

BILL ANALYSIS

Senate Research Center
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H.B. 31
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Agriculture, Water & Rural Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that certain groundwater conservation districts have violated private property rights by unduly impeding, delaying, or denying the issuance of groundwater permits. H.B. 31 seeks to address this issue by making certain statutory changes relating to the regulation of groundwater.

H.B. 31 amends current law relating to the regulation of groundwater.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to groundwater conservation districts (districts) is modified in SECTION 5 (Section 36.122, Water Code) of this bill.

Rulemaking authority previously granted to districts is rescinded in SECTION 7 (Section 36.122, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 36.113(c) and (d), Water Code, as follows:

(c) Authorizes a groundwater conservation district (district) to require that only certain information be included in the permit or permit amendment application, as applicable under the rules of the district, including other information included in a rule of the district in effect on the date the application is submitted that specifies what information is required to be included in an application for a determination of administrative completeness and information reasonably related to certain issues that a district is authorized to consider.

(d) Requires a district, before granting or denying certain permits or permit amendments, to consider whether the application meets certain conditions, including the projected effect of the proposed production, rather than the proposed use of water, unreasonably affects certain factors, including aquifer conditions, depletion, or subsidence.

SECTION 2. Amends Section 36.114(h), Water Code, to provide that an application is administratively complete if it contains the information set forth under, rather than providing an administratively complete application requires information set forth in accordance with, Sections 36.113 (Permits for Wells; Permit Amendments) and 36.1131 (Elements of Permit). Prohibits a district from requiring that additional information be included in an application for a determination of administrative completeness.

SECTION 3. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1147, as follows:

Sec. 36.1147. LIMITATION ON APPLICABILITY OF RULES. Provides that the rules of a district in effect on the date an application for a permit or a permit amendment is submitted to the district are the only district rules that are authorized to govern the district's decision to grant or deny the application.

SECTION 4. Amends the heading to Section 36.122, Water Code, to read as follows:

Sec. 36.122. EXPORT OF GROUNDWATER OUT OF DISTRICT.

SECTION 5. Amends Section 36.122, Water Code, by amending Subsections (a), (b), (c), and (d) and adding Subsections (f-1) and (f-2), as follows:

(a) Provides that this section applies to certain applications for a permit or an amendment to a permit that proposes the export, rather than transfer, of groundwater for use outside of a district's boundaries. Deletes existing text authorizing the district to also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.

(b) Authorizes a district to promulgate rules requiring a person to obtain an operating permit or an amendment to an operating permit, rather than a permit or an amendment to a permit, under Section 36.113 from the district to produce and export groundwater, rather than for the transfer of groundwater. Prohibits a district from requiring a separate permit for the export of groundwater for use outside of the district. Deletes existing text authorizing a district to promulgate certain rules relating to the amount of groundwater that is allowed to be transferred out of a district.

(c) Prohibits a district, except as provided in Subsection (e), rather than in Section 36.113(e), from imposing more restrictive requirements or permit conditions on exporters, rather than imposing more restrictive permit conditions on transporters, than the district imposes on in-district users, rather than existing in-district users. Prohibits a district from denying a permit because the applicant intends to export groundwater for use outside of the district.

(d) Requires an application filed under this section, rather than to comply with this section, to be considered and processed in a certain manner. Deletes existing text requiring that an application complying with this section be combined with certain other applications from the same applicant.

(f-1) Requires that a term for a permit issued under this section that existed on May 29, 2017, to automatically be extended on or before its expiration to a term that is not shorter than the term of an operating permit for the production of water to be exported that is in effect at the time of the extension and for each additional term for which that operating permit for production is renewed under Section 36.1145 (Operating Permit Renewal) or remains in effect under Section 36.1146 (Change in Operating Permits).

(f-2) Provides that a term automatically extended under Subsection (f-1) continues to be subject to conditions contained in the permit as issued before the automatic extension.

SECTION 6. Amends Chapter 36, Water Code, by adding Subchapter M-1, as follows:

SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

Sec. 36.426. PROCEDURE FOR ADOPTING MORATORIUM. Prohibits a district from adopting a moratorium on the issuance of a permit or permit amendment unless the district complies with the notice and hearing procedures prescribed by Section 36.427 and makes written findings supporting the district's determination regarding the issuance, including the district's justification for imposing the moratorium, if applicable.

Sec. 36.427. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) Authorizes a district to impose a moratorium on the issuance of a permit or permit amendment only after the district conducts a public hearing as provided by this section. Requires that the public hearing provide residents of the district and other affected parties an opportunity to be heard.

(b) Requires the district to publish notice of the date, time, and place of the hearing in a newspaper of general circulation in the district on or before the fourth day before the date of the hearing.

(c) Provides that during the period beginning on the fifth business day after the date a notice is published under Subsection (b) and ending on the date the district makes its determination under Subsection (d), a temporary moratorium is imposed. Authorizes a district to stop issuing permits or permit amendments during that period.

(d) Requires the district, not later than the 12th day after the date of the public hearing, to make a final determination on whether to impose the moratorium and to issue written findings supporting the district's determination, including the district's justification for imposing the moratorium, if applicable.

Sec. 36.428. EXPIRATION OF MORATORIUM; EXTENSION PROHIBITED. Provides that a moratorium imposed under this subchapter expires on the 90th day after the date the district makes its determination under Section 36.427(d) to impose the moratorium. Prohibits the district from extending a moratorium imposed under this subchapter.

SECTION 7. Repealers: Sections 36.122(f) (relating to requiring the district to consider certain factors in reviewing a proposed groundwater transfer), (g) (relating to prohibiting a district from denying a permit based solely on certain grounds), (h) (relating to requiring that a permit specify certain conditions), (i) (relating to the duration of a certain period), (j) (relating to providing for the automatic extension of certain terms), (k) (relating to authorizing a district to periodically review certain aspects of a permit), (l) (relating to prohibiting a district from using certain revenues to prohibit the transfer of groundwater out of a district), (m) (relating to prohibiting a district from prohibiting certain exports of groundwater), (n) (relating to certain transfers of groundwater to which this section applies), (o) (relating to requiring a district to adopt rules necessary to implement this section), (p) (relating to certain provisions that do not apply to a district collecting certain export fees or surcharges), and (q) (relating to requiring a district to be fair, impartial, and nondiscriminatory in applying this section), Water Code.

SECTION 8. Prohibits a moratorium on the issuance of a permit or permit amendment that is adopted by a district before September 1, 2017, from continuing in effect after November 30, 2017.

SECTION 9. (a) Provides that a permit to export groundwater approved by a district before the effective date of this Act is validated and confirmed in all respects. Provides that this subsection does not apply to a permit to export groundwater that is subject to litigation that is pending on the effective date of this Act or that results in final judgment that is prohibited from being appealed that the permit is invalid.

(b) Provides that an administratively complete permit application to export groundwater received by a district before the effective date of this Act is governed by the law in effect when the application became administratively complete. Provides that the former law is continued for the purpose of processing an application received before the effective date of this Act.

SECTION 10. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to changes to Chapter 36, Water Code, or nonsubstantive additions to and corrections in enacted codes.

SECTION 11. Effective date: September 1, 2017.