

## **BILL ANALYSIS**

Senate Research Center  
87R16452 BRG-F

C.S.S.B. 152  
By: Perry  
Water, Agriculture & Rural Affairs  
3/22/2021  
Committee Report (Substituted)

### **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.

(Original Author's / Sponsor's Statement of Intent)

C.S.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 a real property interest in groundwater to petition the district where the property that gives rise to the real property interest is located to adopt a rule or modify a rule adopted under this chapter.

(b) Requires the district by rule to prescribe the form for a petition submitted under this section and the procedure for the submission, consideration, and disposition of the petition.

(c) Requires the district, not later than the 90th day after the date the district receives the petition, to deny the petition and provide an explanation for the denial, or to engage in rulemaking consistent with the granted petition.

(d) Prohibits anything in this section from being construed to create a private cause of action for a decision to accept or deny a petition filed under this section.

SECTION 3. Amends Section 36.1071, Water Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Requires that the surface water management plan, or any amendments to the plan:

(1) creates this subdivision from existing text and makes no further changes; and

(2) include the most recently approved desired future conditions of the groundwater resources in a management area adopted under Section 36.108 (Joint Planning in Management Area) and the amount of modeled available groundwater corresponding to the most recently approved desired future conditions.

(b-1) Requires a district to amend a management plan before the second anniversary of the adoption of desired future conditions included under Subsection (b).

(b-2) Requires the executive administrator of the Texas Water Development Board, if a petition challenging the reasonableness of a desired future condition is filed under Section 36.1083(b) (relating to requirements for a petition filed with the district relating to the reasonableness of the desired future condition), to consider the management plan administratively complete if the district includes certain information.

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 district that has adopted rules regulating the spacing of wells under Section 36.116(a)(1) (relating to the authority of a district to regulate the spacing of water wells) to require wells to be spaced a certain distance from other wells, except as provided by Subsection (b), to adopt rules requiring that notice of an application for a permit or permit amendment to drill a well or increase the production capacity of an existing well be provided to each landowner whose:

(1) land is located wholly or partly within the spacing distances from other wells under the spacing rules of the district; and

(2) right to obtain a permit or permit amendment for a well of a certain size or location under the spacing rules of the district will be affected if the district approves the application.

(b) Provides that notice is not required under Subsection (a):

(1) for a replacement well to be drilled at or near the location of the well which it is intended to replace that has an equal or lesser production capacity than the well which it is intended to replace as determined by the rules of the district;

(2) for an emergency well necessary to mitigate a loss of production capacity of an existing well as determined by the rules of the district;

(3) if the notice is to be provided to the lessors of the right to produce groundwater from a property where the applicant for the permit or permit amendment is the lessee; or

(4) if the district:

(A) posts in a place readily accessible to the public at the district's main office a list of the applications described by Subsection (a) that includes the name of the applicant and address or approximate location of the well or proposed well; and

(B) posts on the home page of the district's Internet website, if the district operates an Internet website, a list described by Paragraph (A) or a link to a web application that includes the information included on a list described by Paragraph (A).

SECTION 5. Makes application of Section 36.066, Water Code, as amended by this Act, prospective.

SECTION 6. Requires a district, not later than December 1, 2021, to adopt rules to implement Section 36.1025, Water Code, as added by this Act.

SECTION 7. Makes application of Section 36.1083, Water Code, as amended by this Act, prospective.

SECTION 8. Makes application of Section 36.1141, Water Code, as added by this Act, prospective.

SECTION 9. Effective date: September 1, 2021.