

**House Bill 2729**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

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SECTION 1. Same as House version.

SECTION 2. Same as House version.

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

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

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

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

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

(j) For liability purposes only, a director of the authority is considered an employee of the authority under Chapter 101, Civil Practice and Remedies Code, even if the director does

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not receive fees of office voluntarily, by authority policy, or through a statutory exception.

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

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

(d) The authority may:

- (1) issue or administer grants, loans, or other financial assistance to water users for water conservation and water reuse;
- (2) enter into contracts;
- (3) sue and be sued in its own name;
- (4) receive gifts, grants, awards, and loans for use in carrying out its powers and duties;
- (5) hire an executive director to be the chief administrator of the authority and other employees as necessary to carry out its powers and duties;
- (6) delegate the power to hire employees to the executive director of the authority;
- (7) own real and personal property;
- (8) close abandoned, wasteful, or dangerous wells;
- (9) hold permits under state law or under federal law pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) and its amendments;
- (10) enforce inside the authority's boundaries Chapter 1901

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[32], Occupations [Water] Code, and [commission] rules adopted by the Texas Commission of Licensing and Regulation under that chapter [Act within the authority's boundaries]; and

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

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

Sec. 1.21. CONTESTED CASE HEARINGS; REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS.

(a) An applicant in a contested or uncontested hearing on an application under this Act or a party to a contested hearing may administratively appeal a decision of the board on an application by requesting written findings of fact and conclusions of law not later than the 20th day after the date of the board's decision.

(b) On receipt of a timely written request, the board shall make written findings of fact and conclusions of law regarding a decision of the board on an application under this Act. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 20th day after the date the board receives the request. A party to a contested hearing may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the authority's

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office and must state the grounds for the request.

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

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

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

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

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

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

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

(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~~

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~~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. Sections 1.29(b) and (f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 36, Water Code, that is within the authority's boundaries may

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contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority. The authority may not increase aquifer management fees by more than eight percent per year.

(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 authorized employees, representatives, or

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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. OPEN OR UNCOVERED WELLS.

(a) If the owner or lessee of land on which an open or uncovered well is located fails or refuses to close or cap the well in compliance with Chapter 1901, Occupations Code, and the authority's rules:

(1) the authority may take enforcement action as authorized by this article to require the owner or lessee to close or cap the well; or

(2) a person, firm, or corporation employed by the authority

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agents may enter the land and close, cap, or plug the well safely and securely.

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

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

(1) the existence of the well;

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

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

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

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

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

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

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),

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may go on the land and close or cap the well safely and securely.

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

(c) The lien described by Subsection (b) arises and attaches on recordation of, in the deed records of the county where the well is located, an affidavit executed by any person conversant with the facts stating the following:

(1) the existence of the well;

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

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

(4) the failure or refusal of the owner or lessee, after notification, to close or cap the well before the expiration of 10 days after the notification;

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

(6) the expense incurred by the authority in closing or capping the well.

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

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~~Government Code [Subsection (e), 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.

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

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

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

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

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

No equivalent provision.

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

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

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

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(e) The authority may recover attorney's fees, costs for expert witnesses, and other costs incurred by the authority before the court on the same basis as Chapter 36, Water Code, provides for a groundwater conservation district to recover those fees and costs.

SECTION 13. Section 3.01, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (d) to read as follows:

(d) Not later than the last business day of each even-numbered year, the Edwards Aquifer Authority shall prepare and deliver a report to the committee on the authority's operations. The report must contain a summary of issues related to the authority's operations that affect the continuing implementation of this Act or require an amendment to this Act.

SECTION 14. Same as House version.

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

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

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

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

SECTION 15. The following provisions are repealed:  
(1) Section 1.25(b), Chapter 626, Acts of the 73rd  
Legislature, Regular Session, 1993;

- (2) Section 36.101(l), Water Code;
- (3) Section 36.1011(e), Water Code;
- (4) Section 36.125, Water Code; and
- (5) Section 36.419, Water Code.

SECTION 16. Same as House version.