By:  Murr (Senate Sponsor - Flores) H.B. No. 3656

(In the Senate - Received from the House May 6, 2019; May 7, 2019, read first time and referred to Committee on Water & Rural Affairs; May 15, 2019, reported favorably by the following vote: Yeas 7, Nays 0; May 15, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Creighton       X

Alvarado        X

Johnson         X

Kolkhorst       X

Rodríguez       X

Taylor          X

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of certain permitted irrigation water rights related to a certain portion of the Edwards Aquifer.

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

SECTION 1.  Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 1.34.  TRANSFER OF RIGHTS. (a) In this section:

(1)  "Developed land" means historically irrigated land that has been  physically altered by the installation of utilities or construction of roads, parking lots, driveways, foundations, structures, buildings, stormwater collection systems, public parks, or athletic fields or by similar improvements.

(2)  "Historically irrigated land" means land irrigated during the historical period, as described by Section 1.16 of this Act, that provided the basis for the issuance of an initial regular permit for irrigation use and is identified as the place of use in the initial regular permit.

(3)  "Land no longer practicable to farm" means historically irrigated land:

(A)  that has not been irrigated for more than five years; and

(B)  for which the owner of the land has submitted to the authority documentation demonstrating that because of development on land in close proximity to the historically irrigated land, agricultural activities performed on the land, including crop dusting or other applications of pesticides, have the potential to compromise the health and safety of a farm operator or of persons occupying or residing on property in close proximity to the land.

(b)  Water withdrawn from the aquifer must be used within the boundaries of the authority.

(c) [~~(b)~~]  The authority by rule may establish a procedure by which a person who installs water conservation equipment may sell the water conserved.

(d)  Except as otherwise provided by this section, a [~~(c) A~~] permit holder may lease permitted water rights, but a holder of a permit for irrigation use may not lease more than 50 percent of the irrigation rights initially permitted. The user's remaining irrigation water rights must be used in accordance with the original permit and must pass with transfer of the irrigated land.

(e)  Subject to approval by the authority, the owner of historically irrigated land may sever all or a portion of the remaining water rights for the historically irrigated land which has become developed land in the same proportion as the proportion of developed land and undeveloped land or for which the owner of the historically irrigated land has demonstrated that all or a portion of the land is land no longer practicable to farm. Water rights used for irrigation tied to a portion of land that cannot be developed because of its topography or its location in a floodplain may be included in the proportion of land considered developed land. Water rights for use in irrigation severed under this subsection may change in purpose or place of use. Rules adopted to implement this subsection may not expand the type of land considered developed land or land considered land no longer practicable to farm. The approval of a severance under this section is subject to a contested case hearing in accordance with authority rules.

(f)  The authority may adopt rules to provide for a holder of an initial regular permit for use in irrigation to lease all or part of the water rights for use in irrigation granted in the initial permit to another person for irrigating land, including land not described in the initial regular permit, located in the authority. Rules adopted under this subsection may allow the holder of an initial regular permit to use the water rights temporarily for irrigation at a location other than the land described in the initial regular permit.

SECTION 2.  Rules adopted by the Edwards Aquifer Authority before the effective date of this Act relating to the severance of water rights from historically irrigated land and actions taken by the authority under those rules are validated and confirmed in all respects.

SECTION 3.  The change in law made by this Act to Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, applies only to a transfer, and the contracts or other transaction documents of any kind related thereto, including documents related to the extension of credit, hereinafter collectively referred to as "transfer," effective on or after the effective date of this Act. The change in law made by this Act to Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, does not affect the validity of a transfer effective before the effective date of this Act. A transfer effective before the effective date of this Act is governed by the provisions of Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and the rules of the Edwards Aquifer Authority in effect at the time the transfer became effective. Transfers effective before the effective date of this Act, that have not been rescinded, and are not subject to pending litigation are hereby conclusively validated in all respects.

SECTION 4.  This Act takes effect September 1, 2019.

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