

## Legislative Committee Report 6-8-23 (updated 6-12-23)

### Bills that passed

Actions taken are noted in red with yellow highlight. All others are pending.

**HB1971 (Ashby) & SB638 (Springer)** Would amend Ch. 36 in various ways. Section one amends 36.053 concerning number of eligible directors required to make a decision on a permit application; Section 2 amends 36.058 concerning eligibility of a director with a conflict of interest to participate in discussion or voting; 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 heading for 36.412; Section 6 amends 36.412 to require a request in writing, and a party seeking to appeal a decision by the board must request findings of fact and law in writing unless the board issues the same as part of a decision, and requires the board to consolidate requests for rehearing when pertaining to similar matters; 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.

Governor signed 6-9-23. Becomes law immediately.

**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 following public hearings; 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. Does not affect ability of districts governed by a special law concerning export fees.

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

Filed by Governor without signature 6-13-23. Becomes law 9-1-23.

**HB2443 (Harris)** Would amend Ch. 36 to establish procedures whereby a person could petition a GCD to initiate rulemaking.

NOTES- very similar to previously filed HB668 of 87<sup>th</sup> Legislature.

Governor signed 6-10-23. Becomes law 9-1-23.

**SB2440 (Perry)** Would require plats for subdivisions of land which list groundwater as the supply of water to include proof of groundwater supply in a groundwater availability certification by municipalities and counties, except where determination of availability of groundwater based on credible evidence.

NOTES- Would require engagement of GCD in this evaluation except in Carrizo-Wilcox and Gulf Coast Aquifers, or subdivision divides tract into 10 lots or less.

**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.

Governor signed 6-11-23. Becomes law immediately.

**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. Does not affect ability of GCD to enforce spacing of rules and limits time for exemption to 180 days.

**HB 3440 (Canales)** Amends open meeting law. Requires governmental bodies to post meeting agendas to website.

Governor signed 6-13-23. Becomes law 9-1-23.

**SB1893 (Birdwell)** Prohibits use of certain social media applications and services on devices owned or leased by governmental entities. Target application is "TikTok" or any successor application developed or provided by ByteDance Limited.

**SB232 (Hinojosa)** Provides automatic removal from office of an officer of a political subdivision for guilt in committing certain criminal offenses.

**SB28/SJR75 (Perry/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.

Governor signed 6-9-23. Becomes law- variable.

### **Bills that did not pass from the legislature**

**-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

**Update- this bill was passed out of the Senate and was assigned to House Natural Resources (HNRC) where it was amended with house bills that did not make it through the Senate and did not make it to the floor of the House before end of session.**

**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.

**Update- this bill was heard in Senate Water, Agriculture, and Rural Affairs (SWARAC) and left pending in committee.**

**HB4445 (Gerdes)** Identical to SB1988 above. 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.

**Update- this bill was heard in HNRC 4-25-23 and was left pending in committee.**

**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.

**Update- this bill passed out of the House and referred to SWARAC with no further action.**

**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.

**Update- CSHB3990 passed out of the House and referred to SWARAC with no further action.**

**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.

Update- CSHB4444 removed references to Ch. 11 and bed and banks permits. CSHB4444 passed out of the House and referred to SWARAC with no further action.

**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.

Update- HB4532 passed out of the House and referred to SWARAC with no further action.  
SB2397 was pending in committee awaiting HB4532.

**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.

Update- was voted out of committee as substituted and did not make it through House calendars.

**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.

Update- passed out of the House and referred to SWARAC with no further action.

**HB5302 (Kacal)** Relating to a petition for inquiry of a GCD before TCEQ.

NOTES- Would allow for reimbursement of expenses to GCD providing member of the review panel, and provide that TWDB and OPIC of TCEQ could provide support to the review panel.

Update- CSHB5302 passed out of the House and referred to SWARAC with no further action.