

SUBJECT: Repealing ban against groundwater district regulation of city water transport

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Counts, Corte, Hamric, Puente, Shields, Walker
0 nays
3 absent — T. King, Cook, R. Lewis

WITNESSES: For — Richard Bowers, North Plains Ground Water Conservation District No. 2; Lynn Crittendon, Jeff Davis County Underground Water Conservation District; Scott Holland, Texas Alliance of Groundwater Districts
Against — None

BACKGROUND: Water Code, sec. 36.121, exempts certain water wells from regulation by Chapter 36 groundwater districts created after September 1, 1991, and provides that the district may not prohibit a political subdivision or city from transporting water inside or outside the district's boundaries. Sec. 36.121 is bracketed to target wells and well water in counties with a population of 14,000 or less if the water is used solely:

- ! to supply a city with a population of 115,000 or less and the water rights produced from the well are owned by a political subdivision that is not a city; or
- ! by a city that has a population of 93,000 or less and that bought, owned, or held rights to the water before the district was created, regardless of the date the well was drilled or the water produced.

DIGEST: HB 3764 would repeal Water Code, sec. 36.121.
This bill would take effect September 1, 1999.

SUPPORTERS SAY: HB 3764 would repeal a current statutory exemption that allows certain wells to escape regulation by groundwater districts. Groundwater district rules must apply equally to all wells in a district or the district's ability to make long-term plans and conserve water can be jeopardized. Allowing certain wells to

escape regulation undermines the district's ability to regulate groundwater at a local level.

It is troublesome that sec. 36.121 provides that certain districts may not prohibit a political subdivision or city from transporting water inside or outside the district's boundaries. This raises the possibility of a city selling water to a water bottling company, for example, from an aquifer that might be sorely needed by farmers and residents of the district.

The exemption that HB 3764 would repeal directly contradicts the intent of SB 1 by Brown, the omnibus water bill enacted by the 75th Legislature, under which groundwater districts are the preferred method of managing groundwater in Texas. Under SB 1, groundwater districts must submit groundwater management plans to the Texas Water Development Board (TWDB). Groundwater districts cannot predict or control water usage or submit meaningful plans to the TWDB if some wells are allowed to go unregulated or if an unknown amount of water can be exported outside the district's boundaries.

When enacted, the exemption described in sec. 36.121 may have been meant to apply to a specific situation concerning Midland, but the exemption affects other wells and districts. Four water districts to which this exemption could apply have been created since 1991: Culberson County Underground Water Conservation District, Garza County Underground and Fresh Water Conservation District, Jeff Davis County Underground Water Conservation District, and Winter Garden Underground Water Conservation District.

More and more districts could be affected as they are created. Many more regions are considering creating groundwater districts to protect their groundwater resources, and any Chapter 36 district created after September 1, 1991, will have to figure out if the exemption could apply to any wells within its boundaries.

Since groundwater district regulations can include registration requirements, conservation practices, production limits, and spacing requirements, it is unfair that certain wells would be exempt while others would not when both may be drawing from the same aquifer or water supply.

OPPONENTS
SAY:

The exemption in Water Code sec. 36.121 is narrowly bracketed to apply to wells in districts created after 1991, in counties with a population of 14,000 or less, that are used to supply cities with populations under 115,000 or wells owned by cities with populations under 93,000. To ensure the public health and safety, especially in times of water shortages, these small cities must be able to ensure that a district could not prohibit the export of water outside the district from a well owned by a city.

Cities bought these wells to ensure that they could ensure a reliable supply of water for their residents. A reliable supply might not be available if they could no longer access their own water due to pumping limits or other water district regulations. Cities use the water for municipal needs and would not abuse their well privileges for commercial purposes, as they know only too well how precious and finite are the groundwater resources of the state.

NOTES:

A related bill, HB 3763 by Gallego, which would provide that Water Code, sec. 36.121 did not apply to the Jeff Davis County Underground Water Conservation District, passed the House on the Local, Consent, and Resolutions Calendar on April 23 and was referred to the Senate Natural Resources Committee.