

Legislative Committee Report 3-14-23

SB156 (Perry) Section 1 would modify the award of attorney's fees from "shall" to "may" in Section 36.066(g) (any suit). This change would prevail over any enabling legislation inconsistent with this provision. This proposed modification would not change the award of attorney's fees in enforcement actions under 36.102(d). Section 2 would add a new section to create a petition process to change rules. It would allow a person who owns a real property interest in groundwater within a district to request the adoption of a rule by filing a petition with the district. It would require a district to prescribe the form and procedure for a petition by rule. It would require, upon submission of a petition, that a district shall act within 90 days to either deny the petition in writing stating reasons for denial or initiate a rulemaking proceeding. Subsection (d) would specifically provide that nothing in the section creates or implies a private cause of action on a decision to accept or deny a petition. This is TWCA consensus language. Section 3 would modify 36.1071(b) to include a new subsection providing that if a petition is filed challenging the reasonableness of a DFC, then the TWDB shall consider a management plan administratively complete if the GCD includes the most recently approved DFCs adopted, the corresponding MAG, a statement addressing the status of the petition, and information required in Section 36.1071 (a) and (e). Section 4 would add 36.1411 to require districts adopt rules to provide notice of applications/amendments to landowners whose wells are within the spacing distances and whose right to obtain a well permit may be affected by the application. Notice not required for replacement wells or emergency wells, or if applicant is lessee of the land. Mailed notice not required if district posts a list of applications in readily accessible location and on internet.

NOTES- Language reflects the Committee Substitute of SB 152 from last session. Sections 2, 3, and 4 are TWCA consensus language from 87th and are supported by TWCA this session. TAGD supported Sections 2, 3, and 4 last session, but opposed Section 1. OTHER Bills with similar content- HB2443, HB2119

SB1746 (Perry) Would amend 36.117(b) to add an exemption for drilling a water well for temporary use to supply water for a rig that is actively engaged in drilling a groundwater production well permitted by the district; provides that exemption can be cancelled once the withdrawals that were exempted are no longer solely used to supply water for such rig.

NOTES- Concerns: spacing, length of time. Working with Robby Cook on this one.

SB1988 (Perry) Applies only to municipally owned water utilities (Section 13.002, Water Code) with more than 150,000 service connections. Would require utility to enter into escalating drought contingency if water loss equal to or greater than 15% reported on TWDB Water Loss Audit.

HB1971 (Ashby) & SB638 (Springer) Would amend Ch. 36 in various ways. Section one amends 36.051 to provide that a director of a GCD who has recused themselves from voting or fails to attend 2 consecutive meetings is disqualified from service on the board; Section 2 amends 36.053 to provide that a board member recused from voting shall not count toward quorum or majority requirements for purposes of making a final decision on a permit application/amendment; Section 3 amends 36.409 to limit continuances to timeframe for decision set forth in proposed 36.4165; Section 4 adds 36.411(b) to provide that a board shall ensure a decision is timely rendered in accordance with provisions of chapter. Section 5 amends and adds to 36.412 such that decisions issued under 36.4165 (180 limit) do not require a request for written findings; Section 5 amends 36.413(a) to provide that a decision issued under 36.4165 (providing that if after 180 days no decision then SOAH Proposal for Decision (PFD) is decision is final. Section 7 adds 36.4165(c)(d)(e)(f) to: require final decisions issued by board after going to SOAH must be in writing; board shall issue a decision no later than 180 days after receipt of PFD from SOAH (inclusive of any motions for rehearing) for contested cases that go to SOAH; if SOAH recommends granting one or more permit applications and board fails to act, then the PFD becomes final order; and that if PFD becomes decision for failure to act, then PFD is final, immediately appealable, and not subject to a motion for rehearing.

NOTES- Most likely filed on behalf of LCRA. Concerns: Sections which affect service of GCD Board members. Assured this language is negotiable.

HB2735 (King) Would add Water Code Section 36.2515 requiring posting of security to file suit to challenge a rule of order of a district, and for the district to establish such amount by rule; security amount may be increased in order to contest a permit for parties other than the applicant; includes a formula to determine the amount of security required to appeal a district court decision.

HB3059 (King) Would amend 36.122(e) to increase export fees authorized to 20 cents per thousand gallons exported for both tax and fee based districts (fee-based districts could still opt to instead charge the 50% surcharge); to automatically increase the maximum allowable 20 cents per one thousand gallons by 3% per year; and to allow districts with export fee authority set forth in special law to use either method of assessing export fees. Would amend 36.207 (Use of Fees) to add "or to maintain the operability of wells significantly affected by groundwater development" to enumerated authorized uses of fees.

NOTES- Bill language is consistent with the TAGD Legislative Committee's adopted position paper on large-scale water transfers.

HB3278 (Price) Would amend 36.108(d-2) to provide that after public comment period, a district shall compile and submit materials to other district representatives a summary of relevant comments received, suggested revisions, suggested revisions and basis for those revisions, and any supporting materials, including new or revised GAM runs (italics new); would add (d-2a) to provide that such information must be made available on a website for at least 30 days; would amend (d-3) to provide that after 30 days, at meeting of district representatives shall review those submitted materials and receive public comment.

NOTES- This bill language is supported by TWCA.

HB3990 (Kacal) Would direct TWDB in cooperation with TCEQ to conduct a study (1) collecting existing data on GW/SW interaction, (2) identifying areas where lack of data/inadequate models, and (3) prioritizing development of enhanced modeling to collect more data/studies; would provide that TWDB and TCEQ may coordinate with GCDs, GMAs, river authorities, etc.; in conducting the study; would require TWDB and TCEQ to deliver a report summarizing findings and recommendations by Dec. 1 2024.

NOTES- Concerns with discussions of ownership of alluvial water.

HB4444 (King) Would amend Ch. 36 of the water code in various ways. Would amend definition of waste to exempt from the definition of waste groundwater that is discharged into a stream under a TCEQ bed and banks permit, adds concept that use be economically reasonable, and adds that failure to comply with TDLR rules on drilling/completing/maintaining well constitutes waste; would modify definition of use for a beneficial purpose to add that use must be made with reasonably efficient conservation practices; adds definition of conservation to Ch. 36; would modify 36.113(d)(6) listing of factors for district to consider includes whether the proposed use of water will avoid waste (in addition to requiring applicant agreeing to do so); Would require TCEQ in Ch. 11 to consider carriage losses and reasonableness of project when considering need to avoid waste when reviewing bed and banks permit applications; would limit applicability of subchapter F of Chapter 11 to areas outside GCD boundaries with certain exceptions; would repeal certain well-related provisions in 11.202, .203, 204, and .207 of the water code.

NOTES- Changes to definition of use for a beneficial purpose, adding definition of conservation, and modifying language in 36.133(d)(6) were included in TAGD's white paper on conservation/waste. Concerns over Bed and Banks language.

HB4532 (Kacal) & SB2397 (Zaffarini) Would add definition of "modeled available groundwater pumping" to 36.001, which means "the maximum amount of groundwater that the executive administrator determines may be produced in perpetuity from an aquifer on an annual basis using the best available science." Section 2 would amend 36.108(d)(3) to require GCDs to consider modeled available groundwater pumping as part of the consideration of hydrological conditions, including TERS, before voting on desired future conditions. It would not be calculated for the Ogallala aquifer by virtue of an exemption in Section 3 based on the available cost depletion deduction groundwater withdrawn for irrigation that is available based on the recharge rate of that aquifer.

NOTES- TAGD supported same language as this bill last session.

HB4891 (Rogers) Section 1 would amend 36.1071(e) to require a plan explanation of how district is monitoring and tracking achievement of DFC in management plan and how it has performed over past five-year period; Section 2 would amend 36.108 to require inclusion of a discussion at annual GMA meeting of how districts are implementing DFCs through their rules, would require a plain explanation for any changed DFCs in explanatory report and include a summary of how each district is achieving DFC through implementation and enforcement of rules; would add 108(d-4) requiring DFCs be adopted for a 50-year period and for five-year periods within that 50-year period, and authorizing additional time periods.

HB5052 (Gerdes) Would add exempt registered wells to the considerations before granting a permit under 36.113(d).

NOTES- TAGD supported same language as this bill last session.

SB28 (Perry) & HB 10 (King) Would add to Water Code Ch. 15 the "New Water Supply for Texas Fund" that can be funded in a variety of ways to be used to finance projects that will lead to the acquisition or creation of 7maf of new water by 2033; may only provide low interest loans for water supply projects including water from another state and infrastructure to transport such water; desalination (marine and brackish), produced water, and research into technology to lead to development of new water; fund can provide zero/negative interest loans, or loan forgiveness for those purposes at board's discretion; projects can be partnerships with private entity if project includes a political subdivision; board shall adopt rules to administer. Would add to CH. 15 of Water Code "Texas Water Fund" outside of general revenue fund (subject to voter approval of constitutional amendment) to allow board to disburse \$ to other TWDB funds; a portion is to be used for water infrastructure projects, rural political subdivisions, municipalities under 150k, permit-ready infrastructure, water conservation awareness; creates advisory committee. Amends Ch. 16 water code to create technical assistance program for retail public utilities for water loss audits and to mitigate loss.

NOTES- Main water priority of leadership; invests in new water supplies.