

BILL ANALYSIS

C.S.H.B. 1763
By: Cook, Robby
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Chapter 36, Water Code, authorizes a groundwater conservation district to adopt rules and issue permits related to the regulation and management of groundwater resources located within its boundaries. Although Chapter 36 sets forth a requirement that rules be adopted only after notice and hearing, as well as makes a reference to a hearings process for permit applications, the statute is silent on most aspects of the notice and hearings process. Because groundwater conservation districts are not subject to the Administrative Procedures Act, it is necessary to clarify and prescribe the notice and hearings process to be utilized by the districts. It is also necessary to clarify that, where appropriate, groundwater conservation districts may utilize alternative dispute resolution (ADR) procedures in the permitting process in order to facilitate resolution of conflicts and minimize costs for both the district and parties to a permit hearing. This bill sets forth uniform procedures to be utilized by groundwater conservation districts regarding the notice and hearings process for both rulemaking hearings and permit application hearings and clarifies that districts may utilize ADR procedures.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

- Section 1.** Amends 36.101(b), Water Code, and adds Subsections (d) - (l) to provide specific notice and hearing requirements for districts engaged in a rulemaking process.
- Section 2.** Amend Subchapter D, Chapter 36, Water Code by adding a 36.1011 to provide for the adoption of emergency rules by the district.
- Section 3.** Amends 36.113, Water Code, to authorize a district to provide approval of permit amendments. Provides a district shall consider specific factors before taking action to grant or deny a permit amendment. Provides a district may impose more restrictive permit conditions on permit amendments to increase use by historic users if the limitations meet specific requirements. Provides permit amendments may be subject to rules of a district and subject to terms and provisions that include the operation of, or production of groundwater from, wells.
- Amends 36.114 to authorize a district to establish a rulemaking process to regulate permit and permit amendments. Provides a district by rule shall determine the activities for which a permit or permit amendment is required, and whether a hearing on permits or permit amendments is required. Provides a time line for district action for applications that receive a hearing or hearings. Provides a time line for district action for applications that do not receive a hearing and the actions that can be taken by applicants.
- Section 4.** Amends Chapter 36, Water Code, by adding Section 36.3705 to define "applicant."

Section 5. Amends Chapter 36, Water Code, by adding Subchapter M as follows:

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS; NOTICE AND HEARING PROCESS

Sec. 36.401. **DEFINITIONS.** Defines "applicant."

Sec. 36.402. **APPLICABILITY.** Provides that this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Sec. 36.403. **SCHEDULING OF HEARING.** Provides that the general manager or board of a district shall schedule a hearing on permit or permit applications as necessary as provided by Section 36.114 and provides the requirements and options that a district has when scheduling and conducting a hearing.

Sec. 36.404. **NOTICE.** Provides that notice of each permit or permit amendment hearing shall be given. Provides the content requirements for notice and time and location requirements for notice to be given.

Sec. 36.405. **HEARING REGISTRATION.** Provides that a district may require submission of a hearing registration form and the requirements for the hearing registration form.

Sec. 36.406. **HEARING PROCEDURES.** Provides that a hearing must be conducted according to procedures that specify the participants and the roles and duties of the participants in a hearing. Provides the guidelines by which evidence and testimony may be presented or limited at a hearing and the means to supplement testimony. Provides that a presiding officer, if stated in district rules, may refer parties to a contested application hearing to an alternative dispute resolution procedure and may determine how costs are apportioned among the parties for the procedure.

Sec. 36.407. **EVIDENCE.** Provides the presiding officer of a hearing shall admit relevant evidence and may exclude irrelevant, immaterial or unduly repetitious evidence.

Sec. 36.408. **RECORDING.** Provides the presiding officer is required to prepare and keep a record of each hearing and assess costs associated with producing the transcript to one or more parties.

Sec. 36.409. **CONTINUANCE.** Provides the process that a presiding officer must follow to continue a hearing.

Sec. 36.410. **REPORT.** Provides the procedure the presiding officer must follow to submit a report on the hearing to the board and the contents required for the report. Provides the presiding officer or general manager shall mail a report to each person who requested the report.

Sec. 36.411. **BOARD ACTION.** Provides the time line for board action on the permit or permit application.

Sec. 36.412. **REQUEST FOR REHEARING.** Provides the procedure for a rehearing and the actions of an applicant necessary to appeal a decision and request a rehearing on the board's decision. Provides a time line of board action on an appeal and a request for rehearing.

Sec. 36.413. **DECISION; WHEN FINAL.** Provides the scenarios when a decision by the board in a permit or permit amendment application hearing is final.

Sec. 36.414. **CONSOLIDATED HEARING ON APPLICATIONS.** Provides that a district shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the application on certain permit or permit amendments.

Sec. 36.415. **ADDITIONAL PROCEDURES.** Provides that a district shall adopt procedural rules to implement this chapter and may adopt additional rules to implement this subchapter. Provides that a district may adopt notice and hearing procedures in addition to this subchapter.

Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. Provides that this subchapter does not apply to hearings conducted by the State Office of Administrative Hearings. Provides that if a district contracts with the State Office of Administrative Hearings then the district shall use the State Office of Administrative Hearing=s rules.

Sec. 36.417. ALTERNATIVE DISPUTE RESOLUTION. Provides that a district may, by rule, develop and use alternative dispute resolution procedures in the manner provided under Chapter 2009, Government Code.

Sec. 36.417 NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. Provides that a district that uses Administrative Procedures is not subject to notice and hearing requirements under this chapter.

Sec. 36.419. EDWARDS AQUIFER AUTHORITY. Provides that this subchapter does not apply to the Edwards Aquifer Authority. Sections 36.412 and 36.413, Water Code apply to the Edwards Aquifer Authority.

Section 6. Amends Chapter 36, Water Code by repealing Section 36.001(17).

Section 7. Provides that the change in law made by this Act applies only to a permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district on or after the effective date of this Act. Provides that a permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district before the effective date of this Act is governed by the law in effect at the time the hearing is held. Provides the former law is continued in effect for that purpose.

Section 8. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1.

Section 36.101 (b), Water Code language is added "Except as provided by Section 36.1011"

Section 36.101 (e) the word Arulemaking@ is added when referring to the hearing for clarification

Section 36.101 (d) (5) language is added to have proposed rules accessible to the public and on an Internet site, if the district has a website.

Section 36.101 (f) clarification is given that oral comments made Aat the hearing@ and the language Awithout prejudicing the rights of any person at the hearing@ are deleted from this subsection.

Section 36.101 (i) clarifies that written request for notice of rulemaking hearing is effective for the Aremainder of the@ calendar year in which the request is received.

Section 36.101 (k) is added to state that failure to provide notice does not invalidate a district=s action.

Section 36.101 (l) is added to clarify that section (b) - (k) do not apply to the Edwards Aquifer Authority.

SECTION 2.

Section 36.1011 EMERGENCY RULES, a new subsection (e) is added to clarify that this section does not apply to the Edwards Aquifer Authority.

SECTION 3.

Section 36.113 PERMITS FOR WELLS; PERMIT AMENDMENTS in subsection (a) language is added to clarify district requirements ~~except as provided by Section 36.117~~ and the change from shall to may is put back to: ~~A~~a district shall require a permit for drilling, equipping, operating or completing of wells or for substantially altering the size of wells or well pumps.~~@~~ (shall require is current law)

SECTION 4. No changes

SECTION 5.

Section 36.402 APPLICABILITY corrects reference to added subsection. (changed from 36.415 to 36.416)

Section 36.404 NOTICE

In Section 36.404(b) (3) language is included to clarify that the notice of an application for permit or permit amendment should also include the amount and purpose of the proposed use or change in use.

Section 36.404 (d) clarifies that written request for notice of a permit hearing is effective for the ~~remainder of the~~@calendar year in which the request is received.

Section 36.406 HEARING PROCEDURES

adds a new (d) (3) to designate the parties regarding a contested application and

(d) (9) exercise the procedural rules adopted under Section 36.415 and renumbers accordingly

(e) language is simplified to add ~~except as provided by a rule adopted under Section 36.415, a district may allow~~ any person, including the general manager or a district employee, to provide comment at the hearing.~~@~~

(f) language is added to clarify written testimony can be excluded on motion of a party to the hearing if the person making the written testimony is not reasonably made available for cross-examination upon request.

(g) allows additional written materials to be submitted by persons testifying at the hearing if the board has not acted on the application and adds additional language to require that all parties to the hearing get notice of and opportunity to respond, within 10 days, to any post-hearing submittals.

(h) clarifies that district rules are adopted under Section 36.417.

Section 36.408 RECORDING in Subsection (a) deletes minutes as a form of record of each hearing and adds language to allow and agreement to be worked out for payment of transcription costs between the parties to allow for participation by other parties that may not have the means to cost-share but should have the opportunity to participate.

(b) inserts ~~A~~minutes~~@~~ as a substitute for record of each hearing in an uncontested hearing.

Section 36.410 language is added to clarify that ALL parties to the hearing, not just the applicant, automatically get a copy of the presiding officer's hearing report.

Section 36.412 REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS

(a) clarifies that an applicant in both a contested or uncontested hearing or a party to a contested hearing may administratively appeal a board decision by requesting either written findings and conclusions or a rehearing

adds a new (b) that On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the board receives the request. A person who receives a certified copy of the findings and conclusions from the board may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) language is added that If the original hearing was a contested hearing, the person

requesting a rehearing must provide copies of the request to all parties to the hearing.

(e) A is a@ replaces A constitutes@

subsections are re-lettered accordingly

Section 36.413 DECISION; WHEN FINAL (b) is added:

(b) Except as provided by Subsection (c), an applicant or party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

subsections are re-lettered accordingly

Section 36.414 CONSOLIDATED HEARING ON APPLICATIONS. is added to allow multiple applications from a single applicant to be processed at the same time.

Section 36.415 RULES; ADDITIONAL PROCEDURES is re-numbered and a new (b) is added

(b) In adopting the rules, a district shall:

(1) define under what circumstances an application is considered contested; and

(2) limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.

Section 36.416 HEARING CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS is renumbered and language is removed that spoke to hearing conducted by the State office of Administrative Hearings which is added in 36.418 below.

Section 36.4176 ALTERNATIVE DISPUTE RESOLUTION is renumbered.

Section 36.418 APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT is added to allow a district to establish procedures for hearing consistent with the administrative procedure act if they wish.

Section 36.419 EDWARDS AQUIFER AUTHORITY is added to clarify that the subchapter does not apply to the EAA.

SECTION 6. No Changes

SECTION 7. clarifies that the act applies only to permit applications that are deemed administratively complete or for which notice has been given by the groundwater district before the effective date of the Act.

SECTION 8. No Change

