

By: Keffer

H.B. No. 200

Substitute the following for H.B. No. 200:

By: Larson

C.S.H.B. No. 200

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of groundwater.

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

SECTION 1. Section 36.0015, Water Code, is amended to read as follows:

Sec. 36.0015. PURPOSE. (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development and conservation of groundwater through rules developed, adopted, and promulgated by a

1 district in accordance with the provisions of this chapter.

2 SECTION 2. Section 36.066, Water Code, is amended by
3 amending Subsection (g) and adding Subsection (h) to read as
4 follows:

5 (g) If the district prevails in any suit other than a suit in
6 which it voluntarily intervenes, the district may seek and the
7 court shall grant, in the interests of justice and as provided by
8 Subsection (h), in the same action, recovery for attorney's fees,
9 costs for expert witnesses, and other costs incurred by the
10 district before the court. The amount of the attorney's fees shall
11 be fixed by the court.

12 (h) If the district prevails on some, but not all, of the
13 issues in the suit, the court may award attorney's fees and costs
14 only for those issues on which the district prevails. The district
15 has the burden of segregating the attorney's fees and costs in order
16 for the court to make an award.

17 SECTION 3. Section 36.108(d-1), Water Code, is amended to
18 read as follows:

19 (d-1) After considering and documenting the factors
20 described by Subsection (d) and other relevant scientific and
21 hydrogeological data, the [The] districts may establish different
22 desired future conditions for:

23 (1) each aquifer, subdivision of an aquifer, or
24 geologic strata located in whole or in part within the boundaries of
25 the management area; or

26 (2) each geographic area overlying an aquifer in whole
27 or in part or subdivision of an aquifer within the boundaries of the

1 management area.

2 SECTION 4. Section 36.1083, Water Code, is amended by
3 amending Subsections (a) and (b) and adding Subsections (e) through
4 (r) to read as follows:

5 (a) In this section:

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

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

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

12 (b) Not later than the 120th day after the date on which a
13 district adopts a desired future condition under Section
14 36.108(d-4), an affected [A] person [with a legally defined
15 interest in the groundwater in the management area, a district in or
16 adjacent to the management area, or a regional water planning group
17 for a region in the management area] may file a petition with the
18 district requiring that the district contract with the office to
19 conduct a hearing [development board] appealing the reasonableness
20 [approval] of the desired future condition [conditions of the
21 groundwater resources established under this section]. The
22 petition must provide evidence that the districts did not establish
23 a reasonable desired future condition of the groundwater resources
24 in the management area.

25 (e) Not later than the 10th day after receiving a petition
26 described by Subsection (b), the district shall submit a copy of the
27 petition to the development board. On receipt of the petition, the

1 development board shall conduct:

2 (1) an administrative review to determine whether the
3 desired future condition established by the district meets the
4 criteria in Section 36.108(d); and

5 (2) a study containing scientific and technical
6 analysis of the desired future condition, including consideration
7 of:

8 (A) the hydrogeology of the aquifer; and

9 (B) any relevant:

10 (i) groundwater availability models;

11 (ii) published studies;

12 (iii) estimates of total recoverable
13 storage capacity;

14 (iv) average annual amounts of recharge,
15 inflows, and discharge of groundwater; or

16 (v) information provided in the petition or
17 available to the development board.

18 (f) The development board must complete and deliver to the
19 office a study described by Subsection (e)(2) not later than the
20 120th day after the date the development board receives a copy of
21 the petition.

22 (g) For the purposes of a hearing conducted under Subsection
23 (b):

24 (1) the office shall consider the study described by
25 Subsection (e)(2) to be part of the administrative record; and

26 (2) the development board shall make available
27 relevant staff as expert witnesses if requested by the office or a

1 party to the hearing.

2 (h) Not later than the 60th day after receiving a petition
3 under Subsection (b), the district shall:

4 (1) contract with the office to conduct the contested
5 case hearing requested under Subsection (b); and

6 (2) submit to the office a copy of any petitions
7 related to the hearing requested under Subsection (b) and received
8 by the district.

9 (i) A hearing under Subsection (b) must be held:

10 (1) at a location described by Section 36.403(c); and

11 (2) in accordance with Chapter 2001, Government Code,
12 and the rules of the office.

13 (j) During the period between the filing of the petition and
14 the delivery of the study described by Subsection (e)(2), the
15 district may seek the assistance of the Center for Public Policy
16 Dispute Resolution, the development board, or another alternative
17 dispute resolution system to mediate the issues raised in the
18 petition. If the district and the petitioner cannot resolve the
19 issues raised in the petition, the office will proceed with a
20 hearing as described by this section.

21 (k) The district may adopt rules for notice and hearings
22 conducted under this section that are consistent with the
23 procedural rules of the office. In accordance with rules adopted by
24 the district and the office, the district shall provide:

25 (1) general notice of the hearing; and

26 (2) individual notice of the hearing to:

27 (A) the petitioner;

1 (B) any other party to the hearing;

2 (C) each nonparty district and regional water
3 planning group located in the same management area as a district
4 named in the petition;

5 (D) the development board; and

6 (E) the commission.

7 (1) Before a hearing conducted under this section, the
8 office shall hold a prehearing conference to determine preliminary
9 matters, including:

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

12 (2) whether a person seeking to participate in the
13 hearing is an affected person who is eligible to participate; and

14 (3) which affected persons shall be named as parties
15 to the hearing.

16 (m) The petitioner shall pay the costs associated with the
17 contract for the hearing under this section. The petitioner shall
18 deposit with the district an amount sufficient to pay the contract
19 amount before the hearing begins. After the hearing, the office may
20 assess costs to one or more of the parties participating in the
21 hearing and the district shall refund any excess money to the
22 petitioner. The office shall consider the following in
23 apportioning costs of the hearing:

24 (1) the party who requested the hearing;

25 (2) the party who prevailed in the hearing;

26 (3) the financial ability of the party to pay the
27 costs;

1 (4) the extent to which the party participated in the
2 hearing; and

3 (5) any other factor relevant to a just and reasonable
4 assessment of costs.

5 (n) On receipt of the administrative law judge's findings of
6 fact and conclusions of law in a proposal for decision, including a
7 dismissal of a petition, the district shall issue a final order
8 stating the district's decision on the contested matter and the
9 district's findings of fact and conclusions of law. The district
10 may change a finding of fact or conclusion of law made by the
11 administrative law judge, or may vacate or modify an order issued by
12 the administrative law judge, as provided by Section 2001.058(e),
13 Government Code.

14 (o) If the district vacates or modifies the proposal for
15 decision, the district shall issue a report describing in detail
16 the district's reasons for disagreement with the administrative law
17 judge's findings of fact and conclusions of law. The report shall
18 provide the policy, scientific, and technical justifications for
19 the district's decision.

20 (p) If the district in its final order finds that a desired
21 future condition is unreasonable, the districts in the same
22 management area as the district that participated in the hearing
23 shall reconvene in a joint planning meeting not later than the 30th
24 day after the date of the final order for the purpose of revising
25 the desired future condition.

26 (q) A final order by the district finding that a desired
27 future condition is unreasonable does not invalidate the adoption

1 of a desired future condition by a district that did not participate
2 as a party in the hearing conducted under this section.

3 (r) The administrative law judge may consolidate hearings
4 requested under this section that affect two or more districts. The
5 administrative law judge shall prepare separate findings of fact
6 and conclusions of law for each district included as a party in a
7 multidistrict hearing.

8 SECTION 5. Subchapter D, Chapter 36, Water Code, is amended
9 by adding Section 36.10835 to read as follows:

10 Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE
11 CONDITIONS. (a) A final district order issued under Section
12 36.1083 may be appealed to a district court with jurisdiction over
13 any part of the territory of the district that issued the order.
14 The case shall be decided under the substantial evidence standard
15 of review as provided by Section 2001.174, Government Code. If the
16 court finds that a desired future condition is unreasonable, the
17 court shall strike the desired future condition and order the
18 districts in the same management area as the district that did not
19 participate as a party in the hearing to reconvene in a joint
20 planning meeting not later than the 30th day after the date of the
21 court order for the purpose of revising the desired future
22 condition.

23 (b) A court's finding under this section does not apply to a
24 desired future condition that is not a matter before the court.

25 SECTION 6. Section 36.251, Water Code, is amended to read as
26 follows:

27 Sec. 36.251. SUITS [~~SUIT~~] AGAINST DISTRICT. (a) A person,

1 firm, corporation, or association of persons affected by and
2 dissatisfied with any provision or with any rule or order made by a
3 district is entitled to file a suit against the district or its
4 directors to challenge the validity of the law, rule, or order. The
5 suit shall be filed in a court of competent jurisdiction in any
6 county in which the district or any part of the district is located.
7 The suit may only be filed after all administrative appeals to the
8 district are final.

9 (b) Notwithstanding Sections 36.1083 and 36.10835, an
10 affected person under Section 36.1082 who is dissatisfied with the
11 adoption of a desired future condition by a district is entitled to
12 file suit against the district or its directors to challenge the
13 reasonableness of the desired future condition. The suit must be
14 filed in a court of competent jurisdiction in any county in which
15 the district or any part of the district is located.

16 SECTION 7. Sections 36.1083(c) and (d), Water Code, are
17 repealed.

18 SECTION 8. Section 36.1083, Water Code, as amended by this
19 Act, and Section 36.10835, Water Code, as added by this Act, apply
20 only to a desired future condition adopted by a groundwater
21 conservation district on or after the effective date of this Act. A
22 desired future condition adopted before that date is governed by
23 the law in effect on the date the desired future condition was
24 adopted, and the former law is continued in effect for that purpose.

25 SECTION 9. This Act takes effect September 1, 2015.