BILL ANALYSIS

Senate Research Center
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C.S.S.B. 737
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Natural Resources
3/22/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1, passed by the 75th Legislature, Regular Session, 1997, established a regional and state water planning process in addition to establishing that groundwater districts are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district in accordance with Chapter 36 (Groundwater Conservation Districts), Water Code. These regional and state water plans map out how to conserve water supplies, meet future water supply needs, and respond to future droughts in the planning areas. H.B. 1763, passed by the 79th Legislature, Regular Session, 2005, changed how the amount of groundwater available for use is determined in Texas.

Districts are now required to work together in each groundwater management area to develop desired future conditions for their groundwater resources. After a Desired Future Condition (DFC) is established for an aquifer under Section 36.108 (Joint Planning in Management Area), the statute requires that the Texas Water Development Board model the DFC and submit to the districts and regional water planning groups the "managed available groundwater" (MAG). The MAG is the amount of groundwater the model predicts may be produced under a permit to meet or "achieve" the DFC established by the districts for that particular aquifer. C.S.S.B. 737 changes "managed" to "modeled" to more accurately reflect what the definition describes. In addition, Section 36.1132 (Permits Based On Managed Available Groundwater) required groundwater conservation districts to issue permits up to the MAG. C.S.S.B. 737 amends the definition of "modeled available groundwater" so that the term describes the total amount of groundwater that may be produced to achieve a DFC (as opposed to the amount of groundwater that may be permitted).

Two issues have arisen regarding the requirements of the current law. For the MAG to be truly representative of how much groundwater can be produced while still achieving the DFC, the MAG cannot just represent how much groundwater is produced under permits issued by the district. C.S.S.B. 737 requires that the MAG take into account exempt groundwater use, as well.

Permits issued under Section 36.1132 must also focus on the total amount of production in a district, not how much groundwater is permitted. Permitting decisions need to be based upon the impact the permit will have on the ability of the district to achieve the DFC. The current law ties the permitting decisions exclusively to whether or not the permit will exceed the MAG. From a management standpoint, making such decisions based upon this inflexible mandate is not realistic to accomplishing the purpose of the DFC. C.S.S.B. 737 changes the definition of a MAG to include both exempt and non-exempt groundwater production. Current law requires that permits be issued up to the MAG. C.S.S.B. 737 gives the district flexibility in managing the groundwater to achieve the DFC. Additionally, C.S.S.B. 737 provides guidance to the districts in making permitting decisions under Section 36.1132. It requires the district to consider: the MAG, current and projected exempt use, amount of permitted groundwater, amount of groundwater actually being produced under permits, and annual precipitation and production patterns. Again, these considerations represent the many factors that should figure into a permitting decision by a district, as opposed to just one factor under current law — the MAG.

C.S.S.B. 737 amends current law relating to the management of groundwater production by groundwater conservation districts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.001(25), Water Code, to define "modeled available groundwater," rather than "managed available groundwater."

SECTION 2. Amends Section 36.1071(e), Water Code, as follows:

> (e) Requires the groundwater conservation district (district), in the management plan described under Subsection (a) (relating to requiring the district to develop a comprehensive management plan which addresses certain management goals), to include certain information and estimates, including estimates of modeled, rather than managed, available groundwater in the district based on the desired future condition established under Section 36.108 (Joint Planning in Management Area).

SECTION 3. Amends Section 36.108(o), Water Code, to make a conforming change.

SECTION 4. Amends Section 36.1132, Water Code, as follows:

> Sec. 36.1132. New heading: PERMITS BASED ON MODELED AVAILABLE GROUNDWATER. (a) Creates this subsection from existing text. Requires a district, to the extent possible, to issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108. Deletes existing text requiring a district, to the extent possible, to issue permits up to the point that the total volume of groundwater permitted equals the managed available groundwater, if administratively complete permit applications are submitted to the district.
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> (b) Requires the district, in issuing permits, to manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
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> (1) the modeled available groundwater determined by the executive administrator of the Texas Water Development Board (executive administrator);
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> (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117 (Exemptions; Exception; Limitations);
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> (3) the amount of groundwater authorized under permits previously issued by the district;
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> (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
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> (5) yearly precipitation and production patterns.
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> (c) Requires the executive administrator, in developing the estimate of exempt use under Subsection (b)(2), to solicit information from each applicable district.

SECTION 5. Effective date: September 1, 2011.