

BILL ANALYSIS

C.S.H.B. 41
By: Puente
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 41 provides that Edwards Aquifer Authority (EAA) own, finance, and maintain recharge facilities. The bill also provides that the amount of permitted withdrawals from the Edwards Aquifer may not exceed the sum of all regular permits issued. In addition, C.S.H.B. 41 requires the EAA to reduce the volume of permitted withdrawals to an annualized rate of 340,000 acre-feet, under critical period stage IV. After January 1, 2012, the EAA will be required to reduce the volume of permitted withdrawals to 320,000 acre-feet under critical period IV. C.S.H.B. 41 authorizes an EAA stakeholders committee to appoint a seven-member expert science team to assist with providing technical expertise regarding the Edwards Aquifer system, spring flows, or the development of withdrawal limitations.

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 1.11(f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(f) Authorizes the Edwards Aquifer Authority (authority) to own, finance, design, construct, operate, or maintain recharge facilities or contract with a person who uses water from the aquifer for the authority or that person to own, finance, design, construct, operate, or maintain recharge facilities. Redefines "recharge facility" for the purpose of this subsection. Deletes existing text prohibiting fees from being used for purchasing or operating facilities.

SECTION 2. Amends Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session 1993, by amending Subsections (a), (c), (f), and (h), as follows:

(a) Requires authorizations to withdraw water from Edwards Aquifer (aquifer) and all authorizations and rights to make a withdrawal under this Act to be limited in accordance with this section to recognize the hydro-geologic connection and interaction between surface and groundwater.

(c) Prohibits the amount of permitted withdrawals from the aquifer, except as provided by Subsections (f) and (h) of this section, for the period beginning January 1, 2005, rather than 2008, from exceeding the sum of all regular permits issued or for which an application has been filed and issuance is pending action by the authority as of January 1, 2005. Deletes text providing exceptions provided by Subsection (d) and Section 1.26 of this article. Deletes text prohibiting the permitted amount of withdrawals from the aquifer from exceeding 400,000 acre-feet for each calendar year.

(f) Authorizes the authority, if the level of the aquifer is equal to or greater than 665, rather than 650, feet above mean sea level as measured at well J-17, to authorize withdrawal from the San Antonio pool, on an uninterrupted basis, of permitted amounts. Requires the authority, in accordance with Section 1.26 of this article, to limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

(h) Authorizes the authority, to accomplish the purposes of this article, through a program, to implement and enforce water management practices, procedures, and 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 and to achieve other purposes provided by Subsection (a) of this section and Section 1.26 of this article. Authorizes the authority from time to time as appropriate to revise the practices, procedures, and methods. Requires the authority, to meet this requirement, to require 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 practices, procedures, and methods, including the authority's critical period management plan established under Section 1.26 of this article or implementation of alternative management practices, procedures, and methods.

SECTION 3. Amends Section 1.15(c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to prohibit regular permits, except as provided in Section 1.14(f) and Section 1.26 of this article, from being issued on an interruptible basis, and prohibits the total authorized withdrawals authorized by all regular permits issued by the authority from exceeding the limitation provided by Section 1.14 of this article.

SECTION 4. Amends Section 1.19(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Requires the withdrawal of water under a term permit to be consistent with the authority's critical period management plan established under Section 1.26 of this article. Prohibits a holder of a term permit from withdrawing from the San Antonio pool of the aquifer unless the level of the aquifer is higher than 675, rather 665, feet above sea level, as measured at Well J-17, and the flow at Comal Springs as determined by Section 1.26(c) is greater than 350 cfs.

SECTION 5. Amends Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Section 1.26 and adding Sections 1.26A, as follows:

Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) Requires the authority, after review of the recommendations received, as prescribed in Section 1.26A of this article, to prepare and coordinate implementation of a critical period management plan in a manner consistent with Section 1.14(a). Deletes existing text regarding a deadline.

(b) Defines "MSL" and "CFS." Requires the authority, not later than January 1, 2006, by rule, to adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts indicated in Tables 1 and 2 whether according to the index levels or Comal Springs flow as may be applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 30 percent under Table 2.

(c) Requires the authority to continuously track the average daily discharge rate measured over each period of five consecutive days at Comal Springs to determine whether a reduction in withdrawals to the Stage III reduction level is required. Requires the authority to track the average daily discharge rate measured for any five days in a period of 10 consecutive days to determine whether a reduction in withdrawals to the Stage IV reduction level is required.

(d) Requires the authority, beginning November 1, 2005, to reduce the volume of permitted withdrawals to an annualized rate of 340,000 acre-feet, under critical period Stage IV. Requires the authority, after January 1, 2012, to reduce the volume of permitted withdrawals to 320,000 acre-feet, under critical period IV.

(e) Requires the authority, after January 1, 2020, and after review and consideration of recommendations received by the authority under Section 1.26A of this article, to adjust the volume of permitted withdrawals to an appropriate

annualized rate under critical period Stage IV that is consistent with maintaining the protections contained in Section 1.14(a) of this article.

(f) Authorizes the authority, from time to time, by rule, to amend the withdrawal reduction criteria of the critical period management plan as set forth in Subsections (b), (c) and (e), after review and consideration of the recommendations from the Environmental Flows Commission, or the Texas Water Development Board (board) if the Environmental Flows Commission is not established, the Edwards Aquifer area expert science team, and the Edwards Aquifer Area Stakeholders Committee, as prescribed in Section 1.26A of this article. Requires the amended plan to be consistent with Section 1.14(a) of this article.

Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT. (a) Requires the Environmental Flows Commission, as established under Section 11.0236, Water Code, or the board if the Environmental Flows Commission is not established, to appoint a 15-member Edwards Aquifer Area Stakeholders Committee (stakeholders committee) not later than January 1, 2006. Sets forth the composition of the committee.

(b) Requires the stakeholders committee to appoint a seven-member Edwards area expert science team (expert science team) not later than April 30, 2006. Requires the expert science team to be composed of technical members with certain special expertise. Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of the expert science team. Requires a member of Texas Environmental Flows science advisory committee, or a designee of the board if the Environmental Flows science advisory committee is not established in Section 11.02361, Water Code, to serve as liaison to the expert science team.

(c) Requires the expert science team to develop an analysis of spring discharge rates and aquifer levels as a function of withdrawal levels. Requires the expert science team, based upon this analysis and the required elements to be considered by the authority in Section 1.14 of this article, through a collaborative process designed to achieve consensus, to create recommendations for withdrawal reduction levels and stages for critical period management including, if appropriate, establishing separate and different withdrawal reduction levels and stages for critical period management rules for different pools of the aquifer and submit them to the stakeholders committee, the flows commission, and the authority. Requires the initial recommendations to be completed and submitted no later than September 30, 2006.

(d) Requires the expert science team, in developing its recommendations, to consider all reasonably available science, including any Edwards Aquifer specific studies, and to be based solely on the best science available. Prohibits the stakeholders committee from changing the recommendations of the expert science team regarding the withdrawal limitations appropriate to achieve the purposes of Section 1.14 of this article.

(e) Requires the stakeholders committee to review the withdrawal limitation and critical period management submitted by the expert science team and to consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the Edwards Aquifer area and the required elements to be considered by the authority in Section 1.14 of this article. Requires the stakeholders committee to develop recommendations regarding a critical period management plan and submit its recommendations to the authority and the Environmental Flows Commission or the board if the Environmental Flows Commission is not established. Requires the stakeholders committee, in developing its recommendations, to operate on a consensus basis to the maximum extent possible. Requires the initial recommendations to be completed and submitted no later than October 31, 2006.

(f) Requires the Environmental Flows Commission or the board if the Environmental Flows Commission is not established to submit to the authority its comments on and recommendations regarding the expert science team's recommended withdrawal reduction levels and stages for critical management needed to maintain target spring discharge and aquifer levels. Requires the withdrawal reduction recommendations to be based upon a combination of spring discharge rates of the San Marcos and Comal Springs and levels at J-17 and J-27 wells.

(g) Requires the expert science team, stakeholder committee, and the Environmental Flows Commission or the board if the Environmental Flows Commission is not established to submit recommendations to the authority for use in developing its rules relative to establishing the critical period management plan.

(h) Requires the meetings of the expert science team and stakeholders committee, where reasonably practicable, to be open to the public.

(i) Requires the stakeholders committee, with the assistance of the expert science team, in recognition of the importance of critical period management to adapt to changed conditions or information, after submitting its recommendations regarding withdrawal limitations and strategies to meet the spring flow needs to the authority, to prepare and submit a specific work plan to the Environmental Flows Commission or the board if the Environmental Flows Commission is not established. Sets forth the requirements of the work plan.

(j) Requires the authority, to assist the Environmental Flows Commission or the board if the Environmental Flows Commission is not established to assess the extent to which the recommendations of the expert science team are considered and implemented, to provide specific written reports to the Environmental Flows Commission or the board if the Environmental Flows Commission is not established, at intervals determined by the Environmental Flows Commission or the Texas Water Development Board if the flows commission is not established.

SECTION 6. Amends Sections 1.29(b) and (i), Section 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) Authorizes each water district governed by Chapter 36, rather than 52, Water Code, that is within the authority's boundaries to contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district.

(i) Requires the authority to provide money as necessary, but not to exceed \$75,000, annually adjusted for changes in the consumer price index, rather than five percent of the money collected under Subsection (d), to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

SECTION 7. Amends Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 1.29A, as follows:

Sec. 1.29A. BUDGETARY ADVISORY COMMITTEE. (a) Requires the authority to appoint a budgetary advisory committee no later than November 30, 2005, to consult and advise the authority on certain budget issues prior to its submission to the board.

(b) Requires each voting member of the board to appoint one member of the budgetary advisory committee.

SECTION 8. Amends Section 1.45(a), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to make conforming changes.

SECTION 9. Repealer: (1) Sections 1.14 (b) (relating to the amount of permitted withdrawals from the aquifer), and (d) (relating to authorizing the authority to increase the maximum amount of withdrawals), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993;

(2) Section 1.18 (Additional Regular Permits), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993; and

(3) Section 1.21 (Permit Requirement), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993; and

(4) Sections 1.29 (a) (relating to requiring the cost of reducing withdrawals or permit retirements), (c) (relating to authorizing the authority to assess an equitable special fee), (d) (relating to requiring the commission to assess equitable special fees), and (h) (relating to prohibiting the use of special fees) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 10. Effective date: November 1, 2005.

EFFECTIVE DATE

November 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In SECTION 5 of C.S.H.B. 41, Section 1.26(d), the authority is required to reduce the volume of permitted withdrawals to an annualized rate of 340,000 acre-feet, under critical period Stage IV, beginning November 1, 2005. The bill, as filed, required the reduction as of September 1, 2005. The change is made to accommodate the Act's effective date of November 1, 2005.

In SECTION 5 of C.S.H.B. 41, Section 1.26A(a), the composition of the Edwards Aquifer Area Stakeholders Committee includes two downstream water rights holders in the Guadalupe River basin and two downstream water rights holders in the Nueces River basin. The bill, as filed, provided for membership of four downstream water rights holders in the Guadalupe River basin.

In SECTION 5 of C.S.H.B. 41, Section 1.26A(b), a reference made to the Environmental Flows Commission is changed to more accurately reflect the Environmental Flows science advisory committee appointed by the Environmental Flows Commission.