

BILL ANALYSIS

Senate Research Center
85R30953 AAF-F

C.S.H.B. 31
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Agriculture, Water & Rural Affairs
5/18/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that certain groundwater conservation districts have violated private property rights by unduly impeding, delaying, or denying the issuance of groundwater permits. H.B. 31 seeks to address this issue by making certain statutory changes relating to the regulation of groundwater. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 31 amends current law relating to the regulation of groundwater.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to groundwater conservation districts (districts) is modified in SECTION 15 (Section 36.122, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 35.018(b), Water Code, as follows:

(b) Deletes existing text requiring that the report on the designation of priority groundwater management areas include a report on audits performed on districts under Section 36.302 (Legislative Audit Review; Determination of Whether District is Operational) among certain other information.

SECTION 2. Amends Sections 36.001(2) and (7), Water Code, to redefine "commission" and "subdivision of a groundwater reservoir."

SECTION 3. Amends Sections 36.002(a) and (b), Water Code, as follows:

(a) Provides that a landowner owns, rather than the legislature recognizes that a landowner owns, the groundwater below the surface of the landowner's land as real property.

(b) Provides that the described groundwater ownership and rights entitle the landowner, including a landowner's lessees, heirs, or assigns, to take certain actions, including the right to use groundwater for a beneficial use without causing waste.

SECTION 4. Amends Section 36.020(a), Water Code, to prohibit the maintenance tax rate from exceeding 37.5 cents, rather than 50 cents, on each \$100 of assessed valuation.

SECTION 5. Amends Section 36.061(b), Water Code, to authorize the state auditor to conduct a financial audit, rather than to audit the records, of any groundwater conservation district (district) if the state auditor determines that the audit is necessary.

SECTION 6. Amends Section 36.062, Water Code as follows:

Sec. 36.062. OFFICES AND MEETING PLACES. (a) Requires that the offices for conducting the business of the district be reasonably accessible to members of the public who reside in the district and are authorized to be located in certain areas.

(b) Requires the board to designate one or more places reasonably accessible to members of the public who reside in the district inside or outside the district for conducting the meetings of the board.

SECTION 7. Amends Section 36.101(c), Water Code, to require the board of directors of the district (board) to compile its rules and make them available for use and inspection at each of the district's offices, rather than at the district's principal office.

SECTION 8. Amends Section 36.1071(e) and (f), Water Code, as follows:

(e) Requires the district, in the management plan described by Subsection (a) (relating to requiring the district to develop a management plan that addresses certain goals), to include certain information, including, for each aquifer, estimates of the estimated annual volume of water that discharges through evaporation or transpiration and the annual volume of certain lateral and vertical flows. Deletes existing text requiring that the management plan include certain estimates of the projected water supply and the total demand for water in the district. Deletes existing Subdivision (4) requiring the management plan to consider the water supply needs and strategies included in the adopted state water plan.

(f) Authorizes a newly created district, rather than the district, to accept certain applications for permits, provided that the district does not act on any such application until the district's initial management plan, rather than management plan, is approved in a certain manner.

SECTION 9. Amends Section 36.1072(f), Water Code, as follows:

(f) Prohibits an enforcement action from being taken against a district by TCEQ, rather than by TCEQ or the state auditor, under Subchapter I (Performance Review and Dissolution) because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict in certain manners.

SECTION 10. Amends Section 36.108(d), Water Code, as follows:

(d) Requires the districts, not later than September 1, 2020, and every five years thereafter, to consider certain data and models, including groundwater monitoring data, for the management area and requires the districts to propose for adoption certain desired future conditions. Requires the districts, before voting on the proposed desired future conditions under Subsection (d-2) (relating to requiring that desired future conditions provide a balance between certain actions in the management area), to consider certain information, including the feasibility of achieving the desired future condition and the degree to which any previously adopted desired future condition is being achieved, rather than the feasibility of achieving the desired future condition.

SECTION 11. Amends Section 36.113, Water Code, by amending Subsections (c) and (d) and adding Subsection (d-1), as follows:

(c) Authorizes a district to require that only certain information be included in the permit or permit amendment application, as applicable under the rules of the district, including other information included in a rule of the district in effect on the date the application is submitted that specifies what information is required to be included in an application for a determination of administrative completeness and information reasonably related to certain issues that a district is authorized to consider.

(d) Requires a district, before granting or denying certain permits or permit amendments, to consider whether the proposed use of groundwater unreasonably affects registered wells that are exempt from the requirement to obtain a permit under this chapter or district rules. Makes nonsubstantive changes.

(d-1) Provides that the district's consideration of the effect the proposed use of water has on a registered well described by Subsection (d)(2)(C) (relating to proposed use of water that unreasonably affects certain registered wells) does not affect the registered well's permit exemption under this chapter (Groundwater Conservation Districts) or district rules.

SECTION 12. Amends Section 36.114(h), Water Code, to provide that an application is administratively complete if it contains the information set forth under, rather than an administratively complete application requires information set forth in accordance with, Sections 36.113 (Permits for Wells; Permit Amendments) and 36.1131 (Elements of Permit). Prohibits a district from requiring that additional information be included in an application for a determination of administrative completeness.

SECTION 13. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1147, as follows:

Sec. 36.1147. LIMITATION ON APPLICABILITY OF RULES. Provides that the rules of a district in effect on the date an application for a permit or a permit amendment is submitted to the district are the only district rules that are authorized to govern the district's decision to grant or deny the application.

SECTION 14. Amends the heading to Section 36.122, Water Code, to read as follows:

Sec. 36.122. EXPORT OF GROUNDWATER OUT OF DISTRICT.

SECTION 15. Amends Section 36.122, Water Code, by amending Subsections (a), (b), (c), (d), (f), and (k) and adding Subsections (f-1) and (f-2), as follows:

(a) Provides that this section applies to certain applications for a permit or an amendment to a permit that proposes the export, rather than transfer, of groundwater for use outside of a district's boundaries. Deletes existing text authorizing the district to also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.

(b) Authorizes a district to promulgate rules requiring a person to obtain an operating permit or an amendment to an operating permit, rather than a permit or an amendment to a permit, under Section 36.113 from the district to produce and export groundwater, rather than for the transfer of groundwater. Prohibits a district from requiring a separate permit for the export of groundwater for use outside of the district. Deletes existing text authorizing a district to promulgate certain rules relating to the amount of groundwater that is allowed to be transferred out of a district.

(c) Prohibits a district, except as provided in Subsection (e), rather than in Section 36.113(e), from imposing more restrictive permit conditions on exporters, rather than on transporters, than the district imposes on in-district users, rather than existing in-district users. Prohibits a district from denying a permit solely because the applicant intends to export groundwater for use outside of the district.

(d) Requires that an application filed under this section, rather than to comply with this section, be considered and processed in a certain manner. Deletes existing text requiring that an application complying with this section be combined with certain other applications from the same applicant.

(f) Requires the district, in reviewing a proposed transfer of groundwater out of the district, to consider certain information, including the availability of water in the district, rather than in the district and in the proposed receiving area, during the period for which the water supply is requested. Deletes existing text requiring the district to consider the approved regional water plan and approved district management plan.

(f-1) Requires that a term for a permit issued under this section that existed on May 29, 2017, 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 under Section 36.1145 (Operating Permit Renewal) or remains in effect under Section 36.1146 (Change in Operating Permits).

(f-2) Provides that a term automatically extended under Subsection (f-1) continues to be subject to conditions contained in the permit as issued before the automatic extension.

(k) Deletes existing text providing that the authorization to periodically review certain amounts of water is notwithstanding the period specified in Subsections (i) (relating to requiring the period be of certain lengths) or (j) (relating to requiring that a term be automatically extended under certain conditions) during which water is authorized to be transferred under a permit.

SECTION 16. Amends Section 36.201(b), Water Code, to make a conforming change.

SECTION 17. Amends Section 36.303(a), Water Code, to delete existing text requiring TCEQ, after notice and hearing, to take certain actions if certain sections apply including Section 36.302(f) (requiring TCEQ to take certain actions upon determination that a district is not operational).

SECTION 18. Amends Sections 36.4051(a) and (d), Water Code, as follows:

(a) Authorizes the board to issue a written order to make certain determinations regarding an application, including to grant the application with special conditions provided that the applicant agrees to the conditions before the issuance of the order, rather than grant the application with special conditions.

(d) Authorizes an applicant to, not later than the 20th day after the date the board issues an order granting or denying the application, rather than granting the application, to demand a contested case hearing. Deletes existing text authorizing the applicant to demand a contested case hearing if the order includes certain special conditions or grants a maximum amount of groundwater production that is less than the amount requested in the application.

SECTION 19. Amends Chapter 36, Water Code, by adding Subchapter M-1, as follows:

SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

Sec. 36.426. PROCEDURE FOR ADOPTING MORATORIUM. Prohibits a district from adopting a moratorium on the issuance of a permit or permit amendment unless the district complies with the notice and hearing procedures prescribed by Section 36.427 and makes written findings supporting the district's determination regarding the issuance, including the district's justification for imposing the moratorium, if applicable.

Sec. 36.427. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) Authorizes a district to 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. Requires that the public hearing provide residents of the district and other affected parties an opportunity to be heard.

(b) Requires the district to 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) Provides that 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. Authorizes a district to stop issuing permits or permit amendments during that period.

(d) Requires the district, not later than the 12th day after the date of the public hearing, to make a final determination on whether to impose the moratorium and to 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. Provides that a moratorium imposed under this subchapter expires on the 90th day after the date the district makes its determination under Section 36.427(d) to impose the moratorium. Prohibits the district from extending a moratorium imposed under this subchapter.

SECTION 20. Amends Section 8824.101, Special District Local Laws Code, to provide that Section 36.103 (Improvements and Facilities), rather than Sections 36.103 and 36.104 (Purchase, Sale, Transportation, and Distribution of Water), do not apply to the district.

SECTION 21. Amends Section 8833.102, Special District Local Laws Code, to prohibit a district from imposing certain fees or taxes, including production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose.

SECTION 22. Amends Section 11, Chapter 1321, Acts of the 77th Legislature, Regular Session, 2001, by adding Subsection (b-1), to prohibit a district from assessing production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose.

SECTION 23. Provides that the following provisions of the Water Code are repealed:

- (1) Section 36.001(31) (relating to the definition of "operating permit);
- (2) Section 36.104 (Purchase, Sale, Transportation, and Distribution of Water);
- (3) Section 36.1072 (g) (relating to authorizing a person with a legally defined interest in groundwater in a district to file certain petitions);
- (4) Section 36.108(d-5) (relating to providing that a proposal for the adoption of desired future conditions is not required before May 1, 2016);
- (5) Repealers: Sections 36.122 (i) (relating to the period in which a water permit may be transferred), (j) (relating to the automatic extension of a water permit for a certain term if construction of a conveyance system is begun before the expiration of the initial term), (l) (relating to prohibiting a district from using certain revenues to prohibit the transfer of groundwater out of a district), (m) (relating to prohibiting a district from prohibiting certain exports of groundwater), (n) (relating to certain transfers of groundwater to which this section applies), (p) (relating to certain provisions that do not apply to a district collecting certain export fees or surcharges), and (q) (relating to requiring a district to be fair, impartial, and nondiscriminatory in applying this section).
- (6) Section 36.205(d) (relating to prohibiting certain districts from charging production fees greater than certain amounts); and
- (7) Section 36.302.

SECTION 24. 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.

SECTION 25. (a) Provides that a permit to export groundwater approved by a district before the effective date of this Act is validated and confirmed in all respects. Provides that this subsection does not apply to a permit to export groundwater that is subject to litigation that is pending on the effective date of this Act or that results in final judgment that is prohibited from being appealed that the permit is invalid.

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

(c) Makes application of this Act, except as provided by Subsection (b) of this section, prospective.

SECTION 26. Provides that, 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 27. Effective date: September 1, 2017.