

BILL ANALYSIS

Senate Research Center
82R11530 RWG-D

S.B. 1625
By: Hegar
Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 147, 73rd Legislature, Regular Session, 1993, created the Edwards Aquifer Authority Act (Act), which established the Edwards Aquifer Authority (authority) to manage the Edwards Aquifer (aquifer) in South Central Texas, and to avoid a potential takeover of the aquifer by the federal courts due to then pending federal Endangered Species Act litigation. Since its adoption, the Act has provided a sound and effective framework for the aquifer's management. However, in the course of the Act's implementation, it has become apparent that there are several areas of the Act that require improvement to more effectively benefit the users of the aquifer and the threatened and endangered species associated therewith.

S.B. 1625 amends the Act to provide that Chapter 36 (Groundwater Conservation Districts), Water Code, does not apply to the authority, while incorporating language from certain sections of Chapter 26 that are not otherwise contained in Chapter 49 (Provisions Applicable to All Districts), Water Code, that are useful to the authority's management of the aquifer, such as provisions addressing powers, duties, finances, bonding authority, and judicial review. The bill also creates a new category of exempt wells—*de minimis* use wells—and simplifies the purpose of use and well location requirements for exempt domestic or livestock use wells. The bill provides for the transfer of the administration of the Edwards Aquifer Recovery Implementation Program (program) to a suitable entity. Finally, the bill updates references to other general laws cited in the Act that have been repealed, amended, or recodified, and updates dates in the Act that have been changed as a result of court decisions.

As proposed, S.B. 1625 amends current law relating to the administration, powers, duties, and operation of the Edwards Aquifer 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, by amending Subdivisions (6), (9), (10), (20), (21), and (25) and adding Subdivision (28), as follows:

- (6) Redefines "commission."
- (9) Defines "domestic use," rather than "domestic or livestock use."
- (10) Redefines "existing user."
- (20) Defines "groundwater," rather than "underground water."
- (21) Redefines "waste."
- (25) Redefines "withdrawal."

(28) Defines "livestock use."

SECTION 2. Amends Section 1.07, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

Sec. 1.07. New heading: OWNERSHIP OF GROUNDWATER. Provides that the ownership and rights of the owner of the land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in groundwater, rather than underground water, and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized. Prohibits an action taken pursuant to this Act from being construed as depriving or divesting the owner or the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the Edwards Aquifer Authority (authority), rather than subject to the rules adopted by the authority or a district exercising the powers provided by Chapter 52 (Underground Water Conservation Districts), Water Code. Makes a conforming change.

SECTION 3. Amends Sections 1.08(a) and (b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Provides that the authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 (Provisions Applicable to All Districts) and 51 (Water Control Improvement Districts), Water Code, rather than Chapters 50 (Provisions Generally Applicable to Districts) , 51 and 52, Water Code, applicable to an authority created under Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution. Provides that Chapter 36 (Groundwater Conservation Districts), Water Code, does not apply to the authority.

(b) Provides that this section, rather than this subsection, is not intended to allow the authority to regulate surface water. Makes conforming changes.

SECTION 4. Amends Section 1.09, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsection (d) and adding Subsection (i), as follows:

(d) Provides that Section 41.008 (Effect of Holding Election on Improper Date), Election Code, rather than Sections 41.003 (previously repealed) and 41.008, Election Code, does not apply to an election held under this article. Makes a nonsubstantive change.

(i) Provides that a member of a governing body of another political subdivision is ineligible for appointment or election as a director of the authority. Provides that a director of the authority is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision.

SECTION 5. Amends Section 1.10(h), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to require the presiding officer of the advisory committee to submit a report assessing the effectiveness of the authority to the Texas Commission on Environmental Quality (TCEQ) and the authority, by December 31, rather than March 31, of each even-numbered year.

SECTION 6. Amends Sections 1.11(d) and (g), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(d) Authorizes the authority to:

(1) issue or administer grants, loans, or other financial assistance to water users for water conservation and water reuse;

- (2) enter into contracts;
- (3) sue and be sued only in its own name;
- (4) receive gifts, grants, awards, and loans for use in carrying out its powers and duties;
- (5) hire an executive director to be the chief administrator of the authority and other employees as necessary to carry out its powers and duties;
- (6) delegate the power to hire employees to the executive director of the authority;
- (7) own real and personal property;
- (8) close abandoned, wasteful, or dangerous wells;
- (9) hold permits under state law or under federal law pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) and its amendments;
- (10) enforce Chapter 1901 (Water Well Drillers), Occupations Code, rather than Chapter 32 (Subsurface Area Drip Dispersal System), Water Code, and Texas Department of Licensing and Regulation (TDLR) rules, rather than TCEQ rules, adopted under that chapter, rather than that Act, within the authority's boundaries; and
- (11) require to be furnished to the authority water well drillers' logs that are required by Chapter 1901, Occupations Code, rather than Chapter 32, Water Code, to be kept and furnished to TDLR, rather than to TCEQ.

(g) Provides that the authority has the power of eminent domain. Prohibits the authority from acquiring the rights to groundwater, rather than underground water, by the power of eminent domain.

SECTION 7. Amends Section 1.13, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to require the authority, rather than the authority or a local underground water conservation district, for regulatory credit, to certify the lawful use and reuse of aquifer water, the amount of aquifer water to be used, and the amount of aquifer withdrawals replaced by reuse.

SECTION 8. Amends Section 1.14(e), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to prohibit the authority from allowing withdrawals from the aquifer through wells drilled after June 1, 1993, except for replacement or test wells or wells exempt under Section 1.33 of this article, rather than 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.

SECTION 9. Amends Sections 1.16 (a), (b), and (d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

- (a) Authorizes an existing user to apply for an initial regular permit by filing a declaration of historical use of groundwater, rather than underground water, withdrawn from the aquifer during the historical period from June 1, 1972, through May 31, 1993.
- (b) Requires that an existing user's declaration of historical use be filed on or before December 30, 1996, rather than March 1, 1994, on a form prescribed by the board of directors of the authority (board).

(d) Requires the board to grant an initial regular permit to an existing user who files a declaration and pays fees as required by this section, and establishes by convincing evidence beneficial use of groundwater, rather than underground water, from the aquifer.

SECTION 10. Amends Sections 1.17(a) and (d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Authorizes a person who, on the effective date of this article, owns a producing well that withdraws water from the aquifer to continue to withdraw and beneficially use water without waste until final action on permits by the authority, if the well is in compliance with all statutes and rules relating to well construction, approval, location, spacing, and operation; and by December 30, 1996, rather than March 1, 1994, the person files a declaration of historical use on a form as required by the authority.

(d) Provides that interim authorization for a well under this section ends on entry of a final and appealable order by the authority acting on the application for the well, or December 30, 1996, rather than March 1, 1994, if the well owner has not filed a declaration of historical use.

SECTION 11. Amends Article I, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Sections 1.21 and 1.211, as follows:

Sec. 1.21. **CONTESTED CASE HEARINGS; REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS.** (a) Requires the authority, by rule, to define under what circumstances an application is considered contested and to limit participation in a hearing on a contested application held in accordance with authority rules to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by an application, not including persons who have an interest common to members of the public.

(b) Authorizes an applicant or a party to a contested hearing, except as provided by Subsection (c) of this section, to file a request for rehearing not later than the 20th day after the date of the board of directors of the authority (board) decision.

(c) Authorizes an applicant or a party to a contested hearing to request written findings of fact and conclusions of law not later than the 20th day after the date of the board's decision on the application. Requires the board, on receipt of a timely filed written request under this subsection, to make written findings of fact and conclusions of law regarding a decision of the board on the application. Requires the board to provide copies of the findings of fact and conclusions of law to the person who requested them, and to each person who provided comments at the initial hearing or each designated party, not later than the 35th day after the date the board received the request. Authorizes a person who receives a copy of the findings of fact and conclusions of law from the board to request a rehearing before the board not later than the 20th day after the date the board issues the findings of fact and conclusions of law.

(d) Requires that a request for rehearing on a contested matter be filed in the authority's office and state the grounds for the request.

(e) Requires the board, if the board grants a request for rehearing, to schedule the rehearing not later than the 45th day after the date the request is granted.

(f) Provides that the failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted constitutes a denial of the request.

Sec. 1.211. **APPLICATION DECISION; WHEN FINAL.** (a) Provides that a decision by the board on an application is final:

- (1) if a request for rehearing is not timely filed, on the expiration of the period for filing a request for rehearing; or
- (2) if a request for rehearing is timely filed, on the date the board denies the request for rehearing, or the board renders a written decision after rehearing.

(b) Provides that a timely filed motion for rehearing challenging a decision in a contested hearing is a prerequisite to a suit against the authority under Section 1.46 of this article. Authorizes a suit under that section to be filed not later than the 60th day after the date on which the decision becomes final.

SECTION 12. Amends Section 1.22(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Authorizes the authority to acquire, hold, and transfer, rather than acquire and hold, permits or rights to appropriate surface water or groundwater from sources inside or outside of the authority's boundaries. Authorizes the authority to transport and distribute surface water or groundwater as necessary to accomplish the powers and duties authorized by this article or other applicable law.

SECTION 13. Amends Section 1.25, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

Sec. 1.25. COMPREHENSIVE MANAGEMENT PLAN. (a) Requires the authority, consistent with Section 1.14 of this article, to develop, rather than to develop by September 1, 1995, and implement a comprehensive water management plan that includes conservation, future supply, and demand management plans.

(b) Requires the authority, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and groundwater conservation districts within the authority's boundaries, to develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the authority and reviewed annually by the appropriate state agencies, rather than by the appropriate state agencies and the Edwards Aquifer Legislative Oversight Committee. Makes a conforming change.

SECTION 14. Amends Section 1.26A, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Subsection (r), as follows:

(r) Authorizes the steering committee to oversee and assist in the development of the cooperative agreement relating to a habitat conservation plan used in issuance of an incidental take permit relating to the Endangered Species Act of 1974, after the authority receives the program document produced in accordance with this section, to transfer the administration of the recovery implementation program to any entity that the steering committee considers suitable for the administration and performance of the program's continuing functions. Authorizes the transfer to include all files, records, personal property, contracts, unobligated and unexpended money, and staff, including the program manager.

SECTION 15. Amends Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsections (f) through (i), as follows:

(f) Authorizes the authority, in addition to the fees assessed under Subsection (b) of this section, to assess fees to recover administrative costs such as filing and processing applications and registrations. Prohibits the fees from unreasonably exceeding the administrative costs. Deletes text of existing Subsection (f) requiring the authority to impose a permit application fee not to exceed \$25.

(g) Deletes text of existing Subsection (g) authorizing the authority to impose a registration application fee not to exceed \$10. Redesignates existing Subsection (h) as Subsection (g). Makes no further changes to this subsection.

(h) Redesignates existing Subsection (i) as Subsection (h). Makes no further changes to this subsection.

SECTION 16. Amends Section 1.30(e), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to provide that Section 11.033 (Eminent Domain), Water Code, rather than Sections 11.028 (previously repealed) and 11.033, Water Code, does not apply to a permit issued under this section. Makes a nonsubstantive change.

SECTION 17. Amends Section 1.31(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to provide that the authority is responsible for the costs of purchasing, installing, and maintaining measuring devices, if required, for an irrigation well in existence on June 28, 1996, rather than September 1, 1993.

SECTION 18. Amends Section 1.33, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

Sec. 1.33. WELL METERING EXEMPTION. (a) Provides that except as provided by Subsections (d) and (e) of this section, a well that is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of water per day and is and will be used exclusively for domestic use or livestock use is exempt from metering and withdrawal permit requirements, rather than exempts a well that produces 25,000 gallons of water a day or less for domestic or livestock use from metering requirements. Makes nonsubstantive changes.

(b) Provides that a well drilled on or before June 1, 2011, that is incapable of producing more than 1,250 gallons of water per day or that is metered and does not produce more than 1,250 gallons of water per day for any purpose authorized in this article is exempt from withdrawal permit requirements. Prohibits multiple wells from being used in combination in a manner to satisfy a single water use or purpose, that when combined, would not come within the requirements of this subsection.

(c) Creates this subsection from text of existing Subsection (b). Requires that a well that is exempt under Subsection (a) or (b) of this section, rather than exempt wells, to be registered with the authority, rather than with the authority or with an underground water conservation district in which the well is located. Makes nonsubstantive changes.

(d) Redesignates existing Subsection (c) as Subsection (d). Provides that a well that meets the requirements of Subsection (a) of this section does not qualify for an exemption if the well:

(1) serves a subdivision of land requiring plat approval under Chapter 232 (County Regulation of Subdivisions), Local Government Code;

(2) supplies water to a public water system as defined by 30 T.A.C. Section 290.38 (Definitions); or

(3) produces groundwater for domestic use, was drilled on or before June 1, 2011, and is on a tract of land with a residence that receives water service from a retail public utility as defined by Section 13.002 (Definitions), Water Code.

Deletes existing text providing that a well within or serving a subdivision requiring platting does not qualify for an exempt use.

(e) Provides that a well drilled after June 1, 2011, that meets the requirements of Subsection (a) of this section, is exempt from metering and withdrawal permit requirements only if the well is on a tract of land larger than 10 acres.

SECTION 19. Amends Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 1.361, as follows:

Sec. 1.361. ABANDONED, OPEN, UNCOVERED, OR DETERIORATED WELLS.

(a) Authorizes the authority or its authorized employees, representatives, or agents, if the owner or lessee of land on which an abandoned, open, uncovered, or deteriorated well is located fails or refuses to close, cap, or plug the well in compliance with Chapter 1901, Occupations Code, and the authority's rules, to enter the land and close, cap, or plug the well in a safe and secure manner.

(b) Provides that reasonable expenses incurred by the authority in closing, capping, or plugging a well constitute a lien on the land on which the well is located.

(c) Provides that a lien described by Subsection (b) of this section arises and attaches after an affidavit executed by any person with knowledge of the facts of the closing, capping, or plugging is recorded in the deed records of the county where the well is located. Requires that the affidavit contain:

- (1) a statement or photograph confirming the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) a description of the approximate location of the well on the property;
- (4) a statement confirming the failure or refusal of the owner or lessee, after notification, to close or cap the well within 10 days after the notification, or to plug the well within 180 days after notification, as required by the authority's rules;
- (5) a statement confirming the closing, capping, or plugging of the well by the authority, or by an authorized agent, representative, or employee of the authority; and
- (6) a statement of the expenses incurred by the authority in closing, capping, or plugging the well.

(d) Provides that nothing in this section affects the enforcement of Subchapter A (Covering Wells, Cisterns, and Holes), Chapter 756 (Miscellaneous Hazardous Conditions), Health and Safety Code.

SECTION 20. Amends Sections 1.37(j), (n), and (r), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(j) Requires the person, within 30 days after the date the authority's order is final as provided by Section 2001.144(a) (relating to a final decision in a contested case), Government Code, rather than Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, V.T.C.S.), to make certain payments or file a contesting petition.

(n) Provides that judicial review of the order of the authority is instituted by filing a petition as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001, Government Code, rather than Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, V.T.C.S.), and is under the substantial evidence rule.

(r) Provides that all proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code, rather than the Administrative Procedure and Texas Register Act (Article 6252-13a, V.T.C.S.).

SECTION 21. Amends Section 1.38, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

Sec. 1.38. INJUNCTION BY AUTHORITY. (a) Creates this subsection from existing text. Authorizes the authority to file a civil suit in a state district court for an injunction or mandatory injunction to enforce this article.

(b) Provides that in an enforcement action by the authority against a governmental entity for a violation of authority rules, the limits on the amount of fees, costs, and penalties that the authority is authorized to impose under this section constitute a limit of the governmental entity's liability for the violation. Requires that this subsection not be construed to prohibit the recovery by the authority of fees and costs under this article in an action against a governmental entity.

SECTION 22. Amends Sections 1.42(a), (b), and (c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to make conforming changes.

SECTION 23. Amends Section 1.43, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

Sec. 1.43. New heading: CREATION OF GROUNDWATER CONSERVATION DISTRICT. Authorizes a groundwater conservation district, rather than an underground water conservation district, to be created in any county affected by this article as provided by Subchapter B (Creation of District), Chapter 36, Water Code, rather than Subchapter B, Chapter 52, Water Code.

SECTION 24. Amends Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 1.46, as follows:

Sec. 1.46. SUITS. (a) Entitles an affected person dissatisfied with any authority rule, order, or act to file suit against the authority or its directors to challenge the validity of the rule, order, or act. Authorizes the suit to be filed in any county in which the authority is located. Authorizes the suit to be filed only after all administrative appeals to the authority are final. Provides that the burden of proof is on the petitioner, and requires that the challenged rule, order, or act be deemed prima facie valid. Provides that the review on appeal is governed by Section 2001.038 (Declaratory Judgment) or 2001.174 (Review Under Substantial Evidence Rule or Undefined Scope of Review), Government Code, as appropriate.

(b) Authorizes the authority, if the authority prevails in a suit to enforce this article or its rules, orders, or acts, or in a suit other than a suit in which it voluntarily intervenes, to seek and requires the court to grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the authority before the court. Requires the court to set the amount of the attorney's fees.

SECTION 25. Transfers Section 4.02, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to Article 1 of that Act, redesignates it as Section 1.47, and amends it, as follows:

Sec. 1.47. New heading: ORIGINAL EFFECTIVE DATES. Provides that this Act takes effect June 28, 1993, rather than September 1, 1993, except that Section 1.35 of Article 1 takes effect December 30, 1996, rather than March 1, 1994.

SECTION 26. Amends Section 3.02, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to require TCEQ, rather than the Texas Natural Resource Conservation

Commission (TNRCC), to notify the authority of any water available for appropriation in the Guadalupe-Blanco River Basin as TCEQ discovers the available water.

SECTION 27. Amends Section 36.205(e), Water Code, to provide that Subsection (c) (relating to assessment of fees) does not apply to the following districts: the Fort Bend Subsidence District, the Harris-Galveston Coastal Subsidence District, the Barton Springs-Edwards Aquifer Conservation District, or any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law, rather than the authority, the Fort Bend Subsidence District, the Harris-Galveston Coastal Subsidence District, the Barton Springs-Edwards Aquifer Conservation District, or any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law. Make nonsubstantive changes.

SECTION 28. Repealers: (1) Sections 1.41(d) (relating to transferring funds to the authority from the Edwards Underground Water District) and 3.01 (Legislative Oversight), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993; and

(2) Sections 36.101(l) (relating to certain subsections not applying to the authority), 36.1011(e) (relating to this section not applying to the authority), and 36.419 (authority), Water Code.

SECTION 29. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313 (Notice for Local and Special Laws), Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to TCEQ.

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 30. Effective date: upon passage or September 1, 2011.