

BILL ANALYSIS

C.S.H.B. 911
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1997 the Texas Legislature passed Senate Bill 1, an omnibus water bill intended to promote and protect the state's water supplies for future use. One of the key provisions of S.B. 1 was that establishing the current provisions of Water Code §11.085, the inter-basin transfer (IBT) statute. Currently, the inter-basin transfer statute contains multiple provisions governing an application for an IBT. Many argue that several of these provisions, particularly those regarding notice and certain water conservation standards, serve as impediments to an IBT application. C.S.H.B. 911 amends the inter-basin transfer (IBT) statute to streamline certain requirements for an IBT application. These changes would ease the application requirements for those parties seeking an inter-basin transfer of water.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to The Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

SECTION 1. Amends §11.085, Water Code to require that an inter-basin transfer application include the cost per unit, if applicable, for the water to be transferred. The application must also include information on the projected effect on user rates and fees for each class of customers of the applicant, and strikes a reference to ratepayers. The bill strikes language requiring that notice of an inter-basin transfer application be posted for two consecutive weeks, and within the receiving basin. The bill also strikes the requirement that published notice provisions be of a certain size. The bill authorizes, rather than requires, that the Texas Commission on Environmental Quality request and consider comments from certain county judges regarding inter-basin transfer applications. The bill strikes the requirement that an IBT applicant's water conservation plan result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant, and inserts new language that an applicant's drought contingency and water conservation plans conform with the provisions of Water Code §11.1271 and §11.1272 and commission rules. The bill authorizes a municipal water appropriator in a basin of origin to be a party in any inter-basin transfer hearing if they may be affected by the proposed transfer.

SECTION 2. Transition language applying provisions of the Act to applications for a new water right or an amendment to a permit, certified filing, or certificate of adjudication authorizing an interbasin transfer filed on or after the September 1, 2007 effective date.

SECTION 3. Effective Date: September 1, 2007

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

When compared with the original version of C.S.H.B. 911, the committee substitute no longer includes the authorization for the Texas Commission on Environmental Quality to conduct one or more public meetings to receive comments on an application for an inter-basin transfer. The committee substitute no longer includes the requirement that notice for an inter-basin transfer

application be given in the manner required for water rights applications, as specified by §11.132. The substitute does strike the requirement that notice be published for two consecutive weeks, and within the receiving basin. The substitute also strikes the requirement that published notice provisions be of a certain size. The substitute no longer strikes language listing certain parties to whom notice for an inter-basin transfer application shall be sent. The substitute no longer removes language requiring that if the water sought for inter-basin transfer is used under an existing right, then the impacts that the commission may consider shall be limited to the portion of the water right proposed for the transfer and shall be based on the historical use of that right. The substitute also no longer strikes language relating to consideration of proposed mitigation or compensation, if any, to the basin of origin by the applicant. The substitute no longer strikes language authorizing the commission to grant an inter-basin transfer provided that the applicant has prepared a drought contingency plan and implemented a water conservation plan, however the substitute does remove language requiring that the plan result in the highest practicable levels of water conservation and includes new language requiring that the drought contingency and water conservation plans conform with certain statutory requirements. The substitute also no longer strikes language authorizing county judges from a basin of origin to provide input on the appropriate compensation and mitigation for an inter-basin transfer if the contractual participant in the transfer is a government entity. The committee substitute also authorizes, rather than requires, that the commission request and consider comments from certain county judges regarding inter-basin transfer applications. This provision was repealed in the original version. The committee substitute no longer authorizes the Texas Water Development Board to re-designate, by rule, a river basin on the basis of hydrologic conditions. The substitute also no longer strikes language prohibiting the re-designation of river basins to allow for certain water transfers. The committee substitute does not include provisions that expand the list of exemptions to the requirements of §11.085 to include the contractual sale of water and certain transfers of water from a storage reservoir.

When compared with the original version, the committee substitute does not add Water Code §11.1352 requiring that a new water right or amendment for an inter-basin transfer based on the contractual sale of water must contain a condition for a term not greater than the contract term.

When compared with the original version of H.B. 911, the committee substitute does not repeal §11.085(g) regarding notice specifications for an inter-basin transfer application; §11.085(h) regarding the availability of certain information within an application notice; §11.085(j) regarding the commission's receipt and consideration of comments provided by affected county judges; §11.085(n) limiting the term of a inter-basin transfer on a contractual basis; and §11.085(s) providing that a proposed inter-basin transfer is junior in priority to water rights granted before the time the application for the transfer is accepted for filing.