

By: Ritter

H.B. No. 2720

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the applicability of the law governing emergency
3 authorizations by the Texas Commission on Environmental Quality for
4 the use of state water to certain emergency orders concerning water
5 rights issued by the executive director of the commission.

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

7 SECTION 1. The heading to Section 11.053, Water Code, is
8 amended to read as follows:

9 Sec. 11.053. COMMISSION AUTHORITY TO SUSPEND OR ADJUST
10 [EMERGENCY ORDER CONCERNING] WATER RIGHTS DURING PERIODS OF DROUGHT
11 OR WATER SHORTAGE.

12 SECTION 2. Section 11.053(a), Water Code, is amended to
13 read as follows:

14 (a) During a period of drought or other emergency shortage
15 of water, as defined by commission rule, the executive director by
16 order may, in accordance with the priority of water rights
17 established by Section 11.027:

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

20 (2) temporarily adjust the diversions of water by
21 water rights holders; and

22 (3) temporarily require a water right holder to
23 implement mandatory drought contingency measures to mitigate an
24 imminent hazard to the health, safety, or welfare of the public.

1 SECTION 3. The heading to Section 11.139, Water Code, is
2 amended to read as follows:

3 Sec. 11.139. REQUEST TO TRANSFER WATER TEMPORARILY OR
4 TEMPORARILY AMEND WATER RIGHT [~~EMERGENCY AUTHORIZATIONS~~].

5 SECTION 4. Section 11.139, Water Code, is amended by
6 amending Subsections (b), (h), and (j) and adding Subsections (m)
7 and (n) to read as follows:

8 (b) A person desiring to obtain an emergency authorization
9 to transfer water temporarily under Subsection (h) [~~this section~~]
10 shall submit to the commission a sworn application containing the
11 following information:

12 (1) a description of the condition of emergency
13 justifying the granting of the emergency authorization;

14 (2) a statement setting forth facts which support the
15 findings required under this section;

16 (3) an estimate of the dates on which the proposed
17 authorization should begin and end;

18 (4) a description of the action sought and the
19 activity proposed to be allowed, mandated, or prohibited; and

20 (5) any other statements or information required by
21 the commission.

22 (h) The commission may grant an emergency authorization
23 under this section for the temporary transfer and use of all or part
24 of a permit, certified filing, or certificate of adjudication for
25 other than domestic or municipal use to a retail or wholesale water
26 supplier for public health and safety purposes. In addition to the
27 requirements contained in Subsection (b) [~~of this section~~], the

1 commission may direct that the applicant will timely pay the
2 amounts for which the applicant may be potentially liable under
3 Subsection (j) [~~of this section~~] and to the extent authorized by law
4 will fully indemnify and hold harmless the state, the executive
5 director, and the commission from any and all liability for the
6 authorization sought. The commission may order bond or other
7 surety in a form acceptable to the commission as a condition for
8 such emergency authorization. The commission may not grant an
9 emergency authorization under this section which would cause a
10 violation of a federal regulation. The commission may not grant an
11 emergency authorization under this subsection until a method for
12 calculating and remitting the compensation due under Subsection (j)
13 has been agreed on by the person to be granted an emergency
14 authorization for the temporary transfer and the holder of the
15 water right or the water right holder's agent or lessee from whom
16 the use is to be transferred.

17 (j) The person granted an emergency authorization for a
18 temporary transfer under Subsection (h) [~~of this section~~] is liable
19 to the holder of the water right [~~owner~~] and the water right
20 holder's [~~owner's~~] agent or lessee from whom the use is transferred
21 for the fair market value of the water transferred as well as for
22 any damages caused by the transfer of use. If, within 60 days of the
23 termination of the authorization, the parties do not agree on the
24 amount due, or if full payment is not made, either party may file a
25 complaint with the commission to determine the amount due. The
26 commission may use dispute resolution procedures for a complaint
27 filed under this subsection. After exhausting all administrative

1 remedies under this subsection, an owner from whom the use is
2 transferred may file suit to recover or determine the amount due in
3 a district court in the county where the owner resides or has its
4 headquarters. The prevailing party in a suit filed under this
5 subsection is entitled to recover court costs and reasonable
6 attorney's fees.

7 (m) This section does not apply to a suspension or
8 adjustment ordered by the executive director under Section 11.053.

9 (n) Notwithstanding Subsection (b), a river authority may
10 seek an emergency authorization to amend its water management plan
11 if the water management plan:

12 (1) consists of a reservoir operation plan for the
13 operation of two water supply reservoirs; and

14 (2) was originally required by court order
15 adjudicating the water rights for those reservoirs.

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