

BILL ANALYSIS

C.S.H.B. 200
By: Keffer
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that establishing desired future conditions for aquifers is an essential tool in the groundwater management process. The parties contend, however, that currently there is not an adequate process through which an affected party may challenge the development or approval of a desired future condition. C.S.H.B. 200 seeks to remedy this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 200 amends the Water Code to specify that groundwater conservation districts created as provided by statutory provisions relating to groundwater conservation districts are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of the state, and use the best available science in the development and conservation of groundwater through certain district rules. The bill defines "best available science" as conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

C.S.H.B. 200 authorizes a court, if a district prevails on some, but not all, of the issues in a suit, to award attorney's fees and costs only for those issues on which the district prevails. The bill places the burden on the district of segregating the attorney's fees and costs in order for the court to make an award. The bill specifies that a court's granting of recovery for attorney's fees, costs for expert witnesses, and other costs incurred by a district before the court for a district that prevails in any suit other than a suit in which it voluntarily intervenes be in the interests of justice.

C.S.H.B. 200 conditions the authority of districts to establish different desired future conditions for an aquifer, subdivision of an aquifer, or geologic strata or for a geographic area overlying an aquifer or subdivision of an aquifer on the district having considered and documented specified factors and other relevant scientific and hydrogeological data.

C.S.H.B. 200 revises the procedure for the appeal of a desired future condition of groundwater resources. The bill removes the authorization of a person with a legally defined interest in the groundwater in a management area, a district in or adjacent to a management area, or a regional

water planning group for a region in a management area to file a petition with the Texas Water Development Board (TWDB) appealing the approval of the desired future conditions of the groundwater resources. The bill repeals provisions requiring the TWDB to review the petition and any evidence relevant to the petition, to hold at least one applicable hearing, and, if the TWDB finds that the conditions require revision, to submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources. The bill repeals provisions requiring the districts to prepare a revised plan in accordance with TWDB recommendations, to hold at least one applicable public hearing, and, after consideration of all public and TWDB comments, to revise the conditions and submit the conditions to the TWDB for review. The bill instead authorizes an affected person, not later than the 120th day after the date on which a district adopts a desired future condition, to file a petition with the district requiring that the district contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing appealing the reasonableness of the desired future condition. The bill requires a district, not later than the 10th day after receiving a petition, to submit a copy of the petition to the TWDB and requires the TWDB, on receipt of the petition, to conduct both an administrative review to determine whether the desired future condition established by the district meets applicable criteria and a study containing scientific and technical analysis of the desired future condition that includes specified considerations. The bill requires the TWDB to complete and deliver the study to SOAH not later than the 120th day after the date the TWDB receives a copy of the petition. The bill, for purposes of the hearing, requires SOAH to consider the study to be part of the administrative record and requires the TWDB to make available relevant staff as expert witnesses if requested by SOAH or a party to the hearing.

C.S.H.B. 200 requires the district, not later than the 60th day after receiving a petition, to contract with SOAH to conduct the contested case hearing and submit to SOAH a copy of any petitions related to the hearing and received by the district. The bill requires the hearing to be held at a certain location and in accordance with the Administrative Procedure Act and SOAH rules. The bill authorizes the district, during the period between the filing of the petition and the delivery of the study, to seek the assistance of the Center for Public Policy Dispute Resolution, the TWDB, or another alternative dispute resolution system to mediate the issues raised in the petition. The bill establishes that SOAH will proceed with a hearing if the district and the petitioner cannot resolve the issues raised in the petition. The bill authorizes the district to adopt rules for notice and hearings that are consistent with the procedural rules of SOAH and requires the district, in accordance with rules adopted by the district and SOAH, to provide general notice of the hearing and provide individual notice of the hearing to specified entities. The bill requires SOAH to hold a prehearing conference to determine certain preliminary matters.

C.S.H.B. 200 requires the petitioner to pay the costs associated with the contract for the hearing and to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. The bill authorizes SOAH after the hearing to assess costs to one or more of the parties participating in the hearing and requires the district to refund any excess money to the petitioner. The bill requires SOAH to make specified considerations in apportioning costs of the hearing. The bill requires the district, on receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The bill authorizes the district to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the judge, as provided by the Administrative Procedure Act. The bill requires the district, if the district vacates or modifies the proposal for decision, to issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law and requires the report to provide the policy, scientific, and technical justifications for the district's decision.

C.S.H.B. 200 requires the districts in the same management area as the district that participated in the hearing, if the district in its final order finds that a desired future condition is unreasonable, to reconvene in a joint planning meeting not later than the 30th day after the date of the final order for the purpose of revising the desired future condition. The bill establishes that a final

order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing. The bill authorizes the administrative law judge to consolidate requested hearings that affect two or more districts and requires the judge to prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

C.S.H.B. 200 authorizes a final district order to be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order and requires the case to be decided under the substantial evidence standard of review as provided by the Administrative Procedure Act. The bill requires the court, if the court finds that a desired future condition is unreasonable, to strike the desired future condition and order the districts in the same management area as the district that did not participate as a party in the hearing to reconvene in a joint planning meeting not later than the 30th day after the date of the court order for the purpose of revising the desired future condition. The bill specifies that a court's finding does not apply to a desired future condition that is not a matter before the court. The bill's provisions regarding the appeal of a desired future condition apply only to a desired future condition adopted by a district on or after the bill's effective date.

C.S.H.B. 200 entitles an affected person who is dissatisfied with the adoption of a desired future condition by a district to file suit against the district or its directors to challenge the reasonableness of the desired future condition and requires the suit to be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located.

C.S.H.B. 200 repeals Sections 36.1083(c) and (d), Water Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 200 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 36.0015, Water Code, is amended to read as follows:
Sec. 36.0015. PURPOSE.

In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 36.0015, Water Code, is amended to read as follows:
Sec. 36.0015. PURPOSE. (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article

XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

No equivalent provision.

No equivalent provision.

SECTION 2. The heading to Section 36.1083, Water Code, is amended to read as

XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development and conservation of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

SECTION 2. Section 36.066, Water Code, is amended by amending Subsection (g) and adding Subsection (h) 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 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.

(h) If the district prevails on some, but not all, of the issues in the suit, the court may award attorney's fees and costs only for those issues on which the district prevails. The district has the burden of segregating the attorney's fees and costs in order for the court to make an award.

SECTION 3. Section 36.108(d-1), Water Code, is amended to read as follows:

(d-1) After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the ~~The~~ districts may establish different desired future conditions for:

- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
- (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

No equivalent provision.

follows:

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS: CONTESTED CASE.

SECTION 3. Section 36.1083, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) through (m) to read as follows:

(a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development [~~,"development]~~ board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected [A] person [~~with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area]~~ may file a petition with the ~~development board~~ requesting that the development board contract with the office to conduct a contested case hearing on the matter of appealing the approval of the desired future condition. The matter referred for hearing may include as an issue the reasonableness of the desired future condition, but may not include as an issue a reason for an inquiry described by Section 36.1082(b) [~~conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area]~~.

SECTION 4. Section 36.1083, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) through (r) to read as follows:

(a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development [~~,"development]~~ board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected [A] person [~~with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area]~~ may file a petition with the ~~district~~ requiring that the district contract with the office to conduct a hearing [~~development board]~~ appealing the reasonableness [~~approval]~~ of the desired future condition [~~conditions of the groundwater resources established under this section]~~.

The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

(e) Not later than the 10th day after receiving a petition described by Subsection (b), the district shall submit a copy of the petition to the development board. On receipt of the petition, the development board shall conduct:

(1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and

(2) a study containing scientific and technical analysis of the desired future condition, including consideration of:

(A) the hydrogeology of the aquifer; and

(B) any relevant:

(e) Not later than the 45th day after the date of the deadline for filing a petition under Subsection (b), the development board shall:
(1) contract with the office to conduct the contested case hearing requested under Subsection (b); and
(2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the development board.

(f) During the period between the filing of the petition and the actions described by Subsection (e), the development board may facilitate coordination between the petitioner and the district to resolve the issues raised in the petition.

If the petitioner and the district cannot resolve the issues raised in the petition, a hearing must be conducted in accordance with Chapter 2001, Government Code, and rules of the development board and the office.

(g) The development board may adopt rules for notice and procedures for hearings conducted under this section. Rules adopted

(i) groundwater availability models;
(ii) published studies;
(iii) estimates of total recoverable storage capacity;

(iv) average annual amounts of recharge, inflows, and discharge of groundwater; or
(v) information provided in the petition or available to the development board.

(f) The development board must complete and deliver to the office a study described by Subsection (e)(2) not later than the 120th day after the date the development board receives a copy of the petition.

(g) For the purposes of a hearing conducted under Subsection (b):

(1) the office shall consider the study described by Subsection (e)(2) to be part of the administrative record; and

(2) the development board shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.

(h) Not later than the 60th day after receiving a petition under Subsection (b), the district shall:

(1) contract with the office to conduct the contested case hearing requested under Subsection (b); and

(2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.

(i) A hearing under Subsection (b) must be held:

(1) at a location described by Section 36.403(c); and

(2) in accordance with Chapter 2001, Government Code, and the rules of the office.

(j) During the period between the filing of the petition and the delivery of the study described by Subsection (e)(2), the district may seek the assistance of the Center for Public Policy Dispute Resolution, the development board, or another alternative dispute resolution system to mediate the issues raised in the petition. If the district and the petitioner cannot resolve the issues raised in the petition, the office will proceed with a hearing as described by this section.

(k) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules

under this section must provide for the development board to provide general notice of the hearing to the public and individual notice of the hearing to the participants, including the district, the petitioner, a party to the hearing identified under Subsection (h)(3), the commission, and each nonparty district and regional planning group in the same management area as the district that is a party to the hearing.

(h) Before a hearing conducted under this section, the office shall hold a prehearing conference to determine preliminary matters, including:

- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
- (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
- (3) which persons shall be named as parties to the hearing.

(i) The petitioner shall pay the costs of the contract with the office to conduct the hearing under this section. The petitioner shall pay to the development board an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the development board shall assess costs to one or more of the parties participating in the hearing and shall refund any excess money to the petitioner. The development board shall adopt rules for the manner of payment. The development board shall consider the following in apportioning costs of the hearing:

- (1) the party who requested the hearing;
- (2) the party who prevailed in the hearing;
- (3) the financial ability of the party to pay the costs;
- (4) the extent to which the party participated in the hearing; and
- (5) any other factor relevant to a just and reasonable assessment of costs.

(j) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition under Subsection (h), the development board shall issue a final order stating the development board's decision on the contested matter and the development board's findings of fact and

of the office. In accordance with rules adopted by the district and the office, the district shall provide:

- (1) general notice of the hearing; and
- (2) individual notice of the hearing to:
 - (A) the petitioner;
 - (B) any other party to the hearing;
 - (C) each nonparty district and regional water planning group located in the same management area as a district named in the petition;
 - (D) the development board; and
 - (E) the commission.

(1) Before a hearing conducted under this section, the office shall hold a prehearing conference to determine preliminary matters, including:

- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
- (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
- (3) which affected persons shall be named as parties to the hearing.

(m) The petitioner shall pay the costs associated with the contract for the hearing under this section. The petitioner shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the office may assess costs to one or more of the parties participating in the hearing and the district shall refund any excess money to the petitioner. The office shall consider the following in apportioning costs of the hearing:

- (1) the party who requested the hearing;
- (2) the party who prevailed in the hearing;
- (3) the financial ability of the party to pay the costs;
- (4) the extent to which the party participated in the hearing; and
- (5) any other factor relevant to a just and reasonable assessment of costs.

(n) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law.

conclusions of law. The development board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.

(k) If the development board in its final order finds that a desired future condition is unreasonable, the districts in the same management area as the district that participated in the hearing shall reconvene in a joint planning meeting not later than the 30th day after the date of the final order for the purpose of revising the desired future condition.

(l) A final order by the development board described by Subsection (k) does not automatically invalidate the adoption of a desired future condition by a district that was not a party to the hearing conducted under this section.

(m) The administrative law judge may consolidate hearings requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 4. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.10835 to read as follows:

Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS. (a) A final order issued under Section 36.1083 may be appealed to the district court in Travis County under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that participated in the hearing to reconvene in a joint planning meeting not later than the 30th day after the date of the

The district may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.

(o) If the district vacates or modifies the proposal for decision, the district shall issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the district's decision.

(p) If the district in its final order finds that a desired future condition is unreasonable, the districts in the same management area as the district that participated in the hearing shall reconvene in a joint planning meeting not later than the 30th day after the date of the final order for the purpose of revising the desired future condition.

(q) A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.

(r) The administrative law judge may consolidate hearings requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 5. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.10835 to read as follows:

Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS. (a) A final district order issued under Section 36.1083 may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that did not participate as a party

court order for the purpose of revising the desired future condition.

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

SECTION 5. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1145 to read as follows:

Sec. 36.1145. APPEAL OF PERMIT OR PERMIT AMENDMENT DENIAL. (a) In this section, "development board" means the Texas Water Development Board.

(b) An applicant for a permit or permit amendment or a person who participated as a party in a permit or permit amendment hearing before the district may file a petition with the development board to request an appeal of an action by a district on an application for a permit or permit amendment submitted under Section 36.113 or 36.114. The petitioner must state the basis for the appeal.

(c) In response to a petition under this section, the development board shall hold at least one hearing at a central location in the district to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator.

(d) The development board shall review the petition, testimony at the hearing, and evidence presented by the parties and shall consider:

(1) only issues raised before the district during the permit or permit amendment process; and

(2) whether the district's actions in regard to the permit or permit amendment are consistent with Section 36.1132.

(e) After review under Subsection (d), the development board shall issue its findings and recommendations regarding the permit or permit amendment.

(f) On receipt of the development board's findings and recommendations, the district shall reconsider action on the permit or permit amendment, giving consideration to the development board's findings and recommendations and district rules, and issue a final decision on the permit or permit

in the hearing to reconvene in a joint planning meeting not later than the 30th day after the date of the court order for the purpose of revising the desired future condition.

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

No equivalent provision.

amendment.

(g) An applicant may appeal a final decision issued under Subsection (f) by filing suit against the district as provided by Section 36.251.

(h) Chapter 2001, Government Code, does not apply to a petition filed under this section or to a hearing held under this section.

(i) The development board may adopt rules to implement this section.

No equivalent provision.

SECTION 6. Sections 36.1083(c) and (d), Water Code, are repealed.

SECTION 7. (a) Section 36.1083, Water Code, as amended by this Act, and Section 36.10835, Water Code, as added by this Act, apply only to a desired future condition adopted by a groundwater conservation district on or after the effective date of this Act. A desired future condition adopted before that date is governed by the law in effect on the date the desired future condition was adopted, and the former law is continued in effect for that purpose.

(b) Section 36.1145, Water Code, as added

SECTION 6. Section 36.251, Water Code, is amended to read as follows:

Sec. 36.251. SUITS [SUIT] AGAINST DISTRICT. (a) A person, firm, corporation, or association of persons affected by and dissatisfied with any provision or with any rule or order made by a district is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order. The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located. The suit may only be filed after all administrative appeals to the district are final.

(b) Notwithstanding Sections 36.1083 and 36.10835, an affected person under Section 36.1082 who is dissatisfied with the adoption of a desired future condition by a district is entitled to file suit against the district or its directors to challenge the reasonableness of the desired future condition. The suit must be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located.

SECTION 7. Same as introduced version.

SECTION 8. Section 36.1083, Water Code, as amended by this Act, and Section 36.10835, Water Code, as added by this Act, apply only to a desired future condition adopted by a groundwater conservation district on or after the effective date of this Act. A desired future condition adopted before that date is governed by the law in effect on the date the desired future condition was adopted, and the former law is continued in effect for that purpose.

by this Act, applies only to a permit or permit amendment application submitted to a groundwater conservation district on or after the effective date of this Act. A permit or permit amendment application submitted before that date is governed by the law in effect on the date the permit or permit amendment application was submitted, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2015.

SECTION 9. Same as introduced version.