

BILL ANALYSIS

Senate Research Center
88R811 SGM-F

S.B. 156
By: Perry
Water, Agriculture, & Rural Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, if a groundwater conservation district (GCD) unfairly imposes a regulation on a landowner, the only avenue the landowner can pursue is through the court system. Under current law, if a landowner sues a GCD and loses, they are required to pay the district's attorney's fees. However, if the landowner prevails, the GCD is not required to cover the landowner's attorney's fees. If a private property owner wanted to change or introduce a new rule for a GCD, their only avenue is to use the court system. Finally, not all GCDs uniformly provide adequate notice to affected landowners when new permit applications are submitted. Landowners have been surprised when a well is drilled which can adversely effect their pumping volume.

As proposed, S.B. 156 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, if the district prevails in any suit other than a suit in which it voluntarily intervenes, and authorizes the court, rather than requires the court, in the interests of justice and as provided by Subsection (h) (relating to the court awarding attorney's fees and costs only for those issues on which the district prevails), in the same action, to grant recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court.

(i) Provides that Subsections (g) and (h) of Section 36.066 (Suits), notwithstanding Section 36.052(a) (relating to applying other laws governing the administration or operations of certain districts), 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 Chapter 36 (Groundwater Conservation Districts).

(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:

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

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

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

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

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) include the:

(A) most recently approved desired future conditions adopted under Section 36.108 (Joint Planning in Management Area); and

(B) 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 authorizing a person to file a petition with the district requiring a hearing appealing 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 districts regulating the spacing of water wells by requiring wells to be spaced a certain distance from property lines or adjoining 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:

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

SECTION 6. Requires a district, not later than December 1, 2023, to adopt rules to implement Section 36.1025, Water Code, as added by this Act.

SECTION 7. Makes application of 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, 2023.