

SUBJECT: Eliminating surface-water and well permit exemptions for aesthetic ponds

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Puente, Callegari, Campbell, R. Cook, Geren, Hamilton, Hardcastle, Wolens
0 nays
1 absent — Hope

WITNESSES: None

BACKGROUND: Water Code, ch. 11 governs surface water rights in Texas. Because surface water is the property of the state, a person must obtain a permit to appropriate, divert, or store water from surface water bodies, such as rivers or streams. Sec. 11.142(a) exempts from permit requirements a person who builds on his or her property a dam or reservoir with a storage capacity of up to 200 acre-feet of water that is used for domestic or livestock purposes.

Chapter 36 governs groundwater conservation districts. Sec. 36.117(b) prohibits a groundwater district from requiring a permit for a well used for domestic purposes, livestock, or poultry that cannot produce more than 25,000 gallons of water per day and is located on property of more than 10 acres.

DIGEST: CSHB 2888 would specify that surface water stored in a dam or reservoir predominately to enhance the appearance of the landscape is not being used for domestic or livestock purposes and is not eligible for an exemption from permit requirements under Water Code, sec. 11.142(a).

The bill also would specify that a well that provides water for a pond or lake predominately intended to enhance the appearance of the landscape is not eligible for a permit exemption under Water Code, sec. 36.117(b).

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2888 would eliminate surface-water or groundwater well permit exemptions for aesthetic ponds intended primarily to enhance the appearance of the landscape. Many landowners have avoided permit requirements for such lakes or ponds under the broad exemptions in current law. With many communities in Texas facing increasingly scarce water supplies, property owners should not be allowed to take advantage of these permit exemptions for ponds used for aesthetic purposes.

The bill would clarify that an aesthetic pond does not qualify for a domestic and livestock exemption from surface-water permit requirements. Under this exemption, an owner can build a dam or reservoir containing up to 200 acre-feet of water without a permit. This amount of water would cover 200 football fields with water a foot deep. Some property owners have taken advantage of this exemption to build ponds or lakes for aesthetic purposes in areas with a limited water supply. It is unlikely that the Legislature envisioned that a domestic and livestock exemption would be used in such a way.

The bill also would clarify that a groundwater well used to supply an aesthetic pond is not eligible for an exemption from permit requirements. Because the statute providing well permit exemptions has been amended repeatedly, it is often ambiguous, duplicative, and hard to understand. For instance, a well supplying a pond that qualified for this exemption could produce up to 25,000 gallons per day, enough to supply a typical single-family residence for two months. CSHB 2888 would amend the statute to make it clear that wells supplying aesthetic ponds were not eligible for a permit exemption.

**OPPONENTS
SAY:**

CSHB 2888 would increase costs and governmental regulation for private property owners. A property owner should not have to obtain a permit to use a well to fill a small backyard pond. Aesthetic ponds created by impounding surface water usually are much smaller than 200 acre-feet. These small impoundments do not hoard water nor deny it to neighbors or to the river, and they should not require a permit.

NOTES:

The committee substitute would modify the original bill by changing the criteria defining an aesthetic pond from one used “solely” to one used “predominately” to enhance the appearance of the landscape.