

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 24, 2011

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: SB332 by Fraser (Relating to the vested ownership interest in groundwater beneath the surface of land, the right to produce that groundwater, and the management of groundwater in this state.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Water Code to include the definition of a landowner and provide that a landowner has a vested ownership interest in groundwater below the surface as an interest in the landowner's real property. A landowner would be entitled to a fair chance to produce groundwater below the surface of the landowner's real property, but would not be entitled to a right to capture a specific amount, nor could the capture cause waste or malicious drainage of other properties or subsidence. The rights and interests of the landowner could also be limited by a groundwater and conservation district's rules under Subsection (d), including that a district must 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.

The bill would prohibit a district's rules from discriminating between land that is irrigated for production and land that was irrigated for production and is now participating in a federal conservation program.

A groundwater conservation district would be required to consider the vested ownership interest; the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of water; and the goals developed by districts as part of their management plans.

Local Government Impact

There could be a fiscal impact to a groundwater and conservation district (GCD), but it would vary depending on the number of lawsuits filed that could result from the provisions of the bill.

The provisions of the bill would establish that groundwater rights are equal to oil and gas rights, but would not ensure that the landowner owns any groundwater rights to the groundwater underneath their property. A GCD may have to verify that a potential well owner is actually the owner and entitled to the groundwater beneath the property prior to approving a well by requesting a property deed from the potential well owner or at the County Clerk's office. The costs involved could be minimal or could have a significant impact on a district's budget depending on the rules established in regard to the provisions required in the bill. It is assumed that a GCD would adopt rules and procedures that would not result in a significant fiscal impact to the district.

Source Agencies: 580 Water Development Board

LBB Staff: JOB, SZ, TP