

BILL ANALYSIS

Senate Research Center
84R22818 GRM-F

H.B. 2767
By: Keffer (Perry)
Agriculture, Water & Rural Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The bill would amend the Water Code relating to the powers, duties, and administration of groundwater conservation districts. The bill would amend the definition of "operating permit" and permit a groundwater district to impose certain fees for water exportation, administration, and production under certain circumstances. The bill would require a financial audit and other financial statements of the district to be performed in accordance with standards adopted by the American Institute of Certified Public Accountants. Under the provisions of the bill, a county could pay costs and expenses occurred in the creation and organization of a district. The bill would permit the Texas Water Development Board (TWDB) to allocate funds to a district under certain circumstances.

Under the provisions of the bill, certain individuals could file a petition to the Texas Commission on Environmental Quality (TCEQ) regarding the failure of a district's actions. Under certain conditions, TCEQ would be required to select a review panel in actions to take against a district. The bill would amend the provisions regarding the addition of land by petition of land by land owner, petition and the election or ratify the annexation of land. TWDB and TCEQ indicate that any costs associated with the bill could be absorbed within existing resources.

H.B. 2767 amends current law relating to the powers, duties, and administration of groundwater conservation districts and amends provisions that authorize fees.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resources Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

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. Amends Section 36.001, Water Code, by amending Subdivisions (8) and (16) and adding Subdivision (31) to redefine "waste" and "loan fund" and to define "operating permit."

SECTION 2. Amends Section 36.017(i), Water Code, to require a district, if a majority of the votes cast at the election are against the levy of a maintenance tax, to set fees authorized by this chapter to pay for the district's regulation of groundwater in the district. Deletes existing text requiring the district, if a majority of the votes cast at the election are against the levy of a maintenance tax, to set production fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 3. Amends Section 36.0171(h), Water Code, to require a district, if the majority of the votes cast at the election are against the levy of a maintenance tax, to set fees authorized by this chapter in accordance with Section 35.013(g-1) (requiring the board to assess production fees in the added territory based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn) to pay for the district's regulation of groundwater in the district. Deletes existing text requiring the district, if a majority of the vote case at the election

are against the levy of a maintenance tax, to set production fees in accordance with Section 35.013(g-1) to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 4. Amends Section 36.058, Water Code, to provide that a director of a district is subject to the provisions of Chapters 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments) and 176 (Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information), Local Government Code, rather than Chapter 171, Local Government Code, relating to the regulation of conflicts of officers of local governments.

SECTION 5. Amends Section 36.061(a), Water Code, to delete existing text requiring the board of directors of a district (board), subject to the law governing the district, to adopt the certain codes and policies in writing, including policies that ensure a better use of management information, including uniform reporting requirements that use "Audits of State and Local Government Units" as a guide on audit working papers and that uses "Governmental Accounting and Financial Reporting Standards."

SECTION 6. Amends Section 36.116(c), Water Code, to change references to retail water utility to retail public utility and make a nonsubstantive change.

SECTION 7. Amends Sections 36.117(a) and (d), Water Code, as follows:

(a) Authorizes a district by rule to provide an exemption from the district's requirement to obtain any permit, rather than obtain a drilling permit, an operating permit, or any other permit, required by this chapter or the district's rules.

(d) Authorizes a district to cancel a previously granted exemption and to require an operating permit for or restrict production from a well and assess any appropriate fees if certain conditions are met.

Deletes existing text authorizing a district to cancel a previously granted exemption and to require an operating permit for or restrict production from a well if the well is located in the Hill Country Priority Groundwater Management Area.

SECTION 8. Amends Section 36.122(e), Water Code, as follows:

(e) Authorizes a district to impose an export fee or surcharge, rather than a reasonable fee or surcharge for an export fee, using one of the following methods:

(1) a fee negotiated between the district and the exporter, rather than the transporter;

(2) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water exported from, rather than transferred out of, the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation; or

(3) for a fee-based district, a 50 percent surcharge, rather than a 50 percent export surcharge, in addition to the district's production fee, for water exported from, rather than transferred out of, the district.

SECTION 9. Amends Section 36.153(a), (b), and (d), Water Code, as follows:

(a) Requires that the district audit be performed according to the generally accepted government auditing standards adopted by the American Institute of Certified Public Accountants. Makes no further change to this subsection.

(b) Requires that financial statements be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. Makes no further change to this subsection.

(d) Authorizes a financially dormant district to elect not to conduct an audit and instead submit to the executive director a financial dormancy affidavit. Deletes existing text authorizing a financially dormant district to elect to submit to the executive director a financial dormancy affidavit instead of complying with the audit requirements of Section 49.191 (Duty to Audit).

SECTION 10. Amends Section 36.157(a), Water Code, to authorize a district, or the county or counties where the district is to be located, to pay all costs and expenses necessarily incurred in the creation and organization of a district, including legal fees and other incidental expenses, and to reimburse any person, including a county, for money advanced for these purposes.

SECTION 11. Amends Section 36.159, Water Code, as follows:

Sec. 36.159. New heading: GROUNDWATER CONSERVATION DISTRICT MANAGEMENT PLAN FUNDS. Makes nonsubstantive change to this section.

SECTION 12. Amends Sections 36.205(f) and (g), Water Code, as follows:

(f) Authorizes a district, including a district described under Subsection (d) (prohibiting the Lone Star Groundwater Conservation and the Guadalupe County Groundwater Conservation District from charging certain production fees for an annual period), to assess a production fee under Subsection (c) (authorizing a district to assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn) and an export fee under Subsection (g), if applicable, for any water produced under an exemption under Section 36.117 (Exemptions; Exception; Limitations) if that water is subsequently sold to another person.

(g) Authorizes a district to assess an export fee, rather than a transportation fee, under Section 36.122 (Transfer of Groundwater Out of District).

SECTION 13. Amends Section 36.206(a), Water Code, to authorize a temporary board to set fees authorized by this chapter, rather than to set user fees, to pay for the creation and initial operation of a district, until such time as the district creation has been confirmed and a permanent board has been elected by a majority vote of the qualified voters voting in the district in an election called for those purposes.

SECTION 14. Amends Section 36.207, Water Code, as follows:

Sec. 36.207. New heading: USE OF FEES. Authorizes a district to use funds obtained from administrative, production, or export fees, rather than from permit fees, collected under a special law governing the district or this chapter for any purpose consistent with the district's approved management plan, including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies. Makes nonsubstantive changes.

SECTION 15. Amends Section 36.251, Water Code, as follows:

Sec. 36.251. SUIT AGAINST DISTRICT. (a) Creates this subsection from existing text. Entitles a person, firm, corporation, or association of persons affected by and dissatisfied with any rule or order, rather than provision or rule, made by a district, including an appeal of a decision on a permit application, to file a suit against the district or its directors to challenge the validity of the law, rule, or order.

(b) Authorizes only the district, the applicant, and parties to a contested case hearing to participate in an appeal of a decision on the application that was the

subject of that contested case hearing. Requires that an appeal of a decision on a permit application include the applicant as a necessary party.

(c) Creates this subsection from existing text and makes no further change.

SECTION 16. Amends Section 36.3011, Water Code, as follows:

Sec. 36.3011. New heading: COMMISSION INQUIRY AND ACTION REGARDING DISTRICT DUTIES. (a) Defines "affected person."

(b) Authorizes an affected person to file a petition with the Texas Natural Resource Conservation Commission (TNRCC) requesting an inquiry for any of the following reasons:

(1) a district fails to submit its management plan to the executive administrator;

(2) a district fails to participate in the joint planning process under Section 36.108 (Joint Planning in Management Area);

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted desired future conditions;

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) Requires TNRCC, not later than the 90th day after the date the petition is filed, to review the petition and either:

(1) dismiss the petition if TNRCC finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (d).

(d) Requires TNRCC to appoint a review panel consisting of a chairperson and four other members if the petition is not dismissed under Subsection (c). Authorizes a director or general manager of a district located outside the management area that is the subject of the petition to be appointed to the review panel. Prohibits TNRCC from appointing more than two members of the review panel from any one district. Requires TNRCC also to appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. Authorizes the recording secretary to be an employee of TNRCC. Requires the recording secretary to record and document the proceedings of the panel.

(e) Requires the review panel to review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to TNRCC not later than the 120th day after appointment. Authorizes TNRCC to direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. Authorizes the review panel to attempt to negotiate a settlement or resolve the dispute by any lawful means.

(f) Requires the review panel, in its report, to include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for TNRCC to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

(g) Requires the review panel to submit its report to TNRCC.

(h) Creates this subsection from existing text. Requires the executive director or TNRCC to take action to implement any or all of the panel's recommendations not later than the 45th day after receiving the review panel's report under this section, rather than Section 36.1082 (Petition for Inquiry). Authorizes TNRCC to take any action against a district it considers necessary in accordance with Section 36.303 (Action by Commission) if TNRCC finds any of certain requirements set forth in this subsection have not been met.

SECTION 17. Amends Section 36.303(a), Water Code, as follows:

(a) Requires TNRCC, after notice and hearing in accordance with Chapter 2001 (Administrative Procedure), Government Code, to take action TNRCC considers appropriate, including the actions set forth in this subsection, if Sections 36.301 (Failure to Submit a Management Plan), 36.3011 (Commission Action Regarding District Duties), or 36.302(f) (relating to TNRCC taking appropriate actions when necessary under this section if it is determined under Subsection (c) (relating to the state auditor's analysis of a district) that the district is not operational) applies, rather than if Section 36.108 applies.

SECTION 18. Amends Section 36.321, Water Code, as follows:

Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. Authorizes the owner of land not already in a district, rather than contiguous to a district, subject to Section 36.331 (Annexation of Noncontiguous Territory), to file with the board a notarized petition requesting that the owner's land be included in the district. Requires that the petition describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

SECTION 19. Amends Section 36.325, Water Code, as follows:

Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a) Authorizes landowners of a defined area of territory not already in a district to file with any district a petition requesting inclusion in that district and, subject to Section 36.331, the defined area of territory is not required to be contiguous with that district.

(b) Makes no change to this subsection.

(c) Creates subsection from existing text and makes no further change.

SECTION 20. Amends Section 36.328(a), Water Code, as follows:

(a) Provides that annexation of the territory by petition filed under Section 36.325 (Adding Certain Territory by Petition) is not final until ratified by a majority vote of the voters in the territory to be added. Makes no further change to this subsection.

SECTION 21. Amends the heading to Subchapter L, Chapter 36, Water Code, to read as follows:

SUBCHAPTER L. GROUNDWATER CONSERVATION DISTRICT LOAN
ASSISTANCE FUND

SECTION 22. Amends Section 36.371, Water Code, as follows:

Sec. 36.371. New heading: GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE FUND. (a) Provides that the groundwater conservation district loan assistance fund is created, to be funded by direct appropriation and by the Texas Water Development Board from the water assistance fund.

(b) Requires that repayments of loans be deposited in the water assistance fund.

SECTION 23. Repealer: Section 36.1082 (Petition for Inquiry), Water Code.

SECTION 24. Effective date: upon passage or September 1, 2015.