

- SUBJECT:** Evaluating effects on exempt wells during the well permitting process
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 9 ayes — T. King, Harris, Bowers, Larson, Paul, Price, Ramos, Walle, Wilson
- 0 nays
- 2 absent — Kacal, Lucio
- WITNESSES:** For — Vanessa Puig-Williams, Environmental Defense Fund; Judith McGeary, Farm and Ranch Freedom Alliance; Andrew Wier, Simsboro Aquifer Water Defense Fund; Gregory Ellis; (*Registered, but did not testify*: Shauna Sledge, Barton Springs Edwards Aquifer Conservation District, Prairielands GCD, and Upper Trinity GCD; Carlos Rubinstein, Belding Farms/Cockrell; Chris Herrington, City of Austin; Steve Box, Environmental Stewardship; Cyrus Reed, Lone Star Chapter Sierra Club; Myron Hess, National Wildlife Federation; Adrian Shelley, Public Citizen; Eric Opiela, South Texans’ Property Rights Association; Leah Martinsson, Texas Alliance of Groundwater Districts; David Yeates, Texas Wildlife Association; Vanessa MacDougal; Linda Kaye Rogers)
- Against — (*Registered, but did not testify*: Billy Howe, Texas Farm Bureau)
- On — (*Registered, but did not testify*: Kimberly Nygren, TCEQ)
- BACKGROUND:** Water Code sec. 36.117 exempts certain wells from the need to obtain a permit. This includes wells solely for domestic use or for providing water for livestock or poultry. Exempted wells are required to be located on a tract of land larger than 10 acres and be incapable of producing more than 25,000 gallons of groundwater a day.
- DIGEST:** HB 3619 would require a groundwater conservation district to consider whether a proposed water use would unreasonably affect wells that are

exempt from permitting requirements before granting or denying a permit or an amendment to a permit to drill, equip, or operate a well.

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, 2021.

**SUPPORTERS
SAY:**

HB 3619 would protect the livelihoods and investments of rural property owners, prevent these property owners from incurring prohibitively high well costs, and establish permitting procedures that are equitable for all stakeholders by requiring groundwater conservation districts to take into account the effects that permitting decisions may have on shallow wells currently exempt from consideration.

Wells are essential for rural property owners and represent a significant financial investment. Shallow wells that are exempt from permitting requirements are typically used for domestic or small-scale agricultural purposes. Any negative impact on these wells from larger permitted wells could have a devastating impact on the livelihood of the owner. The critical nature of these exempt wells and the significant investment landowners make in digging them are worthy of consideration in the permitting process. The bill does not require that a groundwater conservation district regulate to the needs of the shallowest well, it simply requires that due consideration be given to the impact on exempt wells.

For many rural landowners, digging a deeper well to account for every new well in the area is prohibitively costly. The decision to dig a shallow exempt well is often the result of the financial circumstances of property owners who operate on slim margins. In many cases, they would be unable to construct a well deep enough to withstand the effects of neighboring wells. The inability of owners to modify existing wells or construct wells requiring a permit could cause some to abandon affected wells altogether. This would not diminish the need for water on these properties, and the construction of new infrastructure to deliver water to these rural areas could represent a significant cost to the state.

Existing permitting processes require a district to consider the effect of a proposed well on other permitted wells. Granting exempt wells parity with permitted ones would ensure the equitable use of groundwater by all stakeholders. Excluding one set of wells from consideration while others receive it is inherently unfair. Accounting for all wells in a given area during the permitting process is the most effective way to ensure equitable distribution of groundwater.

CRITICS
SAY:

HB 3619 would negatively impact the right of property owners seeking permits to use water underneath their land and violate the principle that a decision to issue or deny a permit should be based on the effect a proposed well would have on a landowner's fair share of water.

Property owners in Texas have a right to access and use the water located underneath their land. The presence of exempt wells in the area of a proposed well should not affect this. The deliberate decision to dig a shallow well that is exempt from permitting requirements comes with foreseeable risks. It is the responsibility of a well owner to mitigate the effects of the collective use of water, and a property owner should not be denied a permit because no mitigating action was taken.

A landowner has the right to produce a fair share of the common aquifer. Choosing to include the impact on existing wells among the considerations for a district when evaluating a permit application would stand in opposition to this. Property owners who are affected by the fair use of water by a neighbor still retain their right to access groundwater; they must simply access it in a manner that accounts for collective use. The established fair share principle ensures that groundwater remains available for use by all eligible parties and should be preserved.