

The following is a list of bills filed during the 85th Texas legislative session which are being tracked by POSGCD Board and staff. These notes were generated by the District's General Counsel for use by the Board and Staff in following these bills.

H.B. 645. Amend Sec. 36.116(c), TWC. This Bill states that districts shall consider the service area and service needs of a retail public utility, and may determine if it is appropriate to base permitted production on the utility's service needs or service area. See: H.B. 1318.

H.B. 1318. Amend Sec. 36.116(c), TWC, states that a district shall consider the aggregate acreage owned by a retail public utility and the acreage owned by the utility's customers – and “may subtract permitted wells from that acreage”.

H. B. No. 2005 – Aquifer Storage and Recovery. This Bill requires the TWDB to work with regional planning groups, GCDs, and others to conduct studies of aquifer storage and recovery projects identified in the State Water Plan or by 3rd parties, survey the most favorable areas for ASR projects, report those studies to the interested persons, and by 12/15/18 report to the Governor and others. This HB expires 01/01/2019.

H.B. 2240. Amends Sec. 15.009, 16.025 and 17.004, TWC. Requires certain entities that receive \$500K or more in financial assistance to have a water conservation plan, and exempts a political subdivision that is primarily a wholesale water provider and WSCs operating under Chapt. 67, from this requirement.

H.B. 2264. Amends Sec. 11.085(s), TWC. This Bill excepts from a provision for junior in priority water rights, WCIDs that abut a city having a population of more than 700,000 within a river basin with a population of 6+ million, and cities with a 100K+ population and located in a basin of a river that forms a boundary between Texas and another state and does not flow into the Gulf.

H.B. No. 2377 – Brackish Groundwater. This will require some work but is consistent with and legislates our views that brackish groundwater is groundwater that should be subject to the District rules. It gives you 180 days, after the first application is made, to adopt rules governing brackish groundwater. We should likely consider adopting such rules as convenient before receiving an application. This Bill makes it clear that Districts can regulate brackish groundwater – with some special/different production allowances.

H.B. No. 2378 – Transfer of Water Out of the District. This Bill may very likely be advocated by San Antonio/Blue Water/Abengoa regarding the issue of amending the permit terms so the Operating Permit term and the Transport Permit term are the same.

H.B. 3025. Amending Sec. 1901.255 of the Occupations Code to require landowners, etc. to plug or cap a well if it is abandoned or deteriorated. Amending Sec. 36.118 to authorize the district to require the landowner to cap an abandoned well with minimum standards; providing definitions; providing the district can require the owner of a deteriorated well to plug or repair the well sufficiently to prevent pollution of any water; providing the district may go on the property if no action within 10 days and plug the well; and providing the district may file a lien on the well property for the expense of plugging the well.

H.B. 3028. Amends Secs. of Chapter 36. Sec. 36.001 adds definition of “Fair Share”. Sec. 36.002. Will raise questions regarding the authority to regulate absent doing so in a manner to allow landowners a “fair share”. Sec. 36.101(a). District rules must protect the groundwater ownership and rights

recognized by this section, and may not restrict the groundwater ownership and rights unless it is necessary for the public interest.... Sec. 36.1071(a). Requires the management plan to include protecting the “fair share” rights. Sec. 36.108(c), (d) and (d-2). District representatives meet annually to review management plans must consider effectiveness of protecting private property rights, fair share; and the approved DFCs “...must allow the highest practicable level of groundwater production of the total estimated recoverable storage that is consistent with the groundwater ownership and rights recognized...” in Sec. 36.002. Sec. 36.113(c), (d), (e), (f) and (h). Incorporates “fair share” into permit applications and permit renewals. Sec. 36.116. Preserve historic uses to the maximum extent consistent with “fair share” and ownership and rights recognized by Sec. 59, Article XVI, Tex. Constitution; may consider service needs of WSCs, etc. based on service area /needs in a manner without resulting in the “confiscation by uncompensated drainage” and the fair share rights, and rules must protect the fair share rights. Regulations must select a method appropriate based on protection of groundwater rights and fair share. Sec. 36.2261. Authorizes persons with ownership interests to file petitions to adopt rules, and any person affected by a rule adopted via this method may file suit against the district or its directors. Sec. 36.117(a). Exemptions from having to obtain a permit must be consistent with the ownership and rights under Sec. 36.002.

H.B. 3031. Amending Secs. 11.132, 11.135 and 11.143 , Water Code. Companion Bill to S.B. 864 regarding alternative source of water other than state water. If an applicant to the TWC proposes to use groundwater from a well in a District – to make up for state water taken elsewhere – the District does not get a notice until 30 days prior to proposed action on the application.

H.B. 3037. Amends Secs. 35.004, 36.108 & 36.1085. TWDB shall assign each major and minor aquifer to a groundwater management area, and the Districts w/i each such management area are to adopt DFCs for that specific management area, and require management plans to contain goals and objectives consistent for achieving the DFCs.

H.B. 3038. Amends Sec. 36.108 (d-1). This adds requirements for the DFCs explanatory report to include assessment of brackish groundwater resources, categorized by salinity level, and demonstrate the DFCs will achieve a balance between highest practicable level of production and the conservation and preservation of groundwater.

H.B. 3043. Re-enacts and amends Sec. 16.053(e), 36.108, 36.1081,TWC, and repeals 38.108 (d-5). This Bill establishes processes, procedures and requirements for the regional water planning groups, participation in those groups and public participation. The Bill provides more detail and formality regarding advisory committee and establishes the joint planning advisory committee, the members of which do not have to reside within the district or the region. The joint planning advisory committee is not subject to the Open Meetings and Open Records Acts. The overall thrust of this Bill is to provide for more formality and assured input from stakeholders and interested parties, and will likely materially increase not only opportunity for public input but the time, management and effort required to complete the DFC determination process.

H.B. 3084. Amends Sec. 149.004, Education Code. This Bill requires the Geo-Technology Research Institute to use data to develop a three-dimensional model of the availability and quality of groundwater resources in the State, make that information available and conduct workshops in designated areas.

H.B. 3417. Amends Sec. 36.113(d). This section now includes several items or categories, e.g. existing permit holders, that must be considered on a permit or permit amendment application if the “proposed use of water” affects those items or categories. This amendment adds exempt registered wells to the list of issues a District must consider on a permit or permit amendment application.

H.J.R. 101. Proposes a long, detailed and temporary amendment to Article VIII, Sec. 7-e, Texas Constitution, to require \$1B of sales taxes to be deposited into the Texas Water Development Fund II, subject to a number of limiting issues dependent on state sales tax receipts, etc.

S.B. No. 862. Amends Sec. 36.066(g)(h) and Sec. 36.102(d). These sections currently provide that the District may be awarded attorney fees if it prevails in litigation. These proposed amendments provide the prevailing party (in litigation between a District and a 3rd party) shall be awarded attorney fees. This Bill will increase the possibility of litigation and materially increase the financial risk to Districts involved in litigation. These amendments result in GCDs being subject to more risk in litigation than most other local governmental entities for which there are material limitations on the types of claims, etc. for which they can be liable for the other party’s attorney fees. However, litigation history with some other GCDs have likely resulted in material support for this action.

S.B. No. 864. Amends Chapt. 11, TWC. This Bill is applicable to applications to obtain a right to use state water at some location if the applicant proposes an alternative source of water that is not state water, e.g. taking state water at one location and replacing that with non-state water from another location – including water from a groundwater well. Applications are made to the TCEQ and, if the “replacement water” is to come from groundwater within a District, the District will be entitled to receive only a 30 day notice before the TCEQ can act on the application.

S.B. No. 866. Amends Sec. 15.601(a), etc., TWC, regarding use of the state water pollution control revolving fund. The amendments would limit the use of those funds to projects eligible for assistance under Sec. 603(c) of the Federal Water Pollution Control Act, AND to delete the eligibility of political subdivisions to use the fund for construction of treatment works if not eligible under Sec. 603(c).

S.B. No. 865. Amends Sec. 36.151(b) & (c) to make exceptions regarding the signature requirements for disbursements other than federal reserve wire transfers and electronic fund transfers, and also authorizes payroll disbursements by direct deposit, and authorizes the Board to, by resolution, allow such transfers to District accounts and other accounts.

S.B. No. 863. Amends Sec. 16.051(f), TWC, to list five (5) creeks or bayous as being of unique ecological value.

S.B. No. 1009. Amends Secs. 36.113(c) and 36.114(h). This Bill is similar to others that restrict information that a District may require be included in the permit application. Such information includes the list of items previously set forth in Sec. 36,113(c), and adds by amendment other information set forth in the District Rules when the application is filed.

S.B. No. 1392. Amends Multiple and Significant Sections of Chapter 36. As briefly reviewed with the Board; this Bill advocates the “common reservoir” and joint action by districts to manage the common reservoir; favors acreage based production limits; precludes consideration of where water will be used; prohibits discrimination based on prior use of groundwater (*issue re historic use permits*); modeled available groundwater shall be reported as total available groundwater within a reservoir; requires

common rules among districts regarding a common reservoir [*issue good but no mechanism in place to require adoption of common rules*]; although provisions retain water well spacing, this Bill deletes “imposing spacing requirements adopted by the board” from the authorizations provided in 36.116(a) [*issue given applicable statutory construction standards this is not advisable*]; Sec. 36.207 proposes to amend and limit the issues on which certain groundwater districts, e.g. POSGCD, can expend funds generated by export fees. [**Major issue** – *This amendment would have a very great negative impact on Post Oak.*] In sum, as we generally discussed with the Board, this Bill covers a great number of the Chapter 36 provisions, and parts of this Bill would, if adopted, have a very material impact on district operations and finances.

S.B. No. 1507. Adding Secs. 11.042(b-1) and 11.085(v)(u-1), TWC. This Bill requires the TWC to grant authorization: (1) to transfer privately owned groundwater via bed and banks if the groundwater is treated brackish ground-water, and the applicant is authorized by Chapter 26 to discharge the groundwater into the watercourse; and (2) to divert the applicant’s existing return flows from treated brackish groundwater and transfer those flows to another river basin.

S.B. No. 1511. Amends Secs. 15.439, 16.051 and 16.053, TWC. This Bill requires the TWDB to specify the manner for prioritizing certain projects, requires projects previously given a high priority for purposes of providing financial assistance to be assessed as to extent those projects were implemented in the decade needed, and the impediments to implementation for projects not timely implemented. The Bill requires regional planning groups to hold accessible public meetings, consider feasible water management strategy/project to meet needs that was to have been addressed by an infeasible water management strategy or project, and authorizes such groups to elect to implement simplified planning (no more often than every other five year cycle) if there are no significant changes in water issues within the regional planning area.

S.B. No. 1525. This Bill requires the TWDB to conduct a study of the water needs and availability in this state. The Bill requires the study to consider costs of developing new sources of water, e.g. diversion of water from other states, flood control diversion channels and reuse, potential locations of facilities for desalination of marine water or brackish groundwater, the allocations of costs of transportation of such waters, potential for use of public-private partnerships for water projects, and to ensure stakeholders from all water groups are included in the development of the plans.

S.B. No. 1528. This Bill is the companion of and substantially identical to H.B. 3043. See: H.B. 3043.

S.B. No. 1529. Adds Sec. 149.0045, Education Code. This is a companion Bill to H.B.3084 to require the Geo-Technology Research Institute to use data to develop a three-dimensional model of the availability and quality of groundwater resources in the State, make that information available and conduct workshops in designated areas.

__B. ____. Amending Secs. 552.002 and 552.003 of the Gov’t. Code [Public Information Act] to provide some limits on the type of information that is “public” if in the possession of an entity described in 503.(1)(A)(xii), i.e. “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds”. Should have no impact on POSGCD because all of the PIA is more directly applicable to the District than to an entity described in (xii).

__B. ____. Amending Sec. 552.104 and 552.305 of the Gov’t. Code [PIA]. This Bill amends the exception from disclosure of info that may provide advantage to a competitor or bidder in a particular situation AND provides there is no exception after the bid or contract is awarded. (Likely could still use another part of the PIA to except some info, e.g. trade secrets, etc divulged in a competitive process.) However, the wording of the Sec. 552.104

amendment provides the information is excepted from disclosure of info that may provide advantage to a competitor or bidder in a particular situation **“if a governmental body demonstrates that release of the information would harm its interests....”** However, the amendment to Sec. 552.305 appears to prevent the entity from requesting an AG ORA.