

## **BILL ANALYSIS**

Senate Research Center

H.B. 3035  
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Natural Resources  
5/24/2003  
Committee Report (Amended)

### **DIGEST AND PURPOSE**

Section 36.116 of the Texas Water Code, in part, authorizes groundwater conservation districts (districts) to regulate, by rule, water well spacing and production to minimize "draw-down" of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste. H.B. 3035 grants a groundwater conservation district the power to regulate the spacing of water wells and the production of groundwater.

### **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. Reenacts Section 36.116, Water Code, as amended by Chapters 966 and 1164, Acts of the 77th Legislature, Regular Sessions, 2001, and amends it as follows:

- (a) Requires a groundwater conservation district to regulate the spacing of water wells by taking certain actions, including limiting the amount of water produced based on contiguous acreage.
- (d) Requires a district, in regulating the production of groundwater, to select a method under Subsection (a)(2) that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district.

SECTION 2. Provides that to the extent of any conflict, this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions and corrections in enacted codes.

SECTION 3. Effective date: September 1, 2003.

### **SUMMARY OF COMMITTEE CHANGES**

Committee Amendment No. 1

Amend H.B. 3035 as follows:

On page 2, line 23, strike "a district shall select a method under Subsection (a)(2) that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district" and substitute "and selecting an appropriate method under Subsection(a)(2), a district shall select the hydrogeological conditions of the aquifer or aquifers in the district."

Committee Amendment No. 2

Amends HB 3035 by inserting new SECTIONS 2 through 13 as follows and renumbering the remaining sections accordingly:

"SECTION 2. Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subdivision (28) to read as follows:

(28) "Recharge facility" means a dam, reservoir, or other recharge project, and associated facilities, structures, or works.

SECTION 3. Section 1.07, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 1.07. OWNERSHIP OF UNDERGROUND WATER. The ownership and rights of the owner of the land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in underground water and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized. However, action taken pursuant to this Act may not be construed as depriving or divesting the owner or the owner's lessees and assigns, including holders of recorded liens or other security interest in the land, of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the authority or a district exercising the powers provided by Chapter ~~36~~ [52], Water Code. The legislature intends that just compensation be paid if implementation of this article causes a taking of private property or the impairment of a contract in contravention of the Texas or federal constitution.

SECTION 4. Subsection (a), Section 1.08, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) The authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer. The authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters ~~36, 49, and~~ [50;] 51, [~~and 52;~~] Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction.

SECTION 5. Section 1.09, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (i) to read as follows:

(i) To be eligible to be elected or appointed as a voting member of the board, a person must have resided continuously in the authority single-member election district from which the person seeks to be elected or appointed for six months immediately preceding the following date:

- (1) for a candidate for election, the 60th day before the general election date; or
- (2) for a candidate for appointment, the date the appointment is made.

SECTION 6. Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Subsection (f) and adding Subsection (h) to read as follows:

(f) The authority may contract with a person who uses water from the aquifer for the authority or that person to own, finance, design, construct, operate, or [~~own, finance, and~~] maintain recharge [water supply] facilities. [~~Management fees or special fees may not be used for purchasing or operating these facilities. For the purpose of this subsection, "water supply facility" includes a dam, reservoir, treatment facility, transmission facility, or recharge project.~~]

(h) Notwithstanding any other provision of law, the authority has no duty, responsibility, or authority relating to the protection of water quality. The commission is the agency of the state with responsibility and authority relating to the protection of water quality within the boundaries of the authority.

SECTION 7. Subsections (b) and (c), Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(b) Except as provided by Subsections (d), (f), and (h) of this section and Section 1.26 of this article, beginning January 1, 2008 [~~for the period ending December 31, 2007~~], the amount of permitted withdrawals from the aquifer under regular permits may not exceed 450,000 acre-feet of water for each calendar year.

(c) Except as provided by Subsections (d), (f), and (h) of this section and Section 1.26 of article, beginning January 1, 2010 [~~for the period beginning January 1, 2000~~], the amount of permitted withdrawals from the aquifer under regular permits may not exceed 400,000 acre-feet

of water for each calendar year.

SECTION 8. Section 1.16, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (i) to read as follows:

(i) The authority shall process as administratively complete all declarations of historical use received by the authority on or before February 16, 1997, and shall consider any such declaration as timely filed.

SECTION 9. Section 1.21, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows"

(c) If, before ~~on or after~~ January 1, 2008, the aggregate ~~overall~~ volume of water authorized to be withdrawn from the aquifer under regular permits is greater than 450,000 ~~400,000~~ acre-feet a year or greater than the adjusted amount determined under subsection (d) of Section 1.14 of this article, not later than October 1, 2007, the board shall issue an order to be effective on January 1, 2008, proportionately adjusting the ~~maximum~~ authorized withdrawal amount of each regular permit ~~shall be immediately reduced by an equal percentage~~ as is necessary to reduce aggregate authorized withdrawals under regular permits ~~overall maximum demand~~ to 450,000 ~~400,000~~ acre-feet a year or the adjusted amount, as appropriate. ~~The amount reduced may be restored, in whole or in part, as other appropriate measures are implemented that maintain overall demand at or below the appropriate amount.]~~

(d) If before January 1, 2010, the aggregate volume of water authorized to be withdrawn from the aquifer under regular permits is greater than 400,000 acre-feet a year or greater than the adjusted amount determined under Subsection (d) of Section 1.14 of this article, the board, not later than October 1, 2009, shall issue an order to be effective January 1, 2010, proportionally adjusting the authorized withdrawal amount of each regular permit as is necessary to reduce aggregate authorized withdrawals under regular permits to 400,000 acre-feet a year or the adjusted amount, as appropriate.

(e) Proportional adjustments under this section and for purposes of satisfying the requirements of Section 1.14 of this article and this section shall be applied on the same terms and conditions to all permits issued under Section 1.16 of this article.

SECTION 10. Subsection (b), Section 1.28, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) The authority may issue revenue bonds to finance:

- (1) the purchase of land;
- (2) ~~or~~ the purchase, construction, or installation of facilities or equipment, including recharge dams and associated facilities structures or works; or
- (3) the retirement of permits under Sections 1.21 and 1.22 of this article. ~~[The authority may not allow for any person to construct, acquire, or own facilities for transporting groundwater out of Uvalde or Medina County.]~~

SECTION 11. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.331 to read as follows:

Sec. 1.331. EXEMPTION FOR FEDERAL FACILITIES; TRANSFER OF OWNERSHIP OF APPLICATION. (a) Federal facilities which are immune from regulation under the doctrine of sovereign immunity, are exempt from the requirements of this article and any rules adopted under this article.

(b) A person may obtain an initial regular permit based on an application voluntarily filed by a federal facility if, before September 1, 2003, the authority approves the transfer of ownership of the application for an initial regular permit from the federal facility to the person seeking the permit. If, after the date a transfer is approved by the authority, groundwater subject to the transfer continues to be withdrawn by the federal facility making the transfer, the authority shall condition the authorized withdrawal amount of the transferee's interim authorization or initial regular permit on the reduction in the amount equal to the federal facility withdrawals.

SECTION 12. Subsection (c), Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(c) Subject to the rules of the authority, a ~~A~~ permit holder may transfer a regular permit

or interim authorization [lease permitted water rights, but a holder of a permit for irrigation use may not lease more than 50 percent of the irrigation rights initially permitted. The user's remaining irrigation water rights must be used in accordance with the original permit and must pass with transfer of the irrigated land]. Fifty percent of the groundwater withdrawal amount initially permitted for irrigation may be used only for irrigation.

SECTION 13. Section 1.35, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (f) to read as follows:

(f) A person who transfers a permit or interim authorization to withdraw groundwater from the San Antonio pool to a well that draws from the Uvalde pool may not transport groundwater withdrawn under the transferred permit or interim authorization out of the county in which the well that draws from the Uvalde pool is located."

Committee Amendment No. 3

Amend H.B. 3035 (House Engrossment) as follows:

(1) Insert a new SECTION of the bill to read as follows:

SECTION \_\_\_\_\_. Section 36.101, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission has principal and exclusive authority as to the control, regulation, or abatement of nonpoint source pollution of water or other regulation of water quality in terms of limiting a landowner's ability to develop or use that land in the jurisdiction of any water district or authority with regional management and regulatory authority over groundwater withdrawals within all or part of at least five counties.

(2) Insert a new SECTION of the bill to read as follows:

SECTION \_\_\_\_\_. This section supersedes any other provision of this Act to the extent of any conflict. Section 36.101(d), Water Code, as added by this Act, supersedes any other applicable law or action taken under that law to the extent of any conflict. Any rule or order of an applicable district or authority purporting to regulate water quality as described by the change in law made by this Act to Section 36.101, Water Code, may not be enforced regardless of whether the adoption date of the rule order is before, on, or after the effective date of this Act.