

BILL ANALYSIS

C.S.H.B. 2767
By: Keffer
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the Water Code chapter governing groundwater conservation districts was established a number of years ago by recodifying parts of a different Water Code chapter existing at the time. The parties further note that multiple amendments to the groundwater conservation districts chapter have been approved in the intervening legislative sessions, creating inconsistency in terminology and causing confusion and varying legal interpretations. C.S.H.B. 2767 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2767 amends the Water Code to set out provisions relating to the powers, duties, and administration of groundwater conservation districts. The bill applies the definition of "waste" applicable to a district to water produced from an artesian well. The bill defines "operating permit" as 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.

C.S.H.B. 2767 changes from production fees to fees authorized by provisions generally governing groundwater conservation districts the fees a district is required to set to pay for the district's regulation of groundwater in the district if a majority of the votes cast are against the levy of a maintenance tax at a confirmation and directors' election for a district created by petition in a management area or at a tax authority and directors' election for a district created by the Texas Commission on Environmental Quality (TCEQ) for a priority groundwater management area.

C.S.H.B. 2767 expands the provisions relating to the regulation of conflicts of officers of local governments to which a district director is subject to include Local Government Code provisions relating to the disclosure of certain relationships with local government officers and providing public access to certain information. The bill removes a requirement that the written policies for ensuring a better use of management information that a district board is required to adopt include uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that use "Governmental Accounting and Financial Reporting Standards." The bill changes from a retail water utility to a retail public utility the utility for which a district may consider the service needs or service area in regulating the production of

groundwater based on tract size or acreage.

C.S.H.B. 2767 authorizes a district to assess any appropriate fees for certain wells that no longer meet requirements for a required district permitting exemption in addition to a district's authority to require an operating permit for or to restrict production from such wells. The bill removes language restricting such authority to a well located in the Hill Country Priority Groundwater Management Area for a well from which the exempt groundwater withdrawals are no longer used solely for domestic use or to provide water for livestock or poultry.

C.S.H.B. 2767 requires a district's annual audit to be performed according to the generally accepted government auditing standards adopted by the American Institute of Certified Public Accountants and requires financial statements to be prepared in accordance with generally accepted accounting principles as adopted by the institute. The bill changes from an annual audit under provisions applicable to certain water districts to an annual groundwater conservation district audit the audit that a financially dormant district may elect not to conduct and instead submit to the executive director of TCEQ a financial dormancy affidavit.

C.S.H.B. 2767 expands to the county or counties where a district is to be located the authority of the district to pay all costs and expenses necessarily incurred in the creation and organization of the district and specifies that a county may be reimbursed for money advanced for such purposes.

C.S.H.B. 2767 authorizes a district to assess an applicable export fee for any water produced under an exemption if that water is subsequently sold to another person. The bill changes the fees a temporary board is authorized to set to pay for the creation and initial operation of a district from user fees to fees authorized by provisions generally governing groundwater conservation districts.

C.S.H.B. 2767 changes the fees collected under a special law governing a district from which the district may use funds for any purpose consistent with the district's approved management plan from permit fees to administrative, production, or export fees and expands the source of such funds to include such fees collected under provisions generally governing groundwater conservation districts. The bill removes the entitlement of a person, firm, corporation, or association of persons affected by and dissatisfied with any provision to file a suit against a district or its directors to challenge the validity of the law. The bill specifies that an appeal of a decision on a permit application is included as a district rule or order for which a dissatisfied entity is entitled to file a suit challenging validity. The bill restricts participation in an appeal of a decision on an application that was the subject of a contested case hearing to the district, the applicant, and parties to the contested case hearing. The bill requires an appeal of a decision on a permit application to include the applicant as a necessary party.

C.S.H.B. 2767 includes as an affected person authorized to file a petition with TCEQ requesting a district inquiry for specified reasons a subsidence district in or adjacent to a management area and replaces as an affected person a person who has groundwater rights in the management area with a person with a legally defined interest in groundwater in the management area.

C.S.H.B. 2767 removes from the provisions that, if applicable, require TCEQ to take appropriate corrective action certain provisions relating to joint planning in a management area and includes certain provisions relating to TCEQ inquiry and action regarding district duties.

C.S.H.B. 2767 changes from an owner of land contiguous to a district to an owner of land not already in the district the land owner authorized to file with the board a notarized petition requesting that the owner's land be included in the district but makes such authorization subject to statutory provisions relating to the annexation of noncontiguous territory. The bill specifies that, subject to those statutory provisions, a defined area of territory is not required to be contiguous with a district for purposes of the authority of landowners of a defined area of territory not already in a district to file with a district a petition requesting inclusion in that

district.

C.S.H.B. 2767 renames the groundwater district loan assistance fund as the groundwater conservation district loan assistance fund.

C.S.H.B. 2767 repeals Section 36.1082, Water Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2767 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

| INTRODUCED | HOUSE COMMITTEE SUBSTITUTE |
|---|---|
| SECTION 1. Section 36.001, Water Code, is amended. | SECTION 1. Same as introduced version. |
| SECTION 2. Section 36.017(i), Water Code, is amended. | SECTION 2. Same as introduced version. |
| SECTION 3. Section 36.0171(h), Water Code, is amended. | SECTION 3. Same as introduced version. |
| SECTION 4. Section 36.058, Water Code, is amended. | SECTION 4. Same as introduced version. |
| SECTION 5. Section 36.061(a), Water Code, is amended. | SECTION 5. Same as introduced version. |
| SECTION 6. Section 36.116(c), Water Code, is amended. | SECTION 6. Same as introduced version. |
| SECTION 7. Sections 36.117(a) and (d), Water Code, are amended. | SECTION 7. Same as introduced version. |
| SECTION 8. Section 36.122(e), Water Code, is amended. | SECTION 8. Same as introduced version. |
| SECTION 9. Sections 36.153(a), (b), and (d), Water Code, are amended. | SECTION 9. Same as introduced version. |
| SECTION 10. Section 36.157(a), Water Code, is amended. | SECTION 10. Same as introduced version. |
| SECTION 11. Section 36.159, Water Code, is amended. | SECTION 11. Same as introduced version. |
| SECTION 12. Section 36.204, Water Code, is amended by adding Subsection (c) to read as follows: <u>(c) Sections 26.04(c)-(j), 26.05(b), (c), (d), (e),</u> | No equivalent provision. |

and (g), and 26.07, Tax Code, do not apply to a tax levied and collected under this chapter or an ad valorem tax levied and collected for the payment of the interest on and principal of bonds issued by a district.

SECTION 13. Sections 36.205(f) and (g), Water Code, are amended.

SECTION 12. Same as introduced version.

SECTION 14. Section 36.206(a), Water Code, is amended.

SECTION 13. Same as introduced version.

SECTION 15. Section 36.207, Water Code, is amended.

SECTION 14. Same as introduced version.

SECTION 16. Section 36.251, Water Code, is amended.

SECTION 15. Same as introduced version.

SECTION 17. Section 36.3011, Water Code, is amended.

SECTION 16. Same as introduced version.

SECTION 18. Section 36.303(a), Water Code, is amended.

SECTION 17. Same as introduced version.

SECTION 19. Section 36.321, Water Code, is amended.

SECTION 18. Same as introduced version.

SECTION 20. Section 36.325, Water Code, is amended.

SECTION 19. Same as introduced version.

SECTION 21. Section 36.328(a), Water Code, is amended.

SECTION 20. Same as introduced version.

SECTION 22. The heading to Subchapter L, Chapter 36, Water Code, is amended.

SECTION 21. Same as introduced version.

SECTION 23. Section 36.371, Water Code, is amended.

SECTION 22. Same as introduced version.

SECTION 24. Section 36.1082, Water Code, is repealed.

SECTION 23. Same as introduced version.

SECTION 25. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 24. Same as introduced version.