

## **BILL ANALYSIS**

C.S.H.B. 3233  
By: Ritter  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that certain law relating to interbasin transfers was amended several years ago to include additional measures to ensure that, before the Texas Commission on Environmental Quality (TCEQ) authorizes a transfer, TCEQ thoroughly evaluates the implications of such a transfer on water rights and environmental interests in both the basin of origin and the receiving basin. The parties contend, however, that since such law was amended, fewer transfers have been approved by TCEQ.

C.S.H.B. 3233 seeks to address this issue in order to protect water rights and environmental interests and to facilitate the orderly and efficient processing of future interbasin transfer applications by TCEQ.

### **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. Amends Section 11.085, Water Code, by amending Subsections (b), (e), (g), (l), (n), and (v) as follows:

(b) Provides that the application for an interbasin transfer must include:

- (1) the contract price 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; and
- (3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users.

Strikes the provision stating that the application for an interbasin transfer must include the projected effect on user rates and fees for each class of ratepayers.

(e) Provides that in addition to the public meetings required by Subsection (d), if the application is contested in a manner requiring an evidentiary hearing under the rules of the commission, the commission shall give notice and hold an evidentiary hearing, in accordance with commission rules and applicable state law. Provides that an evidentiary hearing is limited to considering issues related to the requirements of this section.

(g) Provides that the applicant shall cause the notice of application for an interbasin transfer to be published twice within a 30-day period, rather than once a week for two consecutive weeks, in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin. Provides that the published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. Provides that the

notice of application and public meetings shall be combined in the mailed and published notices.

(l) Provides that the commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

- (1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as determined by the commission based on consideration of the factors described by Subsection (k); and
- (2) the applicant for the interbasin transfer has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(n) Provides that if the transfer of water is based on a contractual sale of water, the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer shall contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract, rather than for a term or period not greater than the contract term.

(v) Provides that the provisions of this section, except Subsection (a), do not apply to the following:

- (1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same permit, certified filing, or certificate of adjudication;
- (2) a request for an emergency transfer of water;
- (3) a proposed transfer from a basin to its adjoining coastal basin;
- (4) a proposed transfer from the part of the territory of a county or municipality, or the part of the service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the territory of the county or municipality, or that part of the service area of the utility not within the basin of origin, rather than a proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county or municipality and the municipality's retail service area not within the basin; or
- (5) a proposed transfer of water that is:
  - (A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;
  - (B) for use in this state; and
  - (C) transported by using the bed and banks of any flowing natural stream located in this state.

Makes nonsubstantive changes.

SECTION 2. Provides that the changes in law made by this Act apply only to an application for an interbasin transfer filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. Provides that an application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 3. Provides the effective date of this Act.

## EFFECTIVE DATE

This Act takes effect September 1, 2013.

## COMPARISON OF ORIGINAL TO SUBSTITUTE

While C.S.H.B. 3233 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Sections 11.085(b), (e), (g), (l), (n), and (v), Water Code, are amended to read as follows:

(b) The application must include:

(1) the contract price 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; and

(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.]~~

(e) In addition to the public meetings required by Subsection (d) of this section, if the application is contested in a manner requiring an evidentiary hearing under the rules of the commission, the commission shall give notice and hold an evidentiary hearing, in accordance with commission rules and applicable state law. In any evidentiary hearing for an application to transfer water authorized under an existing water right, contested issues are limited to those issues related to the requirements under this section.

(g) The applicant shall cause the notice of application for an interbasin transfer to be published twice within a 30-day period [~~once a week for two consecutive weeks~~] in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices.

(l) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 11.085(b), (e), (g), (l), (n), and (v), Water Code, are amended to read as follows:

(b) The application must include:

(1) the contract price 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; and

(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].~~

(e) In addition to the public meetings required by Subsection (d) [~~of this section~~], if the application is contested in a manner requiring an evidentiary hearing under the rules of the commission, the commission shall give notice and hold an evidentiary hearing, in accordance with commission rules and applicable state law. An evidentiary hearing is limited to considering issues related to the requirements of this section.

(g) The applicant shall cause the notice of application for an interbasin transfer to be published twice within a 30-day period [~~once a week for two consecutive weeks~~] in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices.

(l) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period based on consideration of factors in subsection (k) of this section.

(n) If the transfer of water is based on a contractual sale of water, the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer shall contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract ~~[term]~~.

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

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

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

(3) a proposed transfer from a basin to its adjoining coastal basin;

(4) a proposed transfer from the part of the territory of [a basin to] a county or municipality, or the part of the service area of a retail water utility, [the municipality's retail service area] that is ~~[partially]~~ within the basin of origin for use in that part of the territory of the county or municipality, or that part of the service area of the retail water utility, [and the municipality's retail service area] not within the basin of origin; or

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream located in this state.

SECTION 2. The changes in law made by this Act apply only to an application for an interbasin transfer filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as determined by the commission based on consideration of the factors described by Subsection (k); and

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

(n) If the transfer of water is based on a contractual sale of water, the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer shall contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract ~~[term]~~.

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

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

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

(3) a proposed transfer from a basin to its adjoining coastal basin;

(4) a proposed transfer from the part of the territory of [a basin to] a county or municipality, or the part of the service area of a retail public utility as defined by Section 13.002, [the municipality's retail service area] that is ~~[partially]~~ within the basin of origin for use in that part of the territory of the county or municipality, or that part of the service area of the utility, [and the municipality's retail service area] not within the basin of origin; or

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream located in this state.

SECTION 2. Same as introduced version.

former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.