

By: Smithee

H.B. No. 4656

A BILL TO BE ENTITLED

AN ACT

relating to the management, operation, and review of groundwater conservation districts.

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

SECTION 1. Subchapter D, Chapter 6, Water Code, is amended by adding Section 6.113 to read as follows:

Sec. 6.113. DUTY TO ESTABLISH TRAINING PROGRAM. The board shall establish a training program for members of boards of directors and general managers of groundwater conservation districts that includes education in:

- (1) the provisions of Chapter 36;
- (2) the principles of hydrogeology;
- (3) relevant permitting procedures;
- (4) effective conservation practices;
- (5) conflicts of interest;
- (6) methods of conducting public hearings;
- (7) the responsibility of a director to provide financial oversight of a district; and
- (8) board management and accountability.

SECTION 2. Subchapter C, Chapter 36, Water Code, is amended by adding Section 36.069 to read as follows:

Sec. 36.069. REQUIRED TRAINING FOR DIRECTORS AND GENERAL MANAGER. (a) Each director and general manager of a district shall complete at least one hour of training in a program

1 established by the Texas Water Development Board under Section  
2 6.113 during each one-year period in which the person serves as a  
3 director or general manager.

4 (b) The Texas Water Development Board or other entity  
5 providing the training shall provide a certificate of course  
6 completion to persons who complete the training required by this  
7 section. A district shall maintain and make available for public  
8 inspection the record of its directors' and general manager's  
9 completion of the training.

10 (c) The failure of one or more of a district's directors or  
11 its general manager to complete the training required by this  
12 section does not affect the validity of an action taken by the  
13 district.

14 SECTION 3. The heading to Section 36.1071, Water Code, is  
15 amended to read as follows:

16 Sec. 36.1071. DISTRICT MANAGEMENT PLAN.

17 SECTION 4. Section 36.1071, Water Code, is amended by  
18 amending Subsections (a), (b), (c), (f), and (g) and adding  
19 Subsection (i) to read as follows:

20 (a) Following notice and hearing, the district shall, in  
21 coordination with surface water management entities on a regional  
22 basis, develop a [~~comprehensive~~] management plan that [~~which~~]  
23 addresses the following management goals, as applicable:

- 24 (1) providing the most efficient use of groundwater;
- 25 (2) controlling and preventing waste of groundwater;
- 26 (3) controlling and preventing subsidence;
- 27 (4) addressing conjunctive surface water management

1 issues;

2 (5) addressing natural resource issues;

3 (6) addressing drought conditions;

4 (7) addressing conservation, recharge enhancement,  
5 rainwater harvesting, precipitation enhancement, or brush control,  
6 where appropriate and cost-effective; and

7 (8) addressing in a quantitative manner the desired  
8 future conditions of the groundwater resources.

9 (b) The [A] district management plan, or any amendments to  
10 the [a] district management plan, shall be developed [~~by the~~  
11 ~~district~~] using the district's best available data and forwarded to  
12 the regional water planning group for use in their planning  
13 process.

14 (c) The commission and the Texas Water Development Board  
15 shall provide technical assistance to a district in the development  
16 of the district management plan required under Subsection (a) which  
17 may include, if requested by the district, a preliminary review and  
18 comment on the plan prior to final approval by the board. If such  
19 review and comment by the commission is requested, the commission  
20 shall provide comment not later than 30 days from the date the  
21 request is received.

22 (f) The district shall adopt rules necessary to implement  
23 the district management plan. Prior to the development of the  
24 district's first management plan and [~~its~~] approval of that plan  
25 under Section 36.1072, the district may not adopt rules other than  
26 rules pertaining to the registration and interim permitting of new  
27 and existing wells and rules governing spacing and procedure before

1 the district's board; however, the district may not adopt any rules  
2 limiting the production of wells, except rules requiring that  
3 groundwater produced from a well be put to a nonwasteful,  
4 beneficial use. The district may accept applications for permits  
5 under Section 36.113, provided the district does not act on any such  
6 application until the district's management plan is approved as  
7 provided in Section 36.1072.

8 (g) The district shall adopt amendments to the district  
9 management plan as necessary. Amendments to the district  
10 management plan shall be adopted after notice and hearing and shall  
11 otherwise comply with the requirements of this section.

12 (i) After the first district management plan is adopted, the  
13 district may not amend rules, repeal rules, or adopt new rules  
14 unless its management plan has been approved and is in effect as  
15 provided in Section 36.1072. The commission may take action under  
16 Section 36.303 if a district amends, repeals, or adopts a rule  
17 without an approved district management plan.

18 SECTION 5. Section 36.1072, Water Code, is amended to read  
19 as follows:

20 Sec. 36.1072. TEXAS WATER DEVELOPMENT BOARD REVIEW AND  
21 APPROVAL OF DISTRICT MANAGEMENT PLAN. (a) In this section,  
22 "development board" means the Texas Water Development Board. A  
23 district shall, not later than three years after the creation of the  
24 district or, if the district required confirmation, after the  
25 election confirming the district's creation, submit the district  
26 management plan required under Section 36.1071 to the executive  
27 administrator for review and approval.

1 (b) Within 60 days of receipt of a district management plan  
2 adopted under Section 36.1071, readopted under Subsection [~~(e) or~~]  
3 (g) or (i) of this section, or amended under Section 36.1073, the  
4 executive administrator shall approve the district [~~a~~] management  
5 plan if the plan is administratively complete. A management plan is  
6 administratively complete when it contains the information  
7 required to be submitted under Section 36.1071(a) and (e). The  
8 executive administrator may waive [~~determine whether conditions~~  
9 ~~justify waiver of~~] the requirements under Section 36.1071(e)(4) if  
10 the executive administrator determines that conditions justify the  
11 waiver.

12 (c) Once the executive administrator has granted  
13 administrative approval to [~~approved~~] a management plan:

14 (1) the executive administrator may not revoke but may  
15 require revisions to the approved groundwater conservation  
16 district management plan as provided by Subsection (g); and

17 (2) the executive administrator may request  
18 additional information from the district if the information is  
19 necessary to clarify, modify, or supplement previously submitted  
20 material[~~, but a request for additional information does not render~~  
21 ~~the management plan unapproved~~].

22 (d) Not later than the 60th day after the date of the  
23 administrative approval of a district management plan under  
24 Subsection (c), the executive administrator shall perform a  
25 substantive review of the plan and:

- 26 (1) request additional information from the district;  
27 (2) request that the district make substantive changes

1 to the plan; or

2 (3) recommend approval of the plan.

3 (e) If the executive administrator recommends approval of a  
4 district management plan under Subsection (d), the development  
5 board shall review the plan, conduct a hearing on the plan, and  
6 either approve or reject the plan.

7 (f) A district management plan takes effect on approval by  
8 the development board [~~executive administrator or, if appealed, on~~  
9 ~~approval by the Texas Water Development Board~~].

10 (g) [(e)] The district may review the district management  
11 plan annually and shall [~~must~~] review and readopt the plan with or  
12 without revisions at least once every five years. The district  
13 shall provide the readopted plan to the executive administrator not  
14 later than the 60th day after the date on which the plan was  
15 readopted. Approval of the preceding district management plan  
16 remains in effect until:

17 (1) the district fails to timely readopt a district  
18 management plan;

19 (2) the district fails to timely submit the district's  
20 readopted management plan to the executive administrator for  
21 administrative approval under Subsection (b); or

22 (3) the development board [~~executive administrator~~]  
23 determines under Subsection (e) that the readopted district  
24 management plan does not meet the requirements for approval, and  
25 the district has exhausted all appeals [~~to the Texas Water~~  
26 ~~Development Board or appropriate court~~].

27 (h) [(f)] If the development board [~~executive~~

1 ~~administrator~~] does not approve the district management plan, the  
2 development board [~~executive administrator~~] shall provide to the  
3 district, in writing, the reasons the development board does not  
4 approve [~~for the action~~]. Not later than the 180th day after the  
5 date a district receives notice that the development board has not  
6 approved the district [~~its~~] management plan [~~has not been~~  
7 ~~approved~~], the district may submit a revised management plan for  
8 review and approval. [~~The executive administrator's decision may~~  
9 ~~be appealed to the Texas Water Development Board.~~] If the  
10 development board [~~Texas Water Development Board~~] decides not to  
11 approve the revised district management plan [~~on appeal~~], the  
12 district may request that the conflict be mediated. The district  
13 and the development board may seek the assistance of the Center for  
14 Public Policy Dispute Resolution at The University of Texas School  
15 of Law or an alternative dispute resolution system established  
16 under Chapter 152, Civil Practice and Remedies Code, in obtaining a  
17 qualified impartial third party to mediate the conflict. The cost  
18 of the mediation services must be specified in the agreement  
19 between the parties and the Center for Public Policy Dispute  
20 Resolution or the alternative dispute resolution system. If the  
21 parties do not resolve the conflict through mediation, the decision  
22 of the development board [~~Texas Water Development Board~~] not to  
23 approve the district management plan may be appealed to a district  
24 court in Travis County. Costs for the appeal shall be set by the  
25 court hearing the appeal. An appeal under this subsection is by  
26 trial de novo. The commission shall not take enforcement action  
27 against a district under Subchapter I until the later of the

1 expiration of the 180-day period, the date the development board  
2 [~~Texas Water Development Board~~] has taken final action withholding  
3 approval of a revised district management plan, the date the  
4 mediation is completed, or the date a final judgment upholding the  
5 development board's decision is entered by a district court. An  
6 enforcement action may not be taken against a district by the  
7 commission or the state auditor under Subchapter I because the  
8 district's management plan and the approved regional water plan are  
9 in conflict while the parties are attempting to resolve the  
10 conflict before the development board, in mediation, or in court.  
11 Rules of the district continue in full force and effect until all  
12 appeals under this subsection have been exhausted and the final  
13 judgment is adverse to the district.

14 (i) [~~(g) In this subsection, "development board" means the~~  
15 ~~Texas Water Development Board.~~] A person with a legally defined  
16 interest in groundwater in a district, or the regional water  
17 planning group, may file a petition with the development board  
18 stating that a conflict requiring resolution may exist between the  
19 district's approved management plan developed under Section  
20 36.1071 and the state water plan. If a conflict exists, the  
21 development board shall provide technical assistance to and  
22 facilitate coordination between the involved person or regional  
23 water planning group and the district to resolve the conflict. Not  
24 later than the 45th day after the date the person or the regional  
25 water planning group files a petition with the development board,  
26 if the conflict has not been resolved, the district and the involved  
27 person or regional planning group may mediate the conflict. The



1 district and the involved person or regional planning group may  
2 seek the assistance of the Center for Public Policy Dispute  
3 Resolution at The University of Texas School of Law or an  
4 alternative dispute resolution system established under Chapter  
5 152, Civil Practice and Remedies Code, in obtaining a qualified  
6 impartial third party to mediate the conflict. The cost of the  
7 mediation services must be specified in the agreement between the  
8 parties and the Center for Public Policy Dispute Resolution or the  
9 alternative dispute resolution system. If the district and the  
10 involved person or regional planning group cannot resolve the  
11 conflict through mediation, the development board shall resolve the  
12 conflict not later than the 60th day after the date the mediation is  
13 completed. The development board action under this provision may  
14 be consolidated, at the option of the board, with related action  
15 under Section 16.053(p). If the development board determines that  
16 resolution of the conflict requires a revision of the approved  
17 groundwater conservation district management plan, the development  
18 board shall provide information to the district. The district  
19 shall prepare any revisions to the plan based on the information  
20 provided by the development board and shall hold, after notice, at  
21 least one public hearing at some central location within the  
22 district. The district shall consider all public and development  
23 board comments, prepare, revise, and adopt its management plan, and  
24 submit the revised management plan to the development board for  
25 approval. On the request of the district or the regional water  
26 planning group, the development board shall include discussion of  
27 the conflict and its resolution in the state water plan that the

1 development board provides to the governor, the lieutenant  
2 governor, and the speaker of the house of representatives under  
3 Section 16.051(e). If the groundwater conservation district  
4 disagrees with the decision of the development board under this  
5 subsection, the district may appeal the decision to a district  
6 court in Travis County. Costs for the appeal shall be set by the  
7 court hearing the appeal. An appeal under this subsection is by  
8 trial de novo.

9 SECTION 6. Section 36.1073, Water Code, is amended to read  
10 as follows:

11 Sec. 36.1073. AMENDMENT TO DISTRICT MANAGEMENT PLAN. Any  
12 amendment to a district [~~the~~] management plan shall be submitted to  
13 the executive administrator within 60 days following adoption of  
14 the amendment by the district's board. The executive  
15 administrator and the Texas Water Development Board shall review  
16 and approve any amendment that [~~which~~] substantially affects the  
17 district management plan in accordance with the procedures  
18 established under Section 36.1072.

19 SECTION 7. Subsections (b), (c), and (n), Section 36.108,  
20 Water Code, are amended to read as follows:

21 (b) If two or more districts are located within the  
22 boundaries of the same management area, each district shall  
23 [~~prepare a comprehensive management plan as required by Section~~  
24 ~~36.1071 covering that district's respective territory. On~~  
25 ~~completion and approval of the plan as required by Section 36.1072,~~  
26 ~~each district shall~~] forward a copy of the district's [~~new or~~  
27 ~~revised~~] management plan to the other districts in the management

1 area. The boards of the districts shall consider the plans  
2 individually and shall compare them to other district management  
3 plans then in force in the management area.

4 (c) The presiding officer, or the presiding officer's  
5 designee, of each district located in whole or in part in the  
6 management area shall meet at least annually to conduct joint  
7 planning with the other districts in the management area and to  
8 review the district management plans and accomplishments for the  
9 management area. In reviewing the district management plans, the  
10 districts shall consider:

11 (1) the goals of each district management plan and its  
12 impact on planning throughout the management area;

13 (2) the effectiveness of the measures established by  
14 each district management plan for conserving and protecting  
15 groundwater and preventing waste, and the effectiveness of these  
16 measures in the management area generally;

17 (3) any other matters that the boards consider  
18 relevant to the protection and conservation of groundwater and the  
19 prevention of waste in the management area; and

20 (4) the degree to which each district management plan  
21 achieves the desired future conditions established during the joint  
22 planning process.

23 (n) The districts shall prepare [~~a~~] revised conditions  
24 [~~plan~~] in accordance with development board recommendations and  
25 hold, after notice, at least one public hearing at a central  
26 location in the groundwater management area. After consideration  
27 of all public and development board comments, the districts shall

1 revise the conditions and submit the conditions to the development  
2 board for review.

3 SECTION 8. Section 36.1132, Water Code, is amended to read  
4 as follows:

5 Sec. 36.1132. PERMITS BASED ON MANAGED AVAILABLE  
6 GROUNDWATER. A district may~~[, to the extent possible, shall]~~ issue  
7 permits up to the point that the total volume of groundwater  
8 permitted equals the managed available groundwater, if  
9 administratively complete permit applications are submitted to the  
10 district.

11 SECTION 9. Subsection (b), Section 36.116, Water Code, is  
12 amended to read as follows:

13 (b) In promulgating any rules limiting groundwater  
14 production, the district may preserve historic or existing use  
15 before the effective date of the rules to the maximum extent  
16 practicable consistent with the district's [~~comprehensive~~]  
17 management plan under Section 36.1071 and as provided by Section  
18 36.113.

19 SECTION 10. Section 36.117, Water Code, is amended by  
20 adding Subsection (e-1) to read as follows:

21 (e-1) An operator of a water well exempt under Subsection  
22 (b)(2) or (3) shall annually report to the district for each exempt  
23 well the total amount of groundwater withdrawn during the year.

24 SECTION 11. Section 36.207, Water Code, is amended to read  
25 as follows:

26 Sec. 36.207. USE OF PERMIT FEES AUTHORIZED BY SPECIAL LAW.  
27 A district may use funds obtained from permit fees collected

1 pursuant to the special law governing the district for any purpose  
2 consistent with the district's certified [~~water~~] management plan  
3 including, without limitation, making grants, loans, or  
4 contractual payments to achieve, facilitate, or expedite  
5 reductions in groundwater pumping or the development or  
6 distribution of alternative water supplies.

7 SECTION 12. Section 36.301, Water Code, is amended to read  
8 as follows:

9 Sec. 36.301. FAILURE TO SUBMIT A DISTRICT MANAGEMENT PLAN.  
10 If a district [~~board~~] fails to submit a management plan or to  
11 receive certification of its management plan under Section 36.1072,  
12 or fails to submit or receive certification of an amendment to the  
13 district management plan under Section 36.1073, the commission  
14 shall take appropriate action under Section 36.303.

15 SECTION 13. Section 36.3011, Water Code, is amended to read  
16 as follows:

17 Sec. 36.3011. FAILURE OF DISTRICT TO CONDUCT JOINT  
18 PLANNING. Not later than the 45th day after receiving the review  
19 panel's report under Section 36.108, the executive director or the  
20 commission shall take action to implement any or all of the panel's  
21 recommendations. The commission may take any action against a  
22 district it considers necessary in accordance with Section 36.303  
23 if the commission finds that:

- 24 (1) a district has failed to submit its management  
25 plan to the executive administrator;
- 26 (2) a district has failed to adopt rules;
- 27 (3) the rules adopted by the district are not designed

1 to achieve the desired future condition of the groundwater  
2 resources in the groundwater management area; or

3 (4) the groundwater in the management area is not  
4 adequately protected by the rules adopted by the district, or the  
5 groundwater in the management area is not adequately protected  
6 because of the district's failure to enforce substantial compliance  
7 with its rules.

8 SECTION 14. Subsections (c), (d), and (f), Section 36.302,  
9 Water Code, are amended to read as follows:

10 (c) In a review performed under Subsection (a), the state  
11 auditor shall make a determination, based on an analysis of a  
12 district's activities, of whether the [a] district is actively  
13 engaged in achieving the objectives of the district's management  
14 plan, including a desired future condition established under  
15 Section 36.108(d) that is applicable to all or part of the district  
16 ~~[based on an analysis of the district's activities]~~.

17 (d) The state auditor shall [may] perform the review under  
18 Subsection (a) following the first anniversary of the initial  
19 approval of the plan under Section 36.1072 and at least as often as  
20 once every five [seven] years after that date, subject to a risk  
21 assessment and to the legislative audit committee's approval of  
22 including the review in the audit plan under Section 321.013,  
23 Government Code.

24 (f) The [~~If it is determined under Subsection (c) that the~~  
25 ~~district is not operational, the~~] commission shall take appropriate  
26 action under Section 36.303 if it is determined under Subsection  
27 (c) that a district is not actively engaged in achieving the

1 objectives of the district's management plan, including a desired  
2 future condition established under Section 36.108(d) that is  
3 applicable to all or part of the district.

4 SECTION 15. Subsection (a), Section 36.303, Water Code, is  
5 amended to read as follows:

6 (a) If Section 36.1071(i), 36.108, 36.301, or 36.302(f)  
7 applies, the commission, after notice and hearing in accordance  
8 with Chapter 2001, Government Code, shall take action the  
9 commission considers appropriate, including:

10 (1) issuing an order requiring the district to take  
11 certain actions or to refrain from taking certain actions;

12 (2) dissolving the board in accordance with Sections  
13 36.305 and 36.307 and calling an election for the purpose of  
14 electing a new board;

15 (3) requesting the attorney general to bring suit for  
16 the appointment of a receiver to collect the assets and carry on the  
17 business of the groundwater conservation district; or

18 (4) dissolving the district in accordance with  
19 Sections 36.304, 36.305, and 36.308.

20 SECTION 16. (a) Section 36.069, Water Code, as added by  
21 this Act, applies to a member of the board of directors of a  
22 groundwater conservation district who qualifies for office and to a  
23 general manager of a groundwater conservation district who begins  
24 employment with the district before, on, or after the effective  
25 date of this Act. A person who is serving as a member of the board  
26 of directors or as a general manager of a groundwater conversation  
27 district on the effective date of this Act must complete the first

1 hour of training as required by Section 36.069, Water Code, as added  
2 by this Act, not later than September 1, 2010.

3 (b) The changes in law made by this Act apply only to a  
4 management plan or an amendment to a management plan that is  
5 submitted by a groundwater conservation district to the executive  
6 administrator of the Texas Water Development Board for review and  
7 approval on or after the effective date of this Act. A management  
8 plan or an amendment to a management plan that is submitted to the  
9 executive administrator of the Texas Water Development Board before  
10 the effective date of this Act is governed by the law in effect when  
11 the management plan or amendment was submitted, and the former law  
12 is continued in effect for that purpose.

13 (c) As soon as practicable after the effective date of this  
14 Act, the Texas Water Development Board shall adopt rules to  
15 implement Section 36.1072, Water Code, as amended by this Act.

16 (d) The first report under Subsection (e-1), Section  
17 36.117, Water Code, as added by this Act, is due not later than  
18 September 1, 2010.

19 (e) The change in law made by this Act to Section 36.302,  
20 Water Code, applies only to a review of a groundwater conservation  
21 district performed on or after the effective date of this Act. A  
22 review of a groundwater conservation district performed before the  
23 effective date of this Act is governed by the law in effect on the  
24 date the review was performed, and the former law is continued in  
25 effect for that purpose.

26 SECTION 17. This Act takes effect immediately if it  
27 receives a vote of two-thirds of all the members elected to each



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1 house, as provided by Section 39, Article III, Texas Constitution.  
2 If this Act does not receive the vote necessary for immediate  
3 effect, this Act takes effect September 1, 2009.