

BILL ANALYSIS

C.S.H.B. 1796
By: Isaac
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the current permit renewal and permit amendment application process has become burdensome and expensive for groundwater conservation districts. C.S.H.B. 1796 seeks to address this issue in an effort to save districts time and money.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to groundwater conservation districts in SECTIONS 2, 3, and 6 of this bill.

ANALYSIS

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

(d) Requires a groundwater conservation district (district), except as provided by Sections 36.1145 and 36.1146, before granting or denying a permit or permit amendment, to consider whether:

- (1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;
- (2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
- (3) the proposed use of water is dedicated to any beneficial use;
- (4) the proposed use of water is consistent with the district's approved management plan;
- (5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;
- (6) the applicant has agreed to avoid waste and achieve water conservation; and
- (7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(f) Provides that, except as provided by Sections 36.1145 and 36.1146, permits and permit amendments may be issued subject to the rules promulgated by the district, and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

SECTION 2. Amends Sections 36.114(b) and (c), Water Code, as follows:

(b) Requires the district by rule, for each activity for which the district determines a permit or permit amendment is required under Subsection (a), and that is not exempt from a hearing requirement under Section 36.1145, to determine whether a hearing on the permit or permit amendment application is required.

(c) Requires the groundwater conservation district board (board), for all applications for which a hearing is not required under Subsection (b) or Section 36.1145, rather than under Subsection (b) alone, to act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

SECTION 3. Adds Sections 36.1145 and 36.1146, Subchapter D, Chapter 36, Water Code, as follows:

Sec. 36.1145. PERMIT RENEWAL. (a) Requires a district, except as provided by Subsection (b), to approve an application to renew an operating permit without a hearing before the date on which the permit expires, provided that:

- (1) the application is submitted in a timely manner in accordance with district rules;
- (2) the application to renew the permit is for the same point of groundwater withdrawal, place of using the water, and purpose of using the water; and
- (3) the amount and rate of groundwater withdrawals under the application are not more than the amount and rate allowed by the permit the applicant seeks to renew.

(b) Provides that a district is not required to renew a permit under this section if the applicant:

- (1) is delinquent in paying a fee required by the district;
- (2) has committed a violation of the permit or a district rule that has not been settled by agreement with the district or a final adjudication; or
- (3) has not paid a civil penalty resulting from a final adjudication of a violation of a permit or rule.

Sec. 36.1146. PERMIT AMENDMENT REQUIRED BY CHANGE IN CONDITIONS.

(a) Provides that, in this section, "hydrogeologic unit" means an aquifer, aquifer subdivision, or management zone, that is defined in the district's management plan or rules or in an order issued by the district board under the district's rules.

(b) Authorizes a district, after notice and hearing conducted under Subchapter M, to amend an operating permit to adjust the rate or amount of permitted groundwater withdrawals only to the extent necessary to:

- (1) respond to:
 - (A) a significant change in the condition of a hydrogeologic unit from which the permit authorizes withdrawals;
 - (B) a significant change in groundwater availability in a hydrogeologic unit from which the permit authorizes withdrawals, arising from a change in the district's management plan approved by the Texas Water Development Board and designed to meet a desired future condition;
 - (C) increased demand on a hydrogeologic unit that impacts the district's ability to meet a desired future condition established under Section 36.108 in all or part of the hydrogeologic unit; or

(D) subsidence conditions that can be mitigated by adjusting permitted withdrawals; or

(2) comply with an order of the Texas Commission on Environmental Quality.

(c) Requires a district, except as provided by Subsection (d), if a district amends an operating permit under this section, to similarly amend all operating permits affected by the applicable condition, regardless of the place or purpose of using the water.

(d) Authorizes a district, in a manner consistent with the district's management plan, to distinguish between:

(1) operating permits based on historic use and permits not based on historic use;

(2) classes or categories of operating permits as specified in a district's rules and management plan approved by the Texas Water Development Board; or

(3) operating permits for which site-specific, science-based hydrogeologic information justifies the distinction.

(e) Requires the district, before a district amends a permit under this section, to demonstrate that a condition described by Subsection (b) exists that justifies the amendment.

(f) Provides that this section does not prohibit a district from:

(1) increasing or decreasing the amount of groundwater that may be produced under a permit based on a condition existing in the permit;

(2) suspending or revoking a permit for a violation of a district rule or the terms of the permit; or

(3) temporarily adjusting the amount or rate of withdrawals under an operating permit during drought conditions under the district's management plan and rules.

SECTION 4. Amends Section 36.122(a), Water Code, as follows:

(a) Authorizes the district to also consider the provisions of this section in determining whether to grant or deny an application for a permit or permit amendment under Section 36.113, rather than authorizes the district, if an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries to also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment, if:

(1) the application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of the district's boundaries; or

(2) the application does not meet the requirements for approval without a hearing under Section 36.1145.

SECTION 5. Amends Section 36.402, Water Code, as follows:

Sec. 36.402. **APPLICABILITY.** Provides that, except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications for which a hearing is required, rather than for permit and permit amendment applications alone.

SECTION 6. Requires groundwater conservation districts, as soon as practicable after the effective date of this Act, to adopt rules to implement the changes in law made by this Act.

SECTION 7. Provides that Section 36.1145, Water Code, as added by this Act, applies only to

an application for a permit renewal submitted to a groundwater conservation district on or after the effective date of this Act. Provides that an application for a permit renewal submitted to a groundwater conservation district before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 8. Provides that, to the extent of any conflict with other provisions of Chapter 36, Water Code, Sections 36.113(d) and (f), 36.114(b) and (c), 36.122(a), and 36.402, Water Code, as amended by this Act, and Sections 36.1145 and 36.1146, Water Code, as added by this Act, prevail.

SECTION 9. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2013.

COMPARISON OF ORIGINAL TO SUBSTITUTE

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 36.113(d) and (f), Water Code, are amended to read as follows:
(d) Except as provided by Sections 36.1145, 36.1146, and 36.1147, before [~~Before~~] granting or denying a permit or permit amendment, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's approved management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

(6) the applicant has agreed to avoid waste and achieve water conservation; and

(7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(f) Except as provided by Sections 36.1145, 36.1146, and 36.1147, permits [~~Permits~~] and permit amendments may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown

SECTION 1. Sections 36.113(d) and (f), Water Code, are amended to read as follows:
(d) Except as provided by Sections 36.1145 and 36.1146, before [~~Before~~] granting or denying a permit or permit amendment, the district shall consider whether:

Same as introduced.

Same as introduced.

Same as introduced.

Same as introduced.

Same as introduced.

Same as introduced.

Same as introduced.

(f) Except as provided by Sections 36.1145 and 36.1146, permits [~~Permits~~] and permit amendments may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the

of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

SECTION 2. Sections 36.114(b) and (c), Water Code, are amended to read as follows:
(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), and that is not exempt from a hearing requirement under Section 36.1145 or 36.1146, the district by rule shall determine whether a hearing on the permit or permit amendment application is required.

(c) For all applications for which a hearing is not required under Subsection (b), Section 36.1145, or Section 36.1146, the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

SECTION 3. Subchapter D, Chapter 36, Water Code, is amended by adding Sections 36.1145, 36.1146, and 36.1147 to read as follows:

Sec. 36.1145. PERMIT RENEWAL. (a) Except as provided by Subsection (b), a district shall renew a permit without a hearing before the date on which the permit expires, provided that:

(1) the application to renew the permit is for the same point of groundwater withdrawal, place of using the water, and purpose of using the water; and

(2) the amount of groundwater to be withdrawn from the well is not more than the amount allowed by the permit the applicant seeks to renew.

(b) A district is not required to renew a permit or consider a permit amendment application if the applicant:

(1) fails to pay a fee required by the district;

(2) has committed a violation of a district permit or rule that has not been settled by agreement with the district or a final adjudication; or

(3) has not paid a civil penalty resulting from a final adjudication of a violation of a permit or rule.

Sec. 36.1146. PERMIT AMENDMENT;

reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

SECTION 2. Sections 36.114(b) and (c), Water Code, are amended to read as follows:
(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), and that is not exempt from a hearing requirement under Section 36.1145, the district by rule shall determine whether a hearing on the permit or permit amendment application is required.

(c) For all applications for which a hearing is not required under Subsection (b) or Section 36.1145, the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

SECTION 3. Subchapter D, Chapter 36, Water Code, is amended by adding Sections 36.1145 and 36.1146 to read as follows:

Sec. 36.1145. PERMIT RENEWAL. (a) Except as provided by Subsection (b), a district shall approve an application to renew an operating permit without a hearing before the date on which the permit expires, provided that:

(1) the application is submitted in a timely manner in accordance with district rules;

(2) the application to renew the permit is for the same point of groundwater withdrawal, place of using the water, and purpose of using the water; and

(3) the amount and rate of groundwater withdrawals under the application are not more than the amount and rate allowed by the permit the applicant seeks to renew.

(b) A district is not required to renew a permit under this section if the applicant:

(1) is delinquent in paying a fee required by the district;

(2) has committed a violation of the permit or a district rule that has not been settled by agreement with the district or a final adjudication; or

(3) has not paid a civil penalty resulting from a final adjudication of a violation of a permit or rule.

No equivalent provision.

NO HEARING REQUIRED. A district may not require a hearing for a well permit amendment application that does not change the permitted:

- (1) point of groundwater withdrawal;
- (2) place of using the water;
- (3) purpose of using the water; or
- (4) rate or amount of groundwater withdrawals from the well.

Sec. 36.1147. PERMIT AMENDMENT REQUIRED BY CHANGE IN CONDITIONS.

No equivalent provision.

(a) After notice and hearing conducted in accordance with Subchapter M, a district may amend an operating permit to adjust the rate or amount of permitted groundwater withdrawals only to:

- (1) respond to:
 - (A) drought conditions;
 - (B) a significant change in the aquifer condition; or

(C) a significant change in groundwater availability arising from a change in the district's management plan designed to meet a desired future condition; or

(2) comply with an order of the commission.

(b) A district may not amend under this section the rate or amount of groundwater withdrawals authorized by an operating permit by more than five percent.

(c) If a district amends a permit under this section, the district must similarly amend all similarly situated permits affected by the applicable condition.

No equivalent provision.

Sec. 36.1146. PERMIT AMENDMENT REQUIRED BY CHANGE IN CONDITIONS.

(a) In this section, "hydrogeologic unit" means an aquifer, aquifer subdivision, or management zone, that is defined in the district's management plan or rules or in an order issued by the district board under the district's rules.

(b) After notice and hearing conducted under Subchapter M, a district may amend an operating permit to adjust the rate or amount of permitted groundwater withdrawals only to the extent necessary to:

(1) respond to:

(A) a significant change in the condition of a hydrogeologic unit from which the permit authorizes withdrawals;

(B) a significant change in groundwater availability in a hydrogeologic unit from which the permit authorizes withdrawals, arising from a change in the district's management plan approved by the Texas Water Development Board and designed to meet a desired future condition;

(C) increased demand on a hydrogeologic unit that impacts the district's ability to meet a desired future condition established under Section 36.108 in all or part of the hydrogeologic unit; or

(D) subsidence conditions that can be mitigated by adjusting permitted withdrawals; or

(2) comply with an order of the commission.

No equivalent provision.

(c) Except as provided by Subsection (d), if a district amends an operating permit under this section, the district must similarly amend all operating permits affected by the applicable condition, regardless of the place or purpose of using the water.

(d) A district may, in a manner consistent with the district's management plan, distinguish between:

- (1) operating permits based on historic use and permits not based on historic use;
- (2) classes or categories of operating permits as specified in a district's rules and management plan approved by the Texas Water Development Board; or
- (3) operating permits for which site-specific, science-based hydrogeologic information justifies the distinction.

(d) Before a district amends a permit under this section, the general manager must demonstrate by a preponderance of evidence that a condition described by Subsection (a) of this section exists and justifies the amendment.

(e) Before a district amends a permit under this section, the district must demonstrate that a condition described by Subsection (b) exists that justifies the amendment.

(e) This section does not prohibit a district from:

(f) This section does not prohibit a district from:

- (1) increasing or decreasing the amount of groundwater that may be produced under a permit based on a condition existing in the permit; or
- (2) suspending or revoking a permit for a violation of the terms of the permit.

- (1) increasing or decreasing the amount of groundwater that may be produced under a permit based on a condition existing in the permit;
- (2) suspending or revoking a permit for a violation of a district rule or the terms of the permit; or
- (3) temporarily adjusting the amount or rate of withdrawals under an operating permit during drought conditions under the district's management plan and rules.

No equivalent provision.

SECTION 4. Section 36.122(a), Water Code, is amended to read as follows:

SECTION 4. Section 36.122(a), Water Code, is amended to read as follows:

(a) ~~The [If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the]~~ district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment, if:

(a) ~~The [If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the]~~ district may also consider the provisions of this section in determining whether to grant or deny an application for a [the] permit or permit amendment under Section 36.113, if:

- (1) an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries; and
- (2) the permit or permit amendment does not meet the requirements for approval without a hearing under Section 36.1145 or 36.1146.

- (1) the application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of the district's boundaries; or
- (2) the application does not meet the requirements for approval without a hearing under Section 36.1145.

SECTION 5. Section 36.402, Water Code, is amended to read as follows:

SECTION 5. Same as introduced.

Sec. 36.402. APPLICABILITY. Except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications for which a hearing is required.

SECTION 6. As soon as practicable after the effective date of this Act, groundwater conservation districts shall adopt rules to implement the changes in law made by this Act.

SECTION 6. Same as introduced.

SECTION 7. Sections 36.1145, 36.1146, and 36.1147, Water Code, as added by this Act, apply only to an application for a permit or permit amendment submitted to a groundwater conservation district on or after the effective date of this Act. An application for a permit or permit amendment submitted to a groundwater conservation district before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 7. Section 36.1145, Water Code, as added by this Act, applies only to an application for a permit renewal submitted to a groundwater conservation district on or after the effective date of this Act. An application for a permit renewal submitted to a groundwater conservation district before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 8. To the extent of any conflict with other provisions of Chapter 36, Water Code, Sections 36.113(d) and (f), 36.114(b) and (c), 36.122(a), and 36.402, Water Code, as amended by this Act, and Sections 36.1145, 36.1146, and 36.1147, Water Code, as added by this Act, prevail.

SECTION 8. To the extent of any conflict with other provisions of Chapter 36, Water Code, Sections 36.113(d) and (f), 36.114(b) and (c), 36.122(a), and 36.402, Water Code, as amended by this Act, and Sections 36.1145 and 36.1146, Water Code, as added by this Act, prevail.

SECTION 9. This Act takes effect September 1, 2013.

SECTION 9. Same as introduced.