

BILL ANALYSIS

C.S.H.B. 1248
By: Lucio III
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the current renewal process for operating permits issued by groundwater conservation districts can be burdensome and expensive for the districts, permit holders, and landowners. In addition, there is concern that the short term of permits issued by some districts results in uncertainty for permit holders that issue long-term debt for water supply projects. C.S.H.B. 1248 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1248 amends the Water Code to require a groundwater conservation district, without a hearing, to renew or approve an application to renew an operating permit before the date on which the permit expires, provided that the application, if required by the district, is submitted in a timely manner and accompanied by any required fees in accordance with district rules and the permit holder is not requesting a change related to the renewal that would require a permit amendment under district rules. The bill exempts a district from that requirement to renew a permit if the applicant is delinquent in paying a fee required by the district, is subject to a pending enforcement action for a substantive violation of a district permit, order, or rule that has not been settled by agreement with the district or a final adjudication, or has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a district permit, order, or rule. The bill establishes that if a district is not required to renew a permit because the applicant is subject to a pending enforcement action, the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation. The bill defines "operating permit" as any permit issued by the district for the operation of or production from a well, including a permit to drill or complete a well if the district does not require a separate permit for the drilling or completion of a well.

C.S.H.B. 1248 establishes that if the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under district rules, the permit as it existed before the permit amendment process remains in effect until the later of the conclusion of the permit amendment or renewal process, as applicable, or final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment. The bill requires a permit, as it existed before a permit amendment process that resulted in the denial of an amendment, to be renewed under the bill's operating

permit renewal provisions without penalty, unless a condition under which the district is not required to renew a permit under those provisions applies. The bill authorizes a district to initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the district's rules. The bill requires an operating permit as it existed before the permit amendment process to remain in effect until the conclusion of the permit amendment or renewal process, as applicable, if a district initiates an amendment to the permit.

C.S.H.B. 1248 exempts the renewal of an operating permit issued under the bill's operating permit renewal provisions from the requirement that a district make certain considerations before granting or denying a permit or permit amendment and from a statutory provision authorizing permits and permit amendments to be issued subject to district rules and to certain terms and provisions. The bill specifies that the permit amendments for which a district is required to make such considerations and that may be issued subject to such rules, terms, and provisions are permit amendments issued in accordance with the bill's change in operating permits provisions. The bill specifies that statutory provisions applicable to the notice and hearing process used by a groundwater conservation district for permit and permit amendment applications apply only to permit and permit amendment applications for which a hearing is required. The bill requires groundwater conservation districts to adopt rules to implement the bill's provisions as soon as practicable after the bill's effective date.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1248 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 36.001, Water Code, is amended.

SECTION 2. 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:

- (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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Sections 36.113(d) and (f), Water Code, are amended to read as follows:

(d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, 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 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 reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

SECTION 3. Sections 36.114(b) and (c), Water Code, are amended.

SECTION 4. Subchapter D, Chapter 36, Water Code, is amended by adding Sections 36.1145 and 36.1146 to read as follows:

Sec. 36.1145. OPERATING PERMIT RENEWAL.

Sec. 36.1146. CHANGE IN OPERATING PERMITS. (a) If the holder of an operating permit requests a change that requires an amendment to the permit under district rules, the existing permit remains in effect until the later of:

- (1) the conclusion of the permit amendment or renewal process, as applicable; or
- (2) final settlement or adjudication on the

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) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Permits, and permit amendments issued in accordance with Section 36.1146, 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 3. Same as introduced version.

SECTION 4. Subchapter D, Chapter 36, Water Code, is amended by adding Sections 36.1145 and 36.1146 to read as follows:

Sec. 36.1145. OPERATING PERMIT RENEWAL.

Sec. 36.1146. CHANGE IN OPERATING PERMITS. (a) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under district rules, the permit as it existed before the permit amendment process remains in effect until the later of:

- (1) the conclusion of the permit amendment or renewal process, as applicable; or
- (2) final settlement or adjudication on the

matter of whether the change to the permit requires a permit amendment.

(b) If the permit amendment process results in the denial of an amendment, the original permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.

(c) A district may initiate an amendment to an operating permit in order to achieve a purpose of this chapter. If a district initiates an amendment to an operating permit, the original permit shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

SECTION 5. Section 36.402, Water Code, is amended.

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 7. Sections 36.1145 and 36.1146, Water Code, as added by this Act, apply only to a permit renewal for a permit issued by a groundwater conservation district initiated on or after the effective date of this Act. A permit renewal initiated before that date is governed by the law in effect on the date the permit renewal was initiated, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2015.

matter of whether the change to the permit requires a permit amendment.

(b) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.

(c) A district may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the district's rules. If a district initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.