

BILL ANALYSIS

C.S.H.B. 3324
By: Larson
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a person may divert surface water in one river basin and transfer the water for use in another river basin after obtaining authorization from the Texas Commission on Environmental Quality. Interested parties contend that the process for obtaining such authorization is difficult and politically controversial, limiting such transfers. C.S.H.B. 3324 seeks to improve the interbasin transfer authorization process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 3324 amends the Water Code to add as exemptions from certain interbasin transfer provisions a proposed transfer of water based on a substitution or exchange of an equal or greater quantity of reclaimed or desalinated water that is first made available in the basin of origin on or after September 1, 2015, provided that the proposed transfer would not result in a net loss of water supply available for use in the basin of origin, and a proposed return of reclaimed water or return flow from the basin of discharge to the basin of origin.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3324 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Sections 11.085(d), (k), (l), and (v), Water Code, are amended to read as follows: (d) Prior to taking action on an application	SECTION 1. Section 11.085(v), Water Code, is amended to read as follows: No equivalent provision.

for an interbasin transfer, the commission shall conduct at least one public meeting to receive comments in both the basin of origin of the water proposed for transfer and the basin receiving water from the proposed transfer. Notice shall be provided under Section 11.132 [~~pursuant to Subsection (g) of this section~~]. Any person may present relevant information and data at the meeting on the criteria which the commission is to consider related to the interbasin transfer.

(k) In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall weigh the effects of the proposed transfer by considering:

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years;

(2) factors identified in the applicable approved regional water plans which address the following:

(A) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;

(B) the amount and purposes of use in the receiving basin for which water is needed;

(C) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 [~~of this code~~] in each basin. If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of

No equivalent provision.

adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;

(3) ~~[proposed mitigation or compensation, if any, to the basin of origin by the applicant;~~

~~[(4)]~~ the continued need to use the water for the purposes authorized under the existing permit, certified filing, or certificate of adjudication, if an amendment to an existing water right is sought; ~~[and]~~

(4) the effect of the proposed transfer of water on promoting the highest efficiency and productivity of water use in this state;
and

(5) the information required to be submitted by the applicant.

(1) 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.

(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 geographic area of a county or municipality, or the part of the retail 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 geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin; ~~[ø]~~

No equivalent provision.

(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 geographic area of a county or municipality, or the part of the retail 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 geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin; ~~[ø]~~

(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; and
(B) for use in this state;
(6) a proposed transfer of water resulting from recycled or desalinated water produced in the basin of origin; or
(7) a proposed transfer of treated wastewater derived from water that was transferred to the basin of origin of the proposed transfer from the basin to which the effluent is returned [and
~~[(C) transported by using the bed and banks of any flowing natural stream located in this state].~~

SECTION 2. Sections 11.085(b), (c), (f), (g), (h), (i), (j), and (o), Water Code, are repealed.

SECTION 3. (a) This Act applies only to an application for a water right or an amendment to a permit, certified filing, or certificate of adjudication authorizing an interbasin transfer of water that is accepted for filing on or after the effective date of this Act.

(b) An application for a water right or an amendment to a permit, certified filing, or certificate of adjudication authorizing an interbasin transfer of water that is accepted for filing before the effective date of this Act is governed by the law in effect at the time the application is accepted for filing, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

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(B) for use in this state; and
(C) transported by using the bed and banks of any flowing natural stream located in this state;
(6) a proposed transfer of water based on a substitution or exchange of an equal or greater quantity of reclaimed or desalinated water that is first made available in the basin of origin on or after September 1, 2015, provided that the proposed transfer would not result in a net loss of water supply available for use in the basin of origin; or
(7) a proposed return of reclaimed water or return flow from the basin of discharge to the basin of origin.

No equivalent provision.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.