

SUBJECT: Changing certain groundwater permitting processes

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 7 ayes — Larson, Phelan, Ashby, Kacal, Lucio, Nevárez, Price  
1 nay — T. King  
3 absent — Burns, Frank, Workman

WITNESSES: For — Robert Puente, San Antonio Water System (SAWS); Sarah Schlessinger, Texas Alliance of Groundwater Districts; Bob Harden, Texas Association of Groundwater Owners and Producers; Doug Shaw, Upper Trinity Groundwater Conservation District; (*Registered, but did not testify*: Buddy Garcia, Aqua Texas; Shauna Fitzsimmons, Benbrook Water Authority, North Texas Groundwater Conservation District, Barton Springs Edwards Aquifer Conservation District; Kent Satterwhite, Canadian River Municipal Water Authority; Ed McCarthy, Fort Stockton Holdings LP, Clayton Williams Farms, Inc.; Jay Howard, Guadalupe-Blanco River Authority; Charles Flatten, Hill Country Alliance; Sarah Floerke Gouak, Lower Colorado River Authority; C.E. Williams, Panhandle Groundwater Conservation District; Katherine Carmichael, Panhandle Producers and Royalty Owners Association; Jim Conkwright, Prairielands Groundwater Conservation District; Steve Kosub, San Antonio Water System (SAWS); Kerry Cammack, SouthWest Water Company; Bill Stevens, Texas Alliance of Energy Producers; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Felicia Wright, Texas Assn. of Builders; Stephen Minick, Texas Association of Business; Kyle Frazier, Texas Desalination Association; Jim Reaves, Texas Farm Bureau; Elizabeth Doyel, Texas League of Conservation Voters; Cory Pomeroy, Texas Oil and Gas Association; Michael Geary, The Texas Conservative Coalition)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; (*Registered, but did not testify*: Ryan Simpson, League of Independent Voters; Michael Barba, Texas Catholic Conference of Bishops; Robyn

Ross; Conrad Walton Jr)

On — Ken Kramer, Sierra Club - Lone Star Chapter

**BACKGROUND:** Under Water Code, sec. 36.113, a groundwater conservation district (GCD) requires a permit to drill, equip, operate, or complete a well. A district may require certain information to be included in the permit application for it to be considered administratively complete.

Sec. 36.122 authorizes a GCD to promulgate rules requiring a person to obtain a permit to transfer groundwater out of the district. A GCD may not impose more restrictive permit conditions on transporters than on in-district users, unless those conditions meet certain requirements and are reasonably necessary to protect existing use.

**DIGEST:** CSHB 31 would amend permit requirements related to operating wells and exporting water outside of a groundwater conservation district (GCD).

**Exporting permits.** CSHB 31 would prohibit a GCD from requiring a separate permit to export groundwater outside of the district and would allow an operating permit to cover the production and export of water. The bill also would repeal requirements and procedures related to exporting permits from Water Code, ch. 36. A GCD also could not deny a permit because the applicant intended to export groundwater for use outside the district.

The term of an exporting permit that existed on May 29, 2017, would automatically be extended to the term of an operating permit for the production of the exported water. A permit that was automatically extended would continue to be subject to its original conditions.

**Operating permit moratorium.** CSHB 31 would prohibit a GCD from adopting a moratorium on issuing operating permits or permit amendments unless the district conducted a public hearing and made written findings supporting the moratorium.

The GCD would have to publish notice of the date, time, and place of the public hearing in a newspaper generally circulated in the district at least four days before the hearing. By the 12th day after the hearing, the district would be required to determine whether to impose a moratorium.

A moratorium would expire after 90 days and could not be extended. A moratorium adopted by a GCD before September 1, 2017, would expire after November 30, 2017.

**Operating permit applications.** Under the bill, a district could require only certain information for an operating permit application to be considered administratively complete, including information reasonably related to an issue that the GCD could consider under Water Code, ch. 36 or a special law governing the district.

Before granting or denying an operating permit, a district also would have to consider whether the proposed production of water would unreasonably affect aquifer conditions, depletion, or subsidence. Only the district rules in effect when an operating permit application was submitted could govern the district's decision to grant or deny the permit. A GCD could not require an applicant to include additional information to gain administrative completeness.

**Effective date.** The bill would take effect September 1, 2017, and would prevail over other legislation passed by the 85th Legislature.

SUPPORTERS  
SAY:

CSHB 31 would remove impediments to developing groundwater resources throughout the state by streamlining the operating permit application process. The bill would eliminate exporting permits, allowing landowners who had obtained operating permits to transport the water they rightfully owned outside a groundwater conservation district (GCD). The exporting permits are not necessary because water that is transported by agricultural irrigation or through certain commodities does not need a permit.

The bill would require GCDs to consider a permit application according to

rules in place when the application was submitted. This would ensure that the rules were not changed in the middle of the process, unnecessarily using up valuable time and resources by considering the application incomplete.

While moratoria on permit applications are sometimes necessary, this bill would make a positive change by limiting a moratorium to 90 days so an application could not be suspended indefinitely. A GCD also would have to seek public opinion of a proposed moratorium, increasing the transparency of the process.

The bill would clarify that GCDs were prohibited from discriminating against exporters when issuing operating permits. Landowners who use their property rights to transport water out of a district should have the same permit conditions as landowners using water in-district.

CSHB 31 also would provide certainty and efficiency in the administrative phase of an operating permit application process by clarifying the requirements for administrative completeness. A GCD could not require additional information for an application to be administratively complete, keeping the process clear and uniform.

A district's ability to safeguard aquifer levels would not be eliminated. The bill would require GCDs to consider in an operating permit application whether the projected production of water would affect aquifer levels.

**OPPONENTS  
SAY:**

CSHB 31 would remove district flexibility by eliminating a GCD's ability to issue groundwater exporting permits. Districts across the state have different water needs and should reserve the right to keep water inside district boundaries for aquifer recharge and other purposes.

Equating crop irrigation to exporting water ignores important scientific and economic differences between these processes. Through irrigation, water filters down into the soil or runs off into other water sources, remaining within the GCD. A separate exporting permit is needed to

address actual groundwater exportation out of a district.

The automatic extension of existing exporting permits also could negatively affect a GCD's ability to manage groundwater. The bill would remove language relating to exporting permits from Water Code, ch. 36, including the ability for a district to review the amount of water that may be transferred under the permit. A district could not change the terms of an exporting permit to ensure that the volumes authorized did not harm aquifer levels or water sustainability.

The bill could allow permit applicants to take advantage of changing district rules because it would require applications to be processed according to the district rules in place at the time of submission. Applicants could rush to submit applications before an imminent rule change, undermining the changing water needs of GCDs.

OTHER  
OPPONENTS  
SAY:

Certain provisions of CSHB 31 would be unnecessary. For example, GCDs already are prohibited from imposing more restrictive permit conditions on exporters than on in-district users.

NOTES:

The committee substitute differs from the filed bill in certain ways, including that CSHB 31 would:

- amend what a district could require for administrative completeness of a permit application to include information reasonably related to a special law governing a district;
- change the requirement to post notice of a public hearing on a proposed moratorium from "on the fourth day" to "on or before the fourth day" prior to the hearing; and
- specify that, to the extent of any conflict, HB 31 would prevail over other legislation of the 85th Legislature.