

## **BILL ANALYSIS**

C.S.H.B. 2950  
By: Hope  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, Chapter 36 of the Texas Water Code allows groundwater conservation districts to protect existing and historic users of the aquifer. Section 36.113(e) allows a district to impose more restrictive permit conditions on new permit applications and increased use by historic users under certain conditions, while Section 36.116(b) allows districts to preserve historic use before the effective date of any rules limiting groundwater production. Impliedly, districts must determine who the existing and historic users are and how much water they are using or have used to implement these subsections.

This bill would provide clarification by providing express language stating that a groundwater conservation district may require the existing or historic users to prove the maximum annual amount of groundwater that the user applied to a beneficial use over a reasonable time period established by the district. When implementing the specific time periods, a district must adhere to certain guidelines in issuing permits to the different classifications of groundwater users. The flexibility in the time period authorized by this bill would allow a district to ensure, based on local circumstances, that the period is of sufficient duration to not exclude those who may not have used water simply because of crop rotation, changes in rainfall, or the like, while keeping it sufficiently short to protect those who are currently relying on the groundwater for economic purposes like irrigation or municipal use from being impacted from forced reductions for the windfall of those who abandoned or are not otherwise currently utilizing the aquifer. Presently, a district could utilize any time period since no prescription is given under Chapter 36.

This bill would also allow certain districts to establish defined historic use periods of groundwater use. The districts which meet the requirements created by the bill must satisfy certain provisions concerning the calculation of a user's amount of beneficial use as well as follow a specific order when limiting or reducing the amount of permitted production of groundwater through proportionate reductions.

### **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**

SECTION 1. Amends Section 36.113, Water Code, by adding Subsection (h) by enabling groundwater conservation districts to require an existing or historic user to prove their maximum annual amount of groundwater that the user applied to a beneficial use during a reasonable period established by the district that ends on or before the date on which the district publishes notice or adopts rules protecting existing or historic use under Section 36.113(e) or Section 36.116(b).

Amends Section 36.113, Water Code, by adding Subsection (i) to require districts to issue a permit for existing or historic use, for a user who produced groundwater for only part of the final year of the period established under Subsection (h), based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use. Provides that a district shall issue a permit for use based on agricultural irrigation, based on the maximum annual amount

of groundwater actually used during the time period established under Subsection (h) of Section 36.113 or the acreage irrigated during the period established under Subsection (h) of Section 36.113. Provides that a district shall issue a permit for an electric utility, a power generation company, or retail electric provider as defined by Section 31.002, Utilities Code, based on the amount actually used as calculated under and for the period established under Subsection (h) or Subdivision (1) of Subsection (i) of Section 36.113; or an amount necessary to annually provide sufficient groundwater for certain purposes for use at certain power generation facilities using land or the right to produce groundwater from land that was acquired by the electric utility, power generation company, or retail electric provider before May 1, 2003 for certain purposes.

Amends Section 36.113, Water Code, by adding Subsection (j) to provide that an annual report of groundwater use previously submitted to a state agency is admissible as evidence of existing or historic use under Subsection (h) or (i) of Section 36.113.

SECTION 2. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1132 to institute defined historic use periods for certain groundwater conservation districts. Provides that Section 36.1132 only applies to a groundwater conservation district which was created under Section 59, Article XVI, Texas Constitution; is adjacent to a district created under Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993; has within its boundaries a part of an aquifer that is regulated under Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993; and is not regulated under Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993. Provides that a district, in implementing Section 36.113(e) or 36.116(b), and notwithstanding the periods described under Section 36.113(h), shall require an existing or historic user to prove the maximum amount of groundwater that the user applied to a beneficial use during certain time periods. Provides that a district, in implementing Subsection (b) of Section 36.1132, for a user who produced groundwater for only part of the final year of the period established under Subsection (b)(2), shall issue a permit for existing or historic use based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use. Provides that a district, which limits or reduces total permitted production within its boundaries in a manner consistent with its certified groundwater district management plan, to limit or reduce the amount of permitted production of groundwater through proportionate reductions that apply equally among classes of users in a certain order, with all limitations or reductions or reductions that can be made in one class being made in that class before proceeding with limitations or reductions in the next subsequent class.

SECTION 3. Provides that the legislature finds that groundwater conservation districts have existing statutory authority to protect existing or historic uses under Section 36.113(e) and 36.116(b), Water Code. Provides that the legislature finds that it is important that groundwater conservation districts, when implementing Sections 36.113(e) and 36.116(b), Water Code, and in the conservation and management of groundwater, adopt precise rules regarding existing or historic use of groundwater, and that those rules include definite time periods during which existing or historic use must be proven. Provides that the legislature finds that it will benefit the state and its citizens to set express statutory guidelines that clarify the ability of groundwater conservation districts to define and identify existing or historic use periods. Provides that the changes in law by this Act do not limit the express or implied powers that groundwater conservation districts had before the effective date of this Act to implement Sections 36.113(e) and 36.116(b), Water Code, using reasonable time periods during which existing or historic use must be proven by a permit applicant or invalidate rules lawfully adopted by a groundwater conservation district before the effective date of this Act that use those time periods.

SECTION 4. Effective date: Immediate or September 1, 2003.

#### **EFFECTIVE DATE**

On passage, or if the Act does not receive the necessary vote, the Act takes effect on September 1, 2003.

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2950 adds new language to Subsection (h) of Section 36.113, Water Code, to allow a groundwater conservation district to require existing and historic users to prove the maximum annual amount of groundwater the user applied to a beneficial use during a reasonable period established by the district that meets certain time requirements.

C.S.H.B. 2950 adds new language by adding Subsection (i) to Section 36.113, Water Code, to require a district to issue a permit for existing and historic use based on an extrapolation of the user's beneficial use of groundwater in an amount that would have been used in a full calendar year when a user has produced water for only part of final year of period established by a district under Subsection (h) of Section 36.113. The substitute also adds new language in Subsection (i) to require a district to issue a permit, for use based on agricultural irrigation, for the maximum annual amount of groundwater actually used during the period established by a district under Subsection (h) or the acreage irrigated during the period established by a district under Subsection (h). The substitute adds new language in Subsection (i) to require a district to issue a permit to an electric utility, a power generation company, or retail electric provider as defined by the Utilities Code based on the amount actually used as calculated under and for the period established under Subsection (h) or Subdivision (1) of Subsection (i) or an amount necessary to annually provide sufficient groundwater for certain purposes for use at certain power generations facilities that use land or the right to produce groundwater from land that was acquired by the electric utility, power generation company, or retail electric provider before May 1, 2003 for certain purposes.

C.S.H.B. 2950 adds new language by adding Subsection (j) to Section 36.113, Water Code, to establish that certain information or reports previously submitted to a state agency is admissible as evidence of existing use or historic use under Subsection (h) or (i).

C.S.H.B. 2950 adds new language by adding Section 36.1132 to the Water Code to establish defined historic use periods for certain districts. The substitute adds new language to create provisions to define what groundwater conservation districts must adhere to Section 36.1132. The language and provisions added by Section 36.1132 requires the district to be adjacent to a district created under Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993; to contain within its boundaries a part of an aquifer that is regulated under Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993; and is not regulated under Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993. The substitute also adds new language to mandate that a district, when implementing Section 36.113(e) or 36.116(b), and notwithstanding the periods described under Section 36.116(h), require an existing or historic user to prove the maximum annual amount of groundwater that the user applied to beneficial use for certain time periods. The substitute adds new language to require a district, in implementing Subsection (b) of Section 36.1132, for a user who produced groundwater for only part of the final year of the period established under Subsection (b)(2), to issue a permit for existing or historic use based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use. The substitute adds new language to require a district, which limits or reduces total permitted production within its boundaries in a manner consistent with its certified groundwater district management plan, to limit or reduce the amount of permitted production of groundwater through proportionate reductions that apply equally among classes of users in a certain order, with all limitations or reductions or reductions that can be made in one class being made in that class before proceeding with limitations or reductions in the next subsequent class.

C.S.H.B. 2950 adds new language to establish that the legislature makes certain legislative findings. The substitute adds new language to provide that the legislature finds that groundwater conservation districts have existing statutory authority to protect existing or historic uses under Section 36.113(e) and 36.116(b), Water Code. The substitute adds new language to state that the legislature finds that it is important that groundwater conservation districts when implementing Sections 36.113(e) and 36.116(b), Water Code, and in the conservation and management of groundwater, adopt precise rules regarding existing or historic use of groundwater, and that those rules include definite time periods during which existing or historic use must be proven. The substitute also adds new language which establishes that the legislature finds that it

will benefit the state and its citizens to set express statutory guidelines that clarify the ability of groundwater conservation districts to define and identify existing or historic use periods. The substitute adds new language to clarify that the changes in law by this Act do not limit the express or implied powers that groundwater conservation districts had before the effective date of this Act to implement Sections 36.113(e) and 36.116(b), Water Code, using reasonable time periods during which existing or historic use must be proven by a permit applicant or invalidate rules lawfully adopted by a groundwater conservation district before the effective date of this Act that use those time periods.