

BILL ANALYSIS

Senate Research Center
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S.B. 854
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Agriculture, Water, and Rural Affairs
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some groundwater conservation districts allow operating permit renewals to go through a lengthy hearing process similar to what applies to the initial issuance of permits. This has resulted in a lack of certainty for water supply projects that require substantial investments and are financed over long periods of time. Current law does not set a minimum term for the issuance of well operating permits, and water conservation districts use permit terms that vary from one year to 30 years.

State law requires a groundwater district to manage groundwater production to achieve desired future conditions for the aquifer(s) within the district's management area. Groundwater districts need authority to review permits periodically and amend them if needed to ensure desired future conditions are achieved. Current law does not allow water conservation districts to initiate the amendment process for an operating permit to ensure the district achieves its desired future condition for the aquifers it manages.

S.B. 854 requires automatic renewal of operating permits by groundwater districts if the permit holder submits the renewal application in a timely manner with all required fees and is not requesting a change that would require a permit amendment. The district would not be required to renew a permit if the applicant was delinquent in paying a fee required by the district or was subject to a pending enforcement action for a violation of a district permit, order, or rule. If the holder of an operating permit requests a change to the permit that requires an amendment under district rules, the original permit would remain in effect until the conclusion of the permit amendment process.

This bill also allows a groundwater conservation district to initiate an amendment process for an operating permit, in connection with the renewal of the permit or otherwise, to achieve the district's statutory purposes, including achieving desired future conditions for the relevant aquifers within district's management area.

As proposed, S.B. 854 amends current law relating to the renewal or amendment of certain permits issued by groundwater conservation districts.

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 Section 36.001, Water Code, by adding Subdivision (31), to define "operating permit."

SECTION 2. Amends Sections 36.113(d) and (f), Water Code, as follows:

- (d) Requires a district or authority created under Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III (Legislative Department), or Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation

Districts), Article XVI (General Provisions), Texas Constitution that has the authority to regulate the spacing of water wells, the production from water wells, or both (district), before granting or denying a permit or permit amendment, except as provided by Sections 36.1145 and 36.1146, to consider whether:

(1)-(7) Makes no substantive changes to these subdivisions;

(f) Provides that permits and permit amendments, except as provided by Sections 36.1145 and 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. 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) (requiring the district to determine each activity regulated by the district for which a permit or permit amendment is required), 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 board of directors of a district (board), for all applications for which a hearing is not required under Subsection (b) or Section 36.1145, to act on the application at a meeting, as defined by Section 551.001 (Definitions), Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

SECTION 4. Amends Subchapter D, Chapter 36, Water Code, by adding Sections 36.1145 and 36.1146, as follows:

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

(1) 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

(2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under district rules.

(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) 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

(3) 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.

(c) Provides that the permit, if a district is not required to renew a permit under Subsection (b)(2), remains in effect until the final settlement or adjudication on the matter of the substantive violation.

Sec. 36.1146. CHANGE IN OPERATING PERMITS. (a) Provides that the original permit, if the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change to the permit that requires an amendment to the permit under district rules, 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) Requires that the original permit as it existed before the permit amendment process, if the permit amendment process results in the denial of an amendment, be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.

(c) Provides that a district may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in order to achieve a purpose of this chapter. Requires that the original permit, if a district initiates an amendment to an operating permit, remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

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

Sec. 36.402. APPLICABILITY. Provides that this subchapter, except as provided by Section 36.416, 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. Requires that the groundwater conservation districts, as soon as practicable after the effective date of this Act, adopt rules to implement the changes in law made by this Act.

SECTION 7. Provides that Sections 36.1145 and 36.1146, Water Code, as added by this Act, apply only to a permit renewal initiated by a groundwater conservation district or a permit holder on or after the effective date of this Act. Provides that 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. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2015.