

1-1 By: Minjarez (Senate Sponsor - Campbell) H.B. No. 2729
 1-2 (In the Senate - Received from the House April 24, 2019;
 1-3 April 25, 2019, read first time and referred to Committee on Water
 1-4 & Rural Affairs; May 14, 2019, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
 1-6 May 14, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 2729 By: Rodríguez

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the administration, duties, and operation of the
 1-20 Edwards Aquifer Authority; authorizing a fee.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1.03(20), Chapter 626, Acts of the 73rd
 1-23 Legislature, Regular Session, 1993, is amended to read as follows:

1-24 (20) "Underground water" or "groundwater" means water
 1-25 percolating beneath the earth [has the meaning assigned by Section
 1-26 52.001, Water Code].

1-27 SECTION 2. Section 1.07, Chapter 626, Acts of the 73rd
 1-28 Legislature, Regular Session, 1993, is amended to read as follows:

1-29 Sec. 1.07. OWNERSHIP OF UNDERGROUND WATER. The ownership
 1-30 and rights of the owner of the land and the owner's lessees and
 1-31 assigns, including holders of recorded liens or other security
 1-32 interests in the land, in underground water and the contract rights
 1-33 of any person who purchases water for the provision of potable water
 1-34 to the public or for the resale of potable water to the public for
 1-35 any use are recognized. However, action taken pursuant to this Act
 1-36 may not be construed as depriving or divesting the owner or the
 1-37 owner's lessees and assigns, including holders of recorded liens or
 1-38 other security interests in the land, of these ownership rights or
 1-39 as impairing the contract rights of any person who purchases water
 1-40 for the provision of potable water to the public or for the resale
 1-41 of potable water to the public for any use, subject to the rules
 1-42 adopted by the authority under this Act or a district exercising the
 1-43 powers provided by Chapter 36 [~~52~~], Water Code. The legislature
 1-44 intends that just compensation be paid if implementation of this
 1-45 article causes a taking of private property or the impairment of a
 1-46 contract in contravention of the Texas or federal constitution.

1-47 SECTION 3. Section 1.08(a), Chapter 626, Acts of the 73rd
 1-48 Legislature, Regular Session, 1993, is amended to read as follows:

1-49 (a) The authority has all of the powers, rights, and
 1-50 privileges necessary to manage, conserve, preserve, and protect the
 1-51 aquifer and to increase the recharge of, and prevent the waste or
 1-52 pollution of water in, the aquifer. The authority has all of the
 1-53 rights, powers, privileges, authority, functions, and duties
 1-54 provided by the general law of this state, including Chapters 49 and
 1-55 [~~50~~, 51, [~~and 52~~], Water Code, applicable to an authority created
 1-56 under Article XVI, Section 59, of the Texas Constitution. This
 1-57 article prevails over any provision of general law that is in
 1-58 conflict or inconsistent with this article regarding the area of
 1-59 the authority's jurisdiction. Chapter 36, Water Code, does not
 1-60 apply to the authority.

2-1 SECTION 4. Section 1.09, Chapter 626, Acts of the 73rd
2-2 Legislature, Regular Session, 1993, is amended by amending
2-3 Subsection (d) and adding Subsections (i) through (k) to read as
2-4 follows:

2-5 (d) Section [Sections 41.003 and] 41.008, Election Code,
2-6 does [do] not apply to an election held under this article.

2-7 (i) A member of a governing body of another political
2-8 subdivision is ineligible for appointment or election as a director
2-9 of the authority. A director of the authority is disqualified and
2-10 vacates the office of director if the director is appointed or
2-11 elected as a member of the governing body of another political
2-12 subdivision.

2-13 (j) For liability purposes only, a director of the authority
2-14 is considered an employee of the authority under Chapter 101, Civil
2-15 Practice and Remedies Code, even if the director does not receive
2-16 fees of office voluntarily, by authority policy, or through a
2-17 statutory exception.

2-18 (k) A director of the authority is immune from suit and
2-19 immune from liability for official votes and official actions. To
2-20 the extent an official vote or official action conforms to laws
2-21 relating to conflicts of interest, abuse of office, or
2-22 constitutional obligations, this subsection provides immunity for
2-23 those actions.

2-24 SECTION 5. Section 1.11(d), Chapter 626, Acts of the 73rd
2-25 Legislature, Regular Session, 1993, is amended to read as follows:

2-26 (d) The authority may:

2-27 (1) issue or administer grants, loans, or other
2-28 financial assistance to water users for water conservation and
2-29 water reuse;

2-30 (2) enter into contracts;

2-31 (3) sue and be sued in its own name;

2-32 (4) receive gifts, grants, awards, and loans for use
2-33 in carrying out its powers and duties;

2-34 (5) hire an executive director to be the chief
2-35 administrator of the authority and other employees as necessary to
2-36 carry out its powers and duties;

2-37 (6) delegate the power to hire employees to the
2-38 executive director of the authority;

2-39 (7) own real and personal property;

2-40 (8) close abandoned, wasteful, or dangerous wells;

2-41 (9) hold permits under state law or under federal law
2-42 pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section
2-43 1531 et seq.) and its amendments;

2-44 (10) enforce inside the authority's boundaries Chapter
2-45 1901 [32], Occupations [Water] Code, and [commission] rules adopted
2-46 by the Texas Commission of Licensing and Regulation under that
2-47 chapter [Act within the authority's boundaries]; and

2-48 (11) require to be furnished to the authority water
2-49 well drillers' logs that are required by Chapter 1901 [32],
2-50 Occupations [Water] Code, to be kept and furnished to the Texas
2-51 Department of Licensing and Regulation [commission].

2-52 SECTION 6. Article 1, Chapter 626, Acts of the 73rd
2-53 Legislature, Regular Session, 1993, is amended by adding Sections
2-54 1.21 and 1.211 to read as follows:

2-55 Sec. 1.21. CONTESTED CASE HEARINGS; REQUEST FOR REHEARING
2-56 OR FINDINGS AND CONCLUSIONS. (a) An applicant in a contested or
2-57 uncontested hearing on an application under this Act or a party to a
2-58 contested hearing may administratively appeal a decision of the
2-59 board on an application by requesting written findings of fact and
2-60 conclusions of law not later than the 20th day after the date of the
2-61 board's decision.

2-62 (b) On receipt of a timely written request, the board shall
2-63 make written findings of fact and conclusions of law regarding a
2-64 decision of the board on an application under this Act. The board
2-65 shall provide certified copies of the findings and conclusions to
2-66 the person who requested them, and to each designated party, not
2-67 later than the 20th day after the date the board receives the
2-68 request. A party to a contested hearing may request a rehearing
2-69 before the board not later than the 20th day after the date the

3-1 board issues the findings and conclusions.
3-2 (c) A request for rehearing must be filed in the authority's
3-3 office and must state the grounds for the request.

3-4 (d) If the board grants a request for rehearing, the board
3-5 shall schedule the rehearing not later than the 45th day after the
3-6 date the request is granted.

3-7 (e) The failure of the board to grant or deny a request for
3-8 rehearing before the 91st day after the date the request is
3-9 submitted is a denial of the request.

3-10 Sec. 1.211. DECISION; WHEN FINAL. (a) A decision by the
3-11 board on an application under this Act is final:

3-12 (1) if a request for rehearing is not filed on time, on
3-13 the expiration of the period for filing a request for rehearing; or

3-14 (2) if a request for rehearing is filed on time, on the
3-15 date:

3-16 (A) the board denies the request for rehearing;
3-17 or

3-18 (B) the board renders a written decision after
3-19 rehearing.

3-20 (b) A timely filed motion for rehearing is a prerequisite to
3-21 a suit against the authority under Section 1.46 of this article
3-22 challenging a decision in a contested hearing. A suit under Section
3-23 1.46 must be filed not later than the 60th day after the date on
3-24 which the decision becomes final.

3-25 SECTION 7. Section 1.26(a), Chapter 626, Acts of the 73rd
3-26 Legislature, Regular Session, 1993, is amended to read as follows:

3-27 (a) ~~The [After review of the recommendations received in the~~
3-28 ~~program document, as prescribed by Section 1.26A of this article,~~
3-29 ~~the] authority by rule shall adopt a critical period management~~
3-30 ~~plan consistent with Sections 1.14(a), (f), and (h) of this~~
3-31 ~~article. [The critical period management plan shall be adopted by~~
3-32 ~~the authority no later than six months after the authority's~~
3-33 ~~receipt of the program document. On adoption of the critical period~~
3-34 ~~management plan, the authority shall provide a written report to~~
3-35 ~~the governor, lieutenant governor, and speaker of the house of~~
3-36 ~~representatives describing the actions taken in response to each~~
3-37 ~~recommendation and, for each recommendation not implemented, the~~
3-38 ~~reason it was not implemented.] The plan must[+
3-39 [(1) distinguish between discretionary use and
3-40 nondiscretionary use;
3-41 [(2) require reductions of all discretionary use to
3-42 the maximum extent feasible;
3-43 [(3) require utility pricing, to the maximum extent
3-44 feasible, to limit discretionary use by the customers of water
3-45 utilities;
3-46 [(4) require reduction of nondiscretionary use by
3-47 permitted or contractual users, to the extent further reductions
3-48 are necessary, in the reverse order of the following water use
3-49 preferences:~~

3-50 ~~[(A) municipal, domestic, and livestock;~~
3-51 ~~[(B) industrial and crop irrigation;~~

3-52 ~~[(C) residential landscape irrigation;~~
3-53 ~~[(D) recreational and pleasure; and~~

3-54 ~~[(E) other uses that are authorized by law; and~~
3-55 ~~[(5)] allow irrigation use to continue in order to~~

3-56 ~~permit the user to complete the irrigation of a crop in progress.~~

3-57 SECTION 8. Sections 1.29(b) and (f), Chapter 626, Acts of
3-58 the 73rd Legislature, Regular Session, 1993, are amended to read as
3-59 follows:

3-60 (b) The authority shall assess equitable aquifer management
3-61 fees based on aquifer use under the water management plan to finance
3-62 its administrative expenses and programs authorized under this
3-63 article. Each water district governed by Chapter 36, Water Code,
3-64 that is within the authority's boundaries may contract with the
3-65 authority to pay expenses of the authority through taxes in lieu of
3-66 user fees to be paid by water users in the district. The contract
3-67 must provide that the district will pay an amount equal to the
3-68 amount that the water users in the district would have paid through
3-69 user fees. The authority may not collect a total amount of fees and

4-1 taxes that is more than is reasonably necessary for the
4-2 administration of the authority. The authority may not increase
4-3 aquifer management fees by more than eight percent per year.

4-4 (f) The authority may [shall] impose a permit application
4-5 fee not to exceed \$25. The authority may impose fees to recover
4-6 administrative costs associated with actions other than the filing
4-7 and processing of applications and registrations. The fees may not
4-8 unreasonably exceed the administrative costs.

4-9 SECTION 9. Article 1, Chapter 626, Acts of the 73rd
4-10 Legislature, Regular Session, 1993, is amended by adding Section
4-11 1.361 to read as follows:

4-12 Sec. 1.361. OPEN OR UNCOVERED WELLS. (a) If the owner or
4-13 lessee of land on which an open or uncovered well is located fails
4-14 or refuses to close or cap the well in compliance with Chapter 1901,
4-15 Occupations Code, and the authority's rules:

4-16 (1) the authority may take enforcement action as
4-17 authorized by this article to require the owner or lessee to close
4-18 or cap the well; or

4-19 (2) a person, firm, or corporation employed by the
4-20 authority may go on the land and close or cap the well safely and
4-21 securely.

4-22 (b) Reasonable expenses incurred by the authority in
4-23 closing or capping a well constitute a lien on the land on which the
4-24 well is located.

4-25 (c) The lien described by Subsection (b) arises and attaches
4-26 on recordation of, in the deed records of the county where the well
4-27 is located, an affidavit executed by any person conversant with the
4-28 facts stating the following:

4-29 (1) the existence of the well;

4-30 (2) the legal description of the property on which the
4-31 well is located;

4-32 (3) the approximate location of the well on the
4-33 property;

4-34 (4) the failure or refusal of the owner or lessee,
4-35 after notification, to close or cap the well before the expiration
4-36 of 10 days after the notification;

4-37 (5) the closing or capping of the well by the
4-38 authority, or by an authorized agent, representative, or employee
4-39 of the authority; and

4-40 (6) the expense incurred by the authority in closing
4-41 or capping the well.

4-42 (d) This section does not affect the enforcement of
4-43 Subchapter A, Chapter 756, Health and Safety Code.

4-44 SECTION 10. Sections 1.37(j), (n), and (r), Chapter 626,
4-45 Acts of the 73rd Legislature, Regular Session, 1993, are amended to
4-46 read as follows:

4-47 (j) Before the expiration of [Within] 30 days after the date
4-48 the authority's order is final as provided by Section 2001.144(a),
4-49 Government Code [Subsection (c), Section 16, Administrative
4-50 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
4-51 Civil Statutes)], the person shall:

4-52 (1) pay the amount of the penalty;

4-53 (2) pay the amount of the penalty and file a petition
4-54 for judicial review contesting the occurrence of the violation, the
4-55 amount of the penalty, or both the occurrence of the violation and
4-56 the amount of the penalty; or

4-57 (3) without paying the amount of the penalty, file a
4-58 petition for judicial review contesting the occurrence of the
4-59 violation, the amount of the penalty, or both the occurrence of the
4-60 violation and the amount of the penalty.

4-61 (n) Judicial review of the order of the authority:

4-62 (1) is instituted by filing a petition as provided by
4-63 Subchapter G, Chapter 2001, Government Code [Section 19,
4-64 Administrative Procedure and Texas Register Act (Article 6252-13a,
4-65 Vernon's Texas Civil Statutes)]; and

4-66 (2) is under the substantial evidence rule.

4-67 (r) All proceedings under this section are subject to
4-68 Chapter 2001, Government Code [the Administrative Procedure and
4-69 Texas Register Act (Article 6252-13a, Vernon's Texas Civil

5-1 Statutes)].

5-2 SECTION 11. Section 1.38, Chapter 626, Acts of the 73rd
5-3 Legislature, Regular Session, 1993, is amended to read as follows:

5-4 Sec. 1.38. INJUNCTION BY AUTHORITY. (a) The authority may
5-5 file a civil suit in a state district court for an injunction or
5-6 mandatory injunction to enforce this article and the authority's
5-7 rules. The authority may recover reasonable attorney fees in a suit
5-8 under this section.

5-9 (b) In an enforcement action by the authority against a
5-10 governmental entity for a violation of authority rules, the limits
5-11 on the amount of fees, costs, and penalties that the authority may
5-12 impose under this section constitute a limit of liability of the
5-13 governmental entity for the violation. This subsection does not
5-14 prohibit the recovery by the authority of fees and costs under this
5-15 article in an action against a governmental entity.

5-16 SECTION 12. Article 1, Chapter 626, Acts of the 73rd
5-17 Legislature, Regular Session, 1993, is amended by adding Section
5-18 1.46 to read as follows:

5-19 Sec. 1.46. SUITS. (a) A person, firm, corporation, or
5-20 association of persons affected by and dissatisfied with any
5-21 provision or with any rule or order made by the authority is
5-22 entitled to file a suit against the authority or its directors to
5-23 challenge the validity of the law, rule, or order.

5-24 (b) Only the authority, the applicant, and parties to a
5-25 contested case hearing may participate in an appeal of a decision on
5-26 the application that was the subject of that contested case
5-27 hearing. An appeal of a decision on a permit application must
5-28 include the applicant as a necessary party.

5-29 (c) A suit under this section must be filed in a court of
5-30 competent jurisdiction in any county in which the authority is
5-31 located. The suit may be filed only after all administrative
5-32 appeals to the authority are final.

5-33 (d) The burden of proof is on the petitioner, and the
5-34 challenged law, rule, order, or act is to be considered prima facie
5-35 valid. The review on appeal is governed by either Section 2001.038
5-36 or Section 2001.174, Government Code, as appropriate.

5-37 (e) The authority may recover attorney's fees, costs for
5-38 expert witnesses, and other costs incurred by the authority before
5-39 the court on the same basis as Chapter 36, Water Code, provides for
5-40 a groundwater conservation district to recover those fees and
5-41 costs.

5-42 SECTION 13. Section 3.01, Chapter 626, Acts of the 73rd
5-43 Legislature, Regular Session, 1993, is amended by adding Subsection
5-44 (d) to read as follows:

5-45 (d) Not later than the last business day of each
5-46 even-numbered year, the Edwards Aquifer Authority shall prepare and
5-47 deliver a report to the committee on the authority's operations.
5-48 The report must contain a summary of issues related to the
5-49 authority's operations that affect the continuing implementation
5-50 of this Act or require an amendment to this Act.

5-51 SECTION 14. Section 36.205(e), Water Code, is amended to
5-52 read as follows:

5-53 (e) Subsection (c) does not apply to the following
5-54 districts:

5-55 (1) ~~the Edwards Aquifer Authority;~~
5-56 ~~(2)]~~ the Fort Bend Subsidence District;
5-57 (2) ~~(3)]~~ the Harris-Galveston Subsidence District;
5-58 (3) ~~(4)]~~ the Barton Springs-Edwards Aquifer
5-59 Conservation District; or
5-60 (4) ~~(5)]~~ any district that collects a property tax
5-61 and that was created before September 1, 1999, unless otherwise
5-62 authorized by special law.

5-63 SECTION 15. The following provisions are repealed:

5-64 (1) Section 1.25(b), Chapter 626, Acts of the 73rd
5-65 Legislature, Regular Session, 1993;
5-66 (2) Section 36.101(1), Water Code;
5-67 (3) Section 36.1011(e), Water Code;
5-68 (4) Section 36.125, Water Code; and
5-69 (5) Section 36.419, Water Code.

6-1 SECTION 16. This Act takes effect September 1, 2019.

6-2 * * * * *