

By: Campbell

S.B. No. 1647

A BILL TO BE ENTITLED

AN ACT

relating to the administration, duties, and operation of the Edwards Aquifer Authority; authorizing a fee.

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

SECTION 1. Section 1.03(20), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(20) "Underground water" or "groundwater" means water percolating beneath the earth ~~[has the meaning assigned by Section 52.001, Water Code]~~.

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

Sec. 1.07. OWNERSHIP OF UNDERGROUND WATER. 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 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. However, action taken pursuant to this Act may not be 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 the resale of potable water to the public for any use, subject to the rules

1 adopted by the authority under this Act or a district exercising the
2 powers provided by Chapter 36 [~~52~~], Water Code. The legislature
3 intends that just compensation be paid if implementation of this
4 article causes a taking of private property or the impairment of a
5 contract in contravention of the Texas or federal constitution.

6 SECTION 3. Section 1.08(a), Chapter 626, Acts of the 73rd
7 Legislature, Regular Session, 1993, is amended to read as follows:

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

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

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

26 (i) A member of a governing body of another political
27 subdivision is ineligible for appointment or election as a director

1 of the authority. A director of the authority is disqualified and
2 vacates the office of director if the director is appointed or
3 elected as a member of the governing body of another political
4 subdivision.

5 (j) For liability purposes only, a director of the authority
6 is considered an employee of the authority under Chapter 101, Civil
7 Practice and Remedies Code, even if the director does not receive
8 fees of office voluntarily, by authority policy, or through a
9 statutory exception.

10 (k) A director of the authority is immune from suit and
11 immune from liability for official votes and official actions. To
12 the extent an official vote or official action conforms to laws
13 relating to conflicts of interest, abuse of office, or
14 constitutional obligations, this subsection provides immunity for
15 those actions.

16 SECTION 5. Section 1.11(d), Chapter 626, Acts of the 73rd
17 Legislature, Regular Session, 1993, is amended to read as follows:

18 (d) The authority may:

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

22 (2) enter into contracts;

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

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

26 (5) hire an executive director to be the chief
27 administrator of the authority and other employees as necessary to

1 carry out its powers and duties;

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

4 (7) own real and personal property;

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

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

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

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

17 SECTION 6. Article 1, Chapter 626, Acts of the 73rd
18 Legislature, Regular Session, 1993, is amended by adding Sections
19 1.21 and 1.211 to read as follows:

20 Sec. 1.21. CONTESTED CASE HEARINGS; REQUEST FOR REHEARING
21 OR FINDINGS AND CONCLUSIONS. (a) An applicant in a contested or
22 uncontested hearing on an application under this Act or a party to a
23 contested hearing may administratively appeal a decision of the
24 board on an application by requesting written findings of fact and
25 conclusions of law not later than the 20th day after the date of the
26 board's decision.

27 (b) On receipt of a timely written request, the board shall

1 make written findings of fact and conclusions of law regarding a
2 decision of the board on an application under this Act. The board
3 shall provide certified copies of the findings and conclusions to
4 the person who requested them, and to each designated party, not
5 later than the 20th day after the date the board receives the
6 request. A party to a contested hearing may request a rehearing
7 before the board not later than the 20th day after the date the
8 board issues the findings and conclusions.

9 (c) A request for rehearing must be filed in the authority's
10 office and must state the grounds for the request.

11 (d) If the board grants a request for rehearing, the board
12 shall schedule the rehearing not later than the 45th day after the
13 date the request is granted.

14 (e) The failure of the board to grant or deny a request for
15 rehearing before the 91st day after the date the request is
16 submitted is a denial of the request.

17 Sec. 1.211. DECISION; WHEN FINAL. (a) A decision by the
18 board on an application under this Act is final:

19 (1) if a request for rehearing is not filed on time, on
20 the expiration of the period for filing a request for rehearing; or

21 (2) if a request for rehearing is filed on time, on the
22 date:

23 (A) the board denies the request for rehearing;

24 or

25 (B) the board renders a written decision after
26 rehearing.

27 (b) A timely filed motion for rehearing is a prerequisite to

a suit against the authority under Section 1.46 of this article
challenging a decision in a contested hearing. A suit under Section
1.46 must be filed not later than the 60th day after the date on
which the decision becomes final.

SECTION 7. Section 1.26(a), Chapter 626, Acts of the 73rd
 Legislature, Regular Session, 1993, is amended to read as follows:

(a) ~~The [After review of the recommendations received in the~~
~~program document, as prescribed by Section 1.26A of this article,~~
~~the]~~ authority by rule shall adopt a critical period management
 plan consistent with Sections 1.14(a), (f), and (h) of this
 article. ~~[The critical period management plan shall be adopted by~~
~~the authority no later than six months after the authority's~~
~~receipt of the program document. On adoption of the critical period~~
~~management plan, the authority shall provide a written report to~~
~~the governor, lieutenant governor, and speaker of the house of~~
~~representatives describing the actions taken in response to each~~
~~recommendation and, for each recommendation not implemented, the~~
~~reason it was not implemented.]~~ The plan must[+]

~~[(1) distinguish between discretionary use and~~
~~nondiscretionary use,~~

~~[(2) require reductions of all discretionary use to~~
~~the maximum extent feasible,~~

~~[(3) require utility pricing, to the maximum extent~~
~~feasible, to limit discretionary use by the customers of water~~
~~utilities,~~

~~[(4) require reduction of nondiscretionary use by~~
~~permitted or contractual users, to the extent further reductions~~

are necessary, in the reverse order of the following water use preferences:

~~[(A) municipal, domestic, and livestock,~~

~~[(B) industrial and crop irrigation,~~

~~[(C) residential landscape irrigation,~~

~~[(D) recreational and pleasure, and~~

~~[(E) other uses that are authorized by law, and~~

~~[(5)]~~ allow irrigation use to continue in order to permit the user to complete the irrigation of a crop in progress.

SECTION 8. Section 1.29(f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(f) The authority may ~~[shall]~~ impose a permit application fee not to exceed \$25. The authority may impose fees to recover administrative costs associated with actions other than the filing and processing of applications and registrations. The fees may not unreasonably exceed the administrative costs.

SECTION 9. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.361 to read as follows:

Sec. 1.361. ABANDONED, OPEN, UNCOVERED, OR DETERIORATED WELLS. (a) In this section, "abandoned well" and "deteriorated well" have the meanings assigned by Section 1901.255, Occupations Code.

(b) 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, Occupations Code, and the authority's rules, the authority or its

1 authorized employees, representatives, or agents may enter the land
2 and close, cap, or plug the well safely and securely.

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

6 (d) The lien as described by Subsection (c) arises and
7 attaches on recording, in the deed records of the county where the
8 well is located, an affidavit that is executed by any person
9 conversant with the facts and states the following:

10 (1) the existence of the well;

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

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

15 (4) the failure or refusal of the owner or lessee,
16 after notification, to close or cap the well before the expiration
17 of 10 days after the notification, or to plug the well before the
18 expiration of 180 days after the notification, as required by the
19 authority's rules;

20 (5) the closing, capping, or plugging of the well by
21 the authority or by an authorized employee, representative, or
22 agent of the authority; and

23 (6) the expense incurred by the authority in closing,
24 capping, or plugging the well.

25 (e) This section does not affect the enforcement of
26 Subchapter A, Chapter 756, Health and Safety Code.

27 SECTION 10. Sections 1.37(j), (n), and (r), Chapter 626,

Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

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

(1) pay the amount of the penalty;

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

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

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

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

(2) is under the substantial evidence rule.

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

SECTION 11. Section 1.38, Chapter 626, Acts of the 73rd

Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 1.38. INJUNCTION BY AUTHORITY. (a) The authority may file a civil suit in a state district court for an injunction or mandatory injunction to enforce this article and the authority's rules. The authority may recover reasonable attorney fees in a suit under this section.

(b) 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 may impose under this section constitute a limit of liability of the governmental entity for the violation. This subsection does not prohibit the recovery by the authority of fees and costs under this article in an action against a governmental entity.

SECTION 12. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.46 to read as follows:

Sec. 1.46. SUITS. (a) 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.

(b) Only the authority, the applicant, and parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case hearing. An appeal of a decision on a permit application must include the applicant as a necessary party.

(c) A suit under this section must be filed in a court of

1 competent jurisdiction in any county in which the authority is
2 located. The suit may be filed only after all administrative
3 appeals to the authority are final.

4 (d) The burden of proof is on the petitioner, and the
5 challenged law, rule, order, or act is to be considered prima facie
6 valid. The review on appeal is governed by either Section 2001.038
7 or Section 2001.174, Government Code, as appropriate.

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

14 SECTION 13. Section 36.205(e), Water Code, is amended to
15 read as follows:

16 (e) Subsection (c) does not apply to the following
17 districts:

- 18 (1) ~~[the Edwards Aquifer Authority,~~
19 ~~(2)]~~ the Fort Bend Subsidence District;
20 (2) ~~(3)]~~ the Harris-Galveston Subsidence District;
21 (3) ~~(4)]~~ the Barton Springs-Edwards Aquifer
22 Conservation District; or
23 (4) ~~(5)]~~ any district that collects a property tax
24 and that was created before September 1, 1999, unless otherwise
25 authorized by special law.

26 SECTION 14. Section 1.25(b), Chapter 626, Acts of the 73rd
27 Legislature, Regular Session, 1993, is repealed.

1 SECTION 15. The following provisions of the Water Code are
2 repealed:

- 3 (1) Section 36.101(1);
- 4 (2) Section 36.1011(e);
- 5 (3) Section 36.125; and
- 6 (4) Section 36.419.

7 SECTION 16. This Act takes effect September 1, 2019.