

By: Lucio III

H.B. No. 2179

A BILL TO BE ENTITLED

AN ACT

relating to hearings that concern the issuance of permits by a groundwater conservation district.

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

SECTION 1. Section 36.403, Water Code, is amended to read as follows:

Sec. 36.403. SCHEDULING OF PUBLIC HEARING. (a) The general manager or board may schedule a public hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) The general manager or board may schedule more than one application for consideration at a public hearing.

(c) A public hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) A public hearing may be held in conjunction with a regularly scheduled board meeting.

SECTION 2. Sections 36.404(a) and (d), Water Code, are amended to read as follows:

(a) If the general manager or board schedules a public hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.

(d) A person may request notice from the district of a

1 public hearing on a permit or a permit amendment application. The
2 request must be in writing and is effective for the remainder of the
3 calendar year in which the request is received by the district. To
4 receive notice of a public hearing in a later year, a person must
5 submit a new request. An affidavit of an officer or employee of the
6 district establishing attempted service by first class mail,
7 facsimile, or e-mail to the person in accordance with the
8 information provided by the person is proof that notice was
9 provided by the district.

10 SECTION 3. Section 36.405, Water Code, is amended to read as
11 follows:

12 Sec. 36.405. HEARING REGISTRATION. The district may
13 require each person who participates in a public hearing to submit a
14 hearing registration form stating:

- 15 (1) the person's name;
16 (2) the person's address; and
17 (3) whom the person represents, if the person is not
18 there in the person's individual capacity.

19 SECTION 4. Subchapter M, Chapter 36, Water Code, is amended
20 by adding Section 36.4051 to read as follows:

21 Sec. 36.4051. BOARD ACTION; CONTESTED CASE HEARING
22 REQUESTS; PRELIMINARY HEARING. (a) The board may take action on
23 any uncontested application at a properly noticed public meeting
24 held at any time after the public hearing at which the application
25 is scheduled to be heard. The board may issue a written order to:

- 26 (1) grant the application;
27 (2) grant the application with special conditions; or

1 (3) deny the application.

2 (b) The board shall schedule a preliminary hearing to hear a
3 request for a contested case hearing filed in accordance with rules
4 adopted under Section 36.415. The preliminary hearing may be
5 conducted by:

6 (1) a quorum of the board;

7 (2) an individual to whom the board has delegated in
8 writing the responsibility to preside as a hearing examiner over
9 the hearing or matters related to the hearing; or

10 (3) the State Office of Administrative Hearings under
11 Section 36.416.

12 (c) Following a preliminary hearing, the board shall
13 determine whether any person requesting the contested case hearing
14 has standing to make that request and whether a justiciable issue
15 related to the application has been raised. If the board determines
16 that no person who requested a contested case hearing had standing
17 or that no justiciable issues were raised, the board may take any
18 action authorized under Subsection (a).

19 (d) An applicant may, not later than the 20th day after the
20 date the board issues an order granting the application, demand a
21 contested case hearing if the order:

22 (1) includes special conditions that were not part of
23 the application as finally submitted; or

24 (2) grants a maximum amount of groundwater production
25 that is less than the amount requested in the application.

26 SECTION 5. Section 36.406(d), Water Code, is amended to
27 read as follows:

1 (d) The presiding officer may:

2 (1) convene the hearing at the time and place
3 specified in the notice;

4 (2) set any necessary additional hearing dates;

5 (3) designate the parties regarding a contested
6 application;

7 (4) establish the order for presentation of evidence;

8 (5) administer oaths to all persons presenting
9 testimony;

10 (6) examine persons presenting testimony;

11 (7) ensure that information and testimony are
12 introduced as conveniently and expeditiously as possible without
13 prejudicing the rights of any party;

14 (8) prescribe reasonable time limits for testimony and
15 the presentation of evidence; ~~and~~

16 (9) exercise the procedural rules adopted under
17 Section 36.415; and

18 (10) determine how to apportion among the parties the
19 costs related to:

20 (A) a contract for the services of a presiding
21 officer; and

22 (B) the preparation of the official hearing
23 record.

24 SECTION 6. Section 36.410, Water Code, is amended to read as
25 follows:

26 Sec. 36.410. PROPOSAL FOR DECISION ~~[REPORT]~~. (a) Except as
27 provided by Subsection (e), the presiding officer shall submit a

1 proposal for decision [~~report~~] to the board not later than the 30th
2 day after the date the evidentiary [~~a~~] hearing is concluded.

3 (b) The proposal for decision [~~report~~] must include:

4 (1) a summary of the subject matter of the hearing;

5 (2) a summary of the evidence or public comments
6 received; and

7 (3) the presiding officer's recommendations for board
8 action on the subject matter of the hearing.

9 (c) The presiding officer or general manager shall provide a
10 copy of the proposal for decision [~~report~~] to:

11 (1) the applicant; and

12 (2) each [~~person who provided comments or each~~]
13 designated party.

14 (d) A party [~~person who receives a copy of the report under~~
15 ~~Subsection (c)~~] may submit to the board written exceptions to the
16 proposal for decision [~~report~~].

17 (e) If the hearing was conducted by a quorum of the board and
18 if the presiding officer prepared a record of the hearing as
19 provided by Section 36.408(a), the presiding officer shall
20 determine whether to prepare and submit a proposal for decision
21 [~~report~~] to the board under this section.

22 (f) The board shall consider the proposal for decision at a
23 final hearing. Additional evidence may not be presented during a
24 final hearing. The parties may present oral argument at a final
25 hearing to summarize the evidence, present legal argument, or argue
26 an exception to the proposal for decision. A final hearing may be
27 continued as provided by Section 36.409.

1 SECTION 7. Sections 36.412(a), (b), and (c), Water Code,
2 are amended to read as follows:

3 (a) An applicant in a contested or uncontested hearing on an
4 application or a party to a contested hearing may administratively
5 appeal a decision of the board on a permit or permit amendment
6 application by requesting written findings and conclusions [~~or a~~
7 ~~rehearing before the board~~] not later than the 20th day after the
8 date of the board's decision.

9 (b) On receipt of a timely written request, the board shall
10 make written findings and conclusions regarding a decision of the
11 board on a permit or permit amendment application. The board shall
12 provide certified copies of the findings and conclusions to the
13 person who requested them, and to each [~~person who provided~~
14 ~~comments or each~~] designated party, not later than the 35th day
15 after the date the board receives the request. A party to a
16 contested hearing [~~person who receives a certified copy of the~~
17 ~~findings and conclusions from the board~~] may request a rehearing
18 [~~before the board~~] not later than the 20th day after the date the
19 board issues the findings and conclusions.

20 (c) A request for rehearing must be filed in the district
21 office and must state the grounds for the request. If the original
22 hearing was a contested hearing, the party [~~person~~] requesting a
23 rehearing must provide copies of the request to all parties to the
24 hearing.

25 SECTION 8. Section 36.415(b), Water Code, is amended to
26 read as follows:

27 (b) In adopting the rules, a district shall:

1 (1) define under what circumstances an application is
2 considered contested; ~~and~~

3 (2) limit participation in a hearing on a contested
4 application to persons who have a personal justiciable interest
5 related to a legal right, duty, privilege, power, or economic
6 interest that is within a district's regulatory authority and
7 affected by a permit or permit amendment application, not including
8 persons who have an interest common to members of the public; and

9 (3) establish the deadline for a person who may
10 participate under Subdivision (2) to file in the manner required by
11 the district a protest and request for a contested case hearing.

12 SECTION 9. Section 36.416, Water Code, is amended by adding
13 Subsections (d), (e), and (f) to read as follows:

14 (d) An administrative law judge who conducts a contested
15 case hearing shall consider applicable district rules or policies
16 in conducting the hearing, but the district deciding the case may
17 not supervise the administrative law judge.

18 (e) A district shall provide the administrative law judge
19 with a written statement of applicable rules or policies.

20 (f) A district may not attempt to influence the finding of
21 facts or the administrative law judge's application of the law in a
22 contested case except by proper evidence and legal argument.

23 SECTION 10. Section 36.4165, Water Code, is amended to read
24 as follows:

25 Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. (a)
26 In a proceeding for a permit application or amendment in which a
27 district has contracted with the State Office of Administrative

1 Hearings for a contested case hearing, the board has the authority
2 to make a final decision on consideration of a proposal for decision
3 issued by an administrative law judge [~~consistent with Section~~
4 [2001.058](#), Government Code].

5 (b) A board may change a finding of fact or conclusion of law
6 made by the administrative law judge, or may vacate or modify an
7 order issued by the administrative judge, only if the board
8 determines:

9 (1) that the administrative law judge did not properly
10 apply or interpret applicable law, district rules, written policies
11 provided under Section [36.416](#)(e), or prior administrative
12 decisions;

13 (2) that a prior administrative decision on which the
14 administrative law judge relied is incorrect or should be changed;
15 or

16 (3) that a technical error in a finding of fact should
17 be changed.

18 SECTION 11. The changes in law made by this Act apply only
19 to an application for a permit or a permit amendment that is
20 received by a groundwater conservation district on or after the
21 effective date of this Act. An application for a permit or permit
22 amendment that is received before the effective date of this Act is
23 governed by the law in effect on the date the application is
24 received, and that law is continued in effect for that purpose.

25 SECTION 12. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section [39](#), Article III, Texas Constitution.

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1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2015.