

BILL ANALYSIS

Senate Research Center

S.B. 864
By: Perry
Agriculture, Water & Rural Affairs
5/23/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, if an application for a surface water right at the Texas Commission on Environmental Quality (TCEQ) proposes to use groundwater to supplant their surface water, there is no requirement to provide notice to a groundwater conservation district (GCD) with jurisdiction over that groundwater. For example, ponds intended for domestic and livestock use are exempt from TCEQ surface water permitting procedures. If the owner of the pond were to convert the use of that pond to a use other than domestic and livestock, becoming a non-exempt use, the owner would then be required to obtain a surface water right to that water. If the water in that basin has already been fully appropriated, TCEQ will often condition that permit on keeping the pond filled with groundwater so they do not have to appropriate state water for that pond. With the current permitting process, the GCD does not get notice that such an application has been made to TCEQ and applicants are often unaware that they must also obtain a permit to pump groundwater from any GCD with jurisdiction over that property. This could lead to illegal pumping of groundwater or enforcement actions at TCEQ.

S.B. 864 requires that notice be provided to a GCD with jurisdiction over the groundwater whenever a surface water permit at TCEQ proposes to use groundwater as an alternate source. TCEQ already has a procedure for providing notice during the permitting process, so this bill would simply expand the notice requirements to apply to GCDs as well.

S.B. 864 amends current law relating to the procedure for obtaining a right to use state water if the applicant proposes an alternative source of water that is not state water.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

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 Sections 11.132(c) and (d), Water Code, as follows:

(c) Includes identification of any proposed alternative source of water, other than state water, identified by the applicant in the list of items the Texas Natural Resource Conservation Commission (TNRCC) is required to include in the notice. Redesignates existing Subdivisions (5) and (6) as Subdivisions (6) and (7) and makes no further changes to these subdivisions.

(d) Authorizes TNRCC to act on an application without holding a public hearing if, among certain other actions, not less than 30 days before the date of action on the application by TNRCC, TNRCC mails a copy of the notice by certain means to each groundwater conservation district (GCD) with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water. Makes nonsubstantive changes.

SECTION 2. Amends Section 11.135(b), Water Code, to include among certain other items the permit is required to contain, a general description of the source of supply from which the appropriation is proposed to be made, including any alternative source of water that is not state water.

SECTION 3. Amend Sections 11.143(e) and (f), Water Code, as follows:

(e) Requires TNRCC, in the notice, among certain other information, to identify the source of supply, including any proposed alternative source of water, other than state water, identified by the applicant, and the place where the water is stored, rather than to identify the source of supply and the place where the water is stored.

(f) Requires that the notice, if the notice identifies groundwater from a well located in a GCD as a proposed alternative source of water, be sent to the GCD in which the well is located and be published in certain ways.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2017.