

## **BILL ANALYSIS**

C.S.H.B. 31  
By: Larson  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that certain groundwater conservation districts have violated private property rights by unduly impeding, delaying, or denying the issuance of groundwater permits. C.S.H.B. 31 seeks to address this issue by making certain statutory changes relating to the regulation of 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. 31 amends the Water Code to limit the authorization for a groundwater conservation district to require that certain specified components be included in a well permit or well permit amendment application to requiring that only those components be included in such an application as applicable under district rules. The bill includes as such a component other information reasonably related to an issue that a district is authorized to consider under certain provisions of law and included in a district rule in effect on the date the application is submitted that specifies what information must be included in an application for a determination of administrative completeness. The bill replaces as one of the considerations a 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 existing groundwater and surface water resources or existing permit holders with a consideration of whether the projected effect of the proposed production unreasonably affects aquifer conditions, depletion, or subsidence, existing groundwater and surface water resources, or existing permit holders. The bill replaces a provision establishing that an administratively complete application requires information set forth in accordance with provisions relating to well permits, permit amendments, and permit elements with a provision making an application administratively complete if it contains the information set forth under such provisions. The bill prohibits a district from requiring that additional information be included in an application for a determination of administrative completeness. The bill makes district rules in effect on the date an application for a permit or a permit amendment is submitted to the district the only district rules that may govern the district's decision to grant or deny the application.

C.S.H.B. 31 revises provisions relating to the export of groundwater out of a district. The bill prohibits a district from requiring a separate permit for the export of groundwater for use outside of the district. The bill changes the exception to the prohibition against a district imposing more

restrictive requirements or conditions on exporters than the district imposes on in-district users from an exception as provided by provisions relating to historic users to an exception as provided by provisions relating to export fees and surcharges. The bill requires a term for an export permit that existed on May 29, 2017, to automatically be extended on or before its expiration to a term that is not shorter than the term of an operating permit for the production of water to be exported that is in effect at the time of the extension and for each additional term for which that operating permit for production is renewed or remains in effect under certain provisions. The bill establishes that a term automatically extended continues to be subject to conditions contained in the permit as issued before the automatic extension. The bill repeals provisions relating to the issuance and terms and conditions of a permit for the export of groundwater out of a district.

C.S.H.B. 31 prohibits a district from adopting a moratorium on the issuance of a permit or permit amendment unless the district complies with applicable notice and hearing procedures and makes written findings supporting the district's determination regarding the issuance, including the district's justification for imposing the moratorium, if applicable. The bill provides for the notice and public hearing requirements, the imposition of a temporary moratorium, and the expiration of a moratorium.

C.S.H.B. 31 prohibits a moratorium on the issuance of a permit or permit amendment that is adopted by a district before September 1, 2017, from continuing in effect after November 30, 2017. The bill provides for the validation and confirmation of certain permits to export groundwater approved by districts before the bill's effective date. To the extent of any conflict, the bill expressly prevails over another act of the 85th Legislature, Regular Session, 2017, relating to changes to Water Code groundwater conservation district provisions or nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 31 repeals Sections 36.122(f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q), Water Code.

#### **EFFECTIVE DATE**

September 1, 2017.

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

While C.S.H.B. 31 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. Sections 36.113(c) and (d), Water Code, are amended to read as follows:

(c) A district may require that only the following be included in the permit or permit amendment application, as applicable under the rules of the district:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 36.113(c) and (d), Water Code, are amended to read as follows:

(c) A district may require that only the following be included in the permit or permit amendment application, as applicable under the rules of the district:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; ~~and~~

(7) a drought contingency plan; and

(8) other information:

(A) included in a rule of the district in effect on the date the application is submitted that specifies what information must be included in an application for a determination of administrative completeness; and

(B) reasonably related to an issue that a district is authorized to consider under this chapter.

(d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the projected effect of the proposed production ~~[use of water]~~ unreasonably affects aquifer conditions, depletion, subsidence, existing groundwater and surface water resources, or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's approved management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

(6) the applicant has agreed to avoid waste and achieve water conservation; and

(7) the applicant has agreed that reasonable diligence will be used to protect

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; ~~and~~

(7) a drought contingency plan; and

(8) other information:

(A) included in a rule of the district in effect on the date the application is submitted that specifies what information must be included in an application for a determination of administrative completeness; and

(B) reasonably related to an issue that a district is authorized to consider:

(i) under this chapter; or

(ii) a special law governing the district.

(d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the projected effect of the proposed production ~~[use of water]~~ unreasonably affects aquifer conditions, depletion, or subsidence, existing groundwater and surface water resources, or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's approved management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

(6) the applicant has agreed to avoid waste and achieve water conservation; and

(7) the applicant has agreed that reasonable diligence will be used to protect

groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

SECTION 2. Section 36.114(h), Water Code, is amended.

SECTION 3. Subchapter D, Chapter 36, Water Code, is amended.

SECTION 4. The heading to Section 36.122, Water Code, is amended.

SECTION 5. Section 36.122, Water Code, is amended.

SECTION 6. Chapter 36, Water Code, is amended by adding Subchapter M-1 to read as follows:

SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

Sec. 36.426. PROCEDURE FOR ADOPTING MORATORIUM.

Sec. 36.427. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) A district may impose a moratorium on the issuance of a permit or permit amendment only after the district conducts a public hearing as provided by this section. The public hearing must provide residents of the district and other affected parties an opportunity to be heard.

(b) The district shall publish notice of the date, time, and place of the hearing in a newspaper of general circulation in the district on the fourth day before the date of the hearing.

(c) During the period beginning on the fifth business day after the date a notice is published under Subsection (b) and ending on the date the district makes its determination under Subsection (d), a temporary moratorium is imposed. During that period, a district may stop issuing permits or permit amendments.

(d) Not later than the 12th day after the date of the public hearing, the district shall make a final determination on whether to impose the moratorium and shall issue written findings supporting the district's determination, including the district's justification for imposing the moratorium, if applicable.

Sec. 36.428. EXPIRATION OF MORATORIUM; EXTENSION

groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Chapter 36, Water Code, is amended by adding Subchapter M-1 to read as follows:

SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

Sec. 36.426. PROCEDURE FOR ADOPTING MORATORIUM.

Sec. 36.427. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) A district may impose a moratorium on the issuance of a permit or permit amendment only after the district conducts a public hearing as provided by this section. The public hearing must provide residents of the district and other affected parties an opportunity to be heard.

(b) The district shall publish notice of the date, time, and place of the hearing in a newspaper of general circulation in the district on or before the fourth day before the date of the hearing.

(c) During the period beginning on the fifth business day after the date a notice is published under Subsection (b) and ending on the date the district makes its determination under Subsection (d), a temporary moratorium is imposed. During that period, a district may stop issuing permits or permit amendments.

(d) Not later than the 12th day after the date of the public hearing, the district shall make a final determination on whether to impose the moratorium and shall issue written findings supporting the district's determination, including the district's justification for imposing the moratorium, if applicable.

Sec. 36.428. EXPIRATION OF MORATORIUM; EXTENSION

PROHIBITED.

SECTION 7. A moratorium on the issuance of a permit or permit amendment that is adopted by a groundwater conservation district under Subchapter M-1, Chapter 36, Water Code, as added by this Act, before September 1, 2017, may not continue in effect later than November 30, 2017.

SECTION 8. (a) A permit to export groundwater approved by a groundwater conservation district before the effective date of this Act is validated and confirmed in all respects. This subsection does not apply to a permit to export groundwater that is subject to litigation:

(1) that is pending on the effective date of this Act; or

(2) that results in final judgment that may not be appealed that the permit is invalid.

(b) An administratively complete permit application to export groundwater received by a groundwater conservation district before the effective date of this Act is governed by the law in effect when the application became administratively complete. The former law is continued for the purpose of processing an application received before the effective date of this Act.

SECTION 9. Sections 36.122(f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q), Water Code, are repealed.

No equivalent provision.

SECTION 10. This Act takes effect September 1, 2017.

PROHIBITED.

SECTION 8. A moratorium on the issuance of a permit or permit amendment that is adopted by a groundwater conservation district before September 1, 2017, may not continue in effect after November 30, 2017.

SECTION 9. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 10. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to changes to Chapter 36, Water Code, or nonsubstantive additions to and corrections in enacted codes.

SECTION 11. Same as introduced version.