



Texas Alliance of Groundwater Districts Legislative Wrap Up

Sarah Rountree Schlessinger

Texas Alliance of Groundwater Districts (TAGD) is a 501(c)3 created in 1988 to provide to a centralized means for Groundwater Conservation Districts (GCDs) to stay current on the quickly evolving world of groundwater science, policy and management. TAGD currently has 83 District Members and 37 Associate Members.

The 85th Texas Legislative Session, Regular Session, saw the introduction of 6,631 bills. Of these, TAGD identified 41 bills as statewide priority groundwater bills, and an additional 40 bills as proposed local groundwater conservation district (GCD) legislation. Of the 41 statewide priority groundwater bills, 9 bills made it across the May 29th finish line, and only 5 bills survived the Governor's veto pen.

Of the 6,631 bills that were filed, 1,211 bills passed, and 50 bills were vetoed. In what could be described as a particularly tense legislative session, several pieces of groundwater legislation were significantly impacted by political factors beyond the groundwater debate. As such, the groundwater policy dialogue is as affected by what didn't pass, as it is by what did.

Following a busy legislative interim for groundwater issues, the 85th Texas Legislature picked up several of the interim's emerging themes. Those topics, as expressed in both interim hearings and reports, predominately included discussion on regulatory certainty, uniformity, permitting approaches/procedures, regional planning, and GCD performance. While it would be difficult to cover the full expanse of filed legislation in this summary, the groundwater legislation filed this session can largely be allocated into those five themes.

Omnibus Bills: Regulatory Certainty & Uniformity

Creating a symmetrical effect and holding the bulk of this session's groundwater focus, the chairmen of both the Senate Committee on Agriculture, Water and Rural Affairs (SAWRAC) and the House Natural Resources Committee (HNRC) each filed one omnibus groundwater bill, and one issue-specific bill. Each of the four ranked as high priority groundwater bills, with significant committee and stakeholder time dedicated to them. While two of the four bills passed, both were ultimately vetoed.

Responding to interim concerns on a groundwater permit applicant's regulatory certainty and incorporating concepts discussed by groundwater consensus groups, Chairman Larson's omnibus HB 31 was comprised of 5 sections that addressed subjects such as export permits, moratoriums, and administrative completeness for permit applications.

TAGD members voted in support of this bill and the issues it addressed. While there was little opposition to it, HB 31 was passed by the full House but did not make it out of the SAWRAC.

Chairman Perry's omnibus SB 1392 met more concern, with the originally filed version consisting of 27 pages and addressing tough subjects such as the adoption of common rules in a groundwater reservoir, and restrictions on a district's ability to issue special permit conditions. While subsequent committee substitutes made significant efforts to meet concerns while still addressing the issue of uniformity, TAGD did not support SB 1392 and it did not pass.

Issue Specific Bills: Brackish Groundwater & Attorney's Fees

Following the previous legislative session's efforts in HB 30, Chairman Larson's HB 2377 sought to establish the permitting procedures for brackish groundwater production permits within TWDB identified brackish groundwater production zones. While the originally filed version of HB 2377 caused some concern within TAGD, a strong stakeholder process ultimately produced a bill that was agreeable to all parties and gained TAGD's support. HB 2377 was ultimately vetoed by Governor Abbott.

If you heard Chairman Perry speak during the legislative interim, you know that he was consistent in his concern regarding a landowner's ability to pursue his or her groundwater rights in a courtroom. As such, the filing of SB 862 on the award of attorney's fees in a suit involving a GCD was not a surprise. With subsequent committee substitutes seeking to balance concerns, testimony against the bill focused on historical context for current provisions, and a regulatory body's ability to take enforcement decisions without fear of its ability to finance it. Amid significant tension, TAGD members did not support SB 862.

Permitting Approaches/Procedures

Beyond the wide array of subjects addressed by the omnibus and issue-specific bills, there were a number of additional pieces of legislation filed that addressed GCD permitting approaches and procedures. Many of these bills were a result of either TWCA's groundwater committee's consensus efforts, or a response to those GCD critiques raised during the legislative interim. Of the 9 total permit related bills, 4 bills passed, and 2 were vetoed.

Larger conceptual efforts to reformat GCD permitting structures included Chairman Perry's omnibus SB 1392, HB 1318 and HB 3028, all three of which were related to a correlative rights GCD permitting structure in some way. Rep. Lucio's HB 1318, relating to the regulation of production wells for a retail public utility by a GCD sought to put legislation in place to protect a water utility's ability to be allocated a permit in a correlative rights model based on their service area, rather than land ownership. Rep. Burn's HB 3028, related specifically to groundwater ownership and rights, attempting to put into legislation the concept of fair share allocation based on property ownership. While neither bill was passed, the discussion of fair share allocation, correlative rights permitting, and the ability to protect those activities and industries that depend on groundwater was front and center in the groundwater policy debate.

Less controversial legislation on permitting approaches and procedures included SB 1009, SB 864, HB 2378, and HB 3417. Chairman Larson's HB 2378, relating to extensions of an expired permit for the transfer of groundwater from a GCD, was a TWCA consensus bill that applied to transfer permits the same automatic renewal provision passed in the previous session for production permits. This bill was supported by TAGD, but was unfortunately, along with several other bills by Chairman Larson, vetoed. Rep. King's HB 3417 was also a TAGD supported consensus bill that addressed what a district considers when issuing a permit, specifically the ability to look at exempt and registered wells for potential impact.

Chairman Perry's SB 1009 and SB 864 were the only permitting bills that passed this session. SB 864 is a consensus piece of legislation that promotes increased coordination between TCEQ and GCDs when issuing a right to use state water if the applicant intends to use groundwater as an alternative supply. TAGD supported this effort. SB 1009 is also a piece of consensus legislation that addresses those requirements that may be requested by a GCD for a permit or permit amendment to be considered administratively complete. As a response to one of the frequent GCD critiques during the interim, TAGD strongly supported SB 1009.

Regional Planning & Joint Groundwater Management

Like the GCD permitting legislation, there were a number of pieces of legislation that address regional planning and joint groundwater management procedures. Most notably, these included SB 1053, SB 1392, SB 1511, HB 2215, HB 3043, and HB 3166.

Of those listed above, only SB 1511 and HB 2215 ultimately passed. Rep. Price's HB 2215 addresses the timeline of desired future condition adoption as it relates to both the groundwater management areas and state water plan, and is a direct result of interim discussions and recommendations made in interim reports. It is a piece of TWCA consensus groundwater legislation and had full TAGD support. Similarly, Chairman Perry's SB 1511 gained TAGD's full support as an attempt to better address which projects receive funding in the state water plan.

GCD Performance, Annexation & Administration

While a principle topic of discussion during the legislative interim hearings and reports, the subject of GCD performance only surfaced in the form of HB 180 and GCD-specific sunset legislation. Filed again from the previous session, HB 180 addressed the role the State Auditor's Office plays in GCD performance review and sought to improve the oversight function. While this bill received no testimony in opposition, had full TAGD support, and was voted out of the full House, the bill was not voted out of SAWRAC.

The subject of GCD territory and annexation received a substantial amount of attention during this session, with numerous testimonies on the merits HB 4122 discussed. Following significant stakeholder discussion, Rep. Kacal's HB 4122 committee substitute, which provided a landowner with a certain amount of property the ability to seek annexation into another GCD, landed in the neutral zone for TAGD. HB 4122 was passed out of the full House but was not passed out of the full Senate.

On an administrative front, two significant bills were passed this session, but only one will become law. Rep. King's HB 3025 related to open, uncovered, abandoned or deteriorated wells, and would have provided GCDs with the ability to plug deteriorated wells before they cause significant harm to groundwater quality. Due to political factors, this bill was unfortunately vetoed. Chairman Perry's SB 865, however, relating to a GCDs ability to use electronic funds transfers, was signed with an immediate effective date.

Summary

TAGD's positions on the 41 statewide priority groundwater filed bills ultimately resulted in support for 22 bills, neutral on 12, and opposed to 6. Broadly speaking, these numbers appear to indicate a willingness from the GCD industry to respond to concerns and work through those topics of regulatory certainty, uniformity, permitting, regional planning and GCD performance.

While several pieces of significant groundwater legislation were not ultimately signed into law, the outcome in groundwater legislation during the 85th appeared much more positive than the initial outlook at the bill filing deadline. With TAGD strongly supporting all 5 of the groundwater bills that have or will become law, it seems reasonable to conclude that it was a good session for GCDs.

Looking ahead, it is clear that there will be more discussion both inside and outside the Texas Legislature on those topics that did not pass into law during the 85th Legislative Session, particularly on the topic of attorney's fees and uniformity.

What Passed

- **HB 2377 VETOED**
Relating to the development of brackish groundwater.
- **HB 2378 VETOED**
Relating to extensions of an expired permit for the transfer of groundwater from a groundwater conservation district.
- **HB 3025 VETOED**
Relating to open, uncovered, abandoned, or deteriorated wells.
- **SB 1525 VETOED**
Relating to a study by the Texas Water Development Board of water needs and availability in this state.
- **SB 865 6/09/17 Effective Date**
Relating to a groundwater conservation district's use of electronic fund transfers.
- **HB 2215 6/09/17 Effective Date**
Relating to the adoption of desired future conditions for aquifers in groundwater management areas and the consideration of those conditions in the regional water planning process.
- **SB 1009 9/01/17 Effective Date**
Relating to administrative completeness requirements for permit and permit amendment applications for groundwater conservation districts.

- **SB 864 6/09/17 Effective Date**
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.
- **SB 1511 9/01/17 Effective Date**
Relating to the state and regional water planning process and the funding of projects included in the state water plan.

What Didn't

- **SB 1392**
Relating to groundwater conservation districts.
- **SB 862**
Relating to the award of attorney's fees and other costs in certain proceedings involving a groundwater conservation district.
- **HB 31**
Relating to the regulation of groundwater.
- **HB 4122**
Relating to the transference of certain territory from one groundwater conservation district to another.
- **HB 3166**
Relating to the consideration of modeled sustainable groundwater pumping in the adoption of desired future conditions in groundwater conservation districts.
- **HB 180**
Relating to the review of groundwater conservation districts by the state auditor.
- **HB 1318**
Relating to regulation of production of wells for retail public utilities by a groundwater conservation district.
- **HB 3028**
Relating to groundwater ownership and rights.
- **HB 3043**
Relating to the joint planning process for groundwater management.
- **HB 3417**
Relating to the criteria considered by groundwater conservation districts before granting or denying a permit.
- **SB 189**
Relating to notice of an application for a permit to drill certain injection wells within a certain distance of a groundwater conservation district.
- **SB 1053**
Relating to an appeal of a desired future condition in a groundwater management area.