

By: Keffer

H.B. No. 2767

Substitute the following for H.B. No. 2767:

By: King of Uvalde

C.S.H.B. No. 2767

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the powers, duties, and administration of groundwater  
3 conservation districts; amending provisions that authorize fees.

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

5 SECTION 1. Section 36.001, Water Code, is amended by  
6 amending Subdivisions (8) and (16) and adding Subdivision (31) to  
7 read as follows:

8 (8) "Waste" means any one or more of the following:

9 (A) withdrawal of groundwater from a groundwater  
10 reservoir at a rate and in an amount that causes or threatens to  
11 cause intrusion into the reservoir of water unsuitable for  
12 agricultural, gardening, domestic, or stock raising purposes;

13 (B) the flowing or producing of wells from a  
14 groundwater reservoir if the water produced is not used for a  
15 beneficial purpose;

16 (C) escape of groundwater from a groundwater  
17 reservoir to any other reservoir or geologic strata that does not  
18 contain groundwater;

19 (D) pollution or harmful alteration of  
20 groundwater in a groundwater reservoir by saltwater or by other  
21 deleterious matter admitted from another stratum or from the  
22 surface of the ground;

23 (E) willfully [~~wilfully~~] or negligently causing,  
24 suffering, or allowing groundwater to escape into any river, creek,

1 natural watercourse, depression, lake, reservoir, drain, sewer,  
2 street, highway, road, or road ditch, or onto any land other than  
3 that of the owner of the well unless such discharge is authorized by  
4 permit, rule, or order issued by the commission under Chapter 26;

5 (F) groundwater pumped for irrigation that  
6 escapes as irrigation tailwater onto land other than that of the  
7 owner of the well unless permission has been granted by the occupant  
8 of the land receiving the discharge; or

9 (G) for water produced from an artesian well,  
10 "waste" also has the meaning assigned by Section 11.205.

11 (16) "Loan fund" means the groundwater conservation  
12 district loan assistance fund created under Section 36.371.

13 (31) "Operating permit" as used in this chapter means  
14 any type of permit issued by a district that relates to the  
15 operation of or production from a water well, which may include  
16 authorization to drill or complete a water well if the district  
17 does not require a separate permit for drilling or completing a  
18 water well.

19 SECTION 2. Section 36.017(i), Water Code, is amended to  
20 read as follows:

21 (i) If a majority of the votes cast at the election are  
22 against the levy of a maintenance tax, the district shall set  
23 [~~production~~] fees authorized by this chapter to pay for the  
24 district's regulation of groundwater in the district[~~, including~~  
25 ~~fees based on the amount of water to be withdrawn from a well~~].

26 SECTION 3. Section 36.0171(h), Water Code, is amended to  
27 read as follows:

1 (h) If the majority of the votes cast at the election are  
2 against the levy of a maintenance tax, the district shall set  
3 ~~[production]~~ fees authorized by this chapter in accordance with  
4 Section 35.013(g-1) to pay for the district's regulation of  
5 groundwater in the district~~[, including fees based on the amount of~~  
6 ~~water to be withdrawn from a well]~~.

7 SECTION 4. Section 36.058, Water Code, is amended to read as  
8 follows:

9 Sec. 36.058. CONFLICTS OF INTEREST. A director of a  
10 district is subject to the provisions of Chapters ~~[Chapter]~~ 171 and  
11 176, Local Government Code, relating to the regulation of conflicts  
12 of officers of local governments.

13 SECTION 5. Section 36.061(a), Water Code, is amended to  
14 read as follows:

15 (a) Subject to the law governing the district, the board  
16 shall adopt the following in writing:

17 (1) a code of ethics for district directors, officers,  
18 employees, and persons who are engaged in handling investments for  
19 the district;

20 (2) a policy relating to travel expenditures;

21 (3) a policy relating to district investments that  
22 ensures that:

23 (A) purchases and sales of investments are  
24 initiated by authorized individuals, conform to investment  
25 objectives and regulations, and are properly documented and  
26 approved; and

27 (B) periodic review is made of district

1 investments to evaluate investment performance and security;

2 (4) policies and procedures for selection,  
3 monitoring, or review and evaluation of professional services; and

4 (5) policies that ensure a better use of management  
5 information, including:

6 (A) budgets for use in planning and controlling  
7 cost; and

8 (B) an audit or finance committee of the board. [~~+~~  
9 and

10 [~~(C) uniform reporting requirements that use  
11 "Audits of State and Local Governmental Units" as a guide on audit  
12 working papers and that uses "Governmental Accounting and Financial  
13 Reporting Standards."~~]

14 SECTION 6. Section 36.116(c), Water Code, is amended to  
15 read as follows:

16 (c) In regulating the production of groundwater based on  
17 tract size or acreage, a district may consider the service needs or  
18 service area of a retail public [~~water~~] utility. For the purposes  
19 of this subsection, "retail public [~~water~~] utility" shall have the  
20 meaning provided by [~~at~~] Section 13.002.

21 SECTION 7. Sections 36.117(a) and (d), Water Code, are  
22 amended to read as follows:

23 (a) A district by rule may provide an exemption from the  
24 district's requirement to obtain [~~a drilling permit, an operating  
25 permit, or~~] any [~~other~~] permit required by this chapter or the  
26 district's rules.

27 (d) A district may cancel a previously granted exemption[~~7~~]

1 and may require an operating permit for or restrict production from  
2 a well and assess any appropriate fees~~[,]~~ if:

3 (1) ~~[the well is located in the Hill Country Priority~~  
4 ~~Groundwater Management Area and]~~ the groundwater withdrawals that  
5 were exempted under Subsection (b)(1) are no longer used solely for  
6 domestic use or to provide water for livestock or poultry;

7 (2) the groundwater withdrawals that were exempted  
8 under Subsection (b)(2) are no longer used solely to supply water  
9 for a rig that is actively engaged in drilling or exploration  
10 operations for an oil or gas well permitted by the Railroad  
11 Commission of Texas; or

12 (3) the groundwater withdrawals that were exempted  
13 under Subsection (b)(3) are no longer necessary for mining  
14 activities or are greater than the amount necessary for mining  
15 activities specified in the permit issued by the Railroad  
16 Commission of Texas under Chapter 134, Natural Resources Code.

17 SECTION 8. Section [36.122](#)(e), Water Code, is amended to  
18 read as follows:

19 (e) The district may impose an export ~~[a reasonable]~~ fee or  
20 surcharge ~~[for an export fee]~~ using one of the following methods:

21 (1) a fee negotiated between the district and the  
22 exporter ~~[transporter]~~;

23 (2) a rate not to exceed the equivalent of the  
24 district's tax rate per hundred dollars of valuation for each  
25 thousand gallons of water exported from ~~[transferred out of]~~ the  
26 district or 2.5 cents per thousand gallons of water, if the district  
27 assesses a tax rate of less than 2.5 cents per hundred dollars of

1 valuation; or

2 (3) for a fee-based district, a 50 percent [~~export~~]  
3 surcharge, in addition to the district's production fee, for water  
4 exported from [~~transferred out of~~] the district.

5 SECTION 9. Sections 36.153(a), (b), and (d), Water Code,  
6 are amended to read as follows:

7 (a) Annually and subject to Subsection (c), the board shall  
8 have an audit made of the financial condition of the district. The  
9 district audit shall be performed according to the generally  
10 accepted government auditing standards adopted by the American  
11 Institute of Certified Public Accountants.

12 (b) Financial statements shall be prepared in accordance  
13 with generally accepted accounting principles as adopted by the  
14 American Institute of Certified Public Accountants. The annual  
15 audit and other district records must be open to inspection during  
16 regular business hours at the principal office of the district.

17 (d) A financially dormant district may elect not to conduct  
18 an audit and instead submit to the executive director a financial  
19 dormancy affidavit [~~instead of complying with the audit~~  
20 ~~requirements of Section 49.191~~].

21 SECTION 10. Section 36.157(a), Water Code, is amended to  
22 read as follows:

23 (a) A district, or the county or counties where the district  
24 is to be located, may pay all costs and expenses necessarily  
25 incurred in the creation and organization of a district, including  
26 legal fees and other incidental expenses, and may reimburse any  
27 person, including a county, for money advanced for these purposes.

1 SECTION 11. Section 36.159, Water Code, is amended to read  
2 as follows:

3 Sec. 36.159. GROUNDWATER CONSERVATION DISTRICT MANAGEMENT  
4 PLAN FUNDS. The Texas Water Development Board may allocate funds  
5 from the water assistance fund to a district to:

6 (1) conduct initial data collections under this  
7 chapter;

8 (2) [~~to~~] develop and implement a long-term  
9 management plan under Section 36.1071;~~]~~ and

10 (3) [~~to~~] participate in regional water plans.

11 SECTION 12. Sections 36.205(f) and (g), Water Code, are  
12 amended to read as follows:

13 (f) A district, including a district described under  
14 Subsection (d), may assess a production fee under Subsection (c)  
15 and an export fee under Subsection (g), if applicable, for any water  
16 produced under an exemption under Section 36.117 if that water is  
17 subsequently sold to another person.

18 (g) A district may assess an export [~~a transportation~~] fee  
19 under Section 36.122.

20 SECTION 13. Section 36.206(a), Water Code, is amended to  
21 read as follows:

22 (a) A temporary board may set [~~user~~] fees authorized by this  
23 chapter to pay for the creation and initial operation of a district,  
24 until such time as the district creation has been confirmed and a  
25 permanent board has been elected by a majority vote of the qualified  
26 voters voting in the district in an election called for those  
27 purposes.

1 SECTION 14. Section 36.207, Water Code, is amended to read  
2 as follows:

3 Sec. 36.207. USE OF [~~PERMIT~~] FEES [~~AUTHORIZED BY SPECIAL~~  
4 ~~LAW~~]. A district may use funds obtained from administrative,  
5 production, or export [~~permit~~] fees collected under a [~~pursuant to~~  
6 the] special law governing the district or this chapter for any  
7 purpose consistent with the district's approved management plan,  
8 including, without limitation, making grants, loans, or  
9 contractual payments to achieve, facilitate, or expedite  
10 reductions in groundwater pumping or the development or  
11 distribution of alternative water supplies.

12 SECTION 15. Section 36.251, Water Code, is amended to read  
13 as follows:

14 Sec. 36.251. SUIT AGAINST DISTRICT. (a) A person, firm,  
15 corporation, or association of persons affected by and dissatisfied  
16 with any [~~provision or with any~~] rule or order made by a district,  
17 including an appeal of a decision on a permit application, is  
18 entitled to file a suit against the district or its directors to  
19 challenge the validity of the law, rule, or order.

20 (b) Only the district, the applicant, and parties to a  
21 contested case hearing may participate in an appeal of a decision on  
22 the application that was the subject of that contested case  
23 hearing. An appeal of a decision on a permit application must  
24 include the applicant as a necessary party.

25 (c) The suit shall be filed in a court of competent  
26 jurisdiction in any county in which the district or any part of the  
27 district is located. The suit may only be filed after all



1 administrative appeals to the district are final.

2 SECTION 16. Section 36.3011, Water Code, is amended to read  
3 as follows:

4 Sec. 36.3011. COMMISSION INQUIRY AND ACTION REGARDING  
5 DISTRICT DUTIES. (a) In this section, "affected person" means, with  
6 respect to a management area:

7 (1) an owner of land in the management area;

8 (2) a groundwater conservation district or subsidence  
9 district in or adjacent to the management area;

10 (3) a regional water planning group with a water  
11 management strategy in the management area;

12 (4) a person who holds or is applying for a permit from  
13 a district in the management area;

14 (5) a person with a legally defined interest in  
15 groundwater in the management area; or

16 (6) any other person defined as affected by commission  
17 rule.

18 (b) An affected person may file a petition with the  
19 commission requesting an inquiry for any of the following reasons:

20 (1) a district fails to submit its management plan to  
21 the executive administrator;

22 (2) a district fails to participate in the joint  
23 planning process under Section 36.108;

24 (3) a district fails to adopt rules;

25 (4) a district fails to adopt the applicable desired  
26 future conditions adopted by the management area at a joint  
27 meeting;

1           (5) a district fails to update its management plan  
2 before the second anniversary of the adoption of desired future  
3 conditions by the management area;

4           (6) a district fails to update its rules to implement  
5 the applicable desired future conditions before the first  
6 anniversary of the date it updated its management plan with the  
7 adopted desired future conditions;

8           (7) the rules adopted by a district are not designed to  
9 achieve the adopted desired future conditions;

10           (8) the groundwater in the management area is not  
11 adequately protected by the rules adopted by a district; or

12           (9) the groundwater in the management area is not  
13 adequately protected due to the failure of a district to enforce  
14 substantial compliance with its rules.

15           (c) Not later than the 90th day after the date the petition  
16 is filed, the commission shall review the petition and either:

17           (1) dismiss the petition if the commission finds that  
18 the evidence is not adequate to show that any of the conditions  
19 alleged in the petition exist; or

20           (2) select a review panel as provided in Subsection  
21 (d).

22           (d) If the petition is not dismissed under Subsection (c),  
23 the commission shall appoint a review panel consisting of a  
24 chairperson and four other members. A director or general manager  
25 of a district located outside the management area that is the  
26 subject of the petition may be appointed to the review panel. The  
27 commission may not appoint more than two members of the review panel

1 from any one district. The commission also shall appoint a  
2 disinterested person to serve as a nonvoting recording secretary  
3 for the review panel. The recording secretary may be an employee of  
4 the commission. The recording secretary shall record and document  
5 the proceedings of the panel.

6 (e) Not later than the 120th day after appointment, the  
7 review panel shall review the petition and any evidence relevant to  
8 the petition and, in a public meeting, consider and adopt a report  
9 to be submitted to the commission. The commission may direct the  
10 review panel to conduct public hearings at a location in the  
11 management area to take evidence on the petition. The review panel  
12 may attempt to negotiate a settlement or resolve the dispute by any  
13 lawful means.

14 (f) In its report, the review panel shall include:

15 (1) a summary of all evidence taken in any hearing on  
16 the petition;

17 (2) a list of findings and recommended actions  
18 appropriate for the commission to take and the reasons it finds  
19 those actions appropriate; and

20 (3) any other information the panel considers  
21 appropriate.

22 (g) The review panel shall submit its report to the  
23 commission.

24 (h) Not later than the 45th day after receiving the review  
25 panel's report under this section [~~Section 36.1082~~], the executive  
26 director or the commission shall take action to implement any or all  
27 of the panel's recommendations. The commission may take any action

1 against a district it considers necessary in accordance with  
2 Section 36.303 if the commission finds that:

3 (1) the district has failed to submit its management  
4 plan to the executive administrator;

5 (2) the district has failed to participate in the  
6 joint planning process under Section 36.108;

7 (3) the district has failed to adopt rules;

8 (4) the district has failed to adopt the applicable  
9 desired future conditions adopted by the management area at a joint  
10 meeting;

11 (5) the district has failed to update its management  
12 plan before the second anniversary of the adoption of desired  
13 future conditions by the management area;

14 (6) the district has failed to update its rules to  
15 implement the applicable desired future conditions before the first  
16 anniversary of the date it updated its management plan with the  
17 adopted desired future conditions;

18 (7) the rules adopted by the district are not designed  
19 to achieve the desired future conditions adopted by the management  
20 area during the joint planning process;

21 (8) the groundwater in the management area is not  
22 adequately protected by the rules adopted by the district; or

23 (9) the groundwater in the management area is not  
24 adequately protected because of the district's failure to enforce  
25 substantial compliance with its rules.

26 SECTION 17. Section 36.303(a), Water Code, is amended to  
27 read as follows:

1 (a) If Section [~~36.108,~~] 36.301, 36.3011, or 36.302(f)  
2 applies, the commission, after notice and hearing in accordance  
3 with Chapter 2001, Government Code, shall take action the  
4 commission considers appropriate, including:

5 (1) issuing an order requiring the district to take  
6 certain actions or to refrain from taking certain actions;

7 (2) dissolving the board in accordance with Sections  
8 36.305 and 36.307 and calling an election for the purpose of  
9 electing a new board;

10 (3) requesting the attorney general to bring suit for  
11 the appointment of a receiver to collect the assets and carry on the  
12 business of the groundwater conservation district; or

13 (4) dissolving the district in accordance with  
14 Sections 36.304, 36.305, and 36.308.

15 SECTION 18. Section 36.321, Water Code, is amended to read  
16 as follows:

17 Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. Subject  
18 to Section 36.331, the [~~The~~] owner of land not already in  
19 [~~contiguous to~~] a district may file with the board a notarized  
20 petition requesting that the owner's land be included in the  
21 district. The petition must describe the land by legal description  
22 or by metes and bounds or by lot and block number if there is a  
23 recorded plat of the area to be included in the district.

24 SECTION 19. Section 36.325, Water Code, is amended to read  
25 as follows:

26 Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a)  
27 Landowners of a defined area of territory not already in a district

1 may file with any district a petition requesting inclusion in that  
2 district and, subject to Section 36.331, the defined area of  
3 territory is not required to be contiguous with that district.

4 (b) The petition must be signed by:

5 (1) a majority of the landowners in the territory;

6 (2) at least 50 landowners if the number of landowners  
7 is more than 50; or

8 (3) the commissioners court of the county in which the  
9 area is located if the area is identified as a priority groundwater  
10 management area or includes the entire county.

11 (c) The petition must describe the land by legal description  
12 or by metes and bounds or by lot and block number if there is a  
13 recorded plat of the area to be included in the district.

14 SECTION 20. Section 36.328(a), Water Code, is amended to  
15 read as follows:

16 (a) Annexation of the territory by petition filed under  
17 Section 36.325 is not final until ratified by a majority vote of the  
18 voters in the territory to be added. An election in the existing  
19 district accepting the addition of land is not required.

20 SECTION 21. The heading to Subchapter L, Chapter 36, Water  
21 Code, is amended to read as follows:

22 SUBCHAPTER L. GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE  
23 FUND

24 SECTION 22. Section 36.371, Water Code, is amended to read  
25 as follows:

26 Sec. 36.371. GROUNDWATER CONSERVATION DISTRICT LOAN  
27 ASSISTANCE FUND. (a) The groundwater conservation district loan

1 assistance fund is created, to be funded by direct appropriation  
2 and by the Texas Water Development Board from the water assistance  
3 fund.

4 (b) Repayments of loans shall be deposited in the water  
5 assistance fund.

6 SECTION 23. Section [36.1082](#), Water Code, is repealed.

7 SECTION 24. This Act takes effect immediately if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section [39](#), Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary for immediate  
11 effect, this Act takes effect September 1, 2015.