

By: Madla, et al.

S.B. No. 352

A BILL TO BE ENTITLED

AN ACT

relating to the management of state-owned land, including the lease of the right to produce groundwater from certain state-owned land.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 11, Natural Resources Code, is amended by adding Section 11.087 to read as follows:

Sec. 11.087. PROHIBITION ON EXPORTATION OF GROUNDWATER PRODUCED FROM STATE-OWNED LAND. A person may not export from this state to a foreign country groundwater produced from state-owned land.

SECTION 2. Section 32.012, Natural Resources Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The board is composed of:

(1) the commissioner;

(2) a citizen of the state appointed by the governor with the advice and consent of the senate; ~~and~~

(3) a citizen of the state appointed by the attorney general with the advice and consent of the senate;

(4) a citizen of the state appointed by the lieutenant governor; and

(5) a citizen of the state appointed by the governor with the advice and consent of the senate from a list of nominees submitted by the speaker of the house of representatives.

1 (d) In making an appointment under Subsection (a)(5), the
2 governor may reject one or more of the nominees on a list submitted
3 by the speaker of the house of representatives and request a new
4 list of different nominees.

5 SECTION 3. Section 51.121, Natural Resources Code, is
6 amended by adding Subsections (f) and (g) to read as follows:

7 (f) Notwithstanding Subsection (a), the commissioner may
8 not lease unsold public school land under this subchapter for a term
9 of more than 10 years or for an indefinite term unless the board
10 approves the lease.

11 (g) Notwithstanding Subsection (a), the commissioner may
12 not lease the right to produce groundwater from unsold public
13 school land. A lease of the right to produce groundwater from
14 unsold public school land is governed by Section 51.132.

15 SECTION 4. Subchapter D, Chapter 51, Natural Resources
16 Code, is amended by adding Section 51.132 to read as follows:

17 Sec. 51.132. LEASE OF RIGHT TO PRODUCE GROUNDWATER. (a) The
18 board may lease the right to produce groundwater from unsold public
19 school land only as provided by this section. The other provisions
20 of this subchapter apply to leases entered into under this section
21 to the extent those provisions do not conflict with this section or
22 Section 51.121(g).

23 (b) The board shall adopt clear and detailed rules governing
24 the lease of the right to produce groundwater from unsold public
25 school land. The rules must require:

26 (1) each regional water planning group and groundwater
27 conservation district in whose jurisdiction the land is located to

1 be notified when the board receives a proposal to lease the right to
2 produce groundwater from the land;

3 (2) the lease contract to be negotiated by the board;

4 (3) the lessee to comply with:

5 (A) the rules and permitting requirements of any
6 groundwater conservation district in which the land is located; and

7 (B) all state and local laws and rules;

8 (4) the right to produce groundwater from land to be
9 leased separately from oil and gas rights; and

10 (5) a lease proposal submitted by a political
11 subdivision of this state to include a letter of interest, approved
12 by the governing body of the political subdivision, that includes:

13 (A) an estimated total daily and annual amount of
14 water to be produced under the lease;

15 (B) any requirements of the political
16 subdivision regarding water quality;

17 (C) a time frame for delivery of the water;

18 (D) an estimated delivered price for the water;

19 and

20 (E) a statement that the political subdivision
21 commits to act in compliance with all state and local laws and
22 rules.

23 (c) Before filing notice of the proposed rules with the
24 secretary of state for publication in the Texas Register, the board
25 must notify the attorney general, Parks and Wildlife Department,
26 Texas Commission on Environmental Quality, Texas Water Development
27 Board, and Department of Agriculture and each member of the

1 legislature that notice of the proposed rules will be published.

2 (d) A lease of the right to produce groundwater from unsold
3 public school land must be awarded through competitive bidding
4 unless:

5 (1) the lessee is a political subdivision of this
6 state or an end user of the water; or

7 (2) the lease entitles the lessee to produce less than
8 125,000 gallons of water per day.

9 SECTION 5. Subchapter C, Chapter 66, Education Code, is
10 amended by adding Section 66.46 to read as follows:

11 Sec. 66.46. LEASE OF RIGHT TO PRODUCE GROUNDWATER. A lease
12 of the right to produce groundwater from lands set aside and
13 appropriated to, or acquired by, the permanent university fund must
14 be awarded through competitive bidding unless:

15 (1) the lessee is a political subdivision of this
16 state or an end user of the water; or

17 (2) the lease entitles the lessee to produce less than
18 125,000 gallons of water per day.

19 SECTION 6. Sections 16.053(c) and (e), Water Code, are
20 amended to read as follows:

21 (c) No later than 60 days after the designation of the
22 regions under Subsection (b), the board shall designate
23 representatives within each regional water planning area to serve
24 as the initial coordinating body for planning. The initial
25 coordinating body may then designate additional representatives to
26 serve on the regional water planning group. The initial
27 coordinating body shall designate additional representatives if

1 necessary to ensure adequate representation from the interests
 2 comprising that region, including the public, counties,
 3 municipalities, industries, agricultural interests, environmental
 4 interests, small businesses, electric generating utilities, river
 5 authorities, water districts, and water utilities. The regional
 6 water planning group shall maintain adequate representation from
 7 those interests. In addition, representatives of the board, the
 8 Parks and Wildlife Department, and the Department of Agriculture
 9 shall serve as ex officio members of each regional water planning
 10 group. If a regional water planning area includes land dedicated to
 11 the permanent university fund, the executive director of University
 12 Lands--West Texas Operations serves as a nonvoting member of the
 13 regional water planning group for that area.

14 (e) Each regional water planning group shall submit to the
 15 board a regional water plan that:

16 (1) is consistent with the guidance principles for the
 17 state water plan adopted by the board under Section 16.051(d);

18 (2) provides information based on data provided or
 19 approved by the board in a format consistent with the guidelines
 20 provided by the board under Subsection (d);

21 (3) identifies:

22 (A) each source of water supply in the regional
 23 water planning area in accordance with the guidelines provided by
 24 the board under Subsections (d) and (f);

25 (B) factors specific to each source of water
 26 supply to be considered in determining whether to initiate a
 27 drought response; and

1 (C) actions to be taken as part of the response;

2 (4) has specific provisions for water management
3 strategies to be used during a drought of record;

4 (5) includes but is not limited to consideration of
5 the following:

6 (A) any existing water or drought planning
7 efforts addressing all or a portion of the region;

8 (B) certified groundwater conservation district
9 management plans and other plans submitted under Section 16.054;

10 (C) all potentially feasible water management
11 strategies, including but not limited to improved conservation,
12 reuse, and management of existing water supplies, acquisition of
13 available existing water supplies, and development of new water
14 supplies, including, if appropriate, groundwater produced from
15 land dedicated to the permanent school fund or permanent university
16 fund;

17 (D) protection of existing water rights in the
18 region;

19 (E) opportunities for and the benefits of
20 developing regional water supply facilities or providing regional
21 management of water supply facilities;

22 (F) appropriate provision for environmental
23 water needs and for the effect of upstream development on the bays,
24 estuaries, and arms of the Gulf of Mexico and the effect of plans on
25 navigation;

26 (G) provisions in Section 11.085(k)(1) if
27 interbasin transfers are contemplated;

1 (H) voluntary transfer of water within the region
2 using, but not limited to, regional water banks, sales, leases,
3 options, subordination agreements, and financing agreements; and

4 (I) emergency transfer of water under Section
5 11.139, including information on the part of each permit, certified
6 filing, or certificate of adjudication for nonmunicipal use in the
7 region that may be transferred without causing unreasonable damage
8 to the property of the nonmunicipal water rights holder;

9 (6) identifies river and stream segments of unique
10 ecological value and sites of unique value for the construction of
11 reservoirs that the regional water planning group recommends for
12 protection under Section 16.051;

13 (7) assesses the impact of the plan on unique river and
14 stream segments identified in Subdivision (6) if the regional water
15 planning group or the legislature determines that a site of unique
16 ecological value exists; and

17 (8) describes the impact of proposed water projects on
18 water quality.

19 SECTION 7. Section 36.101(a), Water Code, is amended to
20 read as follows:

21 (a) A district may make and enforce rules, including rules
22 limiting groundwater production based on tract size or the spacing
23 of wells, to provide for conserving, preserving, protecting, and
24 recharging of the groundwater or of a groundwater reservoir or its
25 subdivisions in order to control subsidence, prevent degradation of
26 water quality, or prevent waste of groundwater and to carry out the
27 powers and duties provided by this chapter. During the rulemaking

1 process the board shall consider all groundwater uses and needs and
2 shall develop rules which are fair and impartial. Rules adopted by
3 a district apply to wells located on land dedicated to the permanent
4 school fund or permanent university fund or located on land
5 formerly dedicated to the permanent school fund or permanent
6 university fund in which the state has reserved the right to produce
7 groundwater.

8 SECTION 8. The lieutenant governor and the governor shall
9 make appointments to the School Land Board under Section 32.012,
10 Natural Resources Code, as amended by this Act, as soon as possible
11 after the effective date of this Act. Each member's term expires
12 August 31, 2007.

13 SECTION 9. This Act takes effect September 1, 2005.