

## **BILL ANALYSIS**

Senate Research Center

H.B. 3233  
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Natural Resources  
5/10/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties note that certain law relating to interbasin transfers was amended several years ago to include additional measures to ensure that, before the Texas Commission on Environmental Quality (TCEQ) authorizes a transfer, TCEQ thoroughly evaluates the implications of such a transfer on water rights and environmental interests in both the basin of origin and the receiving basin. The parties contend, however, that since the law was amended, fewer transfers have been approved by TCEQ.

H.B. 3233 amends current law relating to interbasin transfers of state water.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Natural Resource Conservation Commission is modified in SECTION 1 (Section 11.085, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 11.085(b), (e), (g), (l), (n), and (v), Water Code, as follows:

(b) Requires that the application for an interbasin transfer include the contract price of the water to be transferred, a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category, and the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users. Deletes existing text requiring that the application include the projected effect on user rates and fees for each class of ratepayers.

(e) Requires the Texas Natural Resource Conservation Commission (TNRCC), if the application is contested in a manner requiring an evidentiary hearing under the rules of TNRCC, in addition to the public meetings required by Subsection (d) (relating to requiring TNRCC, prior to taking action on an application for an interbasin transfer, to conduct at least one public meeting to receive comments in both basins involved in transferring and receiving the proposed water), rather than by Subsection (d) of this section, to give notice and hold an evidentiary hearing, in accordance with TNRCC rules and applicable state law. Provides that an evidentiary hearing on an application to transfer water authorized under an existing water right is limited to considering issues related to the requirements of this section.

(g) Requires the applicant to cause the notice of application for an interbasin transfer to be published in two different weeks within a 30-day period, rather than to be published once a week for two consecutive weeks, in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin.

(l) Authorizes TNRCC to grant, in whole or in part, an application for an interbasin transfer only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as determined by TNRCC based on consideration of the factors described by Subsection (k) (relating to requiring TNRCC, in addition to other requirements relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, to weigh the effects of the proposed transfer by considering certain factors, needs, mitigation, and other required information), and the applicant for the interbasin transfer has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(n) Requires that the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer, if the transfer of water is based on a contractual sale of water, contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract. Makes a nonsubstantive change.

(v) Provides that the provisions of this section, except Subsection (a) (relating to prohibiting a person from taking or diverting any state water from a river basin in this state and transferring such water to any other river basin without applying for and receiving authorization from TNRCC), do not apply to certain proposals and requests, including a proposed transfer from a proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002 (Definitions), that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin, rather than providing that the provisions of this section, except Subsection (a), do not apply to certain proposals and requests, including a proposed transfer from a proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county or municipality and the municipality's retail service area not within the basin.

SECTION 2. Makes application of the change in law made by this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2013.