

BILL ANALYSIS

Senate Research Center

C.S.S.B. 847
By: Hinojosa, Lucio
Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no existing law providing a fair mechanism for the transfer of irrigated water rights to municipal water rights in the Lower Rio Grande region. A process needs to be established for the subdivision of urban non-agricultural land on water rights in certain counties, including Willacy, Cameron, and Hidalgo counties.

C.S.S.B. 847 authorizes irrigation water rights owned by water districts, other than a drainage district, in the Lower Rio Grande region that cover counties adjacent to Mexico and the Gulf of Mexico or adjacent to such a county to be converted from irrigation water rights to municipal water rights for use by municipal suppliers in the region and details the conversion process in a uniform manner for the Lower Rio Grande region.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 1 (Sections 49.503 and 49.506, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

[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.]

SECTION 1. Amends Chapter 49, Water Code, by adding Subchapter O, as follows:

SUBCHAPTER O. EFFECT OF SUBDIVISION OF NONAGRICULTURAL LAND ON WATER RIGHTS

Sec. 49.501. DEFINITION. Defines "municipal water supplier."

Sec. 49.502. APPLICABILITY. Provides that this subchapter applies only to a water conservation or reclamation district (district), other than a drainage district, located wholly or partly in a county that borders the Gulf of Mexico and the United Mexican States or that is adjacent to such a county.

Sec. 49.503. PETITION BY MUNICIPAL WATER SUPPLIER TO CONVERT WATER USE AFTER SUBDIVISION. (a) Sets forth the land to which this section applies.

(b) Authorizes a municipal water supplier (supplier) that serves land described by Subsection (a) to petition any district in accordance with this section to convert the proportionate irrigation water right to the Rio Grande from irrigation use to municipal use with municipal priority of allocation under Texas Commission on Environmental Quality (TCEQ) rules, for the use and benefit of the supplier.

(c) Requires the supplier to file the petition with the district not later than January 1 after the expiration of two years after the date the plat or map was recorded under Subsection (a). Requires the district to consider the petition not later than January 31 of the year following the year in which the petition was filed.

(d) Requires the petition to identify by subdivision name or other sufficient description the land that the supplier supplies or has the right to supply potable water.

(e) Provides that this section applies only to one subdivision of land recorded under Subsection (a) and does not apply to any further subdivision of the same property.

Sec. 49.504. EFFECT OF MUNICIPAL WATER SUPPLIER'S FAILURE TO FILE A PETITION. (a) Authorizes the district to retain the water rights for use by the district or declare the water as excess and contract for the sale or use of the water as determined by the district if a municipal water supplier does not file a petition under Section 49.503.

(b) Requires the district, for 90 days, to make the water available under the same terms to all suppliers located outside of a county described by Section 49.502 and to advertise the offer to sell or contract for the use of the water by posting notice at certain locations before a district is authorized to contract for the sale or use of water for more than one year with such counties.

(c) Authorizes the district to contract with any other person for the sale or use of the water under the terms of the offer advertised under Subsection (b) if, after the 90th day after the last date on which the district posted notice, a supplier in a county described by Section 49.502 has not contracted with the district for the sale or use of the water.

Sec. 49.505. CALCULATION OF PROPORTIONATE WATER RIGHTS. Requires a district that receives a petition under Section 49.503 to compute the proportionate amount of water rights to the Rio Grande. Sets forth the calculation for determining the proportionate amount of water rights.

Sec. 49.506. PROVISION OR CONVERSION OF PROPORTIONATE WATER RIGHTS BY DISTRICT. (a) Requires a district, not later than the second anniversary of the date the supplier files a petition under Section 49.503, to provide the supplier with the proportionate water rights described by Section 49.505 from the district's existing water rights or, if the district that does not have sufficient existing water rights, to apply for appropriate amendments to the district's water rights under TCEQ rules to convert the proportionate water rights from irrigation use to municipal use with municipal priority of allocation and provide to the supplier the converted rights described by Section 49.505.

(b) Authorizes the district to continue to use the irrigation use water for district purposes until TCEQ approves the amendment to the district's water rights or the water is otherwise provided to the supplier.

(c) Requires a district that applies for appropriate amendments under Subsection (a)(2) to provide the supplier with an estimate of the district's reasonable costs for the administrative proceedings. Provides that the district is not required to begin the proceedings until the supplier deposits the amount of the estimate with the district. Requires the supplier to pay the district any reasonable costs that exceed the estimate. Requires the district to refund the balance of the deposit if the actual cost is less than the estimate.

Sec. 49.507. CONTRACT TO PURCHASE PROPORTIONATE WATER RIGHTS; WATER RIGHTS SALE CONTRACT. (a) Authorizes a supplier to contract to purchase the proportionate water rights described by Section 49.505.

(b) Prohibits the purchase price from exceeding 68 percent of the current market value, as determined under Section 49.509, for the year that the supplier petitions the district.

(c) Requires the contract to be in writing in a document entitled "Water Rights Sales Contract."

- (d) Requires the contract to include the purchase price for the water rights or, if the consideration for the sale is not monetary, the terms of the sale.
- (e) Requires the supplier to file the contract with the Rio Grande watermaster not later than the 10th day after the date the contract is executed.
- (f) Requires the supplier to pay the purchase price when the proportionate amount of water rights is made available to the supplier.

Sec. 49.508. CONTRACT TO USE PROPORTIONATE WATER RIGHTS; WATER SUPPLY CONTRACT. (a) Authorizes a supplier to contract to use water associated with the proportionate water rights described by Section 49.505.

- (b) Requires the contract to be for at least 40 years.
- (c) Sets forth the calculation for determining the price for the contractual right to receive the municipal use water and prohibits the price from exceeding a certain calculated amount.
- (d) Requires the parties to the contract to agree on the terms of payment of the contract price.
- (e) Requires the governing body of a district to periodically determine the flat rate charge and irrigation per acre charge described by Subsection (c).
- (f) Requires the contract be in writing in a document entitled "Water Supply Contract." Authorizes the contract to contain any terms to which the parties agree.
- (g) Requires the supplier to file the contract with the Rio Grande watermaster not later than the 10th day after the date the contract is executed.

Sec. 49.509. DUTY OF RIO GRANDE REGIONAL WATER AUTHORITY TO CALCULATE CURRENT MARKET VALUE. (a) Requires the Rio Grande Regional Water Authority (water authority) to calculate annually at its January meeting the current market value and sets forth the calculation for determining such.

- (b) Requires the water authority to use information from the water rights sales contracts reported to the Rio Grande Watermaster's Office to calculate the current market value.
- (c) Requires the water authority to make the calculation without charging any of the parties involved and using 100 percent of the value of monetary exchanges, not in-kind exchanges.

Sec. 49.510. ACCOUNTING FOR SALE OF WATER RIGHTS. Requires a district to maintain an accounting of money received from the sale of water rights under this subchapter.

Sec. 49.511. CAPITAL IMPROVEMENTS. Requires a district to designate at least 75 percent of the proceeds from the sale of water rights for capital improvements in the district.

Sec. 49.512. MAP OF SERVICE AREA. (a) Defines "outer boundaries of a district."

- (b) Requires each supplier that has a certificate of convenience and necessity service area in the outer boundaries of a district to file a map of the service area with the district.

(c) Requires the supplier to update the map and forward the map to the district when changes are made.

(d) Requires a district to periodically provide to a supplier that serves territory in the district a copy of the district's map showing the outer boundaries of the district.

(e) Authorizes a district to request from a supplier a map of the supplier's service area and authorizes a supplier to request from the district a map of the district's outer boundaries. Requires the district and supplier to provide the map free of charge to each other at least one time each year upon request. Authorizes the district or supplier to charge a reasonable fee for the map if the district or supplier receives more than one request a year for a map.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.