

House Bill 200
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 36.0015, Water Code, is amended to read as follows:

Sec. 36.0015. PURPOSE. (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development and conservation of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

No equivalent provision.

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SECTION 1. Section 36.0015, Water Code, is amended to read as follows:

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(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter. [FA1(1)-(3)]

SECTION __. Section 36.0151(f), Water Code, is amended to read as follows:

(f) Before September 1, 2021[2015], the commission may not create a groundwater conservation district under this section in a county:

(1) in which the annual amount of surface water used is more

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- than 50 times the annual amount of groundwater produced;
- (2) that is located in a priority groundwater management area;
- and
- (3) that has a population greater than 2.3 million. [FA2]

SECTION 2. Section 36.066, Water Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant, in the interests of justice and as provided by Subsection (h), in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

(h) If the district prevails on some, but not all, of the issues in the suit, the court may award attorney's fees and costs only for those issues on which the district prevails. The district has the burden of segregating the attorney's fees and costs in order for the court to make an award.

SECTION 3. Section 36.108(d-1), Water Code, is amended to read as follows:

(d-1) After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the [The] districts may establish different desired future conditions for:

- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

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(h) If the district prevails on some, but not all, of the issues in the suit, the court shall award attorney's fees and costs only for those issues on which the district prevails. The district has the burden of segregating the attorney's fees and costs in order for the court to make an award. [FA1(4)]

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(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

SECTION 4. Section 36.1083, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) through (r) to read as follows:

(a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development [~~,"development]~~ board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected [A] person [~~with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area]~~ may file a petition with the district requiring that the district contract with the office to conduct a hearing [~~development board]~~ appealing the reasonableness [~~approval~~] of the desired future condition [~~conditions of the groundwater resources established under this section]~~. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

(e) Not later than the 10th day after receiving a petition described by Subsection (b), the district shall submit a copy of the petition to the development board. On receipt of the

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(b) Not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected [A] person [~~with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area]~~ may file a petition with the district requiring that the district contract with the office to conduct a hearing [~~development board]~~ appealing the reasonableness [~~approval~~] of the desired future condition [~~conditions of the groundwater resources established under this section]~~. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

(e) Not later than the 10th day after receiving a petition described by Subsection (b), the district shall submit a copy of the petition to the development board. On receipt of the

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petition, the development board shall conduct:

(1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and

(2) a study containing scientific and technical analysis of the desired future condition, including consideration of:

(A) the hydrogeology of the aquifer; and

(B) any relevant:

(i) groundwater availability models;

(ii) published studies;

(iii) estimates of total recoverable storage capacity;

(iv) average annual amounts of recharge, inflows, and discharge of groundwater; or

(v) information provided in the petition or available to the development board.

(f) The development board must complete and deliver to the office a study described by Subsection (e)(2) not later than the 120th day after the date the development board receives a copy of the petition.

(g) For the purposes of a hearing conducted under Subsection (b):

(1) the office shall consider the study described by Subsection (e)(2) to be part of the administrative record; and

(2) the development board shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.

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petition, the development board shall conduct:

(1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and

(2) a study containing scientific and technical analysis of the desired future condition, including consideration of:

(A) the hydrogeology of the aquifer; [FA1(5)]

() the explanatory report provided to the development board under 36.108(d-3);

() the factors described under Section 36.108(d); and [FA1(6)]

(B) any relevant:

(i) groundwater availability models;

(ii) published studies;

(iii) estimates of total recoverable storage capacity;

(iv) average annual amounts of recharge, inflows, and discharge of groundwater; or

(v) information provided in the petition or available to the development board.

(f) The development board must complete and deliver to the office a study described by Subsection (e)(2) not later than the 120th day after the date the development board receives a copy of the petition.

(g) For the purposes of a hearing conducted under Subsection (b):

(1) the office shall consider the study described by Subsection (e)(2) and the desired future conditions explanatory report submitted to the development board under Section 36.108(d-3) to be part of the administrative record; and [FA1(7)]

(2) the development board shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.

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(h) Not later than the 60th day after receiving a petition under Subsection (b), the district shall:

(1) contract with the office to conduct the contested case hearing requested under Subsection (b); and

(2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.

(i) A hearing under Subsection (b) must be held:

(1) at a location described by Section 36.403(c); and

(2) in accordance with Chapter 2001, Government Code, and the rules of the office.

(j) During the period between the filing of the petition and the delivery of the study described by Subsection (e)(2), the district may seek the assistance of the Center for Public Policy Dispute Resolution, the development board, or another alternative dispute resolution system to mediate the issues raised in the petition. If the district and the petitioner cannot resolve the issues raised in the petition, the office will proceed with a hearing as described by this section.

(k) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In accordance with rules adopted by the district and the office, the district shall provide:

(1) general notice of the hearing; and

(2) individual notice of the hearing to:

(A) the petitioner;

(B) any other party to the hearing;

(C) each nonparty district and regional water planning group located in the same management area as a district named in the petition;

(D) the development board; and

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(h) Not later than the 60th day after receiving a petition under Subsection (b), the district shall:

(1) contract with the office to conduct the contested case hearing requested under Subsection (b); and

(2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.

(i) A hearing under Subsection (b) must be held:

(1) at a location described by Section 36.403(c); and

(2) in accordance with Chapter 2001, Government Code, and the rules of the office.

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(k) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In accordance with rules adopted by the district and the office, the district shall provide:

(1) general notice of the hearing; and

(2) individual notice of the hearing to:

(A) the petitioner;

(B) any person who has requested notice; [FA1(8)]

(C) each nonparty district and regional water planning group located in the same management area as a district named in the petition;

(D) the development board; and

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(E) the commission.

(1) Before a hearing conducted under this section, the office shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) which affected persons shall be named as parties to the hearing.

(m) The petitioner shall pay the costs associated with the contract for the hearing under this section. The petitioner shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the office may assess costs to one or more of the parties participating in the hearing and the district shall refund any excess money to the petitioner. The office shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

(n) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The district may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or

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(E) the commission.

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(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

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(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

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modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.

(o) If the district vacates or modifies the proposal for decision, the district shall issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the district's decision.

(p) If the district in its final order finds that a desired future condition is unreasonable, the districts in the same management area as the district that participated in the hearing shall reconvene in a joint planning meeting not later than the 30th day after the date of the final order for the purpose of revising the desired future condition.

(q) A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.

(r) The administrative law judge may consolidate hearings requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 5. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.10835 to read as follows:
Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS. (a) A final district order issued under

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modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.

(o) If the district vacates or modifies the proposal for decision, the district shall issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the district's decision.

(p) If the district in its final order finds that a desired future condition is unreasonable, not later than the 60th day after the date of the final order, the districts in the same management area as the district that received the petition shall reconvene in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition. [FA1(9)]

(q) A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.

(r) The administrative law judge may consolidate hearings requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 5. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.10835 to read as follows:
Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS. (a) A final district order issued under

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Section 36.1083 may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. An appeal under this subsection must be filed with the district court not later than the 45th day after the date the district issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that did not participate as a party in the hearing to reconvene in a joint planning meeting not later than the 30th day after the date of the court order for the purpose of revising the desired future condition.

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

SECTION 6. Sections 36.1083(c) and (d), Water Code, are repealed.

SECTION 7. Section 36.1083, Water Code, as amended by this Act, and Section 36.10835, Water Code, as added by this Act, apply only to a desired future condition adopted by a groundwater conservation district on or after the effective date of this Act. A desired future condition adopted before that date is governed by the law in effect on the date the desired future condition was adopted, and the former law is continued in effect for that purpose.

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Section 36.1083 may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. An appeal under this subsection must be filed with the district court not later than the 45th day after the date the district issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that received the petition to reconvene not later than the 60th day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition. [FA1(10)]

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

SECTION 6. Same as House version.

SECTION 7. Same as House version.

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SECTION 8. This Act takes effect September 1, 2015.

SECTION 8. Same as House version.