SUBJECT: Establishing a permit hearing procedure for groundwater districts

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Puente, Callegari, Hope, Campbell, R. Cook, Hamilton

0 nays

3 absent — Geren, Hardcastle, Wolens

WITNESSES: For — Jace Houston, Texas Alliance of Groundwater Districts; Kathy Jones, Lone Star Groundwater Conservation District; Ken Kramer, Sierra Club, Lone Star Chapter; Brian Sledge, Lone Star Groundwater Conservation District and Rolling Plains Groundwater Conservation District

Against — None

BACKGROUND: Water Code, ch. 36 governs groundwater conservation districts, the state's preferred method of groundwater management. These districts have the authority to adopt and enforce rules to manage groundwater resources and to issue permits for water wells.

DIGEST: CSHB 1379 would require that, at least 10 days before a rulemaking hearing, the general manager or board of a groundwater conservation district:

- post notice of the hearing in the district office in an area accessible to the public;
- provide notice to the clerk of each county in the district; and
- publish notice in at least one general circulation newspaper in the district.

Notice would have to include the time, date, and location of the hearing and a brief explanation of the subject. A presiding officer of a hearing would have to conduct the hearing in a manner appropriate to obtain information and testimony on the proposed rule as conveniently and expeditiously as possible without prejudicing a person's rights at the hearing.

Permits. A district could prohibit a change in withdrawal or use of groundwater under a permit unless the district had approved a permit amendment authorizing the change. The bill would apply current requirements for well permits to permit amendments. A district could issue a permit or amendment subjecting the operation of a well or production of groundwater to conservation requirements.

A district could determine activities for which a permit was required. For every permitted activity, a district would have to determine whether a hearing on the permit was required. For any permit application for which a hearing was not required, the district board would have to act on the permit in an open meeting, unless the board had delegated authority to the general manager to act on the application. If an administratively complete application was not acted on or set for a hearing within 60 days, the applicant could petition a district court to compel the water district to act or set a hearing. If an application required a hearing, the district would have to act on the application within 60 days of the final hearing.

A district general manager or board would schedule a hearing on an application for a permit or permit amendment as necessary. More than one application could be scheduled for consideration at a hearing. A hearing would have to be held at a district office or regular meeting location, unless the board provided for a different location. A hearing could be held in conjunction with a regularly scheduled meeting.

A general manager or board would have to give notice of each hearing on an application. Notice would include the applicant's name, the well's location, an explanation of a proposed amendment, and the time, date, and location of the hearing, as well as any other information considered relevant and appropriate.

At least 10 days before a hearing, the board or general manager would:

- post notice of the hearing in the district office in an area accessible to the public;
- provide notice to the clerk of each county in the district; and
- provide notice by mail to the applicant or other people entitled to receive notice.

A district could require each person attending a hearing to submit a registration form stating the person's name, address, whom the person represented, and whether the person wished to testify.

A hearing would have to be conducted by a quorum of the board or by a person designated by the board to serve as hearings examiner. A board president or hearings examiner would serve as the presiding officer of the hearing. A presiding officer would have to:

- convene the hearing as specified in the notice;
- set any additional hearing dates;
- establish the order for presentation of the evidence;
- administer oaths for testimony;
- ensure that information and testimony was introduced as conveniently and quickly as possible without prejudicing any party's rights; and
- set reasonable time limits for testimony and presentation of evidence.

Anyone, including a general manager or district employee, could testify or present evidence at the hearing, unless the district or presiding officer limited testimony or presentation of evidence to a person affected by the subject matter of the hearing. A presiding officer could require testimony to be in writing and sworn to. A presiding officer also could allow a person to file additional written materials within 10 days of the hearing if no decision had been made. A district could authorize a presiding officer to issue an order before the board acted on a permit that:

- referred parties in a contested application hearing to an alternative dispute resolution procedure;
- determined how the costs of the procedure would be apportioned; and
- appointed an impartial third party to facilitate the procedure.

A presiding officer would have to admit evidence relevant to an issue at the hearing but could exclude evidence that was irrelevant, immaterial, or unduly repetitious.

A presiding officer would have to keep a record of each hearing. If a hearing was transcribed at the request of a party to the hearing, the presiding officer could assess the costs to one or more of the parties.

A presiding officer could continue a hearing from time to time and from place to place without complying with notice requirements. If the presiding officer continued a hearing without announcing the time, date, and location at a hearing, he or she would have to mail notice of the hearing to those who had registered at the previous hearing.

A presiding officer would have to submit a report to the board within 30 days of the hearing. However, if a hearing was conducted by a quorum of the board, the presiding officer would determine whether to submit a report. A report would have to include a summary of the subject matter of the hearing, a summary of the evidence and public comments received, and the presiding officer's recommendations for board action.

A participant in the hearing could ask to review the report and could submit written exceptions to it. A presiding officer would have to mail a copy of the report in response to each participant's request.

A board would have to act on a permit within 60 days after the conclusion of the final hearing.

An applicant could appeal a board's decision on a permit by requesting a rehearing within 20 days. A request would have to be filed with the district office and would have to state the grounds of the request. If a board granted a request, the board would have to schedule the rehearing within 45 days of the request. Failure to grant or deny a request within 90 days would constitute a denial of the request.

A decision would be final if a request was not filed on time, or if the request was filed on time but on the date the board denied a request or rendered a decision after rehearing.

A district could adopt procedural rules to implement the bill's permit hearing requirements and could adopt additional notice and hearing procedures. The bill's permit hearing requirements would not apply to a hearing conducted by the State Office of Administrative Hearings under contract to the district. A district could develop and use alternative dispute resolution procedures as provided for by state law. The Administrative Procedure Act would not apply to permit hearings held by districts.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

CSHB 1379 would establish hearing procedures and notice requirements for groundwater districts. Although the Water Code requires hearings and notice for rulemaking or permit applications, it does not establish specific procedures for conducting hearings, such as how to admit evidence, request a rehearing, or post notice. As a result, districts around the state have adopted an array of hearing procedures. In one district, a dispute over a permit became bogged down in procedural bickering rather than addressing the merit of the application. As groundwater becomes increasingly scarce, permit applications are likely to become more controversial, and districts will need more sophisticated procedures to sort out disputes. CSHB 1379 would establish a uniform hearing procedure for permit applications, increasing the overall sophistication of groundwater districts.

The bill would specify that districts could use alternative dispute resolution procedures. If authorized, a hearing's presiding officer could send a matter to alternative dispute resolution and could assign costs to the parties. This would benefit smaller districts that could end up in court every time they denied a permit and do not have the staff or financial resources to litigate every disputed permit.

OPPONENTS SAY:

Although the new hearing requirements could benefit some districts, not all districts need the same hearing procedures. A number of districts have not experienced any problems issuing permits under current law. In smaller districts, complying with the bill's hearing and notice requirements could be burdensome.

NOTES:

The committee substitute made numerous technical changes to the bill as introduced. Among other changes, it would require, rather than allow, a presiding officer to admit evidence relevant to a hearing.

The companion bill, SB 738 by Duncan, was reported favorably, as substituted, by the Senate Natural Resources Committee on April 22.