

Item 6 – Board Positions on 85th Legislative Session Bills

There have been only a handful of bills filed this session concerning groundwater. We will discuss each bill and develop a position (For, Against, Neutral). This will guide staff during the session as these bills are moved and need to be addressed.

HB 180 by Lucio III - Relating to the review of groundwater conservation districts by the state auditor.

HB 645 by Lucio III - Relating to regulation of production of wells for retail public utilities by a groundwater conservation district.

HB 1318 by Lucio III - Relating to regulation of production of wells for retail public utilities by a groundwater conservation district.

SB 189 by Uresti - Relating to notice of an application for a permit to drill certain injection wells within a certain distance of a groundwater conservation district.

The full text of each of the above bills follows.

By: Lucio III

H.B. No. 180

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the review of groundwater conservation districts by the
3 state auditor.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 35.018(b), Water Code, is amended to
6 read as follows:

7 (b) The report must include:

8 (1) the names and locations of all priority
9 groundwater management areas and districts created or attempted to
10 be created on or after November 5, 1985, the effective date of
11 Chapter 133 (H.B. No. 2), Acts of the 69th Legislature, Regular
12 Session, 1985;

13 (2) the authority under which each priority
14 groundwater management area and district was proposed for creation;

15 (3) a detailed analysis of each election held to
16 confirm the creation of a district, including analysis of election
17 results, possible reasons for the success or failure to confirm the
18 creation of a district, and the possibility for future voter
19 approval of districts in areas in which attempts to create
20 districts failed;

21 (4) a detailed analysis of the activities of each
22 district created, including those districts which are implementing
23 management plans certified under Section 36.1072;

24 (5) a report on ~~audits performed on districts under~~

1 ~~Section 36.302 and~~] remedial actions taken under Section 36.303;

2 (6) recommendations for changes in this chapter and
3 Chapter 36 that will facilitate the creation of priority
4 groundwater management areas and the creation and operation of
5 districts;

6 (7) a report on educational efforts in newly
7 designated priority groundwater management areas; and

8 (8) any other information and recommendations that the
9 commission considers relevant.

10 SECTION 2. Section 36.061(b), Water Code, is amended to
11 read as follows:

12 (b) The state auditor may conduct a financial audit [~~the~~
13 ~~records~~] of any district if the state auditor determines that the
14 audit is necessary.

15 SECTION 3. Section 36.1072(f), Water Code, is amended to
16 read as follows:

17 (f) If the executive administrator does not approve the
18 district's management plan, the executive administrator shall
19 provide to the district, in writing, the reasons for the
20 action. Not later than the 180th day after the date a district
21 receives notice that its management plan has not been approved, the
22 district may submit a revised management plan for review and
23 approval. The executive administrator's decision may be appealed
24 to the development board. If the development board decides not to
25 approve the district's management plan on appeal, the district may
26 request that the conflict be mediated. The district and the board
27 may seek the assistance of the Center for Public Policy Dispute

1 Resolution at The University of Texas School of Law or an
2 alternative dispute resolution system established under Chapter
3 152, Civil Practice and Remedies Code, in obtaining a qualified
4 impartial third party to mediate the conflict. The cost of the
5 mediation services must be specified in the agreement between the
6 parties and the Center for Public Policy Dispute Resolution or the
7 alternative dispute resolution system. If the parties do not
8 resolve the conflict through mediation, the decision of the
9 development board not to approve the district's management plan may
10 be appealed to a district court in Travis County. Costs for the
11 appeal shall be set by the court hearing the appeal. An appeal
12 under this subsection is by trial de novo. The commission shall
13 not take enforcement action against a district under Subchapter I
14 until the latest of the expiration of the 180-day period, the date
15 the development board has taken final action withholding approval
16 of a revised management plan, the date the mediation is completed,
17 or the date a final judgment upholding the board's decision is
18 entered by a district court. An enforcement action may not be
19 taken against a district by the commission [~~or the state auditor~~]
20 under Subchapter I because the district's management plan and the
21 approved regional water plan are in conflict while the parties are
22 attempting to resolve the conflict before the development board, in
23 mediation, or in court. Rules of the district continue in full
24 force and effect until all appeals under this subsection have been
25 exhausted and the final judgment is adverse to the district.

26 SECTION 4. Section 36.303(a), Water Code, is amended to
27 read as follows:

1 (a) If Section 36.301 or [7] 36.3011[~~7~~ ~~or~~ 36.302(f)]
2 applies, the commission, after notice and hearing in accordance
3 with Chapter 2001, Government Code, shall take action the
4 commission considers appropriate, including:

5 (1) issuing an order requiring the district to take
6 certain actions or to refrain from taking certain actions;

7 (2) dissolving the board in accordance with Sections
8 36.305 and 36.307 and calling an election for the purpose of
9 electing a new board;

10 (3) requesting the attorney general to bring suit for
11 the appointment of a receiver to collect the assets and carry on the
12 business of the groundwater conservation district; or

13 (4) dissolving the district in accordance with
14 Sections 36.304, 36.305, and 36.308.

15 SECTION 5. Section 36.302, Water Code, is repealed.

16 SECTION 6. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2017.

By: Lucio III

H.B. No. 645

A BILL TO BE ENTITLED

AN ACT

1
2 relating to regulation of production of wells for retail public
3 utilities by a groundwater conservation district.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 36.116(c), Water Code, is amended to
6 read as follows:

7 (c) In regulating the production of groundwater based on
8 tract size or acreage, a district shall ~~may~~ consider the service
9 needs or service area of the [a] retail public utility that serves
10 the territory where production is regulated by the district. For
11 the purposes of this subsection, "retail public utility" has ~~shall~~
12 ~~have~~ the meaning assigned ~~provided~~ by Section 13.002. A
13 district may determine whether it is appropriate to base the
14 production amount on a retail public utility's service needs or
15 service area under this subsection.

16 SECTION 2. This Act takes effect September 1, 2017.

By: Lucio III

H.B. No. 1318

A BILL TO BE ENTITLED

AN ACT

1
2 relating to regulation of production of wells for retail public
3 utilities by a groundwater conservation district.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 36.116(c), Water Code, is amended to
6 read as follows:

7 (c) In regulating the production of groundwater based on
8 tract size or acreage, a district shall ~~may~~ consider the
9 aggregate acreage owned by the retail public utility and the retail
10 public utility's customers inside the district and may subtract
11 permitted wells from that acreage ~~[service needs or service area of~~
12 ~~a retail public utility]~~. For the purposes of this subsection,
13 "retail public utility" has ~~shall have~~ the meaning assigned
14 ~~[provided]~~ by Section 13.002.

15 SECTION 2. This Act takes effect September 1, 2017.

By: Uresti

S.B. No. 189

A BILL TO BE ENTITLED

AN ACT

1
2 relating to notice of an application for a permit to drill certain
3 injection wells within a certain distance of a groundwater
4 conservation district.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Section 27.017, Water Code, is
7 amended to read as follows:

8 Sec. 27.017. NOTICE TO AND RECOMMENDATIONS FROM OTHER
9 ENTITIES REGARDING APPLICATIONS.

10 SECTION 2. Section 27.017(b), Water Code, is amended to
11 read as follows:

12 (b) This subsection does not apply to an application for a
13 permit for an ASR injection well under Subchapter G. If an
14 application is received in proper form for a permit for an injection
15 well under the jurisdiction of the commission under this chapter
16 [to dispose of industrial and municipal waste] and the proposed
17 location of the injection well is in the territory of or within 10
18 miles of the boundaries of a groundwater conservation district, the
19 executive director shall submit a copy of the application to the
20 governing body of each such [the] groundwater conservation
21 district. Notice received under this subsection does not grant a
22 groundwater conservation district standing as an affected person in
23 a protest or hearing before the commission.

24 SECTION 3. Section 27.018(e), Water Code, is amended to

1 read as follows:

2 (e) This subsection does not apply to an application for a
3 permit for an ASR injection well under Subchapter G. In addition to
4 the requirements of Subsection (c), before any testimony is heard
5 in a contested case regarding an application for a permit for an
6 injection well under the jurisdiction of the commission under this
7 chapter [~~to dispose of industrial and municipal waste~~] that is
8 proposed to be located in the territory of or within 10 miles of the
9 boundaries of a groundwater conservation district, the record of
10 the proceeding must include evidence that:

11 (1) a copy of each draft permit proposed by the
12 executive director was provided to the governing body of each such
13 [~~the~~] groundwater conservation district; and

14 (2) notice of the contested case hearing was mailed to
15 the governing body of each such [~~the~~] groundwater conservation
16 district.

17 SECTION 4. Subchapter C, Chapter 27, Water Code, is amended
18 by adding Section 27.0322 to read as follows:

19 Sec. 27.0322. NOTICE TO GROUNDWATER CONSERVATION
20 DISTRICTS. (a) A person making application to the railroad
21 commission for a permit for an injection well to which this
22 subchapter applies the proposed location of which is in the
23 territory of or within 10 miles of the boundaries of a groundwater
24 conservation district shall:

25 (1) submit a copy of the application to the governing
26 body of each such groundwater conservation district; and

27 (2) submit with the application evidence showing that

1 the applicant has complied with Subdivision (1).

2 (b) Notice received under this section does not grant a
3 groundwater conservation district standing as an affected person in
4 a protest or hearing before the railroad commission.

5 SECTION 5. Subchapter C-1, Chapter 27, Water Code, is
6 amended by adding Section 27.0441 to read as follows:

7 Sec. 27.0441. NOTICE TO GROUNDWATER CONSERVATION
8 DISTRICTS. (a) A person making application to the railroad
9 commission for a permit for an injection well to which this
10 subchapter applies the proposed location of which is in the
11 territory of or within 10 miles of the boundaries of a groundwater
12 conservation district shall:

13 (1) submit a copy of the application to the governing
14 body of each such groundwater conservation district; and

15 (2) submit with the application evidence showing that
16 the applicant has complied with Subdivision (1).

17 (b) Notice received under this section does not grant a
18 groundwater conservation district standing as an affected person in
19 a protest or hearing before the railroad commission.

20 SECTION 6. (a) Not later than March 1, 2018, the Texas
21 Commission on Environmental Quality and the Railroad Commission of
22 Texas shall adopt rules as necessary to implement the change in law
23 made by this Act to Chapter 27, Water Code.

24 (b) The change in law made by this Act to Chapter 27, Water
25 Code, applies only to a permit application submitted to the Texas
26 Commission on Environmental Quality or the Railroad Commission of
27 Texas on or after the effective date of the applicable rules adopted

S.B. No. 189

1 under Subsection (a) of this section. A permit application
2 submitted before the effective date of the applicable rules adopted
3 under Subsection (a) of this section is governed by the law in
4 effect when the permit application was submitted, and the former
5 law is continued in effect for that purpose.

6 SECTION 7. This Act takes effect September 1, 2017.