

BILL ANALYSIS

C.S.H.B. 3586
By: Puente
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Edwards Aquifer Authority (Authority) was created by the Edwards Aquifer Authority Act (Act) to preserve, protect and manage the Edwards Aquifer (Aquifer). The Aquifer provides water for municipal, industrial and irrigation use in central and south Texas.

The Act establishes a 17 member board, 15 of whom are elected. An order issued in a lawsuit filed against the Authority's predecessor agency, the Edwards Underground Water District, failed to include a 60-day residency requirement for director candidates. The Texas Election Code requires candidates for other political subdivisions to reside in the district for at least 60 days prior to filing for office.

The Act charges the Authority with limiting annual groundwater withdrawal permits to 450,000 acre-feet per annum for the period ending December 31, 2007, and to 400,000 acre-feet per annum for the period beginning January 1, 2008 (the caps). The Act also requires the Authority to issue withdrawal permits to applicants that demonstrate, by convincing evidence, they beneficially used groundwater between 1972 and 1993, and provides most applicants with a guaranteed minimum permit. Over the last five years, the Authority has reviewed over 1,000 applications, over 800 of which have completed the application process and either received a permit or been denied. When the last of the applications complete the contested case process in 2004, the aggregate total of permits issued will far exceed the 450,000 acre-foot cap. Because the Authority has no discretion in the amount of the final permits based on the minimums, and because the Authority cannot change the caps until it completes a number of scientific studies and consults with state and federal agencies, it is currently impossible to comply with both mandates in the Act.

The Act provides that the Authority may interrupt 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. These restrictions are designed to protect springflows at Comal and San Marcos springs, and protect downstream surface water rights during low Aquifer conditions.

The Act allows the Authority to contract with another person for the Authority or that person to construct, operate, own, finance, and maintain water supply facilities but prohibits the Authority from using management or special fees for purchasing or operating these facilities.

The Act places limitations on the transfer of the place and purpose of use for one-half of each irrigation permit such that the permit must "pass with the land" associated with the area originally irrigated. This restriction makes it difficult for farmers to move water from one farm to another as needed. Any transfer of any portion of the irrigated farm forces the farmer to have the land surveyed to ensure the groundwater permit passes with the land.

The Act allows the Authority to issue revenue bonds, but does not explicitly allow Aquifer management fees to be used to repay the bonds, nor does it explicitly allow the bond proceeds to be used for constructing recharge facilities or retiring Authority permits.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1:

Amends Section 1.01 of the Act to include the contributing and recharge zones as a part of the unique hydrogeologic formation; adds Aquifer water quality, as well as industrial and irrigation water supplies to items the Authority is to protect, and requires all reasonable measures be taken to conserve the use and protect the quality of Edwards Aquifer groundwater.

SECTION 2:

Amends Section 1.03 of the Act to add a definition for "recharge facility."

SECTION 3:

Amends Section 1.07 of the Act to update the reference to Chapter 52, Water Code, to Chapter 36, Water Code.

SECTION 4:

Amends Section 1.08(a) of the Act to update references to Chapters 50 and 52, Water Code, to Chapters 36 and 49, Water Code.

SECTION 5:

Adds new proposed Section 1.081 to the Act to allow the Authority to adopt and enforce rules to protect the water quality of the Aquifer, and require the Authority to adopt rules, in consultation with fire departments and fire marshals, to prevent pollution of the Aquifer from fires over the recharge zone.

SECTION 6:

Amends Section 1.09 of the Act by adding new Subsection (i) to require candidates for the office of Authority director to reside in the director district at least six months immediately preceding either the 60th day prior to the general election date for a candidate seeking election to office, or the day of appointment for a candidate seeking appointment.

SECTION 7:

Amends Section 1.11 of the Act by amending Subsection (f) and adding new Subsection (i) to allow the Authority to contract to own, finance, design, construct, operate, or maintain water supply facilities; to remove the restriction on the use of management or special fees for purchasing or operating these facilities; and to require the Authority to determine by rule the extent to which permit holders may use programs to reduce and eliminate fees or taxes under Chapters 311 and 312, Tax Code.

SECTION 8:

Amends Section 1.14 of the Act by amending Subsections (b) - (f) and (h) and adding new Subsections (f-1) and (f-2) to establish January 1, 2008 as the date the Authority must limit regular permits to 450,000 acre-feet per year, and extend the date to achieve the 400,000 acre-foot permit cap to January 1, 2010; requires the Authority to determine, beginning September 1, 2006 and every four years thereafter, whether the permit caps should be changed; allows certain withdrawals from wells drilled after June 1, 1993; requires the Authority to allow uninterrupted withdrawals from the San Antonio Pool if the level of the Aquifer is at or above 650 feet above mean sea level at Well J-17 and from the Uvalde pool if the level of the Aquifer is at or above 845 feet above mean sea level at Well J-27; requires the Authority to interrupt withdrawals when the Aquifer is below those levels; and requires interruptions pursuant to Section 1.26 of the Act to protect springflows at Comal and San Marcos springs during demand management and critical period management conditions.

SECTION 9:

Conforming amendments.

SECTION 10:

Amends Section 1.16(e) of the Act to specify that if an existing user does not have historical use for a full year, the Authority will set the user's maximum permit level at the amount that would have been used in a full year of operation; provides for proportional adjustment to all regular permits in the event total regular permits exceed the permit cap; and requires the Authority to restore regular permits to the statutory minimums.

SECTION 11:

Amends the heading of Section 1.21 of the Act.

SECTION 12:

Amends Section 1.21 of the Act by amending Subsection (c) and adding new Subsection (d) to require that the Authority board issue an order by October 1, 2007, to be effective on January 1, 2008, proportionally adjusting regular permits so that aggregate permits do not exceed 450,000 acre-feet per year; and to require that the Authority board issue an order by October 1, 2009, to be effective on January 1, 2010, proportionally adjusting regular permits so that aggregate permits do not exceed 400,000 acre-feet per year.

SECTION 13:

Amends Section 1.26 of the Act to provide for a demand management and critical period management plan; deletes the "recreational and pleasure" and "other uses" categories from the priority list of non-discretionary groundwater uses; requires the Authority to adopt measures to ensure authorized withdrawals from regular permits are reduced to 350,000 acre-feet per year if the level of the Aquifer is below specified levels for the San Antonio or Uvalde Pools; requires the Authority to adopt a demand management and critical period plan by September 1, 2004; and sunsets the requirement to reduce withdrawals to 350,000 acre-feet on January 1, 2008.

SECTION 14:

Amends Section 1.28 of the Act by amending Subsection (b) and adding new Subsection (b-1) to allow the Authority to issue revenue bonds and use the proceeds to construct recharge dams and retire permits.

SECTION 15:

Amends Section 1.29 of the Act by amending Subsections (a) - (e), (h) and (i) and adding new Subsection (a-1) to provide that the cost to retire regular permits to 450,000 acre-feet is to be borne solely by Aquifer users; requires that the cost to retire permits to 400,000 acre-feet is to be borne equally by regular permit holders and downstream surface water right holders; requires the Authority to assess, bill and collect Aquifer management fees and expand the Authority's ability to use these fees to repay revenue bond debt; changes the reference to Chapter 52, Water Code to Chapter 36, Water Code; requires the Authority to assess, bill, and collect a special fee on regular permit holders to be used to retire permits from 450,000 to 400,000 acre-feet. The special fees under this section, assessed equally on a per acre-foot basis on regular permits without regard to use, may not exceed one-half of the cost of permit retirements from 450,000 to 400,000 acre feet; requires the Texas Commission on Environmental Quality to assess, and the Authority to bill and collect the special fees on all downstream surface water rights to finance the retirement of permits from 450,000 to 400,000 acre feet per year; provides that subsection (e) of Section 1.29 does not apply to the special equitable retirement fee; and amends subsection (h) to reference recharge facilities instead of surface water reservoirs.

SECTION 16:

Amends Section 1.33(a) of the Act to revise the definition of a domestic or livestock well as a well capable of producing 10,000 gallons per day or less; and grandfathers existing wells at the current exempt levels.

SECTION 17:

Amends the Act by adding new proposed Section 1.331 to exempt Federal facilities from the requirements of the Act, and allows others to receive a regular permit based on the historical use of a federal facility if the application is transferred prior to September 1, 2003.

SECTION 18:

Amends Section 1.34 of the Act by amending Subsections (a) and (c), and adding new Subsection (d) to provide that Edwards Aquifer water may be used only within the boundaries of the Authority or within the existing Certificate of Convenience and Necessity (CCN) of a regular permit holder or their wholesale customer; provides that regular permits are generally transferable, and requires that 50 percent of irrigation initial regular permits may only be used for irrigation.

SECTION 19:

Conforming amendments.

SECTION 20:

Amends Section 1.45(a) of the Act to allow the Authority to own, finance, design, construct, operate and maintain recharge dams and associated structures located on the contributing and recharge areas of the Aquifer.

SECTION 21:

Repeals Sections 1.094(c) (relating to county election precincts), 1.21 (a) and (b) (relating to the reduction to 400,000 by 2008, contained in the original SB 1477 language (Chapter 626, Acts of the 73rd Legislature, Regular Session 1993)) and 1.34(b) of the Act (relating to the installation of water conservation equipment).

SECTION 22:

Requires the Authority to process all declarations of historical use filed with the Authority after the filing deadline but before February 16, 1997, as if they were timely filed.

SECTION 23:

SAVINGS CLAUSE to validate all transfers completed prior to September 1, 2003.

SECTION 24:

SAVINGS CLAUSE for certain transfers.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In Section 1.01 of the Act, the substitute adds contributing and recharge zones as areas of concern to the general purposes statement; and adds water quality of the aquifer, industrial, irrigation, and domestic water supplies to items the Authority is created to protect.

In Section 1.03 of the Act, the substitute defines a “recharge facility” to mean a dam, reservoir, treatment facility, transmission facility, or other recharge project, and associated facilities, structures, or works. The original bill defined such structures as a “water supply facility.”

The substitute adds new proposed Section 1.081 of the Act allowing the Authority to adopt and enforce rules to protect the water quality of the aquifer and requiring the Authority to adopt rules regarding firefighting in the recharge zone.

In Section 1.09 of the Act, the substitute deletes proposed section (j) regarding certification of a director candidate contained in the original bill.

In Section 1.11 of the Act, the substitute adds new section (i) requiring the Authority to determine by rule the extent to which permit holders may use programs to reduce or eliminate fees or taxes under Chapters 311 and 312, Tax Code.

In Section 1.14 of the Act, the substitute requires the Authority to limit withdrawals to 450,000 acre-feet rather than raising the cap to 550,000 acre feet as provided in the original bill; however, the date to achieve this limit is extended to January 1, 2008; the requirement to limit withdrawals to 400,000 acre-feet is also reinstated; however, the date to achieve this limit is extended to January 1, 2010.

In Section 1.16 of the Act, the substitute adds a new requirement to proportionally adjust permits to 450,000 acre-feet and also provides guarantees for irrigators and users with more than three year's use.

In Section 1.21 of the Act, the substitute repeals subsections (a) & (b); provides that if aggregate withdrawals will exceed 450,000 by January 1, 2008, the Authority board must issue an order by October 1, 2007 proportionately adjusting withdrawals effective January 1, 2008; and provides that if aggregate withdrawals will exceed 400,000 by January 1, 2010, the Authority board must issue an order by October 1, 2009 proportionately adjusting withdrawals, effective January 1, 2010.

In Section 1.26 of the Act, the substitute deletes "recreational and pleasure" & "other uses" from the list of non-discretionary uses of groundwater; reduces withdrawals to 350,000 acre-feet a year when certain aquifer levels are in effect; and deletes language from the original bill requiring reduction of authorized withdrawals by 20 percent if new demand management/critical period management rules implementing the 350,000 acre foot limit are not adopted by September 1, 2004.

In Section 1.28 of the Act, the substitute changes references to use of revenue bonds for the purpose of compensating permit retirements under Section 1.21(c) of the Act.

In Section 1.29 of the Act, the substitute returns the provisions regarding the costs of the reductions to the original SB 1477 language (Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993) but updates section references and dates; requires the Authority to bill and collect a fee on downstream water right holders for the retirement of water rights from 450,000 acre-feet to 400,000 acre-feet instead of the Texas Commission on Environmental Quality; provides that subsection (e) does not apply to the special equitable retirement fee; and amends subsection (h) to reference recharge facilities instead of surface water reservoirs.

In Section 1.33 of the Act, the substitute redefines exempt domestic and livestock wells as wells capable of producing 10,000 gallons per day or less, but grandfathers all existing exempt wells at the 25,000 gallons per day.

In new proposed Section 1.331 of the Act, the substitute provides that a person may obtain a permit based on the historical use of a federal facility if the application is transferred prior to September 1, 2003.

In Section 1.34 of the Act, the substitute allows the use of Edwards groundwater outside the boundaries of the Authority if it is used within an existing CCN of a permit holder or their wholesale customer; deletes subsection (b); and changes the transfer language in subsection (d) to allow full transfers of all permits, except that 50 percent of the initial regular irrigation permit may be used only for irrigation.

The substitute requires the authority to process applications filed after 12/30/96 but before 2/16/97 as if they had been filed timely

The substitute adds an additional savings clause for certain transfers.

The substitute removes the exemption from Chapter 245, Local Government Code, contained in the original bill.

