

BILL ANALYSIS

Senate Research Center

S.B. 1341
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Edwards Aquifer Authority (authority) has been provided with the powers and duties to manage and protect the Edwards Aquifer and the authority to make decisions regarding groundwater withdrawal limits, permits, fees, recharge projects, demand management and transfers, the authority's board of directors, and revenue bonding authority. Current law allows the authority to issue permits for 450,000 acre-feet a year until January 2008, after which time the permit withdrawal amount must be reduced to 400,000 acre-feet a year. However, this requirement will not be met because the authority is also required to provide withdrawal permits to applicants that demonstrate, by convincing evidence, that they beneficially used groundwater between 1972 and 1993, providing most applicants with a guaranteed minimum permit.

Certain restrictions are in place to protect flows at the Comal Springs and the San Marcos Springs and to protect downstream surface rights during low aquifer conditions. The authority may only change the cap on withdrawals if it completes a number of scientific studies and consults with state and federal agencies. Also, the authority may interrupt the 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.

Currently, there is no scientific evidence available on which the authority can base decisions regarding caps for groundwater withdrawal permits, or interruptions of regular permit withdrawals to protect the spring flows at the Comal and San Marcos Springs and downstream surface water rights during low aquifer conditions.

As proposed, S.B. 1341 establishes a stakeholder process to obtain a consensus to ensure that the flows of the Comal Springs and the San Marcos Springs are protected during droughts, and to encourage conservation and the development of new supplies of water to meet the increasing demands of the region's rapidly growing population. The bill freezes pumping levels at current levels until January 2010, and suspends until January 1, 2012, lawsuits over water rights during the implementation of the program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits the amount of permitted withdrawals from the Edwards Aquifer (aquifer) from exceeding 450,000 acre-feet of water for each calendar year for the period beginning January 1, 2010, rather than the period ending December 31, 2007, except as otherwise provided.

(c) Prohibits the amount of permitted withdrawals from the Edwards Aquifer (aquifer) from exceeding 400,000 acre-feet of water for each calendar year for the period beginning February 1, 2010, rather than January 1, 2008, except as provided by Subsection (d), (f), and (h).

SECTION 2. Amends Sections 1.21(a) and (c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Requires the authority to prepare and implement the plan required under this subsection by January 1, 2010, rather than 2008.

(c) Amends the date under this subsection to on or after February 1, 2010, rather than on or after January 1, 2008

SECTION 3. Amends Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(a) Requires the cost of reducing withdrawals or permit retirements to be borne solely by users of the aquifer for reducing withdrawals from the level on the effective date of this article to 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article for the period beginning January 1, 2010, rather than ending December 31, 2007. Requires the cost of reducing withdrawals or permit retirements to be borne equally by aquifer users and downstream water rights holders for permit retirements from 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article for the period beginning January 1, 2010, to 400,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article, for the period beginning February 1, 2010, rather than January 1, 2008. Makes a conforming change.

(d) Makes conforming changes.

(e)-(g) Makes no changes to these subsections.

(h) Requires the authority, to accomplish the purposes of this article by January 1, 2012, rather than June 1, 1994, 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.

(i) Requires the Bureau of Economic Geology at The University of Texas to develop the program of water management practices, procedures, and methods (program) referred to in this Subsection jointly with the authority, the Texas Commission on Environmental Quality (TCEQ), the Texas Parks and Wildlife Department (TPWD), the Texas Department of Agriculture (TDA), and the Texas Water Development Board (board). Requires the program to be developed through a facilitated, consensus-based process that involves input from the U.S. Fish and Wildlife Service and all interested stakeholders. Requires the authority, TCEQ, TPWD, TDA, and the board to provide two reports to the Edward Aquifer Legislative Oversight Committee; the first report not later than January 1, 2008, and the second report not later than September 1, 2008, and requires the reports to include certain information.

Requires the authority, TCEQ, TPWD, TDA, and the board to jointly prepare a cooperative agreement with the secretary of the interior, through the U.S. Fish and Wildlife Service, pursuant to Section 6(c) of the Engangered Species Act of 1973, 16 U.S.C. Section 1531 et seq., based on the program under this subsection. Requires the cooperative agreement to ensure that listed species associated with the aquifer will be protected at all times, including throughout a repeat of the drought of record, based on the requirements of the critical period management plan in effect at that time pursuant to Section 1.26 of this article. Requires each agency to approve and execute the cooperative agreement not later than January 1, 2012, to take effect not later than December 31, 2012. Requires the cooperative agreement to include a commitment by the TCEQ to utilize certain enforcement powers to the extent necessary to require the authority to perform its duties under this Act, including the authority's duty to regulate withdrawals as required by the critical period management plan approved under Section 1.26 of this Article. Requires the cooperative agreement to include agreements by the parties to pursue grant

funding to the extent available from all available state, federal, and other sources for eligible programs included in the cooperative agreement.

SECTION 4. Prohibits a suit from being instituted in any court contesting the validity or implementation of this Act, or the groundwater withdrawal amounts recognized in Section 4 of this Act prior to January 1, 2012.

SECTION 5. Effective date: upon passage or September 1, 2007.