

SUBJECT: Delaying curtailment of groundwater use for power generation or mining

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, Larson,
Lucio, Nevárez, Workman

0 nays

1 absent — T. King

WITNESSES: For — Ches Blevins, Texas Mining and Reclamation Association;
Lindsey Hughes, Texas Competitive Power Advocates; Stephen Minick,
Texas Association of Business; William Moore, Luminant Generation
Company; Mike Nasi, Water-Energy Nexus for Texas Coalition;
(*Registered, but did not testify*: Jacob Arechiga, Balanced Energy for
Texas; Walt Baum and Chris Miller, Association of Electric Companies of
Texas; Kevin Cooper, GDF Suez Energy; Eric Craven, Texas Electric
Cooperatives; Rick Levy, Texas State Association of Electrical Workers-
IBEW); Parker McCollough, NRG Energy, Inc.; Larry McGinnis, Exelon
Corporation; Amanda McPherson, Lower Colorado River Authority; Mike
Nasi, South Texas Electric Cooperative; Kari Torres, CPS Energy; Mance
Zachary, Luminant; Mark Zion, Texas Public Power Association)

Against — Alan Day, Brazos Valley Groundwater Conservation District;
C.E. Williams, Panhandle Groundwater Conservation District;
(*Registered, but did not testify*: Roy Cathey, Environment Texas; Harvey
Everheart, Mesa Underground Water Conservation District; Tom Forbes,
North Plains Groundwater Conservation District; Myron Hess, National
Wildlife Federation; Billy Howe, Texas Farm Bureau; Ken Kramer, Sierra
Club-Lone Star Chapter; Joey Park, Texas Wildlife Association; Lowell
Raun, Coastal Bend Groundwater Conservation District, Texas Rice
Producers Legislative Group; Jason Skaggs; Texas and Southwestern
Cattle Raisers Association; Dee Vaughan, Corn Producers Association of
Texas; Paul Weatherby, Middle Pecos Groundwater Conservation
District; Hope Wells, San Antonio Water System)

On — Brian Sledge, North Texas Groundwater Conservation District, Upper Trinity Groundwater Conservation District, Prairielands Groundwater Conservation District, and Lone Star Groundwater Conservation District; Stacey Steinbach, Texas Alliance of Groundwater Districts; (*Registered, but did not testify*: Warren Lasher, Electric Reliability Council of Texas; Bill Stevens, Texas Alliance of Energy Producers)

DIGEST:

CSHB 2647 would amend Water Code, ch. 36 to allow a power generation facility or its associated mine to petition a groundwater conservation district for a delay of any district action that would reduce or curtail production from its groundwater well or limit the groundwater production rate of its well to certain maximum annual amounts.

Once a district received a petition, it would be required to hold a public hearing and make a final determination as to whether the proposed reduction or curtailment in groundwater production threatened public health or safety or the reliability of the electric grid. The proposed reduction or curtailment could not take effect until the district made a final determination.

If the district determined it would threaten public health or safety or the reliability of the electric grid, the district would have to delay the reduction or curtailment by at least seven years.

If an owner or operator received a delay, the owner or operator could petition the district a second time for an additional three-year delay. The district would have to hold a public hearing and make a final determination to approve the additional three-year delay if the district determined that:

- the owner or operator had engaged in good faith efforts to identify and begin implementing strategies to comply with the proposed reduction or curtailment; and
- implementing the reduction or curtailment at the seven-year date threatened public health or safety or the reliability of the electric

grid.

In making final determinations, the district would have to request, obtain, and give great weight to an opinion issued by the Public Utility Commission of Texas.

CSHB 2647 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, 2015.

**SUPPORTERS
SAY:**

CSHB 2647 would balance the needs of the power generation industry with the responsibility of groundwater districts to manage water resources. Power plants and their associated mines have a predictable need for water and therefore pump only what they need. Because most operations already implement reuse and recycling measures to get the most beneficial use, a plant could shut down if water were curtailed below the necessary amount. This bill would allow a power generator or its associated mine to petition for a delay if a groundwater conservation district imposed a curtailment of groundwater production.

The bill as filed would have precluded groundwater conservation districts from curtailing groundwater use for power generators and their associated mines. Concerns that the bill would have created a guaranteed protection for these uses were addressed with stakeholder input. The committee substitute would strike the right balance by allowing curtailment, but the implementation could be delayed by up to 10 years upon a determination from the district that the curtailment could threaten public health, safety, or reliability of the grid. This would allow generators adequate opportunity to plan for a curtailment, including the need to secure additional water rights.

Curtailments relating to groundwater typically are in response to long-term planning situations, such as achieving the desired future condition of an aquifer. A long-term planning horizon would be capable of absorbing a 10-year curtailment delay, especially considering the small percentage of groundwater typically used for power generation and mining.

While there are concerns that the bill could result in takings litigation against a district, that would be unlikely. Courts have found that at least 50 percent of the value of a property must be destroyed for a takings claim to be found. Because only a small percentage of groundwater is used for power generation and mining, the distribution across other users would be so minimal that the low risk for a takings claim would not outweigh the benefit that all Texans receive from having affordable and reliable electricity.

OPPONENTS
SAY:

While CSHB 2647 would address stakeholder concerns in that it would require power generators to petition a district for an exemption from curtailment, the curtailment could be delayed for up to 10 years. Such a long-term delay would not encourage water conservation or planning and would shift the burden of curtailment onto other water right holders. A more appropriate solution would be for a power generator or mining operation to buy additional water rights to make up the difference of a curtailment.

Curtailment of groundwater production should be spread among all users. Singling out one type of user for special treatment could lead other users to expect special treatment. Regulating based on type of use could be a violation of private property rights. By not curtailing one user, a district would need to further curtail other users, which could result in takings litigation against a district.

Further, any restriction on curtailment could prevent a groundwater district from meeting the statutory requirement of achieving the desired future condition of an aquifer.

The bill also would require the groundwater conservation districts to give deference to the Public Utility Commission in making a final determination on a curtailment. It is unclear what that could mean and what effect it could have in the standard of review.