

1-1 By: Lucio III (Senate Sponsor - Perry) H.B. No. 2179
 1-2 (In the Senate - Received from the House May 6, 2015;
 1-3 May 6, 2015, read first time and referred to Committee on
 1-4 Agriculture, Water, and Rural Affairs; May 12, 2015, reported
 1-5 favorably by the following vote: Yeas 6, Nays 0; May 12, 2015, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to hearings that concern the issuance of permits by a
 1-19 groundwater conservation district.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 36.403, Water Code, is amended to read as
 1-22 follows:

1-23 Sec. 36.403. SCHEDULING OF PUBLIC HEARING. (a) The general
 1-24 manager or board may schedule a public hearing on permit or permit
 1-25 amendment applications received by the district as necessary, as
 1-26 provided by Section 36.114.

1-27 (b) The general manager or board may schedule more than one
 1-28 application for consideration at a public hearing.

1-29 (c) A public hearing must be held at the district office or
 1-30 regular meeting location of the board unless the board provides for
 1-31 hearings to be held at a different location.

1-32 (d) A public hearing may be held in conjunction with a
 1-33 regularly scheduled board meeting.

1-34 SECTION 2. Sections 36.404(a) and (d), Water Code, are
 1-35 amended to read as follows:

1-36 (a) If the general manager or board schedules a public
 1-37 hearing on an application for a permit or permit amendment, the
 1-38 general manager or board shall give notice of the hearing as
 1-39 provided by this section.

1-40 (d) A person may request notice from the district of a
 1-41 public hearing on a permit or a permit amendment application. The
 1-42 request must be in writing and is effective for the remainder of the
 1-43 calendar year in which the request is received by the district. To
 1-44 receive notice of a public hearing in a later year, a person must
 1-45 submit a new request. An affidavit of an officer or employee of the
 1-46 district establishing attempted service by first class mail,
 1-47 facsimile, or e-mail to the person in accordance with the
 1-48 information provided by the person is proof that notice was
 1-49 provided by the district.

1-50 SECTION 3. Section 36.405, Water Code, is amended to read as
 1-51 follows:

1-52 Sec. 36.405. HEARING REGISTRATION. The district may
 1-53 require each person who participates in a public hearing to submit a
 1-54 hearing registration form stating:

- 1-55 (1) the person's name;
- 1-56 (2) the person's address; and
- 1-57 (3) whom the person represents, if the person is not
 1-58 there in the person's individual capacity.

1-59 SECTION 4. Subchapter M, Chapter 36, Water Code, is amended
 1-60 by adding Section 36.4051 to read as follows:

1-61 Sec. 36.4051. BOARD ACTION; CONTESTED CASE HEARING

2-1 REQUESTS; PRELIMINARY HEARING. (a) The board may take action on
 2-2 any uncontested application at a properly noticed public meeting
 2-3 held at any time after the public hearing at which the application
 2-4 is scheduled to be heard. The board may issue a written order to:
 2-5 (1) grant the application;
 2-6 (2) grant the application with special conditions; or
 2-7 (3) deny the application.
 2-8 (b) The board shall schedule a preliminary hearing to hear a
 2-9 request for a contested case hearing filed in accordance with rules
 2-10 adopted under Section 36.415. The preliminary hearing may be
 2-11 conducted by:
 2-12 (1) a quorum of the board;
 2-13 (2) an individual to whom the board has delegated in
 2-14 writing the responsibility to preside as a hearing examiner over
 2-15 the hearing or matters related to the hearing; or
 2-16 (3) the State Office of Administrative Hearings under
 2-17 Section 36.416.
 2-18 (c) Following a preliminary hearing, the board shall
 2-19 determine whether any person requesting the contested case hearing
 2-20 has standing to make that request and whether a justiciable issue
 2-21 related to the application has been raised. If the board determines
 2-22 that no person who requested a contested case hearing had standing
 2-23 or that no justiciable issues were raised, the board may take any
 2-24 action authorized under Subsection (a).
 2-25 (d) An applicant may, not later than the 20th day after the
 2-26 date the board issues an order granting the application, demand a
 2-27 contested case hearing if the order:
 2-28 (1) includes special conditions that were not part of
 2-29 the application as finally submitted; or
 2-30 (2) grants a maximum amount of groundwater production
 2-31 that is less than the amount requested in the application.
 2-32 SECTION 5. Section 36.406(d), Water Code, is amended to
 2-33 read as follows:
 2-34 (d) The presiding officer may:
 2-35 (1) convene the hearing at the time and place
 2-36 specified in the notice;
 2-37 (2) set any necessary additional hearing dates;
 2-38 (3) designate the parties regarding a contested
 2-39 application;
 2-40 (4) establish the order for presentation of evidence;
 2-41 (5) administer oaths to all persons presenting
 2-42 testimony;
 2-43 (6) examine persons presenting testimony;
 2-44 (7) ensure that information and testimony are
 2-45 introduced as conveniently and expeditiously as possible without
 2-46 prejudicing the rights of any party;
 2-47 (8) prescribe reasonable time limits for testimony and
 2-48 the presentation of evidence; ~~and~~
 2-49 (9) exercise the procedural rules adopted under
 2-50 Section 36.415; and
 2-51 (10) determine how to apportion among the parties the
 2-52 costs related to:
 2-53 (A) a contract for the services of a presiding
 2-54 officer; and
 2-55 (B) the preparation of the official hearing
 2-56 record.
 2-57 SECTION 6. Section 36.410, Water Code, is amended to read as
 2-58 follows:
 2-59 Sec. 36.410. PROPOSAL FOR DECISION [~~REPORT~~]. (a) Except as
 2-60 provided by Subsection (e), the presiding officer shall submit a
 2-61 proposal for decision [~~report~~] to the board not later than the 30th
 2-62 day after the date the evidentiary [~~a~~] hearing is concluded.
 2-63 (b) The proposal for decision [~~report~~] must include:
 2-64 (1) a summary of the subject matter of the hearing;
 2-65 (2) a summary of the evidence or public comments
 2-66 received; and
 2-67 (3) the presiding officer's recommendations for board
 2-68 action on the subject matter of the hearing.
 2-69 (c) The presiding officer or general manager shall provide a

3-1 copy of the proposal for decision [~~report~~] to:

3-2 (1) the applicant; and

3-3 (2) each [~~person who provided comments or each~~]
3-4 designated party.

3-5 (d) A party [~~person who receives a copy of the report under~~
3-6 ~~Subsection (c)~~] may submit to the board written exceptions to the
3-7 proposal for decision [~~report~~].

3-8 (e) If the hearing was conducted by a quorum of the board and
3-9 if the presiding officer prepared a record of the hearing as
3-10 provided by Section 36.408(a), the presiding officer shall
3-11 determine whether to prepare and submit a proposal for decision
3-12 [~~report~~] to the board under this section.

3-13 (f) The board shall consider the proposal for decision at a
3-14 final hearing. Additional evidence may not be presented during a
3-15 final hearing. The parties may present oral argument at a final
3-16 hearing to summarize the evidence, present legal argument, or argue
3-17 an exception to the proposal for decision. A final hearing may be
3-18 continued as provided by Section 36.409.

3-19 SECTION 7. Sections 36.412(a), (b), and (c), Water Code,
3-20 are amended to read as follows:

3-21 (a) An applicant in a contested or uncontested hearing on an
3-22 application or a party to a contested hearing may administratively
3-23 appeal a decision of the board on a permit or permit amendment
3-24 application by requesting written findings and conclusions [~~or a~~
3-25 ~~rehearing before the board~~] not later than the 20th day after the
3-26 date of the board's decision.

3-27 (b) On receipt of a timely written request, the board shall
3-28 make written findings and conclusions regarding a decision of the
3-29 board on a permit or permit amendment application. The board shall
3-30 provide certified copies of the findings and conclusions to the
3-31 person who requested them, and to each [~~person who provided~~
3-32 ~~comments or each~~] designated party, not later than the 35th day
3-33 after the date the board receives the request. A party to a
3-34 contested hearing [~~person who receives a certified copy of the~~
3-35 ~~findings and conclusions from the board~~] may request a rehearing
3-36 [~~before the board~~] not later than the 20th day after the date the
3-37 board issues the findings and conclusions.

3-38 (c) A request for rehearing must be filed in the district
3-39 office and must state the grounds for the request. If the original
3-40 hearing was a contested hearing, the party [~~person~~] requesting a
3-41 rehearing must provide copies of the request to all parties to the
3-42 hearing.

3-43 SECTION 8. Section 36.415(b), Water Code, is amended to
3-44 read as follows:

3-45 (b) In adopting the rules, a district shall:

3-46 (1) define under what circumstances an application is
3-47 considered contested; [~~and~~]

3-48 (2) limit participation in a hearing on a contested
3-49 application to persons who have a personal justiciable interest
3-50 related to a legal right, duty, privilege, power, or economic
3-51 interest that is within a district's regulatory authority and
3-52 affected by a permit or permit amendment application, not including
3-53 persons who have an interest common to members of the public; and

3-54 (3) establish the deadline for a person who may
3-55 participate under Subdivision (2) to file in the manner required by
3-56 the district a protest and request for a contested case hearing.

3-57 SECTION 9. Section 36.416, Water Code, is amended by adding
3-58 Subsections (d), (e), and (f) to read as follows:

3-59 (d) An administrative law judge who conducts a contested
3-60 case hearing shall consider applicable district rules or policies
3-61 in conducting the hearing, but the district deciding the case may
3-62 not supervise the administrative law judge.

3-63 (e) A district shall provide the administrative law judge
3-64 with a written statement of applicable rules or policies.

3-65 (f) A district may not attempt to influence the finding of
3-66 facts or the administrative law judge's application of the law in a
3-67 contested case except by proper evidence and legal argument.

3-68 SECTION 10. Section 36.4165, Water Code, is amended to read
3-69 as follows:

4-1 Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. (a)
4-2 In a proceeding for a permit application or amendment in which a
4-3 district has contracted with the State Office of Administrative
4-4 Hearings for a contested case hearing, the board has the authority
4-5 to make a final decision on consideration of a proposal for decision
4-6 issued by an administrative law judge [~~consistent with Section~~
4-7 ~~2001.058, Government Code~~].

4-8 (b) A board may change a finding of fact or conclusion of law
4-9 made by the administrative law judge, or may vacate or modify an
4-10 order issued by the administrative judge, only if the board
4-11 determines:

4-12 (1) that the administrative law judge did not properly
4-13 apply or interpret applicable law, district rules, written policies
4-14 provided under Section 36.416(e), or prior administrative
4-15 decisions;

4-16 (2) that a prior administrative decision on which the
4-17 administrative law judge relied is incorrect or should be changed;
4-18 or

4-19 (3) that a technical error in a finding of fact should
4-20 be changed.

4-21 SECTION 11. The changes in law made by this Act apply only
4-22 to an application for a permit or a permit amendment that is
4-23 received by a groundwater conservation district on or after the
4-24 effective date of this Act. An application for a permit or permit
4-25 amendment that is received before the effective date of this Act is
4-26 governed by the law in effect on the date the application is
4-27 received, and that law is continued in effect for that purpose.

4-28 SECTION 12. This Act takes effect immediately if it
4-29 receives a vote of two-thirds of all the members elected to each
4-30 house, as provided by Section 39, Article III, Texas Constitution.
4-31 If this Act does not receive the vote necessary for immediate
4-32 effect, this Act takes effect September 1, 2015.

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