

BILL ANALYSIS

C.S.H.B. 4736
By: Phillips
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Commission on Environmental Quality (TCEQ) designated Fannin and Grayson Counties as part of the North-Central Texas–Trinity and Woodbine Aquifers—Priority Groundwater Management Area (PGMA) pursuant to Chapter 35, Texas Water Code. This PGMA designation indicates that the counties are currently experiencing or are expected to experience critical groundwater declines within the next 25 years and requires TCEQ to create a groundwater conservation district to include Fannin and Grayson Counties unless the counties first create a district through the legislative process during the 81st Texas Legislature. In response to the PGMA designation, Fannin and Grayson Counties formed a steering committee composed of local officials and representatives of water suppliers from both counties to create a groundwater conservation district to conserve and protect the groundwater resources of Fannin and Grayson Counties through the legislative process, rather than waiting for TCEQ to create a potentially tax-based district whose territorial boundaries, administration, and management structure are currently unascertainable.

C.S.H.B. 4736 creates the Red River Groundwater Conservation District.

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. 4736 amends the Special District Local Laws Code to set forth standard language for the creation of the Red River Groundwater Conservation District. The bill sets forth general provisions for the nature of the district, the district's public purpose and benefit, and initial district territory. The bill specifies that provisions relating to groundwater conservation districts in the Water Code, with the exception of provisions related to the creation of a district, apply to the district. The bill sets forth temporary provisions, set to expire December 31, 2013, for the appointment, terms, qualifications, and an organizational meeting of initial directors of the district board. The bill sets forth general provisions for the number of members, terms, eligibility, appointment, vacancies, and compensation and reimbursement of the directors of the district board, and a board quorum and concurrence for transacting business. The bill sets forth provisions relating to the powers and duties of the district, including the power to regulate groundwater usage, to grant well permits, to undertake projects involving groundwater conservation, and to enter into contracts; and general financial provisions, including a prohibition against imposing a tax, authority to assess fees, and fee limits; and establishes the initial boundaries of the district as coextensive with the boundaries of Grayson and Fannin Counties.

C.S.H.B. 4736 requires the board, not later than January 1, 2019, and every 10 years following, to complete a review of the adequacy of representation of water users on the board based on groundwater production and use within the district. The bill requires the board, not later than the

20th day following the date the review is complete, to submit the review and any recommendations relating to the reapportionment of directors or the representational structure of the board to each member of the house of representatives and senate whose state legislative district includes territory in the district.

C.S.H.B. 4736 requires the district to exempt any well that is completed on or before the effective date of this bill from the well spacing requirements adopted by the district. The bill authorizes the district by rule to provide that a well may lose its exemption if the well is modified in a manner that substantially increases the capacity of the well after the effective date of the well spacing requirements adopted by the district. The bill authorizes the district to require any well or class of wells exempt from permitting to comply with well spacing requirements adopted by the district. The bill requires the district to apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

C.S.H.B. 4736 authorizes the district to adopt rules requiring the owner or operator of a well or class of wells exempt from permitting to register the well with the district and, with limited exception, to report the groundwater withdrawals from the well. The bill authorizes the district to enforce the bill's provisions in the manner under existing law and, in lieu of or in addition to the remedies provided in such law, to impose a fee not to exceed an amount equal to 10 times the amount assessed under provisions relating to district revenues on a person producing groundwater in violation of a rule of the district.

C.S.H.B. 4736 prohibits a production fee from exceeding \$1 per acre-foot annually for groundwater used for agricultural purposes, or 30 cents per thousand gallons annually for groundwater used for nonagricultural purposes. The bill authorizes the district to assess a production fee for groundwater produced from a well or class of wells exempt from permitting, except for a well exempt from permitting because it is used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day. The bill authorizes the district by rule, resolution, or order before the adoption of its management plan to establish, assess, and enforce the collection of production fees and establish and enforce metering and reporting requirements. The bill authorizes the district by rule to establish a temporary or permanent discounted fee rate for persons who prepay production fees and prohibits the district from assessing a fee for transporting water produced from a well located inside the district and inside a certificated service area of a retail public utility and transported outside of the district, if the water is used in the same certificated service area of the utility. The bill defines the terms "board," "director," "district," "water services district," and "water supply corporation."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4736 differs from the original by replacing the term "special district" with "water services district" but applies the same definition as in the original. The substitute makes technical changes not in the original reflecting standard legislative drafting conventions in provisions related to the board of directors of the district. The substitute adds a provision not in the original providing for the expiration of the temporary provisions related to initial directors on December 31, 2013. The substitute differs from the original by specifying immediate effect or, if the bill does not receive the required vote, on September 1, 2009, whereas the original specifies an effective date of September 1, 2009.