

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1392  
By: Perry  
Agriculture, Water & Rural Affairs  
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Committee Report (Substituted)

### **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. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1392 amends current law relating to groundwater conservation districts.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to a district is modified in SECTION 14 (Section 36.116, Water Code) of this bill.

Rulemaking authority previously granted to a district is rescinded in SECTION 14 (Section 36.116, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 36.001(2) and (7), Water Code, to redefine "commission" and "subdivision of a groundwater reservoir."

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

(b) Provides that groundwater conservation districts (GCDs) created as provided by this chapter are the state's preferred method of groundwater management in order to treat each groundwater owner reservoir fairly, rather than in order to, in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter. Makes nonsubstantive changes.

SECTION 3. Amends Sections 36.002(a) and (b), 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.

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 36.062, Water Code, as follows:

Sec. 36.062. OFFICES AND MEETING PLACES. (a) Requires that certain offices be reasonably accessible to members of the public who reside in the district.

(b) Requires the board of directors of a district (board) to designate one or more places reasonably accessible to members of the public who reside in the district inside or outside the district for conducting the meetings of the board.

SECTION 6. Amends Section 36.101(c), Water Code, to require the board to compile its rules and make them available for use and inspection at each of the district's offices, rather than for use and inspection at the district's principal office.

SECTION 7. Amends Sections 36.1071(e) and (f), Water Code, as follows:

(e) Requires the district, in the management plan described under Subsection (a), to take certain actions.

(f) Authorizes a newly created 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 initial management plan is approved as provided in Section 36.1072 (Texas Water Development Board Review and Approval of Management Plan).

SECTION 8. Amends Sections 36.108, Water Code, by amending Subsections (c), (d), (d-3), and (d-4) and adding Subsections (c-1) and (c-2), as follows:

(c) Requires the districts, in reviewing the management plans, to consider certain factors, including the degree to which the desired future conditions (DFCs) in the management area are being achieved, rather than the degree to which each management plan achieves the DFCs established during the joint planning process.

(c-1) Requires districts in a management area jointly to delineate the boundaries of each subdivision of a groundwater reservoir in the management area, using the best available science. Requires the Texas Water Development Board (TWDB), on request by a district, to provide technical assistance with the development of the initial boundaries and any subsequent updates to the boundaries of a subdivision. Requires the delineated boundaries of each subdivision to be updated as necessary to accurately reflect the actual boundaries.

(c-2) Provides that, under Subsection (c-1), a district:

(1) is authorized to take into consideration conditions that differ substantially from one geographic area to another in delineating boundaries of a subdivision of a groundwater reservoir;

(2) is required to report to TWDB the surface level boundaries of a subdivision of a groundwater reservoir using metes and bounds; and

(3) is required to maintain in each office of the districts in the management area copies of the delineations of the subdivisions of groundwater reservoirs and the report made under Subdivision (2).

(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 DFCs of the aquifers under Subsection (d-2).

(d-3) Requires that the DFCs 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 180th day after the expiration of the public comment period.

(d-4) Requires the district to, not later than a certain day, submit the explanatory report under Subsection (d-3) to TWDB and adopt the DFCs 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 DFCs resolution and explanatory report under Subsection (d-3), adopt the DFCs in the resolution and report that apply to the district.

SECTION 9. Amends Section 36.1083(e), Water Code, to require the district, not later than the 10th day after receiving a petition described by Subsection (b), to submit a copy of the petition to TWDB and to each district in the management area, rather than to TWDB.

SECTION 10. 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 conforms to the district's rules regulating the groundwater production of wells under Section 36.116;

(5) redesignates Subdivision (3) as Subdivision (5) 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 11. 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 12. Amends the heading to Section 36.1132, Water Code, to read as follows:

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

SECTION 13. Amends Section 36.1132, Water Code, by amending Subsections (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Requires the district to, in issuing permits, manage total groundwater production on a long-term basis to achieve an applicable DFC and consider certain factors and actions.

(b-1) Requires the district representatives in a management area, not later than a certain date, and every five years thereafter, to develop a report as described by this subsection. Requires the districts to maintain a copy of the report at each district office. Requires that the report identify and compare certain rules and identify differences in rules based on certain factors.

(b-2) Requires that the joint groundwater management hearing held under Subsection (b)(3) include a public comment period on the DFCs. Requires the districts, during the joint groundwater management hearing, to consider certain factors.

SECTION 14. Amends Sections 36.116(a), Water Code, to delete 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.

SECTION 15. Amends Sections 36.122(h) and (q), Water Code, as follows:

(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.

(q) Requires the district, in administering this section, 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 16. 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 17. Amends Section 36.205(f), Water Code, to delete a district described under Subsection (d) (relating to the Lone Star Groundwater Conservation District and the Guadalupe County Groundwater Conservation District) from districts to which this subsection applies.

SECTION 18. 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 monitoring, modeling, and data collection regarding aquifers managed by the district and research on the advancement of the scientific understanding of a district's groundwater resources.

SECTION 19. Amends Sections 36.4051(a) and (d), Water Code, as follows:

(a) Authorizes the board to issue a written order to grant the application; grant the application with special conditions provided that the applicant agrees to the conditions before the issuance of the order; or deny the application.

(d) Authorizes an applicant, not later than the 20th day after the date the board issues an order granting or denying the application, rather than issues an order granting the application, to demand a contested case hearing. Deletes Subdivisions (1) and (2) relating to conditions relating to the order granting the application.

SECTION 20. 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 21. Amends Section 8833.102, Special District Local Laws Code, as follows:

Sec. 8833.102. LIMITATIONS ON DISTRICT POWERS. Prohibits the district from imposing certain taxes and fees, including production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose.

SECTION 22. Amends Section 11, Chapter 1321, Acts of the 77th Legislature, Regular Session, 2001, by adding Subsection (b-1), to prohibit the district from assessing production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose.

SECTION 23. 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 36.104 (Purchase, Sale, Transportation, and Distribution of Water), Water Code.

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

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

Repealer: Sections 36.122(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 24. Requires a GCD in a management area under Section 36.108, Water Code, as amended by this Act, not later than September 1, 2019, to meet and delineate the initial boundaries of each subdivision of a groundwater reservoir in the management area as required by Section 36.108(c-1), Water Code, as added by this Act.

SECTION 25. Requires each GCD 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 26. 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 GCD prospective.

SECTION 27. Makes application of the changes in law made by this Act to a suit involving a GCD prospective.

SECTION 28. Effective date: September 1, 2017.