

BILL ANALYSIS

Senate Research Center
79R13670 SGA-F

C.S.S.B. 1857
By: Madla
Natural Resources
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Edwards County Aquifer Authority (authority) was created in 1993 in order to develop and implement programs for the comprehensive management of the Edwards Aquifer (aquifer) and allow the state to better regulate its natural resources and to avoid federal control of the aquifer. Federal courts and agencies posed legal challenges to the authority as it was originally created, and, as a result, its organizational and managerial structure was changed in 1995 to better conform to federal rulings and law. The constitutionality of the Act which created the authority has since been challenged, but ultimately the courts decided in favor of the Act. The plan put into action by the Act would reduce pumping from the aquifer during critical periods.

The Kinney County Groundwater Conservation District (district) was created in 2001, and since its creation, has suffered from management problems and currently lacks financial stability.

C.S.S.B. 1857 dissolves the district and consolidates it into the authority by including Kinney County into its jurisdiction, and authorizes the authority to regulate both the Edwards Aquifer portion of Kinney County as well as the other underground water in Kinney County.

Kinney County, as a whole, will be represented through District 14 (western Uvalde County) on the authority board. Kinney County will be given a representative on the South Texas Water Advisory Committee. All powers, duties, rights, assets, and obligations of the district become the powers, duties, rights, assets, and obligations of the authority.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Edwards Aquifer Authority is modified in SECTION 8 (Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. DISSOLUTION. Dissolves the Kinney County Groundwater Conservation District (district). Provides that the Edwards Aquifer (aquifer) and other underground water in Kinney County is made subject to the jurisdiction of the Edwards Aquifer Authority (authority).

SECTION 2. AMENDMENT. Amends Section 1.02(a), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to include all or part of Kinney County in the authority.

SECTION 3. AMENDMENT. Amends Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subdivision (1) and adding Subdivision (28) to redefine "aquifer" and define "western hydrologic division."

SECTION 4. AMENDMENT. Amends Section 1.04, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to provide that the authority includes the territory contained in all of the area of Kinney County.

SECTION 5. AMENDMENT. Amends Section 1.08, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsection (b) and adding Subsections (b-1), (b-2) and (b-3), as follows:

(b) Applies the authority's powers regarding underground water to any other underground water resource in Kinney County. Makes nonsubstantive changes.

(b-1) Sets forth which sections of this article and of the Water Code do not apply to the underground water in Kinney County. Sets forth the rights, powers, privileges, authority, functions, and duties of the authority.

(b-2) Provides that with respect to a certain part of Kinney County, Section 36.201(c) (restricting the authority of a board of directors of a water conservation district in levying a tax to pay maintenance and operating expenses of the district), Water Code, does not apply to or restrict the authority's continuing imposition of an ad valorem tax not to exceed 10 cents on each \$100 of assessed valuation.

(b-3) Creates this subsection from existing text and makes a conforming change.

SECTION 6. AMENDMENT. Amends Section 1.093(n), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to include Kinney County in District 14.

SECTION 7. AMENDMENT. Amends Section 1.10(a), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to provide that a representative of Kinney County serves on the South Central Texas Water Advisory Committee.

SECTION 8. AMENDMENT. Amends Section 1.14(g), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to authorize the authority by rule to more accurately define and locate the western hydrologic division in Kinney County. Makes nonsubstantive changes.

SECTION 9. AMENDMENT. Amends Section 1.16, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Subsection (b-1) to require an existing user withdrawing underground water from the portion of the aquifer in Kinney County to file a declaration of historical use on or before March 1, 2006, on a form prescribed by the board of directors of the authority (board). Requires an applicant for a permit to timely pay all application fees required by the board.

SECTION 10. AMENDMENT. Amends Section 1.17, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding Subsections (a-1) and (e), as follows:

(a-1) Provides that Subsection (a) (authorizing a person to continue to draw water from an existing well that withdraws water from the aquifer until final action on permits by the authority) does not apply to a person who, on September 1, 2005, owns a producing well in Kinney County that withdraws water from the aquifer. Authorizes such a person to continue to withdraw and beneficially use water without waste until final action on the permits by the authority under certain conditions.

(e) Provides that Subsection (d) (setting an ending date for interim authorization) does not apply to a well described by Subsection (a-1) of this section. Sets forth the date upon which interim authorization for a well described by Subsection (a-1) ends.

SECTION 11. AMENDMENT. Amends Section 1.18(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to prohibit the authority from considering or taking action on an application relating to a proposed or existing well of which there is no evidence of actual beneficial use before June 1, 1993, until a final determination has been made on all initial regular permit applications submitted for aquifer use in Kinney County on or before the initial application date of March 1, 2006. Makes nonsubstantive changes.

SECTION 12. AMENDMENT. Amends Section 1.34(c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, to prohibit a holder of a permit to use water from the aquifer for irrigation use, rather than the holder of a permit for irrigation use, from leasing more than 50 percent of the irrigation rights initially permitted.

SECTION 13. REPEALER. Repealer: Chapter 1344 (relating to the creation, administration, powers, duties, and financing of the district), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 14. TRANSITION: DISSOLUTION AND RULES. (a) Transfers all the powers, duties, rights, assets, and obligations of the district to the authority on the effective date of this Act. Transfers all records, supplies, and other property relating to the district to the authority on the effective date of this Act. Requires the authority to be automatically substituted for the district in any judicial or administrative proceeding to which, on the effective date of this Act, the district is a party or is sitting or serving as an administrative, regulatory, or adjudicative body.

(b) Dissolves the district on completion of the transfer of records, supplies, and other property to the authority.

(c) Provides that any rule adopted by the district before the effective date of this Act that relates to the management or control of the Edwards Aquifer is void. Provides that any rule adopted by the district before January 1, 2005, that relates to the management or control of underground water other than water of the Edwards Aquifer is, on the effective date of this Act, a rule of the authority and remains in effect until amended or repealed by the authority.

SECTION 15. TRANSITION: PERMITS AND HEARINGS. (a) Defines "authority" and "district."

(b) Requires the authority, not later than the 90th day after the effective date of this Act and in accordance with this section, to review and act on each application for a historic or existing use permit for underground water other than water of the Edwards Aquifer that was filed with the district on or before December 31, 2003, in accordance with the district's rules then in effect.

(c) Requires an applicant who did not file a timely motion for rehearing on an application that before the effective date of this Act the district reviewed and granted a permit to notify the authority in writing that the applicant accepts the permit granted by the district or file with the authority a motion to reconsider the application and review the district record of the application on or before December 31, 2005.

(d) Requires the authority, if the applicant accepts the district permit, not later than the 45th day after the date on which the authority receives the applicant's acceptance, to issue to the applicant a permit that has terms and conditions consistent with the terms and conditions of the district permit and authorizes production amounts equal to the amounts authorized by the district permit.

(e) Requires the authority, if an applicant does not timely file an acceptance or a motion for reconsideration, not later than February 14, 2006, to issue to the applicant a permit that has terms and conditions consistent with the terms and conditions of the district permit and authorized production amounts equal to the amounts authorized by the district permit.

(f) Requires the authority, if an applicant timely files a motion for reconsideration, not later than the 90th day after the date on which the authority receives the motion, to review the district record of the application and, after notice to the applicant and an opportunity for a hearing, to make an independent recommendation on the issuance of a permit based on the district's rules in effect on January 1, 2004, regarding the issuance of historic or existing use permits and evidence in the record, including any additional information presented by the applicant during a hearing conducted by the authority.

(g) Requires the authority, if an applicant received a permit from the district and timely filed a motion for rehearing with the district, to review the permit issued by the district and the hearing report prepared by the district's presiding officer, as that hearing report may have been amended on the record during the district's public hearing on the

application. Requires the authority to issue the applicant a permit that has terms and conditions consistent with the hearing report as it may have been amended during the district's hearings on the permit and authorizes production amounts equal to the amounts recommended by the report, or, if the authority finds, after notice to an applicant and an opportunity for a hearing, that the recommendations in the hearing report are not supported by any evidence on the record, to issue the applicant a permit with terms, conditions, and production amounts the authority determines are supported by evidence on the record.

(h) Requires the authority, if the district has not granted a permit to an applicant who submitted an application before the effective date of this Act, but the presiding officer of the district has prepared a hearing report on the application and the district has held a public hearing on the application, to review the hearing report and any amendment to the report that may have been made during the hearing. Requires the authority to issue the applicant a permit that has terms and conditions consistent with the hearing report as it may have been amended during the hearing and authorizes production amounts equal to the amounts recommended by the report or, if the authority finds, after notice to the applicant and an opportunity for a hearing, that the recommendations in the hearing report are not supported by any evidence on the record, to issue the applicant a permit with terms, conditions, and production amounts the authority determines are supported by evidence on the record.

(i) Authorizes an applicant aggrieved by the authority's decision on a permit issued by the authority under this section to file a motion for rehearing with the authority not later than the 20th day after the date on which the authority issues the permit to the applicant in writing. Requires the authority, not later than the 45th day after the authority receives the motion, to act on the motion. Provides that if the authority does not act on the motion in the time allowed, the motion for rehearing is overruled by operation of law. Provides that the authority's decision on a permit is final and appealable when the motion for rehearing is overruled, in whole or in part, by the authority in writing or by operation of law. Provides that the timely filing of a motion for rehearing is a prerequisite to an appeal of the authority's decision on a permit issued under this section. Authorizes an applicant aggrieved by the authority's decision on the motion for rehearing to appeal the authority's decision on the motion for rehearing to appeal the authority's decision by filing suit in district court under Subchapter H (Judicial Review), Chapter 36, Water Code. Requires the district court, on appeal, to conduct a trial de novo on the application.

SECTION 16. TRANSITION: APPOINTMENT TO SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE. Requires the Kinney County Commissioners Court, as soon as practicable after the effective date of this Act, to appoint a member of the South Central Texas Water Advisory Committee under Section 1.10(a), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended by this Act.

SECTION 17. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 18. EFFECTIVE DATE. Effective date: September 1, 2005.