

## **BILL ANALYSIS**

Senate Research Center  
80R1582 SGA-D

S.B. 659  
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Natural Resources  
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As Filed

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

The Edwards Aquifer Authority (authority) was created to provide for the effective control of the aquifer and to conserve it as a resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of Texas. The aquifer provides water for municipal, industrial, and irrigation use in Central and South Texas.

The authority is charged with limiting annual groundwater withdrawal permits to a certain amount for a certain time and to issue withdrawal permits to applicants that demonstrate, by convincing evidence, that they beneficially used groundwater between 1972 and 1993. When the groundwater withdrawal permitting process was completed in 2005, the authority determined that the total amount of approved permits mandated by the legislation creating the authority was greater than the mandate stipulated. Because the authority has no discretion in the minimum amount of the final permits issued based on the required minimums and cannot change the caps until it completes scientific studies and consults with governmental agencies, the authority cannot comply with both the mandated caps and permits.

As proposed, S.B. 659 removes certain caps, establishes a critical period management table plan, and allows the authority to own and operate recharge facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Edwards Aquifer Authority in SECTION 5 (Section 1.26, Article 1, 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 aquifer for the authority or that person to own, finance, design, construct, operate, or maintain recharge facilities. Deletes existing text prohibiting management fees or special fees from being used for purchasing or operating these facilities. Defines "water supply facility" rather than "recharge facility." Makes nonsubstantive changes.

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 to be limited in accordance with this section to recognize the hydro-geologic connection and interaction between surface water and groundwater. Makes conforming changes.

(c) Prohibits the amount of permitted withdrawals from the aquifer from 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 Subsections (f) and (h) of this section for the period beginning January 1, 2008. Deletes existing text

providing exceptions in Subsection (d) and Section 1.26 of this article. Deletes existing text prohibiting the withdrawal amount to exceed 4000,000 acre-feet of water for each calendar year.

(e) Deletes existing text prohibiting withdrawals from the aquifer except additional water as provided by Subsection (d) and then on an interruptible basis.

(f) Increases to 665 feet above mean sea level, from 650 feet, the required level of the aquifer at which the authority may authorize certain withdrawals. Requires the authority to limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions in accordance with Section 1.26 of this article.

(h) Requires the authority, through a program, to implement and enforce 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 to accomplish the purposes of this article. Deletes June 1, 1994, as the date by which the authority must take certain actions to accomplish the purposes of this article. Requires the authority to require certain measures to meet this requirement.

SECTION 3. Amends Section 1.15(c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(c) Prohibits regular permits from being issued on an interruptible basis, and the total withdrawals authorized by all regular permits issued by the authority from exceeding the limitations provided by Section 1.14 of this article except as provided by Sections 1.14(f) and 1.26 of this article.

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

(b) Requires withdrawal of water under a term permit to be consistent with the authority's critical period management plan established under Section 1.26 of this article. Prohibits a holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless the flow at Comal Springs as determined by Section 1.26(c) of this article is greater than 350 cfs. Increases the minimum depth of the aquifer to 675 feet, from 665 feet, above sea level for withdrawal.

SECTION 5. 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 to prepare and coordinate implementation of a critical period management plan in a manner consistent with Section 1.14(a) of this article after review of the recommendations received, as prescribed by Section 1.26A of this article. Deletes existing text requiring a completion date on or before September 1, 1995.

(b) Defines "MSL" and "CFS." Requires the authority to, by rule, adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts indicated in certain tables not later than January 1, 2008.

(c) Requires the authority to continuously track the average daily discharge rate measured over a certain amount of time. Requires the authority shall track the average daily discharge rate measured for a certain amount of time.

(d) Requires the authority to reduce the volume of permitted withdrawals to an annualized rate of 340,000 acre feet beginning January 1, 2008, under critical period stage IV. Requires the authority to reduce the volume of permitted

withdrawals to a 320,000 acre-feet, under critical period Stage IV after January 1, 2012.

(e) Requires the authority, after review and consideration of recommendations received by the authority under Section 1.26A of this article, to adjust the volume of permitted withdrawals to an appropriate annualized rate under critical period Stage IV that is consistent with maintaining the protections contained in Section 1.14(a) of this article after January 1, 2020.

(f) Authorizes the authority by rule to, from time to time, amend the withdrawal reduction criteria of the authority's critical period management plan as set forth in Subsections (b), (c), and (e) of this section, after review and consideration of the recommendations from the Environmental Flows Commission (EFC), or the Texas Water Development Board (TWDB) if the EFC is not established, the Edwards Aquifer area expert science team (expert science team), and the Edwards Aquifer Area Stakeholders Committee (EAASC), as prescribed by Section 1.26A of this article. Requires the amended plan to be consistent with Section 1.14(a) of this article.

**Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT.** (a) Requires the EFC, as established under Subchapter B, Chapter 11, Water Code, or the TWDB if the EFC is not established, to appoint a 15-member EAASC not later than January 1, 2008. Sets forth the composition of the committee.

(b) Requires the EAASC to appoint a seven-member Edwards Aquifer area expert science team not later than April 30, 2008. Sets forth the composition of the expert science team. Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of the expert science team. Requires a member of the Texas Environmental Flows Science Advisory Committee, as established under Subchapter B, Chapter 11, Water Code, or a designee of the TWDB if the Texas Environmental Flows Science Advisory Committee (advisory committee) is not established, to serve as liaison to the area expert science team.

(c) Requires the Edwards Aquifer area expert science team to develop an analysis of spring discharge rates and aquifer levels as a function of withdrawal levels. Requires the expert science team, through a collaborative process designed to achieve consensus, to create recommendations for withdrawal reduction levels and stages for critical period management including, if appropriate, establishing separate and different withdrawal reduction levels and stages for critical period management rules for different pools of the aquifer and submit them to the EAASC, the EFC or the TWDB if the EFC is not established, and the authority based on this analysis and the required elements to be considered by the authority in Section 1.14 of this article. Requires the initial recommendations to be completed and submitted not later than September 30, 2008.

(d) Requires the Edwards Aquifer area expert science team to consider all reasonably available science, including any Edwards Aquifer-specific studies, and the recommendations to be based solely on the best science available in developing its recommendations. Prohibits the EAASC from changing the recommendations of the expert science team regarding the withdrawal limitations appropriate to achieve the purposes of Section 1.14 of this article.

(e) Requires the EAASC to review the withdrawal limitation and critical period management recommendations submitted by the Edwards Aquifer area expert science team and to consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the Edwards Aquifer area and the required elements to be considered by the authority in Section 1.14 of this article. Requires the stakeholders committee to develop recommendations regarding a critical period management plan and submit its recommendations to the authority and to the EFC or the TWDB if the

EFC is not established. Requires the stakeholders committee to operate on a consensus basis to the maximum extent possible in developing its recommendations. Requires the initial recommendations to be completed and submitted not later than October 31, 2008.

(f) Requires the EFC or the TWDB if the EFC is not established to submit to the authority its comments on and recommendations regarding the Edwards Aquifer area expert science team's recommended withdrawal reduction levels and stages for critical period management needed to maintain target spring discharge and aquifer levels. Requires the withdrawal reduction recommendations to be based on a combination of spring discharge rates of the San Marcos and Comal Springs and levels at the J-17 and J-27 wells.

(g) Requires the Edwards Aquifer area expert science team, the EAASC, and the EFC or the TWDB if the EFC is not established to submit recommendations to the authority for use in developing its rules relative to establishing the critical period management plan.

(h) Requires meetings of the Edwards Aquifer area expert science team and EAASC to be open to the public where reasonably practicable.

(i) Requires the EAASC, with the assistance of the expert science team, to prepare and submit a work plan to the EFC or the TWDB if the EFC is not established in recognition of the importance of critical period management to adapt to changed conditions or information, after submitting to the authority its recommendations regarding withdrawal limitations and strategies to meet the springflow needs. Requires the work plan to include certain information.

(j) Requires the authority to provide written reports to the EFC or the TWDB if the EFC is not established, at intervals determined by the EFC or the TWDB if the EFC is not established to assist the EFC or the TWDB if the EFC is not established in assessing the extent to which the recommendations of the expert science team are considered and implemented that describe certain information.

SECTION 6. Amends Sections 1.29(b) and (i), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Authorizes each water district governed by Chapter 36 (Groundwater Conservation Districts), rather than Chapter 52 (Underground Water Conservation Districts), Water Code, that is within the authority's boundaries to contract with the authority for certain purposes.

(i) Requires the authority to provide money not to exceed \$75,000, annually adjusted for changes in the consumer price index, to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article. Deletes existing text requiring the authority to provide five percent of the money collected under Subsection (d) of this section to finance the advisory committee's expenses and programs.

SECTION 7. Amends Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 1.29A, as follows:

Sec. 1.29A. BUDGETARY ADVISORY COMMITTEE. (a) Requires the authority to appoint a budgetary advisory committee not later than January 1, 2008, to consult and advise the authority on certain issues prior to its submission to the board.

(b) Requires each voting member of the board to appoint one member of the budgetary advisory committee.

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 and the recharge project does not impair senior water rights or vested riparian rights. Makes a nonsubstantive change.

SECTION 9. Repealer: Sections 1.14(d) (relating to authorization for the authority to set maximum amounts of certain withdrawals), 1.18 (Additional Regular Permits), 1.21 (Permit Retirement), and 1.29(a) (relating to cost of withdrawals), (c) (relating to equitable special fees based on permitted aquifer rights), (d) (relating to equitable special fees on all downstream water rights holders in the Guadalupe River Basin), and (h) (relating to a prohibition of fee usage to finance a surface water supply reservoir project), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 10. Repealer, effective December 31, 2007: Section 1.14(b) (relating to amount of permitted withdrawals from the aquifer), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 11. Effective date: September 1, 2007, except as otherwise provided by this Act.