

BILL ANALYSIS

C.S.H.B. 3924
By: Miller, Doug
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the state faces a difficult challenge in developing water policies that serve both state and regional interests and that, in recognition of certain local groundwater supply limitations, the Hill Country Priority Groundwater Management Area was designated a number of years ago to include territory in Comal County and surrounding areas. The parties further note that while groundwater conservation districts have been created in the surrounding areas, a portion of Comal County lacks such a district, and the parties assert the need for a district in that area in order to plan, develop, and regulate the use of water in the area. C.S.H.B. 3924 seeks to address this issue.

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. 3924 amends the Special District Local Laws Code to create the Comal Trinity Groundwater Conservation District. The bill dissolves the district on December 31, 2017, and sets the bill's provisions to expire on September 1, 2020, if the creation of the district is not confirmed at a confirmation election held before December 31, 2016. The bill, among other provisions, provides for certain district contracts; the development, implementation, and promotion of certain best management practices for water resource management; and the installation and maintenance of well measuring devices on nonexempt wells. The bill authorizes the district to impose reasonable production fees only on each nonexempt well based on the amount of water actually withdrawn from the well, caps the fee at \$30 per acre-foot, and grants the district certain authority to set a lower fee cap.

C.S.H.B. 3924 prohibits the district from requiring the owner of a well used solely for domestic or livestock purposes to install a meter or measuring device on the well; from allowing the sale, transport, or export of groundwater produced from a well inside the district to a person or location outside the district, with certain exceptions; if the owner of a well with a certificate of public convenience and necessity obtains a permit from the district, from prohibiting the sale, transport, or export of groundwater produced from a well inside the district to a person located inside the territory covered by the well owner's certificate of public convenience and necessity; or from assessing and collecting a production fee on wells exempt from permitting. The bill establishes that the district does not have certain authority relating to taxes granted to groundwater conservation districts under certain statutory provisions. The bill exempts certain wells drilled on or before the bill's effective date from the requirement to obtain a withdrawal permit. The bill prohibits the district from exercising the power of eminent domain.

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. 3924 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. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8875 to read as follows:

CHAPTER 8875. COMAL TRINITY GROUNDWATER

CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8875.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.**
- (2) "Commission" means the Texas Commission on Environmental Quality.**
- (3) "Director" means a member of the board.**
- (4) "District" means the Comal Trinity Groundwater Conservation District.**
- (5) "Retail public utility" means a retail public utility as defined by Section 13.002, Water Code, that is providing service in the district **on the effective date of this Act.****

Sec. 8875.002. NATURE OF DISTRICT.

Sec. 8875.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held before **September 1, 2018:**

- (1) the district is dissolved on **September 1, 2019**, except that:**
 - (A) any debts incurred shall be paid;**
 - (B) any assets that remain after the payment of debts shall be transferred to Comal County; and**
 - (C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and**
- (2) this chapter expires on September 1, 2020.**

Sec. 8875.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the boundaries of Comal County, Texas.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8875 to read as follows:

CHAPTER 8875. COMAL TRINITY GROUNDWATER

CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8875.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.**
- (2) "Commission" means the Texas Commission on Environmental Quality.**
- (3) "Director" means a member of the board.**
- (4) "District" means the Comal Trinity Groundwater Conservation District.**
- (5) "Retail public utility" means a retail public utility as defined by Section 13.002, Water Code, that is providing service in the district.**

Sec. 8875.002. NATURE OF DISTRICT.

Sec. 8875.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held before **December 31, 2016:**

- (1) the district is dissolved on **December 31, 2017**, except that:**
 - (A) any debts incurred shall be paid;**
 - (B) any assets that remain after the payment of debts shall be transferred to Comal County; and**
 - (C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and**
- (2) this chapter expires on September 1, 2020.**

Sec. 8875.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the boundaries of Comal County, Texas, **except that the**

district does not include any territory that is included in the boundaries of the Trinity Glen Rose Groundwater Conservation District.

Sec. 8875.005. CONFLICTS OF LAW.

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8875.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) The Comal County Commissioners Court shall appoint five temporary directors to serve terms not to exceed four years as follows:

- (1) one temporary director shall be appointed from each of the four commissioner precincts in the county to represent the precinct in which the temporary director resides; and
- (2) one temporary director who resides in the district shall be appointed to represent the district at large.

No equivalent provision.

(b) If there is a vacancy on the temporary board of directors of the district, the remaining temporary directors shall select a qualified person to fill the vacancy. If, at any time, there are fewer than three qualified temporary directors, the commission shall appoint the necessary number of persons to fill all vacancies on the board.

(c) Temporary directors or their successors serve until the earlier of:

- (1) the time the initial directors are elected as provided by Section 8875.023 and have qualified; or
- (2) the date this chapter expires under Section 8875.003.

Sec. 8875.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS.

Sec. 8875.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a)

Sec. 8875.005. CONFLICTS OF LAW.

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8875.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) The temporary board consists of:

- (1) _____;
- (2) _____;
- (3) _____;
- (4) _____; and
- (5) _____.

(b) The temporary directors may adopt rules and assess fees to manage and operate the district. On the election of the permanent directors, the permanent directors shall consider and may approve the rules adopted by the temporary directors. A rule that is not approved by the permanent directors is not enforceable.

(c) If there is a vacancy on the temporary board of directors of the district, the remaining temporary directors shall select a qualified person to fill the vacancy. If, at any time, there are fewer than three qualified temporary directors, the Comal County Commissioners Court shall appoint the necessary number of persons to fill all vacancies on the board.

(d) Temporary directors or their successors serve until the earlier of:

- (1) the time the initial directors are elected as provided by Section 8875.025 and have qualified; or
- (2) the date this chapter expires under Section 8875.003.

Sec. 8875.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS.

Sec. 8875.023. CONFIRMATION ELECTION. (a) The temporary directors

The temporary directors shall order an election to be held in the district to confirm the creation of the district and to elect the initial directors.

(b) At the confirmation and initial directors' election, the temporary board shall have placed on the ballot the names of the candidates for each of the five positions on the board and provide blank spaces for the names of other candidates. To be eligible to be a candidate for a position as a director, a person must reside in the district.

(c) Section 41.001(a), Election Code, does not apply to an election held under this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by the Election Code and Sections 36.017(b)-(h), Water Code.

(e) If a majority of the votes cast at the election are in favor of confirming the district's creation, the temporary directors shall declare the district created. If a majority of the votes cast are not in favor of confirming the district's creation, the district's creation is not confirmed. The temporary directors shall file a copy of the election results with the Texas Commission on Environmental Quality.

(f) If the district's creation is not confirmed at an election held under this section, the temporary directors may order one or more subsequent elections to be held to confirm the creation of the district not earlier than the first anniversary of the preceding confirmation election. If the district's creation is not confirmed at an election held under this section before September 1, 2018, the district is dissolved in accordance with Section 8875.003.

Sec. 8875.024. INITIAL DIRECTORS.

(a) If the creation of the district is confirmed at an election held under Section 8875.023, the temporary directors, at the time the vote is canvassed, shall:

(1) declare for each board position the person who receives the most votes for that position to be elected as the initial director for that position; and

(2) include the results of the initial

shall order an election to be held in the district to confirm the creation of the district.

No equivalent provision.

(b) Section 41.001(a), Election Code, does not apply to an election held under this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by the Election Code and Sections 36.017(b)-(h), Water Code.

(d) If a majority of the votes cast at the election are in favor of confirming the district's creation, the temporary directors shall declare the district created. If a majority of the votes cast are not in favor of confirming the district's creation, the district's creation is not confirmed. The temporary directors shall file a copy of the election results with the commission.

(e) If the district's creation is not confirmed at an election held under this section, the temporary directors may order one or more subsequent elections to be held to confirm the creation of the district not earlier than the first anniversary of the preceding confirmation election. If the district's creation is not confirmed at an election held under this section before December 31, 2016, the district is dissolved in accordance with Section 8875.003.

Sec. 8875.024. CONTINUATION OF TEMPORARY DIRECTORS.

(a) If the creation of the district is confirmed at an election held under Section 8875.023, the temporary directors shall continue to serve as temporary directors until the uniform election date prescribed by Section 41.001, Election Code, in November of the first even-numbered year after the year in which the creation of the district is confirmed.

directors' election in the district's election report to the Texas Commission on Environmental Quality.

(b) The initial directors elected to positions 2 and 3 serve terms expiring December 1 of the first even-numbered year after the date of the confirmation election, and the initial directors elected to positions 1, 4, and the at-large position serve terms expiring December 1 of the second even-numbered year after the date of the confirmation election.

No equivalent provision.

No equivalent provision.

No equivalent provision.

Sec. 8875.025. INITIAL ELECTION OF PERMANENT DIRECTORS. On the uniform election date prescribed by Section 41.001, Election Code, in November of the first even-numbered year after the year in which the creation of the district is confirmed at an election held under Section 8875.023, an election shall be held in the district for the election of two directors to replace the initial directors who shall serve until that election.

No equivalent provision.

No equivalent provision.

(b) The term of a temporary director may not exceed four years.

(c) If permanent directors have not been elected under Section 8875.025 and the terms of the temporary directors have expired, successor temporary directors shall be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of:

(1) the date permanent directors are elected under Section 8875.025; or

(2) the fourth anniversary of the date of the appointment or reappointment.

(d) If Subsection (c) applies, the temporary directors may submit a petition to the Comal County Commissioners Court requesting that the commissioners court appoint as successor temporary directors the five persons named in the petition. The commissioners court shall appoint as successor temporary directors the five persons named in the petition.

Sec. 8875.025. INITIAL ELECTION OF PERMANENT DIRECTORS. (a) On the uniform election date prescribed by Section 41.001, Election Code, in November of the first even-numbered year after the year in which the creation of the district is confirmed under Section 8875.023, an election shall be held in the district for the election of five directors to replace the temporary directors who shall serve until that election.

(b) The initial permanent directors shall draw lots to determine which three directors shall serve a four-year term and which two directors shall serve a two-year term.

Sec. 8875.026. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2021.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8875.051. DIRECTORS; TERMS.

Sec. 8875.052. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS.

Sec. 8875.053. ELECTION DATE.

Sec. 8875.054. VACANCIES.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8875.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES.

Sec. 8875.102. CONTRACTS.

Sec. 8875.103. BEST MANAGEMENT PRACTICES. (a) The district may participate in the development and implementation of best management practices for water resource management in the district and may engage in and promote the acceptance of best management practices through education efforts sponsored by the district.

(b) Development and implementation of best management practices must address water quantity and quality practices such as brush management, prescribed grazing, recharge structures, water and silt detention and retention structures, plugging of abandoned wells, rainwater harvesting, and other treatment measures for the conservation of water resources.

No equivalent provision.

Sec. 8875.104. LIMITATIONS ON DISTRICT POWERS. The district may not:

Sec. 8875.026. EXPIRATION OF SUBCHAPTER. This subchapter expires December 31, 2019.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8875.051. DIRECTORS; TERMS.

Sec. 8875.052. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS.

Sec. 8875.053. ELECTION DATE.

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SUBCHAPTER C. POWERS AND DUTIES

Sec. 8875.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES.

Sec. 8875.102. CONTRACTS.

Sec. 8875.103. BEST MANAGEMENT PRACTICES. (a) The district may participate in the development and implementation of best management practices for water resource management in the district and may engage in and promote the acceptance of best management practices through education efforts sponsored by the district.

(b) Development and implementation of best management practices must address water quantity and quality practices such as brush management, prescribed grazing, recharge structures, water and silt detention and retention structures, plugging of abandoned wells, rainwater harvesting, and other treatment measures for the conservation of water resources.

(c) The district may not adopt or implement a best management practice that is in conflict with or duplicative of a best management practice adopted by a groundwater conservation district whose territory covers any part of Comal County.

Sec. 8875.104. LIMITATIONS ON DISTRICT POWERS. (a) The district may

- (1) require the owner of a well used solely for domestic or livestock purposes to install a meter or measuring device on the well;
- (2) sell, transport, or export groundwater outside of the district; or

(3) enter into a contract or engage in an action to supply water to any person in the service area of a municipality or retail public utility located in the district, except with the consent of the municipality or retail public utility.

No equivalent provision.

No equivalent provision.

No equivalent provision.

not:

- (1) require the owner of a well used solely for domestic or livestock purposes to install a meter or measuring device on the well;
- (2) except as provided by Subdivision (3), and notwithstanding Section 36.122, Water Code, allow the sale, transport, or export of groundwater produced from a well inside the district to a person or location outside the district;

(3) if the owner of a well with a certificate of public convenience and necessity obtains a permit from the district, prohibit the sale, transport, or export of groundwater produced from a well inside the district to a person located inside the territory covered by the well owner's certificate of public convenience and necessity; or

(4) assess and collect a production fee on wells exempt from permitting.

(b) The district does not have the authority granted by Sections 36.020 and 36.201-36.204, Water Code, relating to taxes.

Sec. 8875.105. WELL EXEMPTION. Notwithstanding Section 36.117(j), Water Code, a well drilled on or before the effective date of the Act enacting this chapter, for any purpose authorized under this chapter, is exempt from the requirement to obtain a withdrawal permit provided that the well:

- (1) is used solely for domestic use or for providing water for livestock or poultry regardless of land lot size and is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
- (2) is not capable of producing more than 10,000 gallons of water a day; or
- (3) is metered and does not produce more than 10 acre-feet of water in a calendar year.

Sec. 8875.106. MEASURING DEVICES. (a) The owner of a nonexempt well shall

install and maintain a water well meter, or alternative measuring device or method approved by the district, designed to indicate the flow rate and cumulative amount of water withdrawn by that well, on each individual well no later than 36 months after the effective date of the Act enacting this chapter.

(b) A well owner is responsible for the costs of installing, operating, and maintaining measuring devices.

Sec. 8875.107. NO EMINENT DOMAIN. The district may not exercise the power of eminent domain.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8875.151. FEES. (a) The district may impose reasonable production fees only on each nonexempt well based on the amount of water actually withdrawn from the well. The district shall adopt any rules necessary for the assessment and collection of fees under this subsection.

(b) The district may use money collected from fees:

- (1) in any manner necessary for the management and operation of the district;
- (2) to pay all or part of the principal of and interest on district bonds or notes; and
- (3) for any purpose consistent with the district's approved water management plan.

(c) The production fee may not exceed \$30 per acre-foot.

(d) Not later than two years after the date on which the district is confirmed at an election, the directors of the district shall reconsider the production fee cap provided by Subsection (c) for the sole purpose of determining if decreasing the dollar amount of the production fee cap would more accurately reflect actual water use and actual expenses related to managing and operating the district. The district may set a lower production fee cap if the lower cap more accurately reflects the actual water use and actual expenses related to managing and operating the district.

No equivalent provision.

No equivalent provision.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8875.151. FEES. (a) The district may impose reasonable fees on an annual basis on each nonexempt well and on each well exempt from permitting under Section 36.117(b)(1), Water Code. The district shall adopt any rules necessary for the assessment and collection of fees under this subsection.

(b) The district may use money collected from fees:

- (1) in any manner necessary for the management and operation of the district;
- (2) to pay all or part of the principal of and interest on district bonds or notes; and
- (3) for any purpose consistent with the district's approved water management plan.

No equivalent provision.

No equivalent provision.

Sec. 8875.152. PROPERTY TAX EXEMPTION FOR WATER

CONSERVATION INITIATIVES. (a) The district by rule shall provide for granting exemptions from ad valorem taxes on property on which a water conservation initiative has been implemented, as provided by Section 11.32, Tax Code. The rules must provide that a retail public utility is eligible to receive an exemption from ad valorem taxes on property on the same grounds as any other district customer.

No equivalent provision.

(b) To encourage retail public utilities to obtain water supplies from sources other than groundwater, rules adopted under Subsection (a) must include an exemption from ad valorem taxes on property used and useful by a retail public utility based on:

(1) the percentage of potable water supplied in the district by the retail public utility from sources other than groundwater compared to the total water supplied by the retail public utility for the preceding year; and

(2) the percentage of wastewater effluent produced by the retail public utility that is used as reclaimed water in the district compared to the total wastewater effluent produced by the retail public utility for the preceding year.

No equivalent provision.

(c) For the purposes of Subsection (a), the district may consider the effects of floods and equipment breakage on the retail public utility's ability to supply water from sources other than groundwater.

No equivalent provision.

(d) The total amount of the exemption from ad valorem taxes may not exceed one-half of the tax imposed by the district.

Sec. 8875.153. LIMITATION ON TAXES. The district may not impose an ad valorem tax for administrative, operation, or maintenance expenses that exceeds the lesser of:

No equivalent provision.

(1) the rate approved by the majority of the voters voting in the election authorizing the tax; or

(2) three-eighths of a cent per \$100 of assessed valuation.

SECTION 2. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas

SECTION 2. Same as introduced version.

Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 3. 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.

SECTION 3. Same as introduced version.