

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1341
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Edwards Aquifer Authority (authority) has been provided with the powers and duties to manage and protect the Edwards Aquifer (aquifer) and the authority to make decisions regarding groundwater withdrawal limits, permits, fees, recharge projects, demand management and transfers, the authority's board of directors, and revenue bonding authority. Current law allows the authority to issue permits for 450,000 acre-feet a year until January 2008, after which time the permit withdrawal amount must be reduced to 400,000 acre-feet a year. However, this requirement will not be met because the authority is also required to provide withdrawal permits to applicants that demonstrate, by convincing evidence, that they beneficially used groundwater between 1972 and 1993, providing most applicants with a guaranteed minimum permit.

Certain restrictions are in place to protect flows at the Comal Springs and the San Marcos Springs and to protect downstream surface rights during low aquifer conditions. The authority may only change the cap on withdrawals if it completes a number of scientific studies and consults with state and federal agencies. Also, the authority may interrupt the regular permit withdrawals if the level of the aquifer is below 650 feet above mean sea level at the J-17 well for the San Antonio Pool, and for the Uvalde pool, when the J-27 well drops below 845 feet above mean sea level.

Currently, there is no scientific evidence available on which the authority can base decisions regarding caps for groundwater withdrawal permits, or interruptions of regular permit withdrawals to protect the spring flows at the Comal and San Marcos Springs and downstream surface water rights during low aquifer conditions.

C.S.S.B. 1341 establishes a stakeholder process to obtain a consensus to ensure that the flows of the Comal Springs and the San Marcos Springs are protected during droughts, and to encourage conservation and the development of new supplies of water to meet the increasing demands of the region's rapidly growing population. C.S.S.B. 1341 prohibits the amount of permitted withdrawals from the aquifer from being less than 572,000 acre-feet; or exceeding the sum of all regular permits issued or for which an application was filed and issuance was pending action by the authority as of January 1, 2005, except if certain conditions exist.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Edwards Aquifer Authority in SECTION 6 (Section 1.26, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.11(f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(f) Authorizes the Edwards Aquifer Authority (authority) to own, finance, design, construct, operate, or maintain recharge facilities or contract with a person who uses water from the Edwards Aquifer (aquifer) for the authority or that person to own, finance, design, construct, operate, or maintain recharge facilities. Deletes existing text authorizing the authority to contract with a person who uses water from the aquifer for certain purposes. Deletes existing text as it relates to management fees or special fees. Defines "recharge facility." Deletes existing text defining "water supply facility."

SECTION 2. Amends Sections 1.14(a), (c), (e), (f), and (h), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Requires authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act to be limited in accordance with this section to recognize the extent of the hydro-geologic connection and interaction between surface water and groundwater. Makes conforming changes.

(c) Prohibits the amount of permitted withdrawals from the aquifer, for the period beginning January 1, 2008, from being less than 572,000 acre-feet; or exceeding the sum of all regular permits issued or for which an application was filed and issuance was pending action by the authority as of January 1, 2005, except as provided by Subsection (f) and (h). Deletes existing text prohibiting the amount of permitted withdrawals from the aquifer from exceeding 400,000 acre-feet of water for each calendar year.

(e) Prohibits the authority from allowing withdrawals from the aquifer through wells drilled after June 1, 1993, except for replacement, test, or exempt wells or to the extent that the authority approves an amendment to an initial regular permit to authorize a change in the point of withdrawal under that permit, rather than except for additional water as provided by Subsection (d) and then on an interruptible basis.

(f) Authorizes the authority, if the level of the aquifer is equal to or greater than 660 feet, rather 650 feet, above mean sea level as measured at Well J-17, to authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. Deletes existing text requiring the authority to limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

(h) Requires the authority, to accomplish the purposes of this article, to implement and enforce, through a program, water management practices, procedures 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 and to achieve other purposes provided by Subsection (a) of this section and Section 1.26 of this Article. Deletes existing text requiring the authority to accomplish the purposes of this article by June 1, 1994. Requires the authority to require phased adjustments to, rather than reduction in, the amount of water that may be used or withdrawn by existing users or categories of other users, including adjustments in accordance with the authority's critical period management plan (plan) established under Section 1.26 of this article.

SECTION 3. Amends Section 1.16(g), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to require the authority to issue an initial regular permit without a term, and an initial permit remains in effect until the permit is abandoned or cancelled, rather than abandoned, cancelled, or retired.

SECTION 4. Amends Section 1.19(b), Chapter 626, Act of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Requires that withdrawal of water under a term permit be consistent with the authority's plan established under Section 1.26 of this article. Prohibits a holder of a term permit from withdrawing water from the San Antonio Pool of the aquifer unless the level of the aquifer is higher than 675 feet, rather than 665 feet, above sea level, as measured at Well J-17; the flow at Comal Springs as determined by Section 1.26(c) of this article is greater than 350 cubic feet per second; and the flow at San Marcos Springs as determined by Section 1.26(c) of this article is greater than 200 cubic feet per second.

SECTION 5. Amends Section 1.22(a), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Deletes existing text authorizing the authority to acquire permitted rights to use water from the aquifer for the purpose of holding those rights for retirement as a means of

complying with pumping reduction requirements under this article; or retiring those right, including those rights already permitted.

SECTION 6. Amends Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Section 1.26 and adding Section 1.26A, as follows:

Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) Requires the authority, after review of the recommendations received in the program document, as prescribed by Section 1.26A of this article, by rule to adopt a critical period management plan (plan) in a manner consistent with Sections 1.14(a), (f), and (h) of this article. Deletes exiting text requiring the authority to prepare and coordinate implementation of a plan for critical period management by a certain period. Requires the authority, on adoption of the plan, to provide a written report to certain government officials describing the actions taken in response to each recommendation and, for each recommendation not implemented, the reason it was not implemented. Requires the plan, rather than mechanisms, to include certain information. Sets forth the information to be included in the plan.

(b) Defines "MSL" and "CFS." Requires the authority, not later than January 1, 2008, by rule to adopt and enforce a plan with withdrawal reduction percentages in the amounts indicated in Tables 1 (Critical Period Withdrawal Reduction Stages for the Sana Antonio Pool) and 2 (Critical Period Withdrawal Reduction Stages for the Uvalde Pool), whether according to the index well levels or the Comal or San Marcos Springs flow as applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 35 percent under Table 2. Provides Tables 1 and 2.

(c) Provides that a change to a critical period stage with higher withdrawal reduction percentages is triggered if the 10-day average of daily springflows at the Comal Springs or the San Marcos Springs or the 10-day average of daily aquifer levels at the J-17 Index Well drops below the lowest number of any of the trigger levels indicated in Table 1. Provides that a change to a critical stage with lower withdrawal reduction percentages is triggered only when the 10-day average of daily springflows at the Comal Springs and the San Marcos Springs and the 10-day average of daily aquifer levels at the J-17 Index Well are above the same stage trigger level. Authorizes the authority to adjust the withdrawal percentages for Stage IV in Tables 1 and 2 if necessary in order to comply with Subsection (d) or (e) of this section.

(d) Prohibits the authority from allowing the volume of permitted withdrawals to be less than an annualized rate of 340,000 acre-feet, under critical Stage IV, beginning September 1, 2007.

(e) Prohibits the authority from allowing the volume of permitted withdrawals to be less than an annualized rate of 320,000 acre-feet, under critical period Stage IV unless, after January 1, 2013, after review and consideration by the authority of the recommendations provided under Section 1.26A of this article, and determination that a different volume of withdrawals is consistent with Sections 1.14(a), (f), and (h) of this article in maintaining protection for listed, protected and endangered species associated with the aquifer to the extent required by federal law.

(f) Authorizes the authority, notwithstanding Subsections (d) and (e) of this section, to require further withdrawal reductions before reviewing and considering the recommendations provided under Section 1.26A of this article if the discharge of Comal Springs or San Marcos Springs declines an additional 15 percent after Stage IV withdrawal reductions are imposed under Subsection (b) of this section. Provides that this subsection expires on the date that plan rules adopted by the authority based on the recommendations provided under Section 1.26A of this article take effect.

Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT THROUGH RECOVERY

IMPLEMENTATION PROGRAM. (a) Requires the authority, with the assistance of Texas A&M University, to develop a recovery implementation program through a facilitated, consensus-based process that involves input from the United States Fish and Wildlife Service, other appropriate federal agencies, and all interested stakeholders, including those listed under Subsection (e)(1) of this section. Requires the implementation program to be developed for the species that are listed as threatened or endangered species under federal law and are associated with the aquifer.

(b) Requires the authority to use its best efforts to enter into a memorandum of agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality (TCEQ), the Texas Parks and Wildlife Department (TPWD), the Texas Department of Agriculture (TDA), and the Texas Water Development Board (board), and other stake holders in order to develop, not later than December 31, 2007, a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit as outline in Subsection (d) of this section.

(c) Requires the authority to use its best efforts to enter into an implementing agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, TCEQ, TPWD, TDA, the board, and other stakeholders to develop a program document as outline in Subsection (d) not later than December 31, 2009.

(d) Requires the authority, TCEQ, TPWD, TDA, the board, and other stakeholders to jointly prepare a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit with the United States secretary of the interior, through the United States Fish and Wildlife Service and other appropriate federal agencies, under Section 4 or Section 6, Endangered Species Act of 1973 (16 U.S.C. Section 1533 or 1535), as applicable, based on the program developed under Subsection (a) of this section. Sets forth the requirements for the program document.

(e) Requires Texas A&M University (TAMU) to assist in the creation of a steering committee (committee) to oversee and assist in the development of the cooperative agreement under Subsection (c) of this section. Requires the committee to be created not later than September 30, 2007. Sets forth the required composition of the committee.

(f) Requires the committee to work with TAMU to establish a regular meeting schedule and publish that schedule to encourage public participation; and not later than October 31, 2007, hire a program director to be housed at TAMU.

(g) Authorizes TAMU to accept outside funding to pay the salary and expenses of the program director hired under this section and any expenses associated with the university's participation in the creation of the committee or subcommittees established by the committee.

(h) Requires that where reasonably practicable or as required by law, any meeting of the committee, the Edwards Aquifer area expert science subcommittee, or another subcommittee established by the committee be open to the public.

(i) Requires the committee appointed under this section to appoint an Edwards Aquifer area expert science subcommittee (subcommittee) not later than December 31, 2007. Requires the subcommittee be composed of an odd number of not fewer than seven or more than 15 members who have technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limits. Requires the Bureau of Economic Geology at The University of Texas at Austin and the River Systems Institute at Texas State University to assist the subcommittee. Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the subcommittee.

(j) Requires the subcommittee to analyze, among other things, species requirements in relation to spring discharge rates and aquifer levels as a function of recharge and withdrawal levels. Requires the subcommittee, through a collaborative process designed to achieve consensus, to develop recommendations for withdrawal reduction levels and stages for critical period management based on certain criteria, including, if appropriate, establishing separate and possibly different withdrawal reduction levels and stages for critical period management for different pools of the aquifer needed to maintain target spring discharge and aquifer levels. Requires the subcommittee to submit its recommendations to the committee and all other stakeholders involved in the recovery implementation program under this section.

(k) Requires the initial recommendations of the subcommittee to be completed and submitted to the committee and other stakeholders not later than December 31, 2008, and requires the recommendation to include certain evaluations.

(l) Requires the subcommittee, in developing its recommendations, to consider all reasonably available science, including any Edwards Aquifer-specific studies, and base its recommendations solely on the best science available, and operate on a consensus basis to the maximum extent possible.

(m) Requires the committee, after development of the cooperative agreement, with the assistance of the subcommittee and with input from the other recovery implementation program stakeholders, to prepare and submit recommendations to the authority. Require that certain recommendations be submitted to the authority.

(n) Defines "recharge facility." Requires the committee to establish a recharge facility feasibility subcommittee (feasibility committee) to assess the need for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities; formulate plans to allow the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities; maximize available federal funding for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities; and evaluate the financing of recharge facilities, including the use of management fees or special fees to be used for purchasing or operating facilities.

(o) Authorizes the committee to establish other subcommittees as necessary, including a hydrology subcommittee, a community outreach and education subcommittee, and a water supply subcommittee.

(p) Authorizes the committee described by Subsection (d), on execution of the memorandum of agreement described by Subsection (b) of this section, to vote to add members to the committee, change the makeup of the committee, or dissolve the committee, by majority vote of its members. Requires the program director hired under Subsection (f) to assume the duties of the committee if it is dissolved.

(q) Requires the authority to provide an annual report to certain elected government officials not later than January 1 of each year that details certain information.

SECTION 7. Amends Sections 1.29(b), (h), and (i), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Authorizes each water district governed by Chapter 36, rather than Chapter 52, Water Code, that is within the authority's boundaries to contract with the authority to pay certain expenses.

(h) Prohibits fees assessed by the authority from being used to fund the cost of reducing withdrawals or retiring permits or of judgments or claims related to withdrawals or permit retirements. Deletes existing text prohibiting certain special fees to be used to finance a surface water supply reservoir project.

(i) Requires the authority and other stakeholders, including state agencies, listed under Section 1.26A of this Article to provide money as necessary to finance the activities of the committee and any subcommittees appointed by the committee and the program director of the recovery implementation program under Section 1.26A of this Article. Requires the authority to provide, as necessary, up to \$75,000 annually, adjusted for changes in the consumer price index, rather than money as necessary, but not to exceed five percent of the money collected under Subsection (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 Section 1.45(a), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Authorizes 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, the recharge project does not impair senior water rights or vested riparian rights, and the recharge project is not designed to recirculate water at Comal or San Marcos Springs.

SECTION 9. Repealer: Sections 1.14(b) and (d), 1.21, and 1.29(a), (c), and (d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 10. (a) Prohibits a suit from being instituted in any court contesting the validity or implementation of this Act, or the groundwater withdrawal amounts recognized in Section 4 of this Act prior to January 1, 2012.

(b) Requires, if applicable, a party to be automatically removed from the committee established under Section 1.26A, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as added by this Act.

(c) Prohibits a suit against the authority from being instituted or maintained by a person who owns, holds, or uses a surface water rights and claims injury or potential injury to that right for any reason, including any actions taken by the authority to implement or enforce Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: upon passage or September 1, 2007.