

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, Water Code, is amended by amending Subsection (d) and adding Subsection (d-1) 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 aquifer conditions, artesian pressure, depletion, or subsidence, existing groundwater and surface water resources, [or] existing permit holders, or registered wells that are exempt from the requirement to obtain a permit under this chapter or district rules;

(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

1 Priority Groundwater Management Area, the proposed use of water
2 from the well is wholly or partly to provide water to a pond, lake,
3 or reservoir to enhance the appearance of the landscape;

4 (6) the applicant has agreed to avoid waste and
5 achieve water conservation; and

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

9 (d-1) The district's consideration of the projected effect
10 of the proposed production on a registered well described by
11 Subsection (d)(2) does not affect a permit exemption for the
12 registered well under this chapter or district rules.

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

15 Sec. 36.1147. LIMITATION ON APPLICABILITY OF RULES. The
16 rules of a district in effect on the date an application for a
17 permit or a permit amendment is submitted to the district are the
18 only district rules that may govern the district's decision to
19 grant or deny the application.

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

22 Sec. 36.122. EXPORT [~~TRANSFER~~] OF GROUNDWATER OUT OF
23 DISTRICT.

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

27 (a) This section applies to [~~If~~] an application for a permit

1 or an amendment to a permit under Section 36.113 that proposes the
2 export [~~transfer~~] of groundwater for use outside of a district's
3 boundaries [~~, the district may also consider the provisions of this~~
4 ~~section in determining whether to grant or deny the permit or permit~~
5 ~~amendment~~].

6 (b) A district may promulgate rules requiring a person to
7 obtain an operating [a] permit or an amendment to an operating [a]
8 permit under Section 36.113 from the district to produce and export
9 [~~for the transfer of~~] groundwater. A district may not require a
10 separate permit for the export of groundwater for use outside [out]
11 of the district [~~to~~].

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

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

17 (c) Except as provided in Subsection (e) [~~Section~~
18 ~~36.113(e)~~], the district may not impose more restrictive
19 requirements or permit conditions on exporters [~~transporters~~] than
20 the district imposes on [~~existing~~] in-district users. A district
21 may not deny a permit because the applicant intends to export
22 groundwater for use outside of the district.

23 (d) The district may impose a reasonable fee for processing
24 an application under this section. The fee may not exceed fees that
25 the district imposes for processing other applications under
26 Section 36.113. An application filed under [~~to comply with~~] this
27 section shall be considered and processed under the same procedures

1 as other applications for permits under Section 36.113 [~~and shall~~
2 ~~be combined with applications filed to obtain a permit for~~
3 ~~in-district water use under Section 36.113 from the same~~
4 ~~applicant~~].

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

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

10 (2) a rate not to exceed the equivalent of the
11 district's tax rate per hundred dollars of valuation for each
12 thousand gallons of water exported from the district or 2.5 cents
13 per thousand gallons of water, if the district assesses a tax rate
14 of less than 2.5 cents per hundred dollars of valuation; or

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

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

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

24 (2) for each additional term for which that operating
25 permit for production is renewed under Section 36.1145 or remains
26 in effect under Section 36.1146.

27 (f-2) A permit extended under Subsection (f-1) continues to

1 be subject to conditions contained in the permit as issued before
2 the extension.

3 SECTION 5. Chapter 36, Water Code, is amended by adding
4 Subchapter M-1 to read as follows:

5 SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

6 Sec. 36.426. PROCEDURE FOR ADOPTING MORATORIUM. A district
7 may not adopt a moratorium on the issuance of a permit or permit
8 amendment unless the district:

9 (1) complies with the notice and hearing procedures
10 prescribed by Section 36.427; and

11 (2) makes written findings supporting the district's
12 determination regarding the issuance, including the district's
13 justification for imposing the moratorium, if applicable.

14 Sec. 36.427. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) A
15 district may impose a moratorium on the issuance of a permit or
16 permit amendment only after the district conducts a public hearing
17 as provided by this section. The public hearing must provide
18 residents of the district and other affected parties an opportunity
19 to be heard.

20 (b) The district shall publish notice of the date, time, and
21 place of the hearing in a newspaper of general circulation in the
22 district on or before the fourth day before the date of the hearing.

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

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

6 Sec. 36.428. EXPIRATION OF MORATORIUM; EXTENSION
7 PROHIBITED. A moratorium imposed under this subchapter expires on
8 the 90th day after the date the district makes its determination
9 under Section 36.427(d) to impose the moratorium. The district may
10 not extend a moratorium imposed under this subchapter.

11 SECTION 6. Sections 36.122(f), (g), (h), (i), (j), (k),
12 (l), (m), (n), (o), and (q), Water Code, are repealed.

13 SECTION 7. A moratorium on the issuance of a permit or
14 permit amendment that is adopted by a groundwater conservation
15 district before September 1, 2019, may not continue in effect after
16 November 30, 2019.

17 SECTION 8. (a) A permit to export groundwater approved by a
18 groundwater conservation district before the effective date of this
19 Act is validated and confirmed in all respects. This subsection
20 does not apply to a permit to export groundwater that is subject to
21 litigation:

22 (1) that is pending on the effective date of this Act;

23 or

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

26 (b) An administratively complete permit application to
27 export groundwater received by a groundwater conservation district

1 before the effective date of this Act is governed by the law in
2 effect when the application became administratively complete. The
3 former law is continued for the purpose of processing an
4 application received before the effective date of this Act.

5 (c) A groundwater conservation district that imposed an
6 export fee or surcharge on the holder of a permit to export
7 groundwater before the effective date of this Act may continue to
8 impose the fee or surcharge on the holder for the duration of the
9 permit and any renewal of the permit if the holder of the permit to
10 export groundwater is not the same person who holds the associated
11 operating permit.

12 SECTION 9. This Act takes effect September 1, 2019.