HOUSE
RESEARCH
ORGANIZATION bill analysis 4/25/2005

HB 2423
Puente

SUBJECT: Groundwater permitting for land enrolled in a conservation program

COMMITTEE: Natural Resources — favorable, as amended

VOTE: 9 ayes — Puente, Callegari, Hope, Bonnen, Campbell, Geren, Hardcastle, Hilderbran, Laney

0 nays

WITNESSES: For — Billy Howe, Texas Farm Bureau; Mary E. Kelly, Environmental Defense; William Lynch

Against — C. R. Kit Bramblett, Hudspeth County; Talley Davis, Hudspeth County Underground Water Conservation District #1; Lindsay Snodgrass, Hudspeth County Water District; Lambeth Townsend, CL Machinery Company; C. E. Williams, Panhandle Groundwater District

BACKGROUND: The Conservation Reserve Program (CRP) is a voluntary program administered by the U.S. Department of Agriculture (USDA) that allows landowners to retire environmentally sensitive pasture from production for a period of 10 to 15 years. The federal government pays rent to landowners who participate by planting native vegetation and not using water wells on the property. The purpose of the program is to preserve topsoil, improve water quality, and enhance wildlife habitat on land participating in the program.

DIGEST: HB 2423 would prevent a groundwater district from discriminating between owners of land that was irrigated for production and owners of land whose land was participating in a federal conservation program. Any district rule that discriminated between land that was irrigated for production and land that was enrolled in a federal conservation program would be void.

In issuing a permit for an existing or historic use, a district could not discriminate between land that was irrigated for production and land that was enrolled in a federal conservation program. A permitting decision would be void if:

- the decision discriminated between irrigated land and land in a conservation program; and
- the district would have reached a different decision had there been no discrimination between the two categories of land.

The district would have to reconsider a decision voided under the bill upon receiving an application of an affected owner or lessee of land. The district would have to base its decision on the equal treatment of irrigated land and land in a conservation reserve program. A district would have to render its decision and notify the applicant within 90 days of receiving an application.

The bill would take effect September 1, 2005.

SUPPORTERS SAY:

HB 2423 would prevent discriminatory treatment in the groundwater permitting process against land owners who place their property in the federal CRP, an important conservation program that helps prevent overuse and improves the ecological balance of pastureland in the state. Landowners who voluntarily have removed their property from production for environmental purposes should not be punished with the possibility of losing their water rights when their participation in the CRP has expired.

While the current definition of "agriculture" under Water Code, subsec. 36.001(19) includes land left idle "for the purpose of participating in any governmental program," some districts have interpreted these terms to exclude land currently enrolled in the CRP. In addition, current law does not require equal consideration of CRP land in the granting of groundwater permits, and some districts give priority to active farmland over land that is inactive under the CRP. The Legislature should clarify the law to ensure that groundwater districts treat CRP land equally or the goal of this important conservation program could be undermined.

The USDA has a thorough application and review process that a landowner must go through before being admitted into the CRP. The USDA ensures that the landowner had operated the land for at least 12 months prior to the application and that land was in production four of the previous six years. In addition, land either must be of concern for erosion or located in a priority conservation area. Preservation of CRP land should be an important priority for the state, and HB 2423 is essential for this purpose.

OPPONENTS SAY:

HB 2423 is unnecessary because current law sufficiently protects the water rights of landowners enrolled in a government program. Districts are required to consider idle land in a government program as agricultural land, preventing disparate treatment of these types of land.

Local groundwater districts need the flexibility to manage permitting among landowners in their district. This bill could require excessive water rights to be granted on marginal pastureland, reducing the amount of water available for agriculturally productive land in a district.

HB 2423 could have unintended statewide consequences by providing water rights for dry land that historically has not been irrigated but is placed in the CRP. This could allow water rights out of proportion to the historic use of water on that land. The bill could grant groundwater rights that would be available for transfer off the land after the land is removed from the CRP, thereby undermining aquifer and streamflow conservation.

NOTES:

As filed, HB 2423 would have required groundwater districts to bring their rules into compliance with the bill within 90 days of its effective date.