

By: Duncan

S.B. No. 344

A BILL TO BE ENTITLED

AN ACT

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

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

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

(b) After notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. ~~[Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.]~~

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

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

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

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

(4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i);

1 and

2 (5) make available a copy of all proposed rules at a  
3 place accessible to the public during normal business hours or post  
4 an electronic copy on a generally accessible Internet site.

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

6 (1) the time, date, and location of the hearing;

7 (2) a brief explanation of the subject of the hearing;

8 and

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

11 (f) The presiding officer shall conduct a rulemaking  
12 hearing in the manner the presiding officer determines to be most  
13 appropriate to obtain information and testimony relating to the  
14 proposed rule as conveniently and expeditiously as possible without  
15 prejudicing the rights of any person at the hearing. Comments may  
16 be submitted orally or in writing. The presiding officer may hold  
17 the record open for a specified period after the conclusion of the  
18 hearing to receive additional written comments.

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

21 (1) the person's name;

22 (2) the person's address; and

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

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

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

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

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

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

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

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

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

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

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

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

8        Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) A  
9 district may [~~shall~~] require a permit [~~permits~~] for the drilling,  
10 equipping, operating, or completing of wells or for substantially  
11 altering the size of wells or well pumps. A district may require  
12 that a change in the withdrawal or use of groundwater during the  
13 term of a permit issued by the district may not be made unless the  
14 district has first approved a permit amendment authorizing the  
15 change.

16        (a-1) A district may not require a permit or a permit  
17 amendment for maintenance or repair of a well if the maintenance or  
18 repair does not increase the production capabilities of the well to  
19 more than its authorized or permitted production rate.

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

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

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

26            (2) if the applicant is other than the owner of the  
27 property, documentation establishing the applicable authority to

1 construct and operate a well for the proposed use;

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

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

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

8 (6) a water well closure plan or a declaration that the  
9 applicant will comply with well plugging guidelines and report  
10 closure to the commission; and

11 (7) a drought contingency plan.

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

14 (1) the application conforms to the requirements  
15 prescribed by this chapter and is accompanied by the prescribed  
16 fees;

17 (2) the proposed use of water unreasonably affects  
18 existing groundwater and surface water resources or existing permit  
19 holders;

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

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

24 (5) the applicant has agreed to avoid waste and  
25 achieve water conservation; and

26 (6) the applicant has agreed that reasonable diligence  
27 will be used to protect groundwater quality and that the applicant

1 will follow well plugging guidelines at the time of well closure.

2 (e) The district may impose more restrictive permit  
3 conditions on new permit applications and permit amendment  
4 applications to increase [~~increased~~] use by historic users if the  
5 limitations:

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

9 (2) bear a reasonable relationship to the existing  
10 district management plan; and

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

12 (f) Permits and permit amendments may be issued subject to  
13 the rules promulgated by the district and subject to terms and  
14 provisions with reference to the drilling, equipping, completion,  
15 [~~or~~] alteration, or operation of, or production of groundwater  
16 from, [~~of~~] wells or pumps that may be necessary to prevent waste and  
17 achieve water conservation, minimize as far as practicable the  
18 drawdown of the water table or the reduction of artesian pressure,  
19 lessen interference between wells, or control and prevent  
20 subsidence.

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

24 Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND  
25 HEARING. (a) The district by rule shall determine each activity  
26 regulated by the district for which a permit or permit amendment is  
27 required.

1       (b) For each activity for which the district determines a  
2 permit or permit amendment is required under Subsection (a), the  
3 district by rule shall determine whether a hearing on the permit or  
4 permit amendment application is required.

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

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

13       (e) If, within 60 [~~30~~] days after the date an [~~the~~]  
14 administratively complete application is submitted, the [~~an~~]  
15 application has not been acted on or set for a hearing on a specific  
16 date, the applicant may petition the district court of the county  
17 where the land is located for a writ of mandamus to compel the  
18 district to act on the application or set a date for a hearing on the  
19 application, as appropriate.

20       (f) For applications requiring a hearing, the initial [A]  
21 hearing shall be held within 35 days after the setting of the date,  
22 and the district shall act on the application within 60 [~~35~~] days  
23 after the date [~~of~~] the final hearing on the application is  
24 concluded.

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

1       (h) An administratively complete application requires  
2 information set forth in accordance with Sections 36.113 and  
3 36.1131.

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

6       Sec. 36.3705. DEFINITION. In this subchapter, "applicant"  
7 means a newly confirmed district applying for a loan from the loan  
8 fund.

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

11       SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;

12                   NOTICE AND HEARING PROCESS

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

15       Sec. 36.402. APPLICABILITY. Except as provided by Section  
16 36.415, this subchapter applies to the notice and hearing process  
17 used by a district for permit and permit amendment applications.

18       Sec. 36.403. SCHEDULING OF HEARING. (a) The general  
19 manager or board may schedule a hearing on permit or permit  
20 amendment applications received by the district as necessary, as  
21 provided by Section 36.114.

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

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

27       (d) A hearing may be held in conjunction with a regularly



1 scheduled board meeting.

2 Sec. 36.404. NOTICE. (a) If the general manager or board  
3 schedules a hearing on an application for a permit or permit  
4 amendment, the general manager or board shall give notice of the  
5 hearing as provided by this section.

6 (b) The notice must include:

7 (1) the name of the applicant;

8 (2) the address or approximate location of the well or  
9 proposed well;

10 (3) for a permit amendment hearing, a brief  
11 explanation of the proposed amendment;

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

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

15 (c) Not later than the 10th day before the date of a hearing,  
16 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; and

21 (3) provide notice by:

22 (A) regular mail to the applicant;

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

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

27 (d) A person may request notice from the district of a

1 hearing on a permit or a permit amendment application. The request  
2 must be in writing and is effective for the calendar year in which  
3 the request is received by the district. To receive notice of a  
4 hearing in a later year, a person must submit a new request. An  
5 affidavit of an officer or employee of the district establishing  
6 attempted service by first class mail, facsimile, or e-mail to the  
7 person in accordance with the information provided by the person is  
8 proof that notice was provided by the district.

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

11 Sec. 36.405. HEARING REGISTRATION. The district may  
12 require each person who participates in a hearing to submit a  
13 hearing registration form stating:

- 14 (1) the person's name;  
15 (2) the person's address; and  
16 (3) whom the person represents, if the person is not  
17 there in the person's individual capacity.

18 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be  
19 conducted by:

- 20 (1) a quorum of the board; or  
21 (2) an individual to whom the board has delegated in  
22 writing the responsibility to preside as a hearings examiner over  
23 the hearing or matters related to the hearing.

24 (b) Except as provided by Subsection (c), the board  
25 president or the hearings examiner shall serve as the presiding  
26 officer at the hearing.

27 (c) If the hearing is conducted by a quorum of the board and

1 the board president is not present, the directors conducting the  
2 hearing may select a director to serve as the presiding officer.

3 (d) The presiding officer may:

4 (1) convene the hearing at the time and place  
5 specified in the notice;

6 (2) set any necessary additional hearing dates;

7 (3) establish the order for presentation of evidence;

8 (4) administer oaths to all persons presenting  
9 testimony;

10 (5) examine persons presenting testimony;

11 (6) ensure that information and testimony are  
12 introduced as conveniently and expeditiously as possible without  
13 prejudicing the rights of any party; and

14 (7) prescribe reasonable time limits for testimony and  
15 the presentation of evidence.

16 (e) Any person, including the general manager or a district  
17 employee, may testify or present evidence at the hearing, unless:

18 (1) the district by rule limits testimony or the  
19 presentation of evidence to persons that the district determines to  
20 be affected by the subject matter of the hearing; or

21 (2) the presiding officer, under authority granted to  
22 the presiding officer by district rule, limits testimony or the  
23 presentation of evidence to persons who, in the presiding officer's  
24 determination, are affected by the subject matter of the hearing.

25 (f) The presiding officer may allow testimony to be  
26 submitted in writing and may require that written testimony be  
27 sworn to.

1       (g) The presiding officer may allow a person who testifies  
2 at the hearing to supplement the testimony given at the hearing by  
3 filing additional written materials with the presiding officer not  
4 later than the 10th day after the date of the hearing if no decision  
5 has been made by the board.

6       (h) The district by rule may authorize the presiding  
7 officer, at the presiding officer's discretion, to issue an order  
8 at any time before board action under Section 36.411 that:

9           (1) refers parties to a contested application hearing  
10 to an alternative dispute resolution procedure on any matter at  
11 issue in the hearing;

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

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

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

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

20       Sec. 36.408. RECORDING. (a) Except as provided by  
21 Subsection (b), the presiding officer shall prepare and keep a  
22 record of each hearing in the form of minutes, an audio or video  
23 recording, or a court reporter transcription. On the request of a  
24 party to a contested hearing, the presiding officer shall have the  
25 hearing transcribed by a court reporter. The presiding officer may  
26 assess any court reporter transcription costs against the party  
27 that requested the transcription or among the parties to the

1 hearing. The presiding officer may exclude a party from further  
2 participation in a hearing for failure to pay in a timely manner  
3 costs assessed against that party under this subsection.

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

7 Sec. 36.409. CONTINUANCE. The presiding officer may  
8 continue a hearing from time to time and from place to place without  
9 providing notice under Section 36.404. If the presiding officer  
10 continues a hearing without announcing at the hearing the time,  
11 date, and location of the continued hearing, the presiding officer  
12 must provide notice of the continued hearing by regular mail to  
13 persons who submitted a hearing registration form under Section  
14 36.405.

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

18 (b) The report must include:

19 (1) a summary of the subject matter of the hearing;  
20 (2) a summary of the evidence or public comments  
21 received; and

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

24 (c) The presiding officer or general manager shall provide a  
25 copy of the report to the applicant, and the applicant may submit to  
26 the board written exceptions to the report.

27 (d) A person who participated in the hearing may:

1           (1) submit a written request to review the report; and  
2           (2) submit to the board written exceptions to the  
3 report.

4           (e) The presiding officer or general manager shall mail a  
5 copy of the report to each person who requests to review the report  
6 under Subsection (d).

7           (f) If the hearing was conducted by a quorum of the board and  
8 if the presiding officer prepared a record of the hearing as  
9 provided by Section 36.408(a), the presiding officer shall  
10 determine whether to prepare and submit a report to the board under  
11 this section.

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

15           Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) An  
16 applicant may appeal a decision of the board on a permit or permit  
17 amendment application by requesting a rehearing before the board  
18 not later than the 20th day after the date of the board's decision.

19           (b) A request for rehearing must be filed in the district  
20 office and must state the grounds for the request.

21           (c) If the board grants a request for rehearing, the board  
22 shall schedule the rehearing not later than the 45th day after the  
23 date the request is granted.

24           (d) The failure of the board to grant or deny a request for  
25 rehearing before the 91st day after the date the request is  
26 submitted constitutes a denial of the request.

27           Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the

1 board on a permit or permit amendment application is final:

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

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

6 (A) the board denies the request for rehearing;

7 (B) the board renders a decision after rehearing;

8 or

9 (C) the request for rehearing is denied by  
10 operation of law.

11 (b) An applicant may not file suit against the district  
12 under Section 36.251 if a request for rehearing was not filed on  
13 time.

14 Sec. 36.414. ADDITIONAL PROCEDURES. A district by rule  
15 shall adopt procedural rules to implement this subchapter and may  
16 adopt notice and hearing procedures in addition to those provided  
17 by this subchapter.

18 Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF  
19 ADMINISTRATIVE HEARINGS. This subchapter does not apply to a  
20 hearing conducted by the State Office of Administrative Hearings  
21 under Section 2003.021(b)(4), Government Code. If a district  
22 contracts with the State Office of Administrative Hearings to  
23 conduct a hearing, the hearing shall be conducted as provided by  
24 Subchapters C, D, and F, Chapter 2001, Government Code.

25 Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. A district by  
26 rule may develop and use alternative dispute resolution procedures  
27 in the manner provided for governmental bodies under Chapter 2009,

1 Government Code.

2 Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT  
3 CODE. Except as provided by Section 36.415, Chapter 2001,  
4 Government Code, does not apply to a hearing under this subchapter.

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

6 SECTION 7. The change in law made by this Act applies only  
7 to a permit or permit amendment application hearing or a rulemaking  
8 hearing held by a groundwater conservation district on or after the  
9 effective date of this Act. A permit or permit amendment  
10 application hearing or a rulemaking hearing held by a groundwater  
11 conservation district before the effective date of this Act is  
12 governed by the law in effect at the time the hearing was held, and  
13 the former law is continued in effect for that purpose.

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