By:  Perry S.B. No. 152

(In the Senate - Filed November 10, 2020; March 3, 2021, read first time and referred to Committee on Water, Agriculture & Rural Affairs; March 25, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; March 25, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Springer        X

Creighton       X

Eckhardt        X

Gutierrez       X

Johnson         X

Kolkhorst                 X

Powell          X

Taylor          X

COMMITTEE SUBSTITUTE FOR S.B. No. 152 By:  Perry

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of groundwater conservation districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 36.066, Water Code, is amended by amending Subsection (g) and adding Subsection (i) 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 may [~~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.

(i)  Notwithstanding Section 36.052(a), Subsections (g) and (h) of this section 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.  Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1025 to read as follows:

Sec. 36.1025.  PETITION TO CHANGE RULES. (a) A person with a real property interest in groundwater may 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)  The district by rule shall prescribe the form for a petition submitted under this section and the procedure for the submission, consideration, and disposition of the petition.

(c)  Not later than the 90th day after the date the district receives the petition, the district shall:

(1)  deny the petition and provide an explanation for the denial; or

(2)  engage in rulemaking consistent with the granted petition.

(d)  Nothing in this section may be construed to create a private cause of action for a decision to accept or deny a petition filed under this section.

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

(b)  The management plan, or any amendments to the plan, shall:

(1)  be developed using the district's best available data and forwarded to the regional water planning group for use in their planning process; and

(2)  include the:

(A)  most recently approved desired future conditions adopted under Section 36.108; and

(B)  amount of modeled available groundwater corresponding to the most recently approved desired future conditions.

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

(b-2)  If a petition challenging the reasonableness of a desired future condition is filed under Section 36.1083(b), the executive administrator shall consider the management plan administratively complete if the district includes:

(1)  the most recently approved desired future conditions adopted under Section 36.108;

(2)  the amount of modeled available groundwater corresponding to the desired future conditions;

(3)  a statement of the status of the petition challenging the reasonableness of a desired future condition; and

(4)  the information required by Subsections (a) and (e).

SECTION 4.  Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1141 to read as follows:

Sec. 36.1141.  NOTICE REQUIRED FOR APPLICATION FOR PERMIT OR PERMIT AMENDMENT. (a) Except as provided by Subsection (b), a district that has adopted rules regulating the spacing of wells under Section 36.116(a)(1) to require wells to be spaced a certain distance from other wells shall 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)  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:

(i)  a list described by Paragraph (A); or

(ii)  a link to a web application that includes the information included on a list described by Paragraph (A).

SECTION 5.  Section 36.066, Water Code, as amended by this Act, applies only to a suit involving a groundwater conservation district that is filed on or after the effective date of this Act. A suit filed before the effective date of this Act is subject to the law in effect on the date the suit is filed, and that law is continued in effect for that purpose.

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

SECTION 7.  The changes in law made by this Act applicable to a petition filed under Section 36.1083, Water Code, apply only to a petition filed under that section on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the hearing was conducted, and the former law is continued in effect for that purpose.

SECTION 8.  Section 36.1141, Water Code, as added by this Act, applies only to an application for a permit or permit amendment submitted on or after the effective date of this Act. An application submitted before the effective date of this Act is subject to the law in effect on the date the application is submitted, and that law is continued in effect for that purpose.

SECTION 9.  This Act takes effect September 1, 2021.

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