



87th Legislative Session Wrap-Up

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[Texas Alliance of Groundwater Districts](#) (TAGD) is a 501(c)3 created in 1988 to provide to a centralized means for GCDs to stay current on the quickly evolving world of groundwater science, policy and management. TAGD currently has 90 GCD members and 38 associate members.

The 87th Texas Legislature adjourned *sine die* on May 31 after a legislative session that was truly like no other. The early months of the legislative session were notably lacking in both ceremonial and social activities as a result of COVID-19 restrictions. Indeed, COVID-19 cast a long shadow throughout the legislative session. The first order of business was establishing COVID-19 pandemic protocols for the two chambers to ensure safe functioning. After a few weeks with most everyone entering the capitol getting tested and wearing masks, protocols began to change with increases in vaccination rates and the removal of the mask mandate. As anyone walking the halls of the capitol could attest, the pandemic impacted access and participation in the legislative process throughout the legislative session. Early on, many anticipated that the COVID-19 pandemic would result in a decrease in the total number of bills filed as compared to prior legislative sessions. That was not the case however, with over 7,300 bills filed—slightly fewer than the 86th legislative session but more than either the 84th and 85th legislative sessions. Although, it likely did impact the overall passage, with only 1,175 bills (~16%) passing both chambers.

I. Big Picture Priorities and Leadership

In the months leading up to the legislative session, many had anticipated that the budget, redistricting, and COVID-19 response would dominate the session. That did not play out quite as planned for several reasons. Winter Storm Uri and the near failure of the state's energy grid caused a swift shift in priorities and quickly became a primary focus of the legislative session. While the state's budget outlook looked grim last spring, it had improved in the months leading up to the legislative session. Also, the Legislature is charged with redrawing the Texas electoral maps every 10 years, which falls this year, but delays in census data meant that this redistricting was not completed. This was not a surprise, and Governor Abbott will call a special session later this fall to complete redistricting (in addition to the 2 special sessions called over the summer).

On the first day of the legislative session, the Texas House of Representatives elected Representative Dade Phelan (R-Beaumont) as Speaker of the House. This meant new committees, new committee chairmen, and a new power structure in the House. Of



particular significance to TAGD and the groundwater stakeholders, Representative Tracy King (D-Uvalde) was newly appointed as chair of the House Natural Resources Committee. A long-serving House member with an extended tenure on the House Natural Resources Committee, Representative Tracy King brings a deep understanding of groundwater to this role. On the Senate side, Lieutenant Governor Dan Patrick (R-Houston) opted to merge the Agriculture Committee with the Water and Rural Affairs Committee and appointed the experienced Senator Charles Perry (R-Lubbock) to chair that committee for the third time.

II. Groundwater Bills

No one really expected the 87th legislative session to have a significant focus on groundwater, which was demonstrated by the relatively few groundwater bills that were filed. A number of those bills were refiled bills, reflecting unsettled issues from prior legislative sessions. COVID-19 prevented committee hearings on interim charges, with only a single Senate Water and Rural Affairs committee hearing in January 2020 where groundwater management was discussed. This convergence of factors made for a legislative session that—for the first time since the Texas Water Code underwent major revisions during the 75th legislative session in 1997—there were no changes to Chapter 36 enacted. However, just as many of these bills were continuations of discussions from prior legislative sessions, it is likely that many of the groundwater bills from the 87th will return.

Throughout the 87th legislative session, TAGD tracked legislation that could impact GCDs and groundwater management. TAGD has a legislative committee that tracks pending legislation and determines if a bill warrants action by TAGD. This committee will then vote on relevant bills and will only take a position if a 75% consensus standard is achieved. This is subject to confirmation by TAGD's Executive Committee.

There were six bills filed that sought to make substantive changes to the provisions of Chapter 36 of the Texas Water Code. While one of these bills was an omnibus bill with four distinct sections, this nevertheless represented fewer Chapter 36-related bills than in prior legislative sessions (15 bills in the 86th, 25 in the 85th, and 23 in the 84th). There were also several other bills filed that implicated groundwater policy and GCD operations. In total, TAGD identified 10 statewide priority groundwater bills for tracking during the legislative session. Of those 10 bills, none crossed the finish line.

In addition to priority groundwater bills, TAGD tracked selected bills affecting individual GCDs, general water, and administrative law/governance of political subdivisions for its membership. In total, TAGD tracked over 120 bills of interest to GCDs.



A. SB 152/HB 668

The omnibus SB 152/HB 668 (Perry/Harris) was the main focus of groundwater-related discussions leading up to and during the legislative session. The bill included four distinct parts. First, it would have changed the mandatory award of attorney's fees to groundwater conservation districts when a district prevails under Section 36.066(g) to be discretionary. Second, it would have clarified which DFC should be used in a GCD's management plan if the adopted DFC is petitioned to be unreasonable under the provisions of Chapter 36. This provision came out of the consensus process conducted by TWCA's groundwater committee in which TAGD and many TAGD members participated. Third, the bill would have added a new section to Chapter 36 allowing a person with groundwater ownership to petition their GCD to adopt or modify a district rule. This provision also achieved consensus at the TWCA groundwater committee. Lastly, SB 152 would have added a new section to Chapter 36 to require an applicant for a well permit application or amendment to provide notice to each person with a real property interest in groundwater beneath the land within the space prescribed by the district's spacing rules for the proposed or existing well, with certain exceptions.

TAGD voted to support three of the four components of SB 152—all except the proposed change to the attorney's fees provision contained in Section 36.066(g). Bills to modify the attorney's fees provisions of Chapter 36 have been filed for at least the past three legislative sessions and have consistently reflected a point of disagreement, with TAGD opposed to such a change. After SB 152 passed the Senate with the provision to change attorney's fees intact, a committee substitute was offered in the House Natural Resources Committee that removed that change. That committee substitute garnered support from TAGD, was voted favorably from committee, and subsequently passed the full House. Ultimately, however, the Senate did not vote to concur or appoint a conference committee on the version of the bill returned to the Senate. As a result, the entire bill died. While it is still too early to make predictions, it does appear likely that the provisions of this bill will again be part of interim discussions and portions of the bill may be refiled in the 88th legislative session.

B. Other Groundwater Bills

Because groundwater bills that are not successful one session have a habit of returning in future sessions, it is worth briefly mentioning the other bills from the 87th legislative session that would have modified Chapter 36. These included:



- **HB 2851 (Lucio)** would have required TWDB to calculate the managed sustained groundwater pumping of the state's aquifers as a way to provide greater context to the total estimated recoverable storage number. This bill was a refile from earlier legislative sessions, and the concept originated in the TWCA consensus process. TAGD supported this bill. This bill was approved by the House but did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.
- **HB 3619/SB 946 (Bowers/Eckhardt)** would have added registered exempt wells to those to be considered in permitting decisions. Similar versions of this bill have been filed in prior legislative sessions and first emerged through the TWCA consensus process. TAGD supported this bill. Like HB 2851, this bill was approved by the House but did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.
- **HB 966 (Burns)** sought to eliminate the mandatory award of attorney's fees under Section 36.066(g) and 36.102(d). TAGD opposed this bill. This bill did not receive a hearing in the House Natural Resources Committee.
- **HB 3972 (T. King)** sought to add a bonding requirement for petitioners other than the applicant in a contested case hearing to cover both the district's and applicant's costs (SB 1314 [Lucio] included a similar but not identical concept). TAGD was neutral on this bill. This bill was voted favorably from the House Natural Resources Committee but did not receive a vote in the House.
- **HB 3801/SB 2157 (Metcalf/Creighton)** contained the same provision regarding unreasonable DFCs as was included in SB 152. TAGD supported this bill. This bill was approved by the House but did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.
- **HB 2103 (Bowers)** would have clarified that meetings of GCDs within groundwater management areas are subject to provisions regarding video and telephonic meetings contained in the Texas Government Code Section 551.125 and 127. This bill was approved by the House but was not referred to a committee in the Senate.

C. Groundwater-Adjacent Bills

While not directly affecting Chapter 36 of the Texas Water Code, another bill that was filed this legislative session and received attention was HB 2095 (Wilson). This bill would have directed the Bureau of Economic Geology at the University of Texas at Austin to conduct studies of surface water and groundwater to improve on data gaps, integrate models to characterize water resources, and make determinations on water availability. In a lengthy Senate Water, Agriculture, and Rural Affairs Committee hearing, questions were raised regarding potential confusion and overlap with other legislatively funded models relied on for the regional and state water planning process, and the bill was left pending in committee. However, the dialogue on this



topic suggests that how to best fill and fund data and modeling gaps, including interactions between groundwater and surface water, could be a subject for interim study.

Finally, a bill with potential future implications for groundwater management that did pass this legislative session was SB 601 (Perry/Burrows). This bill creates the Texas Produced Water Consortium at Texas Tech University, which will study the economic, environmental, and public health aspects of beneficially using water produced during oil and gas operations and will recommend a pilot project. The potential to reuse produced water could provide a viable alternative to disposal through underground injection and may offer future opportunities for beneficial use outside the industry to meet water demands, if the produced water is treated to meet all water quality and groundwater protection standards.

III. Government Bills

After over a year of countless meetings and hearings held virtually, pursuant to Governor Abbott's temporary suspension of certain provisions of TOMA, it was anticipated that the 87th legislative session would bring changes to TOMA that would provide additional opportunities for governmental entities to utilize virtual meetings. Several bills were filed that would have granted governmental entities this increased flexibility, and there was early movement of those bills at the committee level. However, as the legislative session progressed, these efforts met resistance in the Senate. As a result—and pursuant to Governor Abbott's recent declaration—the suspension of certain provisions of TOMA will expire on September 1 and governmental entities will be required to fully comply with the unchanged TOMA.

There were, however, several bills affecting government operations and transparency that did become law and were of interest to TAGD members:

- **HB 1118 (Capriglione/Paxton)** expands the cybersecurity training requirement to include appointed officials while limiting the requirement only to those employees and officials that have access to the government's computer system and who use a computer to perform at least 25% of their required duties.
- **HB 1154 (Jetton/Kolkhorst)** requires certain special purpose districts to post specified information on a website. It also amends requirements regarding public meeting locations for districts in rural areas.
- **HB 1082 (P. King/Zaffirini)** exempts certain personal information of elected public officials from public disclosure.
- **SB 1225 (Huffman/Paddie)** provides that a governmental entity may only suspend responses to open records requests once for each declared



catastrophe. It also requires that a governmental entity make a good faith effort to continue to respond to open records requests even when it closes its administrative offices but requires remote work.

- **HB 2723 (Meyer/Bettencourt)** requires DIR to develop and maintain a property tax database on the internet and requires that tax notices from taxing entities reference how to access that local property tax database.

IV. Looking Forward

During the summer, Governor Abbott called two special sessions to address election integrity, bail reform, and a few other key topics. Next up for the Legislature will be a second special session later this fall to complete redistricting. It is unclear if redistricting will impact the timing for issuance of interim charges by Speaker of the House Dade Phelan and Lieutenant Governor Dan Patrick, which typically occurs late in the fall. Almost certainly, the upcoming interim will see the return of in-person interim hearings on those charges.

To further TAGD's mission to promote and support sound groundwater management based on local conditions and good science, TAGD will continue to engage in groundwater-related interim charges and associated policy discussions. TAGD will also be monitoring the upcoming sunset review process for TWDB and TCEQ. Given the fate of groundwater legislation during the 87th legislative session and continuing pressure caused by population growth on the water resources of the state, it would be unsurprising to see a strong focus on groundwater in the 88th legislative session.