

Amend CSHB 725 (senate committee printing) by adding the appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property. Groundwater ownership and rights may be transferred, conveyed, or leased in the same manner and by the same means as any other ownership interest in real property.

(b) The groundwater ownership and rights described by this section:

(1) entitle the landowner, including a landowner's lessees, heirs, or assigns, to drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence, but does not entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of his land; and

(2) do not affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Nothing [The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing] in this code shall be construed as granting the authority to deprive [depriving] or divest a landowner, including a landowner's lessees, heirs, or assigns, [divesting the owners or their lessees and assigns] of the groundwater ownership and rights described by this section [or rights, except as those rights may be limited or altered by rules promulgated by a district].

(d) This section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner [~~A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program~~].

(e) This section does not affect the ability to regulate groundwater in any manner authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District; and

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District.

SECTION _____. Section 36.101, Water Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule under this chapter, a district [~~During the rulemaking process the board~~] shall:

(1) consider all groundwater uses and needs;

(2) [and shall] develop rules that [which] are fair and impartial;

(3) consider the groundwater ownership and rights described by Section 36.002;

(4) consider the public interest in conservation, preservation, protection, recharging, development and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;

(5) consider the goals developed as part of the district's comprehensive management plan under Section 36.1071; and

(6) [~~and that do~~] not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

(a-1) Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.