

By: Perry, et al.
(King of Uvalde)

S.B. No. 156

Substitute the following for S.B. No. 156:

By: King of Uvalde

C.S.S.B. No. 156

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and management of the use of groundwater
and regulation of groundwater conservation districts.

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

SECTION 1. Sections 7.142(a) and (b), Water Code, are
amended to read as follows:

(a) A person commits an offense if the person violates:

- (1) Section 11.081;
- (2) Section 11.083;
- (3) Section 11.084;
- (4) Section 11.087;
- (5) Section 11.088;
- (6) Section 11.089;
- (7) Section 11.090;
- (8) Section 11.091;
- (9) Section 11.092;
- (10) Section 11.093;
- (11) Section 11.094;
- (12) Section 11.096; or
- (13) [~~Section 11.203; or~~
~~(14)~~] Section 11.205.

(b) An offense under Subsection (a)(9), (a)(10), or (a)(13)
~~[(a)(14)]~~ is punishable under Section 7.187(a)(1)(A) or (2)(B)
~~[Section 7.187(1)(A) or Section 7.187(2)(B)]~~ or both.

1 SECTION 2. Subchapter F, Chapter 11, Water Code, is amended
2 by adding Section 11.2011 to read as follows:

3 Sec. 11.2011. APPLICABILITY. This subchapter, other than
4 Sections 11.202(c) and 11.206, applies only to an artesian well
5 drilled outside the boundaries of a groundwater conservation
6 district, subsidence district, or other conservation and
7 reclamation district with the authority to regulate the drilling,
8 spacing, or production of water wells.

9 SECTION 3. Section 36.001, Water Code, is amended by adding
10 Subdivisions (2-a) and (32) and amending Subdivisions (8) and (9)
11 to read as follows:

12 (2-a) "Conservation" means the practice of reducing
13 the consumption of water, reducing the loss or waste of water,
14 improving the efficiency in the use of water, or increasing the
15 recycling and reuse of water so that a water supply is made
16 available for future or alternative uses.

17 (8) "Waste" means any one or more of the following:

18 (A) withdrawal of groundwater from a groundwater
19 reservoir at a rate and in an amount that causes or threatens to
20 cause intrusion into the reservoir of water unsuitable for
21 agricultural, gardening, domestic, or stock raising purposes;

22 (B) the flowing or producing of wells from a
23 groundwater reservoir if the water produced is not used for a
24 beneficial purpose;

25 (C) escape of groundwater from a groundwater
26 reservoir to any other reservoir or geologic strata that does not
27 contain groundwater;

1 (D) pollution or harmful alteration of
2 groundwater in a groundwater reservoir by saltwater or by other
3 deleterious matter admitted from another stratum or from the
4 surface of the ground;

5 (E) willfully or negligently causing, suffering,
6 or allowing groundwater to escape into any river, creek, natural
7 watercourse, depression, lake, reservoir, drain, sewer, street,
8 highway, road, or road ditch, or onto any land other than that of
9 the owner of the well unless such discharge is authorized by permit,
10 rule, or order issued by the commission under Chapter 26;

11 (F) groundwater pumped for irrigation that
12 escapes as irrigation tailwater onto land other than that of the
13 owner of the well unless permission has been granted by the occupant
14 of the land receiving the discharge; ~~[or]~~

15 (G) the production or use of groundwater in an
16 amount that exceeds the amount reasonably necessary for the purpose
17 for which the groundwater is needed, not including the production
18 or use of groundwater for agricultural irrigation as necessary to
19 comply with federal crop insurance standards and guidelines; or

20 (H) drilling, completing, maintaining, or
21 operating a well that is not in compliance with the requirements of
22 Chapter 1901, Occupations Code, or applicable rules adopted under
23 that chapter ~~[for water produced from an artesian well, "waste"~~
24 ~~also has the meaning assigned by Section 11.205].~~

25 (9) "Use for a beneficial purpose" means the
26 nonwasteful use of groundwater for:

27 (A) agricultural, gardening, domestic, stock

1 raising, municipal, mining, manufacturing, industrial, commercial,
2 recreational, or pleasure purposes;

3 (B) exploring for, producing, handling, or
4 treating oil, gas, sulphur, or other minerals; or

5 (C) any other purpose that is useful and
6 beneficial to the user.

7 (32) "Modeled sustained groundwater pumping" means
8 the maximum amount of groundwater that the executive administrator,
9 using the best available science, determines may be produced
10 annually in perpetuity from an aquifer.

11 SECTION 4. Subchapter D, Chapter 36, Water Code, is amended
12 by adding Section 36.1025 to read as follows:

13 Sec. 36.1025. PETITION TO CHANGE RULES. (a) A person with
14 a real property interest in groundwater may petition the district
15 where the property that gives rise to the real property interest is
16 located to adopt a rule or modify a rule adopted under this chapter.

17 (b) The district by rule shall prescribe the form for a
18 petition submitted under this section and the procedure for the
19 submission, consideration, and disposition of the petition.

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

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

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

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

1 filed under this section.

2 SECTION 5. Section 36.1071, Water Code, is amended by
3 amending Subsection (b) and adding Subsections (b-1) and (b-2) to
4 read as follows:

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

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

10 (2) include the:

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

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

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

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

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

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

27 (3) a statement of the status of the petition

1 challenging the reasonableness of a desired future condition; and
2 (4) the information required by Subsections (a) and
3 (e).

4 SECTION 6. Section 36.108, Water Code, is amended by
5 amending Subsection (d) and adding Subsection (d-5) to read as
6 follows:

7 (d) Not later than May 1, 2021, and every five years
8 thereafter, the districts shall consider groundwater availability
9 models and other data or information for the management area and
10 shall propose for adoption desired future conditions for the
11 relevant aquifers within the management area. Before voting on the
12 proposed desired future conditions of the aquifers under Subsection
13 (d-2), the districts shall consider:

14 (1) aquifer uses or conditions within the management
15 area, including conditions that differ substantially from one
16 geographic area to another;

17 (2) the water supply needs and water management
18 strategies included in the state water plan;

19 (3) hydrological conditions~~[, including]~~ for each
20 aquifer in the management area, including:

21 (A) the total estimated recoverable storage; [as
22 provided by the executive administrator, and]

23 (B) the average annual recharge, inflows, and
24 discharge; and

25 (C) if calculated by the executive
26 administrator, the modeled sustained groundwater pumping;

27 (4) other environmental impacts, including impacts on

1 spring flow and other interactions between groundwater and surface
2 water;

3 (5) the impact on subsidence;

4 (6) socioeconomic impacts reasonably expected to
5 occur;

6 (7) the impact on the interests and rights in private
7 property, including ownership and the rights of management area
8 landowners and their lessees and assigns in groundwater as
9 recognized under Section 36.002;

10 (8) the feasibility of achieving the desired future
11 condition; and

12 (9) any other information relevant to the specific
13 desired future conditions.

14 (d-5) Notwithstanding Subsection (d)(3), the executive
15 administrator may not calculate the modeled sustained groundwater
16 pumping for an aquifer or an aquifer that wholly or partly underlies
17 an aquifer with a recharge rate such that an owner of land that
18 overlies the aquifer qualifies or has previously qualified under
19 federal tax law for a cost depletion deduction for the groundwater
20 withdrawn from the aquifer for irrigation purposes.

21 SECTION 7. Section 36.113(d), Water Code, is amended to
22 read as follows:

23 (d) This subsection does not apply to the renewal of an
24 operating permit issued under Section 36.1145. Before granting or
25 denying a permit, or a permit amendment issued in accordance with
26 Section 36.1146, the district shall consider whether:

27 (1) the application conforms to the requirements

1 prescribed by this chapter and is accompanied by the prescribed
2 fees;

3 (2) the proposed use of water unreasonably affects:
4 (A) existing groundwater and surface water
5 resources; ~~or~~
6 (B) existing permit holders; or
7 (C) wells that are exempt from the requirement to
8 obtain a permit under this chapter or district rules;

9 (3) the proposed use of water is dedicated to any
10 beneficial use;

11 (4) the proposed use of water is consistent with the
12 district's approved management plan;

13 (5) if the well will be located in the Hill Country
14 Priority Groundwater Management Area, the proposed use of water
15 from the well is wholly or partly to provide water to a pond, lake,
16 or reservoir to enhance the appearance of the landscape;

17 (6) the applicant has agreed to avoid waste and
18 achieve water conservation; and

19 (7) the applicant has agreed that reasonable diligence
20 will be used to protect groundwater quality and that the applicant
21 will follow well plugging guidelines at the time of well closure.

22 SECTION 8. Subchapter D, Chapter 36, Water Code, is amended
23 by adding Section 36.1141 to read as follows:

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

1 distance from other wells shall adopt rules requiring that notice
2 of an application for a permit or permit amendment to drill a well
3 or increase the production capacity of an existing well be provided
4 to each landowner whose:

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

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

11 (b) Notice is not required under Subsection (a):

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

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

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

22 (4) if the district:

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

27 and

1 (B) posts on the home page of the district's
2 Internet website, if the district operates an Internet website:

3 (i) a list described by Paragraph (A); or
4 (ii) a link to a web application that
5 includes the information included on a list described by Paragraph
6 (A).

7 SECTION 9. Section 36.122, Water Code, is amended by
8 amending Subsections (e) and (p) and adding Subsections (e-1),
9 (e-2), and (e-3) to read as follows:

10 (e) Except as provided by Subsection (e-1), the ~~[The]~~
11 district may impose an export fee or surcharge using one of the
12 following methods:

13 (1) a fee negotiated between the district and the
14 exporter;

15 (2) for a tax-based district, a rate not to exceed 20
16 cents ~~[the equivalent of the district's tax rate per hundred~~
17 ~~dollars of valuation]~~ for each thousand gallons of water exported
18 from the district ~~[or 2.5 cents per thousand gallons of water, if~~
19 ~~the district assesses a tax rate of less than 2.5 cents per hundred~~
20 ~~dollars of valuation]; or~~

21 (3) for a fee-based district, a rate not to exceed the
22 greater of 20 cents for each thousand gallons or a 50 percent
23 surcharge, in addition to the district's production fee, for water
24 exported from the district.

25 (e-1) Effective January 1, 2024, the maximum allowable rate
26 a district may impose for an export fee or surcharge under
27 Subsection (e)(2) or (e)(3) increases by three percent each

1 calendar year.

2 (e-2) A district governed by a special law in regard to an
3 export fee or surcharge on water exported from the district may
4 charge an export fee or surcharge in accordance with that special
5 law or in accordance with Subsections (e) and (e-1).

6 (e-3) An export fee or surcharge imposed under Subsection
7 (e) or an increase in an imposed export fee or surcharge is not
8 valid unless it is approved by the board after a public hearing.

9 (p) Subsections [Subsection] (e), (e-1), and (e-2) do
10 [does] not apply to a district that is collecting an export fee or
11 surcharge on March 1, 2001.

12 SECTION 10. Section 36.207, Water Code, is amended to read
13 as follows:

14 Sec. 36.207. USE OF FEES. A district may use funds obtained
15 from administrative, production, or export fees collected under a
16 special law governing the district or this chapter for any purpose
17 consistent with the district's approved management plan,
18 including, without limitation, making grants, loans, or
19 contractual payments to achieve, facilitate, or expedite
20 reductions in groundwater pumping or the development or
21 distribution of alternative water supplies or to maintain the
22 operability of wells significantly affected by groundwater
23 development to allow for the highest practicable level of
24 groundwater production while achieving the desired future
25 conditions established under Section 36.108.

26 SECTION 11. Section 36.3011, Water Code, is amended by
27 amending Subsection (d) and adding Subsections (d-1), (d-2), (d-3),

1 (e-1), (e-2), and (e-3) to read as follows:

2 (d) If the petition is not dismissed under Subsection (c),
3 the commission shall appoint a review panel consisting of a
4 chairperson and four other members. A director or general manager
5 of a district located outside the management area that is the
6 subject of the petition may be appointed to the review panel. The
7 commission may not appoint more than two members of the review panel
8 from any one district. The commission also shall appoint a
9 disinterested person to serve as a nonvoting recording secretary
10 for the review panel. The recording secretary shall [~~may~~] be an
11 employee of the commission. The recording secretary shall record
12 and document the proceedings of the panel.

13 (d-1) A review panel established under Subsection (d) is an
14 advisory body to the commission and not a governmental body under
15 Chapter 551 or 552, Government Code.

16 (d-2) The commission shall reimburse a member appointed to
17 the review panel for actual expenses incurred while engaging in
18 activities on behalf of the review panel. To be eligible for
19 reimbursement, the member must file with the executive director a
20 verified statement, including any relevant receipts, describing
21 the expenses incurred. A member appointed to the review panel is
22 not entitled to a fee of office or other compensation for serving on
23 the review panel.

24 (d-3) The records and documents of the recording secretary
25 of the proceedings of the review panel must be provided to the
26 executive director and are public information under Chapter 552,
27 Government Code.

1 (e-1) Not later than the seventh day before the date of a
2 public meeting or public hearing of the review panel under
3 Subsection (e), the executive director shall provide notice of any
4 public meeting or public hearing the review panel is directed to
5 conduct by:

6 (1) posting notice on the commission's Internet
7 website; and

8 (2) regular mail to:

9 (A) the district that is the subject of the
10 petition;

11 (B) the petitioner; and

12 (C) the county clerk of each county in the
13 district that is the subject of the petition.

14 (e-2) The commission or the review panel may submit a
15 written request to the executive administrator for assistance on a
16 technical issue related to the petition. The executive
17 administrator shall provide the technical assistance not later than
18 the 120th day after the date the executive administrator receives
19 the request. A deadline under Subsection (c), (e), or (h) is
20 extended by 120 days if a request for technical assistance is
21 submitted to the executive administrator during a review phase
22 under that subsection.

23 (e-3) On request from a member of the review panel, the
24 office of public interest counsel of the commission shall provide
25 legal advice and assistance to the review panel. Notwithstanding
26 Section 5.273, the office of public interest counsel:

27 (1) may not participate as a party in an inquiry under

1 this section; and

2 (2) has no duty or responsibility to represent the
3 public interest or otherwise in an inquiry except as provided by
4 this subsection.

5 SECTION 12. The following provisions of the Water Code are
6 repealed:

7 (1) Sections 11.202(d) and (e);

8 (2) Section 11.203;

9 (3) Section 11.204; and

10 (4) Section 11.207.

11 SECTION 13. Not later than December 1, 2023, a groundwater
12 conservation district shall adopt rules to implement Section
13 36.1025, Water Code, as added by this Act.

14 SECTION 14. The changes in law made by this Act applicable
15 to a petition filed under Section 36.1083, Water Code, apply only to
16 a petition filed under that section on or after the effective date
17 of this Act. A petition filed before the effective date of this Act
18 is governed by the law in effect on the date the hearing was
19 conducted, and the former law is continued in effect for that
20 purpose.

21 SECTION 15. Section 36.1141, Water Code, as added by this
22 Act, applies only to an application for a permit or permit amendment
23 submitted on or after the effective date of this Act. An application
24 submitted before the effective date of this Act is subject to the
25 law in effect on the date the application is submitted, and that law
26 is continued in effect for that purpose.

27 SECTION 16. Section 36.3011, Water Code, as amended by this

1 Act, applies only to a petition requesting an inquiry regarding the
2 duties of a groundwater conservation district filed with the Texas
3 Commission on Environmental Quality on or after the effective date
4 of this Act. A petition filed with the Texas Commission on
5 Environmental Quality before the effective date of this Act is
6 governed by the law in effect on the date the petition was filed,
7 and the former law is continued in effect for that purpose.

8 SECTION 17. This Act takes effect September 1, 2023.