

By: Ritter

H.B. No. 2720

A BILL TO BE ENTITLED

AN ACT

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

14 Sec. 11.139. REQUEST TO TRANSFER WATER TEMPORARILY  
15 [~~EMERGENCY AUTHORIZATIONS~~].

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

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

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

24 (2) temporarily adjust the diversions of water by

1 water rights holders to address an imminent hazard to public  
2 health.

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

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

10 (1) a description of the condition of emergency  
11 justifying the granting of the emergency authorization;

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

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

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

18 (5) any other statements or information required by  
19 the commission.

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

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

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

1 a district court in the county where the owner resides or has its  
2 headquarters. The prevailing party in a suit filed under this  
3 subsection is entitled to recover court costs and reasonable  
4 attorney's fees.

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

7 SECTION 4. This Act takes effect September 1, 2013.