

BILL ANALYSIS

H.B. 1760
By: Hilderbran
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The condemnation of land for its groundwater imposes multiple burdens on rural areas. Not only is the economic use of the water itself removed from the district, but the community also loses potential for other private use or development of the land, and ad valorem taxes. Even though a landowner can no longer produce crops when water is condemned, he or she may still be able to raise livestock, conduct ecotourism, hunting, or other recreational operations, or sell the land for residential development. Municipalities should not receive those additional economic benefits when they condemn groundwater especially given the fact that they do not receive those benefits when they condemn surface water.

H.B. 1760 prevents a municipality or municipal water supplier from abusing the power of eminent domain within the boundaries of a district for the purpose of acquiring groundwater for municipal use.

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

- SECTION 1. Amends Subsection 251.001(a), Local Government Code, to make conforming changes required by the addition of the new Section 11.033 and Section 36.003, Water Code.
- SECTION 2. Amends Subsection 402.012(c), Local Government Code, to make conforming changes required by the addition of the new Section 11.033 and Section 36.003, Water Code.
- SECTION 3. Amends Subsection 402.013(c), Local Government Code, to make conforming changes required by the addition of the new Section 11.033 and Section 36.003, Water Code.
- SECTION 4. Amends Subsection 402.019(d), Local Government Code, to make conforming changes required by the addition of the new Section 11.033 and Section 36.003, Water Code.
- SECTION 5. Amends Section 11.033, Water Code as follows:
- Defines "municipal water supplier" to mean any legal entity other than a municipality that supplies water to a municipality for municipal use and has the right under other law to exercise the power of eminent domain).
- Defines "municipality" to have the meaning assigned by Section 1.005, Local Government Code.

Prohibits a municipality or municipal water supplier from exercising the power of eminent domain to acquire a water supply for municipal use unless the water supply is essential for maintaining public health or safety (drinking, bathing, sewage disposal, fire protection, or other basic domestic needs).

Authorizes a municipality or municipal water supplier to purchase water for other purposes from a willing seller.

Requires a municipality or municipal water supplier to show that it cannot meet essential domestic needs through conserving its existing supplies or through diverting water from nonessential use in the municipality to essential domestic use before it exercises the power of eminent domain.

Makes conforming changes.

SECTION 6.

Amends Subchapter A, Chapter 36, Water Code, by adding Section 36.003, as follows:

Defines "municipal water supplier" to mean any legal entity other than a municipality that supplies water to a municipality for municipal use and has the right under other law to exercise the power of eminent domain).

Defines "municipality" to have the meaning assigned by Section 1.005, Local Government Code.

Prohibits a municipality or municipal water supplier from exercising the power of eminent domain to acquire a water supply for municipal use unless the procedures of this section are followed and the water supply is essential for maintaining public health or safety (drinking, bathing, sewage disposal, fire protection, or other basic domestic needs).

Requires a municipality or municipal water supplier to show that it cannot meet essential domestic needs through conserving its existing supplies or through diverting water from nonessential use in the municipality to essential domestic use before it exercises the power of eminent domain.

Prohibits a municipality or municipal water supplier from condemning land within the boundaries of a district for the purpose of acquiring groundwater supplies.

Authorizes a municipality or municipal water supplier to condemn the right to capture a quantified number of acre-feet of water annually and to acquire only as much land as is necessary for well sites, pipelines, and other water conveyance infrastructure.

Prohibits the amount of water condemned from exceeding the production limits set by district rules.

Authorizes a landowner whose groundwater is condemned to choose to be compensated in annual payments instead of a lump-sum.

Mandates that if a municipality or municipal water supplier does not produce groundwater before the 10th anniversary of the date of issuance of the permit:

The right of capture acquired reverts to the landowner;

Any land acquired reverts to the landowner; and

Any annual payments being made cease.

Requires a municipality of municipal water supplier to furnish water to a landowner if the amount of groundwater condemned prevents the affected landowner from having a sufficient supply of water to meet the landowner's domestic and livestock needs.

SECTION 7. Amends Section 67.011, Water Code, to make conforming changes required by the addition of the new Section 11.033 and Section 36.003, Water Code.

SECTION 8. Act prospective

SECTION 9. Effective date.

EFFECTIVE DATE

September 1, 2003, unless it receives the requisite number of votes for immediate effect.