



**88th Legislative Session Wrap-Up**  
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*[Texas Alliance of Groundwater Districts](#) (TAGD) is a 501(c)(3) nonprofit membership organization created in 1988 to provide a centralized means for groundwater conservation districts to engage and stay current on the quickly evolving world of groundwater science, policy, and management. TAGD currently has 92 groundwater conservation district members and 39 associate members.*

The 88th Texas Legislature adjourned *sine die* on May 29, 2023 after a hectic legislative session. The session saw 8,046 bills filed— the highest ever. However, just because legislators filed a lot of bills does not mean many of them actually passed. A relatively low 1,246 bills passed both chambers; of those, the Governor subsequently vetoed 76 bills. Committee leadership for the House Natural Resources Committee and Senate Water, Agriculture, and Rural Affairs Committee – most relevant to groundwater conservation districts (GCDs) and groundwater stakeholders – remained the same as last session. Representative Tracy King (D-Uvalde) remained chair of the Natural Resources Committee. On the Senate side, Senator Charles Perry (R-Lubbock) was reappointed to chair the Water, Agriculture, and Rural Affairs Committee for the fifth time.

For the first time in years, the session could fairly be described as a “water session.” Attention on water began early with House Natural Resources Chairman Rep. Tracy King forming the first-ever House Water Caucus, which attracted the participation of 73 House members committed to ensuring a secure water future for Texas. A \$33 billion surplus made the budget and spending priorities a central focus of the session. Leading up to the session, momentum had been building for a generational investment in Texas’s water infrastructure. The water community rallied together to support such an investment. Both Chairmen led on this critical issue, which ultimately resulted in the passage of SB 28/SJR 75 (Perry/T. King). This bill creates the Texas Water Fund and the Legislature appropriated \$1 billion for the fund, subject to voter approval. This umbrella fund will allow the Texas Water Development Board (TWDB) to disburse funds to other water funds and programs it administers. The bill also creates the New Water Supply Fund, which aims to fund projects (including desalination, aquifer storage and recovery, and use of produced water) that will generate 7 million acre-feet of new water supplies by 2033. ([SB 28 2023](#)).

**I. Groundwater Bills That Passed**

Throughout the 88th Legislative Session, TAGD tracked legislation that could impact GCDs and groundwater management. TAGD has a Legislative Committee that follows pending legislation and determines if a bill warrants action. Participation on the Legislative Committee is open to all TAGD members. This committee will then vote on relevant bills (only GCD members may vote) and needs 75% consensus to take a position. Positions are then subject to confirmation by TAGD’s Executive Committee.

Unlike the 87<sup>th</sup> Legislative Session, this session saw a high volume of groundwater bills filed, several of which became law. TAGD identified 25 bills that either sought to make substantive changes to Chapter 36 of the Texas Water Code or otherwise implicated groundwater management and classified these as potentially actionable groundwater bills. In total, six of those bills crossed the finish line. Each of these is discussed below.

- **HB 1971 (Ashby/Springer).** This bill makes several changes to various provisions of Chapter 36 of the Texas Water Code:
  - In a contested case hearing on a permit application or permit amendment for which the GCD has contracted with the State Office of Administrative Hearings (SOAH), the GCD board must issue its final decision in writing no later than 180 days after receipt of SOAH’s proposal for decision. Failure to do so will result in the final SOAH proposal for decision becoming the board’s final order. This final order is then immediately appealable and not subject to a request for rehearing.
  - In a proceeding for permit application or amendment where the GCD has contracted with SOAH for a contested case hearing, the board may not continue a matter in excess of the time limits for issuing a final decision.
  - A board must consolidate all motions for rehearing in a contested case hearing. It must issue its final decision by 90 days after the original decision date.
  - For a GCD board with 10 or more directors, a concurrence of the majority of directors eligible to vote is sufficient to take action on a permit application or amendment.
  - A director required to file a conflict-of-interest affidavit on a matter is prohibited from voting or attending a closed meeting on that matter unless a majority of the directors are also required to file conflict-of-interest affidavits on that matter. ([HB 1971 2023](#)).

The concepts in this bill originated from a river authority that sought certain changes to Chapter 36 to bolster the finality of GCD decisions in the context of contested cases after it had gone through a lengthy contested case hearing process with one GCD. Representative Ashby spearheaded extensive stakeholder discussions during the session in which TAGD participated, resulting in a committee substitute for the filed version of HB 1971. TAGD supported the changes incorporated into the committee substitute and ultimately is the version that became law.

- **HB 2443 (Harris/Perry).** This bill adds a new Section 36.1025 to the Texas Water Code, which allows a person with a real property interest in groundwater to petition their GCD to adopt or modify a district rule. It includes notice and hearing requirements and requires a GCD to issue an explanation for the reasoning if a rulemaking petition is not granted. GCDs must adopt rules governing the form and procedure for such petitions by December 1, 2023. ([HB 2443 2023](#)). TAGD previously prepared a template that districts may use to include such a petition process in their rules. This TAGD-supported bill was a refile from the last two sessions.

- **HB 3059 (T. King/Perry).** This bill makes the following changes to Sections 36.122 and 36.207 of the Texas Water Code:
  - Increases the export fee cap for both tax- and fee-based districts to 20 cents per thousand gallons of water exported;
  - Beginning January 1, 2024, allows for a 3% annual increase to the maximum allowable export fee rate that a district may impose;
  - Provides that increases to export fees are not valid unless there is a public hearing prior to GCD board approval;
  - Allows for a district governed by a special law with provisions regarding export fees to continue to charge fees in accordance with that special law;
  - Restricts a district's use of export fees collected from the authorized 3% annual increase only to costs related to assessing and addressing impacts associated with groundwater development; and
  - Clarifies that a district may use funds obtained from fees to maintain the operability of wells significantly affected by groundwater development to allow for the highest practicable level of groundwater production while achieving the desired future conditions. ([HB 3059 2023](#)).

Over the interim, both the House Natural Resources Committee and the Senate Water, Agriculture, and Rural Affairs Committees held hearings focused on the impacts of large-scale groundwater production and export projects. There was broad acknowledgement that current district funding levels are often insufficient to support the science and monitoring needed to assess impacts or to implement potential programs to address local impacts from those export projects. The export fee caps and structure had remained unchanged since their adoption in 2001. This set the stage for the passage of HB 3059, which TAGD supported.

- **HB 3278 (Price/Blanco).** This bill makes changes to Section 36.108 and the steps required for final adoption of desired future conditions (DFCs) by a groundwater management area (GMA). Specifically, if a GCD receives supporting materials (including new or revised model run results) during the district's public comment period on draft DFCs, then that GCD is required to provide those materials to the other GCD representatives in the GMA and to post those materials on a publicly available website for 30 days. After these 30 days, the GMA may reconvene for a joint planning meeting at which it shall take additional public comment and may adopt a final DFC. The bill further requires that the explanatory report include the reasons for including or excluding comments provided during the public comment period or GMA meeting. ([HB 3278 2023](#))
- **SB 1746 (Perry/Bell).** This bill creates a new exemption in Section 36. 117(b)(4) of the Texas Water Code to cover the use of a water well as a temporary water supply for drilling a permitted groundwater production well. It provides that this exemption may not exceed 180 days unless a district grants an extension not to exceed the time it takes to complete the groundwater production well. It also clarifies that a district may cancel this exemption if the temporary well is no longer used solely for the exempted purpose. ([SB 1746 2023](#))
- **SB 2440 (Perry/Burrows).** This bill modifies the Local Government Code to mandate that cities and counties require groundwater availability certifications as a part of plat

applications. Previously, Local Government Code Sections 212.0101 and 232.0032 allowed (but did not require) cities and counties, respectively, to require a person filing a plat application to certify adequate groundwater availability for that subdivision. The bill allows a city or county to issue a waiver from this new groundwater availability certification requirement if the municipality or county determines, based on credible evidence, that there is sufficient groundwater available and will continue to be available and either: (1) the entire tract will be supplied with water from the Gulf Coast Aquifer or the Carrizo Wilcox aquifer, or (2) the proposed subdivision will divide the tract into not more than 10 lots. The requirements of this bill apply to plat applications filed on or after the bill's effective date of January 1, 2024. ([SB 2440 2023](#)). The Texas Commission on Environmental Quality (TCEQ) is responsible for establishing the form and content of groundwater availability certifications and will undergo a rulemaking to implement the bill. This bill arose in the context of continued rapid growth in Texas as many developers identify groundwater as the source of water to supply planned homes. In some cases, however, those homes are constructed and sold and groundwater availability is subsequently inadequate to serve those homes. TAGD supported this bill.

While not directly affecting Chapter 36 of the Texas Water Code, there are a few other bills relevant to groundwater:

- **HB 2759 (Thompson/Perry)**. The bill provides specific statutory authority for the TWDB as the lead agency to coordinate the TexMesonet through station ownership and partnerships and codifies associated duties. ([HB 2759 2023](#)). The TexMesonet is a hydrometeorological network that provides statewide data on hydrological and meteorological conditions collected from earth observation stations. Many GCDs partner with TWDB to locate and maintain TexMesonet stations. TAGD supported this bill.
- **SB 1047 (Perry/Tepper)**. This bill directs the Texas Produced Water Consortium (created in 2021 through SB 601) to select and implement a pilot project on the beneficial use of produced water and submit a report to the Legislature on that project. ([SB 1047 2023](#)). The Legislature appropriated \$5 million to fund this effort. TAGD supported this bill.
- **HB 4256 (Murr/Blanco)**. This bill establishes a fund and associated grant program for plugging certain wells that will be administered by TCEQ. The bill requires RRC to establish and maintain a list of approved well pluggers that may plug wells through the grant program. The bill defines various program requirements and narrowly defines eligibility in a manner that effectively limits the program to Pecos County in far West Texas. Several particularly problematic deteriorated and abandoned wells are bringing contaminated water, hydrogen sulfide, and radioactive materials to the surface in Pecos County. ([HB 4256 2023](#)). The Legislature allocated \$10 million to this fund. Because TAGD does not take positions on local bills, it did not have an official position on this bill. However, the organization broadly supports addressing orphaned, abandoned, and deteriorated wells.

## II. Select Groundwater Bills that Did Not Pass

Because groundwater bills that are not successful in one session have a habit of returning in future sessions, it is worth briefly mentioning a few other key groundwater bills that did not pass during the 88th legislative session. These included:

- **SB 156 (Perry)**. This omnibus groundwater bill was a refile from the 87th session. The bill included four distinct parts. First, it would have changed the mandatory award of attorney’s fees to GCDs when a district prevails under Section 36.066(g) of the Texas Water Code to be discretionary. Second, it would have clarified which DFC should be used in a GCD’s management plan if a petition is filed that the adopted DFC is unreasonable under the provisions of Chapter 36. Third, it included the same petition for rulemaking process contained in the successful HB 2443 (Harris), discussed above. Finally, SB 156 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. ([SB 156 2023](#)). TAGD supported three of the four components of SB 156—all except the proposed change to the attorney’s fees provision. Bills to modify the attorney’s fees provisions of Chapter 36 have been filed in several prior legislative sessions and have consistently reflected a point of disagreement among stakeholders. SB 156 passed the Senate with the attorney’s fees provision intact. As the end of the session neared, the House Natural Resources Committee approved a committee substitute to SB 156 that removed the attorney’s fees change and added the provisions contained in several other Chapter 36 bills that passed the House but did not receive a committee hearing in the Senate. Those added to CSSB 156 included HB 4444, HB 4532, HB 5052, and HB 5302 (all discussed below), as well as HB 3059 (which did pass, discussed above). ([CSSB 156 2023](#)). While CSSB 156 was placed on the House calendar, the clock ran out before it could receive a vote by the full House.
- **HB 4532 (Kacal)**. This bill would have required TWDB to calculate the modeled sustained groundwater pumping of the state’s aquifers in order to provide context for the calculated total estimated recoverable storage number that is required to be considered by GCDs in the DFC adoption process. ([HB 4532 2023](#)). This bill was a refile from earlier legislative sessions, and, like prior sessions, TAGD supported this bill. The House approved this bill, but did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.
- **HB 5052 (Gerdes)**. This bill would have added registered exempt wells to the list of factors that a GCD considers in reviewing a permit application. ([HB 5052 2023](#)). Similar versions of this TAGD-supported bill have been filed in prior legislative sessions. While the House approved this bill, it did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.
- **HB 2735 (T. King)**. This bill sought to add a bonding requirement for petitioners other than the applicant in a contested case hearing to cover both the GCD’s and the applicant’s attorney’s fees. ([HB 2735 2023](#)). TAGD took no position on this bill. This bill was voted favorably by the House Natural Resources Committee but did not receive a vote by the House.
- **HB 4444 (T. King)**. This bill sought to make certain changes to the definitions section of Chapter 36. These included: updating the antiquated definition of “waste;” clarifying that “use for a beneficial purpose” must not be wasteful; and adding a definition of “conservation.” It would have also cleaned up some obsolete provisions regarding wells contained in Chapter 11 of the Texas Water Code. ([HB 4444 2023](#)). TAGD supported the

engrossed version of 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 5302 (Kacal)**. This bill sought to improve certain aspects of the petition for inquiry review process, which is a GCD oversight mechanism contained in Section 36.3011 of the Texas Water Code. Changes would have included: clarifying TCEQ’s responsibility for compliance with any open government requirements associated with a review panel; providing that the Office of Public Interest Counsel shall provide legal support to the review panel; establishing a process for both the review panel and TCEQ to obtain technical support from TWDB; and providing for compensation of actual expenses of review panel members. ([HB 5302 2023](#)). The basis for these clarifications arose from TCEQ’s and the review panel’s experience in 2019, the first time a petition for inquiry was granted and a review panel appointed. 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.

Finally, after allocating \$1 billion to water infrastructure and new water supply, smaller budgetary requests related to groundwater were less successful. TWDB had sought funding for several exceptional items to bolster its groundwater monitoring, TexMesonet, and Texas water data programs. They also sought to replenish the Agricultural Water Conservation Fund (which will run out of funding at the end of the next biennium) for an additional ten years. A number of GCDs and other entities have utilized this effective program over the years, generating significant water savings by Texas irrigators. By and large, however, these items were not funded – or were funded at a small portion of the requested amounts – in the adopted budget.

### III. Government Bills That Passed

There were several bills affecting government operations that became law and are relevant to GCDs:

- **HB 3440 (Canales/Hinojosa)**. This bill requires that certain governmental entities, including GCDs, post the agenda for an open meeting on the government website and also post the agenda in the same location where the meeting notice is posted. ([HB 3440 2023](#)).
- **SB 232 (Hinojosa/Geren)**. This bill provides for the automatic removal of any person holding elected or appointed office with a political subdivision if that person commits certain enumerated criminal offenses. ([SB 232 2023](#)).
- **SB 271 (Johnson/Shaheen)**. This bill requires a local government (including GCDs) that holds computerized data with sensitive personal information to report a security incident. A “security incident” is defined to include a breach or suspected breach of system security and the introduction of ransomware. ([SB 271 2023](#))
- **SB 1893 (Birdwell/Anderson)**. This bill prohibits the installation or use of certain social media, including TikTok, on any device owned or leased by a governmental entity and requires a governmental entity to adopt a model policy to implement the prohibition. The Department of Information Resources and Department of Public Safety is required to develop the model policy. ([SB 1893 2023](#)).

- **HB 3033 (Landgraf/Zaffirini)**. This bill makes various changes to the public information law. Key provisions include:
  - defining a “business day” as any day other than a Saturday or Sunday, national holiday, state holiday, or days specifically designated by the government body;
  - clarifying the exceptions to disclosure requirements as they relate to election information;
  - imposing certain limitations on repeat requestors and allowing for photo identification requirements;
  - requiring prompt release of basic responsive information, even if the government body is seeking an Attorney General decision on whether other information is subject to the request;
  - adding requirements to notify a requestor of the status of a request; and
  - authorizing the Attorney General to require training of a public official of a government body if the government body fails to comply with a requirement of the public information law. ([HB 3033 2023](#)).

#### **IV. A Look Ahead**

The interim looks like it will be an interesting one around the Capitol. At the time of this writing, Governor Abbott has already called two special sessions to address property tax relief. In addition, the Senate is poised to hold the impeachment trial of Attorney General Ken Paxton in September.

With respect to water, in November we will see the SJR 75 on the ballot. Voter approval of this measure is necessary to create the new Texas Water Fund and trigger the associated \$1 billion appropriation to that fund. And sometime in the late fall or early winter, Speaker of the House Dade Phelan and Lieutenant Governor Dan Patrick will issue their interim charges. Those charges often drive policy discussions over the interim and set the tone for the upcoming session.

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 assist its members in adjusting management and operations in accordance with legislation enacted during the 88th Legislative Session.