

BILL ANALYSIS

C.S.H.B. 3656
By: Murr
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that there is confusion as to how water may be used when its original purpose has shifted due to development or other factors, particularly in regards to groundwater withdrawal rights in areas where water was originally allocated for irrigation use. C.S.H.B. 3656 seeks to address this issue by authorizing an owner in the Edwards Aquifer Authority to sever irrigation water rights that are prohibited from being leased due to development and by authorizing severed irrigation water rights to change in purpose or place of use under certain conditions.

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. 3656 amends Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to authorize an owner of historically irrigated land in the Edwards Aquifer Authority, subject to approval by the authority, to sever all or a portion of the remaining water rights for the historically irrigated land which has become developed land in the same proportion as the proportion of developed land and undeveloped land or for which the owner of the historically irrigated land has demonstrated that all or a portion of the land is land no longer practicable to farm. The bill authorizes irrigation water rights tied to a portion of land that cannot be developed because of its topography or its location in a floodplain to be included in the proportion of land considered developed land. The bill authorizes severed irrigation water rights to change in purpose or place of use. The bill prohibits rules adopted to implement these provisions from expanding the type of land considered developed land or land considered land no longer practicable to farm. The bill subjects approval of a severance of water rights from historically irrigated lands to a contested case hearing in accordance with authority rules. The bill provides for definitions of "developed land," "historically irrigated land," and "land no longer practicable to farm."

C.S.H.B. 3656 authorizes the authority to adopt rules to provide for a holder of an initial regular permit for use in irrigation to lease all or part of water rights for use in irrigation granted in the initial permit to another person for irrigating land, including land not described in the initial regular permit, located in the authority. The bill authorizes such rules to allow the holder of an initial regular permit to use the water rights temporarily for irrigation at a location other than the land described in the initial regular permit.

C.S.H.B. 3656 validates and confirms in all respects rules adopted by the authority before the bill's effective date relating to the severance of water rights from historically irrigated lands and actions taken by the authority under such rules. The bill applies only to a transfer effective on or after the bill's effective date and conclusively validates in all respects transfers effective before such date that have not been rescinded and are not subject to pending litigation.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3656 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.

The substitute revises the definition of "developed land" by not including a provision relating to land that can no longer be used for agricultural purposes due to certain rezoning and making other minor revisions and provides for the definition of "land no longer practicable to farm."

The substitute, with regard to the severance of remaining water rights by the owner of historically irrigated land:

- does not include conditions relating to the percentage of the land that is developed and the percentage of the use that must remain in the same county after severance;
- includes a specification that all or a portion of the rights may be severed and includes language establishing the proportion that may be severed;
- includes a prohibition against the expansion of the type of land considered land no longer practicable to farm by rules adopted to implement applicable provisions; and
- includes a provision subjecting approval of an applicable severance of water rights to a contested case hearing.

The substitute, with regard to rules the authority is authorized to adopt to provide for a holder of an initial regular permit for irrigation use to lease the associated water rights to another person:

- changes a specification of the rules from rules providing for a lease of the full amount of the water rights to rules providing for a lease of all or part of those rights; and
- includes an authorization for the rules to allow the permit holder to use the water rights temporarily at a location other than the land described in the permit.

The substitute includes a provision validating and confirming certain rules adopted by the authority and certain actions taken by the authority before the bill's effective date.