

## **BILL ANALYSIS**

C.S.H.B. 4  
By: Puente  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The 78<sup>th</sup> Texas Legislature created the Water Conservation Implementation Task Force, a volunteer group of Texas citizens with experience in and commitment to using Texas water more efficiently. The task force members unanimously approved a final Report to the Legislature. The report consists of a review and evaluation of optimal levels of water-use efficiency and conservation for the state, and recommendations resulting from this review and evaluation. The task force also issued a Best Management Practices Guide. Experience in water conservation program implementation over the decades has resulted in a body of knowledge in Texas, across the United States and around the world. Practitioners have shared these experiences and adopted the approach of the best management practice or BMP. A BMP is structured for delivering a conservation measure or series of measures that is useful, proven, cost-effective, and generally accepted among conservation experts. The BMPs and the cost effectiveness tools in the guide are offered to the state's regional water planning groups, water providers, and water users as a tool for planning and designing effective conservation programs. The guide is organized into three sections, for municipal, industrial and agricultural water user groups.

With respect to its report, the task force made various recommendations designed to greatly enhance the ability and desire of Texans to implement water conservation strategies to meet their water-supply needs. For example, the task force recommended the state implement a statewide public education campaign to promote water awareness and efficiency, with the goal of reducing statewide per capita water use by one percent annually. This savings would provide enough water for more than 780,000 Texans' indoor water use. A 2004 study commissioned by the task force members via the Texas Water Development Board (TWDB) revealed that only 31 percent of Texans think state government is doing enough to conserve water (Baselice & Associates). However, 71 percent believe statewide funding should be provided to implement water conservation strategies. The research showed only 28 percent of Texans "definitely know" the natural source of their drinking water, but it uncovered a strong correlation between knowledge of water source and willingness to conserve. To address Texans' need for more water knowledge, the TWDB unveiled in January 2005 a campaign name for future public education efforts. The brand, "Water IQ: Know Your Water." or "Water IQ: Conozca a Tu Agua.," was developed as a compelling way to challenge residents to increase their knowledge of water resources and awareness of the need to be more efficient with their water use. The campaign is based on the findings of the Baselice study that the more Texans are told about where their water comes from, the more they will conserve.

In 2006, three pilot programs in three distinct regions of the state - North Texas, Central Texas and the Lubbock/High Plains region - were launched. Research findings and water consumption levels indicate the campaigns are resulting in more awareness and conservation efforts in the pilot areas.

Besides the Water Conservation Implementation Task Force, the TWDB established the Texas Rainwater Harvesting Evaluation Committee pursuant to the passage of House Bill 2430 by the 79<sup>th</sup> Texas Legislature in 2005. House Bill 2430 directed the Texas Rainwater Harvesting Evaluation Committee to evaluate the potential for rainwater harvesting in Texas and to recommend: minimum water quality guidelines and standards for potable and nonpotable indoor uses of rainwater; treatment methods for potable and non-potable indoor uses of rainwater; ways, such as dual plumbing systems, to use rainwater harvesting systems in conjunction with existing municipal water systems; and ways that the state can further promote rainwater harvesting.

In November 2006, the Texas Rainwater Harvesting Evaluation Committee submitted key findings and recommendations to the Speaker of the Texas House of Representatives and the Texas Lieutenant Governor.

Some of the key recommendations from both the Water Conservation Implementation Task Force and the Texas Rainwater Harvesting Evaluation Committee are contained in C.S.H.B. 4.

Specifically, C.S.H.B. 4 sets forth legislative policy statements regarding the value of land stewardship for conservation purposes; directs the TWDB to implement a statewide water conservation public awareness program to educate Texas residents about water conservation; creates a 23-member Water Conservation Advisory Council to monitor the development and implementation of water conservation strategies; requires retail public water utilities that provide potable water service to 3,300 or more connections to submit water conservation plans to the Texas Commission on Environmental Quality (TCEQ) and TWDB and do annual progress updates; and makes express that the TWDB's water assistance fund can be used for grants for water conservation.

C.S.H.B. 4 requires the Texas Higher Education Coordinating Board to encourage the development of curriculum regarding on-site reclaimed system technologies; incorporates on-site reclaimed system technologies into the design and construction of certain new state buildings; and requires TCEQ to establish certain rules regarding rainwater harvesting systems.

C.S.H.B. 4 requires TCEQ to adopt by rule and enforce standards governing the design, installation and operation of irrigation systems, water conservation and the duties and responsibilities of licensed irrigators.

C.S.H.B. 4 authorizes a home-rule municipality to adopt and enforce ordinances requiring water conservation in the municipality and by customers of the municipality's municipally owned water and sewer utility in the extraterritorial jurisdiction of the municipality.

#### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality and the Texas Water Development Board in SECTION 8 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 11 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 13 of this bill.

#### **ANALYSIS**

SECTION 1. Amends Section 1.003, Water Code, by providing that it is the public policy of the state to provide for the conservation and development of the state's natural resources, including the voluntary stewardship of public and private lands to benefit waters of the state.

SECTION 2. Subchapter A, Chapter 1, Water Code, is amended by adding Section 1.004, as follows:

Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP (a) The legislature finds that voluntary land stewardship enhances the efficiency and effectiveness of this state's watersheds by helping to increase surface water and groundwater supplies, resulting in a benefit to the natural resources of this state and to the general public. It is therefore the policy of this state to encourage voluntary land stewardship as a significant water management tool.

(b) "Land stewardship," as used in this code, is the voluntary practice of managing land to conserve and enhance suitable landscapes and the ecosystem values of the land. Land stewardship includes land and habitat management, wildlife conservation, and watershed protection. Land stewardship practices include runoff reduction, prescribed burning, managed

grazing, brush management, erosion management, reseeding with native plant species, riparian management and restoration, and spring and creek-bank protection, all of which benefit the water resources of this state.

SECTION 3. Amends Subtitle A, Title 2, Water Code, by adding new Chapter 10, entitled WATER CONSERVATION ADVISORY COUNCIL.

- Sec. 10.001. Defines “best management practices”, “Board”, “Commission” and “Council”.
- Sec. 10.002. States purpose of council is to provide water conservation expertise to the governor, lieutenant governor, speaker, legislature, TWDB, TCEQ, political subdivisions and the public.
- Sec. 10.003. (a) 23-member council appointed by TWDB with one member representing: (1) TCEQ, (2) Department of Agriculture; (3) Parks and Wildlife Department; (4) State Soil and Water Conservation Board; (5) TWDB; (6) regional water planning groups; (7) federal agencies; (8) municipalities; (9) groundwater conservation districts; (10) river authorities; (11) environmental groups; (12) irrigation districts; (13) institutional water users; (14) professional organizations focused on water conservation; (15) higher education; (16) agricultural groups; (17) refining and chemical manufacturing; (18) electric generation; (19) mining and recovery of minerals; (20) landscape irrigation and horticulture; (21) water control and improvement districts; (22) rural water users; and (23) municipal utility districts.
- (b) Each of the 23 entities may recommend one or more persons to represent their interests. If more than one person is recommended, the TWDB will appoint one of the recommended persons.
- Sec. 10.004. (a) Council members served staggered six-year terms, with seven or eight members' terms, as applicable, expiring Aug. 31 of each odd-numbered year.
- (b) TWDB is required to fill unexpired terms on the council with someone with the same qualifications, as required under Section 10.003, as the vacating member.
- Sec. 10.005. A presiding officer is selected by the council from its membership to serve in that capacity until the person's term as a council member expires.
- Sec. 10.006. On request by the council, the TWDB shall provide any necessary staff to assist the council in performance of its duties.
- Sec. 10.007. (a) Allows the council to hold public meetings.
- (b) The council is subject to Chapters 551 and 552, Government Code.
- Sec. 10.008. The council is exempt from Chapter 2110 Government Code, which governs the size, composition and duration of state agency advisory committees.
- Sec. 10.009. (a) Council members receive no compensation, but may be reimbursed by legislative appropriation for actual and necessary council-related expenses.
- (b) Reimbursement is subject to approval of the presiding officer.
- Sec. 10.010. Requires the council to:
- (1) monitor trends in water conservation implementation;
  - (2) monitor new technologies that could be added to the best management practices guide developed by the water conservation implementation task force;

- (3) monitor the effectiveness of the statewide water conservation public awareness program developed under Section 16.401 and associated local involvement in implementation of the program;
- (4) develop and implement a state water management resource library;
- (5) develop and implement a public recognition program for water conservation;
- (6) monitor the implementation of water conservation strategies by water users included in regional water plans; and
- (7) monitor target and goal guidelines for water conservation to be considered by TWDB and TCEQ.

Sec.10.011. Requires the council to submit a water conservation progress report to the governor, lieutenant governor, and speaker by December 1 of every even-numbered year.

Sec. 10.012 (a) Requires the council to conduct a study to evaluate the desirability of requiring the board to: (1) designate as certified water conservation training facilities entities and programs that provide assistance to retail public utilities in developing water conservation plans under Section 13.146; and (2) give preference to certified water conservation training facilities in making loans or grants for water conservation training and education activities.  
(b) Requires the council to submit a written report containing the findings of the study and the recommendations of the council to the governor, lieutenant governor, and speaker by December 1, 2008.  
(c) This section expires June 1, 2009.

SECTION 4. Amends Section 11.002, Water Code, by adding Subdivision (15) which defines “best management practices” (BMPs).

SECTION 5. Amends Section 11.0235(b), Water Code, by providing that the legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

SECTION 6. Amends Subchapter E, Chapter 13, Water Code, by adding Section 13.146, entitled WATER CONSERVATION PLAN, which requires TCEQ to require a retail public utility that provides potable water service to 3,300 or more connections to submit to the executive administrator of the TWDB a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate BMPs, as defined by Section 11.002, or other water conservation strategies.

SECTION 7. Amends Section 15.102 (b), Water Code, by making “water conservation” eligible for grants from the Water Assistance Fund.

SECTION 8. Amends Chapter 16, Water Code, by adding Subchapter K, WATER CONSERVATION.

Sec. 16.401. (a) Requires TWDB’s executive administrator to develop and implement a statewide water conservation public awareness program to educate residents of this state about water conservation. The program shall take into account differences in water conservation needs of various geographic regions in the state and shall also be designed to complement and support existing local and regional water conservation programs.

(b) Requires TWDB's executive administrator to develop and implement the program in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium specifically for that purpose.

Sec. 16.402. (a) Requires each entity that is required to submit a water conservation plan to the TCEQ under the Water Code to submit a copy of the plan to the executive administrator of the TWDB.

(b) Requires each entity required to submit a plan to the executive administrator, TWDB or TCEQ under the Water Code to report annually to the executive administrator on the entity's progress in implementing the plan.

(c) Requires TWDB's executive administrator to review each plan and annual report to determine compliance with certain minimum requirements and deadlines.

(d) Authorizes the TWDB to notify TCEQ if a submitting entity violates this section or a related rule. Provides that notwithstanding Section 7.051(b), a violation of this section or rule adopted under this section is enforceable in the manner provided by Chapter 7 for a violation of a provision of the Water Code within the TCEQ's jurisdiction or of a rule adopted by the TCEQ under a provision of the Water Code within the TCEQ's jurisdiction.

(e) Requires TWDB and TCEQ to jointly adopt rules:

- (1) identifying minimum requirements and submission deadlines for the annual reports required by Subsection (b); and
- (2) providing for enforcement of this section and related rules.

SECTION 9. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.969, entitled ON-SITE RECLAIMED SYSTEM TECHNOLOGIES CURRICULUM, which requires the Texas Higher Education Coordinating Board to encourage each institution of higher education to develop curriculum and provide related instruction regarding on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down.

SECTION 10. Amends Section 447.004, Government Code, by adding Subsection (c-1), which provides that procedural standards adopted under this section must require that on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for nonpotable indoor use and landscape watering be incorporated into the design and construction of: (1) each new state building with a roof measuring at least 10,000 square feet; and (2) any other new state building for which the incorporation of such systems is feasible.

SECTION 11. Amends Section 341.042, Health and Safety Code, to require TCEQ to provide, by rule, that if a structure is connected to a public water supply system and has a rainwater harvesting system for indoor use: (1) the structure must have appropriate cross-connection safeguards; and (2) the rainwater harvesting system may be used only for nonpotable indoor purposes. Standards and rules adopted by TCEQ under this chapter governing public drinking water supply systems do not apply to a person who harvests rainwater for domestic use and whose property is not connected to a public drinking water system.

SECTION 12. Amends Chapter 401, Local Government Code, by adding Section 401.006, entitled WATER CONSERVATION BY HOME-RULE MUNICIPALITY, authorizing a home-rule municipality to adopt and enforce ordinances requiring water conservation in the municipality and by customers of the municipality's municipally owned water and sewer utility in the extraterritorial jurisdiction of the municipality.

SECTION 13. Amends Section 1903.053, Occupations Code, as follows: Requires TCEQ to adopt by rule and enforce standards governing: (1) the connection of irrigation systems to any water supply; (2) the design, installation, and operation of irrigation systems; (3) water conservation; and (4) the duties and responsibilities of licensed irrigators. Requires the TCEQ to consult the Irrigator Advisory Council in adopting standards. Deletes language that authorizes the TCEQ to adopt standards for irrigation that include water conservation, irrigation system design and installation, and compliance with municipal codes.

SECTION 14. Requires TWDB as soon as practicable on or after the effective date of the Act to appoint initial members to the Water Conservation Advisory Council. In making the initial appointments, TWDB shall designate seven members to serve terms expiring August 31, 2009, eight members to serve terms expiring August 31, 2011, and eight members to serve terms expiring August 31, 2013.

SECTION 15. Makes Section 15.102(b), Water Code, as amended by this Act, applicable to applications for financial assistance filed with TWDB on or after the effective date. An application for financial assistance filed before the effective date of the Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 16. Requires the TWDB and the TCEQ to jointly adopt rules as required by Section 16.402(e), Water Code, as added by this Act, no later than January 1, 2008.

SECTION 17. Requires the TCEQ to adopt standards as required by Section 1903.053, Occupations Code, as amended by this Act, no later than June 1, 2008, to take effect January 1, 2009.

SECTION 18. Upon passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **EFFECTIVE DATE**

Upon passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 4 amends Section 1.003, Water Code, by providing that it is the public policy of the state to provide for the conservation and development of the state's natural resources, including the voluntary stewardship of public and private lands to benefit waters of the state.

C.S.H.B. 4 amends the caption of Section 1.004, Water Code, as added by this Act, to read "FINDINGS AND POLICY REGARDING LAND STEWARDSHIP. In the introduced version, the caption read "FINDINGS REGARDING LAND STEWARDSHIP". C.S.H.B. 4 includes a statement that it is therefore the policy of this state to encourage voluntary land stewardship as a significant water management tool. C.S.H.B. 4 also defines land stewardship "as used in this code", as opposed to "as used in this section" in the introduced version.

C.S.H.B. 4 changes the total number of members of the Water Conservation Advisory Council from 17 to 23, deletes a general "industries" category, and adds representatives from the following specific interest groups: refining and chemical manufacturing; electric generation; mining and recovery of minerals; landscape irrigation and horticulture; water control and improvement districts; rural water users; and municipal utility districts. To reflect the change in total number of members of the Water Conservation Advisory Council, C.S.H.B. 4 also provides that seven or eight members' terms, as applicable, expire August 31 of each odd-numbered year. The introduced version of the bill provided that five or six members' terms, as applicable, expire August 31 of each odd-numbered year.

C.S.H.B. 4 requires the Water Conservation Advisory Council to conduct a study to evaluate the desirability of requiring the board to designate as certified water conservation training facilities entities and programs that provide assistance to retail public utilities in developing water conservation plans under Section 13.146 and give preference to certified water conservation training facilities in making loans or grants for water conservation training and education activities; requires the council to submit a written report containing the findings of the study and the recommendations of the council to the governor, lieutenant governor, and speaker by December 1, 2008; and provides that the section requiring the study expires June 1, 2009.

C.S.H.B. 4 amends Section 11.0235(b), Water Code, by providing that the legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

C.S.H.B. 4 requires retail public utilities that provide potable water service to 3,300 or more connections, rather than to a population of 3,300 or more as stated in the introduced version, to submit to the executive administrator of the TWDB, a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate BMPs, as defined by

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Section 11.002, or other water conservation strategies. Language contained in the introduced version relating to the determination of population served by a retail public utility is deleted.

C.S.H.B. 4, in Section 16.402, Water Code, as added by this Act, clarifies that the rulemaking authority with respect to plan and annual report review by the TCEQ and TWDB does not conflict with existing statutory provisions establishing the required content of water conservation and drought contingency plans by:

(1) in subsection (c) of Section 16.402, adding the words "established by Section 11.1271" between "requirements" and "and" and adding "of this section" after "Subsection (e)";

(2) in subsection (e)(1) of Section 16.402, striking the words "water conservation plans described by Subsection (b) and the" and also striking "that subsection" after "by", and replacing with "Subsection (b)".

C.S.H.B. 4, in Section 51.969, as added by this Act, entitled ON-SITE RECLAIMED SYSTEM TECHNOLOGIES CURRICULUM, requires the Texas Higher Education Coordinating Board to encourage each institution of higher education to develop curriculum and provide related instruction regarding on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down. The introduced version only referenced curriculum and related instruction on rainwater harvesting technology.

C.S.H.B. 4 incorporates on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for nonpotable indoor use and landscape watering, into the design and construction of new state buildings with a roof measuring at least 10,000 square feet and any other new state buildings, where feasible. The introduced version only referenced incorporation of rainwater harvesting systems.

C.S.H.B. 4 amends Chapter 401, Local Government Code, by adding Section 401.006, entitled WATER CONSERVATION BY HOME-RULE MUNICIPALITY, authorizing a home-rule municipality to adopt and enforce ordinances requiring water conservation in the municipality and by customers of the municipality's municipally owned water and sewer utility in the extraterritorial jurisdiction of the municipality.