

## **BILL ANALYSIS**

C.S.H.B. 2377  
By: Larson  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that brackish groundwater desalination is one of the water supply strategies planned for use in meeting the state's future water demands. The goal of C.S.H.B. 2377 is to support this strategy by encouraging and facilitating the development of brackish groundwater.

### **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. 2377 amends the Water Code to authorize a groundwater conservation district located over any part of a designated brackish groundwater production zone to adopt rules to govern the issuance of permits for the completion and operation of a well for the withdrawal of brackish groundwater from a designated brackish groundwater production zone. The bill requires the district to adopt such rules if the district receives a petition from a person with a legally defined interest in groundwater in the district and to adopt the rules not later than the 180th day after the date the district receives the petition. The bill applies the rules only to a permit for a municipal project designed to treat brackish groundwater to drinking water standards for the purpose of providing a public source of drinking water and an electric generation project to treat brackish groundwater to water quality standards sufficient for the project needs. The bill sets out rule requirements relating to the manner of processing an application for a brackish groundwater production zone operating permit, a cap on withdrawals and rates of withdrawal of brackish groundwater, a minimum permit term, implementation of a water monitoring system, monitoring of land elevations in certain zones, annual reports from a permit holder, and groundwater property rights.

C.S.H.B. 2377 sets out required contents for an application for a brackish groundwater production zone operating permit. The bill requires a district to submit an application to the Texas Water Development Board (TWDB) and requires the TWDB to conduct a technical review of the application and submit a report of the review of the application that includes certain findings and recommendations. The bill prohibits the district from scheduling a hearing on the application until the district receives the report from the TWDB.

C.S.H.B. 2377 requires a district to provide the annual reports from a permit holder to the TWDB. The bill requires the TWDB, not later than the 120th day after the date the TWDB

receives a request from a district, to investigate and issue a report on whether brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the TWDB in the designation of the zone; negative effects on water quality in an aquifer, subdivision of an aquifer, or geologic stratum; or for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term. The bill authorizes a district, after receiving such a report from the TWDB and after applicable notice and hearing, to amend the applicable permit to establish a production limit necessary to mitigate any negative effects identified by the report, approve a mitigation plan that alleviates any negative effects identified by the report, or both amend the permit to establish a production limit and approve a mitigation plan.

C.S.H.B. 2377 establishes that production under a permit issued under the bill's provisions to produce brackish groundwater from a designated brackish groundwater production zone is in addition to the amount of groundwater that may be produced based on the modeled available groundwater determined by the executive administrator of the TWDB and the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions. The bill requires a district to the extent possible to issue permits up to the point that the total volume of exempt and permitted groundwater production in a designated brackish groundwater production zone equals the amount of brackish groundwater that may be produced annually to achieve the groundwater availability described by the TWDB in its designation of the brackish groundwater production zone.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2377 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

SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1015 to read as follows:

Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER PRODUCTION ZONES.

(a) In this section,

"designated brackish groundwater production zone" means an aquifer, subdivision of an aquifer, or geologic stratum designated under Section 16.060(b)(5).

No equivalent provision.

No equivalent provision.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1015 to read as follows:

Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER PRODUCTION ZONES.

(a) In this section:

(1) Substantially the same as introduced version.

(2) "Development board" means the Texas Water Development Board.

(3) "Gulf Coast Aquifer" means the system of hydrogeologic units that run along the Gulf Coast from the Sabine River to the Rio

(b) A district located over any part of a designated brackish groundwater production zone that receives a petition from a person with a legally defined interest in groundwater in the district shall adopt rules to govern the issuance of permits to withdraw brackish groundwater from a well in a designated brackish groundwater production zone for a project designed to treat brackish groundwater to drinking water standards.

The district must adopt the rules not later than the 180th day after the date the district receives the petition.

No equivalent provision.

The rules must:

(1) allow withdrawals and rates of withdrawal of brackish groundwater from a designated brackish groundwater production zone not to exceed and consistent with the withdrawal amounts identified in Section 16.060(e);

Grande, including:

(A) the Catahoula confining system, including the Frio Formation, the Anahuac Formation, and the Catahoula Tuff or Sandstone;

(B) the Jasper Aquifer, including the Oakville Sandstone and Fleming Formation;

(C) the Burkeville confining system separating the Jasper Aquifer from the Evangeline Aquifer;

(D) the Evangeline Aquifer, including the Goliad Sand; and

(E) the Chicot Aquifer, including the Willis Sand, the Bentley and Montgomery Formations, the Beaumont Clay, and alluvial deposits at the surface.

(b) A district located over any part of a designated brackish groundwater production zone may adopt rules to govern the issuance of permits for the completion and operation of a well for the withdrawal of brackish groundwater from a designated brackish groundwater production zone and shall adopt rules described by this subsection if the district receives a petition from a person with a legally defined interest in groundwater in the district.

The district must adopt the rules not later than the 180th day after the date the district receives the petition. Rules adopted under this subsection apply only to a permit for a project described by Subsection (c).

(c) A person may obtain a permit under rules adopted under this section for the following projects:

(1) a municipal project designed to treat brackish groundwater to drinking water standards for the purpose of providing a public source of drinking water; and

(2) an electric generation project to treat brackish groundwater to water quality standards sufficient for the project needs.

(d) The rules adopted must:

(1) provide for processing an application for a brackish groundwater production zone operating permit in the same manner as an application for an operating permit for a fresh groundwater well, except as provided by this section;

(2) allow withdrawals and rates of withdrawal of brackish groundwater from a designated brackish groundwater production zone not to exceed and consistent with the withdrawal amounts identified in Section 16.060(e);

(2) provide for a minimum term of 30 years for a permit issued for a well that produces brackish groundwater from a designated brackish groundwater production zone;

(3) allow reasonable monitoring of an aquifer, subdivision of an aquifer, or geologic stratum adjacent to a designated brackish groundwater production zone consistent with those required for fresh groundwater production;

(4) allow the district to amend a permit issued under rules adopted under this section following receipt of a report requested under Subsection (c); and

(5) require from the holder of a permit issued under rules adopted under this section reports that must include:

(A) the amount of brackish groundwater withdrawn;

(B) the average monthly water quality of the brackish groundwater withdrawn; and

(C) aquifer levels in both the designated brackish groundwater production zone and in any aquifer, subdivision of the aquifer, or geologic stratum for which the permit requires monitoring.

No equivalent provision.

(3) provide for a minimum term of 30 years for a permit issued for a well that produces brackish groundwater from a designated brackish groundwater production zone;

(4) require implementation of a monitoring system recommended by the development board to monitor water levels and water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum in which the designated brackish groundwater production zone is located;

(5) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, require reasonable monitoring by the district of land elevations to determine if production from the project is causing or is likely to cause subsidence during the permit term;

(6) require from the holder of a permit issued under rules adopted under this section annual reports that must include:

(A) the amount of brackish groundwater withdrawn;

(B) the average monthly water quality of the brackish groundwater withdrawn and in the monitoring wells; and

(C) aquifer levels in both the designated brackish groundwater production zone and in any aquifer, subdivision of an aquifer, or geologic stratum for which the permit requires monitoring; and

(7) be consistent with and not impair property rights described by Sections 36.002(a) and (b).

(e) An application for a brackish groundwater production zone operating permit must include:

(1) the proposed well field design compared to the designated brackish groundwater production zone;

(2) the requested maximum groundwater withdrawal rate for the proposed project;

(3) the number and location of monitoring wells needed to determine the effects of the proposed project on water levels and water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum in which the designated brackish groundwater production zone is located; and

(4) a report that includes:

(A) a simulation of the projected effects of

No equivalent provision.

No equivalent provision.

(c) The district shall provide the reports required under Subsection (b)(5) to the Texas Water Development Board.

On request from the district, the development board shall investigate and issue a report on whether brackish groundwater withdrawals from the designated brackish groundwater production zone are causing:

(1) significant aquifer level declines in an adjacent freshwater aquifer that were not anticipated by the Texas Water Development Board in the designation of the zone; or

(2) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum.

(d) After receiving from the Texas Water Development Board a report issued under Subsection (c) and after notice and hearing,

the proposed production on water levels and water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum in which the designated brackish groundwater production zone is located;

(B) a description of the model used for the simulation described by Paragraph (A); and

(C) sufficient information for a technical reviewer to understand the parameters and assumptions used in the model described by Paragraph (B).

(f) The district shall submit the application to the development board and the development board shall conduct a technical review of the application. The development board shall submit a report of the review of the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone; and

(2) recommendations for the monitoring system described by Subsection (d)(4).

(g) The district may not schedule a hearing on the application until the district receives the report from the development board described by Subsection (f).

(h) The district shall provide the reports required under Subsection (d)(6) to the development board.

Not later than the 120th day after the date the development board receives a request from the district, the development board shall investigate and issue a report on whether brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause:

(1) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the development board in the designation of the zone;

(2) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(3) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term.

(i) After receiving from the development board a report issued under Subsection (h) and after notice and hearing subject to

the district may:

- (1) amend the applicable permit to establish a production limit necessary to mitigate any negative effects identified by the report;
- (2) approve a mitigation plan that alleviates any negative effects identified by the report;
- or
- (3) both amend the permit to establish a production limit and approve a mitigation plan.

SECTION 2. Section 36.1071(a), Water Code, is amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a management plan that addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; ~~and~~
- (8) addressing the desired future conditions adopted by the district under Section 36.108; and
- (9) identifying goals for the development of brackish groundwater desalination strategies in designated brackish groundwater production zones.

SECTION 3. Section 36.108(d-2), Water Code, is amended to read as follows:

(d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. The desired future condition does not apply to brackish groundwater production in designated brackish groundwater production zones. This subsection does not prohibit the establishment of desired future conditions

Subchapter M, the district may:

- (1) amend the applicable permit to establish a production limit necessary to mitigate any negative effects identified by the report;
- (2) approve a mitigation plan that alleviates any negative effects identified by the report;
- or
- (3) both amend the permit to establish a production limit and approve a mitigation plan.

No equivalent provision.

No equivalent provision.

that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

No equivalent provision.

SECTION 4. This Act takes effect September 1, 2017.

SECTION 2. Section 36.1132, Water Code, is amended by adding Subsection (d) to read as follows:

(d) Production under a permit issued under Section 36.1015 to produce brackish groundwater from a designated brackish groundwater production zone is in addition to the amount of groundwater that may be produced based on Subsections (b)(1) and (2). To the extent possible, a district shall issue permits up to the point that the total volume of exempt and permitted groundwater production in a designated brackish groundwater production zone equals the amount of brackish groundwater that may be produced annually to achieve the groundwater availability described by the Texas Water Development Board in its designation of the brackish groundwater production zone under Section 16.060(e).

SECTION 3. Same as introduced version.