

86R4413 AAF-F

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 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;

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

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

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

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

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

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

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

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

(a) This section applies to [~~If~~] an application for a permit or an amendment to a permit under Section 36.113 that proposes the export [~~transfer~~] of groundwater for use outside of a district's boundaries [~~, 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 an operating [~~a~~] permit or an amendment to an operating [~~a~~] permit under Section 36.113 from the district to produce and export

~~[for the transfer of]~~ groundwater. A district may not require a separate permit for the export of groundwater for use outside ~~[out]~~ of the district ~~[to:]~~

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

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

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

(d) The district may impose a reasonable fee for processing an application under this section. The fee may not exceed fees that the district imposes for processing other applications under Section 36.113. An application filed under ~~[to comply with]~~ this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 ~~[and shall be combined with applications filed to obtain a permit for in-~~

~~district water use under Section 36.113 from the same applicant].~~

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

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

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

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

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

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

(2) for each additional term for which that operating

permit for production is renewed under Section 36.1145 or remains in effect under Section 36.1146.

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

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

SUBCHAPTER M-1. MORATORIUM ON ISSUING PERMIT

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

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

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

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

to be heard.

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

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

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

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

SECTION 6. Sections 36.122(f), (g), (h), (i), (j), (k), (l),

(m), (n), (o), and (q), Water Code, are repealed.

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

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

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

or

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

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

(c) A groundwater conservation district that imposed an

export fee or surcharge on the holder of a permit to export groundwater before the effective date of this Act may continue to impose the fee or surcharge on the holder for the duration of the permit and any renewal of the permit if the holder of the permit to export groundwater is not the same person who holds the associated operating permit.

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