

By: Garza

H.B. No. 2760

A BILL TO BE ENTITLED

AN ACT

1
2 relating to species-protection programs for the Edwards Aquifer,
3 the Guadalupe River Basin, the San Antonio River Basin, and the San
4 Antonio Bay and estuary system; imposing a tax.

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

6 SECTION 1. FINDINGS AND DECLARATION OF POLICY. (a) The
7 legislature makes the findings described by this section.

8 (b) The Edwards Aquifer is a unique and complex hydrological
9 system and has a hydrologic interrelationship with the Guadalupe
10 River and San Antonio River Basins. The aquifer is the primary
11 source of water for the residents of the region and is vital to the
12 general economy and welfare of this state. In keeping with these
13 findings, it is necessary, appropriate, and a benefit to the
14 welfare of this state to provide for the continued proper and
15 effective management of the aquifer to sustain the diverse economic
16 and social interests associated with the aquifer and the interests
17 of those species associated with the aquifer that have been listed
18 under federal law as threatened or endangered.

19 (c) The legislature passed the Act creating the Edwards
20 Aquifer Authority in 1993 to provide for the necessary regulation
21 and management of the aquifer. The management of the aquifer under
22 the Act creating the Edwards Aquifer Authority has provided a sound
23 and effective framework for the aquifer's management. To foster and
24 further advance the protection of the threatened or endangered

1 species associated with the aquifer, the legislature amended the
2 Act creating the Edwards Aquifer Authority in 2007 to institute a
3 consensus-based process that involves input from the United States
4 Fish and Wildlife Service, other appropriate federal agencies, the
5 Edwards Aquifer Authority, the Texas Commission on Environmental
6 Quality, the Parks and Wildlife Department, the Texas Department of
7 Agriculture, the Texas Water Development Board, the
8 Guadalupe-Blanco River Authority, the San Antonio River Authority,
9 the San Antonio Water System, and other interested stakeholders to
10 develop an Edwards Aquifer recovery implementation program for the
11 species in compliance with the federal Endangered Species Act of
12 1973 (16 U.S.C. Section 1531 et seq.).

13 (d) The legislature created a steering committee for the
14 program that, after more than three years of consensus-based study,
15 investigation, and decision making, will, by the end of 2011,
16 present to the Edwards Aquifer Authority certain program documents
17 containing recommended courses of action for the implementation of
18 certain species-protection measures for the threatened or
19 endangered species associated with the aquifer and the riverine and
20 riparian lands at and proximately located downstream of the Comal
21 Springs and San Marcos Springs.

22 (e) In amending the Act creating the Edwards Aquifer
23 Authority to institute the Edwards Aquifer recovery implementation
24 program, a funding mechanism was not provided for the
25 implementation of the program, and for this reason, a broad-based
26 regional funding mechanism dedicated to the implementation of the
27 program is required and vital to the general economy and welfare of

1 this state, and particularly to the Edwards Aquifer region in South
2 Central Texas and the Guadalupe River and San Antonio River Basins.
3 The imposition of a sales and use tax in the area of the state that
4 is the beneficiary of the activities undertaken under the Edwards
5 Aquifer recovery implementation program is the most appropriate
6 mechanism to generate revenue for and allocate the costs for this
7 program and is in the public interest.

8 (f) The Guadalupe River and San Antonio River Basins are
9 primary sources of water for the residents of South Central Texas
10 and for inflows into the San Antonio Bay and estuary system and are
11 vital to the general economy and welfare of this state. The
12 legislature also recognizes that the ecological soundness of these
13 river basins and bay system is important to the economy, health, and
14 well-being of the state. For these reasons, it is necessary,
15 appropriate, and a benefit to the welfare of this state to provide
16 for the continued proper and effective management of the Guadalupe
17 River and San Antonio River Basins and the San Antonio Bay and
18 estuary system to sustain the diverse economic and social interests
19 associated with these river basins and bay system and the interests
20 of those species that have been listed under federal law as
21 threatened or endangered or are otherwise considered to be species
22 of concern and are associated with these river basins and bay
23 system.

24 (g) To improve the foundation of work accomplished by the
25 state relating to freshwater inflow needs for bays and estuaries in
26 the state and to fully address bay and estuary environmental flow
27 issues, in S.B. No. 3, Acts of the 80th Legislature, Regular

1 Session, 2007, the legislature instituted a more intensive
2 environmental flows process across the state to evaluate riverine
3 environmental flow conditions and develop management strategies
4 for addressing environmental flow needs through an ongoing,
5 regional consensus-based, and adaptive approach involving balanced
6 representation of stakeholders.

7 (h) To facilitate the environmental flows process, the
8 legislature created the environmental flows advisory group to study
9 the public policy implications for balancing the demands on the
10 water resources of the state resulting from a growing population
11 and the environmental flow requirements of the riverine, bay, and
12 estuary systems of the state, including those in the Guadalupe
13 River and San Antonio River Basins and the San Antonio Bay and
14 estuary system. In the course of its work, the advisory group is
15 considering issues that it determines have importance and relevance
16 to the protection of environmental flows in the state's riverine,
17 bay, and estuary systems, including those of the Guadalupe River
18 and San Antonio River Basins and the San Antonio Bay and estuary
19 system.

20 (i) To assist in the evaluation and recommendation process
21 for the environmental flows process for the Guadalupe River and San
22 Antonio River Basins and the San Antonio Bay and estuary system, a
23 basin and bay area stakeholder committee and an expert science team
24 were established to make recommendations to the environmental flows
25 advisory group and the Texas Commission on Environmental Quality
26 regarding environmental flow standards and strategies to meet those
27 standards. After reviewing the work of the expert science team, the

1 stakeholder committee is scheduled to make these recommendations in
2 September 2011. After it submits its recommendations to the
3 advisory group and the Texas Commission on Environmental Quality,
4 the stakeholder committee will prepare a work plan as required by
5 the environmental flows process that establishes, among other
6 things, prioritized strategies and projects as approved by the
7 advisory group, a periodic review of the environmental flow
8 standards, recommendations, and strategies at least once every 10
9 years, specific monitoring, studies, and activities, and a schedule
10 for continuing the validation or refinement of the environmental
11 flow standards, analyses, recommendations, and strategies. The
12 work plan is scheduled to be completed in 2012-2013 and will be
13 submitted to the advisory group for approval as required by the
14 environmental flows process.

15 (j) In creating the environmental flows process, a funding
16 mechanism was not provided for the development of the work plan or
17 the implementation of strategies to meet the environmental flow
18 standards recommended by the stakeholder committee for the
19 Guadalupe River and San Antonio River Basins and the San Antonio Bay
20 and estuary system, and for this reason, a broad-based regional
21 funding mechanism dedicated to the development and implementation
22 of the environmental flows work plan for the Guadalupe River and San
23 Antonio River Basins and the San Antonio Bay and estuary system is
24 required and vital to the general economy and welfare of this state,
25 and particularly to the region encompassed by these river basins
26 and estuary system. The imposition of a sales and use tax in the
27 area of the state that is the beneficiary of the activities

1 undertaken under the environmental flows process for these river
2 basins and estuary system is the most appropriate mechanism to
3 generate revenue for and allocate the costs for this process and is
4 in the public interest. Because the Edwards Aquifer and the
5 Guadalupe River and San Antonio River Basins have a hydrologic
6 interrelationship, it is appropriate to consider them together in
7 the creation of a regional funding mechanism for the implementation
8 of the species-protection programs associated with these
9 hydrologic systems.

10 SECTION 2. SALES AND USE TAX. Subtitle C, Title 3, Tax
11 Code, is amended by adding Chapter 328 to read as follows:

12 CHAPTER 328. EDWARDS AQUIFER, GUADALUPE RIVER BASIN, SAN ANTONIO
13 RIVER BASIN, AND SAN ANTONIO BAY AND ESTUARY SYSTEM

14 SPECIES-PROTECTION SALES AND USE TAXES

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 328.001. DEFINITION. In this chapter, "authorities"
17 means the Edwards Aquifer Authority, the Guadalupe-Blanco River
18 Authority, and the San Antonio River Authority.

19 Sec. 328.002. MEANING OF WORDS AND PHRASES. The words and
20 phrases used in this chapter and defined by Chapters 151 and 321
21 have the meanings assigned by Chapters 151 and 321.

22 Sec. 328.003. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS.

23 (a) Subtitles A and B, Title 2, and Chapter 151 apply to taxes
24 imposed under this chapter and to the administration and
25 enforcement of those taxes in the same manner that those laws apply
26 to state taxes.

27 (b) Chapter 321 applies to the application, collection, and

1 administration of a sales and use tax imposed under this chapter by
2 the authorities.

3 (c) The following provisions of this code do not apply to a
4 tax imposed under this chapter:

5 (1) Section 321.101; and

6 (2) Subchapter F, Chapter 321.

7 Sec. 328.004. APPLICABILITY TO AREA IN CERTAIN WATER
8 AUTHORITIES. This chapter applies to the species-protection
9 program area in the Edwards Aquifer Authority, the Guadalupe-Blanco
10 River Authority, and the San Antonio River Authority.

11 Sec. 328.005. SPECIES-PROTECTION PROGRAM AREA DEFINED. (a)
12 In this section:

13 (1) "Guadalupe River Basin" has the meaning assigned
14 by Section 17.1001, Water Code.

15 (2) "San Antonio River Basin" has the meaning assigned
16 by Section 17.1001, Water Code.

17 (b) "Species-protection program area" means the area of a
18 county:

19 (1) bordering or transected by the Guadalupe River and
20 located in the geographical extent of the Guadalupe River Basin;

21 (2) bordering or transected by the San Antonio River
22 and located in the geographical extent of the San Antonio River
23 Basin; and

24 (3) in the Edwards Aquifer Authority.

25 [Sections 328.006-328.050 reserved for expansion]

26 SUBCHAPTER B. IMPOSITION OF SALES AND USE TAX FOR

27 SPECIES-PROTECTION PROGRAMS

1 Sec. 328.051. AUTHORIZATION. The authorities may adopt a
2 sales and use tax under this chapter in the species-protection
3 program area if imposition of the tax is authorized at an election
4 under Subchapter C.

5 Sec. 328.052. MAXIMUM SALES AND USE TAX RATE. (a) The
6 maximum tax rate for the tax imposed under this chapter is
7 one-fourth of one percent.

8 (b) The tax authorized under this chapter must be imposed at
9 the rate of one-eighth of one percent unless the Edwards Aquifer
10 Authority determines under Section 17.1013, Water Code, that
11 additional species-protection measures are required or the
12 environmental flows advisory group approves a work plan under
13 Section 11.02362(t), Water Code.

14 (c) On notification to the comptroller under Section
15 17.1013(a) or Section 11.02362(t), Water Code, the tax shall be
16 imposed at the rate of one-fourth of one percent beginning on the
17 date provided by Section 321.102.

18 Sec. 328.053. EFFECT ON COMBINED LOCAL TAX RATE. The rate
19 of the tax imposed under this chapter may not be considered in
20 determining the combined or overlapping rate of local sales and use
21 taxes in any area under this subtitle or another law, including:

- 22 (1) the Health and Safety Code;
- 23 (2) the Local Government Code;
- 24 (3) the Special District Local Laws Code; or
- 25 (4) the Transportation Code.

26 Sec. 328.054. DURATION OF TAX. (a) In this section,
27 "Edwards Aquifer recovery implementation program" and

1 "implementing agreement" have the meanings assigned by Section
2 17.1001, Water Code.

3 (b) The tax imposed under this chapter may not be abolished
4 or decreased during the term of the implementing agreement for the
5 Edwards Aquifer recovery implementation program.

6 Sec. 328.055. USE OF TAX REVENUE. The revenue from a tax
7 imposed under this chapter shall be deposited to the credit of the
8 species-protection program fund established under Section 17.1002,
9 Water Code. The money in the fund may be appropriated only to the
10 Texas Water Development Board to provide financial assistance under
11 Subchapter N, Chapter 17, Water Code.

12 [Sections 328.056-328.100 reserved for expansion]

13 SUBCHAPTER C. ELECTION

14 Sec. 328.101. ELECTION ON TAX. (a) The governing bodies of
15 the authorities by joint order may call an election in the
16 species-protection program area in each authority to authorize the
17 adoption of the tax under this chapter. For an area of
18 jurisdictional overlap between the Edwards Aquifer Authority and
19 one of the other two authorities, the Edwards Aquifer Authority
20 will adopt the order and conduct the election for that part of the
21 program area in the Edwards Aquifer Authority's jurisdiction.

22 (b) The election may be held on a uniform election date and
23 in conjunction with any other election.

24 (c) The ballot shall be printed to provide for voting for or
25 against the proposition: "Authorization of a sales and use tax at a
26 rate of not more than one-fourth of one percent in the
27 species-protection program area to provide money to the Texas Water

1 Development Board for species-protection programs under Subchapter
2 N, Chapter 17, Water Code, for the Edwards Aquifer recovery
3 implementation program and the Guadalupe River Basin, San Antonio
4 River Basin, and San Antonio Bay and estuary system environmental
5 flows program."

6 (d) The tax is adopted if a majority of the votes cast in the
7 election favor the proposition.

8 (e) Notwithstanding any other law, the board of the
9 authorities may meet in a joint meeting to canvass the votes of the
10 election, declare the results, and, if necessary, send notice to
11 the comptroller of those results.

12 Sec. 328.102. NOTICE OF ELECTION. In addition to the notice
13 required by Section 4.003(c), Election Code, the authorities shall
14 give notice of the election to adopt the sales and use tax under
15 this chapter by publishing a substantial copy of the joint order
16 under Section 328.101 in a newspaper with general circulation in
17 each county of the species-protection program area once a week for
18 two consecutive weeks. The first publication must appear not
19 earlier than the 30th day before the date set for the election.

20 Sec. 328.103. ELECTION COSTS. The authorities shall pay
21 for the cost of an election held under this subchapter for their
22 respective parts of the species-protection program area. For an
23 area of jurisdictional overlap between the Edwards Aquifer
24 Authority and one of the other two authorities, the Edwards Aquifer
25 Authority shall pay the cost of conducting the election for that
26 part of the program area in the Edwards Aquifer Authority's
27 jurisdiction.

1 SECTION 3. FINANCIAL ASSISTANCE FOR SPECIES-PROTECTION
2 PROGRAMS. Chapter 17, Water Code, is amended by adding Subchapter N
3 to read as follows:

4 SUBCHAPTER N. FINANCIAL ASSISTANCE TO THE SPECIES-PROTECTION
5 PROGRAMS FOR THE EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM
6 AND THE GUADALUPE RIVER BASIN, SAN ANTONIO RIVER BASIN, AND SAN
7 ANTONIO BAY AND ESTUARY SYSTEM ENVIRONMENTAL FLOWS PROGRAM

8 Sec. 17.1001. DEFINITIONS. In this subchapter:

9 (1) "Adaptive decision-making process" means the
10 procedures incorporated into and made a part of the implementing
11 agreement that provide for an integrated, structured, and
12 interactive decision-making process to review and evaluate the
13 results of the monitoring and research programs that allows for
14 adjusting previous decisions made for the Edwards Aquifer recovery
15 implementation program regarding the appropriate
16 species-protection measures in light of the results of the
17 monitoring program and other sources of new data and information.

18 (2) "Adaptive management plan" means the plan
19 incorporated into and made a part of the implementing agreement for
20 examining alternative strategies for meeting measurable biological
21 goals and objectives and then, if necessary, adjusting future
22 species-protection measures according to what is learned.

23 (3) "Advisory group" has the meaning assigned by
24 Section 11.002.

25 (4) "Edwards Aquifer" has the meaning assigned by
26 Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular
27 Session, 1993.

1 (5) "Edwards Aquifer recovery implementation program"
2 means the program developed under Section 1.26A, Chapter 626, Acts
3 of the 73rd Legislature, Regular Session, 1993, for the Edwards
4 Aquifer for the protection of the plan species.

5 (6) "Financial assistance" means the money provided
6 from the fund by the board for the purposes described by Section
7 17.1002.

8 (7) "Fund" means the species-protection program fund
9 created by Section 17.1002.

10 (8) "Guadalupe River Basin" means the geographical
11 extent of the river basin as delineated by maps maintained by the
12 board and in the Guadalupe-Blanco River Authority.

13 (9) "Guadalupe River Basin, San Antonio River Basin,
14 and San Antonio Bay and estuary system environmental flows program"
15 means the environmental flows program developed under Article 1,
16 Chapter 1430 (S.B. 3), Acts of the 80th Legislature, Regular
17 Session, 2007, for the Guadalupe River Basin, San Antonio River
18 Basin, and San Antonio Bay and estuary system for, among other
19 things, the protection of the species of concern.

20 (10) "Implementing agreement" means the agreement
21 that binds one or more permittees to the requirements and
22 responsibilities of the habitat conservation plan and incidental
23 take permit approved and issued under Section 10 of the federal
24 Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), for
25 the Edwards Aquifer recovery implementation program, and any
26 changes to, or renewals of, the agreement.

27 (11) "Plan species" means the species identified in

1 the implementing agreement.

2 (12) "San Antonio River Basin" means the geographical
3 extent of the river basin as delineated by maps maintained by the
4 board and in the San Antonio River Authority.

5 (13) "San Antonio Bay and estuary system" means the
6 geographical extent of the bay and estuary system having a
7 hydrologic interrelationship with the Guadalupe River and San
8 Antonio River Basins, separated from the Gulf of Mexico by
9 Matagorda Island, and composed of those interconnected bodies of
10 water known as Hynes Bay, Mission Lake, and Guadalupe Bay in the
11 northwest, Ayres and Mesquite Bays to the southwest, and Espiritu
12 Santo Bay to the east.

13 (14) "Species of concern" means species located in the
14 Guadalupe River Basin, the San Antonio River Basin, and the San
15 Antonio Bay and estuary system that are:

16 (A) listed as threatened or endangered under
17 Section 4 of the federal Endangered Species Act of 1973 (16 U.S.C.
18 Section 1531 et seq.);

19 (B) listed by the Parks and Wildlife Department
20 as threatened or endangered; or

21 (C) determined by the advisory group, or the
22 Guadalupe-Blanco River Authority and the San Antonio River
23 Authority, to be at risk because of declines in populations or
24 habitat, or are otherwise in need of concentrated conservation
25 actions.

26 (15) "Species-protection measure" means the
27 activities incorporated into and made a part of the implementing

1 agreement to:

2 (A) manage water in and withdrawn from the
3 Edwards Aquifer, and water discharging from Comal Springs and San
4 Marcos Springs, for the protection of the species identified in the
5 implementing agreement;

6 (B) restore the habitat of the species identified
7 in the implementing agreement;

8 (C) minimize and mitigate the impact of the
9 adverse effects of the activities covered by the incidental take
10 permit issued for the Edwards Aquifer recovery implementation
11 program;

12 (D) implement the adaptive management plan; and

13 (E) implement the adaptive decision-making
14 process.

15 (16) "Work plan" means the document required to be
16 prepared for the Guadalupe River Basin, San Antonio River Basin,
17 and San Antonio Bay and estuary system environmental flows program
18 by the stakeholder committees established under Section
19 11.02362(d) and submitted to the advisory group for approval under
20 Section 11.02362(p) that:

21 (A) makes recommendations regarding
22 environmental flow standards and strategies and projects to meet
23 those standards;

24 (B) prioritizes the strategies and projects;

25 (C) provides for a periodic review to occur at
26 least once every 10 years of the environmental flow analyses and
27 environmental flow regime recommendations, environmental flow

1 standards, and strategies;

2 (D) prescribes specific monitoring, studies, and
3 activities; and

4 (E) establishes a schedule for continuing the
5 validation or refinement of the environmental flow analysis and
6 environmental flow regime recommendation, the environmental flow
7 standards adopted by the Texas Commission on Environmental Quality,
8 and the strategies to achieve those standards.

9 Sec. 17.1002. FUND CREATED. (a) There is created in the
10 state treasury outside the general revenue fund a special fund
11 known as the species-protection program fund, and the board shall
12 administer the fund in accordance with this subchapter.

13 (b) The fund consists of:

14 (1) revenue from the tax imposed under Chapter 328,
15 Tax Code;

16 (2) earnings on the investment of money credited to
17 the fund; and

18 (3) interest earned on the fund.

19 (c) The fund may be appropriated only to the board and only
20 to provide financial assistance for:

21 (1) implementing species-protection measures for the
22 Edwards Aquifer recovery implementation program;

23 (2) implementing the adaptive management plan for the
24 Edwards Aquifer recovery implementation program;

25 (3) paying research and planning costs associated with
26 the implementation of species-protection measures or the adaptive
27 management plan, including planning, engineering, architectural,

1 legal, title, fiscal, economic, and any other study, survey,
2 design, or research and investigation costs;

3 (4) providing money for the state's participation in
4 any federal program that may provide money for the Edwards Aquifer
5 recovery implementation program;

6 (5) paying research, planning, development, and
7 preparation costs of the work plan for the Guadalupe River Basin,
8 San Antonio River Basin, and San Antonio Bay and estuary system
9 environmental flows program; or

10 (6) providing water projects in the Guadalupe River
11 Basin, the San Antonio River Basin, or the San Antonio Bay and
12 estuary system related to species of concern as recommended in the
13 approved work plan, or as approved by the Guadalupe-Blanco River
14 Authority and the San Antonio River Authority.

15 (d) From money appropriated to the board from the fund, the
16 board shall allocate not less than \$1.5 million per state fiscal
17 year for purposes described by Subsections (c)(5) and (6). After
18 that first \$1.5 million has been allocated, the board shall give
19 priority to providing financial assistance for purposes described
20 by Subsections (c)(1)-(4).

21 Sec. 17.1003. EXEMPTION FROM LAW ON USE OF DEDICATED
22 REVENUE. Section 403.095, Government Code, does not apply to the
23 fund.

24 Sec. 17.1004. DEPOSITS TO FUND. The board shall deposit in
25 the fund all amounts received from the tax imposed under Chapter
26 328, Tax Code.

27 Sec. 17.1005. INVESTMENT OF MONEY IN FUND; INTEREST. (a)

1 The board shall invest, reinvest, and direct the investment of
2 money accumulated in the fund.

3 (b) Section 404.071, Government Code, does not apply to the
4 fund.

5 Sec. 17.1006. USE OF FUND. The board shall provide
6 financial assistance to an applicant from money in the fund only in
7 accordance with this subchapter. The board may not make financial
8 assistance available under this subchapter from any other fund.

9 Sec. 17.1007. FEES; RULE. (a) The board by rule may set a
10 fee at an amount necessary to recover the costs incurred by the
11 board in administering the fund.

12 (b) The board may not set a fee for the filing of an
13 application for financial assistance.

14 (c) Board fees may not exceed the cost to the board of
15 performing the administrative functions necessary to administer
16 the fund. The fee may be deducted from the fund on an annual basis
17 as determined by the board.

18 Sec. 17.1008. ELIGIBLE APPLICANT. (a) The following
19 persons may apply to the board for financial assistance for a
20 purpose described by Section 17.1002(c)(1), (2), (3), or (4):

21 (1) the Edwards Aquifer Authority; or

22 (2) a party to the implementing agreement authorized
23 under Section 17.1009(b)(2) to apply for financial assistance.

24 (b) The following persons may apply to the board for
25 financial assistance for a purpose described by Section
26 17.1002(c)(5) or (6):

27 (1) the Guadalupe-Blanco River Authority; or

1 (2) the San Antonio River Authority.

2 Sec. 17.1009. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A
3 person who applies to the board for financial assistance shall
4 apply in affidavit form.

5 (b) The application must include:

6 (1) the name and contact information of the applicant
7 and its principal officers;

8 (2) a resolution of the applicant representing that
9 the filing of the application has been authorized by the governing
10 body or other appropriate official of the applicant;

11 (3) a description of the purposes for which financial
12 assistance is applied for under Section 17.1002(c);

13 (4) for applications for financial assistance under
14 Section 17.1002(c)(1), (2), (3), or (4), a statement that the
15 implementing agreement, habitat conservation plan, incidental take
16 permit, or other appropriate regulatory document authorizes the
17 proposed activity to be performed;

18 (5) for applications for financial assistance under
19 Section 17.1002(c)(5) or (6):

20 (A) a statement that the financial assistance is
21 for researching, planning, developing, and preparing the work plan
22 for the Guadalupe River Basin, San Antonio River Basin, and San
23 Antonio Bay and estuary system environmental flows program; or

24 (B) a description of a water project
25 demonstrating that:

26 (i) the project is in the Guadalupe River
27 Basin, the San Antonio River Basin, or the San Antonio Bay and

1 estuary system;

2 (ii) the project relates to species of
3 concern; and

4 (iii) the approved work plan, or the action
5 of the Guadalupe-Blanco River Authority and the San Antonio River
6 Authority, authorizes the proposed water project to be performed;

7 (6) citations to all appropriate documents requested
8 by the board demonstrating that the proposed activity is
9 authorized;

10 (7) a brief action plan for the proposed activity for
11 the period for which financial assistance is sought;

12 (8) a budget showing the estimated total cost of the
13 proposed activity and the amount anticipated to be expended for the
14 period for which financial assistance is sought; and

15 (9) the amount of financial assistance requested.

16 (c) The application must be filed with the board not later
17 than September 30th of the year preceding the year for which
18 financial assistance is sought.

19 Sec. 17.1010. ACTION ON THE APPLICATION. (a) The board
20 shall approve an application under Section 17.1009 for an applicant
21 that demonstrates:

22 (1) the applicant is eligible to apply under Section
23 17.1008;

24 (2) authorization as described by Section
25 17.1009(b)(2);

26 (3) the proposed activity is authorized for financial
27 assistance in Section 17.1002(c);

1 (4) the proposed activity is authorized to be
2 performed by the implementing agreement or work plan, or other
3 authorization, as applicable;

4 (5) the action plan describes the proposed activity
5 for the period for which financial assistance is sought;

6 (6) the budget states the estimated total costs of the
7 proposed activities and the amount anticipated to be spent for the
8 period for which financial assistance is sought;

9 (7) the fund balance is sufficient to provide
10 financial assistance in the applied for amount; and

11 (8) the prioritization required by Section 17.1002(d)
12 has been met, if applicable.

13 (b) The board may withhold action on an application if it
14 identifies a consideration in Subsection (a) that is deficient and
15 it allows reasonable time to file additional information before the
16 application is reconsidered for final action. If the reason for
17 withholding action is the insufficiency of money in the fund, the
18 board shall advise the applicant and withhold action on the
19 application until sufficient money is available.

20 (c) The board shall notify the applicant in writing of its
21 decision on the application.

22 (d) The board shall provide a written statement to an
23 applicant whose application has been denied because it did not
24 qualify under Subsection (a). The statement must provide the
25 reasons and justification for the denial.

26 (e) If the board approves an application under this section,
27 it shall enter into a grant agreement with the applicant not later

1 than the 30th day after the date it takes final action on the
2 application and promptly remit the amount of the approved financial
3 assistance to the applicant.

4 Sec. 17.1011. APPLICATION AMENDMENT. (a) An applicant may
5 amend an application for financial assistance by filing a written
6 request to the board to take action on the application as amended.

7 (b) The board shall take action under Section 17.1010 on the
8 amended application in the same manner as provided for in the
9 original application.

10 Sec. 17.1012. DELEGATION TO EXECUTIVE ADMINISTRATOR. The
11 board may delegate to the executive administrator its authority to
12 take action on an application under this subchapter.

13 Sec. 17.1013. NOTICE OF ADDITIONAL MEASURES. (a) If at any
14 time during the term of the implementing agreement the Edwards
15 Aquifer Authority determines that additional species-protection
16 measures are required to achieve the biological goals of the
17 Edwards Aquifer recovery implementation program and that
18 additional financial assistance is required to pay for the
19 additional measures, the Edwards Aquifer Authority shall give
20 notice to the board and the comptroller that additional measures
21 are required and that the sales and use tax rate will be increased
22 as provided by Section 328.052(b), Tax Code, if the tax is being
23 imposed at a rate of one-eighth of one percent. The Edwards Aquifer
24 Authority shall send the notice to the board and the comptroller by
25 United States certified or registered mail.

26 (b) The notice must include:

27 (1) a summary of the findings of the adaptive

1 management plan;

2 (2) a description of the alternative measures that are
3 recommended to be implemented in addition to, or instead of, the
4 species-protection measures that are being implemented under the
5 implementing agreement;

6 (3) a summary of the results of the adaptive
7 decision-making process; and

8 (4) a certified copy of the final decision by the
9 United States Fish and Wildlife Service that the additional
10 species-protection measures are required and that they are approved
11 for implementation by the Edwards Aquifer recovery implementation
12 program.

13 Sec. 17.1014. REPORT. Not later than April 1 of each year,
14 the Edwards Aquifer Authority shall prepare and file with the board
15 a report of:

16 (1) the preceding year's activities to implement the
17 Edwards Aquifer recovery implementation program;

18 (2) the activities that are scheduled for the next
19 year; and

20 (3) the amount of financial assistance that will
21 likely be applied for in the next two years.

22 Sec. 17.1015. EXEMPTION FROM UNIFORM GRANT AND CONTRACT
23 MANAGEMENT LAW. Chapter 783, Government Code, does not apply to
24 financial assistance.

25 SECTION 4. ENVIRONMENTAL FLOW RECOMMENDATION. Section
26 11.02362, Water Code, is amended by adding Subsection (t) to read as
27 follows:

1 (t) On approval by the advisory group of the work plan for
2 the river basin and bay system consisting of the Guadalupe River
3 Basin, the San Antonio River Basin, and the San Antonio Bay and
4 estuary system, the advisory group shall send to the comptroller by
5 United States certified or registered mail a certified copy of the
6 advisory group's approval action and a map of those river basins and
7 bay system and give notice that the sales and use tax rate will be
8 increased as provided by Section 328.052(b), Tax Code, if the tax is
9 being imposed at a rate of one-eighth of one percent.

10 SECTION 5. TRANSITION. (a) The Texas Water Development
11 Board may not approve an application for financial assistance under
12 Section 17.1010, Water Code, as added by this Act, before January 1,
13 2012.

14 (b) The Texas Water Development Board may not remit money
15 under Subchapter N, Chapter 17, Water Code, as added by this Act,
16 for applications for financial assistance approved in 2012 under
17 Section 17.1010, Water Code, as added by this Act, before January 1,
18 2013.

19 SECTION 6. EFFECTIVE DATE. This Act takes effect
20 immediately if it receives a vote of two-thirds of all the members
21 elected to each house, as provided by Section 39, Article III, Texas
22 Constitution. If this Act does not receive the vote necessary for
23 immediate effect, this Act takes effect September 1, 2011.