

BILL ANALYSIS

Senate Research Center
87R1323 BRG-F

S.B. 152
By: Perry
Water, Agriculture & Rural Affairs
3/16/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 152 addresses transparency and portions of regulations tied to groundwater conservation districts (GCD) in the state. The bill creates judicial discretion in the awarding of attorney's fees in court cases involving a GCD. It also provides an alternative avenue to court with the addition of a process to petition for rule making. Finally, S.B. 152 includes requirements for providing notice to landowners when a new or amended permit is requested.

As proposed, S.B. 152 amends current law relating to the regulation of groundwater conservation districts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.066, Water Code, by amending Subsection (g) and adding Subsection (i), as follows:

(g) Authorizes a groundwater conservation district (district) to seek and authorizes, rather than requires, the court to grant, in the interests of justice and as provided by Subsection (h) (relating to court awarded attorney's fees and costs), in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court if the district prevails in any suit other than a suit in which it voluntarily intervenes.

(i) Provides that, notwithstanding Section 36.052(a) (relating to other laws governing the administration or operations of districts that do not apply to districts in Chapter 36 (Groundwater Conservation Districts)), Subsections (g) and (h) of Section 36.066 (Suits) prevail over any other special law inconsistent with those subsections unless the other law prohibits an award of attorney's fees or costs.

SECTION 2. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1025, as follows:

Sec. 36.1025. PETITION TO CHANGE RULES. (a) Authorizes a person with groundwater ownership and rights to petition the district where the property that gives rise to the ownership and rights is located to adopt a rule or modify a rule adopted under this chapter.

(b) Requires that a petition submitted under this section include:

(1) an explanation of why the adoption or modification of the rule requested is necessary to be consistent with ownership and rights recognized under Section 36.002 (Ownership of Groundwater) or conservation or beneficial use of the groundwater resources located in the

district, in regard to either the entire district, or an aquifer, subdivision of an aquifer, or geologic strata located in the district; and

(2) proof that the petitioner has complied with the notice requirements described by Subsection (c).

(c) Requires a petitioner under this section to provide written notice of the petition to each person with groundwater ownership and rights in the geographic area that would be affected by the adoption or modification of the rule described in the petition.

(d) Authorizes the district to consider the petition at a public hearing or a regularly scheduled board meeting. Requires the district, if it meets quarterly, to grant or deny the petition not later than the 90th day after the date the district received the petition.

(e) Requires the district, after a hearing held under Subsection (d), to grant or deny the petition and authorizes the district to grant or deny the petition wholly or partly. Requires the district to provide an explanation for the action the district takes on the petition, including a determination about the consistency of the action with the concerns raised by the petitioner's explanation required by Subsection (b)(1).

(f) Requires the district, as soon as practicable after a petition or a portion of a petition is granted, to engage in rulemaking consistent with the granted petition or the granted portion of the petition.

SECTION 3. Amends Section 36.114(h), Water Code, to provide that an application is administratively complete if it contains certain information and, if applicable, the applicant has submitted proof of notice required under Section 36.1141.

SECTION 4. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1141, as follows:

Sec. 36.1141. NOTICE REQUIRED FOR APPLICATION FOR PERMIT OR PERMIT AMENDMENT. (a) Requires a person, not later than the date that a person submits an application for a permit or permit amendment to a district, to provide notice by certified mail, return receipt requested, to each person with a real property interest in the groundwater beneath the land within the space prescribed by the district's spacing rules for the proposed or existing well.

(b) Requires that the notice required under Subsection (a) inform the notice recipient that the recipient may contest the application for the permit or permit amendment.

(c) Requires the person who provides notice under Subsection (a) to submit proof of providing the notice with the person's application for the permit or permit amendment.

SECTION 5. Amends Section 36.415, Water Code, by adding Subsection (c), to provide that, for purposes of Section 36.415 (Rules; Additional Procedures), a person entitled to receive notice under Section 36.1141 is considered to have a personal justiciable interest described by Subsection (b) (relating to the adoption of rules by a district).

SECTION 6. Makes application of Section 36.066, Water Code, as amended by this Act, prospective.

SECTION 7. Makes application of Sections 36.114 (Permit; Permit Amendment; Application and Hearing) and 36.415, Water Code, as amended by this Act, and Section 36.1141, Water Code, as added by this Act, prospective.

SECTION 8. Effective date: September 1, 2021.