

## **BILL ANALYSIS**

C.S.H.B. 4112  
By: Burns  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that recent legislation amended the statute relating to the groundwater ownership and rights established by common law and provided a more detailed description of the groundwater ownership and rights that the legislature believed the courts had established for landowners. The parties note, however, that in a recent court case a court established a private property right that is not referenced in the statute, and the parties contend that the statute must be amended to recognize any common law right the courts establish for groundwater. C.S.H.B. 4112 seeks to address this issue.

### **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. 4112 amends the Water Code to establish that the groundwater ownership and rights recognized by the legislature entitle a landowner, including a landowner's lessees, heirs, or assigns, to have any right recognized under common law and not just the right to drill for and produce the groundwater below the surface of real property without causing waste or malicious drainage of other property or negligently causing subsidence.

### **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. 4112 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**

SECTION 1. Section 36.002, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 36.002, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

84R 26553

15.119.548

Substitute Document Number: 84R 24829

(b) The groundwater ownership and rights described by this section[~~z~~]:

[~~(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) any other right recognized under common law, including the right to produce or save a fair share of the groundwater described in Subsection(a).

(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.

SECTION 2. 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.

(b) The groundwater ownership and rights described by this section[~~z~~]:

[~~(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.

SECTION 2. Same as introduced version.