

By: Cook of Colorado, Hope

H.B. No. 1763

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the notice, hearing, rulemaking, and permitting
3 procedures for groundwater conservation districts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 36.101, Water Code, is amended by
6 amending Subsection (b) and adding Subsections (d)-(1) to read as
7 follows:

8 (b) Except as provided by Section 36.1011, after ~~[After]~~
9 notice and hearing, the board shall adopt and enforce rules to
10 implement this chapter, including rules governing procedure before
11 the board. ~~[Notice in this section shall include publication of the
12 agenda of the hearing in one or more newspapers of general
13 circulation in the county or counties in which the district is
14 located.]~~

15 (d) Not later than the 20th day before the date of a
16 rulemaking hearing, the general manager or board shall:

17 (1) post notice in a place readily accessible to the
18 public at the district office;

19 (2) provide notice to the county clerk of each county
20 in the district;

21 (3) publish notice in one or more newspapers of
22 general circulation in the county or counties in which the district
23 is located;

24 (4) provide notice by mail, facsimile, or electronic

1 mail to any person who has requested notice under Subsection (i);
2 and

3 (5) make available a copy of all proposed rules at a
4 place accessible to the public during normal business hours and, if
5 the district has a website, post an electronic copy on a generally
6 accessible Internet site.

7 (e) The notice provided under Subsection (d) must include:

8 (1) the time, date, and location of the rulemaking
9 hearing;

10 (2) a brief explanation of the subject of the
11 rulemaking hearing; and

12 (3) a location or Internet site at which a copy of the
13 proposed rules may be reviewed or copied.

14 (f) The presiding officer shall conduct a rulemaking
15 hearing in the manner the presiding officer determines to be most
16 appropriate to obtain information and comments relating to the
17 proposed rule as conveniently and expeditiously as possible.
18 Comments may be submitted orally at the hearing or in writing. The
19 presiding officer may hold the record open for a specified period
20 after the conclusion of the hearing to receive additional written
21 comments.

22 (g) A district may require each person who participates in a
23 rulemaking hearing to submit a hearing registration form stating:

24 (1) the person's name;

25 (2) the person's address; and

26 (3) whom the person represents, if the person is not at
27 the hearing in the person's individual capacity.

1 (h) The presiding officer shall prepare and keep a record of
2 each rulemaking hearing in the form of an audio or video recording
3 or a court reporter transcription.

4 (i) A person may submit to the district a written request
5 for notice of a rulemaking hearing. A request is effective for the
6 remainder of the calendar year in which the request is received by
7 the district. To receive notice of a rulemaking hearing in a later
8 year, a person must submit a new request. An affidavit of an
9 officer or employee of the district establishing attempted service
10 by first class mail, facsimile, or e-mail to the person in
11 accordance with the information provided by the person is proof
12 that notice was provided by the district.

13 (j) A district may use an informal conference or
14 consultation to obtain the opinions and advice of interested
15 persons about contemplated rules and may appoint advisory
16 committees of experts, interested persons, or public
17 representatives to advise the district about contemplated rules.

18 (k) Failure to provide notice under Subsection (d)(4) does
19 not invalidate an action taken by the district at a rulemaking
20 hearing.

21 (l) Subsections (b)-(k) do not apply to the Edwards Aquifer
22 Authority.

23 SECTION 2. Subchapter D, Chapter 36, Water Code, is amended
24 by adding Section 36.1011 to read as follows:

25 Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an
26 emergency rule without prior notice or hearing, or with an
27 abbreviated notice and hearing, if the board:

1 (1) finds that a substantial likelihood of imminent
2 peril to the public health, safety, or welfare, or a requirement of
3 state or federal law, requires adoption of a rule on less than 20
4 days' notice; and

5 (2) prepares a written statement of the reasons for
6 its finding under Subdivision (1).

7 (b) Except as provided by Subsection (c), a rule adopted
8 under this section may not be effective for longer than 90 days.

9 (c) If notice of a hearing on the final rule is given not
10 later than the 90th day after the date the rule is adopted, the rule
11 is effective for an additional 90 days.

12 (d) A rule adopted under this section must be adopted at a
13 meeting held as provided by Chapter 551, Government Code.

14 (e) This section does not apply to the Edwards Aquifer
15 Authority.

16 SECTION 3. Sections 36.113 and 36.114, Water Code, are
17 amended to read as follows:

18 Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a)
19 Except as provided by Section 36.117, a [A] district shall require a
20 permit [~~permits~~] for the drilling, equipping, operating, or
21 completing of wells or for substantially altering the size of wells
22 or well pumps. A district may require that a change in the
23 withdrawal or use of groundwater during the term of a permit issued
24 by the district may not be made unless the district has first
25 approved a permit amendment authorizing the change.

26 (a-1) A district may not require a permit or a permit
27 amendment for maintenance or repair of a well if the maintenance or

1 repair does not increase the production capabilities of the well to
2 more than its authorized or permitted production rate.

3 (b) A district shall require that an application for a
4 permit or a permit amendment be in writing and sworn to.

5 (c) A district may require that the following be included in
6 the permit or permit amendment application:

7 (1) the name and mailing address of the applicant and
8 the owner of the land on which the well will be located;

9 (2) if the applicant is other than the owner of the
10 property, documentation establishing the applicable authority to
11 construct and operate a well for the proposed use;

12 (3) a statement of the nature and purpose of the
13 proposed use and the amount of water to be used for each purpose;

14 (4) a water conservation plan or a declaration that
15 the applicant will comply with the district's management plan;

16 (5) the location of each well and the estimated rate at
17 which water will be withdrawn;

18 (6) a water well closure plan or a declaration that the
19 applicant will comply with well plugging guidelines and report
20 closure to the commission; and

21 (7) a drought contingency plan.

22 (d) Before granting or denying a permit or permit amendment,
23 the district shall consider whether:

24 (1) the application conforms to the requirements
25 prescribed by this chapter and is accompanied by the prescribed
26 fees;

27 (2) the proposed use of water unreasonably affects

1 existing groundwater and surface water resources or existing permit
2 holders;

3 (3) the proposed use of water is dedicated to any
4 beneficial use;

5 (4) the proposed use of water is consistent with the
6 district's certified water management plan;

7 (5) the applicant has agreed to avoid waste and
8 achieve water conservation; and

9 (6) the applicant has agreed that reasonable diligence
10 will be used to protect groundwater quality and that the applicant
11 will follow well plugging guidelines at the time of well closure.

12 (e) The district may impose more restrictive permit
13 conditions on new permit applications and permit amendment
14 applications to increase [~~increased~~] use by historic users if the
15 limitations:

16 (1) apply to all subsequent new permit applications
17 and permit amendment applications to increase [~~increased~~] use by
18 historic users, regardless of type or location of use;

19 (2) bear a reasonable relationship to the existing
20 district management plan; and

21 (3) are reasonably necessary to protect existing use.

22 (f) Permits and permit amendments may be issued subject to
23 the rules promulgated by the district and subject to terms and
24 provisions with reference to the drilling, equipping, completion,
25 [~~or~~] alteration, or operation of, or production of groundwater
26 from, [~~of~~] wells or pumps that may be necessary to prevent waste and
27 achieve water conservation, minimize as far as practicable the

1 drawdown of the water table or the reduction of artesian pressure,
2 lessen interference between wells, or control and prevent
3 subsidence.

4 ~~[(g) A district may require that changes in the withdrawal
5 and use of groundwater under a permit not be made without the prior
6 approval of a permit amendment issued by the district.]~~

7 Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND
8 HEARING. (a) The district by rule shall determine each activity
9 regulated by the district for which a permit or permit amendment is
10 required.

11 (b) For each activity for which the district determines a
12 permit or permit amendment is required under Subsection (a), the
13 district by rule shall determine whether a hearing on the permit or
14 permit amendment application is required.

15 (c) For all applications for which a hearing is not required
16 under Subsection (b), the board shall act on the application at a
17 meeting, as defined by Section 551.001, Government Code, unless the
18 board by rule has delegated to the general manager the authority to
19 act on the application.

20 (d) The district shall promptly consider and act on each
21 administratively complete application for a permit or permit
22 amendment as provided by Subsection (c) or Subchapter M.

23 (e) If, within 60 [~~30~~] days after the date an [~~the~~]
24 administratively complete application is submitted, the [~~an~~]
25 application has not been acted on or set for a hearing on a specific
26 date, the applicant may petition the district court of the county
27 where the land is located for a writ of mandamus to compel the

1 district to act on the application or set a date for a hearing on the
2 application, as appropriate.

3 (f) For applications requiring a hearing, the initial [A]
4 hearing shall be held within 35 days after the setting of the date,
5 and the district shall act on the application within 60 [35] days
6 after the date ~~[of]~~ the final hearing on the application is
7 concluded.

8 (g) The district may by rule set a time when an application
9 will expire if the information requested in the application is not
10 provided to the district.

11 (h) An administratively complete application requires
12 information set forth in accordance with Sections 36.113 and
13 36.1131.

14 SECTION 4. Subchapter L, Chapter 36, Water Code, is amended
15 by adding Section 36.3705 to read as follows:

16 Sec. 36.3705. DEFINITION. In this subchapter, "applicant"
17 means a newly confirmed district applying for a loan from the loan
18 fund.

19 SECTION 5. Chapter 36, Water Code, is amended by adding
20 Subchapter M to read as follows:

21 SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;

22 NOTICE AND HEARING PROCESS

23 Sec. 36.401. DEFINITION. In this subchapter, "applicant"
24 means a person who is applying for a permit or a permit amendment.

25 Sec. 36.402. APPLICABILITY. Except as provided by Section
26 36.416, this subchapter applies to the notice and hearing process
27 used by a district for permit and permit amendment applications.

1 Sec. 36.403. SCHEDULING OF HEARING. (a) The general
2 manager or board may schedule a hearing on permit or permit
3 amendment applications received by the district as necessary, as
4 provided by Section 36.114.

5 (b) The general manager or board may schedule more than one
6 application for consideration at a hearing.

7 (c) A hearing must be held at the district office or regular
8 meeting location of the board unless the board provides for
9 hearings to be held at a different location.

10 (d) A hearing may be held in conjunction with a regularly
11 scheduled board meeting.

12 Sec. 36.404. NOTICE. (a) If the general manager or board
13 schedules a hearing on an application for a permit or permit
14 amendment, the general manager or board shall give notice of the
15 hearing as provided by this section.

16 (b) The notice must include:

17 (1) the name of the applicant;

18 (2) the address or approximate location of the well or
19 proposed well;

20 (3) a brief explanation of the proposed permit or
21 permit amendment, including any requested amount of groundwater,
22 the purpose of the proposed use, and any change in use;

23 (4) the time, date, and location of the hearing; and

24 (5) any other information the general manager or board
25 considers relevant and appropriate.

26 (c) Not later than the 10th day before the date of a hearing,
27 the general manager or board shall:

1 (1) post notice in a place readily accessible to the
2 public at the district office;

3 (2) provide notice to the county clerk of each county
4 in the district; and

5 (3) provide notice by:

6 (A) regular mail to the applicant;

7 (B) regular mail, facsimile, or electronic mail
8 to any person who has requested notice under Subsection (d); and

9 (C) regular mail to any other person entitled to
10 receive notice under the rules of the district.

11 (d) A person may request notice from the district of a
12 hearing on a permit or a permit amendment application. The request
13 must be in writing and is effective for the remainder of the
14 calendar year in which the request is received by the district. To
15 receive notice of a hearing in a later year, a person must submit a
16 new request. An affidavit of an officer or employee of the district
17 establishing attempted service by first class mail, facsimile, or
18 e-mail to the person in accordance with the information provided by
19 the person is proof that notice was provided by the district.

20 (e) Failure to provide notice under Subsection (c)(3)(B)
21 does not invalidate an action taken by the district at the hearing.

22 Sec. 36.405. HEARING REGISTRATION. The district may
23 require each person who participates in a hearing to submit a
24 hearing registration form stating:

25 (1) the person's name;

26 (2) the person's address; and

27 (3) whom the person represents, if the person is not

1 there in the person's individual capacity.

2 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be
3 conducted by:

4 (1) a quorum of the board; or

5 (2) an individual to whom the board has delegated in
6 writing the responsibility to preside as a hearings examiner over
7 the hearing or matters related to the hearing.

8 (b) Except as provided by Subsection (c), the board
9 president or the hearings examiner shall serve as the presiding
10 officer at the hearing.

11 (c) If the hearing is conducted by a quorum of the board and
12 the board president is not present, the directors conducting the
13 hearing may select a director to serve as the presiding officer.

14 (d) The presiding officer may:

15 (1) convene the hearing at the time and place
16 specified in the notice;

17 (2) set any necessary additional hearing dates;

18 (3) designate the parties regarding a contested
19 application;

20 (4) establish the order for presentation of evidence;

21 (5) administer oaths to all persons presenting
22 testimony;

23 (6) examine persons presenting testimony;

24 (7) ensure that information and testimony are
25 introduced as conveniently and expeditiously as possible without
26 prejudicing the rights of any party;

27 (8) prescribe reasonable time limits for testimony and

1 the presentation of evidence; and

2 (9) exercise the procedural rules adopted under
3 Section 36.415.

4 (e) Except as provided by a rule adopted under Section
5 36.415, a district may allow any person, including the general
6 manager or a district employee, to provide comments at a hearing on
7 an uncontested application.

8 (f) The presiding officer may allow testimony to be
9 submitted in writing and may require that written testimony be
10 sworn to. On the motion of a party to the hearing, the presiding
11 officer may exclude written testimony if the person who submits the
12 testimony is not available for cross-examination by phone, a
13 deposition before the hearing, or other reasonable means.

14 (g) If the board has not acted on the application, the
15 presiding officer may allow a person who testifies at the hearing to
16 supplement the testimony given at the hearing by filing additional
17 written materials with the presiding officer not later than the
18 10th day after the date of the hearing. A person who files
19 additional written material with the presiding officer under this
20 subsection must also provide the material, not later than the 10th
21 day after the date of the hearing, to any person who provided
22 comments on an uncontested application or any party to a contested
23 hearing. A person who receives additional written material under
24 this subsection may file a response to the material with the
25 presiding officer not later than the 10th day after the date the
26 material was received.

27 (h) The district by rule adopted under Section 36.417 may

1 authorize the presiding officer, at the presiding officer's
2 discretion, to issue an order at any time before board action under
3 Section 36.411 that:

4 (1) refers parties to a contested hearing to an
5 alternative dispute resolution procedure on any matter at issue in
6 the hearing;

7 (2) determines how the costs of the procedure shall be
8 apportioned among the parties; and

9 (3) appoints an impartial third party as provided by
10 Section 2009.053, Government Code, to facilitate that procedure.

11 Sec. 36.407. EVIDENCE. (a) The presiding officer shall
12 admit evidence that is relevant to an issue at the hearing.

13 (b) The presiding officer may exclude evidence that is
14 irrelevant, immaterial, or unduly repetitious.

15 Sec. 36.408. RECORDING. (a) Except as provided by
16 Subsection (b), the presiding officer shall prepare and keep a
17 record of each hearing in the form of an audio or video recording or
18 a court reporter transcription. On the request of a party to a
19 contested hearing, the presiding officer shall have the hearing
20 transcribed by a court reporter. The presiding officer may assess
21 any court reporter transcription costs against the party that
22 requested the transcription or among the parties to the hearing.
23 Except as provided by this subsection, the presiding officer may
24 exclude a party from further participation in a hearing for failure
25 to pay in a timely manner costs assessed against that party under
26 this subsection. The presiding officer may not exclude a party from
27 further participation in a hearing as provided by this subsection

1 if the parties have agreed that the costs assessed against that
2 party will be paid by another party.

3 (b) If a hearing is uncontested, the presiding officer may
4 substitute minutes or the report required under Section 36.410 for
5 a method of recording the hearing provided by Subsection (a).

6 Sec. 36.409. CONTINUANCE. The presiding officer may
7 continue a hearing from time to time and from place to place without
8 providing notice under Section 36.404. If the presiding officer
9 continues a hearing without announcing at the hearing the time,
10 date, and location of the continued hearing, the presiding officer
11 must provide notice of the continued hearing by regular mail to the
12 parties.

13 Sec. 36.410. REPORT. (a) Except as provided by Subsection
14 (e), the presiding officer shall submit a report to the board not
15 later than the 30th day after the date a hearing is concluded.

16 (b) The report must include:

17 (1) a summary of the subject matter of the hearing;

18 (2) a summary of the evidence or public comments
19 received; and

20 (3) the presiding officer's recommendations for board
21 action on the subject matter of the hearing.

22 (c) The presiding officer or general manager shall provide a
23 copy of the report to:

24 (1) the applicant; and

25 (2) each person who provided comments or each
26 designated party.

27 (d) A person who receives a copy of the report under

1 Subsection (c) may submit to the board written exceptions to the
2 report.

3 (e) If the hearing was conducted by a quorum of the board and
4 if the presiding officer prepared a record of the hearing as
5 provided by Section 36.408(a), the presiding officer shall
6 determine whether to prepare and submit a report to the board under
7 this section.

8 Sec. 36.411. BOARD ACTION. The board shall act on a permit
9 or permit amendment application not later than the 60th day after
10 the date the final hearing on the application is concluded.

11 Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND
12 CONCLUSIONS. (a) An applicant in a contested or uncontested
13 hearing on an application or a party to a contested hearing may
14 administratively appeal a decision of the board on a permit or
15 permit amendment application by requesting written findings and
16 conclusions or a rehearing before the board not later than the 20th
17 day after the date of the board's decision.

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

1 (c) A request for rehearing must be filed in the district
2 office and must state the grounds for the request. If the original
3 hearing was a contested hearing, the person requesting a rehearing
4 must provide copies of the request to all parties to the hearing.

5 (d) If the board grants a request for rehearing, the board
6 shall schedule the rehearing not later than the 45th day after the
7 date the request is granted.

8 (e) The failure of the board to grant or deny a request for
9 rehearing before the 91st day after the date the request is
10 submitted is a denial of the request.

11 Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the
12 board on a permit or permit amendment application is final:

13 (1) if a request for rehearing is not filed on time, on
14 the expiration of the period for filing a request for rehearing; or

15 (2) if a request for rehearing is filed on time, on the
16 date:

17 (A) the board denies the request for rehearing;
18 or

19 (B) the board renders a written decision after
20 rehearing.

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

26 (c) An applicant or a party to a contested hearing may not
27 file suit against the district under Section 36.251 if a request for

1 rehearing was not filed on time.

2 Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS. (a)
3 Except as provided by Subsection (b), a district shall process
4 applications from a single applicant under consolidated notice and
5 hearing procedures on written request by the applicant if the
6 district requires a separate permit or permit amendment application
7 for:

8 (1) drilling, equipping, operating, or completing a
9 well or substantially altering the size of a well or well pump under
10 Section 36.113;

11 (2) the spacing of water wells or the production of
12 groundwater under Section 36.116; or

13 (3) transferring groundwater out of a district under
14 Section 36.122.

15 (b) A district is not required to use consolidated notice
16 and hearing procedures to process separate permit or permit
17 amendment applications from a single applicant if the board cannot
18 adequately evaluate one application until it has acted on another
19 application.

20 Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) A district
21 by rule shall adopt procedural rules to implement this subchapter
22 and may adopt notice and hearing procedures in addition to those
23 provided by this subchapter.

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

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

27 (2) limit participation in a hearing on a contested

1 application to persons who have a personal justiciable interest
2 related to a legal right, duty, privilege, power, or economic
3 interest that is within a district's regulatory authority and
4 affected by a permit or permit amendment application, not including
5 persons who have an interest common to members of the public.

6 Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF
7 ADMINISTRATIVE HEARINGS. If a district contracts with the State
8 Office of Administrative Hearings to conduct a hearing, the hearing
9 shall be conducted as provided by Subchapters C, D, and F, Chapter
10 2001, Government Code.

11 Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. A
12 district by rule may develop and use alternative dispute resolution
13 procedures in the manner provided for governmental bodies under
14 Chapter 2009, Government Code.

15 Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
16 ACT. (a) A district may adopt rules establishing procedures for
17 contested hearings consistent with Subchapters C, D, and F, Chapter
18 2001, Government Code, including the authority to issue a subpoena,
19 require a deposition, or order other discovery.

20 (b) Except as provided by this section and Section 36.416,
21 Chapter 2001, Government Code, does not apply to a hearing under
22 this subchapter.

23 Sec. 36.419. EDWARDS AQUIFER AUTHORITY. (a) Except as
24 provided by Subsection (b), this subchapter does not apply to the
25 Edwards Aquifer Authority.

26 (b) Sections 36.412 and 36.413 apply to the Edwards Aquifer
27 Authority.

1 SECTION 6. Section 36.001(17), Water Code, is repealed.

2 SECTION 7. The change in law made by this Act applies only
3 to a permit or permit amendment application determined to be
4 administratively complete or a rulemaking hearing for which notice
5 is given by a groundwater conservation district on or after the
6 effective date of this Act. A permit or permit amendment
7 application determined to be administratively complete or a
8 rulemaking hearing for which notice was given by a groundwater
9 conservation district before the effective date of this Act is
10 governed by the law in effect at the time the application was
11 determined to be administratively complete or the notice was given,
12 and the former law is continued in effect for that purpose.

13 SECTION 8. This Act takes effect September 1, 2005.