

## **BILL ANALYSIS**

Senate Research Center

H.B. 3656  
By: Murr (Flores)  
Water & Rural Affairs  
5/11/2019  
Engrossed

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

Interested parties contend that there has been confusion as to the scope of groundwater withdrawal rights where water originally allocated for irrigation use is now designed to be put to a new use. Currently, there is uncertainty as to how water may be used when its original purpose has shifted due to development or its topography, or location in a floodplain that would cause the land to no longer be used as irrigable farmland.

H.B. 3656 codifies an agreed-to definition of "developed land," and provides limitations for base irrigation groundwater (BIG) conversion processes. This bill also validates past Edwards Aquifer Authority rules and actions regarding changes in purpose or place-of-use associated with BIG, in order to protect property owners and to avoid future confusion within the established Edwards Aquifer water market.

H.B. 3656 amends current law relating to the transfer of certain permitted irrigation water rights related to a certain portion of the Edwards Aquifer.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Edwards Aquifer Authority in SECTION 1 (Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

Sec. 1.34. TRANSFER OF RIGHTS. (a) Redesignates existing Subsections (b) and (c) as Subsections (c) and (d). Defines "developed land," "historically irrigated land," and "land no longer practicable to farm" for purposes of this section.

(b) Creates this subsection from existing text.

(c) Redesignates Subsection (b) as this subsection.

(d) Creates an exception under this section authorizing a permit holder to lease permitted water rights, but providing that a holder of a permit for irrigation use is prohibited from leasing more than 50 percent of the irrigation rights initially permitted.

(e) Provides that, subject to approval by the Edwards Aquifer Authority (authority), the owner of historically irrigated land may sever all or a portion of the remaining water rights for the historically irrigated land which has become developed land in the same proportion as the proportion of developed land and undeveloped land or for which the owner of the historically irrigated land has demonstrated that all or a portion of the land is land no longer practicable to farm. Provides that water rights used for irrigation tied to a portion of land that cannot be developed because of its topography or its location in a floodplain may be included in the proportion of land considered developed land. Provides that water

rights for use in irrigation severed under this subsection may change in purpose or place of use. Prohibits rules adopted to implement this subsection from expanding the type of land considered developed land or land considered land no longer practicable to farm. Provides that the approval of a severance under this section is subject to a contested case hearing in accordance with authority rules.

(f) Authorizes the authority to adopt rules to provide for a holder of an initial regular permit for use in irrigation to lease all or part of the water rights for use in irrigation granted in the initial permit to another person for irrigating land, including land not described in the initial regular permit, located in the authority. Authorizes rules adopted under this subsection to allow the holder of an initial regular permit to use the water rights temporarily for irrigation at a location other than the land described in the initial regular permit.

SECTION 2. Provides that rules adopted by the authority before the effective date of this Act relating to the severance of water rights from historically irrigated land and actions taken by the authority under those rules are validated and confirmed in all respects.

SECTION 3. Provides that the change in law made by this Act to Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, applies only to a transfer, and the contracts or other transaction documents of any kind related thereto, including documents related to the extension of credit, hereinafter collectively referred to as "transfer," effective on or after the effective date of this Act. Provides that the change in law made by this Act to Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, does not affect the validity of a transfer effective before the effective date of this Act. Provides that a transfer effective before the effective date of this Act is governed by the provisions of Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and the rules of the authority in effect at the time the transfer became effective. Provides that transfers effective before the effective date of this Act, that have not been rescinded, and are not subject to pending litigation are hereby conclusively validated in all respects.

SECTION 4. Effective date: September 1, 2019.