

By: Callegari

H.B. No. 3233

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a procedure for authorizing the beneficial use or reuse of certain water.

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

SECTION 1. Section 11.002, Water Code, is amended by amending Subdivisions (5) and (10) and by adding Subdivisions (15) through (22) to read as follows:

(5) "Water right" means a right acquired under the laws of this state to impound, divert, or use state water or a right to reuse municipal return flows acquired under section 11.0462 of this chapter.

(10) "Surplus water" means water in excess of the initial or continued beneficial use of the appropriator or authorized indirect reuse, that is not reserved for instream flows or freshwater inflows.

(15) "Imported water" means state water that has been imported to the river basin of use under a permit issued under Section 11.085 or state water that has been imported from any source outside the boundaries of the state.

(16) "Discharger" for purposes of this chapter means:

(A) the owner of a municipal wastewater treatment plant; or

(B) a municipality who has contracted with the owner of a municipal wastewater treatment plant for wastewater

1 treatment services where such contract assigns ownership of the  
2 municipal return flows to the municipality;

3 (C) the person who holds the water right for the  
4 water from which municipal return flows are derived, if the person  
5 who holds the water right and the municipality or owner of the  
6 municipal wastewater treatment plant from which the municipal  
7 return flows are derived have entered into a contract that assigns  
8 ownership of the municipal return flows to the water right holder.

9 (17) "Direct reuse" means the beneficial use of: (1)  
10 municipal wastewater or industrial wastewater or process water that  
11 is under the direct control of a treatment plant owner or operator  
12 or industrial facility, or (2) agricultural tailwater, before such  
13 wastewater, process water or tailwater is either disposed of,  
14 discharged, or otherwise allowed to flow into a watercourse, lake,  
15 or other body of state water.

16 (18) "Indirect reuse" means the diversion of water  
17 from a watercourse, lake, or other body of state water, for  
18 beneficial use, of a quantity of water that can be attributed to a  
19 specific quantity of return flows originating upstream of the  
20 diversion point.

21 (19) "Return flows" means municipal wastewater or  
22 industrial wastewater or process water, or agricultural tailwater,  
23 that has been disposed of, discharged, or otherwise allowed to flow  
24 into a watercourse, lake, or other body of state water.

25 (20) "Municipal return flows" means return flows  
26 derived from municipal wastewater.

27 (21) "Existing municipal return flows" means the

1 volume of municipal return flows derived from:

2 (A) surface water that has been authorized to be  
3 appropriated under a water right issued before September 1, 2007;

4 or

5 (B) groundwater brought to the surface through  
6 artificial means before September 1, 2007.

7 (22) "Future municipal return flows" means the volume  
8 of municipal return flows derived from:

9 (A) surface water that has been authorized to be  
10 appropriated under a water right issued on or after September 1,  
11 2007; or

12 (B) groundwater brought to the surface through  
13 artificial means on or after September 1, 2007.

14 SECTION 2. Section 11.021, Water Code, is amended to read as  
15 follows:

16 Sec. 11.021. STATE WATER. (a) The water of the ordinary  
17 flow, underflow, and tides of every flowing river, natural stream,  
18 and lake, and of every bay or arm of the Gulf of Mexico, and the  
19 storm water, floodwater, and rainwater of every river, natural  
20 stream, canyon, ravine, depression, and watershed in the state, and  
21 of any return flows derived from state water, is the property of the  
22 state.

23 (b) Water imported from any source outside the boundaries of  
24 the state for use in the state, together with any return flows  
25 derived from imported water, that [~~and which~~] is transported  
26 through the beds and banks of any navigable stream within the state  
27 or by utilizing any facilities owned or operated by the state is the

1 property of the state.

2 SECTION 3. The heading to Section 11.042, Water Code, is  
3 amended to read as follows:

4 Sec. 11.042. DELIVERING WATER DOWN BANKS AND BEDS; STORED  
5 WATER, INTRABASIN CONVEYANCE, IMPORTED WATER, AND GROUNDWATER.

6 SECTION 4. Section 11.042, Water Code, is amended by  
7 amending Subsections (a), (b), (c), and (d) and adding Subsections  
8 (e), (f) and (h) to read as follows:

9 (a) With prior authorization granted [U] under rules  
10 prescribed by the commission, a person [~~association of persons,~~  
11 ~~corporation, water control and improvement district, water~~  
12 ~~improvement district, or irrigation district supplying stored or~~  
13 ~~conserved water under contract as provided in this chapter~~] may use  
14 the bed and bank [~~and bed~~] of any flowing natural stream in the  
15 state to convey [~~the~~ diverted or stored water from the place of  
16 authorized diversion or storage to [~~the~~] another place of  
17 authorized use, [~~or to the~~] diversion, or storage within the same  
18 river basin [~~point of the appropriator~~]. Such authorization must  
19 allow for the storage or diversion of the amount of water to be  
20 conveyed, less carriage losses.

21 (b) A person who wishes to use the bed and bank of a flowing  
22 natural stream to convey and subsequently divert imported water or  
23 groundwater that has been brought to the surface by artificial  
24 means [~~discharge and then subsequently divert and reuse the~~  
25 ~~person's existing return flows derived from privately owned~~  
26 ~~groundwater~~] must obtain prior authorization from the commission  
27 under this section [ ~~for the diversion and the reuse of these return~~

1 flows]. The Commission shall authorize [~~authorization may allow~~  
2 ~~for~~] the diversion of the amount of imported water or groundwater to  
3 be conveyed [~~and reuse by the discharger of existing return flows~~],  
4 less carriage losses [~~, and shall be subject to special conditions~~  
5 ~~if necessary to protect an existing water right that was granted~~  
6 ~~based on the use or availability of these return flows. Special~~  
7 ~~conditions may also be provided to help maintain instream uses and~~  
8 ~~freshwater inflows to bays and estuaries. A person wishing to~~  
9 ~~divert and reuse future increases of return flows derived from~~  
10 ~~privately owned groundwater must obtain authorization to reuse~~  
11 ~~increases in return flows before the increase~~].

12 (c) A person may not convey water [~~Except as otherwise~~  
13 ~~provided in Subsection (a) of this section, a person who wishes to~~  
14 ~~convey and subsequently divert water in a watercourse or stream~~  
15 ~~must obtain the prior approval of the commission through a bed and~~  
16 ~~banks authorization. The authorization shall allow to be diverted~~  
17 ~~only the amount of water put into a watercourse or stream, less~~  
18 ~~carriage losses and subject to any special conditions that may~~  
19 ~~address the impact of the discharge, conveyance, and diversion on~~  
20 ~~existing permits, certified filings, or certificates of~~  
21 ~~adjudication, instream uses, and freshwater inflows to bays and~~  
22 ~~estuaries. Water discharged~~] into a watercourse or stream under  
23 this chapter if the conveyance would [~~shall not~~] cause a  
24 degradation of water quality below the water quality standards  
25 applicable to the [~~extent that the~~] stream segment(s) through which  
26 the water will be conveyed [~~'s classification would be lowered~~].

27 (d) Authorizations under this section and water quality

1 authorizations may be approved in a consolidated permit proceeding.

2 (e) Water conveyed through the bed and banks of a natural  
3 stream under this section is not subject to the prior appropriation  
4 system in the basin where the conveyance occurs and is not subject  
5 to priority call by existing water right holders within the basin of  
6 conveyance authorized under this section.

7 (f) A person seeking authorization under this section must  
8 develop, submit, and implement a water conservation plan consistent  
9 with requirements of section 11.1271 of this Code.

10 (g) [~~(d)~~ Nothing in this section shall be construed to  
11 affect an existing project for which water rights [~~and~~  
12 ~~reuse~~]authorizations have been granted by the commission before  
13 September 1, 2007 [~~1997~~].

14 (h) Nothing in this section shall be construed to affect the  
15 requirements to obtain an interbasin transfer authorization under  
16 Section 11.085 of this code.

17 SECTION 5. Section 11.046, Water Code, is amended by  
18 amending Subsection (c) and adding Subsection (c-1) to read as  
19 follows:

20 (c) Except as specifically provided otherwise in the water  
21 right, water appropriated under a permit, certified filing, or  
22 certificate of adjudication may, prior to its release into a  
23 watercourse or stream, be beneficially used and directly reused by  
24 the holder of a permit, certified filing, or certificate of  
25 adjudication for the purposes and locations of use provided in the  
26 permit, certified filing, or certificate of adjudication, without  
27 further authorization from the commission under this chapter.

1 Except for water reserved for instream uses or freshwater inflows  
2 under Section 11.0461, return flows from [~~Once~~] water that has been  
3 diverted under a permit, certified filing, or certificate of  
4 adjudication are [~~and then returned to a watercourse or stream,~~  
5 ~~however, it is~~] considered surplus water and therefore subject [~~to~~  
6 ~~reservation for instream uses or beneficial inflows or~~] to  
7 appropriation [~~by others~~] unless expressly provided otherwise in  
8 the permit, certified filing, or certificate of adjudication.

9 (c-1) Notwithstanding Subsection (c), municipal return  
10 flows authorized for indirect reuse under Section 11.0462 are  
11 considered surplus water only until the indirect reuse has been  
12 implemented and may be appropriated by others only on a term or  
13 temporary basis.

14 SECTION 6. Subchapter B, Chapter 11, Water Code, is amended  
15 by adding Sections 11.0461 and 11.0462 to read as follows:

16 Sec. 11.0461. RESERVATION OF MUNICIPAL RETURN FLOWS FOR  
17 INSTREAM FLOWS AND FRESHWATER INFLOWS.

18 (a) Before the commission may authorize the indirect reuse  
19 of municipal return flows under Section 11.0462, the commission by  
20 rule shall reserve to the state five percent of municipal return  
21 flows for the purpose of maintaining instream flows and freshwater  
22 inflows to bays and estuaries, or such other amount as the  
23 commission may establish under Subsection (b).

24 (b) The commission by rule may reserve a portion of  
25 municipal return flows in a particular river basin in amounts that  
26 are less than the applicable percentages provided by Subsection (a)  
27 if the commission determines that the reservation of a lesser

1 portion of those flows is sufficient to maintain instream flows and  
2 freshwater inflows to bays and estuaries in the basin.

3 (c) The municipal return flows reserved under this section  
4 are not subject to the prior appropriation system and are not  
5 subject to priority call by existing water right holders.

6 Sec. 11.0462. INDIRECT REUSE OF WATER. (a) A discharger  
7 must obtain authorization from the commission to indirectly reuse  
8 municipal return flows under this section. An authorization for  
9 indirect reuse and a discharge permit or permit amendment or  
10 renewal under Chapter 26 may be obtained in a consolidated permit  
11 proceeding.

12 (b) Except as provided by Subsections (c) and (d), an  
13 authorization for indirect reuse that is granted under this section  
14 shall authorize a discharger to indirectly reuse a portion of  
15 municipal return flows not to exceed:

16 (1) fifty percent, less carriage losses, in the case  
17 of existing and future municipal return flows derived from surface  
18 water that originates in the river basin where the return flows are  
19 discharged;

20 (2) seventy percent, less carriage losses, in the case  
21 of existing and future municipal return flows derived from imported  
22 water;

23 (3) fifty percent, less carriage losses, for existing  
24 municipal return flows derived from groundwater that has been  
25 brought to the surface through artificial means; and

26 (4) seventy percent, less carriage losses, for future  
27 municipal return flows derived from groundwater that has been



1 brought to the surface through artificial means.

2 (c) In addition to the other limitations provided by this  
3 section on the quantities of municipal return flows that may be  
4 authorized for indirect reuse, the commission shall include  
5 conditions in the authorization that:

6 (1) are necessary to ensure that the indirect reuse  
7 does not cause a degradation of water quality to the extent that the  
8 stream segment's classification would be lowered;

9 (2) restrict the indirect reuse to such quantities and  
10 in such locations as are reasonably necessary to meet either of the  
11 following:

12 (A) the discharger's own water supply needs for  
13 municipal or electrical generation purposes, if such need is  
14 located within:

15 (i) the river basin where the return flows  
16 would otherwise be discharged, or

17 (ii) an area covered by an interbasin  
18 transfer permit held by the discharger under section 11.085 of this  
19 chapter.

20 (B) if the discharger does not hold the  
21 underlying water right from which the return flows are derived, an  
22 identified water supply need in the service area of the holder of  
23 the underlying water right from which the return flows are derived  
24 if:

25 (i) the water supply need to be met is for a  
26 person other than the discharger, and

27 (ii) the water cannot otherwise be supplied

1 by the water right holder from which the return flows are derived.

2 (3) are necessary to protect existing water rights  
3 that expressly authorize the appropriation of the municipal return  
4 flows for which the particular indirect reuse authorization is  
5 sought;

6 (4) requires the applicant to comply with a daily  
7 accounting plan, which shall be developed and approved prior to the  
8 issuance of the authorization, and which ensures the indirect reuse  
9 by the applicant will be limited by the amount of available return  
10 flows actually discharged and authorized for indirect reuse,  
11 subject to:

12 (A) the reservation of return flows under Section  
13 11.0461;

14 (B) a deduction for carriage losses between the  
15 point of discharge and the point of diversion that reflects actual  
16 hydrologic conditions at the time of any indirect reuse; and

17 (C) any other applicable limitation on the amount  
18 permitted to be diverted and reused, including any limitation  
19 contained in the authorization in accordance with this subsection  
20 and subsection (d);

21 (5) requires the implementation of an approved water  
22 conservation plan that is consistent with requirements of section  
23 11.1271 of this Code; and

24 (6) allows the Commission, upon the adoption of rules  
25 under subsection (d)(2) of this section, to increase or further  
26 restrict the amount of municipal return flows authorized for reuse  
27 by no more than fifteen percent of the total municipal return flows.

1       (d) The commission by rule shall adjust the amount of  
2 indirect reuse of municipal return flows otherwise authorized under  
3 subsection (c) of this section to address regional agreements and  
4 impacts on existing water rights as required by this subsection.

5           (1) In recognition of the varying hydrologic  
6 conditions and water supply needs of each river basin in this state,  
7 it is the intent of the Legislature to allow the implementation of  
8 local or regional agreements that would allow indirect reuse of  
9 municipal return flows in amounts that differ from the applicable  
10 percentages provided by subsections (b) and (c) in limited  
11 circumstances. Specifically, the commission shall adopt by rule  
12 changes to the applicable percentages of authorized indirect reuse  
13 where such indirect reuse would be implemented as part of a  
14 cooperative agreement between water right holders who hold water  
15 rights to greater than seventy percent of the water within a basin  
16 and dischargers whose return flows comprise more than seventy  
17 percent of return flows in a particular river basin. If included in  
18 such agreements, the commission shall include in its rules a  
19 reservation of municipal return flows to meet instream flow or  
20 freshwater inflow needs in excess of the amounts reserved under  
21 Section 11.0461.

22           (2) To address the potential impact on existing water  
23 rights holders of indirect municipal reuse, the commission shall  
24 adopt rules on or before March 1, 2009 that adjust the authorized  
25 indirect municipal reuse that may be allowed under subsections (b)  
26 and (c) on a basin specific basis, where the studies conducted under  
27 subsection (e) indicate that the adjustments will ensure that the

1 period reliability of any existing water right will not be reduced  
2 by more than ten percent as compared to its period reliability based  
3 on the maximum usage conditions over the last ten years.

4 (e) To address the potential impact on existing water rights  
5 holders of indirect municipal reuse, the commission shall, on or  
6 before September 1, 2008, evaluate, quantify, and specifically  
7 identify, through a peer-reviewed process, the effects on indirect  
8 municipal reuse on the period reliability of existing water rights,  
9 as such have existed and been used over the last ten years, based  
10 on:

11 (1) the percent of indirect reuse authorized by  
12 subsection (b) of this section;

13 (2) a reduction of reuse by no more than fifteen  
14 percent of the municipal return flows below those amounts  
15 authorized in subsection (b); and

16 (3) an increase in indirect reuse by no more than an  
17 additional fifteen percent of the municipal return flows over those  
18 amounts authorized in subsection (b).

19 (f) In considering an application for an authorization for  
20 indirect reuse, the commission shall follow the requirements of  
21 Section 11.134 except that it shall not:

22 (1) determine whether unappropriated water is  
23 available in the source of supply;

24 (2) evaluate the effects the proposed reuse may have  
25 on:

26 (A) the public welfare; or

27 (B) existing water rights or vested riparian

1 rights, except as allowed under subsection (c)(3) or (d)(2) of this  
2 section; or

3 (3) consider the assessments performed under Sections  
4 11.147(d) and (e), 11.150, 11.151, and 11.152, except as necessary  
5 to address water quality effects under Subsection (c)(1) of this  
6 section.

7 (g) Municipal return flows authorized for indirect reuse  
8 are not subject to the prior appropriation system and are not  
9 subject to priority call by existing water right holders.

10 (h) The commission shall, on or before by March 1, 2008,  
11 adopt rules to implement a process for the expedited review and  
12 action on requests for indirect reuse authorizations under  
13 subsection (b).

14 (i) This section does not affect a reuse  
15 authorization granted by the commission before September 1, 2007,  
16 nor any amendments to such authorizations that do not increase the  
17 amount of water authorized to be reused. A person who filed an  
18 application to engage in indirect reuse of municipal return flows  
19 prior to September 1, 2007, may elect to have the application  
20 considered under the law in existence at the time the application  
21 was filed or to have the application considered under this section.

22 SECTION 7. This Act takes effect September 1, 2007.