



# **TEXAS WATER CODE**

## **CHAPTER 36**

### **GROUNDWATER CONSERVATION DISTRICTS**

#### **AS MODIFIED BY THE**

#### **84th TEXAS LEGISLATURE (2015)**

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**TEXAS WATER CODE  
CHAPTER 36  
GROUNDWATER CONSERVATION DISTRICTS  
AS MODIFIED BY THE 83rd TEXAS LEGISLATURE 2013**

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## SUBCHAPTER A. GENERAL PROVISIONS

### Sec. 36.001. DEFINITIONS

In this chapter:

- (1) "District" means any district or authority created under Section 52, Article 111, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "Executive director" means the executive director of the commission.
- (4) "Executive administrator" means the executive administrator of the Texas Water Development Board.
- (4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.
- (5) "Groundwater" means water percolating below the surface of the earth.
- (6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.
- (7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.
- (8) "Waste" means any one or more of the following:
  - A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
  - (B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
  - (C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
  - (D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

- (E) willfully ~~wilfully~~ or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;
  - (F) groundwater pumped for irrigation that escapes as irrigation tail water onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
  - (G) for water produced from an artesian well, "waste" also has the meaning assigned by Section 11.205.
- (9) "Use for a beneficial purpose" means use for:
- (A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
  - (B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
  - (C) any other purpose that is useful and beneficial to the user.
- (10) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.
- (11) "Board" means the board of directors of a district.
- (12) "Director" means a member of a board.
- (13) "Management area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.
- (14) "Priority groundwater management area" means an area designated and delineated by the commission under Chapter 35 as an area experiencing or expected to experience critical groundwater problems.
- (15) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.
- (16) "Loan fund" means the groundwater conservation district loan assistance fund created under Section 36.371.
- (17) Repealed by Acts 2005, 79th Leg., Ch. 970, Sec. 18.



- (18) "Public water supply well" means, for purposes of a district governed by this chapter, a well that produces the majority of its water for use by a public water system.
- (19) "Agriculture" means any of the following activities:
- (A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
  - (B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
  - (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
  - (D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
  - (E) wildlife management; and
  - (F) raising or keeping equine animals.
- (20) "Agricultural use" means any use or activity involving agriculture, including irrigation.
- (21) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.
- (22) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.
- (23) "River basin" means a river or coastal basin designated as a river basin by the board under Section 16.05 1. The term does not include waters of the bays or arms originating in the Gulf of Mexico.
- (24) "Total aquifer storage" means the total calculated volume of groundwater that an aquifer is capable of producing.

- (25) "Modeled available groundwater" means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.
- (26) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.
- (27) "Inflows" means the amount of water that flows into an aquifer from another formation.
- (28) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.
- (29) "Evidence of historic or existing use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by district rule that regulates groundwater based on historic use. Evidence in the form of oral or shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- (30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.
- (31) "Operating permit" as used in this chapter means any type of permit issued by a district that relates to the operation of or production from a water well, which may include authorization to drill or complete a water well if the district does not require a separate permit for drilling or completing a water well.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.20, eff. Sept. 1, 1997; Acts 1999, 76<sup>th</sup> Leg., Ch. 62, Sec. 18.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., Ch. 966, Sec. 2.29, eff. Sept. 1, 2001; Acts 2001, 77th Leg., Ch. 1234, Sec. 34, eff. Sept. 1, 2001; Acts 2003, 78th Leg., Ch. 1275, Sec. 2(147), eff. Sept. 1, 2003; Acts 2005, 79th Leg., Ch. 970, Sec. 2, 18, eff. Sept. 1, 2005; Acts 2005, 79th Leg., Ch. 1116, Sec. 1, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 18, Sec. 1, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., Ch. 1233, Sec. 14, eff. Sept. 1, 2011; Amended by Acts, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.0015. PURPOSE**

- (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.
- (b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI,

Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.21, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.30, eff. Sept. 1, 2001; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

## **Sec. 36.002. OWNERSHIP OF GROUNDWATER**

- (a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.
- (b) The groundwater ownership and rights described by this section:
  - ~~(1)~~—entitle the landowner, including a landowner's lessees, heirs, or assigns, to:
    - (1) drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence; and,
    - (2) have any other right recognized under common law.
  - ~~(b-1)~~ The groundwater ownership and rights described by this section do , ~~but does not:~~
    - (1) entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of that landowner's land; or and
    - (2) ~~do not~~ affect the existence of common law defenses or other defenses to liability under the rule of capture.
- (c) Nothing in this code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by this section.
- (d) This section does not:
  - (1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;
  - (2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

- (3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.
- (e) This section does not affect the ability to regulate groundwater in any manner authorized under:
- (1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;
  - (2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District; and
  - (3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.31, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. 11 16, Sec. 2, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 1207, Sec. 1, eff. Sept. 1, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 16, 2015.

## **SUBCHAPTER B. CREATION OF DISTRICT**

### **Sec. 36.011. METHOD OF CREATING DISTRICT**

- (a) A groundwater conservation district may be created under and subject to the authority, conditions, and restrictions of Section 59, Article XVI, Texas Constitution.
- (b) The commission has exclusive jurisdiction over the creation of districts.

Added by Acts 1995, 75<sup>th</sup> Leg., Ch. 933, Sect. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77<sup>th</sup> Leg., Ch. 966, Sect. 2.32, eff. Sept. 1, 2001.

### **Sec. 36.012. COMPOSITION OF DISTRICT**

- (a) A district may include all or part of one or more counties, cities, districts, or other political subdivisions.
- (b) A district may not include territory located in more than one county except on a majority vote of the voters residing within the territory in each county sought to be included in the district at an election called for that purpose.
- (c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a priority groundwater management area.
- (d) A district may consist of separate bodies of land separated by land not included in the district.
- (e) A majority of the voters in a segregated area must approve the creation of the district before that area may be included in the district.

(f) This section does not apply to districts created under Section 36.0151.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., Ch. 966, Sec. 2.33, eff. Sept. 1, 2001.

### **Sec. 36.013. PETITION TO CREATE DISTRICT**

- (a) A petition requesting creation of a district must be filed with the commission for review and certification under Section 36.015.
- (b) The petition filed pursuant to this section must be signed by:
  - (1) a majority of the landowners within the proposed district, as indicated by the county tax rolls; or
  - (2) if there are more than 50 landowners in the proposed district, at least 50 of those landowners.
- (c) The petition must include:
  - (1) the name of the proposed district;
  - (2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;
  - (3) the purpose or purposes of the district;
  - (4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated costs of those projects according to the persons filing the projects if the projects are to be funded by the sale of bonds or notes;
  - (5) the names of at least five individuals qualified to serve as temporary directors; and
  - (6) financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., Ch. 966, Sec. 2.34, eff. Sept. 1, 2001.

### **Sec. 36.014. NOTICE AND PUBLIC MEETING ON DISTRICT CREATION**

- (a) If a petition is filed under Section 36.013, the commission shall give notice of the application and shall conduct a public meeting in a central location within the area of the proposed district on the application not later than the 60th day after the date the commission issues notice. The notice must contain the date, time, and location of the public meeting and must be published in one or more newspapers of general circulation in the area of the proposed district.

- (b) If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1070, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., Ch. 966, Sec. 2.35, eff. Sept. 1, 2001.

**Sec. 36.015. COMMISSION CERTIFICATION AND ORDER**

- (a) Not later than the 90th day after the date the commission holds a public meeting on a petition under Section 36.014, the commission shall certify the petition if the petition is administratively complete. A petition is administratively complete if it complies with the requirements of Sections 36.013(b) and (c).
- (b) The commission may not certify a petition if the commission finds that the proposed district cannot be adequately funded to carry out its purposes based on the financial information provided in the petition under Section 36.013(c)(6) or that the boundaries of the proposed district do not provide for the effective management of the groundwater resources. The commission shall give preference to boundary lines that are coterminous with those of a groundwater management area but may also consider boundaries along existing political subdivision boundaries if such boundaries would facilitate district creation and confirmation.
- (c) If a petition proposes the creation of a district in an area, in whole or in part, that has not been designated as a management area, the commission shall provide notice to the Texas Water Development Board. On the receipt of notice from the commission, the Texas Water Development Board shall initiate the process of designating a management area for the area of the proposed district not included in a management area. The commission may not certify the petition until the Texas Water Development Board has adopted a rule whereby the boundaries of the proposed district are coterminous with or inside the boundaries of a management area.
- (d) If the commission does not certify the petition, the commission shall provide to the petitioners, in writing, the reasons for not certifying the petition. The petitioners may resubmit the petition, without paying an additional fee, if the petition is resubmitted within 90 days after the date the commission sends the notice required by this subsection.
- (e) If the commission certifies the petition as administratively complete, the commission shall issue an order, notify the petitioners, and appoint temporary directors as provided by Section 36.016.
- (f) Refusal by the commission to certify a petition to create a district does not invalidate or affect the designation of any management area.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.36, eff. Sept. 1, 2001.

**Sec. 36.0151. CREATION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA**

- (a) If the commission is required to create a district under Section 35.012(b), it shall, without an evidentiary hearing, issue an order creating the district and shall provide in its order that temporary directors be appointed under Section 36.0161 and that an election be called by the temporary directors to authorize the district to assess taxes and to elect permanent directors.
- (b) The commission shall notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order creating the district.
- (c) The commission may amend the territory in an order issued under Section 35.008 or this section to adjust for areas that, in the time between when the order was issued under Section 35.008 and the order is issued under this section, have:
  - (1) been added to an existing district or created as a separate district; or
  - (2) not been added to an existing district or created as a separate district.
- (d) In making a modification under Subsection (c), the commission may recommend:
  - (1) creation of a new district in the area; or
  - (2) that the area be added to a different district.
- (e) Except as provided by Section 35.013(h), a change in the order under Subsection (c) does not affect a deadline under Section 35.012 or 35.013.
- (f) Before September 1, ~~2021~~2015, the commission may not create a groundwater conservation district under this section in a county:
  - (1) in which the annual amount of surface water used is more than 50 times the annual amount of groundwater produced;
  - (2) that is located in a priority groundwater management area; and
  - (3) that has a population greater than 2.3 million.
- (g) To the extent of a conflict between Subsection (f) and Section 35.012, Subsection (f) prevails.
- (h) The commission may charge an annual fee not to exceed \$500 to a county described by Subsection (f) for the purpose of studying compliance with that subsection in that county and the overall groundwater consumption in that county.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.37, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., Ch. 886, Sec. 5, eff. June 17, 2011; Acts 2011, 82nd Leg., 1<sup>st</sup> C.S. Ch. 4, Sec. 77, eff. Sept. 28, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.



**Sec. 36.016. APPOINTMENT OF TEMPORARY DIRECTORS**

- (a) If the commission certifies a petition to create a district under Section 36.015, the commission shall appoint the temporary directors named in the petition. If the commission dissolves a district's board under Section 36.303, it shall appoint five temporary directors.
- (b) If the commission creates a district under Section 36.0151, the county commissioners court or courts of the county or counties that contain the area of the district shall, within 90 days after receiving notification by the commission under Section 36.0151(b), appoint five temporary directors, or more if the district contains the territory of more than five counties, for the district's board using the method provided by Section 36.0161. A county commissioners court shall not make any appointments after the expiration of the 90-day period. If fewer than five temporary directors have been appointed at the expiration of the period, the commission shall appoint additional directors so that the board has at least five members.
- (c) Temporary directors appointed under this section shall serve until the initial directors are elected and have qualified for office or until the voters fail to approve the creation of the district.
- (d) If an appointee of the commission or of a county commissioners court fails to qualify or if a vacancy occurs in the office of temporary director, the commission or the county commissioners court, as appropriate, shall appoint an individual to fill the vacancy.
- (e) As soon as all temporary directors have qualified, the directors shall meet, take the oath of office, and elect a chairman and vice chairman from among their membership. The chairman shall preside at all meetings of the board and, in the chairman's absence, the vice chairman shall preside.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.25, eff. Sept. 1, 1977; Acts 2001, 77th Leg., Ch. 966, Sec. 2.38, eff. Sept. 1, 2001.

**Sec. 36.0161. METHOD FOR APPOINTING TEMPORARY DIRECTORS FOR DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA**

- (a) If a district in a priority groundwater management area is:
  - (1) contained within one county, the county commissioners court of that county shall appoint five temporary directors for the district;
  - (2) contained within two counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the three remaining directors to be apportioned as provided by Subsection (b);
  - (3) contained within three counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the two remaining directors to be apportioned as provided by Subsection (b);



- (4) contained within four counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointment of the remaining director to be apportioned as provided by Subsection (b); or
  - (5) contained within five or more counties, the county commissioners court of each county shall appoint one temporary director.
- (b) (1) In this subsection, "estimated groundwater use" means the estimate of groundwater use in acre-feet developed by the commission under Subsection (c) for the area of a county that is within the district.
- (2) The apportionment of appointments under Subsection (a) shall be made by the commission so as to reflect, as closely as possible, the proportion each county's estimated groundwater use bears to the sum of the estimated groundwater use for the district as determined under Subsection (c). The commission shall by rule determine the method it will use to implement this subdivision.
- (c) If a district for which temporary directors are to be appointed is contained within two, three, or four counties, the commission shall develop an estimate of annual groundwater use in acre-feet for each county area within the district.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.26, eff. Sept. 1, 1997.

**Sec. 36.017. CONFIRMATION AND DIRECTORS' ELECTION FOR DISTRICT IN A MANAGEMENT AREA**

- (a) For a district created under Section 36.015, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors.
- (b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.
- (c) The temporary directors shall publish notice of the election at least one time in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.
- (d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the \_\_\_\_\_ Groundwater Conservation District." If the district levies a maintenance tax for payment of its expenses, then an additional proposition shall be included with the following language: "The levy of a maintenance tax at a rate not to exceed \_\_\_\_\_ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

- (e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns and declare the result. The board shall file a copy of the election result with the commission.
- (f) If a majority of the votes cast at the election favor the creation of the district, the temporary board shall declare the district created and shall enter the result in its minutes.
- (g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h).
- (h) If the majority of the votes cast at the election are against the creation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.
- (i) If a majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set ~~production~~ fees authorized by this chapter 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.~~

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.39, eff. Sept. 1, 2001, Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. , Sec. , eff. June 10, 2015.

**Sec. 36.0171. TAX AUTHORITY AND DIRECTORS' ELECTION FOR DISTRICT IN A PRIORITY GROUNDWATER MANAGEMENT AREA**

- (a) For a district created under Section 36.0151, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to authorize the district to assess taxes and to elect permanent directors.
- (b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.
- (c) The temporary directors shall publish notice of the election at least once in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.
- (d) The ballot for the election must be printed to provide for voting for or against the proposition: "The levy of a maintenance tax by the \_\_\_\_\_ Groundwater Conservation District at a rate not to exceed \_\_\_\_\_ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.
- (e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns, declare the result, and turn over the operations of the district to the elected permanent directors. The board shall file a copy of the election result with the commission.

- (f) If a majority of the votes cast at the election favor the levy of a maintenance tax, the temporary board shall declare the levy approved and shall enter the result in its minutes.
- (g) If a majority of the votes cast at the election are against the levy of a maintenance tax, the temporary board shall declare the levy defeated and shall enter the result in its minutes.
- (h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set ~~production~~ fees authorized by this chapter 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.~~

Added by Acts 2001, 77th Leg., Ch. 966, Sec. 2.40, eff. Sept. 1, 2001. Amended by Acts 2011, 82nd Leg., Ch. 886, Sec. 6, eff. June 17, 2011, Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_, Sec. \_\_\_\_, eff. June 10, 2015.

### **Sec. 36.018. INCLUSION OF MUNICIPALITY**

- (a) If part of the territory to be included in a district is located in a municipality, a separate voting district may not be established in the municipality for the purpose of determining whether the municipality as a separate area is to be included in the district.
- (b) If for any other reason the territory in a municipality is established as a separate voting district, the failure by the voters in the municipal territory to confirm the creation of the district or the annexation of territory to a district does not prevent the territory in the municipality from being included in the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1995.

### **Sec. 36.019. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY**

- (a) A district, the major portion of which is located in one county, may not be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is approved by a majority of the voters of the other county voting in an election called for that purpose.
- (b) This section does not apply to districts created under Section 36.0151.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.41, eff. Sept. 1, 2001.

### **Sec. 36.020. BOND AND TAX PROPOSAL**

- (a) At an election to create a district, the temporary directors may include a proposition for the issuance of bonds or notes, the levy of taxes to retire all or part of the bonds or notes, and the levy of a maintenance tax. The maintenance tax rate may not exceed 50 cents on each \$100 of assessed valuation.
- (b) The board shall include in any bond and tax proposition the maximum amount of bonds or notes to be issued and their maximum maturity date.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.021. NOTIFICATION OF COUNTY CLERK**

Within 30 days following the creation of a district or any amendment to the boundaries of a district, the board of directors shall file with the county clerk of each county in which all or part of the district is located a certified copy of the description of the boundaries of the district. Each county clerk shall record the certified copy of the boundaries in the property records of that county.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**SUBCHAPTER C. ADMINISTRATION**

**Sec. 36.051. BOARD OF DIRECTORS**

- (a) The governing body of a district is the board of directors, which shall consist of not fewer than five and not more than 11 directors elected for four-year terms. The number of directors may be changed as determined by the board when territory is annexed by the district.
- (b) A member of a governing body of another political subdivision is ineligible for appointment or election as a director. A director is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision. This subsection does not apply to any district with a population less than 50,000.
- (c) Vacancies in the office of director shall be filled by appointment of the board. If the vacant office is not scheduled for election for longer than two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled director's election. The appointed director's term shall end on qualification of the director elected at that election.
- (d) In a district with a population of less than 50,000, the common law doctrine of incompatibility does not disqualify:
  - (1) a member of the governing body or officer of another political subdivision other than a municipality or county from serving as a director of the district; or
  - (2) a director of the district from serving as a member of the governing body or officer of another political subdivision other than a municipality or county.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 78, Sec. 1, eff. May 19, 2003.

**Sec. 36.052. OTHER LAWS NOT APPLICABLE**

- (a) Other laws governing the administration or operations of districts created under Section 52, Article 111, or Section 59, Article XVI, Texas Constitution, shall not apply to any district governed by this chapter. This chapter prevails over any other law in conflict or inconsistent with this chapter, except any special law governing a specific district shall prevail over this chapter.

- (b) Notwithstanding Subsection (a), the following provisions prevail over a conflicting or inconsistent provision of a special law that governs a specific district:
- (1) Sections 36.107-36.108;
  - (2) Sections 36.159-36.161; and
  - (3) Subchapter I.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.27, eff. Sept. 1, 1997.

### **Sec. 36.053. QUORUM**

A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.054. OFFICERS**

- (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice president, secretary, and any other officers or assistant officers as the board may deem necessary and begin the discharge of its duties.
- (b) After each directors' election, the board shall meet and elect officers.
- (c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and shall attest the president's signature on all documents.
- (d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.
- (e) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE**

- (a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.

- (b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.
- (c) Before beginning to perform the duties of office, each director shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.
- (d) The sworn statement shall be filed as prescribed by the constitution. The bond and oath shall be filed with the district and retained in its records. A duplicate original of the oath shall also be filed with the secretary of state within 10 days after its execution and need not be filed before the new director begins to perform the duties of office.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., Ch. 249, Sec. 1, eff. Aug. 30, 1999.

#### **Sec. 36.056. GENERAL MANAGER**

- (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.
- (b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the district and to determine the compensation to be paid all employees other than the general manager.
- (c) Except in a district that is composed of the territory of more than one county, a director may be employed as general manager of the district. The compensation of a general manager who also serves as a director shall be established by the other directors.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

#### **Sec. 36.057. MANAGEMENT OF DISTRICT**

- (a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.
- (b) The board shall set the compensation and terms for consultants.
- (c) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code.

- (d) The board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.
- (e) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.
- (f) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district.
- (g) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

#### **Sec. 36.058. CONFLICTS OF INTEREST**

A director of a district is subject to the provisions of ~~Chapter~~ Chapters 171 and 176, Local Government Code, relating to the regulation of conflicts of officers of local governments.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

#### **Sec. 36.059. GENERAL ELECTIONS**

- (a) All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this chapter. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.
- (b) The directors of the district shall be elected according to the precinct method as defined by Chapter 12, page 1105, Special Laws, Acts of the 46th Legislature, Regular Session, 1939. To be qualified to be elected as a director, a person must be a registered voter in the precinct that the person represents. If any part of a municipal corporation is a part of one precinct, then no part of the municipal corporation shall be included in another precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two or more precincts. In a multicounty district, not more than two of the five precincts may include the same municipal corporation or part of the same municipal corporation.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

#### **Sec. 36.060. FEES OF OFFICE; REIMBURSEMENT**

- (a) A director is entitled to receive fees of office of not more than \$250 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$9,000 a year.



- (b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.
- (c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.
- (d) Section 36.052(a) notwithstanding, Subsection (a) prevails over any other law in conflict with or inconsistent with that subsection, including a special law governing a specific district unless the special law prohibits the directors of that district from receiving a fee of office. If the application of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the district's board by resolution authorizes payment of the higher fees.
- (e) For liability purposes only, a director is considered a district employee under Chapter 101, Civil Practice and Remedies Code, even if the director does not receive fees of office voluntarily, by district policy, or through a statutory exception to this section.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., Ch. 1354, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., Ch. 966, Sec. 2.42, eff. Sept. 1, 2001; Acts 2003, 78th Leg., Ch. 905, Sec. 1, eff. June 20, 2003; Acts 2013, 83<sup>rd</sup> Leg., Ch. 931, Sec. 1, eff. Sept. 1, 2013; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 15, 2015.

### **Sec. 36.061. POLICIES**

- (a) Subject to the law governing the district, the board shall adopt the following in writing:
  - (1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;
  - (2) a policy relating to travel expenditures;
  - (3) a policy relating to district investments that ensures that:
    - (A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and
    - (B) periodic review is made of district investments to evaluate investment performance and security;
  - (4) policies and procedures for selection, monitoring, or review and evaluation of professional services; and
  - (5) policies that ensure a better use of management information, including:
    - (A) budgets for use in planning and controlling cost; and
    - (B) an audit or finance committee of the board.;~~and~~



~~(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that uses "Governmental Accounting and Financial Reporting Standards."~~

- (b) The state auditor may audit the records of any district if the state auditor determines that the audit is necessary.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 785, Sec. 5 1, eff. Sept. 1, 2003; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.062. OFFICES AND MEETING PLACES**

- (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.
- (b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.063. NOTICE OF MEETINGS**

- (a) Except as provided by Subsections (b) and (c), notice of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.
- (b) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:
- (1) the proposed desired future conditions and a list of any other agenda items;
  - (2) the date, time, and location of the meeting or hearing;
  - (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
  - (4) the names of the other districts in the district's management area; and
  - (5) information on how the public may submit comments.
- (c) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Acts 2011, 82nd Leg., Ch. 1233, Sec. 15, eff. Sept. 1, 2011.

**Sec. 36.064. MEETINGS**

- (a) The board shall hold regular meetings at least quarterly. It may hold meetings at other times as required for the business of the district.
- (b) Meetings shall be conducted and notice of meetings shall be posted in accordance with the Open Meetings Act, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the Open Meetings Act, Chapter 55 1, Government Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.065. RECORDS**

- (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.
- (b) The records of each district are the property of the district and are subject to Chapter 552, Government Code.
- (c) The preservation, storage, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 20 1, Local Government Code, and rules adopted thereunder.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.066. SUITS**

- (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. A district board member is immune from suit and immune from liability for official votes and official actions. To the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations, this subsection provides immunity for those actions. All courts shall take judicial notice of the creation of the district and of its boundaries.
- (b) Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.
- (c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon a district may be served.
- (d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:
  - (1) the validity of the creation and boundaries of a district;
  - (2) any bonds or other obligations issued by a district; or
  - (3) the validity or the authorization of a contract with the United States by a district.

- (e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general.
- (f) A district shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.
- (g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant, in the interests of justice and as provided by Subsection (h), in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.
- (h) If the district prevails on some, but not all, of the issues in the suit, the court shall award attorney's fees and costs only for those issues on which the district prevails. The district has the burden of segregating the attorney's fees and costs in order for the court to make an award.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.43, eff. Sept. 1, 2001; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015, .

### **Sec. 36.067. CONTRACTS**

- (a) A district shall contract, and be contracted with, in the name of the district.
- (b) A district may purchase property from any other governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.
- (c) A district may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 436, Sec. 8, eff. May 28, 2001.

### **Sec. 36.068. EMPLOYEE BENEFITS**

- (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.
- (b) The board may establish a public retirement system in accordance with the provisions of chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).
- (c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and may adopt any plan, rule, or

regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

- (d) The board may establish a sick leave pool for employees of the district in the same manner as that authorized for the creation of a sick leave pool for state employees by Subchapter A, Chapter 66 1, Government Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., Ch. 1354, Sec. 2, eff. Sept. 1, 1999.

## **SUBCHAPTER D. POWERS AND DUTIES**

### **Sec. 36.101. RULEMAKING POWER**

- (a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule under this chapter, a district shall:
- (1) consider all groundwater uses and needs;
  - (2) develop rules that are fair and impartial;
  - (3) consider the groundwater ownership and rights described by Section 36.002;
  - (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;
  - (5) consider the goals developed as part of the district's management plan under Section 36.1071; and
  - (6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.
- (a-1) Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.
- (b) Except as provided by Section 36.1011, after notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board.
- (c) The board shall compile its rules and make them available for use and inspection at the district's principal office.
- (d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

- (1) post notice in a place readily accessible to the public at the district office;
  - (2) provide notice to the county clerk of each county in the district;
  - (3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;
  - (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i); and
  - (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.
- (e) The notice provided under Subsection (d) must include:
- (1) the time, date, and location of the rulemaking hearing;
  - (2) a brief explanation of the subject of the rulemaking hearing; and
  - (3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.
- (f) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
- (g) A district may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:
- (1) the person's name;
  - (2) the person's address; and
  - (3) whom the person represents, if the person is not at the hearing in the person's individual capacity.
- (h) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- (i) A person may submit to the district a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.
- (j) A district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory

committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

- (k) Failure to provide notice under Subsection (d)(4) does not invalidate an action taken by the district at a rulemaking hearing.
- (l) Subsections (b)-(k) do not apply to the Edwards Aquifer Authority.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1994. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.44, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. 970, Sec. 3, eff. Sept. 1, 2005; Acts 2005, 79th Leg., Ch. 1116, Sec. 3, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 1207, Sec. 2, eff. Sept. 1, 2011.

### **Sec. 36.1011. EMERGENCY RULES**

- (a) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:
  - (1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
  - (2) prepares a written statement of the reasons for its finding under Subdivision (1).
- (b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.
- (c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.
- (d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.
- (e) This section does not apply to the Edwards Aquifer Authority.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 4, eff. Sept. 1, 2005.

### **Sec. 36.102. ENFORCEMENT OF RULES**

- (a) A district may enforce this chapter and its rules against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- (b) The board by rule may set reasonable civil penalties against any person for breach of any rule of the district not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.
- (c) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced against any person by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.
- (d) If the district prevails in any suit to enforce its rules, the district may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for

expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

- (e) In an enforcement action by a district against any person that is a governmental entity for a violation of district rules, the limits on the amount of fees, costs, and penalties that a district may impose under Section 36.122, 36.205, or this section, or under a special law governing a district operating under this chapter, constitute a limit of liability of the governmental entity for the violation. This subsection shall not be construed to prohibit the recovery by a district of fees and costs under Subsection (d) in an action against any person that is a governmental entity.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 548, Sec. 2, eff. June 11, 2001; Acts 2001, 77th Leg., Ch. 966, Sec. 2.45, eff. Sept. 1, 2001; Acts 2009, 81<sup>st</sup> Leg., Ch. 425, Sec. 1, eff. June 19, 2009.

### **Sec. 36.103. IMPROVEMENTS AND FACILITIES**

- (a) A district may build, acquire, or obtain by any lawful means any property necessary for the district to carry out its purpose and the provisions of this chapter.
- (b) A district may:
  - (1) acquire land to erect dams or to drain lakes, draws, and depressions;
  - (2) construct dams;
  - (3) drain lakes, depressions, draws, and creeks;
  - (4) install pumps and other equipment necessary to recharge a groundwater reservoir or its subdivision; and
  - (5) provide necessary facilities for water conservation purposes.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 560, Sec. 1, eff. Sept. 1, 2003.

### **Sec. 36.104. PURCHASE, SALE, TRANSPORTATION, AND DISTRIBUTION OF WATER**

A district may purchase, sell, transport, and distribute surface water or groundwater.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 560, Sec. 2, eff. Sept. 1, 2003.

### **Sec. 36.105. EMINENT DOMAIN**

- (a) A district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property if that property interest is:
  - (1) within the boundaries of the district; and
  - (2) necessary for conservation purposes, including recharge and reuse.
- (b) The power of eminent domain authorized in this section may not be used for the condemnation of land for the purpose of:



- (1) acquiring rights to groundwater, surface water or water rights; or
  - (2) production, sale, or distribution of groundwater or surface water.
- (c) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit a bond as provided by Section 21.021(a), Property Code.
- (d) In a condemnation proceeding brought by a district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.
- (e) In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission or distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived from the old facility.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 560, Sec. 3, eff. Sept. 1, 2003.

### **Sec. 36.106. SURVEYS**

A district may make surveys of the groundwater reservoir or subdivision and surveys of the facilities in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by a reservoir or its subdivision.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 560, Sec. 4, eff. Sept. 1, 2003.

### **Sec. 36.107. RESEARCH**

A district may carry out any research projects deemed necessary by the board.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.28, eff. Sept. 1, 1997.

### **Sec. 36.1071. MANAGEMENT PLAN**

- (a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a management plan that addresses the following management goals, as applicable:
- (1) providing the most efficient use of groundwater;
  - (2) controlling and preventing waste of groundwater;
  - (3) controlling and preventing subsidence;
  - (4) addressing conjunctive surface water management issues;



- (5) addressing natural resource issues;
  - (6) addressing drought conditions;
  - (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and
  - (8) addressing the desired future conditions adopted by the district under Section 36.108.
- (b) The management plan, or any amendments to the plan, shall be developed using the district's best available data and forwarded to the regional water planning group for use in their planning process.
- (c) The commission and the Texas Water Development Board shall provide technical assistance to a district in the development of the management plan required under Subsection (a) which may include, if requested by the district, a preliminary review and comment on the plan prior to final approval by the board. If such review and comment by the commission is requested, the commission shall provide comment not later than 30 days from the date the request is received.
- (d) The commission shall provide technical assistance to a district during its initial operational phase. If requested by a district, the Texas Water Development Board shall train the district on basic data collection methodology and provide technical assistance to districts.
- (e) In the management plan described under Subsection (a), the district shall:
- (1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);
  - (2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;
  - (3) include estimates of the following:
    - (A) modeled available groundwater in the district based on the desired future condition established under Section 36.108;
    - (B) the amount of groundwater being used within the district on an annual basis;
    - (C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;
    - (D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

- (E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;
  - (F) the projected surface water supply in the district according to the most recently adopted state water plan; and
  - (G) the projected total demand for water in the district according to the most recently adopted state water plan; and
- (4) consider the water supply needs and water management strategies included in the adopted state water plan.
- (f) The district shall adopt rules necessary to implement the management plan. Prior to the development of the management plan and its approval under Section 36.1072, the district may not adopt rules other than rules pertaining to the registration and interim permitting of new and existing wells and rules governing spacing and procedure before the district's board; however, the district may not adopt any rules limiting the production of wells, except rules requiring that groundwater produced from a well be put to a nonwasteful, beneficial use. The district may accept applications for permits under Section 36.113, provided the district does not act on any such application until the district's management plan is approved as provided in Section 36.1072.
- (g) The district shall adopt amendments to the management plan as necessary. Amendments to the management plan shall be adopted after notice and hearing and shall otherwise comply with the requirements of this section.
- (h) In developing its management plan, the district shall use the groundwater availability modeling information provided by the executive administrator together with any available site-specific information that has been provided by the district to the executive administrator for review and comment before being used in the plan.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Redesignated from 36.107(b) and (c) and amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.46, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. 970, Sec. 5, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 18, Sec. 2, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., Ch. 17, Sec. 1, eff. April 29, 2011; Acts 2011, 82nd Leg., Ch. 1233, Sec. 16, eff. Sept. 1, 2011.

### **Sec. 36.1072. TEXAS WATER DEVELOPMENT BOARD REVIEW AND APPROVAL OF MANAGEMENT PLAN**

- (a) In this section, "development board" means the Texas Water Development Board.
- (a-1) A district shall, not later than three years after the creation of the district or, if the district required confirmation, not later than three years after the election confirming the district's creation, submit the management plan required under Section 36.1071 to the executive administrator for review and approval.
- (b) Within 60 days of receipt of a district's management plan adopted under Section 36.1071, readopted under Subsection (e) or (g) of this section, or amended under Section 36.1073,

the executive administrator shall approve the district's plan if the plan is administratively complete. A management plan is administratively complete when it contains the information required to be submitted under Section 36.1071 (a) and (e). The executive administrator may determine whether conditions justify waiver of the requirements under Section 36.1071(e)(4).

- (c) Once the executive administrator has approved a district's management plan:
  - (1) the executive administrator may not revoke but may require revisions to the approved management plan as provided by Subsection (g); and
  - (2) the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material, but a request for additional information does not render the management plan unapproved.
- (d) A management plan takes effect on approval by the executive administrator or, if appealed, on approval by the development board.
- (e) The district may review the plan annually and must review and readopt the plan with or without revisions at least once every five years. The district shall provide the readopted plan to the executive administrator not later than the 60th day after the date on which the plan was readopted. Approval of the preceding management plan remains in effect until:
  - (1) the district fails to timely readopt a management plan;
  - (2) the district fails to timely submit the district's readopted management plan to the executive administrator; or
  - (3) the executive administrator determines that the readopted management plan does not meet the requirements for approval, and the district has exhausted all appeals to the Texas Water Development Board or appropriate court.
- (f) If the executive administrator does not approve the district's management plan, the executive administrator shall provide to the district, in writing, the reasons for the action. Not later than the 180th day after the date a district receives notice that its management plan has not been approved, the district may submit a revised management plan for review and approval. The executive administrator's decision may be appealed to the development board. If the development board decides not to approve the district's management plan on appeal, the district may request that the conflict be mediated. The district and the board may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the parties do not resolve the conflict through mediation, the decision of the development board not to approve the district's management plan may be appealed to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo. The commission shall not take enforcement action

against a district under Subchapter I until the latest of the expiration of the 180-day period, the date the development board has taken final action withholding approval of a revised management plan, the date the mediation is completed, or the date a final judgment upholding the board's decision is entered by a district court. An enforcement action may not be taken against a district by the commission or the state auditor under Subchapter I because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict before the development board, in mediation, or in court. Rules of the district continue in full force and effect until all appeals under this subsection have been exhausted and the final judgment is adverse to the district.

- (g) A person with a legally defined interest in groundwater in a district, or the regional water planning group, may file a petition with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section 36.1071 and the state water plan. If a conflict exists, the development board shall provide technical assistance to and facilitate coordination between the involved person or regional water planning group and the district to resolve the conflict. Not later than the 45th day after the date the person or the regional water planning group files a petition with the development board, if the conflict has not been resolved, the district and the involved person or regional planning group may mediate the conflict. The district and the involved person or regional planning group may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved person or regional planning group cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed. The development board action under this provision may be consolidated, at the option of the board, with related action under Section 16.053(p). If the development board determines that resolution of the conflict requires a revision of the approved management plan, the development board shall provide information to the district. The district shall prepare any revisions to the plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location within the district. The district shall consider all public and development board comments, prepare, revise, and adopt its management plan, and submit the revised management plan to the development board for approval. On the request of the district or the regional water planning group, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e). If the groundwater conservation district disagrees with the decision of the development board under this subsection, the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.47, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. 970, Sec. 6, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 17, Sec. 2, eff. April 29, 2011.

### **Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN**

Any amendment to the management plan shall be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. The executive administrator shall review and approve any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., Ch. 970, Sec. 7, eff. Sept. 1, 2005.

### **Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA**

- (a) In this section:
- (1) "Development board" means the Texas Water Development Board.
  - (2) "District representative" means the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.
- (b) If two or more districts are located within the boundaries of the same management area, each district shall forward a copy of that district's new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.
- (c) The district representatives shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans, the accomplishments of the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:
- (1) the goals of each management plan and its impact on planning throughout the management area;
  - (2) the effectiveness of the measures established by each district's management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;
  - (3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and
  - (4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.
- (d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:

- (1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
  - (2) the water supply needs and water management strategies included in the state water plan;
  - (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
  - (4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
  - (5) the impact on subsidence;
  - (6) socioeconomic impacts reasonably expected to occur;
  - (7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;
  - (8) the feasibility of achieving the desired future condition; and
  - (9) any other information relevant to the specific desired future conditions.
- (d-1) After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the~~The~~ districts may establish different desired future conditions for:
- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
  - (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.
- (d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant



comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

- (d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:
- (1) identify each desired future condition;
  - (2) provide the policy and technical justifications for each desired future condition;
  - (3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;
  - (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
  - (5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.
- (d-4) As soon as possible after a district receives the desired future conditions resolution and explanatory report under Subsection (d-3), the district shall adopt the desired future conditions in the resolution and report that apply to the district.
- (d-5) Notwithstanding Subsection (d) and regardless of the date on which a proposal may have been voted on before September 1, 2013, a proposal for the adoption of desired future conditions for the relevant aquifers within a management area is not required before May 1, 2016. This subsection does not prevent districts in a management area from voting on a proposal for the adoption of desired future conditions for the relevant aquifers within their management area before May 1, 2016. This subsection expires January 1, 2018.
- (e) Except as provided by this section, a joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint meeting must be provided at least 10 days before the date of the meeting by:
- (1) providing notice to the secretary of state;
  - (2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and

- (3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.
- (e-1) The secretary of state and the county clerk of each county described by Subsection (e) shall post notice of the meeting in the manner provided by Section 551.053, Government Code.
- (e-2) Notice of a joint meeting must include:
  - (1) the date, time, and location of the meeting;
  - (2) a summary of any action proposed to be taken;
  - (3) the name of each district located wholly or partly in the management area; and
  - (4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.
- (e-3) The failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.29, eff. Sept. 1, 1997; Acts 2001, 77th Leg., Ch. 519, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., Ch. 966, Sec. 2.48, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. 970, Sec. 8, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 18, Sec. 3, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., Ch. 17, Sec. 3, eff. April 29, 2011; Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011; Acts 2013, 83<sup>rd</sup> Leg., Ch. 785, Sec. 1, eff. Sept. 1, 2013; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

### **Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING**

- (a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.
- (b) During the joint planning process under Section 36.108, the district representatives may appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Added by Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011.

### **~~Sec. 36.1082. PETITION FOR INQUIRY~~**

- ~~(a) In this section, "affected person" means, with respect to a management area:~~
  - ~~(1) an owner of land in the management area;~~
  - ~~(2) a district in or adjacent to the management area;~~
  - ~~(3) a regional water planning group with a water management strategy in the management area;~~
  - ~~(4) a person who holds or is applying for a permit from a district in the management area;~~



- (5) a person who has groundwater rights in the management area; or
  - (6) any other person defined as affected by commission rule.
- (b) ~~An affected person may file a petition with the commission 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;
  - (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 desired future conditions adopted by the management area during the joint planning process;
  - (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) ~~Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:~~
- (1) dismiss the petition if the commission 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) ~~If the petition is not dismissed under Subsection (c), the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.~~
- (e) ~~Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the~~

~~petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.~~

~~(f) In its report, the review panel shall include:~~

- ~~(1) a summary of all evidence taken in any hearing on the petition;~~
- ~~(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and~~
- ~~(3) any other information the panel considers appropriate.~~

~~(g) The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.~~

~~As Added by Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011; Repealed by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.~~

### **Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS**

(a) In this section:

- (1) "Affected person" has the meaning assigned by Section 36.1082.
- (2) "Development" development board means the Texas Water Development Board.
- (3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 120<sup>th</sup> day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected A person with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area may file a petition with the district requiring that the district contract with the office to conduct a hearing development board appealing the reasonableness approval of the desired future condition conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

~~(e) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.~~

~~(d) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.~~

- (e) Not later than the 10<sup>th</sup> day after receiving a petition described by Subsection (b), the district shall submit a copy of the petition to the development board. On receipt of the petition, the development board shall conduct:
- (1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and
  - (2) a study containing scientific and technical analysis of the desired future condition, including consideration of:
    - (A) the hydrogeology of the aquifer;
    - (B) the explanatory report provided to the development board under Section 36.108(d-3);
    - (C) the factors described under Section 36.108(d); and
    - (D) any relevant:
      - (i) groundwater availability models;
      - (ii) published studies;
      - (iii) estimates of total recoverable storage capacity;
      - (iv) average annual amounts of recharge, inflows, and discharge of groundwater; or
      - (v) information provided in the petition or available to the development board.
- (f) The development board must complete and deliver to the office a study described by Subsection (e)(2) not later than the 120<sup>th</sup> day after the date the development board receives a copy of the petition.
- (g) For the purposes of a hearing conducted under Subsection (b):
- (1) The office shall consider the study described by Subsection (e)(2) and the desired future conditions explanatory report submitted to the development board under Section 36.108(d-3) to be part of the administrative record; and
  - (2) The development board shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.
- (h) Not later than the 60<sup>th</sup> day after receiving a petition under Subsection (b), the district shall:
- (1) contract with the office to conduct the contested case hearing requested under subsection (b); and

- (2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.
- (i) A hearing under Subsection (b) must be held:
  - (1) at a location described by Section 36.403(c); and
  - (2) in accordance with Chapter 2001, Government Code, and the rules of the office.
- (j) During the period between the filing of the petition and the delivery of the study described by Subsection (e)(2), the district may seek the assistance of the center for Public Policy Dispute resolution, the development board, or another alternative dispute resolution system to mediate the issues raised in the petition. If the district and the petitioner cannot resolve the issues raised in the petition, the office will proceed with a hearing as described by this section.
- (k) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In accordance with rules adopted by the district and the office, the district shall provide:
  - (1) General notice of the hearing; and
  - (2) Individual notice of the hearing to:
    - (A) the petitioner;
    - (B) any person who has requested notice;
    - (C) each nonparty district and regional water planning group located in the same management area as a district named in the petition;
    - (D) the development board; and
    - (E) the commission.
- (l) Before a hearing conducted under this section, the office shall hold a prehearing conference to determine preliminary matters including:
  - (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
  - (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
  - (3) which affected persons shall be named as parties to the hearing.
- (m) The petitioner shall pay the costs associated with the contract for the hearing under this section. The petitioner shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the office may assess costs to one or more of the parties participating in the hearing and the district shall refund any excess money to the petitioner. The office shall consider the following in apportioning costs of the hearing:

- (1) the party who requested the hearing;
  - (2) the party who prevailed in the hearing;
  - (3) the financial ability of the party to pay the costs;
  - (4) the extent to which the party participated in the hearing; and
  - (5) any other factor relevant to a just and reasonable assessment of costs.
- (n) Receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The district may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.
- (o) If the district vacates or modifies the proposal for decision, the district shall issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the district's decision.
- (p) If the district in its final order finds that a desired future condition is unreasonable, not later than the 60<sup>th</sup> day after the date of the final order, the districts in the same management area as the district that received the petition shall reconvene in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.
- (q) A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.
- (r) The administrative law judge may consolidate hearings requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

As Added by Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_, Sec. \_\_\_\_, eff. Sept. 1, 2015.

### **Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS**

- (a) A final district order issued under Section 36.1083 may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. An appeal under this subsection must be filed with the district court not later than the 45<sup>th</sup> day after the date the district issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that received the petition to reconvene not later than the 60<sup>th</sup> day after the date

of the court order in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.

- (b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

Added by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_, Sec. \_\_\_\_, eff. Sept. 1, 2015.

#### **Sec. 36.1084. MODELED AVAILABLE GROUNDWATER**

- (a) The Texas Water Development Board shall require the districts in a management area to submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):
- (1) the desired future conditions adopted under Section 36.108;
  - (2) proof that notice was posted for the joint planning meeting; and
  - (3) the desired future conditions explanatory report.
- (b) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts.

As Added by Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011.

#### **Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES**

Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

As Added by Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011.

#### **Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA**

Districts located within the same management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

As Added by Acts 2011, 82nd Leg., Ch. 1233, Sec. 17, eff. Sept. 1, 2011.

**Sec. 36.109. COLLECTION OF INFORMATION**

A district may collect any information the board deems necessary, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir. At the request of the executive administrator, the district shall provide any data collected by the district in a format acceptable to the executive administrator.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., Ch. 970, Sec. 9, eff. Sept. 1, 2005.

**Sec. 36.110. PUBLICATION OF PLANS AND INFORMATION**

A district may publish its plans and the information it develops, bring them to the attention of the users of groundwater in the district, and encourage the users to adopt and use them.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.111. RECORDS AND REPORTS**

- (a) The district may require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of groundwater.
- (b) In implementing Subsection (a), a district may adopt rules that require an owner or operator of a water well that is required to be registered with or permitted by the district, except for the owner or operator of a well that is exempt from permit requirements under Section 36.117(b)(1), to report groundwater withdrawals using reasonable and appropriate reporting methods and frequency.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2007, 80th Leg., R.S., Ch. 523, Sec. 1, eff. Sept. 1, 2007.

**Sec. 36.112. DRILLERS' LOGS**

A district shall require that accurate drillers' logs be kept of water wells and that copies of drillers' logs and electric logs be filed with the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS**

- (a) Except as provided by Section 36.117, a district shall require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.
- (a-1) A district may not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.
- (b) A district shall require that an application for a permit or a permit amendment be in writing and sworn to.



- (c) A district may require that the following be included in the permit or permit amendment application:
- (1) the name and mailing address of the applicant and the owner of the land on which the well will be located;
  - (2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
  - (3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
  - (4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;
  - (5) the location of each well and the estimated rate at which water will be withdrawn;
  - (6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; and
  - (7) a drought contingency plan.
- (d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, the district shall consider whether:
- (1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;
  - (2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
  - (3) the proposed use of water is dedicated to any beneficial use;
  - (4) the proposed use of water is consistent with the district's approved management plan;
  - (5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;
  - (6) applicant has agreed to avoid waste and achieve water conservation; and
  - (7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.
- (e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations:
- (1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;
  - (2) bear a reasonable relationship to the existing district management plan; and

- (3) are reasonably necessary to protect existing use.
- (f) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Permits, and permit amendments issued in accordance with Section 36.1146, may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.
- (h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.<sup>1</sup>
- (i) A permitting decision by a district is void if:
  - (1) the district makes its decision in violation of Subsection (h); and
  - (2) the district would have reached a different decision if the district had treated land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program the same as land irrigated for production.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., Ch. 966, Sec. 2.49, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. 970, Sec. 10, eff. Sept. 1, 2005; Acts 2005, 79th Leg., Ch. 1116, Sec. 4, eff. Sept. 1, 2005; Acts 2007, 80<sup>th</sup> Leg., R.S., Ch. 1430, Sec. 2.21, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., Ch. 17, Sec. 4, eff. April 29, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

### **Sec. 36.1131. ELEMENTS OF PERMIT**

- (a) A permit issued by the district to the applicant under Section 36.113 shall state the terms and provisions prescribed by the district.
- (b) The permit may include:
  - (1) the name and address of the person to whom the permit is issued;
  - (2) the location of the well;
  - (3) the date the permit is to expire if no well is drilled;
  - (4) a statement of the purpose for which the well is to be used;
  - (5) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
  - (6) the location of the use of the water from the well;

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<sup>1</sup>An editorial discrepancy between the original Session Laws and Vernon's Texas Codes Annotated (VTCA), subsections (h) and (i) as included in this version of Chapter 36 are not consistent with their respective subsection labels in VTCA. However, subsections (h) and (i) in this version reflect the intent of the legislature, and are consistent with the statute as provided on Texas Legislature Online.

- (7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;
- (8) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
- (9) any conservation-oriented methods of drilling and operating prescribed by the district;
- (10) a drought contingency plan prescribed by the district; and
- (11) other terms and conditions as provided by Section 36.113.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.31, eff. Sept. 1, 1997.

**Sec. 36.1132. PERMITS BASED ON MODELED AVAILABLE GROUNDWATER.**

- (a) A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.
- (b) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
  - (1) the modeled available groundwater determined by the executive administrator;
  - (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
  - (3) the amount of groundwater authorized under permits previously issued by the district;
  - (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
  - (5) yearly precipitation and production patterns.
- (c) In developing the estimate of exempt use under Subsection (b)(2), the executive administrator shall solicit information from each applicable district.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 11, eff. Sept. 1, 2005; Amended by Acts 2011, 82nd Leg., Ch. 18, Sec. 4, eff. Sept. 1, 2011.

**Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING**

- (a) The district by rule shall determine each activity regulated by the district for which a permit or permit amendment is required.
- (b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), and that is not exempt from a hearing requirement under Section 36.1145, the district by rule shall determine whether a hearing on the permit or permit amendment application is required.

- (c) For all applications for which a hearing is not required under Subsection (b), or Section 36.1145, the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.
- (d) The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.
- (e) If, within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.
- (f) For applications requiring a hearing, the initial hearing shall be held within 35 days after the setting of the date, and the district shall act on the application within 60 days after the date the final hearing on the application is concluded.
- (g) The district may by rule set a time when an application will expire if the information requested in the application is not provided to the district.
- (h) An administratively complete application requires information set forth in accordance with Sections 36.113 and 36.1131.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 319, Sec. 1, eff. May 24, 2001 ; Acts 2005, 79th Leg., Ch. 970, Sec. 10, eff. Sept. 1, 2005; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

### **Sec. 36.1145. OPERATING PERMIT RENEWAL**

- (a) Except as provided by Subsection (b), a district shall without a hearing renew or approve an application to renew an operating permit before the date on which the permit expires, provided that:
  - (1) the application, if required by the district, is submitted in a timely manner and accompanied by any required fees in accordance with district rules; and
  - (2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under district rules.
- (b) A district is not required to renew a permit under this section if the applicant:
  - (1) is delinquent in paying a fee required by the district;
  - (2) is subject to a pending enforcement action for a substantive violation of a district permit, order, or rule that has not been settled by agreement with the district or a final adjudication; or
  - (3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a district permit, order, or rule.

- (c) If a district is not required to renew a permit under Subsection (b)(2), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

Added by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

**Sec. 36.1146. CHANGE IN OPERATING PERMITS.**

- (a) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under district rules, the permit as it existed before the permit amendment process remains in effect until the later of:
- (1) the conclusion of the permit amendment or renewal process, as applicable; or
  - (2) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.
- (b) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.
- (c) A district may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the district's rules. If a district initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

Added by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

**Sec. 36.115. DRILLING OR ALTERING WELL WITHOUT PERMIT**

- (a) No person, firm, or corporation may drill a well without first obtaining a permit from the district.
- (b) No person, firm, or corporation may alter the size of a well or well pump such that it would bring that well under the jurisdiction of the district without first obtaining a permit from the district.
- (c) No person, firm, or corporation may operate a well without first obtaining a permit from the district.
- (d) A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate permits are approved.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.116. REGULATION OF SPACING AND PRODUCTION**

- (a) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate:

- (1) the spacing of water wells by:
  - (A) requiring all water wells to be spaced a certain distance from property lines or adjoining wells;
  - (B) requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or
  - (C) imposing spacing requirements adopted by the board; and
- (2) the production of groundwater by:
  - (A) setting production limits on wells;
  - (B) limiting the amount of water produced based on acreage or tract size;
  - (C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;
  - (D) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre;
  - (E) managed depletion; or
  - (F) any combination of the methods listed above in Paragraphs (A) through (E).
- (b) In promulgating any rules limiting groundwater production, the district may preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's management plan under Section 36.1071 and as provided by Section 36.113.
- (c) In regulating the production of groundwater based on tract size or acreage, a district may consider the service needs or service area of a retail public water utility. For the purposes of this subsection, "retail public water utility" shall have the meaning provided ~~at~~ by Section 13.002.
- (d) For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:
  - (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or
  - (2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.
- (e) In regulating the production of groundwater under Subsection (a)(2), a district:

- (1) shall select a method that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district; and
- (2) may limit the amount of water produced based on contiguous surface acreage.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 1164, Sec. 1, eff. June 15, 2001; Acts 2001, 77th Leg., Ch. 966, Sec. 2.50, eff. Sept. 1, 2001; Acts 2003, 78th Leg., Ch. 1242, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., Ch. 1276, Sec. 18.006, eff. Sept. 1, 2003; Acts 2005, 79th Leg., Ch. 970, Sec. 12, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 17, Sec. 5, eff. April 29, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS**

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

*(Text of subsection (b) as amended by SB 691—Acts 2011, 82nd Leg., Ch. 16, Sec. 1, eff. Sept. 1, 2011.)*

- (b) ~~A district may not require any permit issued by the district for:~~
  - (1) ~~a well used solely for domestic use or for providing water for livestock or poultry, if the well is:~~
    - (A) ~~located on a tract of land larger than 10 acres; and~~
    - (B) ~~either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;~~
  - (2) ~~the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or~~
  - (3) ~~the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.~~

*(Text of subsection (b) as amended by SB 692—Acts 2011, 82nd Leg., Ch. 32, Sec. 1, eff. May 9, 2011.)*

- (b) Except as provided by this section, a district shall provide an exemption from the district requirement to obtain a permit for:
  - (1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:
    - (A) located or to be located on a tract of land larger than 10 acres; and



- (B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
  - (2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or
  - (3) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
- (c) A district may not restrict the production of water from any well described by Subsection (b)(1).
- (d) A district may cancel a previously granted exemption, and may require an operating permit for or restrict production from a well and assess any appropriate fees, if:
- (1) ~~the well is located in the Hill Country Priority Groundwater Management Area~~ and the groundwater withdrawals that were exempted under Subsection (b)(1) are no longer used solely for domestic use or to provide water for livestock or poultry;
  - (2) the groundwater withdrawals that were exempted under Subsection (b)(2) are no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or
  - (3) the groundwater withdrawals that were exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.
- (e) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:
- (1) the total amount of water withdrawn during the month;
  - (2) the quantity of water necessary for mining activities; and
  - (3) the quantity of water withdrawn for other purposes.
- (f) A district may require compliance with the district's well spacing rules for the drilling of any well except a well exempted under Subsection (b)(3).
- (g) A district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.

- (h) A district shall require the owner of a water well to:
  - (1) register the well in accordance with rules promulgated by the district; and
  - (2) equip and maintain the well to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.
- (i) The driller of a well shall file with the district the well log required by Section 1901.251, Occupations Code, and, if available, the geophysical log.
- (j) An exemption provided under Subsection (b) does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
- (k) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.
- (l) This chapter applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This chapter does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.32, eff. Sept. 1, 1997; Acts 1999, 76th Leg., Ch. 239, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., Ch. 966, Sec. 2.51, eff. Sept. 1, 2001; Acts 2007, 80<sup>th</sup> Leg., R.S., Ch. 1430, Sec. 2.22, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., Ch. 32, Sec. 1, eff. May 9, 2011; Acts 2011, 82nd Leg., Ch. 16, Sec. 1, eff. Sept. 1, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.118. OPEN OR UNCOVERED WELLS**

- (a) A district may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.
- (b) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by this chapter.
- (c) If the owner or lessee fails or refuses to close or cap the well in compliance with this chapter in accordance with district rules, any person, firm, or corporation employed by the district may go on the land and close or cap the well safely and securely.
- (d) Reasonable expenses incurred by the district in closing or capping a well constitute a lien on the land on which the well is located.

- (e) The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:
  - (1) the existence of the well;
  - (2) the legal description of the property on which the well is located;
  - (3) the approximate location of the well on the property;
  - (4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
  - (5) the closing of the well by the district, or by an authorized agent, representative, or employee of the district; and
  - (6) the expense incurred by the district in closing the well.
- (f) Nothing in this section affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.119. ILLEGAL DRILLING AND OPERATION OF WELL; CITIZEN SUIT**

- (a) Drilling or operating a well or wells without a required permit or producing groundwater in violation of a district rule adopted under Section 36.116(a)(2) is declared to be illegal, wasteful per se, and a nuisance.
- (b) Except as provided by this section, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which a well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of a district rule adopted under Section 36.116(a)(2) , or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the well or wells, may sue the owner of the well or wells in a court of competent jurisdiction to restrain or enjoin the illegal drilling, operation, or both. The suit may be brought with or without the joinder of the district.
- (c) Except as provided by this section, the aggrieved party may also sue the owner of the well or wells for damages for injuries suffered by reason of the illegal operation or production and for other relief to which the party may be entitled. In a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) is prima facie evidence of illegal drainage.
- (d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.
- (e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.

- (f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.
- (g) Before filing a suit under Subsection (b) or (c), an aggrieved party must file a written complaint with the district having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a district rule. The district shall investigate the complaint and, after notice and hearing and not later than the 90th day after the date the written complaint was received by the district, the district shall determine, based on the evidence presented at the hearing, whether a district rule has been violated. The aggrieved party may only file a suit under this section on or after the 91st day after the date the written complaint was received by the district.
- (h) Notwithstanding Subsection (g), an aggrieved party under Subsection (b) may sue a well owner or well driller in a court of competent jurisdiction to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the district under Subsection (g) and without the need to wait for a hearing on the matter.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2007, 80<sup>th</sup> Leg., R.S., Ch. 1321, Sec. 1, eff. June 15, 2007.

#### **Sec. 36.120. INFORMATION**

On request of the executive director or the executive administrator, the district shall make available information that it acquires concerning the groundwater resources within its jurisdiction. The district shall also provide information to the commission and Texas Water Development Board concerning its plans and activities in conserving and protecting groundwater resources. On request of a district, the executive director and the executive administrator shall provide information they acquire concerning the groundwater resources within the district's jurisdiction.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

#### **Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES**

Except as provided by Section 36.117, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a municipality that has a population of 121,000 or less and the rights to the water produced from the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 115,000 or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 11.04, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., Ch. 1042, Sec. 1, eff. June 17, 2011; Acts 2011, 82nd Leg., Ch. 1163, Sec. 181, eff. Sept. 1, 2011; Acts 2013, 83<sup>rd</sup> Leg., Ch. 161, Sec. 21.002, eff. Sept. 1, 2013.

**Sec. 36.122. TRANSFER OF GROUNDWATER OUT OF DISTRICT**

- (a) If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.
- (b) A district may promulgate rules requiring a person to obtain a permit or an amendment to a permit under Section 36.113 from the district for the transfer of groundwater out of the district to:
  - (1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or
  - (2) transfer groundwater out of the district on or after March 2, 1997, under a new arrangement.
- (c) Except as provided in Section 36.113(e), the district may not impose more restrictive permit conditions on transporters than the district imposes on existing in-district users.
- (d) The district may impose a reasonable fee for processing an application under this section. The fee may not exceed fees that the district imposes for processing other applications under Section 36.113. An application filed to comply with this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 and shall be combined with applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant.
- (e) The district may impose an export ~~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 ~~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 ~~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 ~~export~~ surcharge, in addition to the district's production fee, for water exported from ~~transferred out of~~ the district.
- (f) In reviewing a proposed transfer of groundwater out of the district, the district shall consider:
  - (1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;
  - (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and
  - (3) the approved regional water plan and approved district management plan.

- (g) The district may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section if conditions in Subsection (f) warrant the limitation, subject to Subsection (c).
- (h) In addition to conditions provided by Section 36.1131, the permit shall specify:
  - (1) the amount of water that may be transferred out of the district; and
  - (2) the period for which the water may be transferred.
- (i) The period specified by Subsection (h)(2) shall be:
  - (1) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or
  - (2) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.
- (j) A term under Subsection (i)(1) shall automatically be extended to the terms agreed to under Subsection (i)(2) if construction of a conveyance system is begun before the expiration of the initial term.
- (k) Notwithstanding the period specified in Subsections (i) and (j) during which water may be transferred under a permit, a district may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (f) warrant the limitation, subject to Subsection (c). The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the district. In its determination of whether to renew a permit issued under this section, the district shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the district.
- (l) A district is prohibited from using revenues obtained under Subsection (e) to prohibit the transfer of groundwater outside of a district. A district is not prohibited from using revenues obtained under Subsection (e) for paying expenses related to enforcement of this chapter or district rules.
- (m) A district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.
- (n) This section applies only to a transfer of water that is permitted after September 1, 1997.
- (o) A district shall adopt rules as necessary to implement this section but may not adopt rules expressly prohibiting the export of groundwater.
- (p) Subsection (e) does not apply to a district that is collecting an export fee or surcharge on March 1, 2001.
- (q) In applying this section, a district must be fair, impartial, and nondiscriminatory.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.33, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.52, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., Ch. 17, Sec. 6, eff. April 29, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.123. RIGHT TO ENTER LAND**

- (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.
- (b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Added by Acts 1999, 76th Leg., Ch. 1354, Sec. 3, eff. Sept. 1, 1999.

**Sec. 36.124. DISTRICT ACT OR PROCEEDING PRESUMED VALID**

- (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:
  - (1) the third anniversary of the effective date of the act or proceeding has expired; and
  - (2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.
- (b) This section does not apply to:
  - (1) an act or proceeding that was void at the time it occurred;
  - (2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;
  - (3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or
  - (4) a matter that on the effective date of this section:
    - (A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or
    - (B) has been held invalid by a final judgment of a court.

Added by Acts 2001, 77th Leg., Ch. 389, Sec. 1, eff. May 28, 2001.



**Sec. 36.125. EDWARDS AQUIFER AUTHORITY**

- (a) Except as provided by Subsection (b), this subchapter does not apply to the Edwards Aquifer Authority.
- (b) Sections 36.102 and 36.118 apply to the Edwards Aquifer Authority.

Added by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. 1, eff. Sept. 1, 2015.

**SUBCHAPTER E. DISTRICT FINANCES**

**Sec. 36.151. EXPENDITURES**

- (a) A district's money may be disbursed only by check, draft, order, or other instrument.
- (b) Disbursements shall be signed by at least two directors, except the board may by resolution allow certain employees of the district, or a combination of employees and directors, to sign disbursements on behalf of the board.
- (c) The board may by resolution allow disbursements to be transferred by federal reserve wire system to accounts in the name of the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.152. FISCAL YEAR**

- (a) The district shall be operated on the basis of a fiscal year established by the board.
- (b) The fiscal year may not be changed during a period in which revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.153. ANNUAL AUDIT**

- (a) Annually and subject to Subsection (c), the board shall have an audit made of the financial condition of the district. The district audit shall be performed according to the generally accepted government auditing standards adopted by the American Institute of Certified Public Accountants.
- (b) Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. The annual audit and other district records must be open to inspection during regular business hours at the principal office of the district.
- (c) The district is exempt from the requirement under Subsection (a) if it had:
  - (1) not more than \$500 in receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;
  - (2) not more than \$500 in disbursements of funds during the calendar year;

- (3) no bonds or other liabilities with terms of more than one year outstanding during the calendar year; and
- (4) no cash or investments amounting to more than \$5,000 at any time during the calendar year.
- (d) A financially dormant district may elect not to conduct an audit and instead submit to the executive director a financial dormancy affidavit ~~instead of complying with the audit requirements of Section 49.191.~~

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., Ch. 785, Sec. 52, eff. Sept. 1, 2003; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.154. ANNUAL BUDGET**

- (a) The board shall prepare and approve an annual budget.
- (b) The budget shall contain a complete financial statement, including a statement of:
  - (1) the outstanding obligations of the district;
  - (2) the amount of cash on hand to the credit of each fund of the district;
  - (3) the amount of money received by the district from all sources during the previous year;
  - (4) the amount of money available to the district from all sources during the ensuing year;
  - (5) the amount of the balances expected at the end of the year in which the budget is being prepared;
  - (6) the estimated amount of revenues and balances available to cover the proposal budget; and
  - (7) the estimated tax rate or fee revenues that will be required.
- (c) The annual budget may be amended on the board's approval.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.155. DEPOSITORY**

- (a) The board shall name one or more banks to serve as depository for the district funds.
- (b) District funds, other than those transmitted to a bank for payment of bonds issued by the district, shall be deposited as received with the depository bank and shall remain on deposit. This subsection does not limit the power of the board to place a portion of the district's funds on time deposit or to purchase certificates of deposit.
- (c) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by the Public Funds Collateral Act, Chapter 2257, Government Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.156. INVESTMENTS**

- (a) Funds of the district may be invested and reinvested in accordance with the provisions of the Public Funds Investment Act, Chapter 2256, Government Code.
- (b) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.1561. INVESTMENT OFFICER**

- (a) Notwithstanding Section 2256.005(f), Government Code, the board may contract with a person to act as investment officer of the district.
- (b) The investment officer of a district shall:
  - (1) not later than the first anniversary of the date the officer takes office or assumes the officer's duties, attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Government Code; and
  - (2) attend at least four hours of additional investment training within each two-year period after the first year.
- (c) Training under this section must be from an independent source approved by:
  - (1) the board; or
  - (2) a designated investment committee advising the investment officer.
- (d) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapter 2256, Government Code.
- (e) During January of each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the districts for which the person provided required training under this section during the previous calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

Added by Acts 2001, 77th Leg., Ch. 69, Sec. 1, eff. May 14, 2001.

**Sec. 36.157. REPAYMENT OF ORGANIZATIONAL EXPENSES**

- (a) A district, or the county or counties where the district is to be located, may pay all costs and expenses necessarily incurred in the creation and organization of a district, including legal fees and other incidental expenses, and may reimburse any person, including a county, for money advanced for these purposes.

- (b) Payments may be made from money obtained from the sale of bonds first issued by the district or out of maintenance taxes or other revenues of the district.

Amended by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_, Sec. \_\_\_\_, eff. June 10, 2015.

**Sec. 36.158. GRANTS**

A district may make or accept grants, gratuities, advances, or loans in any form to or from any source approved by the board, including any governmental entity, and may enter into contracts, agreements, and covenants in connection with grants, gratuities, advances, or loans that the board considers appropriate.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.159. GROUNDWATER CONSERVATION DISTRICT MANAGEMENT PLAN FUNDS**

The Texas Water Development Board may allocate funds from the water assistance fund to a district to:

- (1) conduct initial data collections under this chapter;
- (2) ~~to~~ develop and implement a long-term management plan under Section 36.1071;<sup>;</sup> and
- (3) ~~to~~ participate in regional water plans.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.34, eff. Sept. 1, 1997; Amended by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_, Sec. \_\_\_\_; eff. June 10, 2015.

**Sec. 36.160. FUNDS**

The Texas Water Development Board, the commission, the Parks and Wildlife Department, the Texas Agricultural Extension Service, and institutions of higher education may allocate funds to carry out the objectives of this chapter and Chapter 35, which include but are not limited to:

- (1) conducting initial and subsequent studies and surveys under Sections 36.107 , and 36.109;
- (2) providing appropriate education in affected areas identified in Section 35.007 relating to the problems and issues concerning water management that may arise;
- (3) processing priority groundwater management area evaluations under this chapter and Chapter 35;
- (4) providing technical and administrative assistance to newly created districts under this chapter and Chapter 35;
- (5) covering the costs of newspaper notices required under Sections 35.009 and 36.014 and failed elections in accordance with Sections 35.014(c), 36.017(h), and 36.019; and
- (6) providing for assistance from the Parks and Wildlife Department to the Texas Water Development Board or a district for the purpose of assessing fish and

wildlife resource habitat needs as they may apply to overall management plan goals and objectives of the district.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

### **Sec. 36.161. ELIGIBILITY FOR FUNDING**

- (a) The Texas Water Development Board may provide funds under Sections 36.159 and 36.160, Chapters 15, 16, and 17, and Subchapter L of this chapter to a district if the Texas Water Development Board determines that such funding will allow the district to comply or continue to comply with provisions of this chapter.
- (b) The Texas Water Development Board may, after notice and hearing, discontinue funding described in Subsection (a) if the Texas Water Development Board finds that the district is not using the funds to comply with the provisions of this chapter.
- (c) The Texas Water Development Board, when considering discontinuance under Subsection (b), shall give written notice of the hearing to the district at least 20 days before the date set for the hearing. The hearing shall be conducted in accordance with Chapter 2001, Government Code, or the rules of the respective agency. General notice of the hearing shall be given in accordance with the rules of the agency.
- (d) The Texas Water Development Board may delegate to the State Office of Administrative Hearings the responsibility to conduct a hearing under this section.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

## **SUBCHAPTER F. BONDS AND NOTES**

### **Sec. 36.171. ISSUANCE OF BONDS AND NOTES**

- (a) The board may issue and sell bonds and notes in the name of the district for any lawful purpose of the district. A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to refunding bonds.
- (b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.
- (c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.
- (d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director

shall retain a copy of the report and send a copy of the report to both the commission and the district.

- (e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.
- (f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. The commission shall retain a copy of the order and send a copy of the order to the district.
- (g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

#### **Sec. 36.172. MANNER OF REPAYMENT OF BONDS AND NOTES**

The board may provide for the payment of principal of and interest on the bonds and notes in any one of the following manners:

- (1) from the levy and collection of ad valorem taxes on taxable property within the district;
- (2) from fees;
- (3) by pledging all or any part of the designated revenues from the ownership or operation of the district's works, improvements, and facilities and from the sale, transportation, and distribution of water; or
- (4) from any combination of these sources.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

#### **Sec. 36.173. ADDITIONAL SECURITY FOR BONDS AND NOTES**

- (a) The bonds and notes may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds and notes.
- (b) The trust indenture, regardless of the existence of the deed trust or mortgage lien on the properties, may contain provisions established by the board for the security of the bonds and notes and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.
- (c) A purchaser under a sale under the deed trust or mortgage lien shall be absolute owner of the properties and rights purchased and may maintain and operate them.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.174. FORM OF BONDS OR NOTES**

- (a) A district may issue its bonds or notes in various series or issues.
- (b) Bonds or notes may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state.
- (c) A district's bonds, notes, and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or may contain a mandatory redemption provision.
- (d) A district's bonds and notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.175. PROVISIONS OF BONDS AND NOTES**

- (a) In the orders or resolutions authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds. The board may make additional covenants with respect to bonds or notes, pledged revenues, and the operation and maintenance of those works, improvements, and facilities, of which the revenue is pledged.
- (b) The orders or resolutions of the board authorizing the issuance of bonds or notes may also prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds or notes to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds or notes being issued.
- (c) The orders or resolutions of the board issuing bonds or notes may contain other provisions and covenants as the board may determine.
- (d) The board may adopt and have executed any other proceeding or instruments necessary and convenient in the issuance of bonds or notes.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.176. REFUNDING BONDS**

- (a) A district may issue bonds to refund all or any part of its outstanding bonds or notes, including matured but unpaid interest coupons.
- (b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.



- (c) Refunding bonds may be payable from the same source as the bonds or notes being refunded or from other additional sources.
- (d) The refunding bonds must be approved by the attorney general as in the case of other bonds or notes and shall be registered by the comptroller on the surrender and cancellation of the bonds or notes being refunded.
- (e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds or notes being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds or notes being refunded. If refunding bonds are issued before cancellation of the other bonds or notes, an amount sufficient to pay the principal of and interest on the bonds or notes being refunded to their maturity dates, or to their option dates if the bonds or notes have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds or notes being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds or notes being refunded.
- (f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.
- (g) In lieu of the method set forth in Subsections (a)-(f) a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.177. BONDS AND NOTES AS INVESTMENTS**

District bonds and notes are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.178. BONDS AND NOTES AS SECURITY FOR DEPOSITS**

District bonds and notes are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds or notes are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.179. TAX STATUS OF BONDS AND NOTES**

Since a district governed by this chapter is a public entity performing an essential public function, bonds and notes issued by the district, any transaction relating to the bonds and notes, and profits made in the sale of the bonds and notes, are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.180. ELECTION**

- (a) Bonds or notes secured in whole or in part by taxes may not be issued by the district until authorized by a majority vote of the qualified voters of the district at an election called for that purpose.
- (b) The board may order an election, and the order calling the election shall state the nature and the date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds or notes to be authorized, and the maximum maturity of the bonds or notes.
- (c) At an election to authorize bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."
- (d) The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.181. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER**

- (a) Bonds and notes issued by a district must be submitted to the attorney general for examination.

- (b) If the attorney general finds that the bonds or notes have been authorized in accordance with law, the attorney general shall approve them, and they shall be registered by the comptroller.
- (c) After the approval and registration of bonds or notes, the bonds or notes are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

## **SUBCHAPTER G. DISTRICT REVENUES**

### **Sec. 36.201. LEVY OF TAXES**

- (a) The board may annually levy taxes to pay the bonds issued by the district that are payable in whole or in part by taxes.
- (b) The board may annually levy taxes to pay the maintenance and operating expenses of the district at a rate not to exceed 50 cents on each \$100 of assessed valuation.
- (c) The board may not levy a tax to pay the maintenance and operating expenses of the district under this section until the tax is approved by a majority of the electors voting at an election in the district held for that purpose. The district may:
  - (1) hold an election for approval of the tax at the same time and in conjunction with an election to authorize bonds, following the procedures applicable to a bond election; or
  - (2) hold a separate election for approval of the tax in accordance with Subsection (d).
- (d) An order calling a separate election for approval of a tax under this section must be issued at least 15 days before the date of the election, and the election notice must be published at least twice in a newspaper of general circulation in the district. The first publication of the notice must be at least 14 days before the date of the election.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.202. BOARD AUTHORITY**

- (a) The board may levy taxes for the entire year in which the district is created.
- (b) If territory is added to or annexed by the district, the board may levy taxes in the new territory for the entire year in which the territory is added or annexed.
- (c) The board shall levy taxes on all property in the district subject to district taxation.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.203. TAX RATE**

In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.204. TAX APPRAISAL, ASSESSMENT AND COLLECTION**

- (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.
- (b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.205. AUTHORITY TO SET FEES**

- (a) A district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.
- (b) A district shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the district of providing the services outside the district.
- (c) A district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees shall not exceed:
  - (1) \$1 per acre-foot payable annually for water used for agricultural use; or
  - (2) \$10 per acre-foot payable annually for water used for any other purpose.
- (d) The Lone Star Groundwater Conservation District and the Guadalupe County Groundwater Conservation District may not charge 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. This subsection shall take precedence over all prior enactments.
- (e) Subsection (c) does not apply to the following districts:
  - (1) the Edwards Aquifer Authority;
  - (2) the Fort Bend Subsidence District;
  - (3) the Harris-Galveston Subsidence District;
  - (4) the Barton Springs-Edwards Aquifer Conservation District; or
  - (5) any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law.

- (f) A district, including a district described under Subsection (d), may assess a production fee under Subsection (c) and an export fee under Subsection (g), if applicable, for any water produced under an exemption under Section 36.117 if that water is subsequently sold to another person.
- (g) A district may assess an export~~a transportation~~ fee under Section 36.122.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.53, eff. Sept. 1, 2001; Acts 2007, 80<sup>th</sup> Leg., R.S., Ch. 1405, Sec. 1, eff. Sept. 1, 2007; Acts 2013, 83<sup>rd</sup> Leg., Ch. 161, Sec. 21.003, eff. Sept. 1, 2013; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.206. DISTRICT FEES**

- (a) A temporary board may set ~~user~~ fees authorized by this chapter 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.
- (b) The rate of fees set for agricultural uses shall be no more than 20 percent of the rate applied to municipal uses.
- (c) District fees may not be used to purchase groundwater rights unless the purchased rights are acquired for conservation purposes and are permanently held in trust not to be produced.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.35, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.54, eff. Sept. 1, 2001; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.207. USE OF ~~PERMIT~~ FEES AUTHORIZED BY SPECIAL LAW**

A district may use funds obtained from administrative, production, or export ~~permit~~ fees collected under a ~~pursuant to the~~ 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.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.35, eff. Sept. 1, 1997; Acts 2011, 82nd Leg., Ch. 17, Sec. 7, eff. April 29, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

## **SUBCHAPTER H. JUDICIAL REVIEW**

### **Sec. 36.251. SUIT AGAINST DISTRICT**

- (a) A person, firm, corporation, or association of persons affected by and dissatisfied with any ~~provision or with any~~ rule or order made by a district, including an appeal of a decision on a permit application, is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order.
- (b) Only the district, the applicant, and parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case

hearing. An appeal of a decision on a permit application must include the applicant as a necessary party.

- (c) The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located. The suit may only be filed after all administrative appeals to the district are final.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.252. SUIT TO BE EXPEDITED**

A suit brought under this subchapter shall be advanced for trial and determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.253. TRIAL OF SUIT**

The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed prima facie valid. The review on appeal is governed by the substantial evidence rule as defined by Section 2001.174, Government Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.254. SUBCHAPTER CUMULATIVE**

The provisions of this subchapter do not affect other legal or equitable remedies that may be available.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

## **SUBCHAPTER I. PERFORMANCE REVIEW AND DISSOLUTION**

### **Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN**

If a district fails to submit a management plan or to receive approval of its management plan under Section 36.1072 or fails to submit or receive approval of an amendment to the management plan under Section 36.1073, the commission shall take appropriate action under Section 36.303.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997; Acts 2011, 82nd Leg., Ch. 17, Sec. 8, eff. April 29, 2011.

### **Sec. 36.3011. COMMISSION INQUIRY AND ACTION REGARDING DISTRICT DUTIES**

- (a) In this section, "affected person" means, with respect to a management area:

- (1) an owner of land in the management area;
- (2) a groundwater conservation district or subsidence district in or adjacent to the management area;

- (3) a regional water planning group with a water management strategy in the management area;
  - (4) a person who holds or is applying for a permit from a district in the management area;
  - (5) a person with a legally defined interest in groundwater in the management area; or
  - (6) any other person defined as affected by commission rule.
- (b) An affected person may file a petition with the commission 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;
  - (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) groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.
- (c) Not later than the 90<sup>th</sup> day after the date the petition is filed, the commission shall review the petition and either:
- (1) Dismiss the petition if the commission 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) If the petition is not dismissed under Subsection (9c), the commission shall appoint a review panel consisting of a chairperson and four other members. A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.



- (e) Not later than the 120<sup>th</sup> day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.
- (f) In its report, the review panel shall include:
- (1) a summary of all evidence taken in any hearing on the petition;
  - (2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and
  - (3) any other information the panel considers appropriate.
- (g) The review panel shall submit its report to the commission.
- (h) Not later than the 45th day after receiving the review panel's report under this section ~~Section 36.1082~~, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:
- (1) the district has failed to submit its management plan to the executive administrator;
  - (2) the district has failed to participate in the joint planning process under Section 36.108;
  - (3) the district has failed to adopt rules;
  - (4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
  - (5) the district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
  - (6) the district has failed 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 the district are not designed to achieve the desired future conditions adopted by the management area during the joint planning process;
  - (8) the groundwater in the management area is not adequately protected by the rules adopted by the district; or
  - (9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

Added by Acts 2001, 77th Leg., Ch. 966, Sec. 2.55, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., Ch. 970, Sec. 13, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 17, Sec. 9, eff. April 29, 2011; Acts 2011, 82nd Leg., Ch. 1233, Sec. 18, eff. Sept. 1, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.302. LEGISLATIVE AUDIT REVIEW; DETERMINATION OF WHETHER DISTRICT IS OPERATIONAL**

- (a) A district is subject to review by the state auditor under the direction of the legislative audit committee pursuant to Chapter 321, Government Code.
- (b) The commission, the Texas Water Development Board, and the Parks and Wildlife Department shall provide technical assistance to the state auditor's office for a review performed under Subsection (a).
- (c) In a review performed under Subsection (a), the state auditor shall make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan based on an analysis of the district's activities.
- (d) The state auditor may perform the review under Subsection (a) following the first anniversary of the initial approval of the plan under Section 36.1072 and at least as often as once every seven years after that date, subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.
- (e) The state auditor shall report findings of the review to the legislative audit committee and to the commission.
- (f) If it is determined under Subsection (c) that the district is not operational, the commission shall take appropriate action under Section 36.303.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., Ch. 785, Sec. 53, eff. Sept. 1, 2003; Acts 2005, 79th Leg., Ch. 970, Sec. 14, eff. Sept. 1, 2005.

**Sec. 36.303. ACTION BY COMMISSION**

- (a) If Section ~~36.108~~, 36.301, 36.3011, or 36.302(f) applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:
  - (1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;
  - (2) dissolving the board in accordance with Sections 36.305 and 36.307 and calling an election for the purpose of electing a new board;
  - (3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the groundwater conservation district; or
  - (4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308.
- (b) In addition to actions identified under Subsection (a), the commission may recommend to the legislature, based upon the report required by Section 35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

Added by Acts 1997, 75<sup>th</sup> Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., Ch. 966, Sec. 2.56, eff. Sept. 1, 2001; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.3035. APPOINTMENT OF A RECEIVER**

- (a) If the attorney general brings a suit for the appointment of a receiver for a district, a district court shall appoint a receiver if an appointment is necessary to protect the assets of the district.
- (b) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.
- (c) After appointment and execution of bond, the receiver shall take possession of the assets of the district specified by the court.
- (d) Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the district and shall strictly observe the final order involved.
- (e) On a showing of good cause by the district, the court may dissolve the receivership and order the assets and control of the business returned to the district.

Added by Acts 2001, 77th Leg., Ch. 966, Sec. 2.57, eff. Sept. 1, 2001.

**Sec. 36.304. DISSOLUTION OF DISTRICT**

- (a) The commission may dissolve a district that has no outstanding bonded indebtedness.
- (b) A district composed of territory entirely within one county may be dissolved even if the district has outstanding indebtedness that matures after the year in which the district is dissolved, whereupon the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Water Code Sec. 36.301 and amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997; Acts 2005, 79th Leg., Ch. 970, Sec. 15, eff. Sept. 1, 2005.

**Sec. 36.305. NOTICE OF HEARING FOR DISSOLUTION OF BOARD OR DISTRICT**

- (a) The commission shall give notice of the hearing for dissolution of a district or of a board which briefly describes the reasons for the proceeding.
- (b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.
- (c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Water Code Sec. 36.302 and amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

**Sec. 36.306. INVESTIGATION**

The executive director shall investigate the facts and circumstances of any violations of any rule or order of the commission or any provisions of this chapter and shall prepare and file a written report with the commission and district and include any actions the executive director believes the commission should take under Section 36.303.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Water Code Sec. 36.303 and amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

**Sec. 36.307. ORDER OF DISSOLUTION OF BOARD**

If the commission enters an order to dissolve the board, the commission shall notify the county commissioners court of each county which contains territory in the district and the commission shall provide that temporary directors be appointed under Section 36.016 to serve until an election for a new board can be held under Section 36.017, provided, however, that district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

**Sec. 36.308. CERTIFIED COPY OF ORDER**

The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Water Code Sec. 36.305 by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

**Sec. 36.309. APPEALS**

Appeals from any commission order shall be filed and heard in the district court of any of the counties in which the land is located.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Water Code Sec. 36.306 and amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

**Sec. 36.310. ASSETS ESCHEAT**

Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single-county district. If it is a multicounty district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1423, Sec. 20.10, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Water Code Sec. 36.307 and amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

## SUBCHAPTER J. ADDING TERRITORY TO DISTRICT

### Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER

Subject to Section 36.331, ~~the~~The owner of land not already in contiguous to a district may file with the board a notarized petition requesting that the owner's land be included in the district. The petition must 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.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### Sec. 36.322. ASSUMPTION OF BONDS

If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxation that have been voted but are unissued, the petitioner shall assume its share of the outstanding bonds, notes, or other obligations and any voted but unissued tax bonds of the district, and the property shall be assessed an ad valorem tax at the same rate as that set for the existing district to pay for outstanding bonds and for the maintenance and operation of the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### Sec. 36.323. HEARING AND DETERMINATION OF PETITION

- (a) The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the petitioner and to the existing district.
- (b) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of the annexation, -the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### Sec. 36.324. RECORDING PETITION

A petition that is granted which adds land to the district shall be recorded in the office of the county clerk of the county or counties in which the land is located and the county or counties in which the existing district's principal office is located.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION

- (a) Landowners of a defined area of territory not already in a district may 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) The petition must be signed by:
  - (1) a majority of the landowners in the territory;

- (2) at least 50 landowners if the number of landowners is more than 50; or
  - (3) the commissioners court of the county in which the area is located if the area is identified as a priority groundwater management area or includes the entire county.
- (c) The petition must 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.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.37, eff. Sept. 1, 1997; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.326. HEARING ON PETITION**

The board by order shall set the time and place of separate hearings on the petition to include the territory in the district. At least one hearing shall be held in the existing district and one hearing shall be held in the territory to be added.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.327. RESOLUTION TO ADD TERRITORY**

If the board finds after the hearing on the petition that the addition of the land would benefit the district and the territory to be added, it may add the territory to the district by resolution. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

### **Sec. 36.328. ELECTION TO RATIFY ANNEXATION OF LAND**

- (a) Annexation of the territory by petition filed under Section 36.325 is not final until ratified by a majority vote of the voters in the territory to be added. An election in the existing district accepting the addition of land is not required.
- (b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of (briefly describe additional area) in the \_\_\_\_\_ District." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed \_\_\_\_\_ cents on each \$100 of assessed valuation for payment of maintenance and operating expenses of the district."
- (c) The amount of the tax included in the proposition shall be the maximum amount that the district is authorized to levy. If the district has outstanding or authorized bonded indebtedness, the proposition shall include language providing for the assumption by the additional area of a proportional share of the bonded indebtedness of the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.329. NOTICE AND PROCEDURE OF ELECTION**

The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by the Election Code.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.330. LIABILITY OF ADDED TERRITORY**

The added territory shall bear its pro rata share of indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

Added by Acts 1995, 74<sup>th</sup> Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.331. ANNEXATION OF NONCONTIGUOUS TERRITORY**

Land not contiguous to the existing boundaries of a district may not be added to or annexed to a district unless the land is located either within the same management area, priority groundwater management area, or a groundwater subdivision designated by the commission or its predecessors.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995; Amended by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.38, eff. Sept. 1, 1997.

**SUBCHAPTER K. CONSOLIDATION OF DISTRICTS**

**Sec. 36.351. CONSOLIDATION OF DISTRICTS**

- (a) Two or more districts may consolidate into one district. To initiate a consolidation, the board of a district shall adopt a resolution proposing a consolidation and deliver a copy of the resolution to the board of each district with which consolidation is proposed.
- (b) Adjacent districts may consolidate portions of either district if one district relinquishes land within that district to the jurisdiction of the other district.
- (c) A consolidation under this subchapter occurs if the board of each involved district adopts a resolution containing the terms and conditions of the consolidation.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., Ch. 1025, Sec. 1, eff. June 18, 1999.

**Sec. 36.352. TERMS AND CONDITIONS OF CONSOLIDATION**

- (a) The terms and conditions for consolidation shall include:
  - (1) adoption of a name for the district;
  - (2) the number and apportionment of directors to serve on the board;
  - (3) the effective date of the consolidation;
  - (4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district;
  - (5) transfer of all permits issued in the area that is the subject of the consolidation to the consolidated district; and
  - (6) an agreement on governing the districts during the transition period, including selection of officers.



- (b) The terms and conditions for consolidation may include:
- (1) assumption by each district of the other district's bonds, notes, voted but unissued bonds, or other obligations;
  - (2) an agreement to levy taxes to pay for bonds;
  - (3) any other terms of conditions agreed upon by the board of each district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.353. NOTICE AND HEARING ON CONSOLIDATION**

- (a) Each board shall publish notice and hold a public hearing within that district on the terms and conditions for consolidation of the districts.
- (b) After the hearing, the board may, by resolution, approve the terms and conditions for consolidation and enter an order consolidating the districts.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.354. ELECTIONS TO APPROVE CONSOLIDATION**

- (a) An election to ratify the consolidation is required in each district that initiates consolidation. An election is not required in a district that does not initiate consolidation.
- (b) The board of each district that is required by Subsection (a) to conduct an election shall order an election in the district only after the board of each district to be consolidated has agreed on the terms and conditions of consolidation. The directors of each district conducting an election shall order the election to be held on the same day in each district. The election shall be held and notice given in the manner provided by the Election Code.
- (c) The ballots for the election shall be printed to provide for voting for or against the proposition: "The consolidation of (names of the districts to be consolidated) in the \_\_\_\_\_ District." If the district levies a property tax for payment of its bonded indebtedness, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed \_\_\_\_\_ cents on each \$100 of assessed valuation for payment of bonds." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed cents on each \$100 of assessed valuation for payment of maintenance and operating expenses of the district."
- (d) A district may be consolidated only if a majority of the electors in each district required by Subsection (a) to conduct an election vote in favor of the consolidation. If more than two districts are consolidating, failure of any one district to ratify the consolidation shall not prevent the consolidation of the other districts.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., Ch. 1025, Sec. 2, eff. June 18, 1999.

**Sec. 36.355. GOVERNING CONSOLIDATED DISTRICTS**

- (a) After two or more districts are consolidated, they become one district and are governed as one district.
- (b) During the transition period, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.
- (c) If the consolidated district elects directors, directors for the consolidated district shall be elected in the same manner and for the same term as directors elected at a confirmation election. The directors' election shall be set for the next regular election.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.356. DEBTS OF ORIGINAL DISTRICTS**

- (a) After two or more districts are consolidated, the consolidated district shall protect the debts of the original districts and shall assure that the debts are not impaired. If the consolidated district has taxing authority, the debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.
- (b) If the consolidated district has taxing authority and assumes the bonds, notes, and other obligations of the original districts, taxes may be levied uniformly on all taxable property within the consolidated district to pay the debts.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.357. ASSESSMENT AND COLLECTION OF TAXES.**

If the consolidated district has taxing authority, the district shall assess and collect taxes on property on all property in the district for maintenance and operation of the district.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.358. VOTED BUT UNISSUED BONDS**

If either district has voted but unissued bonds payable in whole or in part from taxation assumed by the consolidated district, the consolidated district may issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**Sec. 36.359. FILING OF ORDER WITH COUNTY CLERK AND EXECUTIVE DIRECTOR**

A consolidation order issued by the board shall be kept in the records of the consolidated district, recorded in the office of the county clerk in each of the counties in the consolidated district, and filed with the executive director.

Added by Acts 1995, 74th Leg., Ch. 933, Sec. 2, eff. Sept. 1, 1995.

**SUBCHAPTER L.      GROUNDWATER CONSERVATION      DISTRICT      LOAN  
ASSISTANCE FUND**

**Sec. 36.3705. DEFINITION**

In this subchapter, "applicant" means a newly confirmed district applying for a Loan from the loan fund.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 16, eff. Sept. 1, 2005.

**Sec. 36.371.      GROUNDWATER CONSERVATION      DISTRICT      LOAN      ASSISTANCE  
FUND**

(a)      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)      Repayments of loans shall be deposited in the water assistance fund.

Added by Acts 1997, 75th Leg., Ch. 101 0, Sec. 4.39, eff. Sept. 1, 1997; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.372.      FINANCIAL ASSISTANCE**

(a)      The loan fund may be used by the Texas Water Development Board to provide loans to newly confirmed districts and legislatively created districts that do not require a confirmation election to pay for their creation and initial operations.

(b)      The Texas Water Development Board shall establish rules for the use and administration of the loan fund.

Added by Acts 1997, 75th Leg., Ch. 101 0, Sec. 4.39, eff. Sept. 1, 1997.

**Sec. 36.373.      APPLICATION FOR ASSISTANCE**

(a)      In an application to the Texas Water Development Board for financial assistance from the loan fund, the applicant shall include:

- (1)      the name of the district and its board members;
- (2)      a citation of the law under which the district operates and was created;
- (3)      a description of the initial operations;
- (4)      the total start-up cost of the initial operations;
- (5)      the amount of state financial assistance requested;
- (6)      the plan for repaying the total cost of the loan; and
- (7)      any other information the Texas Water Development Board may require to perform its duties and protect the public interest.

(b)      The Texas Water Development Board may not accept an application for a loan from the loan fund unless it is submitted in affidavit form by the applicant's board. The Texas Water Development Board shall prescribe the affidavit form in its rules.

- (c) The rules implementing this section shall not restrict or prohibit the Texas Water Development Board from requiring additional factual material from an applicant.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

#### **Sec. 36.374. APPROVAL OF APPLICATION**

The Texas Water Development Board, by resolution, may approve an application if it finds that:

- (1) granting financial assistance to the applicant will serve the public interest; and
- (2) the revenue pledged by the applicant from district taxes and fees and other sources will be sufficient to meet all the obligations assumed by the applicant.

Added by Acts 1997, 75th Leg., Ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

### **SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS; NOTICE AND HEARING PROCESS**

#### **Sec. 36.401. DEFINITION**

In this subchapter, "applicant" means a person who is applying for a permit or a permit amendment.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

#### **Sec. 36.402. APPLICABILITY**

Except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications for which a hearing is required.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. Sept. 1, 2015.

#### **Sec. 36.403. SCHEDULING OF PUBLIC HEARING**

- (a) The general manager or board may schedule a public hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.
- (b) The general manager or board may schedule more than one application for consideration at a public hearing.
- (c) A public hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.
- (d) A public hearing may be held in conjunction with a regularly scheduled board meeting.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005, Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.404. NOTICE**

- (a) If the general manager or board schedules a public hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.
- (b) The notice must include:
  - (1) the name of the applicant;
  - (2) the address or approximate location of the well or proposed well;
  - (3) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - (4) the time, date, and location of the hearing; and
  - (5) any other information the general manager or board considers relevant and appropriate.
- (c) Not later than the 10th day before the date of a hearing, the general manager or board shall:
  - (1) post notice in a place readily accessible to the public at the district office;
  - (2) provide notice to the county clerk of each county in the district; and
  - (3) provide notice by:
    - (A) regular mail to the applicant;
    - (B) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and
    - (C) regular mail to any other person entitled to receive notice under the rules of the district.
- (d) A person may request notice from the district of a public hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.
- (e) Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the district at the hearing.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.405. HEARING REGISTRATION**

The district may require each person who participates in a public hearing to submit a hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not there in the person's individual capacity.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.4051. BOARD ACTION; CONTESTED CASE HEARING REQUESTS; PRELIMINARY HEARING**

- (a) The board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The board may issue a written order to:
  - (1) grant the application;
  - (2) grant the application with special conditions; or
  - (3) deny the application.
- (b) The board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415. The preliminary hearing may be conducted by:
  - (1) a quorum of the board;
  - (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or
  - (3) the State Office of Administrative Hearings under Section 36.416.
- (c) Following a preliminary hearing, the board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may take any action authorized under Subsection (a).
- (d) An applicant may, not later than the 20<sup>th</sup> day after the date the board issues an order granting the application, demand a contested case hearing if the order:
  - (1) includes special conditions that were not part of the application as finally submitted; or
  - (2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

Added by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.406. HEARING PROCEDURES**

- (a) A hearing must be conducted by:
- (1) a quorum of the board;
  - (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
  - (3) the State Office of Administrative Hearings under Section 36.416.
- (b) Except as provided by Subsection (c) or Section 36.416, the board president or the hearings examiner shall serve as the presiding officer at the hearing.
- (c) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
- (d) The presiding officer may:
- (1) convene the hearing at the time and place specified in the notice;
  - (2) set any necessary additional hearing dates;
  - (3) designate the parties regarding a contested application;
  - (4) establish the order for presentation of evidence;
  - (5) administer oaths to all persons presenting testimony;
  - (6) examine persons presenting testimony;
  - (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
  - (8) prescribe reasonable time limits for testimony and the presentation of evidence; ~~and~~
  - (9) exercise the procedural rules adopted under Section 36.415; and
  - (10) determine how to apportion among the parties the costs related to:
    - (A) a contract for the services of a presiding officer; and
    - (B) the preparation of the official hearing record.
- (e) Except as provided by a rule adopted under Section 36.415, a district may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.
- (f) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not



available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

- (g) If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.
- (h) The district by rule adopted under Section 36.417 may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that:
  - (1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
  - (2) determines how the costs of the procedure shall be apportioned among the parties; and
  - (3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2011, 82nd Leg., Ch. 53, Sec. 1, eff. May 12, 2011, Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.407. EVIDENCE**

- (a) The presiding officer shall admit evidence that is relevant to an issue at the hearing.
- (b) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

### **Sec. 36.408. RECORDING**

- (a) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

- (b) If a hearing is uncontested, the presiding officer may substitute minutes or the report required under Section 36.410 for a method of recording the hearing provided by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

### **Sec. 36.409. CONTINUANCE**

The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

### **Sec. 36.410. ~~REPORT~~PROPOSAL FOR DECISION**

- (a) Except as provided by Subsection (e), the presiding officer shall submit a proposal for decision ~~report~~ to the board not later than the 30th day after the date ~~at~~the evidentiary hearing is concluded.
- (b) The ~~report~~ proposal for decision must include:
- (1) a summary of the subject matter of the hearing;
  - (2) a summary of the evidence or public comments received; and
  - (3) the presiding officer's recommendations for board action on the subject matter of the hearing.
- (c) The presiding officer or general manager shall provide a copy of the proposal for decision ~~report~~ to:
- (1) the applicant; and
  - (2) each ~~person who provided comments or each~~ designated party.
- (d) A party ~~person who receives a copy of the report under Subsection (e)~~ may submit to the board written exceptions to the proposal for decision ~~report~~.
- (e) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer shall determine whether to prepare and submit a proposal for decision ~~report~~ to the board under this section.
- (f) The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Section 36.409.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005, Amended by Acts, 84<sup>th</sup> Leg. Ch. \_\_, Sec. \_\_, eff. June 10, 2015.

**Sec. 36.411. BOARD ACTION**

The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

**Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS**

- (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions ~~or a rehearing before the board~~ not later than the 20th day after the date of the board's decision.
- (b) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each ~~person who provided comments or each designated party~~, not later than the 35th day after the date the board receives the request. ~~A party to a contested hearing person who receives a certified copy of the findings and conclusions from the board~~ may request a rehearing ~~before the board~~ not later than the 20th day after the date the board issues the findings and conclusions.
- (c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the ~~party person~~ requesting a rehearing must provide copies of the request to all parties to the hearing.
- (d) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- (e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.413. DECISION; WHEN FINAL**

- (a) A decision by the board on a permit or permit amendment application is final:
  - (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
  - (2) if a request for rehearing is filed on time, on the date:
    - (A) the board denies the request for rehearing; or
    - (B) the board renders a written decision after rehearing.
- (b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or

permit amendment application not later than the 60th day after the date on which the decision becomes final.

- (c) An applicant or a party to a contested hearing may not file suit against the district under Section 36.251 if a request for rehearing was not filed on time.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

#### **Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS**

- (a) Except as provided by Subsection (b), a district shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:
- (1) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113;
  - (2) the spacing of water wells or the production of groundwater under Section 36.116; or
  - (3) transferring groundwater out of a district under Section 36.122.
- (b) A district is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

#### **Sec. 36.415. RULES; ADDITIONAL PROCEDURES**

- (a) A district by rule shall adopt procedural rules to implement this subchapter and may adopt notice and hearing procedures in addition to those provided by this subchapter.
- (b) In adopting the rules, a district shall:
- (1) define under what circumstances an application is considered contested; ~~and~~
  - (2) limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public; and
  - (3) establish the deadline for a person who may participate under Subdivision (2) to file in the manner required by the district a protest and request for a contested case hearing.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

#### **Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS; RULES**

- a) If a district contracts with the state Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code. The district may adopt rules for a hearing conducted under this section that are consistent with the procedural rules of the State Office of Administrative Hearings.
- (b) If requested by the applicant or other party to a contested case, a district shall contract with the State Office of Administrative Hearings to conduct the hearing. If the district does not prescribe a deadline by rule, the applicant or other party must request the hearing before the State Office of Administrative Hearings not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The hearing must be held in Travis County or at a location described by Section 36.403(c). The district shall choose the location.
- (c) The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the district shall refund any excess money to the paying party. All other costs may be assessed as authorized by this chapter or district rules.
- (d) An administrative law judge who conducts a contested case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge.
- (e) A district shall provide the administrative law judge with a written statement of applicable rules or policies.
- (f) A district may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., Ch. 53, Sec. 2, eff. May 12, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

### **Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS.**

- (a) In a proceeding for a permit application or amendment in which a district has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge ~~consistent with Section 2001.058, Government Code.~~
- (b) A board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:
  - (1) that the administrative law judge did not properly apply or interpret applicable law, district rules, written policies provided under Section 36.416(e), or prior administrative decisions;

- (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
- (3) that a technical error in a finding of fact should be changed.

Added by Acts 2011, 82<sup>nd</sup> Leg., Ch. 53, Sec. 3, eff. May 12, 2011; Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 10, 2015.

**Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION**

A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

Added by Acts 2005, 79<sup>th</sup> Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005, Amended by Acts 2015, 84<sup>th</sup> Leg., Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. \_\_\_\_\_.

**Sec. 36.418. RULES; CONTESTED CASE HEARINGS; APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT**

- (a) A district may adopt rules establishing procedures for contested hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.
- (b) Except as provided by this section and Sections 36.416 and 36.4165, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.
- (c) The district shall adopt rules to:
  - (1) establish a procedure for preliminary and evidentiary hearings;
  - (2) allow the presiding officer, at a preliminary hearing by the district and before a referral of the case to the State Office of Administrative Hearings, to determine a party's right to participate in a hearing according to Section 36.415(b)(2); and
  - (3) set a deadline for a party to file a request to refer a contested case to the State Office of Administrative Hearings under Section 36.416.

Added by Acts 2005, 79<sup>th</sup> Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005; Amended by Acts 2011, 82<sup>nd</sup> Leg., Ch. 53, Sec. 4, eff. May 12, 2011; Acts 2011, 82<sup>nd</sup> Leg., Ch. 53, Sec. 5, eff. May 12, 2011.

**Sec. 36.419. EDWARDS AQUIFER AUTHORITY**

- (a) Except as provided by Subsection (b), this subchapter does not apply to the Edwards Aquifer Authority.
- (b) Sections 36.412 and 36.413 apply to the Edwards Aquifer Authority.

Added by Acts 2005, 79<sup>th</sup> Leg., Ch. 970, Sec. 17, eff. Sept. 1, 2005.

## **SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS**

### **Sec. 36.451. DEFINITIONS**

In this subchapter, "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator" have the meanings assigned by Section 27.151.

Added by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_, Sec. \_\_\_\_, eff. June 16, 2015.

### **Sec. 36.452. APPLICABILITY TO RECOVERY WELLS THAT ALSO FUNCTION AS INJECTION WELLS**

Notwithstanding Section 27.152, this subchapter applies to an ASR recovery well that also functions as an ASR injection well.

Added by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_, Sec. \_\_\_\_, eff. June 16, 2015.

### **Sec. 36.453. REGISTRATION AND REPORTING OF WELLS**

- (a) A project operator shall:
- (1) register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with any district in which the wells are located;
  - (2) each calendar month by the deadline established by the commission for reporting to the commission, provide the district with a copy of the written or electronic report required to be provided to the commission under Section 27.155; and
  - (3) annually by the deadline established by the commission for reporting to the commission, provide the district with a copy of the written or electronic report required to be provided to the commission under Section 27.156.
- (b) If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the commission to be recovered under the project, the project operator shall report to the district the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection (a)(2).

Added by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_, Sec. \_\_\_\_, eff. June 16, 2015.

### **Sec. 36.454 PERMITTING, SPACING, AND PRODUCTION REQUIREMENTS**

- (a) Except as provided by Subsection (b), a district may not require a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by the commission.
- (b) The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing and production requirements of the district if the amount of groundwater recovered from the wells exceeds the volume authorized by the commission to be recovered under the project. The requirements of the district apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the commission to be recovered.



- (c) A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the commission to be recovered under the project unless the project operator complies with the applicable requirements of a district as described by this section.

Added by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 16, 2015.

### **Sec. 36.455. FEES AND SURCHARGES**

- (a) A district may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.
- (b) A district may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the district assesses such a fee for other wells registered with the district.

Added by Acts 2015; 84<sup>th</sup> Leg. Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 16, 2015.

### **Sec. 36.456. DESIRED FUTURE CONDITIONS**

A district may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.

Added by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 16, 2015.

### **Sec. 36.457. OTHER LAWS NOT AFFECTED**

This subchapter does not affect the ability to regulate groundwater as authorized under:

- (1) Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;
- (2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District;
- (3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District;
- (4) Chapter 8802, Special District Local Laws Code, for the Barton Springs-Edwards Aquifer conservation District; or
- (5) Chapter 8811, Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

Added by Acts 2015, 84<sup>th</sup> Leg. Ch. \_\_\_\_\_, Sec. \_\_\_\_\_, eff. June 16, 2015.