

SUBJECT: Changing dates of Edwards Aquifer management plan

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Counts, Yost, Combs, R. Lewis, Puente, Walker

2 nays — Corte, King

1 absent — Stiles

WITNESSES: For — None

Against — Carol Patterson, Tim Jones, Kirk Patterson

BACKGROUND: In 1993 the 73rd Legislature enacted SB 1477 by Armbrister, establishing a new Edwards Aquifer Authority to regulate groundwater use. The Edwards Aquifer Authority was authorized to implement most of the provisions of the bill.

The status of the authority is uncertain due to U.S. Justice Department objections under Sec. 5 of the federal Voting Rights Act. The Justice Department objected to replacing an elected body with authority over the aquifer, the Edwards Underground Water District, with an appointed authority. In March 1994 the state filed suit (*Texas v. United States* No. 94-0465 (D.D.C.)) in the U.S. District Court for the District of Columbia seeking to override the Justice Department's decision. The trial is set for June 5. In the meantime, with the status of authority uncertain, implementation of SB 1477 has been delayed.

DIGEST: HB 2890 would delay for two years some of the dates in Chapter 626, Acts of the 73rd Legislature, (SB 1477 by Armbrister).

HB 2890 would change the date by which the Edwards Aquifer Authority would be directed to implement a program to ensure continuous minimum springflows of Comal and San Marcos Springs from June 1, 1994, to June 1, 1996.

The date by which the authority would be directed to develop a comprehensive water management plan and to prepare and coordinate implementation of a plan for critical period management would be changed from September 1, 1995, to September 1, 1997.

The authority could not allow withdrawals from the aquifer through wells drilled after June 1, 1995, rather than June 1, 1993.

The period in which an existing user could apply for an initial regular permit, by filing a declaration of historical use, would change from June 1, 1972 — May 31, 1993, to June 1, 1972 — May 31, 1995.

The date by which an existing user's declaration of historical use would have to be filed would be changed from March 1, 1994, to March 1, 1996.

Interim authorization for a well would end on March 1, 1996, rather than March 1, 1994, if the well owner had not filed a declaration of historical use.

The Edwards Aquifer Authority could not act on an application relating to a proposed or existing well of which there was no evidence of actual beneficial use before June 1, 1995, rather than June 1, 1993.

The authority would be responsible for the costs of well measuring devices for irrigation wells in existence on September 1, 1995, rather than September 1, 1993.

A special permit to divert water from the Guadalupe River would be subordinate to permitted water rights for which applications were submitted before May 31, 1995 (rather than May 31, 1993).

HB 2890 would provide that an existing user was a person who had withdrawn and beneficially used underground water from the Edwards Aquifer on or before June 1, 1995, rather than June 1, 1993.

The date on which unobligated and unexpended funds of the Edwards Underground Water District would be transferred to the authority would change from September 1, 1993, to September 1, 1995.

The date by which the authority would have to submit a report to the governor, lieutenant governor and speaker of the House evaluating the extent of cooperation with the authority would be changed from January 1, 1995, to January 1, 1997.

The bill would take effect upon approval by two-thirds of the membership of each house.

SUPPORTERS
SAY:

HB 2890 would recognize the uncertain status of the Edwards Aquifer Authority has delayed implementation of most of the provisions of SB 1477 by Armbrister, enacted in 1993, and simply extend for two years most of the deadlines and other time-related provisions in the act. The status of SB 1477 is uncertain because of objections by the U.S. Justice Department, which objected to the abolishment of an elected board (the Edwards Underground water District) and the creation of a wholly appointed board for the new Edwards Aquifer Authority. Since the Edwards Aquifer Authority is the entity that would implement most of SB 1477's provisions, most of its provisions cannot be implemented until the issue of selection of the authority board is settled.

Only one provision of the bill, validating the Uvalde Underground Water District, was separately precleared by the Justice Department and is being implemented.

Some have argued that if portions of SB 1477 dealing with the selection of the two boards were severed, the remainder of the bill could take effect, even though SB 1477 does not contain an explicit severability clause. However, but there has been no move to implement the bill.

In the meantime, pending a decision by the three-judge federal court panel or enactment of legislation by the 74th Legislature that would satisfy the Justice Department objections, most of SB 1477 remains in limbo and many of the deadlines provided in the bill have expired.

HB 2890 would merely update the expired dates in the bill so that if and when the bill finally goes into effect, either because of a judicial decision or a legislative enactment, the dates in SB 1477 would be current.

OPPONENTS
SAY:

SB 1477 should never have been implemented in the first place, so there is no need to update the bill. (For further discussion of SB 1477, see the analysis of HB 3189 in today's *Daily Floor Report*.)

NOTES:

Also on today's calendar is HB 3189 by Puente et al., which would create a 17-member board, with 16 elected and one appointed member, to replace the appointed board of the Edwards Aquifer Authority.