

BILL ANALYSIS

Senate Research Center

S.B. 1914
By: Wentworth
Natural Resources
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As Filed

DIGEST AND PURPOSE

As proposed, S.B. 1914 grants the Edwards Aquifer Authority the powers and duties to manage and protect the Edwards Aquifer including provisions regarding groundwater withdrawals, permitting, aquifer management fees, recharge projects, demand management and transfers, the board of directors of the Edwards Aquifer Authority, and revenue bonding 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, and Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, by adding Subsection (28) to define "water supply facility."

SECTION 2. Amends Section 1.09, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended by Chapter 261, Acts of the 74th Legislature, Regular Session, 1995, by adding Subsections (i) and (j), as follows:

(i) Requires a person, to be eligible to be elected or appointed as a voting member of the board, to have resided continuously in the authority single-member election district from which the office is elected for six months immediately preceding the 60th day prior to the general election date for a candidate for election and the date the appointment is made for an appointee to office.

(j) Authorizes a person who files with the authority an application to be a candidate for or appointed to the office of director of the board for a single-member election district to request from the Edwards Aquifer Authority (authority) a written certification of the district in which the residence address identified in the application is located. Requires the certification request to be in writing on a form provided by the authority.

(1) Requires the authority, upon receipt of a certification request, within 10 days, to consult with appropriate county election officials and review public records to determine in which single-member election district the residence address is located. Requires the general manager, or designated representative, upon making the determination, to issue a written certification stating the county and authority district in which the residence address on the candidacy or appointment application is located and the date of issuance of the certification.

(2) Requires the authority, in the event it is unable to reasonably determine the location of a residence address within a district, or otherwise provide the requested information, to so advise the requestor.

(3) Requires all certification requests to be filed with the authority no later than the close of business of the authority on the 10th day preceding the last day to file an application for a place on the ballot with the authority, for a candidate for

election or the last day to file an application to be appointed to fill a vacancy with the authority, for an appointee to office.

(4) Prohibits the authority from processing any certification request filed with the authority after the time periods set out in Subsection (j)(3).

(5) Requires the candidate, in the event a candidate for election or appointment receives a certification from the authority which was incorrect at the time it was made, and the candidate desires to assume the office, having otherwise qualified for election or appointment as an authority director, no later than 60 days from the date the candidate was made aware of such error in certification, to establish and maintain residency in the district from which the candidate was elected or appointed. Requires, in the event the candidate fails to establish residency within 60 days as required, the candidate to be considered ineligible, the office to be declared vacant, and the resulting vacancy to be filled in the manner prescribed to fill vacancies in the office.

SECTION 3. Repealer: Section 1.094(c), Chapter 163, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 4. Amends Section 1.11(f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, to authorize the authority to contract with a person who uses water from the aquifer for the authority or that person to own, finance, design, construct, operate, or maintain water supply facilities. Deletes text referring to a prohibition against management fees or special fees being used for purchasing or operating these facilities. Deletes a definition for "water supply facility."

SECTION 5. Amends Sections 1.14(b)-(h), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Prohibits the amount of permitted withdrawals from the aquifer from exceeding 550,000 acre-feet of water, rather than 450,000 acre-feet of water, for each calendar year, except as provided by Subsections (c), (e), and (g) of this section and Section 1.26 of this article, beginning January 1, 2005. Deletes text referring to limits of withdrawals in a specific time period.

(c) Redesignates this subsection from Subsection (d). Authorizes the authority, in consultation with appropriate state and federal agencies, if, through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, programs, practices, procedures, or methods, of any kind, the authority determines that the amount of water available for permitting under Subsection (b) of this section should be changed to more effectively accomplish the purposes of this article, to review and, by order, change the amount of water available for permitting under Subsection (b) of this section. Deletes text referring to additional available aquifer supplies and increasing the maximum amount of withdrawals provided by this section and setting a different maximum amount of withdrawals. Requires the authority, beginning September 1, 2006, and every four years thereafter, to determine whether the amount of water available for permitting under Subsection (b) of this section should be changed pursuant to this subsection. Requires the authority, if the requirements of Subsection (a) have not all been met, to implement new requirements to assure compliance with Subsection (a), by March 1 of the succeeding year.

(d) Redesignates this subsection from Subsection (e). Prohibits the authority, unless made pursuant to the transfer of a regular, term, emergency, monitoring, or recharge recovery permit, the transfer of interim authorization, or an exempt well, from allowing withdrawals from the aquifer through wells drilled after June 1, 1993. Deletes text referring to an exception to the prohibition.

(e) Redesignates this subsection from Subsection (f). Requires, rather than authorizes, the authority, if the level of the aquifer is equal to or greater than 650 feet above mean sea level as measured at Well J-17, to authorize withdrawals pursuant to initial regular permits, rather than withdrawals, from the San Antonio pool, on an uninterruptible basis. Requires, rather than authorizes, the authority, if the level of the aquifer is equal to or greater than 845 feet at Well J-27, to authorize withdrawals pursuant to initial regular permits from the Uvalde pool, on an uninterruptible basis. Authorizes the authority, if the level of the aquifer is less than 650 feet above mean sea level as measured at Well J-17, pursuant to Section 1.26 of this article, to interrupt withdrawals pursuant to initial regular permits from the San Antonio pool. Authorizes the authority, if the level of the aquifer is less than 845 feet at Well J-27, pursuant to Section 1.26 of this article, to interrupt withdrawals pursuant to initial regular permits from the Uvalde pool. Requires the authority, pursuant to Section 1.26 of this article, to require interruptions in withdrawals, rather than limit the additional withdrawals, or require implementation of programs, practices, procedures, or methods, pursuant to Subsection (g) of this section, to protect, rather than ensure, springflows at the Comal Springs and San Marcos Springs during demand management and critical period management, rather than drought, conditions.

(f) Redesignates this subsection from Subsection (g).

(g) Redesignates this subsection from Subsection (h). Requires the authority, by June 1, 2005, rather than 1994, to implement and enforce water management programs, practices, procedures, or 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. Deletes text referring to accomplishing the purposes of this article. Authorizes the authority from time to time as appropriate to revise the programs, practices, procedures, or methods. Requires the authority, to meet this requirement, to require, pursuant to Section 1.26 of this article, phased reductions in the amount of water that may be used or withdrawn by existing users or categories of other users, or implementation of alternative management programs, practices, procedures, or methods.

SECTION 6. Amends Section 1.15(b), Chapter 626 Acts of the 73rd Legislature, Regular Session, 1993, to include a reference to Section 1.331 of this article as an exception to the prohibition against a person withdrawing water from the aquifer or beginning construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority.

SECTION 7. Amends Sections 1.16(e)-(h), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(e) Requires the board of directors of the Edwards Aquifer Authority (board), to the extent water is available for permitting, to issue an existing user a regular permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. Requires the authority, if an existing user does not have historical use for a full year, to set the user's maximum beneficial use of water without waste as the amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. Deletes text referring to issuing a permit for withdrawal.

(f) Creates this subsection from existing text. Requires the authority, if the total amount of water determined to have been beneficially used without waste under Subsection (e) of this section exceeds the amount of water available for permitting under Subsection (b) of Section 1.14 of this article, to proportionately adjust the amount of water authorized for withdrawal under regular permits to meet the amount available for permitting. Prohibits an existing user, except as provided by Subsection (b) of Section 1.21 of this article, from being proportionately adjusted below certain amounts.

(g) Requires the authority, except as provided by Subsection (b) of Section 1.21 of this

article, in the event a proportional adjustment results in an amount of water authorized for withdrawal under a regular permit that is less than an applicable minimum regular permit amount specified in Subsection (f) of this section, to restore the amount to be equal to the minimum regular permit amount.

(h) Redesignates this subsection from Subsection (f).

(i) Redesignates this subsection from Subsection (g).

(j) Redesignates this subsection from Subsection (h).

SECTION 8. Amends Section 1.21, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

SECTION 1.21. New heading: RETIREMENT OF PERMITS OR APPLICATIONS. (a) Requires the authority to prepare and implement a plan for reducing, by January 1, 2005, rather than 2008, the maximum annual volume of water authorized to be withdrawn from the aquifer under regular permits to 550,000, rather than 400,000, acre-feet a year or the adjusted amount determined under Subsection (c), rather than (d) of Section 1.14 of this article. Requires the plan to be enforceable and to include measures to retire all or part of regular permits or applications for initial regular permits, or other water management measures designed to achieve the required reductions.

(b) Requires the authority, if, on or after January 1, 2005, rather than 2008, the overall volume of water authorized to be withdrawn from the aquifer under regular permits is greater than 550,000 acre-feet a year or greater than the adjusted amount determined under Subsection (c) of Section 1.14 of this article, to immediately proportionately adjust the maximum authorized withdrawal amount of each regular permit as determined under Subsection (e) of Section 1.16 of this article, rather than to be immediately reduced by an equal percentage, as is necessary to reduce aggregate, rather than aggregate overall, maximum authorized withdrawals under regular permits to 550,000 acre-feet a year or the adjusted amount, as appropriate. Requires the authority, in the event a proportional adjustment results in an amount of water authorized for withdrawal under a regular permit that is less than an applicable minimum regular permit amount specified in Subsection (f) of Section 1.16 of this article, to, in accordance with Section 1.29 of this article, compensate the permittee for the amount of the authorized withdrawal below the minimum regular permit amount that was proportionately adjusted in order to meet 550,000 acre-feet a year, or as that amount may be adjusted under Subsection (c) of Section 1.14 of this article. Authorizes the amount reduced to be restored, in whole or in part, as other appropriate measures are implemented that maintain overall demand at or below the appropriate amount. Makes conforming changes.

SECTION 9. Amends Section 1.26, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

SECTION 1.26. New heading: DEMAND MANAGEMENT AND CRITICAL PERIOD MANAGEMENT PLAN. (a) Requires the authority to prepare and coordinate implementation of a plan for demand management and critical period management. Requires the mechanisms to meet certain conditions. Deletes existing text relating to implementing a certain plan on or before September 1, 1995.

(b) Requires the board to adopt measures to ensure that authorized withdrawals from non-exempt wells are reduced to 350,000 acre-feet, annualized, if certain conditions are met.

(c) Requires the demand management and critical period plan required to be prepared and implemented by this section to be adopted by the board no later than

September 1, 2004. Requires the board, in the event this deadline is not met, irrespective of whether a demand management or critical period is in effect, to issue an order temporarily interrupting 20 percent of the amount of water authorized for withdrawal under each regular permit until the board has adopted the plan.

SECTION 10. Amends Section 1.28(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to authorize the authority to issue revenue bonds for certain purposes.

SECTION 11. Amends Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 and Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Requires the cost of permit or application retirements under Section 1.21 of this article or the adjusted amount under Subsection (c) of Section 1.14 of this article for the period ending December 31, 2004, to be borne solely by users of the aquifer and to be paid for by aquifer management fees assessed under Subsections (b) and (c) of this section. Deletes existing text relating to the cost of reducing withdrawals. Makes conforming changes.

(b) Authorizes aquifer management fees to additionally be used for the repayment of revenue bonds issued by the authority pursuant to Section 1.28 of this article. Deletes existing Subsections (c), (d) and (h) relating to certain special fees.

(c) Redesignates from existing Subsection (e).

(d) Redesignates from existing Subsection (f).

(e) Redesignates from existing Subsection (g).

(f) Redesignates from existing Subsection (i). Makes a conforming change.

SECTION 12. Amends Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended by Chapters 261 and 524, Acts of the 74th Legislature, Regular Session, 1995, Chapter 163, Acts of the 76th Legislature, Regular Session, 1999, and Chapters 966 and 1192, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1.331, as follows:

SECTION 1.331 EXEMPTION FOR FEDERAL FACILITIES. Provides that a federal facility that has not waived sovereign immunity with respect to the permitting requirements of Section 1.15(b) of this article is exempt from the requirements of this article and any rules promulgated thereunder.

SECTION 13. Amends Sections 1.34(b) and 1.34(c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Requires, rather than authorizes, the authority by rule to establish a procedure by which a person who has achieved, rather than installs, water conservation, rather than water conservation equipment, may transfer, rather than sell, the conserved water.

(c) Authorizes a permit holder to transfer a regular permit, however, with respect to a regular permit originally issued for irrigation use, up to 50 percent of such a permit may be transferred without restrictions as to the place or purpose of use, while the remaining 50 percent may only be transferred to certain places and in a manner consistent with rules adopted by the authority for the transfer of conserved water pursuant to Subsection (b) of this section. Deletes existing text relating to prohibiting a holder of a permit for irrigation from taking certain actions. Deletes existing text relating to remaining irrigation water rights.

SECTION 14. Amends Section 1.45, 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.

SECTION 15. TRANSFER SAVINGS CLAUSE. Provides that the provisions of Section 1.34, as amended by this Act, apply only to transfers effective on or after the effective date of this Act. Provides that the change in law to Section 1.34 made by this Act does not affect the validity of transfers effective prior to the effective date of this Act and such transfers are governed by the Act and the rules of the authority in effect at the time the transfer was effective. Provides that transfers effective prior to the effective date of this Act approved by the authority and which have not been rescinded or are not subject to pending litigation are hereby validated.

SECTION 16. Amends Chapter 626, Acts of the 73rd Legislature Regular Session, 1993, as amended by Chapters 261 and 524, Acts of the 74th Legislature, Regular Session, 1995, Chapter 163, Acts of the 76th Legislature, Regular Session 1999, and Chapters 966 and 1192, Acts of the 77th Legislature, Regular Session 2001, by adding Section 3.05 as follows:

SECTION 3.05. EXEMPTION. Provides that Chapter 245, Local Government Code, does not apply within the boundaries of the Edwards Aquifer Authority.

SECTION 17. EFFECTIVE DATE. Effective date: upon passage or September 1, 2003.