

By: Rodriguez of Bexar

H.B. No. 2769

A BILL TO BE ENTITLED

AN ACT

relating to the process for appealing the desired future conditions adopted by a groundwater conservation district for an aquifer.

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

SECTION 1. Section 36.1083, Water Code, is amended to read as follows:

Sec. 36.1083. ADMINISTRATIVE APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development [,"development] board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 180th day after the date on which a district adopted a desired future condition under Section 36.108(d-4), an affected person may file a petition with the district requesting that the district contract with the office to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition [~~A person with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area may file a petition with the development board appealing the approval of the~~

1 ~~desired future conditions of the groundwater resources established~~  
2 ~~under this section. The petition must provide evidence that the~~  
3 ~~districts did not establish a reasonable desired future condition~~  
4 ~~of the groundwater resources in the management area].~~

5 (c) Not later than the 45th day after receiving a petition  
6 under Subsection (b), the district shall:

7 (1) contract with the office;

8 (2) request a contested case hearing; and

9 (3) submit a copy of the petition to the office [The

10 ~~development board shall review the petition and any evidence~~  
11 ~~relevant to the petition. The development board shall hold at least~~  
12 ~~one hearing at a central location in the management area to take~~  
13 ~~testimony on the petition. The development board may delegate~~  
14 ~~responsibility for a hearing to the executive administrator or to a~~  
15 ~~person designated by the executive administrator. If the~~  
16 ~~development board finds that the conditions require revision, the~~  
17 ~~development board shall submit a report to the districts that~~  
18 ~~includes a list of findings and recommended revisions to the~~  
19 ~~desired future conditions of the groundwater resources].~~

20 (d) The hearing must be held at a location described by  
21 Section 36.403(c). The hearing shall be conducted in accordance

22 with Chapter 2001, Government Code, and rules of the office [The

23 ~~districts shall prepare a revised plan in accordance with~~

24 ~~development board recommendations and hold, after notice, at least~~

25 ~~one public hearing at a central location in the management area.~~

26 ~~After consideration of all public and development board comments,~~

27 ~~the districts shall revise the conditions and submit the conditions~~

1 ~~to the development board for review].~~

2 (e) The district may adopt rules for notice and hearings  
3 conducted under this section that are consistent with the  
4 procedural rules of the office. In the manner prescribed by  
5 district and office rules, the district shall provide general  
6 notice of the hearing and individual notice of the hearing to the  
7 petitioner, any other party in the hearing identified under  
8 Subsection (f)(3), each nonparty district and regional water  
9 planning group in the management area, the development board, and  
10 the commission. Only an affected person may participate as a party  
11 in the hearing.

12 (f) The office shall hold a prehearing conference to  
13 determine preliminary matters including:

14 (1) whether the petition should be dismissed for  
15 failure to state a claim on which relief can be granted;

16 (2) whether a person is an affected person and  
17 eligible to participate as a party in the hearing; and

18 (3) naming parties to the hearing.

19 (g) The petitioner shall pay all costs associated with the  
20 contract for the hearing and shall deposit with the district an  
21 amount sufficient to pay the contract amount before the hearing  
22 begins. At the conclusion of the hearing, the district shall refund  
23 any excess money to the petitioner.

24 (h) If the administrative law judge finds that a technical  
25 analysis is needed related to the hydrogeology of the area or  
26 matters within the development board's expertise, the judge may  
27 request a study from the development board. In conducting the

1 technical analysis, the development board shall consider any  
2 relevant information provided in the petition, as well as any  
3 groundwater availability models, published studies, or other  
4 information the development board considers relevant. The study  
5 must be completed and delivered to the office not later than the  
6 120th day after the date of the request for admission into the  
7 evidentiary record for consideration at the hearing. The  
8 development board shall make available the relevant staff as expert  
9 witnesses during the hearing if requested by any party or the  
10 administrative law judge.

11 (i) On receipt of the administrative law judge's findings of  
12 fact and conclusions of law in a proposal for decision, including a  
13 dismissal of a petition under Subsection (f), the district's board  
14 shall issue a final order stating the district's decision on the  
15 contested matter and the district's findings of fact and  
16 conclusions of law. The board may change a finding of fact or  
17 conclusion of law made by the administrative law judge, or may  
18 vacate or modify an order issued by the administrative law judge in  
19 the same manner as a state agency under Section 2001.058(e),  
20 Government Code. If the district in its final order finds that a  
21 desired future condition is unreasonable, the districts in the  
22 management area shall reconvene in a joint planning meeting not  
23 later than the 30th day after the date of the final order to revise  
24 the desired future condition.

25 (j) A district's final order finding that a desired future  
26 condition is unreasonable does not invalidate the desired future  
27 condition for a district not subject to the petition.

1 SECTION 2. Subchapter D, Chapter 36, Water Code, is amended  
2 by adding Section 36.10831 to read as follows:

3 Sec. 36.10831. COURT APPEAL OF DESIRED FUTURE CONDITION. A  
4 final district order under Section 36.1083 may be appealed to a  
5 court under the substantial evidence standard of review as provided  
6 by Section 2001.174, Government Code. The venue for an appeal is a  
7 district court in Travis County. If the court finds that a desired  
8 future condition is unreasonable, the court shall strike the  
9 desired future condition and order the districts in the management  
10 area to reconvene in a joint planning meeting not later than the  
11 30th day after the date of the court's decision to revise the  
12 desired future condition.

13 SECTION 3. (a) A petition filed under Section 36.1083,  
14 Water Code, and pending on the effective date of this Act before the  
15 Texas Water Development Board to appeal the desired future  
16 condition adopted by a groundwater conservation district shall be  
17 handled by the Texas Water Development Board in compliance with  
18 Section 36.1083, Water Code, as that section existed before the  
19 effective date of this Act.

20 (b) Section 36.1083, Water Code, as amended by this Act,  
21 applies only to a petition filed on or after the effective date of  
22 this Act.

23 SECTION 4. This Act takes effect September 1, 2013.