

**SUBJECT:** Automatic renewal of certain groundwater production permits

**COMMITTEE:** Natural Resources — committee substitute recommended

**VOTE:** 10 ayes — Keffer, Ashby, D. Bonnen, Burns, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

1 absent — Frank

**WITNESSES:** For — Thomas Taggart, Hays Caldwell Public Utility Agency; Ty Embrey, Middle Trinity Groundwater Conservation District, Panola County Groundwater Conservation District, Clearwater Underground Water Conservation District; Jim Conkwright, Prairielands Groundwater Conservation District; Hope Wells, San Antonio Water System; Stacey Steinbach, Texas Alliance of Groundwater Districts; Brian Sledge, Texas Water Conservation Association Groundwater Legislative Committee, Lone Star Groundwater Conservation District, Prairielands Groundwater Conservation District, Upper Trinity Groundwater Conservation District; (*Registered, but did not testify:* Kent Satterwhite, Canadian River Municipal Water Authority; Chuck Bailey, Canyon Regional Water Authority; Heather Cooke, City of Austin; Jeff Coyle, City of San Antonio; Robby Cook, Hemphill County Underground Water Conservation District; Harvey Everheart, Mesa Underground Water Conservation District; C.E. Williams, Panhandle Groundwater Conservation District; Billy Phenix, Schertz Seguin Local Government Corporation; Daniel Gonzalez and Steven Garza, Texas Association of Realtors; Kyle Frazier, Texas Association of Ground Water Owners and Producers; Billy Howe, Texas Farm Bureau; Shanna Igo, Texas Municipal League; Fred Aus, Texas Rural Water Association; Dean Robbins, Texas Water Conservation Association)

Against — None

On — Michele Gangnes, League of Independent Voters of Texas

**BACKGROUND:** Under Water Code, sec. 36.113, a groundwater conservation district must require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require a permit amendment for a change in the withdrawal or use of groundwater during the term of a permit.

Permits and permit amendments may be issued subject to district rules and certain terms. Before granting or denying a permit or permit amendment, groundwater conservation districts must consider whether:

- the application meets requirements and includes the fee;
- the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
- the proposed use of water is dedicated to any beneficial use;
- the proposed use of water is consistent with the district's approved management plan;
- 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 for a well located in the Hill Country Priority Groundwater Management Area;
- the applicant has agreed to avoid waste and achieve water conservation; and
- 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.

**DIGEST:** CSHB 1248 would amend the Water Code, ch. 36, by requiring groundwater conservation districts (GCD) to automatically renew groundwater production permits without a hearing as long as renewal application fees were timely paid and the permit holder did not request any change to the permit that would require a permit amendment.

A GCD would not be required to automatically renew a permit if the permit holder:

- was delinquent in paying fees to the GCD;
- was subject to a pending GCD enforcement action for substantive violation of the permit, order, or rule that had not been finalized; or
- had not paid a penalty or complied with a final non-appealable decision that the permit holder violated a permit, order, or rule.

If a permit holder was subject to a pending enforcement action, the permit would remain in effect until the conclusion of the action.

If a permit holder requested a change to the permit at the time of permit renewal, the existing permit would remain in effect until the later of:

- the conclusion of the permit amendment process;
- the conclusion of the permit renewal process, if applicable; or
- a final settlement or adjudication of a legal proceeding on the issue.

If the GCD denied a permit amendment request, the permit holder would have to be given the opportunity to renew the permit as it existed before the permit amendment process.

A GCD would be allowed initiate an amendment to an operating permit, through the renewal of a permit or otherwise, in accordance with district rules. If a GCD initiated an amendment to a permit, the existing permit would remain in effect until the conclusion of the permit amendment or renewal process.

GCDs would be required to adopt applicable rules as soon as practicable after the effective date of the bill.

This bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 1248 would provide more certainty in groundwater district permitting by requiring groundwater conservation districts to automatically renew groundwater production permits as long as the permit holder was in good standing and did not request any change to the permit that would require a permit amendment.

Reasonable certainty and predictability in the regulatory environment is key, especially when financing large-scale water projects that could require the issuance of long-term bonds. A typical groundwater production permit term is five years, which makes long-term planning difficult. Knowing that in as little as five years there is a possibility that a district may not renew a permit or that the permit renewal could be subject to a contested case hearing can leave utilities, ratepayers, and investors without needed stability.

The bill would strike a balance in groundwater permitting by providing regulatory certainty for water providers while safeguarding the district's ability to manage the aquifer. Safeguards would include allowing the district to initiate a permit amendment at any time in accordance with their rules, as well as the ability to deny an automatic renewal if the permit holder was not in good standing.

This bill would not limit public participation in the management of an aquifer. The opportunity for contesting a case hearing existed when the permit was initiated. Under the bill, permits could be automatically renewed only if the permit holder was not requesting a change related to the renewal that would require an amendment to the initial permit. Further, existing provisions relating to permit amendments and the provision in the bill that would allow the district to initiate a permit amendment would require district rulemaking, which includes the opportunity for public participation. Any rule change implementing this bill would be accompanied by public notice and comment.

**OPPONENTS  
SAY:**

Requiring groundwater conservation districts to automatically renew groundwater production permits, under certain conditions, would eliminate the opportunity for members of the community to participate in a contested case hearing. It can take years for the full effect of a groundwater production permit to be recognized because districts have limited information at the time of the initial permit. While the bill would allow districts to initiate an amendment to a permit at any time, the public should have the opportunity to weigh in as well, especially if the reason

for the amendment were in response to changes in the condition of the aquifer.