

By: Callegari

H.B. No. 911

A BILL TO BE ENTITLED

AN ACT

relating to the requirements for interbasin water transfers.

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

SECTION 1. Sections 11.085(b), (d), (e), (f), (k), (l), (o), (p), (u), and (v), Water Code, are amended to read as follows:

(b) The application must include:

(1) the contract price or cost per unit of the water to be transferred;

(2) a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;

(3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and

(4) the projected effect on user rates and fees for each class of ratepayers.

(d) Prior to taking action on an application for an interbasin transfer, the commission may ~~shall~~ conduct ~~[at least]~~ one or more public meetings ~~[meeting]~~ to receive comments in both the basin of origin of the water proposed for transfer and the basin receiving water from the proposed transfer. Notice shall be provided pursuant to Subsection (f) ~~[(g) of this section]~~. Any person may present relevant information and data at the meeting on the criteria which the commission is to consider related to the

1 interbasin transfer.

2 (e) In addition to the public meetings authorized
3 ~~[required]~~ by Subsection (d) ~~[of this section]~~, if the application
4 is contested in a manner requiring an evidentiary hearing under the
5 rules of the commission, the commission shall give notice and hold
6 an evidentiary hearing, in accordance with commission rules and
7 applicable state law.

8 (f) Notice of an application for an interbasin transfer
9 shall be given in the manner provided by Section 11.132 ~~[mailed to~~
10 ~~the following:~~

11 ~~[(1) all holders of permits, certified filings, or~~
12 ~~certificates of adjudication located in whole or in part in the~~
13 ~~basin of origin;~~

14 ~~[(2) each county judge of a county located in whole or~~
15 ~~in part in the basin of origin;~~

16 ~~[(3) each mayor of a city with a population of 1,000 or~~
17 ~~more located in whole or in part in the basin of origin; and~~

18 ~~[(4) all groundwater conservation districts located~~
19 ~~in whole or in part in the basin of origin; and~~

20 ~~[(5) each state legislator in both basins].~~

21 (k) In addition to other requirements of this code relating
22 to the review of and action on an application for a new water right
23 or amended permit, certified filing, or certificate of
24 adjudication, the commission shall weigh the effects of the
25 proposed transfer by considering:

26 (1) the need for the water in the basin of origin and
27 in the proposed receiving basin based on the period for which the

1 water supply is requested, but not to exceed 50 years;

2 (2) factors identified in the applicable approved
3 regional water plans which address the following:

4 (A) the availability of feasible and practicable
5 alternative supplies in the receiving basin to the water proposed
6 for transfer;

7 (B) the amount and purposes of use in the
8 receiving basin for which water is needed;

9 (C) proposed methods and efforts by the receiving
10 basin to avoid waste and implement water conservation and drought
11 contingency measures;

12 (D) proposed methods and efforts by the receiving
13 basin to put the water proposed for transfer to beneficial use;

14 (E) the projected economic impact that is
15 reasonably expected to occur in each basin as a result of the
16 transfer; and

17 (F) the projected impacts of the proposed
18 transfer that are reasonably expected to occur on existing water
19 rights, instream uses, water quality, aquatic and riparian habitat,
20 and bays and estuaries that must be assessed under Sections 11.147,
21 11.150, and 11.152 [of this code] in each basin[. If the water
22 sought to be transferred is currently authorized to be used under an
23 existing permit, certified filing, or certificate of adjudication,
24 such impacts shall only be considered in relation to that portion of
25 the permit, certified filing, or certificate of adjudication
26 proposed for transfer and shall be based on historical uses of the
27 permit, certified filing, or certificate of adjudication for which

1 ~~amendment is sought];~~

2 (3) ~~[proposed mitigation or compensation, if any, to~~
3 ~~the basin of origin by the applicant,~~

4 ~~[(4)]~~ the continued need to use the water for the
5 purposes authorized under the existing permit, certified filing, or
6 certificate of adjudication, if an amendment to an existing water
7 right is sought; and

8 (4) ~~[(5)]~~ the information required to be submitted by
9 the applicant.

10 (1) The commission may grant, in whole or in part, an
11 application for an interbasin transfer only to the extent that~~+~~

12 ~~[(1)]~~ the detriments to the basin of origin during the
13 proposed transfer period are less than the benefits to the
14 receiving basin during the proposed transfer period~~+, and~~

15 ~~[(2) the applicant for the interbasin transfer has~~
16 ~~prepared a drought contingency plan and has developed and~~
17 ~~implemented a water conservation plan that will result in the~~
18 ~~highest practicable levels of water conservation and efficiency~~
19 ~~achievable within the jurisdiction of the applicant].~~

20 (o) The parties to a contract for an interbasin transfer may
21 include provisions for compensation and mitigation. ~~[If the party~~
22 ~~from the basin of origin is a government entity, each county judge~~
23 ~~of a county located in whole or in part in the basin of origin may~~
24 ~~provide input on the appropriate compensation and mitigation for~~
25 ~~the interbasin transfer.]~~

26 (p) The board by rule may redesignate a [A] river basin if
27 the board determines that the redesignation is appropriate based on

1 hydrologic conditions ~~[may not be redesignated in order to allow a~~
2 ~~transfer or diversion of water otherwise in violation of this~~
3 ~~section]~~.

4 (u) An appropriator of water for municipal purposes in the
5 basin of origin may, at the appropriator's option, be a party in any
6 hearings under this section if the appropriator is a person who may
7 be affected by the proposed transfer.

8 (v) The provisions of this section, except Subsection (a),
9 do not apply to:

10 (1) a proposed transfer which in combination with any
11 existing transfers totals less than 3,000 acre-feet of water per
12 annum from the same permit, certified filing, or certificate of
13 adjudication;

14 (2) a request for an emergency transfer of water;

15 (3) a proposed transfer from a basin to its adjoining
16 coastal basin; ~~[or]~~

17 (4) a proposed transfer from a basin that occupies a
18 portion of [to] a county or municipality or a [the] municipality's
19 retail service area to a geographic area within the county,
20 municipality, or service area ~~[that is partially within the basin]~~
21 for use in the [that] part of the county, [or] municipality, or [and
22 ~~the municipality's retail]~~ service area not within the basin of
23 origin;

24 (5) a proposed transfer of water that is based on a
25 contractual sale of water; or

26 (6) a proposed transfer of water from a storage
27 reservoir that, in combination with existing diversions and

1 transfers, totals less than or equals the firm yield of the storage
2 reservoir.

3 SECTION 2. Subchapter D, Chapter 11, Water Code, is amended
4 by adding Section 11.1352 to read as follows:

5 Sec. 11.1352. CONDITION OF PERMIT AUTHORIZING INTERBASIN
6 TRANSFER BASED ON CONTRACTUAL SALE. A new water right or an
7 amendment to a permit, certified filing, or certificate of
8 adjudication authorizing an interbasin transfer of water that is
9 based on a contractual sale of water must contain a condition for a
10 term or period not greater than the contract term.

11 SECTION 3. Sections 11.085(g), (h), (j), (n), and (s),
12 Water Code, are repealed.

13 SECTION 4. Section 11.085, Water Code, as amended by this
14 Act, and Section 11.1352, Water Code, as added by this Act, apply
15 only to an application for a new water right or an amendment to a
16 permit, certified filing, or certificate of adjudication
17 authorizing an interbasin transfer filed on or after the effective
18 date of this Act. An application filed before the effective date of
19 this Act is governed by the law in effect on the date the
20 application is filed, and the former law remains in effect for that
21 purpose.

22 SECTION 5. This Act takes effect September 1, 2007.