

## **BILL ANALYSIS**

C.S.H.B. 1279  
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Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

S.B. 1477, 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.

C.S.H.B. 1279 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 36 that are not otherwise contained in Chapter 49 (Provisions Applicable to All Districts), Water Code, or other applicable general law, 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 (i.e. a well incapable of producing or, if metered that does not actually produce more than 1,250 gallons of water per day)—and simplifies the purpose of use and well location requirements for exempt domestic and livestock use wells. The bill updates references to other general laws cited in the Act that have been repealed, amended, or recodified, and updates dates in the Act that have been changed as a result of court decisions. Finally, the bill provides for limitations on the institution of suits against the Authority based on or derived from Chapter 36, Water Code, and that changes in Chapter 36 made by the bill apply only to suits filed on or after the effective date of the bill.

As proposed, C.S.H.B. 1279 amends current law relating to the administration, powers, duties, and operation of the Authority.

### **RULEMAKING AUTHORITY**

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

### **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 resale of potable water to the public for any use, subject to the rules adopted by the Authority, rather than subject to the rules adopted by the Authority or a district exercising the powers provided by former Chapter 52 (Underground Water Conservation Districts), Water Code. Makes a conforming change.

SECTION 3. Amends Section 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 former Chapter 50 (Provisions Generally Applicable to Districts), Chapter 51 and former Chapter 52, (Underground Water Conservation Districts) 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 Section 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 former Chapter 32 (Water Well Drillers), 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 (Water Well Drillers), Occupations Code, rather than former Chapter 32 (Water Well Drillers), 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 Section 1.15, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, by amending Subsection (d) and adding Subsection (d-1) as follows:

(d) Provides that a permit issued by the Authority to an applicant must state the terms and provisions prescribed by the Authority. Provides that each groundwater withdrawal permit must specify the maximum rate and total volume of water that the water user may withdraw in a calendar year, rather than that each permit must specify the maximum rate and total volume of water that the user may withdraw in a calendar year.

(d-1) Provides that a permit may include:

- (1) the name and address of the person to whom the permit is issued;

- (2) the location of the well;
- (3) the term of the permit, including the date the permit is to expire;
- (4) a statement of purpose for which the well is to be used;
- (5) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
- (6) the location at which the water from the well will be used;
- (7) a water well closure plan or a declaration that the applicant will comply with the Authority's well closure requirements and notify the Authority of the closure;
- (8) conditions and restrictions on the rate and amount of withdrawal;
- (9) conservation requirements prescribed by the Authority;
- (10) a drought contingency plan prescribed by the Authority; and'
- (11) other terms and conditions the Authority determines reasonable and appropriate.

SECTION 10. Amends Section 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 11. Amends Section 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 12. 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 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 13. 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 14. Amends Section 1.25, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsections (a) and (b), and adding Subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k) as follows:

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

(b) Provides that the Authority shall develop the groundwater management plan, and any amendment to the plan, using the best available data that the Authority has obtained and forward the plan, and any amendment to the plan, to the appropriate regional water planning group for use in the group's planning process. Strikes text of existing Subsection (b), providing that the Authority, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and underground water conservation districts within the Authority's boundaries, shall 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 and the Edwards Aquifer Legislative Oversight Committee and that the Authority, advisory committee, Texas Water Development Board, and districts, in developing the plan, shall (1) thoroughly investigate all alternative technologies, (2) investigate mechanisms for providing financial assistance for alternative supplies through the Texas Water Development Board; (3) perform a cost-benefit analysis and an environmental analysis.

(c) Provides that on request of the Authority, the commission and the Texas Water Development Board shall provide technical assistance to the Authority in the development of the groundwater management plan which may include, a preliminary review and comment on the plan prior to final certification by the executive administrator of the Texas Water Development Board. Provides that if such review and comment by the commission is requested, the commission shall provide comment not later than 30 days from the date the request is received.

(d) Provides that on request of the executive director of the commission or the executive administrator of the Texas Water Development Board, the Authority shall make available information that it acquires concerning the Aquifer within its jurisdiction and information concerning its plans and activities in conserving and protecting the Aquifer. Provides that on request of the Authority, the executive director and the executive administrator shall provide information they acquire concerning the Aquifer within the Authority's jurisdiction.

(e) Provides that in the groundwater management plan, the Authority shall:

- (1) identify the performance standards and management objectives under which the Authority will operate to achieve its aquifer management goals;
- (2) specify the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;
- (3) include estimates of the following:
  - (A) the amount of groundwater being used within the Authority on an annual basis;
  - (B) the annual amount of recharge to the Aquifer;
  - (C) the annual volume of water that discharges from the Aquifer to springs;
  - (D) the annual volume of flow into and out of the Authority's jurisdiction within the Aquifer and between the Aquifer and other aquifers, if an appropriate groundwater availability model is available;
  - (E) the projected surface water supply in the Authority according to the most recently adopted state water plan; and
  - (F) the projected total demand for water in the Authority according to the most recently adopted state water plan; and

- (4) consider the water supply needs and water management strategies included in the adopted state water plan.

(f) Provides that the Authority shall adopt amendments to the groundwater management plan as necessary. Provides that amendments to the plan shall be adopted after notice and hearing. Provides that any amendment to the plan shall be submitted to the executive administrator of the Texas Water Development Board within 60 days following adoption of the amendment by the board. Provides that the executive administrator shall review and certify any amendment in accordance with the procedures established in this section.

(g) Provides that the Authority shall, not later than December 31, 2015, submit its next groundwater management plan to the executive administrator of the Texas Water Development Board for review and certification.

(h) Provides that within 60 days of receipt of the groundwater management plan adopted by the board, the executive administrator of the Texas Water Development Board shall certify the plan if the plan is administratively complete. Provides that the plan is administratively complete when it contains the information required by this section. Provides that once the executive administrator has certified the plan, the executive administrator may not decertify the plan.

(i) Provides that the groundwater management plan takes effect on certification by the executive administrator of the Texas Water Development Board.

(j) Provides that the Authority shall review its groundwater management plan annually and must review and readopt the plan with or without amendments at least once every five years. Provides that the Authority shall provide the readopted plan to the executive administrator of the Texas Water Development Board not later than the 60<sup>th</sup> day after the date on which the plan was readopted by the board. Provides that certification of the preceding plan remains in effect until the executive administrator has certified the readopted plan.

(k) Provides that if the executive administrator of the Texas Water Development Board does not certify the groundwater management plan, the executive administrator shall provide to the Authority, in writing, the reasons for the action. Provides that not later than the 180<sup>th</sup> day after the date the Authority receives notice that its plan has not been certified, the Authority may submit a revised plan for review and certification. Provides that the executive administrator's decision may be appealed to the Texas Water Development Board. Provides that if the Texas Water Development Board decides not to certify the plan on appeal, the Authority may request that the conflict be mediated. Provides that the Authority and the Texas Water Development Board may seek the assistance of the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. Provides that the cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. Provides that if the parties do not resolve the conflict through mediation, the decision of the Texas Water Development Board not to certify the plan may be appealed to a district court in Travis County. Provides that costs for the appeal shall be set by the court hearing the appeal. Provides that an appeal under this subsection is by trial de novo.

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. Strikes 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 the text of existing Subsection (b). Requires that a well that is exempt under Subsection (a) or (b) of this section, rather than generally 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 (Water Well Drillers), 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;

(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 Section 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 Section 1.42(a), (b), and (c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to make conforming changes relating to the name for groundwater conservation districts, rather than underground water conservation districts.

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, (Groundwater Conservation Districts), Water Code, rather than former Subchapter B (Creation of Districts and Management Areas Generally), former Chapter 52 (Underground Water Conservation Districts), 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, 1996, 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. Makes nonsubstantive changes.

SECTION 28. Repealers: (1) Section 1.41(d) (relating to transferring funds to the Authority from the Edwards Underground Water District); 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 a suit based on or derived from Chapter 36 (Groundwater Conservation Districts), Water Code, contesting the validity or implementation of Article 1, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, or a rule, order or other action of the Authority under that article may not be instituted in a state court.

(b) Provides that a person may not institute or maintain a suit against the Authority based on or derived from Chapter 36 (Groundwater Conservation Districts), Water Code, for any injury or potential injury, including any injury or potential injury caused by an action taken by the Authority to implement or enforce Article 1, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, or a rule, order, or other action of the Authority under that article.

(c) Provides that the changes in law made by this Act to Chapter 36 (Groundwater Conservation Districts), Water Code, apply only to a cause of action against the Authority filed on or after the effective date of this Act. Provides that a cause of action filed before the effective date of this Act is governed by the law in effect when the cause of action was filed, and the former law is continued in effect for that purpose.

SECTION 30. (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 31. Provides for the effective date of this Act.

### **EFFECTIVE DATE**

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 1279 defines livestock use as the use of water for livestock or poultry, whereas the original defined livestock use as the use of water for watering livestock.

C.S.H.B. 1279 omits a section amending Chapter 36 (Groundwater Conservation Districts), Water Code, to provide that the chapter does not apply to the Authority, whereas the original included such an amendment.

C.S.H.B. 1279 provides that a member of a governing body of another political subdivision is ineligible for appointment or election as a director of the Authority and that director of the Authority is disqualified and vacates the office if the director is appointed or elected as a member of the governing body of another political subdivision, whereas the original contained no such provision.

C.S.H.B. 1279 modifies the name in which the Authority may be sued to “only” in its own name, whereas the original provided the Authority may be sue and be sued “in its own name in the courts of this state in the name of the authority by and through the board.”

C.S.H.B. 1279 amends a subsection to provide that a permit issued by the Authority to an applicant must state the terms and provisions prescribed by the Authority, and that each groundwater withdrawal permit must specify the maximum rate and total volume of water that the water user may withdraw in a calendar year, whereas the original contained no such amendment.

C.S.H.B. 1279 adds a subsection providing that a permit may include (1) the name and address of the person to whom the permit is issued, (2) the location of the well, (3) the term of the permit, including the date the permit is to expire, (4) a statement of the purpose for which the well is to be used, (5) a requirement that the water withdrawn under the permit be put to beneficial use at all times, (6) the location at which water from the well will be used, (7) a water well closure plan or a declaration that the applicant will comply with the Authority’s well closure requirements and notify the Authority of the closure, (8) the conditions and restrictions on the rate and amount of withdrawal, (9) conservation requirements prescribed by the Authority, (10) a drought contingency plan prescribed by the Authority, and (11) other terms and conditions the Authority determines reasonable and appropriate, whereas the original contained no such provision.

C.S.H.B. 1279 strikes COMPREHENSIVE in the title of Section 1.25 of the Act inserts GROUNDWATER before MANAGEMENT PLAN, and strikes “comprehensive water” and inserts “groundwater” in subsection (a) of Section 1.25, whereas the original contained no such strike and amendment.

C.S.H.B. 1279 provides that the Authority shall develop a groundwater management plan after notice and hearing, whereas the original provided that the Authority shall develop and implement a comprehensive water management plan with no such notice and hearing provision.

C.S.H.B. 1279 provides that the Authority shall develop a groundwater management plan, and any amendment to the plan, using the best available data that the Authority has obtained and forward the plan, and any amendment to the plan, to the appropriate regional water planning group for use in the group’s planning process, whereas the original contained no such a provision.

C.S.H.B. 1279 strikes all of a subsection requiring the Authority to develop a 20-year plan, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and underground water conservation districts for providing alternative supplies of water to the region and providing requirements for developing such a plan, whereas the original did not strike all of the subsection but struck only “and the Edwards Aquifer Legislative Oversight Committee.”

C.S.H.B. 1279 provides that on request of the Authority, the commission and the Texas Water Development Board shall provide technical assistance to the Authority in the development of the groundwater management plan which may include a preliminary review and comment on the plan prior to final certification by the executive administrator of the Texas Water Development Board, and that if such review and comment by the commission is requested, the commission shall provide comment not later than 30 days from the date the request is received, whereas the original contained no such provision.

C.S.H.B. 1279 provides that on request of the executive director of the commission or the executive administrator of the Texas Water Development Board, the Authority shall make available information that it acquires concerning the Aquifer within its jurisdiction and information concerning its plans and activities in conserving and protecting the Aquifer and that

on request of the Authority, the executive director and the executive administrator shall provide information they acquire concerning the Aquifer within the Authority's jurisdiction, whereas the original contained no such provision.

C.S.H.B. 1279 provides that in the groundwater management plan, the Authority shall: (1) identify the performance standards and management objectives under which the Authority will operate to achieve its aquifer management goals; (2) specify the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules; (3) include estimates of the following: (A) the amount of groundwater being used within the Authority on an annual basis; (B) the annual amount of recharge to the Aquifer; (C) the annual volume of water that discharges from the Aquifer to springs; (D) the annual volume of flow into and out of the Authority's jurisdiction within the Aquifer and between aquifers, if an appropriate groundwater availability model is available; (E) the projected surface water supply in the Authority according to the most recently adopted state water plan; and (F) the projected total demand for water in the Authority according to the most recently adopted state water plan; and (4) consider the water supply needs and water management strategies included in the adopted state water plan, whereas the original contained no such provision.

C.S.H.B. 1279 provides that the Authority shall adopt amendments to the groundwater management plan as necessary; that amendments to the plan shall be adopted after notice and hearing; that any amendment to the plan shall be submitted to the executive administrator of the Texas Water Development Board within 60 days following adoption of the amendment by the board; and that the executive administrator shall review and certify any amendment in accordance with the procedures established in this section, whereas the original contained no such provision.

C.S.H.B. 1279 provides that the Authority shall, not later than December 31, 2015, submit its next groundwater management plan to the executive administrator of the Texas Water Development Board for review and certification, whereas the original contained no such provision.

C.S.H.B. 1279 provides that within 60 days of receipt of the groundwater management plan adopted by the board, the executive administrator of the Texas Water Development Board shall certify the plan if the plan is administratively complete; that the plan is administratively complete when it contains the information required by this section; and that once the executive administrator has certified the plan, the executive administrator may not decertify the plan, whereas the original contained no such provision.

C.S.H.B. 1279 provides that the groundwater management plan takes effect on certification by the executive administrator of the Texas Water Development Board, whereas the original contained no such provision.

C.S.H.B. 1279 provides that the Authority shall review its groundwater management plan annually and must review and readopt the plan with or without amendments at least once every five years; that the Authority shall provide the readopted plan to the executive administrator of the Texas Water Development Board not later than the 60<sup>th</sup> day after the date on which the plan was readopted by the board; and that certification of the preceding plan remains in effect until the executive administrator has certified the readopted plan, whereas the original contained no such provision.

C.S.H.B. 1279 provides that if the executive administrator of the Texas Water Development Board does not certify the groundwater management plan, the executive administrator shall provide to the Authority, in writing, the reasons for the action; that not later than the 180<sup>th</sup> day after the date the Authority receives notice that its plan has not been certified, the Authority may submit a revised plan for review and certification; that the executive administrator's decision may be appealed to the Texas Water Development Board; that if the Texas Water Development Board decides not to certify the plan on appeal, the Authority may request that the conflict be mediated; that the Authority and the Texas Water Development Board may seek the assistance of the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code; that in obtaining a qualified impartial third party to mediate the conflict, the cost

of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system; that if the parties do not resolve the conflict through mediation, the decision of the Texas Water Development Board not to certify the plan may be appealed to a district court in Travis County; that costs for the appeal shall be set by the court hearing the appeal; and that an appeal under this subsection is by trial de novo, whereas the original contained no such provision.

C.S.H.B. 1279 does not amend Section 1.26A (Development of Withdrawal Reduction Levels And Strategies for Critical Period Management Through Recovery Implementation Program) of the Act to add a section allowing the transfer of the administration of the recovery implementation program by the steering committee to any entity that in the judgment of the steering committee is suitable for the administration or performance of any continuing functions that may be required of the recovery implementation, whereas the original contained such an amendment.

C.S.H.B. 1279 provides that the Authority may assess fees to recover administrative costs such as filing and processing applications and registrations, whereas the original provided that the Authority could set fees for its performance of administrative acts, such as filing and processing applications and registrations.

C.S.H.B. 1279 provides that multiple wells “may not” be used in combination in a manner to satisfy a single water use or purpose, that, “when combined,” would not come within the requirements for a well exempt from withdrawal permit requirements, whereas the original provided that multiple wells “shall not” be used in “combination with one another” in a manner to satisfy a single water use or purpose, that, when combined, would not come within the requirements for a well exempt from withdrawal permit requirements.

C.S.H.B. 1279 provides that a well exempt under the subsection describing wells exempt from metering and withdrawal permit requirements “or” the subsection describing wells exempt from withdrawal permit requirements must be registered with the Authority, whereas the original provided that a well exempt under the subsection describing wells exempt from metering and withdrawal permits “and” the subsection describing wells exempt from withdrawal requirements must be registered with the Authority.

C.S.H.B. 1279 requires that an affidavit, the recordation upon which in the deed records of the county where the well is located a lien arises and attaches, executed by any person conversant with the facts, must contain a statement or photograph confirming the existence of an abandoned well that has been plugged, whereas the original provided only that the affidavit state existence of the abandoned well that has been plugged.

C.S.H.B. 1279 requires that an affidavit, the recordation upon which in the deed records of the county where the well is located contain a statement confirming the failure of the owner or lessee, after notification, to close or cap the well within 10 days after the notification, whereas the original required the affidavit to state 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.

C.S.H.B. 1279 repeals a section regarding the date by which all unobligated and unexpended funds of the former Edwards Underground Water District shall be transferred to the Authority; whereas the original included such section but changed the date by which the funds would have been transferred.

C.S.H.B. 1279 provides that “an affected person dissatisfied with any authority rule, order, or act is entitled to file suit against the authority or its directors to challenge the validity of the rule, order, or act,” whereas the original provided that “a person, firm, corporation, or association of persons affected by and dissatisfied with any provision or with any rule or order made by the authority is entitled to file a suit against the authority or its directors to challenge the validity of the law, rule, or order.”

C.S.H.B. 1279 transfers and redesignates Section 4.02 of Article 1, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, as Section 1.47, Article 1, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, strikes September 1, 1993 as the date on which the Act took

effect, amends the date to June 28, 1996, strikes March 1, 1994 as the date on which Article 1 of the Act took effect, and amends the date to December 30, 1996, whereas the original contained no such transfer and redesignation but made the same strikes and amendments to the dates.

C.S.H.B. 1279 strikes “the Edwards Aquifer Authority” from Section 36.205(e)(1), Water Code, and strikes and renumbers Subsections (2) through (5) accordingly, whereas the original repealed Section 36.205(e)(1), Water Code.

C.S.H.B. 1279 provides that a suit based on or derived from Chapter 36 (Groundwater Conservation Districts), Water Code, contesting the validity or implementation of Article 1, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, or a rule, order or other action of the Authority under that article may not be instituted in a state court, whereas the original contained no such provision.

C.S.H.B. 1279 provides that a person may not institute or maintain a suit against the Authority based on or derived from Chapter 36 (Groundwater Conservation Districts), Water Code, for any injury or potential injury, including any injury or potential injury caused by an action taken by the Authority to implement or enforce Article 1, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, or a rule, order, or other action of the Authority under that article, whereas the original contained no such provision.

C.S.H.B. 1279 provides that the changes in law made by this Act to Chapter 36 (Groundwater Conservation Districts), Water Code, applies only to a cause of action against the Authority filed on or after the effective date of this Act, and that a cause of action filed before the effective date of this Act is governed by the law in effect when the cause of action was filed, and the former law is continued in effect for that purpose, whereas the original contained no such provision.

C.S.H.B. 1279 makes nonsubstantive changes to the original.