

BILL ANALYSIS

S.B. 692
By: Estes
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, groundwater conservation districts across the state may require drilling or operating permits based on the use of the groundwater to be withdrawn, but the provisions of Chapter 36 (Groundwater Conservation Districts), Water Code, seem to state that the exemptions apply to the well, rather than the groundwater use. This inconsistency leads to confusion and potential litigation over the meaning and legislative intent for these exemptions.

Groundwater conservation districts have had their hands tied by current law. Once a well is permitted because of its exempt use, groundwater conservation districts lose their ability to regulate that well. This is problematic in situations where the initial, exempt use changes, often due to development of the property, changing its domestic nature. The new use is no longer exempt; however, the property owners contend that the well is still exempt from groundwater conservation district regulation. Property owners use Chapter 36, Government Code, as the basis of their argument that the well is exempt.

This bill amends current law relating to groundwater conservation district permit exemptions to make it clear the exemptions apply to groundwater use and not to a specific well.

As proposed, S.B. 692 amends current law relating to exemptions from groundwater conservation district permit requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to groundwater conservation districts in SECTION 1 of this bill.

ANALYSIS

SECTION 1. Amends Sections 36.117(a)-(d), (f), (h), (i), (j), and (k), Water Code, as follows:

(a) Authorizes a district by rule to provide an exemption, rather than exempt wells, from the district's requirement to obtain, rather than from the requirement of obtaining, a drilling permit, an operating permit, or any other permit required by this chapter or the district's rules.

(b) Requires a district, except as provided by this section, to provide an exemption from the district requirement to obtain a permit, rather than prohibiting a district from requiring any permit issued by the district, for:

(1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:

(A) located or to be located on a tract of land larger than 10 acres; and

(B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas (railroad commission) provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or

(3) drilling a water well authorized under a permit issued by the railroad commission under Chapter 134 (Texas Surface Coal Mining and Reclamation Act), Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water. Makes nonsubstantive changes.

(c) Prohibits a district from restricting the production of water from any well described by Subsection (b)(1), rather than prohibiting a district from restricting the production of any well that is exempt from permitting under Subsection (b)(1).

(d) Authorizes a district to cancel a previously granted exemption and to require an operating permit for or restrict production from a well, rather than authorizing a district, notwithstanding existing Subsection (b), to require a well to be permitted by the district and to comply with all district rules, if:

(1) the well is located in, rather than the withdrawals from a well in, the Hill Country Priority Groundwater Management Area and the groundwater withdrawals that were exempted under Subsection (b)(1) are no longer used solely for domestic use or to provide water for livestock or poultry;

(2) the groundwater withdrawals that were exempted, rather than the purpose of a well exempted, under Subsection (b)(2) are no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the railroad commission; or

(3) the groundwater withdrawals that were exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the railroad commission under Chapter 134, Natural Resources Code. Makes conforming changes.

(f) Authorizes a district to require compliance with the district's well spacing rules for the drilling of any well except a well exempted under Subsection (b)(3), rather than prohibiting a district, notwithstanding Subsection (d), from requiring a well exempted under Subsection (b)(3) to comply with the spacing requirement of the district.

(h) Requires a district to require the owner of a water well, rather than requires a water well exempted under Subsection (a) or (b), to:

(1) register the well in accordance with rules promulgated by the district; and

(2) equip and maintain the well to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir. Makes conforming changes.

(i) Requires the driller of a well to file with the district the well log required by Section 1901.251 (Well Log), Occupations Code, and, if available, the geophysical log. Makes conforming changes.

(j) Provides that an exemption provided under Subsection (b) does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232 (County Regulation of Subdivisions), Local Government Code. Deletes existing text providing that a well to supply water for a

subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, is not exempted under existing Subsection (b).

(k) Provides that groundwater withdrawn under an exemption provided in accordance with this section, rather than groundwater withdrawn from a well exempt from permitting or regulation under this section, and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 (Transfer of Groundwater Out of District) and 36.205 (Authority to Set Fees).

SECTION 2. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.