

## **BILL ANALYSIS**

C.S.H.B. 3972  
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Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding the growing number of third-party appeals of permits approved by groundwater conservation districts. C.S.H.B. 3972 seeks to address these concerns by requiring a district by rule to establish the amount of security required to file a suit against the district in order to insure the recovery of applicable costs resulting from the suit.

### **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. 3972 amends the Water Code to require a groundwater conservation district, subject to Civil Practice and Remedies Code provisions relating to the amount of security for a money judgment, by rule to establish the amount of security required to file a suit against the district challenging a rule or order made by the district, including an appeal of a decision on a permit application. The bill caps the required amount of security at \$100,000, but requires the amount of security required to be posted by a party to a contested case hearing, other than by the applicant, for the appeal of a decision granting a permit application or permit amendment application to be increased by an amount sufficient to cover the applicant's cost to defend the permit or amendment granted by the district against the suit and appeal. The bill caps the amount of the increase at \$100,000.

C.S.H.B. 3972 establishes that Civil Practice and Remedies Code provisions relating to the amount of security for a money judgment apply to an appeal from a decision of the district court affirming a district's rule, order, or decision on a permit application and requires the amount of security for the appeal to equal the sum of the following:

- the amount of any civil penalty awarded;
- interest for the estimated duration of the suit or appeal; and
- attorney's fees and costs required for the district to defend against the suit and appeal.

C.S.H.B. 3972 requires a security that is required under the bill's provisions to be filed into the registry of the district court in which the suit is filed. The bill defines "security" as a bond or deposit posted by a plaintiff before filing suit against a district or, as provided by the Texas Rules of Appellate Procedure, by a judgment debtor to a district to suspend execution of the judgment during appeal of the judgment.

## **EFFECTIVE DATE**

September 1, 2021.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3972 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the original and substitute provide for certain security with respect to a suit filed against a groundwater conservation district, but their provisions differ as follows:

- whereas the original required a person to obtain a surety bond before filing the suit that covers all associated legal costs, including those that may be incurred by the district and the applicant and the cost of a requested hearing before the State Office of Administrative Hearings, the substitute requires a district by rule to establish the amount of security required to file the suit, subject to certain requirements, caps the security amount at \$100,000, and defines "security";
- whereas the original required the person bringing an appeal taken from a district court decision affirming the district's decision to issue the permit to increase the bond amount to cover all associated legal costs, including the actual costs incurred by the district and the applicant in the district court, the substitute requires the amount of required security to be increased by a party to a contested case hearing, other than by the applicant, for the appeal of a decision granting a permit application or permit amendment application by an amount sufficient to cover the applicant's cost to defend the granted permit or amendment against the suit and appeal, but by not more than \$100,000; and
- the original included as legal costs the bond must cover estimated costs that may be incurred by the district and the applicant if appeal is taken to the court of appeals and to the supreme court, which were not included in the substitute.

The substitute includes provisions not in the original subjecting an appeal from a decision of the district court affirming a district's rule, order, or decision on a permit application to Civil Practice and Remedies Code provisions relating to the amount of security for a money judgment and requiring the amount of required security for that appeal to equal the sum of any awarded civil penalty amount, interest for the estimated duration of the suit or appeal, and attorney's fees and costs required for the district to defend against the suit and appeal.

The substitute does not include a provision that appeared in the original requiring the district court clerk, if on appeal the person challenging the permit issuance prevails in the final decision, to return the bond to the person posting it upon receipt of a court order authorizing its release.