

## **BILL ANALYSIS**

C.S.S.B. 156  
By: Perry  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There are numerous issues relating to the regulation of groundwater and groundwater conservation districts that C.S.S.B. 156 seeks to address, such as the following:

- antiquated and new definitions;
- antiquated provisions regarding artesian wells;
- petitions and processes for inquiries of districts before the Texas Commission on Environmental Quality;
- export fee structure and rate cap;
- use of funds obtained from district fees;
- the need for additional volumetric data for setting desired future conditions of certain aquifers;
- the desired future conditions to be included in a management plan;
- notice to landowners of certain permit applications;
- consideration of exempt wells with regard to certain permitting decisions; and
- a method to petition a district to adopt or modify a rule.

C.S.S.B. 156 seeks to address these issues by setting out provisions relating to the regulation and management of the use of groundwater and regulation of groundwater conservation districts.

### **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**

#### **Definitions Regarding "Conservation," "Waste," and "Use for a Beneficial Purpose" and Provisions Relating to Artesian Wells**

C.S.S.B. 156 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.S.B. 156 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.S.B. 156 repeals the following provisions:

- 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;
- 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; and
- the prohibition against a person drilling and operating certain artesian wells in the sole source aquifer after September 1, 1991, and before January 1, 1994, the authority of the TCEQ to grant certain exemptions from that prohibition, and the authority for the TCEQ to delegate by rule that authority to a local water district.

### **Petition to Change Groundwater Conservation District Rules**

C.S.S.B. 156 authorizes a person with a real property interest in groundwater to petition the groundwater conservation district where the property that gives rise to the real property interest is located to adopt a rule or modify a rule adopted under statutory groundwater conservation district provisions. The bill requires a district by rule to prescribe the form for the petition and the procedure for the submission, consideration, and disposition of the petition. The bill requires a district, not later than the 90th day after the date the district receives a petition, to either deny the petition and provide an explanation for the denial or engage in rulemaking consistent with the granted petition. The bill prohibits these provisions of the bill from being construed to create a private cause of action for a decision to accept or deny a petition. The bill requires a district, not later than December 1, 2023, to adopt rules to implement these provisions of the bill.

### **Provisions Relating to a Groundwater Conservation District's Management Plan**

C.S.S.B. 156 requires a groundwater conservation district's management plan, or any amendments to the plan, to include the following:

- the most recently approved desired future conditions; and
- the amount of modeled available groundwater corresponding to the most recently approved desired future conditions.

The bill requires a district to amend a management plan before the second anniversary of the adoption of the included desired future conditions. The bill requires the executive administrator of the Texas Water Development Board (TWDB), if a petition challenging the reasonableness of a desired future condition is filed under specified statutory provisions, to consider the management plan administratively complete if the district includes the following:

- the most recently approved desired future conditions;
- the amount of modeled available groundwater corresponding to the desired future conditions;
- a statement of the status of the petition challenging the reasonableness of a desired future condition; and
- certain prescribed information required under current law.

The changes in law made by the bill applicable to a petition regarding the appeal of the reasonableness of a desired future condition apply only to a petition filed on or after the bill's effective date. A petition filed before such date is governed by the law in effect on the date the hearing was conducted and the former law is continued in effect for that purpose.

### **Modeled Sustained Groundwater Pumping**

C.S.S.B. 156 requires groundwater conservation districts to consider modeled sustained groundwater pumping, if calculated by the TWDB executive administrator, for each aquifer in the management area before voting on the proposed desired future conditions of the relevant aquifers within the management area. The bill removes the specification that the total estimated recoverable storage for an aquifer considered by a district be the storage as provided by the executive administrator.

C.S.S.B. 156 prohibits the executive administrator from calculating the modeled sustained groundwater pumping for an aquifer or an aquifer that wholly or partly underlies an aquifer with a recharge rate such that an owner of land that overlies the aquifer qualifies or has previously qualified under federal tax law for a cost depletion deduction for the groundwater withdrawn from the aquifer for irrigation purposes.

C.S.S.B. 156 defines "modeled sustained groundwater pumping" as the maximum amount of groundwater that the executive administrator, using the best available science, determines may be produced annually in perpetuity from an aquifer.

### **Certain Groundwater Conservation District Permitting**

C.S.S.B. 156 includes among the considerations a groundwater conservation district is required to make before granting or denying certain permits or permit amendments the consideration of whether the proposed use of water unreasonably affects wells that are exempt from the requirement to obtain a permit under statutory groundwater conservation district provisions or district rules.

### **Notice of Certain Well Permit Applications**

C.S.S.B. 156 requires a groundwater conservation district that has adopted rules regulating the spacing of wells under applicable statutory provisions that require wells to be spaced a certain distance from other wells to adopt rules requiring that notice of an application for a permit or permit amendment to drill a well or increase the production capacity of an existing well be provided to each landowner whose:

- land is located wholly or partly within the spacing distances from other wells under the spacing rules of the district; and

- right to obtain a permit or permit amendment for a well of a certain size or location under the spacing rules of the district will be affected if the district approves the application.

Notice is not required for the following:

- a replacement well to be drilled at or near the location of the well which it is intended to replace that has an equal or lesser production capacity than the well which it is intended to replace as determined by the rules of the district; or
- an emergency well necessary to mitigate a loss of production capacity of an existing well as determined by the rules of the district.

Notice is not required under the following circumstances:

- if the notice is to be provided to the lessors of the right to produce groundwater from a property where the applicant for the permit or permit amendment is the lessee; or
- if the district does the following:
  - posts in a place readily accessible to the public at the district's main office a list of the applications that includes the name of the applicant and address or approximate location of the well or proposed well; and
  - posts the following on the home page of the district's website, if the district operates a website:
    - such a list; or
    - a link to a web application that includes the information included on such a list.

These provisions of the bill apply only to an application for a permit or permit amendment submitted on or after the bill's effective date. An application submitted before such date is subject to the law in effect on the date the application is submitted and that law is continued in effect for that purpose.

### **Export Fees and Surcharges**

C.S.S.B. 156 revises the rate of an export fee or surcharge that a groundwater conservation district may impose for the transfer of groundwater outside of the district's boundaries as follows:

- for a tax-based district, replaces the rate that is capped at the district's tax rate per hundred dollars of valuation for each thousand gallons of exported water or 2.5 cents per thousand gallons of water, as applicable, with a rate capped at 20 cents for each thousand gallons of exported water; and
- for a fee-based district, replaces the 50 percent surcharge, in addition to the district's production fee, with a rate capped at the greater of that surcharge or 20 cents for each thousand gallons of exported water, in addition to the production fee.

The bill establishes that, effective January 1, 2024, the maximum allowable rate a district may impose for an export fee or surcharge under these provisions of the bill increases by three percent each calendar year.

C.S.S.B. 156 authorizes a groundwater conservation district governed by a special law in regard to an export fee or surcharge on water exported from the district to charge an export fee or surcharge in accordance with that special law or in accordance with applicable statutory provisions as amended by the bill. The bill establishes that an export fee or surcharge imposed under such provisions or an increase in an imposed export fee or surcharge is not valid unless it is approved by the district's board after a public hearing. The bill's provisions relating to the maximum rate for an export fee or surcharge and a district governed by a special law do not apply to a district that is collecting an export fee or surcharge on March 1, 2001. The bill includes the maintenance of the operability of wells significantly affected by groundwater development to allow for the highest practicable level of groundwater production while achieving the applicable desired future conditions among the authorized uses of district funds obtained from administrative, production, or export fees collected under a special law governing a district or under Water Code provisions governing groundwater conservation districts.

## **Review Panel for a Petition for Inquiry of a Groundwater Conservation District**

C.S.S.B. 156 replaces the authorization for the nonvoting recording secretary appointed as part of a review panel for a petition for inquiry of a groundwater conservation district to be an employee of the TCEQ with a requirement for the secretary to be such an employee. The bill establishes the following with respect to such a review panel:

- a review panel member is not entitled to a fee of office or other compensation for serving on the review panel, but the TCEQ must reimburse a member for actual expenses incurred while engaging in activities on behalf of the review panel;
- to be eligible for reimbursement the member must file with the executive director of the TCEQ a verified statement describing the expenses incurred including any relevant receipts;
- the review panel is an advisory body to the TCEQ and not a governmental body for purposes of state open meetings and public information laws;
- the records and documents of the review panel's recording secretary must be provided to the executive director and are public information for purposes of state public information law; and
- the executive director must provide notice of any public meeting or public hearing that the panel is directed to conduct not later than the seventh day before the date of the meeting or hearing by posting notice on the TCEQ website and by providing notice by regular mail to the district that is the subject of the petition, the petitioner, and the county clerk of each county in the district that is the subject of the petition.

C.S.S.B. 156 authorizes the TCEQ or the review panel to submit a written request for assistance on technical issues related to the petition to the TWDB executive administrator and requires the executive administrator to provide the technical assistance not later than the 120th day after the date the request is received. The bill extends certain deadlines regarding actions of the TCEQ, the executive director of the TCEQ, or a review panel by 120 days if a request for technical assistance is submitted to the TWDB executive administrator during that phase of the petition review. The bill requires the office of public interest counsel to provide legal advice and assistance to the review panel on request from a member of the panel, but prohibits the office from otherwise participating as a party in an inquiry and establishes that the office has no duty or responsibility to represent the public interest or otherwise in such an inquiry.

These provisions of the bill apply to a petition requesting an inquiry regarding the duties of a groundwater conservation district filed with the TCEQ on or after the bill's effective date. A petition filed with the TCEQ before such date is governed by the law in effect on the date the petition was filed and the former law is continued in effect for that purpose.

### **Repealed Provisions**

C.S.S.B. 156 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**

September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 156 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not include provisions present in the engrossed that did the following:

- replaced the requirement for a court to grant a groundwater conservation district recovery for attorney's fees and applicable costs sought by the district in relation to a suit in which the district prevails but did not voluntarily intervene with an authorization for the court to do so; and
- specified that provisions relating to the awarding of such fees and costs prevail over any other special law inconsistent with those provisions unless the other law prohibits an award of the fees or costs.

The substitute includes provisions absent from the engrossed relating to the following:

- definitions regarding "conservation," "waste," and "use for a beneficial purpose" and provisions relating to artesian wells;
- modeled sustained groundwater pumping;
- certain groundwater conservation district permitting considerations;
- export fees and surcharges;
- use of revenue obtained from district fees; and
- petitions for inquiry of a groundwater conservation district to the TCEQ.