

1-1 By: Keffer (Senate Sponsor - Perry) H.B. No. 2767
 1-2 (In the Senate - Received from the House May 4, 2015;
 1-3 May 4, 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 | | | | |
| 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 the powers, duties, and administration of groundwater
 1-19 conservation districts; amending provisions that authorize fees.

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

1-21 SECTION 1. Section 36.001, Water Code, is amended by
 1-22 amending Subdivisions (8) and (16) and adding Subdivision (31) to
 1-23 read as follows:

1-24 (8) "Waste" means any one or more of the following:

1-25 (A) withdrawal of groundwater from a groundwater
 1-26 reservoir at a rate and in an amount that causes or threatens to
 1-27 cause intrusion into the reservoir of water unsuitable for
 1-28 agricultural, gardening, domestic, or stock raising purposes;

1-29 (B) the flowing or producing of wells from a
 1-30 groundwater reservoir if the water produced is not used for a
 1-31 beneficial purpose;

1-32 (C) escape of groundwater from a groundwater
 1-33 reservoir to any other reservoir or geologic strata that does not
 1-34 contain groundwater;

1-35 (D) pollution or harmful alteration of
 1-36 groundwater in a groundwater reservoir by saltwater or by other
 1-37 deleterious matter admitted from another stratum or from the
 1-38 surface of the ground;

1-39 (E) willfully [~~wilfully~~] or negligently causing,
 1-40 suffering, or allowing groundwater to escape into any river, creek,
 1-41 natural watercourse, depression, lake, reservoir, drain, sewer,
 1-42 street, highway, road, or road ditch, or onto any land other than
 1-43 that of the owner of the well unless such discharge is authorized by
 1-44 permit, rule, or order issued by the commission under Chapter 26;

1-45 (F) groundwater pumped for irrigation that
 1-46 escapes as irrigation tailwater onto land other than that of the
 1-47 owner of the well unless permission has been granted by the occupant
 1-48 of the land receiving the discharge; or

1-49 (G) for water produced from an artesian well,
 1-50 "waste" also has the meaning assigned by Section 11.205.

1-51 (16) "Loan fund" means the groundwater conservation
 1-52 district loan assistance fund created under Section 36.371.

1-53 (31) "Operating permit" as used in this chapter means
 1-54 any type of permit issued by a district that relates to the
 1-55 operation of or production from a water well, which may include
 1-56 authorization to drill or complete a water well if the district
 1-57 does not require a separate permit for drilling or completing a
 1-58 water well.

1-59 SECTION 2. Section 36.017(i), Water Code, is amended to
 1-60 read as follows:

1-61 (i) If a majority of the votes cast at the election are

2-1 against the levy of a maintenance tax, the district shall set
 2-2 [~~production~~] fees authorized by this chapter to pay for the
 2-3 district's regulation of groundwater in the district[~~, including~~
 2-4 ~~fees based on the amount of water to be withdrawn from a well~~].

2-5 SECTION 3. Section 36.0171(h), Water Code, is amended to
 2-6 read as follows:

2-7 (h) If the majority of the votes cast at the election are
 2-8 against the levy of a maintenance tax, the district shall set
 2-9 [~~production~~] fees authorized by this chapter in accordance with
 2-10 Section 35.013(g-1) to pay for the district's regulation of
 2-11 groundwater in the district[~~, including fees based on the amount of~~
 2-12 ~~water to be withdrawn from a well~~].

2-13 SECTION 4. Section 36.058, Water Code, is amended to read as
 2-14 follows:

2-15 Sec. 36.058. CONFLICTS OF INTEREST. A director of a
 2-16 district is subject to the provisions of Chapters [~~Chapter~~] 171 and
 2-17 176, Local Government Code, relating to the regulation of conflicts
 2-18 of officers of local governments.

2-19 SECTION 5. Section 36.061(a), Water Code, is amended to
 2-20 read as follows:

2-21 (a) Subject to the law governing the district, the board
 2-22 shall adopt the following in writing:

2-23 (1) a code of ethics for district directors, officers,
 2-24 employees, and persons who are engaged in handling investments for
 2-25 the district;

2-26 (2) a policy relating to travel expenditures;

2-27 (3) a policy relating to district investments that
 2-28 ensures that:

2-29 (A) purchases and sales of investments are
 2-30 initiated by authorized individuals, conform to investment
 2-31 objectives and regulations, and are properly documented and
 2-32 approved; and

2-33 (B) periodic review is made of district
 2-34 investments to evaluate investment performance and security;

2-35 (4) policies and procedures for selection,
 2-36 monitoring, or review and evaluation of professional services; and

2-37 (5) policies that ensure a better use of management
 2-38 information, including:

2-39 (A) budgets for use in planning and controlling
 2-40 cost; and

2-41 (B) an audit or finance committee of the board. [~~+~~
 2-42 ~~and~~

2-43 [~~(C) uniform reporting requirements that use~~
 2-44 ~~"Audits of State and Local Governmental Units" as a guide on audit~~
 2-45 ~~working papers and that uses "Governmental Accounting and Financial~~
 2-46 ~~Reporting Standards."~~]

2-47 SECTION 6. Section 36.116(c), Water Code, is amended to
 2-48 read as follows:

2-49 (c) In regulating the production of groundwater based on
 2-50 tract size or acreage, a district may consider the service needs or
 2-51 service area of a retail public [~~water~~] utility. For the purposes
 2-52 of this subsection, "retail public [~~water~~] utility" shall have the
 2-53 meaning provided by at Section 13.002.

2-54 SECTION 7. Sections 36.117(a) and (d), Water Code, are
 2-55 amended to read as follows:

2-56 (a) A district by rule may provide an exemption from the
 2-57 district's requirement to obtain [~~a drilling permit, an operating~~
 2-58 ~~permit, or~~] any [~~other~~] permit required by this chapter or the
 2-59 district's rules.

2-60 (d) A district may cancel a previously granted exemption[~~7~~]
 2-61 and may require an operating permit for or restrict production from
 2-62 a well and assess any appropriate fees[~~7~~] if:

2-63 (1) [~~the well is located in the Hill Country Priority~~
 2-64 ~~Groundwater Management Area and~~] the groundwater withdrawals that
 2-65 were exempted under Subsection (b)(1) are no longer used solely for
 2-66 domestic use or to provide water for livestock or poultry;

2-67 (2) the groundwater withdrawals that were exempted
 2-68 under Subsection (b)(2) are no longer used solely to supply water
 2-69 for a rig that is actively engaged in drilling or exploration

3-1 operations for an oil or gas well permitted by the Railroad
3-2 Commission of Texas; or

3-3 (3) the groundwater withdrawals that were exempted
3-4 under Subsection (b)(3) are no longer necessary for mining
3-5 activities or are greater than the amount necessary for mining
3-6 activities specified in the permit issued by the Railroad
3-7 Commission of Texas under Chapter 134, Natural Resources Code.

3-8 SECTION 8. Section 36.122(e), Water Code, is amended to
3-9 read as follows:

3-10 (e) The district may impose an export [~~a reasonable~~] fee or
3-11 surcharge [~~for an export fee~~] using one of the following methods:

3-12 (1) a fee negotiated between the district and the
3-13 exporter [~~transporter~~];

3-14 (2) a rate not to exceed the equivalent of the
3-15 district's tax rate per hundred dollars of valuation for each
3-16 thousand gallons of water exported from [~~transferred out of~~] the
3-17 district or 2.5 cents per thousand gallons of water, if the district
3-18 assesses a tax rate of less than 2.5 cents per hundred dollars of
3-19 valuation; or

3-20 (3) for a fee-based district, a 50 percent [~~export~~]
3-21 surcharge, in addition to the district's production fee, for water
3-22 exported from [~~transferred out of~~] the district.

3-23 SECTION 9. Sections 36.153(a), (b), and (d), Water Code,
3-24 are amended to read as follows:

3-25 (a) Annually and subject to Subsection (c), the board shall
3-26 have an audit made of the financial condition of the district. The
3-27 district audit shall be performed according to the generally
3-28 accepted government auditing standards adopted by the American
3-29 Institute of Certified Public Accountants.

3-30 (b) Financial statements shall be prepared in accordance
3-31 with generally accepted accounting principles as adopted by the
3-32 American Institute of Certified Public Accountants. The annual
3-33 audit and other district records must be open to inspection during
3-34 regular business hours at the principal office of the district.

3-35 (d) A financially dormant district may elect not to conduct
3-36 an audit and instead submit to the executive director a financial
3-37 dormancy affidavit [~~instead of complying with the audit~~
3-38 ~~requirements of Section 49.191~~].

3-39 SECTION 10. Section 36.157(a), Water Code, is amended to
3-40 read as follows:

3-41 (a) A district, or the county or counties where the district
3-42 is to be located, may pay all costs and expenses necessarily
3-43 incurred in the creation and organization of a district, including
3-44 legal fees and other incidental expenses, and may reimburse any
3-45 person, including a county, for money advanced for these purposes.

3-46 SECTION 11. Section 36.159, Water Code, is amended to read
3-47 as follows:

3-48 Sec. 36.159. GROUNDWATER CONSERVATION DISTRICT MANAGEMENT
3-49 PLAN FUNDS. The Texas Water Development Board may allocate funds
3-50 from the water assistance fund to a district to:

3-51 (1) conduct initial data collections under this
3-52 chapter;

3-53 (2) [~~to~~] develop and implement a long-term
3-54 management plan under Section 36.1071; [~~to~~] and

3-55 (3) [~~to~~] participate in regional water plans.

3-56 SECTION 12. Sections 36.205(f) and (g), Water Code, are
3-57 amended to read as follows:

3-58 (f) A district, including a district described under
3-59 Subsection (d), may assess a production fee under Subsection (c)
3-60 and an export fee under Subsection (g), if applicable, for any water
3-61 produced under an exemption under Section 36.117 if that water is
3-62 subsequently sold to another person.

3-63 (g) A district may assess an export [~~a transportation~~] fee
3-64 under Section 36.122.

3-65 SECTION 13. Section 36.206(a), Water Code, is amended to
3-66 read as follows:

3-67 (a) A temporary board may set [~~user~~] fees authorized by this
3-68 chapter to pay for the creation and initial operation of a district,
3-69 until such time as the district creation has been confirmed and a

4-1 permanent board has been elected by a majority vote of the qualified
 4-2 voters voting in the district in an election called for those
 4-3 purposes.

4-4 SECTION 14. Section 36.207, Water Code, is amended to read
 4-5 as follows:

4-6 Sec. 36.207. USE OF ~~[PERMIT]~~ FEES ~~[AUTHORIZED BY SPECIAL~~
 4-7 ~~LAW]~~. A district may use funds obtained from administrative,
 4-8 production, or export ~~[permit]~~ fees collected under a ~~[pursuant to~~
 4-9 ~~the]~~ special law governing the district or this chapter for any
 4-10 purpose consistent with the district's approved management plan,
 4-11 including, without limitation, making grants, loans, or
 4-12 contractual payments to achieve, facilitate, or expedite
 4-13 reductions in groundwater pumping or the development or
 4-14 distribution of alternative water supplies.

4-15 SECTION 15. Section 36.251, Water Code, is amended to read
 4-16 as follows:

4-17 Sec. 36.251. SUIT AGAINST DISTRICT. (a) A person, firm,
 4-18 corporation, or association of persons affected by and dissatisfied
 4-19 with any ~~[provision or with any]~~ rule or order made by a district,
 4-20 including an appeal of a decision on a permit application, is
 4-21 entitled to file a suit against the district or its directors to
 4-22 challenge the validity of the law, rule, or order.

4-23 (b) Only the district, the applicant, and parties to a
 4-24 contested case hearing may participate in an appeal of a decision on
 4-25 the application that was the subject of that contested case
 4-26 hearing. An appeal of a decision on a permit application must
 4-27 include the applicant as a necessary party.

4-28 (c) The suit shall be filed in a court of competent
 4-29 jurisdiction in any county in which the district or any part of the
 4-30 district is located. The suit may only be filed after all
 4-31 administrative appeals to the district are final.

4-32 SECTION 16. Section 36.3011, Water Code, is amended to read
 4-33 as follows:

4-34 Sec. 36.3011. COMMISSION INQUIRY AND ACTION REGARDING
 4-35 DISTRICT DUTIES. (a) In this section, "affected person" means, with
 4-36 respect to a management area:

- 4-37 (1) an owner of land in the management area;
- 4-38 (2) a groundwater conservation district or subsidence
 4-39 district in or adjacent to the management area;
- 4-40 (3) a regional water planning group with a water
 4-41 management strategy in the management area;
- 4-42 (4) a person who holds or is applying for a permit from
 4-43 a district in the management area;
- 4-44 (5) a person with a legally defined interest in
 4-45 groundwater in the management area; or
- 4-46 (6) any other person defined as affected by commission
 4-47 rule.

4-48 (b) An affected person may file a petition with the
 4-49 commission requesting an inquiry for any of the following reasons:

- 4-50 (1) a district fails to submit its management plan to
 4-51 the executive administrator;
- 4-52 (2) a district fails to participate in the joint
 4-53 planning process under Section 36.108;
- 4-54 (3) a district fails to adopt rules;
- 4-55 (4) a district fails to adopt the applicable desired
 4-56 future conditions adopted by the management area at a joint
 4-57 meeting;
- 4-58 (5) a district fails to update its management plan
 4-59 before the second anniversary of the adoption of desired future
 4-60 conditions by the management area;
- 4-61 (6) a district fails to update its rules to implement
 4-62 the applicable desired future conditions before the first
 4-63 anniversary of the date it updated its management plan with the
 4-64 adopted desired future conditions;
- 4-65 (7) the rules adopted by a district are not designed to
 4-66 achieve the adopted desired future conditions;
- 4-67 (8) the groundwater in the management area is not
 4-68 adequately protected by the rules adopted by a district; or
- 4-69 (9) the groundwater in the management area is not

5-1 adequately protected due to the failure of a district to enforce
 5-2 substantial compliance with its rules.

5-3 (c) Not later than the 90th day after the date the petition
 5-4 is filed, the commission shall review the petition and either:

5-5 (1) dismiss the petition if the commission finds that
 5-6 the evidence is not adequate to show that any of the conditions
 5-7 alleged in the petition exist; or

5-8 (2) select a review panel as provided in Subsection
 5-9 (d).

5-10 (d) If the petition is not dismissed under Subsection (c),
 5-11 the commission shall appoint a review panel consisting of a
 5-12 chairperson and four other members. A director or general manager
 5-13 of a district located outside the management area that is the
 5-14 subject of the petition may be appointed to the review panel. The
 5-15 commission may not appoint more than two members of the review panel
 5-16 from any one district. The commission also shall appoint a
 5-17 disinterested person to serve as a nonvoting recording secretary
 5-18 for the review panel. The recording secretary may be an employee of
 5-19 the commission. The recording secretary shall record and document
 5-20 the proceedings of the panel.

5-21 (e) Not later than the 120th day after appointment, the
 5-22 review panel shall review the petition and any evidence relevant to
 5-23 the petition and, in a public meeting, consider and adopt a report
 5-24 to be submitted to the commission. The commission may direct the
 5-25 review panel to conduct public hearings at a location in the
 5-26 management area to take evidence on the petition. The review panel
 5-27 may attempt to negotiate a settlement or resolve the dispute by any
 5-28 lawful means.

5-29 (f) In its report, the review panel shall include:

5-30 (1) a summary of all evidence taken in any hearing on
 5-31 the petition;

5-32 (2) a list of findings and recommended actions
 5-33 appropriate for the commission to take and the reasons it finds
 5-34 those actions appropriate; and

5-35 (3) any other information the panel considers
 5-36 appropriate.

5-37 (g) The review panel shall submit its report to the
 5-38 commission.

5-39 (h) Not later than the 45th day after receiving the review
 5-40 panel's report under this section [~~Section 36.1082~~], the executive
 5-41 director or the commission shall take action to implement any or all
 5-42 of the panel's recommendations. The commission may take any action
 5-43 against a district it considers necessary in accordance with
 5-44 Section 36.303 if the commission finds that:

5-45 (1) the district has failed to submit its management
 5-46 plan to the executive administrator;

5-47 (2) the district has failed to participate in the
 5-48 joint planning process under Section 36.108;

5-49 (3) the district has failed to adopt rules;

5-50 (4) the district has failed to adopt the applicable
 5-51 desired future conditions adopted by the management area at a joint
 5-52 meeting;

5-53 (5) the district has failed to update its management
 5-54 plan before the second anniversary of the adoption of desired
 5-55 future conditions by the management area;

5-56 (6) the district has failed to update its rules to
 5-57 implement the applicable desired future conditions before the first
 5-58 anniversary of the date it updated its management plan with the
 5-59 adopted desired future conditions;

5-60 (7) the rules adopted by the district are not designed
 5-61 to achieve the desired future conditions adopted by the management
 5-62 area during the joint planning process;

5-63 (8) the groundwater in the management area is not
 5-64 adequately protected by the rules adopted by the district; or

5-65 (9) the groundwater in the management area is not
 5-66 adequately protected because of the district's failure to enforce
 5-67 substantial compliance with its rules.

5-68 SECTION 17. Section 36.303(a), Water Code, is amended to
 5-69 read as follows:

6-1 (a) If Section [~~36.108,~~] 36.301, 36.3011, or 36.302(f)
6-2 applies, the commission, after notice and hearing in accordance
6-3 with Chapter 2001, Government Code, shall take action the
6-4 commission considers appropriate, including:

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

6-7 (2) dissolving the board in accordance with Sections
6-8 36.305 and 36.307 and calling an election for the purpose of
6-9 electing a new board;

6-10 (3) requesting the attorney general to bring suit for
6-11 the appointment of a receiver to collect the assets and carry on the
6-12 business of the groundwater conservation district; or

6-13 (4) dissolving the district in accordance with
6-14 Sections 36.304, 36.305, and 36.308.

6-15 SECTION 18. Section 36.321, Water Code, is amended to read
6-16 as follows:

6-17 Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. Subject
6-18 to Section 36.331, the [The] owner of land not already in
6-19 [contiguous to] a district may file with the board a notarized
6-20 petition requesting that the owner's land be included in the
6-21 district. The petition must describe the land by legal description
6-22 or by metes and bounds or by lot and block number if there is a
6-23 recorded plat of the area to be included in the district.

6-24 SECTION 19. Section 36.325, Water Code, is amended to read
6-25 as follows:

6-26 Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a)
6-27 Landowners of a defined area of territory not already in a district
6-28 may file with any district a petition requesting inclusion in that
6-29 district and, subject to Section 36.331, the defined area of
6-30 territory is not required to be contiguous with that district.

6-31 (b) The petition must be signed by:

6-32 (1) a majority of the landowners in the territory;

6-33 (2) at least 50 landowners if the number of landowners
6-34 is more than 50; or

6-35 (3) the commissioners court of the county in which the
6-36 area is located if the area is identified as a priority groundwater
6-37 management area or includes the entire county.

6-38 (c) The petition must describe the land by legal description
6-39 or by metes and bounds or by lot and block number if there is a
6-40 recorded plat of the area to be included in the district.

6-41 SECTION 20. Section 36.328(a), Water Code, is amended to
6-42 read as follows:

6-43 (a) Annexation of the territory by petition filed under
6-44 Section 36.325 is not final until ratified by a majority vote of the
6-45 voters in the territory to be added. An election in the existing
6-46 district accepting the addition of land is not required.

6-47 SECTION 21. The heading to Subchapter L, Chapter 36, Water
6-48 Code, is amended to read as follows:

6-49 SUBCHAPTER L. GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE
6-50 FUND

6-51 SECTION 22. Section 36.371, Water Code, is amended to read
6-52 as follows:

6-53 Sec. 36.371. GROUNDWATER CONSERVATION DISTRICT LOAN
6-54 ASSISTANCE FUND. (a) The groundwater conservation district loan
6-55 assistance fund is created, to be funded by direct appropriation
6-56 and by the Texas Water Development Board from the water assistance
6-57 fund.

6-58 (b) Repayments of loans shall be deposited in the water
6-59 assistance fund.

6-60 SECTION 23. Section 36.1082, Water Code, is repealed.

6-61 SECTION 24. This Act takes effect immediately if it
6-62 receives a vote of two-thirds of all the members elected to each
6-63 house, as provided by Section 39, Article III, Texas Constitution.
6-64 If this Act does not receive the vote necessary for immediate
6-65 effect, this Act takes effect September 1, 2015.

6-66 * * * * *