

## **BILL ANALYSIS**

C.S.H.B. 3807  
By: Zerwas  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the Fort Bend Subsidence District was created several years ago to control and prevent subsidence within the district by reducing groundwater withdrawals and that such goal is achieved through a regulatory plan that requires converting groundwater supplies to alternative water supplies. Such parties contend that the district's statutes need to be updated to recognize aggregate permits, make administrative changes, provide for the appointment of an investment officer, and define certain terms. C.S.H.B. 3807 seeks to address these issues.

### **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. 3807 amends the Special District Local Laws Code to revise, update, and clarify provisions relating to the Fort Bend Subsidence District. The bill establishes that the provisions relating to the district prevail over any other law in conflict or inconsistent with those provisions. The bill requires the district secretary to ensure that all district records and books are properly kept and to attest to the chair's signature on all documents. The bill authorizes the district's board of directors to authorize another director, the general manager, or any employee or contractor to execute documents on the district's behalf and to certify the authenticity of any district record. The bill requires the board to hold regular meetings at a time set by the board, rather than requiring the board to hold one regular meeting each month at a time set by the board. The bill specifies that the exemption from the state's open meetings law for a meeting of a committee of the board at which less than a quorum is present applies only if less than a quorum of the board is present.

C.S.H.B. 3807 removes the requirement that the board's annual hearing to determine the effects during the preceding calendar year of groundwater withdrawal on subsidence in the district be held before March 31. The bill requires the district to deliver or mail notice of a hearing other than a permit application hearing to each regional water supplier in the district by a certain deadline and revises the requirement regarding the posting at a county courthouse of a notice of a hearing. The bill defines "regional water supplier" to mean a political subdivision of this state that has the authority to conserve, store, transport, treat, distribute, sell, and deliver water to any person and an approved groundwater reduction plan.

C.S.H.B. 3807 authorizes the board to contract with a person to act as investment officer of the district and sets out training requirements for such officer. The bill requires an investment officer for the district who holds that office on the bill's effective date to attend specified training not later than the first anniversary of the bill's effective date unless that person has already taken the training in the 12 months preceding that effective date.

C.S.H.B. 3807 authorizes the board to issue permits to drill new wells and authorizes the board

by rule to provide exemptions from the permit requirements. The bill requires the district to grant a permit to drill and operate a new well inside a platted subdivision if water service from a retail public utility is not available to the lot where the well is to be located. The bill clarifies that a well owner commits a violation if the well owner does not obtain a required district permit before drilling, equipping, or completing the well, substantially altering the size of the well or a well pump, or operating the well. The bill defines "well owner" as a person who has an ownership interest in a well, operates a well, owns land on which a well is located, or owns the water withdrawn or to be withdrawn from a well.

C.S.H.B. 3807 requires the board to issue a permit to an applicant if the board finds on sufficient evidence that, in addition to other criteria, there is no other adequate and available substitute or supplemental source of alternative water supplies at prices competitive with the prices charged by suppliers in the district, rather than if there is no other adequate and available substitute or supplemental source of surface water at such prices.

C.S.H.B. 3807 requires a well owner's annual report to the board to include the total amount of groundwater withdrawn from the well during the preceding calendar year, rather than during the preceding 12-month period, and the total amount of groundwater withdrawn from the well during each month of the preceding calendar year, rather than during each month of the preceding 12-month period. The bill requires a well owner whose well is aggregated with other wells permitted and managed by a regional water supplier to file the annual report with the regional water supplier instead of the district. The bill requires a regional water supplier to submit to the board the annual report for all wells owned, managed, or permitted by that supplier not later than March 31 of each year. The bill defines "agricultural crop," "florist item," "nursery grower," "nursery product," and "water conservation."

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3807 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Sec. 8834.001, Special District Local Laws Code, is amended to read as follows:

DEFINITIONS. In this chapter:

(1) "Agricultural crop":

(A) means food or fiber commodities that are grown for resale or commercial purposes and that are to be used for food, clothing, or animal feed; and

(B) includes nursery products and florist items that are in the possession of a nursery grower.

(2) "Alternative water supply" means any water source other than groundwater withdrawn within the district, and may include any water supplied through an

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 8834.001, Special District Local Laws Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (4-a), (5-a), (5-b), (5-c), (7-a), and (8-a) to read as follows:

(1) "Agricultural crop":

(A) means food or fiber commodities that are grown for resale or commercial purposes and that are to be used for food, clothing, or animal feed; and

(B) includes nursery products and florist items that are in the possession of a nursery grower.

approved groundwater reduction plan.

(3) "Beneficial use" means any use that is useful or beneficial to the user, including:

(A) an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or

(B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals.

(4[2]) "Board" means the district's board of directors.

(5[3]) "Commission" means the Texas Commission on Environmental Quality.

(6[4]) "District" means the Fort Bend Subsidence District.

(7) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(8[5]) "Groundwater" means water existing below the earth's surface in the district. The term does not include water produced with oil in the production of oil and gas.

(9) "Nursery grower" means a person who grows in any medium more than 50 percent of the nursery products or florist items that the person sells or leases. A person grows a nursery product or florist item if the person cultivates or propagates the product or item by engaging in activities associated with the production or multiplying of stock, including the development of new plants from cuttings, grafts, plugs, or seedlings. The term does not include a person who merely holds or maintains a nursery product or florist item before sale or lease.

(10) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown or kept for, or capable of, propagation and distribution for sale or lease.

(11[6]) "Regional water supplier" means a political subdivision of the State of Texas with the authority to conserve, store, transport, treat, purify, distribute, sell, and deliver water to persons, corporations, municipal corporations, political subdivisions of the state and others, either by statutory authorization or contract, and has an approved groundwater reduction plan.

(12) "Subsidence" means the lowering in elevation of the surface of land by groundwater withdrawal.

(1-a) "Beneficial use" means any use that is useful or beneficial to the user, including:

(A) an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or

(B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals.

(4-a) "Florist item" means a cut flower, a potted plant, a blooming plant, an inside foliage plant, a bedding plant, a corsage flower, cut foliage, a floral decoration, or live decorative material.

(5-a) "Nursery grower" means a person who grows in any medium more than 50 percent of the nursery products or florist items that the person sells or leases. A person grows a nursery product or florist item if the person cultivates or propagates the product or item by engaging in activities associated with the production or multiplying of stock, including the development of new plants from cuttings, grafts, plugs, or seedlings. The term does not include a person who merely holds or maintains a nursery product or florist item before sale or lease.

(5-b) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown or kept for, or capable of, propagation and distribution for sale or lease.

(5-c) "Regional water supplier" means a political subdivision of this state that has:

(A) the authority to conserve, store, transport, treat, distribute, sell, and deliver water to any person; and

(B) an approved groundwater reduction plan.

(13[7]) "Waste" means:

(A) groundwater withdrawal from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) groundwater withdrawal from a groundwater reservoir through a well if the water withdrawn is not used for a beneficial use or if the amount used is more than is reasonably required for a beneficial use;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or other harmful matter admitted from another stratum or from the surface of the ground;

(E) unless the discharge is authorized by a permit, rule, or order issued by the commission under Chapter 26, Water Code, wilfully or negligently causing, suffering, or allowing groundwater to escape or flow:

(i) into a river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch; or

(ii) onto land that does not belong to the owner of the well;

(F) unless the occupant of the land receiving the discharge granted permission for the discharge, the escape of groundwater pumped for irrigation as irrigation tailwater onto land that does not belong to the owner of the well; or

(G) wilfully causing or knowingly permitting the water withdrawn from an artesian well to run off the owner's land or to percolate through the stratum above which the water is found, as prescribed by Section 11.205, Water Code.

(14) "Water conservation" means a measure that seeks to make a water supply available for alternative or future use. The term includes best management practices, improved efficiency or accountability, recycling, reuse, pollution prevention, and reduction in consumption, loss, or waste.

(15[8]) "Well" means a facility, device, or method used to withdraw groundwater.

(16) "Well owner" means a person who has an ownership interest in a well, operates a well, owns land on which a well is located,

(7-a) "Water conservation" means a measure that seeks to make a water supply available for alternative or future use. The term includes best management practices, improved efficiency or accountability, recycling, reuse, pollution prevention, and reduction in consumption, loss, or waste.

(8-a) "Well owner" means a person who has an ownership interest in a well, operates a

or owns the water withdrawn or to be withdrawn from a well.  
(17[9]) "Withdrawal" means the act of extracting by pumping or another method.

SECTION 2. Sec. 8834.006, Special District Local Laws Code, is amended.

SECTION 3. Sec. 8834.055, Special District Local Laws Code, is amended.

SECTION 4. Sec. 8834.056, Special District Local Laws Code, is amended to read as follows:

(a) The board shall hold [~~one~~] regular [~~meeting each month~~] meetings at a time set by the board.

(b) The board may hold a special meeting at the call of the chairman [~~president~~] or on the written request of at least three directors.

(c) A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any district business. Any member that abstains from voting on a particular matter does not count as part of the membership for the purposes of that vote, and a majority of the remaining membership is sufficient for transacting any district business.

SECTION 5. Sec. 8834.057(b), Special District Local Laws Code, is amended.

SECTION 6. Sec. 8834.104(a), Special District Local Laws Code, is amended.

SECTION 7. Sec. 8834.115, Special District Local Laws Code, is amended.

SECTION 8. Chapter 8834, Subchapter D, Special District Local Laws Code, is amended.

SECTION 9. Sec. 8834.201, Special District Local Laws Code, is amended.

SECTION 10. Sec. 8834.202, Special District Local Laws Code, is amended.

SECTION 11. Sec. 8834.206 (a) and (c), Special District Local Laws Code, are amended to read as follows:

well, owns land on which a well is located, or owns the water withdrawn or to be withdrawn from a well.

SECTION 2. Same as introduced version.

SECTION 3. Substantially the same as introduced version.

SECTION 4. Section 8834.056, Special District Local Laws Code, is amended to read as follows:

Sec. 8834.056. MEETINGS. (a) The board shall hold [~~one~~] regular meetings [~~meeting each month~~] at a time set by the board.

(b) The board may hold a special meeting at the call of the chair [~~president~~] or on the written request of at least three directors.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Substantially the same as introduced version.

SECTION 9. Substantially the same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Sections 8834.206(a) and (c), Special District Local Laws Code, are amended to read as follows:

(a) A well [The] owner of a well located in the district must obtain a permit from the board before:

- (1) drilling, equipping, or completing the well;
- (2) substantially altering the size of the well or a well pump; or
- (3) operating the well.

(c) A well [An] owner [or operator] commits a violation if the well owner [or operator] does not obtain a permit as required by Subsection (a). A violation occurs on the first day the drilling, equipping, completing, altering, or operation begins. Each day that a violation continues is a separate violation.

SECTION 12. Sec. 8834.209(c), Special District Local Laws Code, is amended.

SECTION 13. Sec. 8834.214, Special District Local Laws Code, is amended.

No equivalent provision.

SECTION 14. EFFECTIVE DATE. 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 on September 1, 2011.

(a) A well [The] owner [of a well located in the district] must obtain a permit from the board before:

- (1) drilling, equipping, or completing the well;
- (2) substantially altering the size of the well or a well pump; or
- (3) operating the well.

(c) A well [An] owner [or operator] commits a violation if the well owner [or operator] does not obtain a permit as required by Subsection (a). A violation occurs on the first day the drilling, equipping, completing, altering, or operation begins. Each day that a violation continues is a separate violation.

SECTION 12. Same as introduced version.

SECTION 13. Substantially the same as introduced version

SECTION 14. A person who is an investment officer for the Fort Bend Subsidence District and who holds that office on the effective date of this Act must attend the training required by Section 8834.158(b)(1), Special District Local Laws Code, as added by this Act, not later than the first anniversary of the effective date of this Act unless that person has already taken the training in the 12 months preceding that effective date.

SECTION 15. 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, 2013.