

BILL ANALYSIS

Senate Research Center
89R3024 JAM-F

S.B. 2550
By: West
Natural Resources
4/17/2025
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The problems posed by the statutory requirements in the sale of groundwater and surface water rights are described in a paper given at the 2024 State Bar of Texas Changing Facts of Water Law Seminar entitled "Caselaw Impact on Contract Drafting" by Denise V. Cheney and David A. Weatherbie.

There are a number of statutes that require a landowner selling their property to provide notice to buyers of factors that could affect the use of the property, or that would subject the property to government taxes or assessments. For example, Section 5.011, Property Code, requires a disclosure that property is within the extraterritorial jurisdiction of a city, and could be annexed in the future, because annexation would render the property subject to the city's land use regulations and taxing authority. Section 5.014, Property Code, requires disclosure that the property is located in a public improvement district and is subject to assessments from the district. These statutory notices contain important information with regard to the land being sold, but unfortunately, the statutes apply not just to land, but to "real property" being sold by the landowner, which would include the sale of groundwater rights and surface water rights from the land. As a result, if a landowner is selling only groundwater rights or surface water rights from their land, they are required to give these statutory notices to buyers, even though the conditions in the notice do not affect the groundwater or surface water rights. To illustrate, the notice of possible future annexation required by Section 5.011 does not affect water rights, because cities have the statutory authority to annex and tax land, but not water rights. Similarly, public improvement districts have the statutory authority to impose assessments against land within the district, but not against water rights in the land. These statutes contain severe penalties for failure to give the required notices. If a landowner fails to comply, all five statutes allow the buyer to terminate the contract and get its earnest money back. In addition, two of the statutes expressly make the failure to provide the notice a deceptive trade practice, which would subject the landowner to a possible suit under the Deceptive Trade Practices Act. Two others give the buyer the right to sue for damages for the cost of acquiring the property, together with interest and attorneys' fees.

These are harsh financial consequences for the failure to give notices for factors that do not really affect water rights being sold. The use of the term "real property" in these statutes would also apply to a sale of mineral rights, and the five statutes in the bill would have required a landowner selling mineral rights from their land to give the statutory notices to buyers, but for the fact that these statutes expressly exempt a conveyance of mineral rights from the disclosure requirements. The legislature recognized that the disclosures do not affect all of the real property rights associated with land, by making an exemption for mineral rights. The purpose of this bill is to similarly recognize that the disclosures are not applicable to the water rights being sold from the land, by exempting the sale of groundwater and surface water rights from the notice requirements. By doing so, the legislature would remove unnecessary regulation and provide protections to landowners selling only groundwater or surface water rights in connection with their land.

The bill removes unnecessary and burdensome disclosure requirements that currently apply to the sale of water rights in Texas. Texas has numerous real estate disclosure laws designed to put purchasers of land on notice of certain conditions applicable to the land they are purchasing. However, many of these laws are relevant only to surface estates (land and structures), and not to mineral rights or water rights. The bill exempts the sale of water rights from certain disclosure

requirements (see list below). While these disclosures already exempt the sale of mineral rights, the sale of water rights were not as common when the statutes were adopted.

By removing these requirements, the bill removes unnecessary regulations that apply to the sale of water rights, which can create confusion, delay and additional legal costs in water sale transactions.

Under the bill, the following notices will no longer be required for the sale of groundwater or surface water:

Section 33.135 (Notice to Purchasers or Grantees of Coastal Area Property), Natural Resources Code. This notice warns purchasers of property that shares a common boundary with tidally influenced submerged lands of the state that boundaries can change and that there are restrictions on placing structures in, on, or under submerged state-owned lands.

Section 61.025, Natural Resources Code. This notice warns buyers about risks when purchasing property near Gulf Coast beaches, including coastal erosion or storm events that may result in structures ending up on public beaches, and the potential for economic loss due to the required removals of structures from public beaches.

Section 13.257, Water Code. This notice informs the buyer that the owner of the property may have to pay special charges before it can receive water or sewer service. Water rights owners do not purchase these services.

Section 5.011, Property Code. This notice informs the buyer that the property may be annexed by a nearby city. Cities do not annex water rights.

Section 5.014, Property Code. This notice informs the buyer that the property is in a public improvement district and is subject to assessments. Water rights owners are not subject to assessments.

As proposed, S.B. 2550 amends current law relating to an exemption of the transfer of certain rights in water from certain disclosure requirements applicable to the transfer of certain interests in real property.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 33.135(a), Natural Resources Code, as follows:

- (a) Requires a person who sells, transfers, or conveys an interest other than a groundwater or surface water right or a mineral, leasehold, or security interest in real property adjoining and abutting the tidally influenced waters of the state to include a certain notice as a part of a written executory contract for the sale, transfer, or conveyance.

SECTION 2. Amends Section 61.025(a), Natural Resources Code, to make a conforming change.

SECTION 3. Amends Section 5.011(c), Property Code, to provide that Section 5.011 (Seller's Disclosure Regarding Potential Annexation) does not apply to certain transfers, including a transfer of only a groundwater right, surface water right, mineral interest, leasehold interest, or security interest.

SECTION 4. Amends Section 5.014(c), Property Code, to make a conforming change.

SECTION 5. Amends Section 13.257(c), Water Code, to make a conforming change.

SECTION 6. Effective date: September 1, 2025.