

SUBJECT: Changing certain groundwater permitting processes

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King

0 nays

4 absent — Lucio, Nevárez, Price, Workman

WITNESSES: For — Hope Wells, San Antonio Water System; Dirk Aaron, Texas Alliance of Groundwater Districts; Stacey Steinbach, Texas Water Conservation Association; Shauna Fitzsimmons, Upper Trinity GCD, Prairielands GCD, Lone Star GCD, North Texas GCD; (*Registered, but did not testify*: Dirk Aaron, Clearwater Underground Water Conservation District; Ty Embrey, Middle Trinity Groundwater Conservation District; Randy Lee, San Antonio Water System; Billy Phenix, Schertz Seguin Local Government Corporation; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Dean Robbins, Texas Water Conservation Association; Thomas Parkinson)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Elizabeth Montgomery)

On — (*Registered, but did not testify*: Larry French, Texas Water Development Board)

BACKGROUND: Under Water Code, sec. 36.113, a groundwater conservation district (GCD) must require a permit to drill, equip, operate, or complete a well.

Sec. 36.122 allows a GCD to adopt 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: HB 26 would amend permit requirements related to operating wells and exporting water outside of a groundwater conservation district (GCD).

Operating permit applications. Only the district rules in effect when an application for a permit or permit amendment was submitted could govern the district's decision to grant or deny the application.

Exporting permits. HB 26 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 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 August 17, 2017, would automatically be extended to a term no shorter than that of the associated operating permit. The exporting permit also would be automatically extended for each additional term the operating permit would be renewed or remain in effect. The exporting permit would continue to be subject to conditions contained in the permit as issued.

Operating permit moratorium. HB 26 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 December 1, 2017, would expire after February 28, 2018.

Effective date. The bill would take effect December 1, 2017, and would not apply to an administratively complete exporting permit application received before that date.

SUPPORTERS
SAY:

HB 26 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 own 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.

Current law allows districts to review permits and make changes in accordance with district rules, which could include amending the amount of water authorized to be transferred by the permit.

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.

OPPONENTS

HB 26 would remove district flexibility by eliminating a GCD's ability

SAY: to issue groundwater exporting permits separate from operating 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 ability of GCDs to respond to changing water needs.

**OTHER
OPPONENTS
SAY:** Certain provisions of HB 26 are unnecessary. For example, GCDs already are prohibited from imposing more restrictive permit conditions on exporters than on in-district users.