

SUBJECT: Creating new Water Code chapters for groundwater districts

COMMITTEE: Natural Resources — favorable, with amendments

VOTE: 8 ayes — Counts, Yost, Combs, Corte, King, R. Lewis, Puente, Walker
0 nays
1 absent — Stiles

WITNESSES: For — Gregory Ellis, Harris-Galveston Coastal Subsidence District; C.E. Williams, Panhandle Ground Water Conservation District #3; Allan Lange, Lipan-Kickapoo Water Conservation District; Lee Arrington, South Plains Underground Water Conservation District; Richard Bowers, North Plains Ground Water Conservation District; Scott Holland, Irion County Water Conservation District; Dennis Clark, Emerald County Water Conservation District

Against — None

BACKGROUND: In 1949 the state authorized the creation of underground water conservation districts for the "conservation, preservation, protection, recharging, and prevention of waste" of underground water.

Underground water districts can be created by the Legislature under Texas Constitution Art. 16, sec. 59; districts can be formed when a number of area landowners file a petition with TNRCC through a procedure based on Water Code Subchapter B of Chapter 52, or TNRCC can designate an area as a "critical groundwater area" and create a district, subject to local voter approval.

TNRCC supervises all water districts. Water Code Chapter 50 governs some of the administrative and financial procedures for all water districts, Chapter 51 provides for the creation and operation and financing of water control and improvement districts, and Chapter 52 provides for the creation, operation, powers, duties and financing mechanisms of underground water conservation districts.

DIGEST: HB 2294, as amended, would reorganize and amend the Water Code chapters concerning groundwater districts, and create two new chapters. Both of these new chapters would be located in Title 2 (State Water Administration) of the Water Code. Chapter 52 of the Water Code, governing underground water conservation districts (commonly called groundwater districts) would be repealed.

Groundwater district provisions found in Chapters 50, 51 and 52 would be consolidated into a new Water Code Chapter 36.

Provisions governing the responsibilities of state agencies concerning the designation of groundwater management areas, critical groundwater areas and the creation of new districts would be consolidated into a new Water Code Chapter 35.

HB 2294 as amended, would also make some substantive changes to the current statutory provisions governing water districts. Substantive changes would include:

- The definition of underground water would be changed from "water percolating below the surface of the earth and that is suitable for agricultural, gardening, domestic, or stock raising purposes, but does not include defined subterranean streams or the underflow of rivers" to "water percolating below the surface of the earth."
- Subchapter K would provide that two or more districts or portions of districts could consolidate into one district, if the board of each district passed a resolution containing the terms and conditions of the consolidation. A consolidated district would be governed as one district. District elections would have to be held to approve such a consolidation unless the districts do not issue bonds or levy taxes, or the consolidation would not result in any additional taxing or bonding authority.
- Sec. 36.158 would allow groundwater districts to make grants as approved by the district board.
- Secs. 36.066 and 36.102 would allow districts to collect attorney fees, expert testimony costs, or other court costs in any suit in which the district prevailed.

- Sec. 36.205 would provide districts with the specific authority to set administrative fees and would require districts to collect fees for services provided outside the district boundaries.
- Sec. 36.102 would allow districts to set civil penalties up to \$5,000. Penalties could only be awarded through a civil suit.

Sec. 36.068 would remove current requirements regarding retirement account investments and provide that such investments would come under Government Code, Chapter 810, the Public Employee Retirement Act.

Secs. 36.155 and 36.156 would remove specific statutory limitations on handling district funds and replace them with references to Government Code, Chapters 2256 and 2257, the Public Funds Investment Act and Public Funds Collateral Act.

Throughout Chapter 36 separate and specific requirements concerning the posting of notices for meetings and hearings would simply call for the districts to comply with the Texas Open Meetings Act.

**SUPPORTERS
SAY:**

HB 2294 would reorganize state statutes concerning underground water conservation districts and make several needed changes. HB 2294 would clarify the differences among water districts, which differ widely because surface water and groundwater are treated very differently under Texas law. Surface water belongs to the state, which grants rights to use it, while in Texas groundwater historically has been subject to the "right of capture" by landowners, who are not required to have state permits for use.

Although groundwater districts have administrative duties similar to other water districts, they are unique because they are regional regulatory authorities that manage a privately owned resource. Groundwater districts are regulatory in nature as opposed to surface water supply districts, like river authorities and municipal utility districts, which commonly sell water, build pipelines and operate sewage treatment plants.

These differences made HB 2294 necessary. The laws governing groundwater districts are currently located in Title 4 of the Water Code, and every time the Legislature amends Chapter 50 to address a problem with water supply districts, the change also applies to groundwater districts, even when there is no intent to do so. As a result the past five sessions the Legislature has had to amend Chapter 52, which governs groundwater

districts, to correct mistakes and inadvertent consequences of bills enacted pertaining to other types of water districts. This is bothersome and a waste of time and taxpayer money, and it creates confusion about the powers and duties of groundwater districts.

Groundwater districts also waste valuable time rushing to get exempted from statutory requirements that do not fit the purposes of groundwater districts and may have unintended adverse consequences.

Differences between districts make it very hard to pass sensible or equitable laws that apply to all districts and are acceptable to all districts. Notification provisions for a neighborhood water supply district, for example, would not work for a multi-county groundwater district. HB 2294 would remove the root of this confusion by giving groundwater districts their own chapter under a different title of the Water Code.

Allowing two or more districts or portions of districts to consolidate into one district would solve a current problem. In some parts in the state two groundwater districts cover the same area. Permitting districts to consolidate would allow one district to cede land to the other, thereby removing the burden of double taxation from district residents.

Groundwater districts should be able to make grants, as approved by the district board, for projects beneficial for the district. This authority would allow greater cooperation with other local governments in areas such as water conservation.

Allowing districts to collect attorney fees, expert testimony costs, or other court costs in suits in which the district prevailed, would finally allow districts to take enforcement actions against some of the violators of district rules. Currently it can cost more to conduct an enforcement suit than is collectible in penalties, and those who know this violate the rules with impunity. Allowing additional costs could also cut down on nuisance suits.

Letting districts collect fees for services provided outside of district boundaries would allow districts to give technical help to water users outside their boundaries to promote water conservation without using district taxpayer money to do so. Currently, districts do not have any way to be reimbursed for their services if they help someone outside their boundaries, even if that help would ultimately benefit the district.

Districts should be allowed to set higher civil penalties because the injunctive relief allowed under current law is not enough to prevent violations — it can only cure them.

Current requirements regarding retirement account investments by districts are unnecessarily restrictive. HB 2294 as amended, would provide that such investments would be made under the Public Employee Retirement Act, which provides prudent investment guidelines.

OPPONENTS
SAY:

Defining groundwater as water percolating below the surface of the earth. would include water specifically exempted from the current definition (subterranean streams or the underflow of rivers). It also states that all water percolating below the surface would be groundwater — not just water "suitable" for certain purposes. This change would make it much more difficult for the state to claim authority over a body of water that it believed to be an underground river or stream.

Sec. 36.158 would allow groundwater districts to make grants as approved by the district board, but there are no limitations on use of grants. Grants should only be made if they are restricted to the purposes of the district.

Districts should not be allowed to collect attorney's fees if they are only voluntarily intervening in someone else's lawsuit.

The bill should be amended to better define "waste" to exclude permitted discharges.

NOTES:

The committee amendments would make several technical and conforming changes to the bill as well as some substantive ones including:

- allowing the commission to designate a separate groundwater reservoir despite an appreciable (rather than measurable) effect of withdrawing water from a separate subdivision;
- clarifying that administrative remedies would have to be exhausted before a declaratory action or any other suit may be filed against a district
- allowing districts to provide copies of their rules in any format requested and

- clarifying that a district could perform a survey without being required to engage a professional registered engineer.

SB 1465 by Armbrister, almost identical to HB 2294 as filed, was referred to the Senate Natural Resources Committee on March 21.

HB 1104 by Yost, which would consolidate most of the administration provisions of the Water Code relating to water districts into one new chapter, making administrative provisions uniform for all water districts, was reported favorably from the House Natural Resources Committee on April 10. The Senate companion to HB 1104, SB 626 by Armbrister, was placed on the Regular Order of Business Calendar on April 18.

Also on today's House calendar is HB 2189 by Harris, making numerous changes to the authority of water districts and their boards.