

By: Larson

H.B. No. 726

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of groundwater.

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

SECTION 1. Section 36.113(d), Water Code, is amended to read as follows:

(d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the projected effect of the proposed production ~~[use of water]~~ unreasonably affects existing groundwater and surface water resources, ~~[or]~~ existing permit holders, or registered well owners;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's approved management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

1 (6) the applicant has agreed to avoid waste and  
2 achieve water conservation; and

3 (7) the applicant has agreed that reasonable diligence  
4 will be used to protect groundwater quality and that the applicant  
5 will follow well plugging guidelines at the time of well closure.

6 SECTION 2. Subchapter D, Chapter 36, Water Code, is amended  
7 by adding Section 36.1147 to read as follows:

8 Sec. 36.1147. LIMITATION ON APPLICABILITY OF RULES. The  
9 rules of a district in effect on the date an application for a  
10 permit or a permit amendment is submitted to the district are the  
11 only district rules that may govern the district's decision to  
12 grant or deny the application.

13 SECTION 3. The heading to Section 36.122, Water Code, is  
14 amended to read as follows:

15 Sec. 36.122. EXPORT [~~TRANSFER~~] OF GROUNDWATER OUT OF  
16 DISTRICT.

17 SECTION 4. Section 36.122, Water Code, is amended by  
18 amending Subsections (a), (b), (c), (d), and (e) and adding  
19 Subsections (f-1) and (f-2) to read as follows:

20 (a) This section applies to [~~If~~] an application for a permit  
21 or an amendment to a permit under Section 36.113 that proposes the  
22 export [~~transfer~~] of groundwater for use outside of a district's  
23 boundaries[~~, the district may also consider the provisions of this~~  
24 ~~section in determining whether to grant or deny the permit or permit~~  
25 ~~amendment]~~.

26 (b) A district may promulgate rules requiring a person to  
27 obtain an operating [~~a~~] permit or an amendment to an operating [~~a~~]

1 permit under Section 36.113 from the district to produce and export  
2 ~~[for the transfer of]~~ groundwater. A district may not require a  
3 separate permit for the export of groundwater for use outside ~~[out]~~  
4 of the district ~~[to]~~.

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

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

10 (c) Except as provided in Subsection (e) ~~[Section~~  
11 ~~36.113(e)]~~, the district may not impose more restrictive  
12 requirements or permit conditions on exporters ~~[transporters]~~ than  
13 the district imposes on ~~[existing]~~ in-district users. A district  
14 may not deny a permit because the applicant intends to export  
15 groundwater for use outside of the district.

16 (d) The district may impose a reasonable fee for processing  
17 an application under this section. The fee may not exceed fees that  
18 the district imposes for processing other applications under  
19 Section 36.113. An application filed under ~~[to comply with]~~ this  
20 section shall be considered and processed under the same procedures  
21 as other applications for permits under Section 36.113 ~~[and shall~~  
22 ~~be combined with applications filed to obtain a permit for~~  
23 ~~in-district water use under Section 36.113 from the same~~  
24 ~~applicant].~~

25 (e) The district may impose an export fee or surcharge on  
26 the holder of an operating permit for water exported for use outside  
27 of the district using one of the following methods:

1 (1) a fee negotiated between the district and the  
2 exporter;

3 (2) a rate not to exceed the equivalent of the  
4 district's tax rate per hundred dollars of valuation for each  
5 thousand gallons of water exported from the district or 2.5 cents  
6 per thousand gallons of water, if the district assesses a tax rate  
7 of less than 2.5 cents per hundred dollars of valuation; or

8 (3) for a fee-based district, a 50 percent surcharge,  
9 in addition to the district's production fee, for water exported  
10 from the district.

11 (f-1) A district shall extend a term for a permit issued  
12 under this section that existed on May 27, 2019, on or before its  
13 expiration in the manner prescribed by Section 36.1145:

14 (1) to a term that is not shorter than the term of an  
15 operating permit for the production of water to be exported that is  
16 in effect at the time of the extension; and

17 (2) for each additional term for which that operating  
18 permit for production is renewed under Section 36.1145 or remains  
19 in effect under Section 36.1146.

20 (f-2) A permit extended under Subsection (f-1) continues to  
21 be subject to conditions contained in the permit as issued before  
22 the extension.

23 SECTION 5. Section 36.414(a), Water Code, is amended to  
24 read as follows:

25 (a) Except as provided by Subsection (b), a district shall  
26 process applications from a single applicant under consolidated  
27 notice and hearing procedures on written request by the applicant

1 if the district requires a separate permit or permit amendment  
2 application for:

3 (1) drilling, equipping, operating, or completing a  
4 well or substantially altering the size of a well or well pump under  
5 Section 36.113; or

6 (2) the spacing of water wells or the production of  
7 groundwater under Section 36.116 [~~or~~

8 [~~(3) transferring groundwater out of a district under~~  
9 ~~Section 36.122]~~.

10 SECTION 6. Chapter 36, Water Code, is amended by adding  
11 Subchapter M-1 to read as follows:

12 SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

13 Sec. 36.426. PROCEDURE FOR ADOPTING MORATORIUM. A district  
14 may not adopt a moratorium on the issuance of a permit or permit  
15 amendment unless the district:

16 (1) complies with the notice and hearing procedures  
17 prescribed by Section 36.427; and

18 (2) makes written findings supporting the district's  
19 determination regarding the issuance, including the district's  
20 justification for imposing the moratorium, if applicable.

21 Sec. 36.427. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) A  
22 district may impose a moratorium on the issuance of a permit or  
23 permit amendment only after the district conducts a public hearing  
24 as provided by this section. The public hearing must provide  
25 residents of the district and other affected parties an opportunity  
26 to be heard.

27 (b) The district shall publish notice of the date, time, and

1 place of the hearing in a newspaper of general circulation in the  
2 district on or before the fourth day before the date of the hearing.

3 (c) During the period beginning on the fifth business day  
4 after the date a notice is published under Subsection (b) and ending  
5 on the date the district makes its determination under Subsection  
6 (d), a temporary moratorium is imposed. During that period, a  
7 district may stop issuing permits or permit amendments.

8 (d) Not later than the 12th day after the date of the public  
9 hearing, the district shall make a final determination on whether  
10 to impose the moratorium and shall issue written findings  
11 supporting the district's determination, including the district's  
12 justification for imposing the moratorium, if applicable.

13 Sec. 36.428. EXPIRATION OF MORATORIUM; EXTENSION  
14 PROHIBITED. A moratorium imposed under this subchapter expires on  
15 the 90th day after the date the district makes its determination  
16 under Section 36.427(d) to impose the moratorium. The district may  
17 not extend a moratorium imposed under this subchapter.

18 SECTION 7. The following provisions are repealed:

19 (1) Sections 8810.103 and 8852.104, Special District  
20 Local Laws Code; and

21 (2) Sections 36.122(f), (g), (h), (i), (j), (k), (l),  
22 (m), (n), (o), and (q), Water Code.

23 SECTION 8. A moratorium on the issuance of a permit or  
24 permit amendment that is adopted by a groundwater conservation  
25 district before September 1, 2019, may not continue in effect after  
26 November 30, 2019.

27 SECTION 9. (a) A permit to export groundwater approved by a

1 groundwater conservation district before the effective date of this  
2 Act is validated and confirmed in all respects. This subsection  
3 does not apply to a permit to export groundwater that is subject to  
4 litigation:

5 (1) that is pending on the effective date of this Act;  
6 or

7 (2) that results in final judgment that may not be  
8 appealed that the permit is invalid.

9 (b) An administratively complete permit application to  
10 export groundwater received by a groundwater conservation district  
11 before the effective date of this Act is governed by the law in  
12 effect when the application became administratively complete. The  
13 former law is continued for the purpose of processing an  
14 application received before the effective date of this Act.

15 (c) A groundwater conservation district that imposed an  
16 export fee or surcharge on the holder of a permit to export  
17 groundwater before the effective date of this Act may continue to  
18 impose the fee or surcharge on the holder for the duration of the  
19 permit and any renewal of the permit if the holder of the permit to  
20 export groundwater is not the same person who holds the associated  
21 operating permit.

22 SECTION 10. This Act takes effect September 1, 2019.