

By: Cyrier

H.B. No. 3161

A BILL TO BE ENTITLED

AN ACT

relating to prioritizing groundwater production.

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

SECTION 1. Section 36.122, Water Code, is amended to read as follows:

Sec. 36.122. EXPORT [~~TRANSFER~~] OF GROUNDWATER OUT OF DISTRICT. (a) Prior to exporting [~~If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of~~] groundwater outside of a district's boundaries, the exporting person must first obtain a permit from the district-[~~may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment~~].

(b) A district may promulgate rules requiring a person to obtain a permit or an amendment to a permit [~~under Section 36.113~~] from the district for the export [~~transfer~~] of groundwater out of the district to:

(1) increase, on or after March 2, 1997, the amount of groundwater to be exported [~~transferred~~] under a continuing arrangement in effect before that date; or

(2) export [~~transfer~~] groundwater out of the district on or after March 2, 1997, under a new arrangement.

(c) Except as provided in Section 36.113(e) and subsection (1), the district may not impose more restrictive permit conditions on exporters [~~transporters~~] than the district imposes on existing

1 in-district users.

2 (d) The district may impose a reasonable fee for processing  
3 an application under this section. The fee may not exceed fees that  
4 the district imposes for processing other applications under  
5 Section 36.113. An application filed to comply with this section  
6 shall be considered and processed under the same procedures as  
7 other applications for permits under Section 36.113 and shall be  
8 combined with applications filed to obtain a permit for in-district  
9 groundwater [~~water~~] use under Section 36.113 from the same  
10 applicant.

11 (e) The district may impose a reasonable fee or surcharge  
12 for an export fee using one of the following methods:

13 (1) a fee negotiated between the district and the  
14 exporter [~~transporter~~];

15 (2) a rate not to exceed the equivalent of the  
16 district's tax rate per hundred dollars of valuation for each  
17 thousand gallons of groundwater exported [~~water transferred~~] out of  
18 the district or 2.5 cents per thousand gallons of water, if the  
19 district assesses a tax rate of less than 2.5 cents per hundred  
20 dollars of valuation; or

21 (3) for a fee-based district, a 50 percent export  
22 surcharge, in addition to the district's production fee, for water  
23 groundwater exported [~~water transferred~~] out of the district.

24 (f) In reviewing a proposed export [~~transfer~~] of  
25 groundwater out of the district, the district shall consider:

26 (1) the availability of water in the district and in  
27 the proposed receiving area during the period for which the

1 groundwater [~~water~~] supply is requested;

2 (2) the projected effect of the proposed export  
3 [~~transfer~~] on the district's ability to achieve its desired future  
4 condition [~~aquifer conditions, depletion, subsidence, or effects~~  
5 ~~on existing permit holders or other groundwater users within the~~  
6 ~~district, and~~];

7 (3) factors identified in the applicable approved  
8 regional water plans that address the following:

9 (A) the availability of feasible and practicable  
10 alternative supplies in the receiving area to the groundwater  
11 proposed for export;

12 (B) proposed methods and efforts by the receiving  
13 area to avoid waste and implement water conservation and drought  
14 contingency measures;

15 (C) the projected economic impact reasonably  
16 expected to occur in each area as a result of the export;

17 (4) the information required to be submitted by the  
18 applicant;

19 (5) the ~~approved regional water plan~~ and] approved  
20 district management plan]; and

21 (6) if the export is based on a contractual sale of  
22 water, the terms of the contract, including provisions for  
23 conservation, drought response and waste prevention.

24 (g) The district may not deny a permit based on the fact that  
25 the applicant seeks to export [~~transfer~~] groundwater outside of the  
26 district but may limit a permit issued under this section if  
27 conditions in Subsection (f) warrant the limitation, subject to

1 Subsection (c).

2 (h) Export permits [~~In addition to conditions provided by~~  
3 ~~Section 36.1131, the permit~~] shall specify:

4 (1) the amount of groundwater [~~water~~] that may be  
5 exported [~~transferred~~] out of the district; and

6 (2) the period for which the groundwater [~~water~~] may  
7 be exported [~~transferred~~].

8 (i) The period specified by Subsection (h)(2) shall be:

9 (1) at least three years if construction of a  
10 conveyance system has not been initiated prior to the issuance of  
11 the permit; [~~or~~]

12 (2) at least 30 years if construction of a conveyance  
13 system has been initiated prior to the issuance of the permit; or

14 (3) if the export is based on a contractual sale of  
15 water, no greater than the term of the contract, including any  
16 extension or renewal of the contract.

17 (j) A term under Subsection (i)(1) shall automatically be  
18 extended to the terms agreed to under Subsection (i)(2) if  
19 construction of a conveyance system is begun before the expiration  
20 of the initial term.

21 (k) Notwithstanding the period specified in Subsections (i)  
22 and (j) during which groundwater [~~water~~] may be exported  
23 [~~transferred~~] under a permit, a district may periodically review  
24 the amount of groundwater [~~water~~] that may be transferred under the  
25 permit and may limit the amount if additional factors considered in  
26 Subsection (f) warrant the limitation, subject to Subsection (c).  
27 The review described by this subsection may take place not more

1 frequently than the period provided for the review or renewal of  
2 operating [~~regular~~] permits issued by the district. In its  
3 determination of whether to renew a permit issued under this  
4 section, the district shall consider relevant and current data for  
5 the conservation of groundwater resources and shall consider the  
6 permit in the same manner it would consider any other permit in the  
7 district.

8 (l) Any operating permit associated with an export permit  
9 is junior in priority to any other operating permit issued before  
10 the time the application for the export permit is accepted for  
11 filing, and any groundwater production reductions must be applied  
12 to operating permits associated with an export permit before they  
13 may be applied to any operating permit issued before the time the  
14 application for the export permit was accepted for filing [A  
15 ~~district is prohibited from using revenues obtained under~~  
16 ~~Subsection (e) to prohibit the transfer of groundwater outside of a~~  
17 ~~district. A district is not prohibited from using revenues obtained~~  
18 ~~under Subsection (e) for paying expenses related to enforcement of~~  
19 ~~this chapter or district rules].~~

20 (m) A district may not prohibit the export of groundwater if  
21 the purchase was in effect on or before June 1, 1997.

22 (n) This section applies only to an export [~~a transfer~~] of  
23 groundwater [~~water~~] that is permitted after September 1, 1997.

24 (o) A district shall adopt rules as necessary to implement  
25 this section but may not adopt rules expressly prohibiting the  
26 export of groundwater.

27 (p) Subsection (e) does not apply to a district that is

1 collecting an export fee or surcharge on March 1, 2001.

2 ~~[(q) In applying this section, a district must be fair,~~  
3 ~~impartial, and nondiscriminatory].~~

4 SECTION 2. EFFECTIVE DATE. This Act takes effect  
5 immediately if it receives a vote of two-thirds of all the members  
6 elected to each house, as provided by Section 39, Article III, Texas  
7 Constitution. If this Act does not receive the vote necessary for  
8 immediate effect, this Act takes effect on September 1, 2015.