

By: Keffer

H.B. No. 2767

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the powers, duties, and administration of groundwater  
3 conservation districts.

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. Section 36.204, Water Code, is amended by  
12 adding Subsection (c) to read as follows:

13 (c) Sections 26.04(c)-(j), 26.05(b), (c), (d), (e), and  
14 (g), and 26.07, Tax Code, do not apply to a tax levied and collected  
15 under this chapter or an ad valorem tax levied and collected for the  
16 payment of the interest on and principal of bonds issued by a  
17 district.

18 SECTION 13. Sections 36.205(f) and (g), Water Code, are  
19 amended to read as follows:

20 (f) A district, including a district described under  
21 Subsection (d), may assess a production fee under Subsection (c)  
22 and an export fee under Subsection (g), if applicable, for any water  
23 produced under an exemption under Section 36.117 if that water is  
24 subsequently sold to another person.

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

27 SECTION 14. Section 36.206(a), Water Code, is amended to

1 read as follows:

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

8 SECTION 15. Section 36.207, Water Code, is amended to read  
9 as follows:

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

19 SECTION 16. Section 36.251, Water Code, is amended to read  
20 as follows:

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

27 (b) Only the district, the applicant, and parties to a



1 contested case hearing may participate in an appeal of a decision on  
2 the application that was the subject of that contested case  
3 hearing. An appeal of a decision on a permit application must  
4 include the applicant as a necessary party.

5 (c) The suit shall be filed in a court of competent  
6 jurisdiction in any county in which the district or any part of the  
7 district is located. The suit may only be filed after all  
8 administrative appeals to the district are final.

9 SECTION 17. Section 36.3011, Water Code, is amended to read  
10 as follows:

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

- 14 (1) an owner of land in the management area;  
15 (2) a groundwater conservation district or subsidence  
16 district in or adjacent to the management area;  
17 (3) a regional water planning group with a water  
18 management strategy in the management area;  
19 (4) a person who holds or is applying for a permit from  
20 a district in the management area;  
21 (5) a person with a legally defined interest in  
22 groundwater in the management area; or  
23 (6) any other person defined as affected by commission  
24 rule.

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

- 27 (1) a district fails to submit its management plan to

1 the executive administrator;

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

4 (3) a district fails to adopt rules;

5 (4) a district fails to adopt the applicable desired  
6 future conditions adopted by the management area at a joint  
7 meeting;

8 (5) a district fails to update its management plan  
9 before the second anniversary of the adoption of desired future  
10 conditions by the management area;

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

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

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

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

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

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

27 (2) select a review panel as provided in Subsection

1 (d).

2 (d) If the petition is not dismissed under Subsection (c),  
3 the commission shall appoint a review panel consisting of a  
4 chairperson and four other members. A director or general manager  
5 of a district located outside the management area that is the  
6 subject of the petition may be appointed to the review panel. The  
7 commission may not appoint more than two members of the review panel  
8 from any one district. The commission also shall appoint a  
9 disinterested person to serve as a nonvoting recording secretary  
10 for the review panel. The recording secretary may be an employee of  
11 the commission. The recording secretary shall record and document  
12 the proceedings of the panel.

13 (e) Not later than the 120th day after appointment, the  
14 review panel shall review the petition and any evidence relevant to  
15 the petition and, in a public meeting, consider and adopt a report  
16 to be submitted to the commission. The commission may direct the  
17 review panel to conduct public hearings at a location in the  
18 management area to take evidence on the petition. The review panel  
19 may attempt to negotiate a settlement or resolve the dispute by any  
20 lawful means.

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

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

24 (2) a list of findings and recommended actions  
25 appropriate for the commission to take and the reasons it finds  
26 those actions appropriate; and

27 (3) any other information the panel considers

1 appropriate.

2 (g) The review panel shall submit its report to the  
3 commission.

4 (h) Not later than the 45th day after receiving the review  
5 panel's report under this section [~~Section 36.1082~~], the executive  
6 director or the commission shall take action to implement any or all  
7 of the panel's recommendations. The commission may take any action  
8 against a district it considers necessary in accordance with  
9 Section 36.303 if the commission finds that:

10 (1) the district has failed to submit its management  
11 plan to the executive administrator;

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

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

15 (4) the district has failed to adopt the applicable  
16 desired future conditions adopted by the management area at a joint  
17 meeting;

18 (5) the district has failed to update its management  
19 plan before the second anniversary of the adoption of desired  
20 future conditions by the management area;

21 (6) the district has failed to update its rules to  
22 implement the applicable desired future conditions before the first  
23 anniversary of the date it updated its management plan with the  
24 adopted desired future conditions;

25 (7) the rules adopted by the district are not designed  
26 to achieve the desired future conditions adopted by the management  
27 area during the joint planning process;

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

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

6 SECTION 18. Section 36.303(a), Water Code, is amended to  
7 read as follows:

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

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

14 (2) dissolving the board in accordance with Sections  
15 36.305 and 36.307 and calling an election for the purpose of  
16 electing a new board;

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

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

22 SECTION 19. Section 36.321, Water Code, is amended to read  
23 as follows:

24 Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. Subject  
25 to Section 36.331, the [~~The~~] owner of land not already in  
26 [~~contiguous to~~] a district may file with the board a notarized  
27 petition requesting that the owner's land be included in the

1 district. The petition must describe the land by legal description  
2 or by metes and bounds or by lot and block number if there is a  
3 recorded plat of the area to be included in the district.

4 SECTION 20. Section 36.325, Water Code, is amended to read  
5 as follows:

6 Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a)  
7 Landowners of a defined area of territory not already in a district  
8 may file with any district a petition requesting inclusion in that  
9 district and, subject to Section 36.331, the defined area of  
10 territory is not required to be contiguous with that district.

11 (b) The petition must be signed by:

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

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

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

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

21 SECTION 21. Section 36.328(a), Water Code, is amended to  
22 read as follows:

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

27 SECTION 22. The heading to Subchapter L, Chapter 36, Water

1 Code, is amended to read as follows:

2 SUBCHAPTER L. GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE  
3 FUND

4 SECTION 23. Section 36.371, Water Code, is amended to read  
5 as follows:

6 Sec. 36.371. GROUNDWATER CONSERVATION DISTRICT LOAN  
7 ASSISTANCE FUND. (a) The groundwater conservation district loan  
8 assistance fund is created, to be funded by direct appropriation  
9 and by the Texas Water Development Board from the water assistance  
10 fund.

11 (b) Repayments of loans shall be deposited in the water  
12 assistance fund.

13 SECTION 24. Section 36.1082, Water Code, is repealed.

14 SECTION 25. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section 39, Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect September 1, 2015.