

By: Estes

S.B. No. 1414

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  
27 as 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.

26 (a) In a proceeding for a permit application or amendment in which  
27 a 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.

S.B. No. 1414

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