

By: Fraser

S.B. No. 332

Substitute the following for S.B. No. 332:

By: \_\_\_\_\_

C.S.S.B. No. 332

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the vested ownership interest in groundwater beneath  
3 the surface of land, the right to produce that groundwater, and the  
4 management of groundwater in this state.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 36.001, Water Code, is amended by adding  
7 Subdivision (6-a) to read as follows:

8 (6-a) "Landowner" means:

9 (A) an owner of a possessory interest in the  
10 surface estate of real property; or

11 (B) any lessee or other person to whom a person  
12 described by Paragraph (A) has leased, granted, or conveyed either  
13 an ownership interest in, or a groundwater production right to, the  
14 groundwater below the surface of the real property, but only to the  
15 extent of the lease, grant, or conveyance, or

16 (C) a successor in interest to a person described  
17 by Subdivisions (A) or (B).

18 SECTION 2. Subchapter A, Chapter 36, Water Code, is amended  
19 by adding Section 36.0011 to read as follows:

20 Sec. 36.0011. FINDINGS. The legislature finds that the  
21 conservation, preservation, use, and development of groundwater  
22 resources in this state are compelling public interests vital to  
23 public safety, welfare, and economic progress. In this chapter,  
24 the legislature has recognized that the implementation of long-term  
25 aquifer management strategies developed by local groundwater

1 conservation districts to address the diverse characteristics that  
2 distinguish the many groundwater aquifers in this state is  
3 essential to implement Section 59, Article XVI, Texas Constitution,  
4 and to protect the landowner's ownership interest in the  
5 groundwater below the surface.

6 SECTION 3. Section 36.002, Water Code, is amended to read as  
7 follows:

8 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature  
9 recognizes that a landowner has a vested ownership interest in  
10 groundwater below the surface as an interest in the landowner's  
11 real property.

12 (b) The vested ownership interest described by this section:

13 (1) entitles the landowner to a fair chance to produce  
14 the groundwater below the surface of real property, subject to  
15 Subsection (d), without causing waste, malicious drainage of other  
16 properties, or negligently causing subsidence but does not entitle  
17 a landowner to the right to capture a specific amount of  
18 groundwater below the surface; and

19 (2) does not affect the existence of common law defenses  
20 or other defenses to liability under the rule of capture.

21 (c) Nothing [~~The ownership and rights of the owners of the~~  
22 ~~land and their lessees and assigns in groundwater are hereby~~  
23 ~~recognized, and nothing~~] in this code shall be construed as  
24 depriving or divesting a landowner [~~the owners or their lessees and~~  
25 ~~assigns~~] of the ownership interest [~~or rights, except as those~~  
26 ~~rights may be limited or altered by rules promulgated by a~~

1 ~~district]~~.

2 (d) Nothing in this section shall be construed to:

3 (1) prohibit a district from promulgating a rule to limit  
4 the exercise of the right of the landowner to produce groundwater;

5 (2) prohibit a district from limiting or prohibiting the  
6 drilling of a well by a landowner for failure or inability to  
7 comply with minimum well spacing or tract size requirements adopted  
8 by a district;

9 (3) affect the ability of a district to regulate  
10 groundwater production as authorized under Section 36.113, 36.116,  
11 or 36.122, or otherwise under this chapter or a special law  
12 governing a district; or

13 (4) require that rules or regulations adopted by a  
14 district must allocate to each landowner a proportionate share of  
15 available groundwater for production from the aquifer based on the  
16 number of acres owned by the landowner.

17 (e) A rule promulgated by a district may not discriminate  
18 between owners of land that is irrigated for production and  
19 landowners [~~owners of land or their lessees and assigns~~] whose land  
20 that was irrigated for production is enrolled or participating in a  
21 federal conservation program.

22 SECTION 4. Section 36.101, Water Code, is amended by amending  
23 Subsection (a) and adding Subsections (a-1) to read as follows:

24 (a) A district may make and enforce rules, including rules  
25 limiting groundwater production based on tract size or the spacing

1 of wells, to provide for conserving, preserving, protecting, and  
2 recharging of the groundwater or of a groundwater reservoir or its  
3 subdivisions in order to control subsidence, prevent degradation of  
4 water quality, or prevent waste of groundwater and to carry out the  
5 powers and duties provided by this chapter. [~~During the rulemaking~~  
6 ~~process the board~~] In adopting a rule under this chapter, a  
7 district shall:

8 (1) consider all groundwater uses and needs;

9 (2) develop rules that are fair and impartial [~~and~~];

10 (3) [~~shall~~] consider the vested ownership interest  
11 described by Section 36.002;

12 (4) consider the public interest in conservation,  
13 preservation, protection, recharging, and prevention of waste of  
14 groundwater, and of groundwater reservoirs or their subdivisions,  
15 and to control subsidence caused by withdrawal of water from  
16 those groundwater reservoirs or their subdivisions, consistent  
17 with the objectives of Section 59, Article XVI, Texas  
18 Constitution, and

19 (5) consider the goals developed as part of the  
20 district's comprehensive management plan under Section 36.1071; and

21 (6) [~~that do~~] not discriminate between land that is  
22 irrigated for production and land that was irrigated for production  
23 and enrolled or participating in a federal conservation program.

1        (a-1) Any rule of a district that discriminates between land  
2 that is irrigated for production and land that was irrigated for  
3 production and enrolled or participating in a federal conservation  
4 program is void.

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6        SECTION 5. Subsection (c), Section 36.108, Water Code, is  
7 amended to read as follows:

8        (c) The presiding officer, or the presiding officer's  
9 designee, of each district located in whole or in part in the  
10 management area shall meet at least annually to conduct joint  
11 planning with the other districts in the management area and to  
12 review the management plans and accomplishments for the management  
13 area. In reviewing the management plans, the districts shall  
14 consider:

15            (1) the goals of each management plan and its impact on  
16 planning throughout the management area;

17            (2) the effectiveness of the measures established by  
18 each management plan for conserving and protecting groundwater,  
19 ~~and~~ preventing waste, and considering the vested ownership  
20 interest described by Section 36.002, and the effectiveness of  
21 these measures in the management area generally;

22            (3) any other matters that the boards consider relevant  
23 to the protection and conservation of groundwater and the  
24 prevention of waste in the management area; and

25            (4) the degree to which each management plan achieves  
26 the desired future conditions established during the joint planning

C.S.S.B. No. \_\_\_\_\_

1 process.

2 SECTION 6. This Act takes effect September 1, 2011.