

## BILL ANALYSIS

Senate Research Center

S.B. 1703

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Natural Resources

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As Filed

### **DIGEST AND PURPOSE**

The Edwards Aquifer Authority (authority) was created to preserve, protect, and manage the Edwards Aquifer (aquifer). The aquifer provides water for municipal, industrial, and irrigation use in central and south Texas. As proposed, S.B. 1703 authorizes the authority to interrupt regular permit withdrawals if the level of the aquifer is below a certain level; allows the authority to contract with another person for the authority to perform certain acts; prohibits the authority from using management or special fees for purchasing or operating certain facilities; authorizes the authority to impose aquifer management fees on aquifer users; limits the transfer of the place and purpose of use for one-half of each irrigation permit; and prohibits exporting water outside the boundaries of the authority.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, by adding Subsection (28), to define “water supply facility.”

SECTION 2. Amends Section 1.11(f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, to authorize the Edwards Aquifer Authority (authority) to contract with a person who uses water from the aquifer for the authority or that person to own, finance, design, construct, operate, or maintain water supply facilities. Deletes text prohibiting certain fees and defining “water supply facility.”

SECTION 3. Amends Sections 1.14(b)-(h), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Prohibits the amount of permitted withdrawals from the aquifer, except as provided by Subsections (c), (e), and (g) of this section and Section 1.26 of this article, beginning January 1, 2005, from exceeding 550,000, rather than 400,000, acre-feet of water for each calendar year. Deletes original Subsection (c), which prohibits the permitted withdrawals from exceeding 400,00 acre-feet of water for each calendar year.

(c) Requires, rather than authorizes, the authority, in consultation with appropriate state and federal agencies, if through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, programs, practices, procedures, or methods, of any kind, the authority determines that the amount of water available for permitting under Subsection (b) of this section should be changed to more effectively accomplish the purposes of this article, to review and, by order, to change the amount of water available for permitting under Subsection (b) of this section. Requires the authority, beginning September 1, 2006, and every four years thereafter, to determine whether the amount of water available for permitting under Subsection (b) of this section

should be changed pursuant to this subsection. Requires the authority, if the requirements of Subsection (a) have not all been met, to by March 1 of the succeeding year implement new requirements to assure compliance with Subsection (a). Deletes text regarding the maximum amount of withdrawals provided by this section and sets a different maximum amount of withdrawals.

(d) Prohibits the authority, unless made pursuant to the transfer of a regular, term, emergency, monitoring, or recharge recovery permit, the transfer of interim authorization, or an exempt wells, from allowing withdrawals from the aquifer through wells drilled after June 1, 1993. Deletes text regarding additional water and an interruptible basis.

(e) Requires, rather than authorizes, the authority, if the level of the aquifer is equal to or greater than 650 feet above mean sea level as measured at Well J-17, to authorize withdrawals pursuant to initial regular permits from the San Antonio pool, on an uninterruptible basis. Requires, rather than authorizes, the authority, if the level of the aquifer is equal to or greater than 845 feet at Well J-27, to authorize withdrawals pursuant to initial regular permits from the Uvalde pool, on an uninterruptible basis. Authorizes the authority, if the level of the aquifer is less than 650 feet above mean sea level as measured at Well J-17, to, pursuant to Section 1.26 of this article, interrupt withdrawals pursuant to initial regular permits from the San Antonio pool. Authorizes the authority, if the level of the aquifer is less than 845 feet at Well J-27, to, pursuant to Section 1.26 of this article, interrupt withdrawals pursuant to initial regular permits from the Uvalde pool. Requires the authority, pursuant to Section 1.26 of this article, to require interruptions in withdrawals, or require implementation of programs, practices, procedures, or methods, pursuant to Subsection (g) of this section, to protect, rather than ensure, springflows at the Comal Springs and San Marcos Springs during demand management and critical period management, rather than drought, conditions.

(f) Created from existing text.

(g) Requires the authority, by June 1, 2005, rather than June 1, 1994, to implement and enforce water management programs, practices, procedures, or, rather than and, methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law. Authorizes the authority from time to time as appropriate to revise the programs, practices, procedures, or, rather than and, methods. Requires the authority, to meet this requirement, to require certain acts.

#### SECTION 4. Amends Sections 1.16(e)-(h), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(e) Requires the board, to the extent water is available for permitting, to issue an existing user a regular permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. Requires the authority, if an existing user, rather than water user, does not have historical use for a full year to set the user's maximum beneficial use of water without waste as the amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. Deletes text regarding the issuance of a permit.

(f) Requires the authority, if the total amount of water determined to have been beneficially used without waste under Subsection (e) of this section exceeds the amount of water available for permitting under Subsection (b) of Section 1.14 of this article, to proportionately adjust the amount of water authorized for withdrawal under regular permits to meet the amount available for permitting. Authorizes no existing user, except as provided by Subsection (b) of Section 1.21 of this article, to be proportionately adjusted below certain amounts. Makes conforming changes.

(g) Requires the authority to restore the amount to be equal to the minimum regular permit amount, except as provided by Subsection (b) of Section 1.21 of this article, in the

event a proportional adjustment results in an amount of water authorized for withdrawal under a regular permit that is less than an applicable minimum regular permit amount specified in Subsection (f) of this section.

(h) Created from existing text.

(i) Created from existing text.

(j) Created from existing text.

**SECTION 5.** Amends Section 1.21, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

**Sec. 1.21 New heading: RETIREMENT OF PERMITS OR APPLICATIONS.** (a) Requires the authority to prepare and implement a plan for reducing, by January 1, 2005, rather than January 1, 2008, the maximum annual volume of water authorized to be withdrawn from the aquifer under regular permits to 550,000, rather than 400,000, acre-feet a year or the adjusted amount determined under Subsection (c), rather than (d), of Section 1.14 of this article. Requires the plan to be enforceable and to include measures to retire all or part of regular permits or applications for initial regular permits or other water management measures designed to achieve the required reductions. Deletes original Subsection (b), which provides for certain requirements.

(b) Requires the authority, if on or after January 1, 2005, rather than 2008, the overall volume of water authorized to be withdrawn from the aquifer under regular permits is greater than the adjusted amount determined under Subsection (c) of Section 1.14 of this article, to immediately proportionately adjust the maximum authorized withdrawal amount of each regular permit as determined under Subsection (e) of Section 1.16 of this article as is necessary to reduce aggregate, rather than overall, maximum authorized withdrawals under regular permits to 550,000, rather than 400,000, acre-feet a year or the adjusted amount, as appropriate. Makes conforming changes. Requires the authority, in the event a proportional adjustment results in an amount of water authorized for withdrawal under a regular permit that is less than an applicable minimum regular permit amount specified in Subsection (f) of Section 1.16 of this article, to, in accordance with Section 1.29 of this article, compensate the permittee for the amount of the authorized withdrawal below the minimum regular permit amount that was proportionately adjusted in order to meet 550,000 acre-feet a year, or as that amount may be adjusted under Subsection (c) of Section 1.14 of this article.

**SECTION 6.** Amends Section 1.26, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

**Sec. 1.26 New heading: DEMAND MANAGEMENT AND CRITICAL PERIOD MANAGEMENT PLAN.** (a) Requires the authority to prepare and coordinate implementation of a plan for demand management and critical period management. Requires the mechanisms to perform certain acts. Deletes reference to on or before September 1, 1995.

(b) Requires the board to adopt measures to ensure that authorized withdrawals from non-exempt wells are reduced to 350,000 acre-feet, annualized, if certain conditions are met.

(c) Requires the demand management and critical period plan required to be prepared and implemented by this section to be adopted by the board no later than September 1, 2004. Requires the board, in the event this deadline is not met, irrespective of whether a demand management or critical period is in effect, to issue an order temporarily interrupting 20 percent of the amount of water authorized for withdrawal under each regular permit until the board has adopted

the plan.

SECTION 7. Amends Sections 1.29(a) and (c)-(i), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, as follows:

- (a) Requires the cost of permit or application retirements under Section 1.21 of this article or the adjusted amount under Subsection (c) of Section 1.14 of this article for the period ending December 31, 2004, to be borne solely by users of the aquifer and to be paid for by aquifer management fees assessed under Subsections (b) and (c) of this section. Deletes text regarding reduction withdrawals and permit retirements.
- (b) Requires the authority to assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Authorizes aquifer management fees to additionally be used for the repayment of revenue bonds issued by the authority pursuant to Section 1.28 of this article. Authorizes each water district governed by Chapter 52, Water Code, that is within the authority's boundaries to contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. Requires the contract to provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. Prohibits the authority from collecting a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority. Deletes text from the original Subsections (c) and (d) that requires the authority to assess an equitable special fee and requires the commission to assess equitable special fees.
- (c) Created from existing text.
- (d) Created from existing text.
- (e) Created from existing text. Deletes the original Subsection (h), which prohibits the financing of a surface water supply reservoir project.
- (f) Requires the authority to provide money as necessary, but not to exceed five percent of the money collected under Subsection (b), rather than (d), of this section, to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

SECTION 8. Amends Sections 1.34(a), (b) and (c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

- (a) Provides that water withdrawn from the aquifer may only, rather than must, be used within certain boundaries.
- (b) Requires, rather than authorizes, the authority by rule to establish a procedure by which a person who has achieved water conservation may transfer, rather than sell, the conserved water.
- (c) Authorizes a permit holder to transfer a regular permit, rather than lease permitted water rights. Authorizes up to 50 percent of a regular permit originally issued for irrigation use to be transferred without restrictions as to the place or purpose of use, while the remaining 50 percent may only be transferred to a certain place. Deletes text that prohibits a holder of a permit from leasing more than 50 percent of the irrigation rights.

SECTION 9. Amends Subsection (a), Section 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to authorize the authority to own, finance, design, construct, operate, and maintain recharge dams, and associated facilities, structures, or works, in the contributing or recharge area of the aquifer if the recharge is made to increase the yield of the aquifer and the recharge project does not impair senior water rights or vested riparian rights. Makes a

conforming change.

SECTION 10. EFFECTIVE DATE. Effective date: upon passage or September 1, 2003.