

BILL ANALYSIS

C.S.H.B. 3116
By: Cyrier
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that the Lost Pines Groundwater Conservation District currently is reviewing permit applications for very large groundwater production projects. The parties express concern that, if these permit applications are approved, the district eventually may have to require historic users to reduce groundwater production. The parties believe the district should take action to protect, to the maximum extent practicable, the historic uses and the investment-backed expectations of those permit holders. C.S.H.B. 3116 seeks to address this situation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 3116 amends the Special District Local Laws Code to require the Lost Pines Groundwater Conservation District, before issuing an order for a reduction or curtailment, to adopt rules for the adoption, modification, or cancellation of an order for a reduction or curtailment. The bill requires rules adopted to reduce or curtail groundwater production to preserve production of groundwater from a well that has historic use to the maximum extent practicable in a manner consistent with the district's management plan. The bill defines "historic use" as an amount determined by the actual lawful production of groundwater that is put to beneficial use from a permitted well in Lee or Bastrop County in any calendar year after December 31, 2000, and before January 1, 2013.

C.S.H.B. 3116 requires the district, if the district by order implements a temporary reduction or curtailment that affects all wells permitted by the district for an aquifer, to apply the reduction or curtailment in a manner that is uniform and nondiscriminatory and to use the best available science, as defined by the bill, to determine the minimum amount of reduction or curtailment necessary to achieve the district's purposes of regulating well spacing and groundwater production. The bill requires the reduction or curtailment order to provide for the production for all permitted wells without historic use for the affected aquifer initially to be reduced at 100 percent of the amount ordered for reduction, except as otherwise provided by the bill, and for the production for all permitted wells with historic use for the affected aquifer initially to be reduced at 50 percent of the amount ordered for reduction. The bill, if a reduction order results in reducing to zero the allowed production level for permitted wells without historic use, requires the production for all permitted wells with historic use for the affected aquifer to be reduced at 100 percent of the amount ordered for reduction until the district modifies or cancels the reduction or curtailment.

C.S.H.B. 3116 subjects a permit without historic use that was issued before the bill's effective date to a political subdivision for the purpose of supporting the operation of a power generation facility to reduction or curtailment in the same manner and to the same extent as a permit with historic use. The bill requires the production amount for each permit to be restored proportionately to the amount of production authorized by the original permit if aquifer conditions improve and the district's board modifies the reduction or curtailment order to allow increased production. The bill restores the production amount for each permit to the amount of production authorized by the original permit if aquifer conditions improve and the board cancels the reduction or curtailment order.

C.S.H.B. 3116 establishes that a well's historic use does not exempt the well from any rule of the district relating to a matter other than the production of groundwater, including rules relating to beneficial use, conservation, waste, or pumping fees. The bill applies to a well with historic use a statutory groundwater conservation district provision authorizing a district to impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations satisfy certain criteria. The bill establishes that provisions governing the Lost Pines Groundwater Conservation District, except as otherwise provided by such provisions, prevail in the event of a conflict with provisions generally governing groundwater conservation districts.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3116 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Chapter 8849, Special District Local Laws Code, is amended by adding Sec. 8849.107 to read as follows:

Sec. 8849.107. Permits Issued for Historic Use.

(a) In promulgating any rules limiting groundwater production, the district shall preserve historic use to the maximum

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 8849.005, Special District Local Laws Code, is amended to read as follows:

Sec. 8849.005. CONFLICTS OF LAW. (a) Except as otherwise provided by this chapter, if there is a conflict between this chapter and Chapter 36, Water Code, this chapter prevails.
(b) The following provisions prevail over a conflicting or inconsistent provision of this chapter:

- (1) Sections 36.1071-36.1073, Water Code;
- (2) Sections 36.159-36.161, Water Code; and
- (3) Subchapter I, Chapter 36, Water Code.

SECTION 2. Subchapter C, Chapter 8849, Special District Local Laws Code, is amended by adding Section 8849.107 to read as follows:

Sec. 8849.107. HISTORIC USE; REDUCTION AND CURTAILMENT.

(b) Before issuing an order for a reduction or curtailment, the district must adopt rules consistent with this section for the adoption.

extent practicable consistent with the district's management plan.

(b) The historic use period shall begin January 1, 2001 and end December 31, 2012, and the district shall issue historic use permits for permitted use during that historic use period.

(c) Historic use permits shall be issued in an amount equal to the maximum amount of groundwater actually withdrawn and placed to a beneficial use without waste during any one calendar year during the historic use period.

(d) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations:

- (1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;
- (2) bear a reasonable relationship to the approved district management plan; and
- (3) are reasonably necessary to protect existing use.

modification, or cancellation of an order for a reduction or curtailment. Rules adopted to reduce or curtail groundwater production must preserve production of groundwater from a well that has historic use to the maximum extent practicable in a manner consistent with the district's management plan.

(a) In this section:

(1) "Best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, or studies that are publicly available to reviewing scientists and that may be employed to address a specific scientific question.

(2) "Historic use" means an amount determined by the actual lawful production of groundwater that is put to beneficial use from a permitted well in Lee or Bastrop County in any calendar year after December 31, 2000, and before January 1, 2013.

(j) Section 36.113(e), Water Code, applies to a well with historic use.

(c) If the district by order implements a temporary reduction or curtailment that affects all wells permitted by the district for an aquifer, the district must:

(1) apply the reduction or curtailment in a manner that is uniform and nondiscriminatory; and

(2) use the best available science to determine the minimum amount of reduction or curtailment necessary to achieve the purposes of Section 36.116(a), Water Code.

(d) The reduction or curtailment order must provide for:

(1) except as provided by Subsection (f), the production for all permitted wells without

historic use for the affected aquifer initially to be reduced at 100 percent of the amount ordered for reduction; and

(2) the production for all permitted wells with historic use for the affected aquifer initially to be reduced at 50 percent of the amount ordered for reduction.

(e) If a reduction order results in reducing to zero the allowed production level for permitted wells without historic use, the production for all permitted wells with historic use for the affected aquifer must be reduced at 100 percent of the amount ordered for reduction until the district modifies or cancels the reduction or curtailment.

(f) A permit without historic use that was issued before the effective date of the Act creating this section to a political subdivision for the purpose of supporting the operation of a power generation facility is subject to reduction or curtailment in the same manner and to the same extent as a permit with historic use.

(g) If aquifer conditions improve and the board modifies the reduction or curtailment order to allow increased production, the production amount for each permit must be restored proportionately to the amount of production authorized by the original permit.

(h) If aquifer conditions improve and the board cancels the reduction or curtailment order, the production amount for each permit is restored to the amount of production authorized by the original permit.

(i) A well's historic use does not exempt the well from any rule of the district relating to a matter other than the production of groundwater, including rules relating to beneficial use, conservation, waste, or pumping fees.

(e) Historic use permits may form the basis of an operating permit but do not relieve the permittee from district regulations regarding beneficial use, conservation, waste or regulatory pumping fees, or any other district rules.

SECTION 2. 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, 2015.

SECTION 3. Substantially the same as introduced version.