

SUBJECT: TNRCC fees for Edwards Aquifer development

COMMITTEE: Natural Resources — favorable, with amendment

VOTE: 8 ayes — Counts, Walker, Cook, Corte, Culberson, King, Moffat, Puente

0 nays

1 absent — R. Lewis

WITNESSES: For — Michael Thuss and Scott Halty, San Antonio Water System; Weir Labatt, Edwards Aquifer Authority; Mary Arnold

Against — None

On — John Young, Texas Natural Resource Conservation Commission

BACKGROUND : The Texas Natural Resource Conservation Commission (TNRCC) has enacted rules to regulate activities that could potentially pollute the Edwards Aquifer. The Edwards Rules require TNRCC approval for certain regulated activities in the Edwards Aquifer Recharge Zone. Regulated activities include construction of sewage collection systems, installation of underground fuel tanks, and regulated development. Regulated development includes commercial subdivisions and other activities that could alter recharge characteristics in the recharge zone.

The TNRCC is authorized to impose fees for processing plans or changes to plans concerning development in the recharge zone as well as inspection of the construction projects described in the plans. The fees can be no less than \$100 nor more than \$2,000. Fees collected are deposited in the state treasury to the credit of the water quality fund.

The Edwards Aquifer, an underground, water-bearing geologic formation stretching from Kyle to Bracketville, is the primary source water source for 1.5 million people, including the residents of San Antonio. The Edwards Aquifer Recharge Zone includes portions of Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis and Williamson counties.

**DIGEST:** HB 1016, as amended, would raise from \$2,000 to \$5,000 the cap on fees that can be imposed by TNRCC to review applications involving regulated activities over the Edwards Aquifer Recharge Zone.

The bill would require that fees be used only for the TNRCC's Edwards Aquifer programs.

HB 1016 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS SAY:** HB 1016 would provide more money to TNRCC to fund its Edwards Aquifer programs, resulting in greater protection from pollution for the Edwards Aquifer as well as less bureaucracy for commercial developers. The Edwards Aquifer, sole source of water for the city of San Antonio, is a unique and precious resource that should be protected to the greatest extent of the law.

Currently, the TNRCC is underfunded and understaffed and cannot promptly implement the rules they have promulgated concerning the Edwards Aquifer. Developers, who must submit water pollution abatement plans before beginning development in the recharge zone, are experiencing long, expensive delays in getting their applications processed. The money raised by the bill would allow the commission to hire extra staff so that development applications could be promptly reviewed.

According to the bill's fiscal note, raising the application fee cap would allow TNRCC to recover current program costs, with the small amount left over to hire more staff. The additional money is sorely needed. TNRCC currently funds only three positions in the local San Antonio office to oversee an area encompassing portions of 13 counties, and TNRCC staff, who must review permit applications, have little time for inspections. Compliance inspections must be carried out when construction is actually taking place to check that safeguards are keeping large amounts of debris and sediment from washing into the aquifer. In addition, the staff has little or no time to inspect fuel storage facilities and storm water pollution control measures on sites regulated under the Edwards Rules.

HB 1016 would also ensure that the money collected from applicants under the Edwards Rules would be used only for the commission's Edwards Aquifer Programs and not be siphoned off for other uses. Developers would have no problem with paying the increased fees if they could be assured that the money was going to protect the resource on which their investment depends.

Raising the application fee also would allow TNRCC to assess a larger fee for bigger projects, which cost significantly more to approve and inspect and which could potentially have a much higher impact on the aquifer. A \$2,000 fee is inadequate for a 5,000-acre development.

OPPONENTS  
SAY:

The fiscal note for the bill estimates that HB 1016 would generate increased funding to the extent that program revenues would exceed the program's current annual costs by approximately \$80,000. There is no reason why developers should pay more in fees than the program actually costs to implement, just so they can be regulated more stringently. Commercial development in the area is already highly regulated and proceeding in an orderly fashion. Additional regulation is unneeded, and there is no way to ensure that the extra fee money generated by the bill would be used by TNRCC to speed up the processing of development applications.

At the least, the fee should be imposed on a sliding scale depending on the size of the project, rather than leaving the amount of the fee up to TNRCC staff. This method would ensure that fees were equitably assessed.

OTHER  
OPPONENTS  
SAY:

TNRCC is already hobbled by the fact that many water fees are dedicated for specific uses and can be used only to support activities related to the funding source. This makes it difficult for the agency to respond to emergency situations, especially in the area of water-resource management. HB 1016 would create yet another specially dedicated stream of money.

NOTES:

The committee amendment would delete a provision in the original version of the bill specifying that the fee would be deposited in a special account and would reinstate a current statutory provision, accidentally left out of the original version, which specifies that the fee is deposited in the TNRCC's Water Quality Fund.

According to the Legislative Budget Board's fiscal note, raising the application fee cap would produce \$991,300 annually, compared to the \$622,000 currently raised by application fees. The board estimated the TNRCC's current annual program costs at \$911,250.

A companion bill, SB 392 by Madla, has referred to the Natural Resources Committee.