

## **BILL ANALYSIS**

C.S.H.B. 2720  
By: Ritter  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law authorizes the executive director of the Texas Commission on Environmental Quality (TCEQ) to issue an order adjusting water rights during times of drought and to ensure that, to the extent practicable, suspensions or adjustments to water rights conform with the statutory preference of use. In addition, current law prescribes a procedure through which a water right holder who experiences a shortage due to drought or another emergency may contract with another water user to purchase water, subject to TCEQ approval. Interested parties note that the two provisions appear to apply to the same situation, with the only significant difference relating to who initiates the reallocation of water.

C.S.H.B. 2720 seeks to provide clarification among these provisions relating to water rights during a drought or other emergency. First, with respect to contracting for water rights, such parties assert that it would be prudent to ensure that payment is made prior to the authorization. Additionally, interested parties contend that it is potentially unclear whether a junior water right holder is entitled to compensation when TCEQ issues a curtailment order during times of drought.

### **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. Provides that the heading to Section 11.053, Water Code, is amended from "Emergency Order Concerning Water Rights" to "Commission Authority to Suspend or Adjust Water Rights During Periods of Drought or Water Shortage."

SECTION 2. Amends Section 11.053(a)(2), Water Code, as follows:

(a) Provides that during a period of drought or other emergency shortage of water, as defined by commission rule, the executive director by order may, in accordance with the priority of water rights established by Section 11.027:

- (1) temporarily suspend the right of any person who holds a water right to use the water; and
- (2) temporarily adjust the diversions of water by water rights holders to address an imminent hazard to the health, safety, or welfare of the public.

SECTION 3. Provides that the heading to Section 11.139, Water Code, is amended from "Emergency Authorizations" to "Request to Transfer Water Temporarily."

SECTION 4. Amends Section 11.139, Water Code, by amending Subsections (b), (h), and (j), and by adding Subsection (m) to read as follows:

(b) Provides that a person desiring to obtain an emergency authorization to transfer water temporarily under Subsection (h) shall submit to the commission a sworn application containing the following information:

- (1) a description of the condition of emergency justifying the granting of the emergency authorization;
- (2) a statement setting forth facts which support the findings required under this section;
- (3) an estimate of the dates on which the proposed authorization should begin and end;
- (4) a description of the action sought and the activity proposed to be allowed, mandated, or prohibited; and
- (5) any other statements or information required by the commission.

(h) Provides that the commission may grant an emergency authorization under this section for the temporary transfer and use of all or part of a permit, certified filing, or certificate of adjudication for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes. Provides that in addition to the requirements contained in Subsection (b), the commission may direct that the applicant will timely pay the amounts for which the applicant may be potentially liable under Subsection (j) and to the extent authorized by law will fully indemnify and hold harmless the state, the executive director, and the commission from any and all liability for the authorization sought. Provides that the commission may order bond or other surety in a form acceptable to the commission as a condition for such emergency authorization. Provides that the commission may not grant an emergency authorization under this section which would cause a violation of a federal regulation. Provides that the commission may not grant an emergency authorization under this subsection until a method for calculating and remitting the compensation due under Subsection (j) has been agreed on by the person to be granted an emergency authorization for the temporary transfer and the holder of the water right or the water right holder's agent or lessee from whom the use is to be transferred.

(j) Provides that the person granted an emergency authorization for a temporary transfer under Subsection (h) is liable to the holder of the water right and the water right holder's agent or lessee from whom the use is transferred for the fair market value of the water transferred as well as for any damages caused by the transfer of use. Provides that if, within 60 days of the termination of the authorization, the parties do not agree on the amount due, or if full payment is not made, either party may file a complaint with the commission to determine the amount due. Provides that the commission may use dispute resolution procedures for a complaint filed under this subsection. Provides that after exhausting all administrative remedies under this subsection. Provides that, after exhausting all administrative remedies under this Subsection, an owner from whom the use is transferred may file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. Provides that the prevailing party in a suit filed under this subsection is entitled to recover court costs and reasonable attorney's fees.

(m) Provides that this section does not apply to a suspension or adjustment ordered by the executive director under Section 11.053.

SECTION 5. Provides for the effective date of this Act.

#### **EFFECTIVE DATE**

Provides that the effective date of this Act is September 1, 2013.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

##### INTRODUCED

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Section 11.053, Water Code, is amended to read  
**COMMISSION AUTHORITY TO  
 SUSPEND OR ADJUST WATER RIGHTS**

SECTION 1. Same as introduced version.

DURING PERIODS OF DROUGHT OR WATER SHORTAGE.

SECTION 2. The heading to Section 11.139, Water Code, is amended to read REQUEST TO TRANSFER WATER TEMPORARILY.

SECTION 3. Section 11.053, Water Code, is amended by amending Subsection (a) to read as follows:

(a) During a period of drought or other emergency shortage of water, as defined by order may, in accordance with the priority of water rights established by Section 11.027:

(1) temporarily suspend the right of any person who holds a water right to use the water; and

(2) temporarily adjust the diversions of water by water rights holders to address an imminent hazard to public health.

SECTION 4. Section 11.139, Water Code, is amended.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 2. Formerly SECTION 3 in introduced version. Section 11.053(a), Water Code, is amended to read as follows:

(a) During a period of drought or other emergency shortage of water, as defined by order may, in accordance with the priority of water rights established by Section 11.027:

(1) temporarily suspend the right of any person who holds a water right to use the water; and

(2) temporarily adjust the diversions of water by water rights holders to address an imminent hazard to the health, safety, or welfare of the public.

SECTION 3. Same as SECTION 2 of introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.