

SENATE AMENDMENTS

2nd Printing

By: Frank, et al.

H.B. No. 3735

A BILL TO BE ENTITLED

AN ACT

relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality.

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

SECTION 1. Sections 11.002(1) and (3), Water Code, are amended to read as follows:

(1) "Commission" means the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

SECTION 2. Section 11.125(a), Water Code, is amended to read as follows:

(a) The application must be accompanied by a map or plat in the form and containing the information prescribed by the commission ~~[drawn on tracing linen on a scale not less than one inch equals 2,000 feet]~~.

SECTION 3. Section 11.128, Water Code, is amended to read as follows:

Sec. 11.128. PAYMENT OF FEE. The ~~[If the]~~ applicant ~~[is not exempted from payment of the filing fee under Section 12.112 of this code, he]~~ shall pay the filing fee prescribed by Section 5.701 ~~[5.701(c)]~~ at the time ~~[he files]~~ the application is filed. The commission may ~~[shall]~~ not record, file, or consider the

1 application until the executive director certifies to the
2 commission that the fee is paid.

3 SECTION 4. Section 11.134, Water Code, is amended by adding
4 Subsection (b-1) to read as follows:

5 (b-1) In determining whether an appropriation is
6 detrimental to the public welfare under Subsection (b)(3)(C), the
7 commission may consider only the factors that are within the
8 jurisdiction and expertise of the commission as established by this
9 chapter.

10 SECTION 5. Sections 11.125(b) and (c), Water Code, are
11 repealed.

12 SECTION 6. The changes in law made by this Act apply only to
13 an application for a new or amended water right received by the
14 Texas Commission on Environmental Quality on or after the effective
15 date of this Act. An application received before the effective date
16 of this Act is governed by the law in effect on the date the
17 application was received, and the former law is continued in effect
18 for that purpose.

19 SECTION 7. This Act takes effect September 1, 2017.

By: Perry

H.B. No. 3735

Substitute the following for H.B. No. 3735

By: [Signature]

C.S. H.B. No. 3735

ADOPTED

MAY 24 2017

[Signature]

A BILL TO BE ENTITLED

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relating to an application for a new or amended ~~water~~ ^{water right} submitted to the Texas Commission on Environmental Quality.

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SECTION 1. Sections 11.002(1) and (3), Water Code, are amended to read as follows:

(1) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

SECTION 2. Section 11.122, Water Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) A holder of a water right that begins using desalinated seawater after acquiring the water right has a right to expedited consideration of an application for an amendment to the water right if the amendment:

(1) authorizes the applicant to divert water from a diversion point that is different from or in addition to the point or points from which the applicant was authorized to divert water before the requested amendment;

(2) authorizes the applicant to divert from the different or additional diversion point an amount of water that is equal to or less than the amount of desalinated seawater used

1 by the applicant;

2 (3) authorizes the applicant to divert from all of
3 the diversion points authorized by the water right an amount of
4 water that is equal to or less than the amount of water the
5 applicant was authorized to divert under the water right before
6 the requested amendment; and

7 (4) does not authorize the water diverted from the
8 different or additional diversion point to be transferred to
9 another river basin.

10 (b-2) The executive director or the commission shall
11 prioritize the technical review of an application that is
12 subject to Subsection (b-1) over the technical review of
13 applications that are not subject to that subsection.

14 SECTION 3. Section 11.125(a), Water Code, is amended to
15 read as follows:

16 (a) The application must be accompanied by a map or plat
17 in the form and containing the information prescribed by the
18 commission [~~drawn on tracing linen on a scale not less than one~~
19 ~~inch equals 2,000 feet~~].

20 SECTION 4. Section 11.128, Water Code, is amended to read
21 as follows:

22 Sec. 11.128. PAYMENT OF FEE. The [~~If the~~] applicant [~~is~~
23 ~~not exempted from payment of the filing fee under Section 12.112~~
24 ~~of this code, he~~] shall pay the filing fee prescribed by Section
25 5.701 [~~5.701(e)~~] at the time [~~he files~~] the application is
26 filed. The commission may [~~shall~~] not record, file, or consider
27 the application until the executive director certifies to the

1 commission that the fee is paid.

2 SECTION 5. Section 11.134, Water Code, is amended by
3 adding Subsection (b-1) to read as follows:

4 (b-1) In determining whether an appropriation is
5 detrimental to the public welfare under Subsection (b)(3)(C),
6 the commission may consider only the factors that are within the
7 jurisdiction and expertise of the commission as established by
8 this chapter.

9 SECTION 6. Section 2003.047, Government Code, is amended
10 by amending Subsection (e-3) and adding Subsection (e-6) to read
11 as follows:

12 (e-3) The deadline specified by Subsection (e-2) or (e-6),
13 as applicable, may be extended:

14 (1) by agreement of the parties with the approval of
15 the administrative law judge; or

16 (2) by the administrative law judge if the judge
17 determines that failure to extend the deadline would unduly
18 deprive a party of due process or another constitutional right.

19 (e-6) For a matter pertaining to an application described
20 by Section 11.122(b-1), Water Code, the administrative law judge
21 must complete the proceeding and provide a proposal for decision
22 to the commission not later than the 270th day after the date
23 the matter was referred to the office.

24 SECTION 7. Sections 11.125(b) and (c), Water Code, are
25 repealed.

26 SECTION 8. The changes in law made by this Act apply only
27 to an application for a new or amended water right received by

1 the Texas Commission on Environmental Quality on or after the
2 effective date of this Act. An application received before the
3 effective date of this Act is governed by the law in effect on
4 the date the application was received, and the former law is
5 continued in effect for that purpose.

6 SECTION 9. This Act takes effect September 1, 2017.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3735 by Frank (Relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Texas Water Code, Section 11.122 to give existing water right holders who begin using desalinated seawater the right to expedited consideration of an amendment application by the Texas Commission on Environmental Quality (TCEQ), provided that the amendment would: authorize a different or additional diversion point or points; authorize the diversion of an amount of water from the different or additional diversion point that is equal to or less than the amount of desalinated sweater used by the applicant before the amendment; authorize the diversion from all of the diversion points authorized by the water right an amount of water equal to or less than the amount of water the applicant was authorized to divert before the amendment; and would not authorize the water diverted from the different or additional diversion point to be transferred to another river basin. The bill would require the executive director of TCEQ to prioritize the technical review of the amendment application in order to expedite consideration. The bill would amend Texas Government Code, Section 2003.047 to require the State Office of Administrative Hearings (SOAH) to complete case hearings concerning amendment applications subject to the bill within 270 days of referral.

The bill would amend Texas Water Code, Section 11.125(a) to require that an application to appropriate state water must include a map or plat in the form and containing the information prescribed by the Texas Commission on Environmental Quality (TCEQ). The bill would amend Section 11.134 to allow TCEQ to consider only the factors within the jurisdiction and expertise of the agency when determining whether an appropriation is detrimental to the public welfare. The bill would apply only to applications received after the effective date of the bill. The bill would take effect September 1, 2017.

TCEQ and SOAH estimate that implementing the provisions of the bill could be done using existing resources, and that no significant savings would be realized due to any shortening of the timeframes of contested case hearings or limitation of issues considered.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality
LBB Staff: UP, SD, MSO, SZ

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 18, 2017

TO: Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3735 by Frank (relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Texas Water Code, Section 11.122 to give existing water right holders who begin using desalinated seawater the right to expedited consideration of an amendment application by the Texas Commission on Environmental Quality (TCEQ), provided that the amendment would: authorize a different or additional diversion point or points; authorize the diversion of an amount of water from the different or additional diversion point that is equal to or less than the amount of desalinated sweater used by the applicant before the amendment; authorize the diversion from all of the diversion points authorized by the water right an amount of water equal to or less than the amount of water the applicant was authorized to divert before the amendment; and would not authorize the water diverted from the different or additional diversion point to be transferred to another river basin. The bill would require the executive director of TCEQ to prioritize the technical review of the amendment application in order to expedite consideration. The bill would amend Texas Government Code, Section 2003.047 to require the State Office of Administrative Hearings (SOAH) to complete case hearings concerning amendment applications subject to the bill within 270 days of referral.

The bill would amend Texas Water Code, Section 11.125(a) to require that an application to appropriate state water must include a map or plat in the form and containing the information prescribed by the Texas Commission on Environmental Quality (TCEQ). The bill would amend Section 11.134 to allow TCEQ to consider only the factors within the jurisdiction and expertise of the agency when determining whether an appropriation is detrimental to the public welfare. The bill would apply only to applications received after the effective date of the bill. The bill would take effect September 1, 2017.

TCEQ and SOAH estimate that implementing the provisions of the bill could be done using existing resources, and that no significant savings would be realized due to any shortening of the timeframes of contested case hearings or limitation of issues considered.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, MSO, SZ

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 16, 2017

TO: Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3735 by Frank (Relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend Texas Water Code, Section 11.125(a) to require that an application to appropriate state water must include a map or plat in the form and containing the information prescribed by the Texas Commission on Environmental Quality (TCEQ). The bill would amend Section 11.134 to allow TCEQ to consider only the factors within the jurisdiction and expertise of the agency when determining whether an appropriation is detrimental to the public welfare. The bill would apply only to applications received after the effective date of the bill. The bill would take effect September 1, 2017.

TCEQ estimates that implementing the provisions of the bill could be done using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, MSO, SZ

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 18, 2017

TO: Honorable Lyle Larson, Chair, House Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3735 by Frank (Relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Texas Water Code, Section 11.125(a) to require that an application to appropriate state water must include a map or plat in the form and containing the information prescribed by the Texas Commission on Environmental Quality (TCEQ). The bill would amend Section 11.134 to require that applications address a water supply need in a manner that is not inconsistent with the state water plan, and to allow TCEQ to consider only the factors within the jurisdiction and expertise of the agency when determining whether an appropriation is detrimental to the public welfare. The bill would apply only to applications received after the effective date of the bill. The bill would take effect September 1, 2017.

TCEQ estimates that implementing the provisions of the bill could be done using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, SZ, MSO