

## **BILL ANALYSIS**

Senate Research Center  
85R961 AAF-F

S.B. 1392  
By: Perry  
Agriculture, Water & Rural Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 36, Water Code, regulates groundwater conservation districts (GCDs), the state's preferred method of groundwater regulation. The charge placed upon GCDs is one of great importance- they must balance vested private property rights with proper conservation management to provide for the future water needs of the state. It is important that GCDs meet this balance through the use of proper available science, public transparency, and a foundation of management that emphasizes equitable regulations. Interested parties note that numerous provisions in Chapter 36 warrant revisions based on recent court cases, changing hydrological conditions, and a general necessity for updating the Water Code to provide a foundation that meets this desired balance.

S.B. 1392 signals a vital shift in water policy in the state of Texas. This bill promotes use of, and improvements to, scientific reasoning for permitting actions and groundwater management. Focusing on a ground up approach, the bill also provides the necessary encouragement to GCDs to work together to ensure they are properly managing all parts of a shared groundwater reservoir that are affected by water users.

As proposed, S.B. 1392 amends current law relating to groundwater conservation districts.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the applicable district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both (district) in SECTION 7 (Section 36.101, Water Code), SECTION 16 (Section 36.1132, Water Code) and SECTION 22 (Section 36.207, Water Code) of this bill.

Rulemaking authority previously granted to a district is modified in SECTION 17 (Section 36.114, Water Code) and SECTION 18 (Section 36.116, Water Code) of this bill.

Rulemaking authority previously granted to a district is rescinded in SECTION 18 (Section 36.116, Water Code) and SECTION 29 (Section 36.122, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.001, Water Code, by amending Subdivisions (25) and (30) and adding Subdivision (32), to redefine "modeled available groundwater" and "desired future condition" and define "common reservoir."

SECTION 2. Amends Section 36.0015(b), Water Code, as follows:

(b) Provides that 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 conservation and provide for the orderly development of groundwater to meet the needs of this state; use the best available science; treat each groundwater owner overlying a common reservoir fairly; and act jointly with other groundwater conservation districts through common rules developed, adopted, and promulgated by those districts in accordance with the provisions of this chapter, rather than protect

property rights; balance the conservation and development of groundwater to meet the needs of this state; and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

SECTION 3. Amends Sections 36.002(a), (b), and (d), Water Code, as follows:

(a) Provides that a landowner owns the groundwater below the surface of the landowner's land as real property, rather than provides that the legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

(b) Includes the right to use produced groundwater for a beneficial use without causing water waste among the entitlements to which the landowner, including a landowner's lessees, heirs, or assigns, are entitled.

(d) Provides that this section does not prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements or with production limits based on the amount of land owned by the landowner, rather than comply with minimum well spacing or tract size requirements, adopted by the district.

SECTION 4. Amends Section 36.020(a), Water Code, to decrease from 50 to 37.5 cents on each \$100 of assessed valuation the amount that the maintenance tax rate may not exceed.

SECTION 5. Amends Section 36.051, Water Code, by adding Subsection (b-1) to provide that a representative or employee of the governing body of a river authority is ineligible for appointment or election as a director.

SECTION 6. Amends Section 36.062, Water Code, to require that certain offices be reasonably accessible to the public.

SECTION 7. Amends Section 36.101(a) and (c), Water Code, as follows:

(a) Requires a district to adopt, rather than authorizes a district to make, and enforce certain rules. Requires the district, in adopting a rule under this chapter, to develop certain rules, make certain considerations, and not discriminate on certain basis.

(c) Requires the board of directors of a district (board) to compile its rules and make them available for use and inspection at each of the district's offices, rather than make them available for use and inspection at the district's principal office.

SECTION 8. Amends Sections 36.1071(e), (f), and (h), Water Code, as follows:

(e) Requires the district, in the management plan described under Subsection (a), to take certain actions, including, for each common reservoir designated under Section 36.108 (Joint Planning in Management Area), to include certain estimates.

(f) Deletes existing text authorizing the district to accept applications for permits under Section 36.113 (Permits for Wells; Permit Amendments), provided the district does not act on any such application until the district's management plan is approved as provided in Section 36.1072 (Texas Water Development Board Review and Approval of Management Plan).

(h) Includes the designation of the appropriate common reservoir within a management area under Section 36.108 among resources that the district is required to use in developing its management plan. Makes a nonsubstantive change.

SECTION 9. Amends Sections 36.108(c), (d), (d-1), (d-2), (d-3), and (d-4), Water Code, as follows:

(c) Deletes existing text requiring the district representatives to review the management plans, the accomplishments of the management area, and proposals to adopt new or amend existing desired future conditions. Requires the district, in conducting joint planning, rather than in reviewing the management plans, to make certain considerations.

(d) Includes groundwater monitoring data among the factors that the district is required to consider. Requires the district to make certain considerations before voting on the proposed desired future conditions of the aquifers under subsection (d-2).

(d-1) Authorizes the districts to, after making certain considerations and documenting certain factors, establish different desired future conditions for each common reservoir located in whole or in part within the boundaries of the management area, rather than each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area or each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) Requires that the desired future conditions proposed under Subsection (d) provide a balance between certain factors, including the control of subsidence in each common reservoir in the management area, rather than control of subsidence in the management area. Deletes groundwater availability model run results from information that the district is required to make available in its office during the public comment period.

(d-3) Requires that the desired future conditions be approved by a resolution adopted by a two-thirds vote of all the district representatives not later than a certain day, rather than be adopted as a resolution by a two-thirds vote of all the district representatives. Requires the district representatives to produce a certain report and submit to certain entities certain documentation not later than the 120th day after the expiration of the public comment period. Requires the report to meet certain criteria, including to identify each common reservoir to which the condition applies.

(d-4) Requires the district to, not later than a certain day, submit the explanatory report under Subsection (d-3) to the development board and adopt the desired future conditions in the resolution required by Subsection (d-3) and the explanatory report that apply to the district, rather than requires the district to, as soon as possible after the district receives the desired future conditions resolution and explanatory report under Subsection (d-3), adopt the desired future conditions in the resolution and report that apply to the district.

SECTION 10. Amends Section 36.1083(e), Water Code, as follows:

(e) Requires the district, not later than the 10th day after receiving a petition described by Subsection (b), to submit a copy of the petition to the development board and to each district overlying any part of the applicable common reservoir, rather than to the development board. Includes the hydrology of the common reservoir, including the identification and determination of boundaries of each common reservoir in the management area, rather than the hydrology of the aquifer, in the list of required elements of the study that the development board is required to conduct on receipt of the petition.

SECTION 11. Amends Section 36.1084(b), Water Code, to require that the modeled available groundwater be reported as the total available groundwater for each common reservoir identified under Section 36.108 and makes no further changes.

SECTION 12. Amends Section 36.1085 and 36.1086, Water Code, as follows:

Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Requires each district in the management area to ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant common reservoirs, rather than relevant aquifers, as adopted during the joint planning process.

Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. Includes studies of aquifer monitoring among the joint efforts districts may undertake.

SECTION 13. Amends Section 36.113(d), Water Code, as follows:

(d) Requires the district, before granting or denying a permit or a permit amendment issued in accordance with Section 36.1146, to consider among other factors, whether:

(1) makes no changes to this subdivision;

(2) for each water well, the proposed spacing of the wells conforms to the district's rules regulating the spacing of wells under Section 36.116 (Regulation of Spacing and Production);

(3) creates this subdivision from existing text and makes no further changes to this subdivision;

(4) the proposed annual production of the well conforms to the district's rules regulating the groundwater production of wells under Section 36.116;

(5) creates this subdivision from existing text and makes no further changes to this subdivision;

(6) creates this subdivision from existing text; deletes existing text requiring the district to consider whether the proposed use of water is consistent with the district's approved management plan;

(7) redesignates existing Subdivision (6) as Subdivision (7) and makes no further changes to this subdivision; and

(8) redesignates existing Subdivision (7) as Subdivision (8) and makes no further changes to this subdivision.

SECTION 14. Amends Section 36.1131(b), Water Code, to authorize a permit to include certain information, terms and conditions, including the conditions and restrictions placed by district rules adopted under Section 36.116 on the rate and amount of withdrawal, rather than the conditions and restrictions, if any, placed on the rate and amount of withdrawal.

SECTION 15. Amends the heading to Section 36.1132, Water Code, to read as follows:

Sec. 36.1132. DISTRICT MANAGEMENT TO ACHIEVE DESIRED FUTURE CONDITIONS.

SECTION 16. Amends Section 36.1132, Water Code, by amending Subsections (b) and (c) and adding Subsections (b-1) and (d), as follows:

(b) Requires each district overlying a common reservoir to, in issuing permits, jointly manage groundwater production on a long-term basis to achieve an applicable desired future condition by taking certain actions, rather than requires the district to, in issuing permits, manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider certain factors.

(b-1) Requires the joint groundwater management hearing held under Subsection (b)(5) to include a public comment period on the desired future conditions. Requires the district to consider certain issues during the joint groundwater management hearing.

(c) Requires the executive administrator, in developing the estimate of exempt use under Subsection (b-1)(1), rather than (b)(2), to solicit information from each applicable district overlying the common reservoir, rather than from each applicable district.

(d) Requires the applicable districts to adopt new common rules under Section 36.116 not later than a certain date. Requires that the new rules immediately apply to all new permit applications submitted to a district. Requires the districts to adopt rules indicating when all existing permits must comply with the new rules to achieve the desired future condition.

SECTION 17. Amends Sections 36.114(a) and (h), Water Code, as follows:

(a) Requires the district, by rule, to require a permit or permit amendment for certain activities, rather than requires the district, by rule, to determine each activity regulated by the district for which a permit or permit amendment is required.

(h) Requires the district to determine if an application is administratively complete not later than a certain day.

SECTION 18. Amends Sections 36.116(a), (b), (d), and (e), Water Code, as follows:

(a) Deletes existing text providing that imposing spacing requirements adopted by the board is one manner by which a district may regulate the spacing of water wells.

(b) Requires a district to maintain well spacing or groundwater production allocation existing before the effective date of the rules to the maximum extent practicable, rather than authorizes the district to preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's management plan under Section 36.1071 and as provided by Section 36.113, in promulgating any rules limiting groundwater production.

(d) Requires each district overlying a common reservoir that is under joint management under Section 36.108 to adopt common rules for regulation of groundwater production for proper management of the groundwater resources located in a common reservoir, rather than authorizes the district to adopt different rules for certain aquifers and geographic areas, for better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another.

(e) Deletes text authorizing a district to limit the amount of water produced based on contiguous surface acreage. Makes nonsubstantive changes.

SECTION 19. Amends Sections 36.122(a), (g), (h), (i), and (q), Water Code, as follows:

(a) Provides that the right to export groundwater is of equal dignity with the right to produce groundwater. Prohibits the district from imposing more restrictive permit conditions on persons who will transfer groundwater than the permit conditions the district imposes on persons who will use groundwater in the district, rather than authorizes the district to consider the provisions of this section in determining whether to grant or deny the permit or permit amendment, if a certain application proposes the transfer to groundwater outside of a district's boundaries.

(g) Deletes existing text authorizing the district to limit a permit issued under this section if conditions in Subsection (f) warrant the limitation, subject to Subsection (c).

(h) Requires that the permit make certain specifications, including the maximum amount, rather than the amount, of water that may be transferred out of the district.

(i) Requires that a certain period be at least 30 years unless the applicant requests a shorter period, rather than at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit or at least 30 years if the construction of a conveyance system has been initiated prior to the issuance of the permit.

(q) Requires the district to be fair, impartial, and nondiscriminatory between the transfer of groundwater outside of the district's boundaries and the use of groundwater in the district, rather than requires the district to be fair, impartial, and nondiscriminatory.

SECTION 20. Amends Section 36.201(b), Water Code, to decrease from 50 to 37.5 cents on each \$100 of assessed valuation the amount that the rate of taxes to pay maintenance and operating expenses may not exceed.

SECTION 21. Amends Section 36.205(f), Water Code, to delete a district described under Subsection (d) (relating to the Lone State Groundwater Conservation District and the Guadalupe County Groundwater Conservation District) from districts to which this subsection applies.

SECTION 22. Amends Section 36.207, Water Code, as follows:

Sec. 36.207. USE OF FEES. (a) Creates this subsection from existing text. Deletes funds obtained from export fees collected under certain law from fees which the district may use for specific purposes.

(b) Authorizes a district to use funds obtained from export fees collected under a special law governing the district or this chapter only to enhance certain research and issue certain payments.

(c) Requires the district to, by rule, determine the amount of a payment to a permit holder based on a pro rata share of certain acreage or a certain volume of groundwater if a district issues payments to existing permit holders under Subsection (b)(2).

SECTION 23. Amends Sections 36.4051(a) and (d), Water Code, as follows:

(a) Deletes existing text authorizing the board to issue a written order to grant the application with special conditions.

(d) Deletes Subdivisions (1) and (2) relating to conditions relating to the order granting the application.

SECTION 24. Amends Section 8810.103(b), Special District Local Laws Code, to provide that Section 36.122(e) (relating to imposing an export fee or surcharge using a certain method) and (i) (relating to a certain period being at least a certain term), rather than Sections 36.122(c) (relating to imposing restrictive permit conditions), (e), (i), and (j) (relating to extension of certain terms), Water Code, do not apply to a requirement or limitation imposed under this section.

SECTION 25. Amends Section 8824.101, Special District Local Laws Code, to delete Section 36.104 (Purchase, Sale, Transportation, and Distribution of Water), Water Code, as a section that does not apply to the district.

SECTION 26. Amends Section 8852.104(c), Special District Local Laws Code, to delete Sections 36.122(c) and (j), Water Code, as sections that do not apply to a requirement or limitation imposed under this section.

SECTION 27. Amends Section 11002.112, Special District Local Laws Code, to delete existing text providing that Section 36.121, Water Code, does not apply to a groundwater well owned or used by the district within the boundaries of the Brewster County Groundwater Conservation District.

SECTION 28. Repealer: Section 8837.006(b) (relating to applicability of Section 36.121, Water Code), Special District Local Laws Code.

Repealer: Section 8851.103 (Limitation on Rulemaking Power Not Applicable), Special District Local Laws Code.

Repealer: Section 8852.108 (Limitation on Rulemaking Power Not Applicable), Special District Local Laws Code.

Repealer: Section 8867.102 (Limitation on Rulemaking Power Not Applicable), Special District Local Laws Code.

Repealer: Section 8876.005(b) (relating to applicability of Section 36.121, Water Code), Special District Local Laws Code.

SECTION 29. Repealer: Section 36.001(29) (relating to the definition of "evidence of historic or existing use"), Water Code.

Repealer: Section 36.001(31) (relating to the definition of "operating permit"), as added by Chapter 415 (H.B. 2767), Acts of the 84th Legislature, Regular Session, 2015, Water Code.

Repealer: Section 36.002(b-1) (relating to groundwater ownership and rights), Water Code.

Repealer: Sections 36.0151(f) (relating to creating a groundwater conservation district) and (g) (relating to resolution between conflicting sections), Water Code.

Repealer: Section 36.101(a-1) (relating to certain rules of a district), Water Code.

Repealer: Section 36.104 (Purchase, Sale, Transportation, and Distribution of Water), Water Code.

Repealer: Section 36.1072(g), (relating to filing a petition with the development board), Water Code.

Repealer: Section 36.108(d-5) (relating to a proposal for the adoption of desired future conditions), Water Code.

Repealer: Sections 36.113(f) (relating to permits and permit amendments), (h) (relating to discrimination between certain land), and (i) (relating to voiding a permitting decision), Water Code.

Repealer: Section 36.121 (Limitation on Rulemaking Power of Districts Over Wells in Certain Counties), Water Code.

Repealer: Sections 36.122(b) (relating to imposing restrictive permit conditions), (c) (relating to promulgation of rules requiring a person to obtain a permit or an amendment to a permit), (j) (relating to extension to certain terms), (m) (relating to prohibiting the export of groundwater), and (n) (relating to applicability of this section to water transfers permitted after September 1, 1997), Water Code.

Repealer: Section 36.205(d) (relating to the Lone Star Groundwater Conservation District and the Guadalupe County Groundwater Conservation District), Water Code.

SECTION 30. Requires each groundwater conservation district to, as soon as practicable after the effective date of this Act, adopt rules as necessary to implement the changes in law made by this Act.

SECTION 31. Makes application of the changes in law made by this Act to an application for a permit or a permit amendment that is received by a groundwater conservation district prospective.

SECTION 32. Makes application of the changes in law made by this Act to a suit involving a groundwater conservation district prospective.

SECTION 33. Effective date: September 1, 2017.