

By: Miller of Comal

H.B. No. 1279

Substitute the following for H.B. No. 1279:

By: Hopson

C.S.H.B. No. 1279

A BILL TO BE ENTITLED

AN ACT

relating to the administration, powers, duties, and operation of the Edwards Aquifer Authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Subdivisions (6), (9), (10), (20), (21), and (25) and adding Subdivision (28) to read as follows:

(6) "Commission" means the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

(9) "Domestic ~~[or livestock]~~ use" means the use of water for:

(A) drinking, washing, or culinary purposes;

(B) irrigation of a family garden or orchard the produce of which is for household consumption only; or

(C) the watering of residential landscape of one-half acre or less or any other purpose incidental to and associated with domestic activities, provided that the primary purpose of the well is for the purposes of Paragraph (A) [watering of animals].

(10) "Existing user" means a person who has withdrawn and beneficially used groundwater ~~[underground water]~~ from the aquifer on or before June 1, 1993.

(20) "Groundwater" means water percolating beneath

1 the surface of the earth [~~"Underground water" has the meaning~~
2 ~~assigned by Section 52.001, Water Code~~].

3 (21) "Waste" means:

4 (A) withdrawal of groundwater [~~underground~~
5 ~~water~~] from the aquifer at a rate and in an amount that causes or
6 threatens to cause intrusion into the reservoir of water unsuitable
7 for agricultural, gardening, domestic, or stock raising purposes;

8 (B) the flowing or producing of wells from the
9 aquifer if the water produced is not used for a beneficial purpose;

10 (C) escape of groundwater [~~underground water~~]
11 from the aquifer to any other reservoir that does not contain
12 groundwater [~~underground water~~];

13 (D) pollution or harmful alteration of
14 groundwater [~~underground water~~] in the aquifer by salt water or
15 other deleterious matter admitted from another stratum or from the
16 surface of the ground;

17 (E) wilfully or negligently causing, suffering,
18 or permitting groundwater [~~underground water~~] from the aquifer to
19 escape into any river, creek, natural watercourse, depression,
20 lake, reservoir, drain, sewer, street, highway, road, or road
21 ditch, or onto any land other than that of the owner of the well
22 unless such discharge is authorized by permit, rule, or order
23 issued by the commission under Chapter 26, Water Code;

24 (F) groundwater [~~underground water~~] pumped from
25 the aquifer for irrigation that escapes as irrigation tailwater
26 onto land other than that of the owner of the well unless permission
27 has been granted by the occupant of the land receiving the

1 discharge; or

2 (G) for water produced from an artesian well,
3 "waste" has the meaning assigned by Section 11.205, Water Code.

4 (25) "Withdrawal" means an act or a failure to act that
5 results in taking water from the aquifer by or through man-made
6 facilities, including pumping, withdrawing, or diverting
7 groundwater [~~underground water~~].

8 (28) "Livestock use" means the use of water for
9 watering livestock or poultry.

10 SECTION 2. Section 1.07, Chapter 626, Acts of the 73rd
11 Legislature, Regular Session, 1993, is amended to read as follows:

12 Sec. 1.07. OWNERSHIP OF GROUNDWATER [~~UNDERGROUND WATER~~].
13 The ownership and rights of the owner of the land and the owner's
14 lessees and assigns, including holders of recorded liens or other
15 security interests in the land, in groundwater [~~underground water~~]
16 and the contract rights of any person who purchases water for the
17 provision of potable water to the public or for the resale of
18 potable water to the public for any use are recognized. However,
19 action taken pursuant to this Act may not be construed as depriving
20 or divesting the owner or the owner's lessees and assigns,
21 including holders of recorded liens or other security interests in
22 the land, of these ownership rights or as impairing the contract
23 rights of any person who purchases water for the provision of
24 potable water to the public or for the resale of potable water to
25 the public for any use, subject to the rules adopted by the
26 authority [~~or a district exercising the powers provided by Chapter~~
27 ~~52, Water Code~~]. The legislature intends that just compensation be

1 paid if implementation of this article causes a taking of private
2 property or the impairment of a contract in contravention of the
3 Texas or federal constitution.

4 SECTION 3. Sections 1.08(a) and (b), Chapter 626, Acts of
5 the 73rd Legislature, Regular Session, 1993, are amended to read as
6 follows:

7 (a) The authority has all of the powers, rights, and
8 privileges necessary to manage, conserve, preserve, and protect the
9 aquifer and to increase the recharge of, and prevent the waste or
10 pollution of water in, the aquifer. The authority has all of the
11 rights, powers, privileges, authority, functions, and duties
12 provided by the general law of this state, including Chapters 49 and
13 [~~50,~~ 51, [~~and 52,~~] Water Code, applicable to an authority created
14 under Article XVI, Section 59, of the Texas Constitution. This
15 article prevails over any provision of general law that is in
16 conflict or inconsistent with this article regarding the area of
17 the authority's jurisdiction. Chapter 36, Water Code, does not
18 apply to the authority.

19 (b) The authority's powers regarding groundwater
20 [~~underground water~~] apply only to groundwater [~~underground water~~]
21 within or withdrawn from the aquifer. This section [~~subsection~~] is
22 not intended to allow the authority to regulate surface water.

23 SECTION 4. Section 1.09, Chapter 626, Acts of the 73rd
24 Legislature, Regular Session, 1993, is amended by amending
25 Subsection (d) and adding Subsection (i) to read as follows:

26 (d) Section [~~Sections 41.003 and~~] 41.008, Election Code,
27 does [~~do~~] not apply to an election held under this article.

1 (i) A member of a governing body of another political
2 subdivision is ineligible for appointment or election as a director
3 of the authority. A director of the authority is disqualified and
4 vacates the office of director if the director is appointed or
5 elected as a member of the governing body of another political
6 subdivision.

7 SECTION 5. Section 1.10(h), Chapter 626, Acts of the 73rd
8 Legislature, Regular Session, 1993, is amended to read as follows:

9 (h) The presiding officer of the advisory committee shall
10 submit a report assessing the effectiveness of the authority to the
11 commission and the authority by December [~~March~~] 31 of each
12 even-numbered year. The report must assess the effect on
13 downstream water rights of the management of the aquifer. The
14 authority shall consider the report in managing the authority's
15 affairs.

16 SECTION 6. Sections 1.11(d) and (g), Chapter 626, Acts of
17 the 73rd Legislature, Regular Session, 1993, are amended to read as
18 follows:

19 (d) The authority may:

20 (1) issue or administer grants, loans, or other
21 financial assistance to water users for water conservation and
22 water reuse;

23 (2) enter into contracts;

24 (3) sue and be sued only in its own name;

25 (4) receive gifts, grants, awards, and loans for use
26 in carrying out its powers and duties;

27 (5) hire an executive director to be the chief

1 administrator of the authority and other employees as necessary to
2 carry out its powers and duties;

3 (6) delegate the power to hire employees to the
4 executive director of the authority;

5 (7) own real and personal property;

6 (8) close abandoned, wasteful, or dangerous wells;

7 (9) hold permits under state law or under federal law
8 pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section
9 1531 et seq.) and its amendments;

10 (10) enforce Chapter 1901 [~~32~~], Occupations Code
11 [~~Water Code~~], and Texas Department of Licensing and Regulation
12 [~~commission~~] rules adopted under that chapter [~~Act~~] within the
13 authority's boundaries; and

14 (11) require to be furnished to the authority water
15 well drillers' logs that are required by Chapter 1901 [~~32~~],
16 Occupations Code [~~Water Code~~], to be kept and furnished to the Texas
17 Department of Licensing and Regulation [~~commission~~].

18 (g) The authority has the power of eminent domain. The
19 authority may not acquire rights to groundwater [~~underground water~~]
20 by the power of eminent domain.

21 SECTION 7. Section 1.13, Chapter 626, Acts of the 73rd
22 Legislature, Regular Session, 1993, is amended to read as follows:

23 Sec. 1.13. REUSE AUTHORIZED. Any regulation of the
24 withdrawal of water from the aquifer must allow for credit to be
25 given for certified reuse of the water. For regulatory credit, the
26 authority [~~or a local underground water conservation district~~] must
27 certify:

- 1 (1) the lawful use and reuse of aquifer water;
- 2 (2) the amount of aquifer water to be used; and
- 3 (3) the amount of aquifer withdrawals replaced by
- 4 reuse.

5 SECTION 8. Section 1.14(e), Chapter 626, Acts of the 73rd
6 Legislature, Regular Session, 1993, is amended to read as follows:

7 (e) The authority may not allow withdrawals from the aquifer
8 through wells drilled after June 1, 1993, except for replacement or
9 ~~[] test[, or exempt]~~ wells or wells exempt under Section 1.33 of
10 this article or to the extent that the authority approves an
11 amendment to an initial regular permit to authorize a change in the
12 point of withdrawal under that permit.

13 SECTION 9. Section 1.15, Chapter 626, Acts of the 73rd
14 Legislature, Regular Session, 1993, is amended by amending
15 Subsection (d) and adding Subsection (d-1) to read as follows:

16 (d) A permit issued by the authority to an applicant must
17 state the terms and provisions prescribed by the authority. Each
18 groundwater withdrawal permit must specify the maximum rate and
19 total volume of water that the water user may withdraw in a calendar
20 year.

21 (d-1) A permit may include:

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

24 (2) the location of the well;

25 (3) the term of the permit, including the date the
26 permit is to expire;

27 (4) a statement of the purpose for which the well is to

1 be used;

2 (5) a requirement that the water withdrawn under the
3 permit be put to beneficial use at all times;

4 (6) the location at which the water from the well will
5 be used;

6 (7) a water well closure plan or a declaration that the
7 applicant will comply with the authority's well closure
8 requirements and notify the authority of the closure;

9 (8) conditions and restrictions on the rate and amount
10 of withdrawal;

11 (9) conservation requirements prescribed by the
12 authority;

13 (10) a drought contingency plan prescribed by the
14 authority; and

15 (11) other terms and conditions the authority
16 determines reasonable and appropriate.

17 SECTION 10. Sections 1.16(a), (b), and (d), Chapter 626,
18 Acts of the 73rd Legislature, Regular Session, 1993, are amended to
19 read as follows:

20 (a) An existing user may apply for an initial regular permit
21 by filing a declaration of historical use of groundwater
22 [~~underground water~~] withdrawn from the aquifer during the
23 historical period from June 1, 1972, through May 31, 1993.

24 (b) An existing user's declaration of historical use must be
25 filed on or before December 30, 1996 [~~March 1, 1994~~], on a form
26 prescribed by the board. An applicant for a permit must timely pay
27 all application fees required by the board. An owner of a well used

1 for irrigation must include additional documentation of the number
2 of acres irrigated during the historical period provided by
3 Subsection (a) of this section.

4 (d) The board shall grant an initial regular permit to an
5 existing user who:

6 (1) files a declaration and pays fees as required by
7 this section; and

8 (2) establishes by convincing evidence beneficial use
9 of groundwater [~~underground water~~] from the aquifer.

10 SECTION 11. Sections 1.17(a) and (d), Chapter 626, Acts of
11 the 73rd Legislature, Regular Session, 1993, are amended to read as
12 follows:

13 (a) A person who, on the effective date of this article,
14 owns a producing well that withdraws water from the aquifer may
15 continue to withdraw and beneficially use water without waste until
16 final action on permits by the authority, if:

17 (1) the well is in compliance with all statutes and
18 rules relating to well construction, approval, location, spacing,
19 and operation; and

20 (2) by December 30, 1996 [~~March 1, 1994~~], the person
21 files a declaration of historical use on a form as required by the
22 authority.

23 (d) Interim authorization for a well under this section ends
24 on:

25 (1) entry of a final and appealable order by the
26 authority acting on the application for the well; or

27 (2) December 30, 1996 [~~March 1, 1994~~], if the well

1 owner has not filed a declaration of historical use.

2 SECTION 12. Article 1, Chapter 626, Acts of the 73rd
3 Legislature, Regular Session, 1993, is amended by adding Sections
4 1.21 and 1.211 to read as follows:

5 Sec. 1.21. CONTESTED CASE HEARINGS; REQUEST FOR REHEARING
6 OR FINDINGS AND CONCLUSIONS. (a) The authority, by rule, shall
7 define under what circumstances an application is considered
8 contested and shall limit participation in a hearing on a contested
9 application held in accordance with authority rules to persons who
10 have a personal justiciable interest related to a legal right,
11 duty, privilege, power, or economic interest affected by an
12 application, not including persons who have an interest common to
13 members of the public.

14 (b) Except as provided by Subsection (c) of this section, an
15 applicant or a party to a contested hearing may file a request for
16 rehearing not later than the 20th day after the date of the board's
17 decision.

18 (c) An applicant or a party to a contested hearing may
19 request written findings of fact and conclusions of law not later
20 than the 20th day after the date of the board's decision on the
21 application. On receipt of a timely filed written request under
22 this subsection, the board shall make written findings of fact and
23 conclusions of law regarding a decision of the board on the
24 application. The board shall provide copies of the findings of fact
25 and conclusions of law to the person who requested them, and to each
26 person who provided comments at the initial hearing or each
27 designated party, not later than the 35th day after the date the

1 board received the request. A person who receives a copy of the
2 findings of fact and conclusions of law from the board may request a
3 rehearing before the board not later than the 20th day after the
4 date the board issues the findings of fact and conclusions of law.

5 (d) A request for rehearing on a contested matter must be
6 filed in the authority's office and must state the grounds for the
7 request.

8 (e) If the board grants a request for rehearing, the board
9 shall schedule the rehearing not later than the 45th day after the
10 date the request is granted.

11 (f) The failure of the board to grant or deny a request for
12 rehearing before the 91st day after the date the request is
13 submitted constitutes a denial of the request.

14 Sec. 1.211. APPLICATION DECISION; WHEN FINAL. (a) A
15 decision by the board on an application is final:

16 (1) if a request for rehearing is not timely filed, on
17 the expiration of the period for filing a request for rehearing; or

18 (2) if a request for rehearing is timely filed, on the
19 date:

20 (A) the board denies the request for rehearing;
21 or

22 (B) the board renders a written decision after
23 rehearing.

24 (b) A timely filed motion for rehearing challenging a
25 decision in a contested hearing is a prerequisite to a suit against
26 the authority under Section 1.46 of this article. A suit under that
27 section may be filed not later than the 60th day after the date on

1 which the decision becomes final.

2 SECTION 13. Section 1.22(b), Chapter 626, Acts of the 73rd
3 Legislature, Regular Session, 1993, is amended to read as follows:

4 (b) The authority may acquire, ~~and~~ hold, and transfer
5 permits or rights to appropriate surface water or groundwater from
6 sources inside or outside of the authority's boundaries. The
7 authority may transport and distribute surface water or groundwater
8 as necessary to accomplish the powers and duties authorized by this
9 article or other applicable law.

10 SECTION 14. Section 1.25, Chapter 626, Acts of the 73rd
11 Legislature, Regular Session, 1993, is amended to read as follows:

12 Sec. 1.25. GROUNDWATER ~~[COMPREHENSIVE]~~ MANAGEMENT PLAN.

13 (a) Consistent with Section 1.14 of this article, after notice and
14 hearing, the authority shall develop~~[, by September 1, 1995,]~~ and
15 implement a groundwater ~~[comprehensive water]~~ management plan that
16 includes conservation, future supply, and demand management plans.
17 The authority may not delegate the development of the plan under
18 Section 1.42 of this article.

19 (b) The authority shall develop the groundwater management
20 plan, and any amendment to the plan, using the best available data
21 that the authority has obtained and forward the plan, and any
22 amendment to the plan, to the appropriate regional water planning
23 group for use in the group's planning process ~~[The authority, in~~
24 ~~conjunction with the South Central Texas Water Advisory Committee,~~
25 ~~the Texas Water Development Board, and underground water~~
26 ~~conservation districts within the authority's boundaries, shall~~
27 ~~develop a 20-year plan for providing alternative supplies of water~~

1 ~~to the region, with five-year goals and objectives, to be~~
2 ~~implemented by the authority and reviewed annually by the~~
3 ~~appropriate state agencies and the Edwards Aquifer Legislative~~
4 ~~Oversight Committee. The authority, advisory committee, Texas~~
5 ~~Water Development Board, and districts, in developing the plan,~~
6 ~~shall:~~

7 ~~[(1) thoroughly investigate all alternative~~
8 ~~technologies;~~

9 ~~[(2) investigate mechanisms for providing financial~~
10 ~~assistance for alternative supplies through the Texas Water~~
11 ~~Development Board; and~~

12 ~~[(3) perform a cost-benefit analysis and an~~
13 ~~environmental analysis].~~

14 (c) On request by the authority, the commission and the
15 Texas Water Development Board shall provide technical assistance to
16 the authority in the development of the groundwater management
17 plan. The technical assistance provided may include a preliminary
18 review and comment on the plan prior to final certification by the
19 executive administrator of the Texas Water Development Board. If
20 such review and comment by the commission is requested, the
21 commission shall provide comment not later than the 30th day after
22 the date the request is received.

23 (d) On request of the executive director of the commission
24 or the executive administrator of the Texas Water Development
25 Board, the authority shall make available information that it
26 acquires concerning the aquifer and information concerning its
27 plans and activities in conserving and protecting the aquifer. On

1 request of the authority, the executive director and the executive
2 administrator shall provide information they acquire concerning
3 the aquifer within the authority's jurisdiction.

4 (e) In the groundwater management plan, the authority
5 shall:

6 (1) identify the performance standards and management
7 objectives under which the authority will operate to achieve its
8 aquifer management goals;

9 (2) specify the actions, procedures, performance, and
10 avoidance that are or may be necessary to effect the plan, including
11 specifications and proposed rules;

12 (3) include estimates of the following:

13 (A) the amount of groundwater being used within
14 the authority on an annual basis;

15 (B) the annual amount of recharge to the aquifer;

16 (C) the annual volume of water that discharges
17 from the aquifer to springs;

18 (D) the annual volume of flow into and out of the
19 authority's jurisdiction within the aquifer and between the aquifer
20 and other aquifers within the authority's boundaries, if an
21 appropriate groundwater availability model is available;

22 (E) the projected surface water supply in the
23 authority according to the most recently adopted state water plan;

24 and

25 (F) the projected total demand for water in the
26 authority according to the most recently adopted state water plan;

27 and

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

3 (f) The authority shall adopt amendments to the groundwater
4 management plan as necessary. An amendment to the plan may be
5 adopted only after notice and hearing. An amendment to the plan
6 shall be submitted to the executive administrator of the Texas
7 Water Development Board not later than the 60th day after the date
8 the amendment is adopted by the board. The executive administrator
9 shall review and certify any amendment in accordance with the
10 procedures established in this section.

11 (g) The authority shall, not later than December 31, 2015,
12 submit its next groundwater management plan to the executive
13 administrator of the Texas Water Development Board for review and
14 certification.

15 (h) Not later than the 60th day after the date of receipt of
16 the groundwater management plan adopted by the board, the executive
17 administrator of the Texas Water Development Board shall certify
18 the plan if the plan is administratively complete. The plan is
19 administratively complete if it contains the information required
20 by this section. Once the executive administrator has certified
21 the plan, the executive administrator may not decertify the plan.

22 (i) The groundwater management plan takes effect on
23 certification by the executive administrator of the Texas Water
24 Development Board.

25 (j) The authority shall review its groundwater management
26 plan annually and must review and readopt the plan with or without
27 amendments at least once every five years. The authority shall

1 provide the readopted plan to the executive administrator of the
2 Texas Water Development Board not later than the 60th day after the
3 date on which the plan was readopted by the board. Certification of
4 the preceding plan remains in effect until the executive
5 administrator has certified the readopted plan.

6 (k) If the executive administrator of the Texas Water
7 Development Board does not certify the groundwater management plan,
8 the executive administrator shall provide to the authority, in
9 writing, the reasons for the action. Not later than the 180th day
10 after the date the authority receives notice that its plan has not
11 been certified, the authority may submit a revised plan for review
12 and certification. The executive administrator's decision may be
13 appealed to the Texas Water Development Board. If the Texas Water
14 Development Board decides not to certify the plan on appeal, the
15 authority may request that the conflict be mediated. The authority
16 and the Texas Water Development Board may seek the assistance of the
17 Center for Public Policy Dispute Resolution at The University of
18 Texas at Austin School of Law or an alternative dispute resolution
19 system established under Chapter 152, Civil Practice and Remedies
20 Code, in obtaining a qualified impartial third party to mediate the
21 conflict. The cost of the mediation services must be specified in
22 the agreement between the parties and the Center for Public Policy
23 Dispute Resolution or the alternative dispute resolution system.
24 If the parties do not resolve the conflict through mediation, the
25 decision of the Texas Water Development Board not to certify the
26 plan may be appealed to a district court in Travis County. Costs
27 for the appeal shall be set by the court hearing the appeal. An

1 appeal under this subsection is by trial de novo.

2 SECTION 15. Section 1.29, Chapter 626, Acts of the 73rd
3 Legislature, Regular Session, 1993, is amended by amending
4 Subsections (f), (g), (h), and (i) to read as follows:

5 (f) In addition to the fees assessed under Subsection (b) of
6 this section, the authority may assess fees to recover
7 administrative costs such as filing and processing applications and
8 registrations. The fees may not unreasonably exceed the
9 administrative costs. [~~The authority shall impose a permit~~
10 ~~application fee not to exceed \$25.~~]

11 (g) [~~The authority may impose a registration application~~
12 ~~fee not to exceed \$10.~~]

13 [~~(h)~~] Fees assessed by the authority may not be used to fund
14 the cost of reducing withdrawals or retiring permits or of
15 judgments or claims related to withdrawals or permit retirements.

16 (h) [~~(i)~~] The authority and other stakeholders, including
17 state agencies, listed under Section 1.26A of this article shall
18 provide money as necessary to finance the activities of the
19 steering committee and any subcommittees appointed by the steering
20 committee and the program director of the recovery implementation
21 program under Section 1.26A of this article. The authority shall
22 provide, as necessary, up to \$75,000 annually, adjusted for changes
23 in the consumer price index, to finance the South Central Texas
24 Water Advisory Committee's administrative expenses and programs
25 authorized under this article.

26 SECTION 16. Section 1.30(e), Chapter 626, Acts of the 73rd
27 Legislature, Regular Session, 1993, is amended to read as follows:

1 (e) Section [~~Sections 11.028 and~~] 11.033, Water Code, does
2 [~~do~~] not apply to a permit issued under this section.

3 SECTION 17. Section 1.31(b), Chapter 626, Acts of the 73rd
4 Legislature, Regular Session, 1993, is amended to read as follows:

5 (b) The authority is responsible for the costs of
6 purchasing, installing, and maintaining measuring devices, if
7 required, for an irrigation well in existence on June 28, 1996
8 [~~September 1, 1993~~].

9 SECTION 18. Section 1.33, Chapter 626, Acts of the 73rd
10 Legislature, Regular Session, 1993, is amended to read as follows:

11 Sec. 1.33. WELL METERING EXEMPTION. (a) Except as provided
12 by Subsections (d) and (e) of this section, a [A] well that is
13 drilled, completed, or equipped so that it is incapable of
14 producing more than [produces] 25,000 gallons of water per [a] day
15 and is and will be used exclusively [or less] for domestic use or
16 livestock use is exempt from metering and withdrawal permit
17 requirements.

18 (b) A well drilled on or before June 1, 2011, that is
19 incapable of producing more than 1,250 gallons of water per day or
20 that is metered and does not produce more than 1,250 gallons of
21 water per day for any purpose authorized in this article is exempt
22 from withdrawal permit requirements. Multiple wells may not be
23 used in combination in a manner to satisfy a single water use or
24 purpose, that when combined, would not come within the requirements
25 of this subsection.

26 (c) A well that is exempt under Subsection (a) or (b) of this
27 section [Exempt wells] must be registered [register] with the

1 authority [~~or with an underground water conservation district in~~
2 ~~which the well is located~~].

3 (d) [~~(c)~~ A well that meets the requirements of Subsection
4 (a) of this section [within or serving a subdivision requiring
5 platting] does not qualify for an exemption if the well:

6 (1) serves a subdivision of land requiring plat
7 approval under Chapter 232, Local Government Code;

8 (2) supplies water to a public water system as defined
9 by 30 T.A.C. Section 290.38; or

10 (3) produces groundwater for domestic use, was drilled
11 on or before June 1, 2011, and is on a tract of land with a residence
12 that receives water service from a retail public utility as defined
13 by Section 13.002, Water Code [~~exempt use~~].

14 (e) A well drilled after June 1, 2011, that meets the
15 requirements of Subsection (a) of this section, is exempt from
16 metering and withdrawal permit requirements only if the well is on a
17 tract of land larger than 10 acres.

18 SECTION 19. Article 1, Chapter 626, Acts of the 73rd
19 Legislature, Regular Session, 1993, is amended by adding Section
20 1.361 to read as follows:

21 Sec. 1.361. ABANDONED, OPEN, UNCOVERED, OR DETERIORATED
22 WELLS. (a) If the owner or lessee of land on which an abandoned,
23 open, uncovered, or deteriorated well is located fails or refuses
24 to close, cap, or plug the well in compliance with Chapter 1901,
25 Occupations Code, and the authority's rules, the authority or its
26 authorized employees, representatives, or agents may enter the land
27 and close, cap, or plug the well in a safe and secure manner.

1 (b) Reasonable expenses incurred by the authority in
2 closing, capping, or plugging a well constitute a lien on the land
3 on which the well is located.

4 (c) A lien described by Subsection (b) of this section
5 arises and attaches after an affidavit executed by any person with
6 knowledge of the facts of the closing, capping, or plugging is
7 recorded in the deed records of the county where the well is
8 located. The affidavit must contain:

9 (1) a statement or photograph confirming the existence
10 of the well;

11 (2) the legal description of the property on which the
12 well is located;

13 (3) a description of the approximate location of the
14 well on the property;

15 (4) a statement confirming the failure or refusal of
16 the owner or lessee, after notification, to close or cap the well
17 within 10 days after the notification;

18 (5) a statement confirming the closing, capping, or
19 plugging of the well by the authority, or by an authorized agent,
20 representative, or employee of the authority; and

21 (6) a statement of the expenses incurred by the
22 authority in closing, capping, or plugging the well.

23 (d) Nothing in this section affects the enforcement of
24 Subchapter A, Chapter 756, Health and Safety Code.

25 SECTION 20. Sections 1.37(j), (n), and (r), Chapter 626,
26 Acts of the 73rd Legislature, Regular Session, 1993, are amended to
27 read as follows:

1 (j) Within 30 days after the date the authority's order is
2 final as provided by Section 2001.144(a), Government Code
3 [~~Subsection (c), Section 16, Administrative Procedure and Texas~~
4 ~~Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~],
5 the person shall:

6 (1) pay the amount of the penalty;

7 (2) pay the amount of the penalty and file a petition
8 for judicial review contesting the occurrence of the violation, the
9 amount of the penalty, or both the occurrence of the violation and
10 the amount of the penalty; or

11 (3) without paying the amount of the penalty, file a
12 petition for judicial review contesting the occurrence of the
13 violation, the amount of the penalty, or both the occurrence of the
14 violation and the amount of the penalty.

15 (n) Judicial review of the order of the authority:

16 (1) is instituted by filing a petition as provided by
17 Subchapter G, Chapter 2001, Government Code [~~Section 19,~~
18 ~~Administrative Procedure and Texas Register Act (Article 6252-13a,~~
19 ~~Vernon's Texas Civil Statutes)~~]; and

20 (2) is under the substantial evidence rule.

21 (r) All proceedings under this section are subject to
22 Chapter 2001, Government Code [~~the Administrative Procedure and~~
23 ~~Texas Register Act (Article 6252-13a, Vernon's Texas Civil~~
24 ~~Statutes)~~].

25 SECTION 21. Section 1.38, Chapter 626, Acts of the 73rd
26 Legislature, Regular Session, 1993, is amended to read as follows:

27 Sec. 1.38. INJUNCTION BY AUTHORITY. (a) The authority may

1 file a civil suit in a state district court for an injunction or
2 mandatory injunction to enforce this article. The authority may
3 recover reasonable attorney fees in a suit under this section.

4 (b) In an enforcement action by the authority against a
5 governmental entity for a violation of authority rules, the limits
6 on the amount of fees, costs, and penalties that the authority may
7 impose under this section constitute a limit of the governmental
8 entity's liability for the violation. This subsection shall not be
9 construed to prohibit the recovery by the authority of fees and
10 costs under this article in an action against a governmental
11 entity.

12 SECTION 22. Sections 1.42(a), (b), and (c), Chapter 626,
13 Acts of the 73rd Legislature, Regular Session, 1993, are amended to
14 read as follows:

15 (a) A groundwater [~~An underground water~~] conservation
16 district other than the authority may manage and control water that
17 is a part of the aquifer after the effective date of this article
18 only as provided in this section. This article does not affect a
19 water reclamation or conservation district that manages and
20 controls only water from a resource other than the aquifer.

21 (b) A groundwater [~~An underground water~~] conservation
22 district other than the authority may manage and control water that
23 is a part of the aquifer to the extent that those management
24 activities do not conflict with and are not duplicative of this
25 article or the rules and orders of the authority.

26 (c) Except as otherwise provided by this article, the board
27 may delegate the powers and duties granted to it under this article.

1 The board shall delegate all or part of its powers or duties to a
2 groundwater [~~an underground water~~] conservation district on the
3 district's request if the district demonstrates to the satisfaction
4 of the board that:

5 (1) the district has statutory powers necessary for
6 full enforcement of the rules and orders to be delegated;

7 (2) the district has implemented all rules and
8 policies necessary to fully implement the programs to be delegated;
9 and

10 (3) the district has implemented a system designed to
11 provide the authority with adequate information with which to
12 monitor the adequacy of the district's performance in enforcing
13 board rules and orders.

14 SECTION 23. Section 1.43, Chapter 626, Acts of the 73rd
15 Legislature, Regular Session, 1993, is amended to read as follows:

16 Sec. 1.43. CREATION OF GROUNDWATER [~~UNDERGROUND WATER~~]
17 CONSERVATION DISTRICT. A groundwater [~~An underground water~~]
18 conservation district may be created in any county affected by this
19 article as provided by Subchapter B, Chapter 36 [~~52~~], Water Code.

20 SECTION 24. Article 1, Chapter 626, Acts of the 73rd
21 Legislature, Regular Session, 1993, is amended by adding Section
22 1.46 to read as follows:

23 Sec. 1.46. SUITS. (a) An affected person dissatisfied with
24 any authority rule, order, or act is entitled to file suit against
25 the authority or its directors to challenge the validity of the
26 rule, order, or act. The suit may be filed in any county in which
27 the authority is located. The suit may be filed only after all

1 administrative appeals to the authority are final. The burden of
2 proof is on the petitioner, and the challenged rule, order, or act
3 shall be deemed prima facie valid. The review on appeal is governed
4 by Section 2001.038 or 2001.174, Government Code, as appropriate.

5 (b) If the authority prevails in a suit to enforce this
6 article or its rules, orders, or acts, or in a suit other than a suit
7 in which it voluntarily intervenes, the authority may seek and the
8 court shall grant, in the same action, recovery for attorney's
9 fees, costs for expert witnesses, and other costs incurred by the
10 authority before the court. The court shall set the amount of the
11 attorney's fees.

12 SECTION 25. Section 4.02, Chapter 626, Acts of the 73rd
13 Legislature, Regular Session, 1993, is transferred to Article 1 of
14 that Act, redesignated as Section 1.47, and amended to read as
15 follows:

16 Sec. 1.47 [~~4.02~~]. ORIGINAL EFFECTIVE DATES. This article
17 [~~Act~~] takes effect June 28, 1996 [~~September 1, 1993~~], except
18 Section 1.35 of Article 1 takes effect December 30, 1996 [~~March 1,~~
19 ~~1994~~].

20 SECTION 26. Section 3.02, Chapter 626, Acts of the 73rd
21 Legislature, Regular Session, 1993, is amended to read as follows:

22 Sec. 3.02. NOTICE OF AVAILABLE WATER. The Texas [~~Natural~~
23 ~~Resource Conservation~~] Commission on Environmental Quality shall
24 notify the Edwards Aquifer Authority of any water available for
25 appropriation in the Guadalupe-Blanco River Basin as the commission
26 discovers the available water.

27 SECTION 27. Section 36.205(e), Water Code, is amended to

1 read as follows:

2 (e) Subsection (c) does not apply to the following
3 districts:

4 (1) [~~the Edwards Aquifer Authority,~~

5 [~~2~~] the Fort Bend Subsidence District;

6 (2) [~~3~~] the Harris-Galveston Coastal Subsidence
7 District;

8 (3) [~~4~~] the Barton Springs-Edwards Aquifer
9 Conservation District; or

10 (4) [~~5~~] any district that collects a property tax
11 and that was created before September 1, 1999, unless otherwise
12 authorized by special law.

13 SECTION 28. The following laws are repealed:

14 (1) Section 1.41(d), Chapter 626, Acts of the 73rd
15 Legislature, Regular Session, 1993; and

16 (2) Sections 36.101(1), 36.1011(e), and 36.419, Water
17 Code.

18 SECTION 29. (a) A suit based on or derived from Chapter 36,
19 Water Code, contesting the validity or implementation of Article 1,
20 Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993,
21 or a rule, order, or other action of the Edwards Aquifer Authority
22 under that article may not be instituted in a state court.

23 (b) A person may not institute or maintain a suit against
24 the Edwards Aquifer Authority based on or derived from Chapter 36,
25 Water Code, for any injury or potential injury, including any
26 injury or potential injury caused by an action taken by the
27 authority to implement or enforce Article 1, Chapter 626, Acts of

1 the 73rd Legislature, Regular Session, 1993, or a rule, order, or
2 other action of the authority under that article.

3 (c) The changes in law made by this Act to Chapter 36, Water
4 Code, apply only to a cause of action against the Edwards Aquifer
5 Authority filed on or after the effective date of this Act. A cause
6 of action filed before the effective date of this Act is governed by
7 the law in effect when the cause of action was filed, and the former
8 law is continued in effect for that purpose.

9 SECTION 30. (a) The legal notice of the intention to
10 introduce this Act, setting forth the general substance of this
11 Act, has been published as provided by law, and the notice and a
12 copy of this Act have been furnished to all persons, agencies,
13 officials, or entities to which they are required to be furnished
14 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
15 Government Code.

16 (b) The governor, one of the required recipients, has
17 submitted the notice and Act to the Texas Commission on
18 Environmental Quality.

19 (c) The Texas Commission on Environmental Quality has filed
20 its recommendations relating to this Act with the governor, the
21 lieutenant governor, and the speaker of the house of
22 representatives within the required time.

23 (d) All requirements of the constitution and laws of this
24 state and the rules and procedures of the legislature with respect
25 to the notice, introduction, and passage of this Act are fulfilled
26 and accomplished.

27 SECTION 31. This Act takes effect immediately if it

C.S.H.B. No. 1279

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