

BILL ANALYSIS

C.S.H.B. 4444
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Legislation is needed to implement recommendations to the 88th Texas Legislature from the House Natural Resources Committee interim report regarding conservation and waste of groundwater. With regard to groundwater conservation districts, the bill seeks to update antiquated definitions of "waste" and "use for a beneficial purpose" to eliminate confusion in the interplay between those definitions and to add a definition for "conservation" that captures the modern use of the term to improve efficiency in the use of water. The bill also seeks to address antiquated provisions regarding artesian wells, many of which predate the legislature's enactment of legislation in 1949 that led to the creation of groundwater conservation districts and that now supersedes many of the old artesian well statutes. C.S.H.B. 4444 seeks to address these issues by revising provisions relating to groundwater conservation districts and artesian wells.

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. 4444 amends the Water Code to define, for purposes of provisions governing groundwater conservation districts, "conservation" as the practice of reducing the consumption of water, reducing the loss or waste of water, improving the efficiency in the use of water, or increasing the recycling and reuse of water so that a water supply is made available for future or alternative uses. The bill, with regard to the use for certain purposes that constitutes "use for a beneficial purpose," specifies that such use is the nonwasteful use of groundwater for such purposes. The bill, with regard to the term "waste," removes a specification relating to the wasting of water from an artesian well and includes the following as waste:

- the production or use of groundwater in an amount that exceeds the amount reasonably necessary for the purpose for which the groundwater is needed, not including the production or use of groundwater for agricultural irrigation as necessary to comply with federal crop insurance standards and guidelines; and
- drilling, completing, maintaining, or operating a well that is not in compliance with the requirements of provisions governing water well drillers or applicable rules adopted under those provisions.

C.S.H.B. 4444 establishes that statutory water rights provisions relating to artesian wells, other than the following provisions, apply only to an artesian well drilled outside the boundaries of a

groundwater conservation district, subsidence district, or other conservation and reclamation district with the authority to regulate the drilling, spacing, or production of water wells:

- a requirement that an artesian well, when water is reached containing mineral or other substances injurious to vegetation or agriculture, be securely capped or its flow controlled so as not to injure another person's land or be properly plugged so as to prevent the water from rising above the first impervious stratum below the ground's surface; and
- a provision establishing that an artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readily and effectively prevent water from flowing out of the well and running over the ground's surface above the well or wasting through the strata through which it passes is a public nuisance and subject to abatement by the Texas Commission on Environmental Quality (TCEQ) executive director.

C.S.H.B. 4444 repeals the following requirements:

- a requirement for a person who drills an artesian well or has one drilled to keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and, when the well is completed, to transmit a copy of the record to the TCEQ by registered mail;
- a requirement for an owner or operator of an artesian well, within one year after the well is drilled, to transmit to the TCEQ a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use; and
- an annual reporting requirement for a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use.

C.S.H.B. 4444 repeals the following provisions of the Water Code:

- Sections 11.202(d) and (e);
- Section 11.203;
- Section 11.204; and
- Section 11.207.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4444 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

With regard to definitions applicable to provisions governing groundwater conservation districts, the introduced and the substitute differ as follows:

- whereas the introduced defined "conservation" as those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses, the substitute defines the term as the practice of reducing the consumption of water, reducing the loss or waste of water, improving the efficiency in the use of water, or increasing the recycling and reuse of water so that a water supply is made available for future or alternative uses;
- whereas the introduced specified that "use for a beneficial purpose" is a use that is made with reasonably efficient conservation practices and required the use for an otherwise nonspecified purpose that is useful and beneficial to the user to be for a nonwasteful

purpose, the substitute specifies that the use for certain purposes that constitutes the term is the nonwasteful use of groundwater for those purposes; and

- with regard to the term "waste":
 - the substitute omits provisions present in the introduced that included the following as waste:
 - the escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata from which groundwater production is not reasonably economically feasible; and
 - wilfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the well's owner unless such discharge is authorized by permit, rule, or order issued by the TCEQ under certain statutory water rights provisions;
 - whereas the introduced included as waste the production or use of that amount of groundwater in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the groundwater to that purpose, the substitute includes as waste the production or use of groundwater in an amount that exceeds the amount reasonably necessary for the purpose for which the groundwater is needed, not including the production or use of groundwater for agricultural irrigation as necessary to comply with federal crop insurance standards and guidelines; and
 - whereas the introduced included as waste drilling, completing, maintaining, or operating a well that does not comply with provisions governing water well drillers or the rules of the Texas Department of Licensing and Regulation implementing those provisions, the substitute includes as waste drilling, completing, maintaining, or operating a well that is not in compliance with the requirements of such provisions or applicable rules adopted under those provisions.

With regard to the bill provision that establishes that certain statutory water rights provisions relating to artesian wells apply outside the boundaries of certain districts, whereas the introduced specified that the provisions apply in areas of Texas outside such boundaries, the substitute specifies that the provisions apply only to an artesian well drilled outside such boundaries.

The substitute omits the following provisions that were present in the introduced:

- a provision that, with regard to a groundwater conservation district's required consideration of whether an applicant for certain permits or permit amendments has agreed to avoid waste and achieve water conservation, included in that consideration whether the proposed use of water will also avoid and achieve such; and
- a provision that did the following:
 - authorized the TCEQ to authorize a person to discharge groundwater into a watercourse or stream prior to its beneficial use for subsequent diversion and beneficial use through a bed and banks authorization; and
 - required the TCEQ to consider the expected carriage and other losses of the groundwater in light of the totality of circumstances involved in the project described in the application and to grant, deny, or grant with special conditions the authorization on the basis of the following:
 - the project's reasonableness under the circumstances when balanced with the need to achieve conservation and avoid waste; and
 - whether the application meets all other applicable requirements.