

By: Hughes

H.B. No. 3635

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation, administration, powers, duties,
3 operation, and financing of the Upshur County Groundwater
4 Conservation District.

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

6 SECTION 1. DEFINITIONS. In this Act:

7 (1) "Board" means the board of directors of the Upshur
8 County Groundwater Conservation District.

9 (2) "Designated management area" means an area
10 designated as a management area under Section 35.004, Water Code.

11 (3) "Director" means a member of the board.

12 (4) "District" means the Upshur County Groundwater
13 Conservation District.

14 SECTION 2. CREATION. (a) A groundwater conservation
15 district, to be known as the Upshur County Groundwater
16 Conservation District, is created in Upshur County, subject to
17 approval at a confirmation election under Section 10 of this Act.

18 (b) The district is a governmental agency and a political
19 subdivision of this state.

20 SECTION 3. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The
21 district is created to serve a public use and benefit.

22 (b) The district is created under and is essential to
23 accomplish the purposes of Section 59, Article XVI, Texas
24 Constitution.

1 (c) The district is created to:

2 (1) provide for the protection, recharging, and
3 prevention of waste of groundwater in the Upshur County area;

4 (2) control subsidence caused by the withdrawal of
5 water from the groundwater reservoirs in that area; and

6 (3) regulate the transport of groundwater out of the
7 boundaries of the district.

8 (d) All of the land and other property included within the
9 boundaries of the district will be benefited by the works and
10 projects that are to be accomplished by the district under powers
11 conferred by Section 59, Article XVI, Texas Constitution.

12 SECTION 4. BOUNDARIES. The boundaries of the district are
13 coextensive with the boundaries of Upshur County, Texas.

14 SECTION 5. APPLICABILITY OF OTHER LAW. This Act prevails
15 over any provision of general law that is in conflict or
16 inconsistent with this Act, including any provision of Chapter 36,
17 Water Code.

18 SECTION 6. BOARD OF DIRECTORS. (a) The district is governed
19 by a board of nine directors.

20 (b) Temporary directors are appointed under Section 7 of
21 this Act and serve until initial directors are elected under
22 Section 10 of this Act.

23 (c) Four of the initial directors serve until the first
24 election of permanent directors under Section 11 of this Act. Five
25 of the initial directors serve until the second election of
26 permanent directors under Section 11 of this Act.

27 (d) Permanent directors serve staggered four-year terms.

1 (e) Each director, including temporary directors, must
2 qualify to serve as director in the manner provided by Section
3 36.055, Water Code.

4 (f) A director may serve consecutive terms.

5 (g) If there is a vacancy in the office of temporary
6 director, the Upshur County Commissioners Court shall appoint a
7 person to fill the vacancy in accordance with the appointment
8 method under Section 7 of this Act.

9 (h) A director is entitled to receive fees of office of not
10 more than \$50 a day for each day the director actually spends
11 performing the duties of a director. The fees of office may not
12 exceed \$3,000 a year.

13 (i) The board may authorize a director to receive
14 reimbursement for the director's reasonable expenses incurred
15 while engaging in activities on behalf of the board.

16 (j) A majority vote of a quorum is required for board
17 action. If there is a tie vote, the proposed action fails.

18 SECTION 7. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Not
19 later than the 45th day after the effective date of this Act:

20 (1) the Upshur County Commissioners Court shall
21 appoint two temporary directors from each of the four commissioners
22 precincts to represent the precincts in which they reside; and

23 (2) the county judge of Upshur County shall appoint
24 one temporary director who resides in the district to represent the
25 district at large.

26 (b) Of the temporary directors, at least one must represent
27 the interests of rural water suppliers in the district, one must

1 represent agricultural interests in the district, and one must
2 represent industrial interests in the district.

3 SECTION 8. ORGANIZATIONAL MEETING. As soon as practicable
4 after all the temporary directors have qualified according to
5 Section 6(e) of this Act, a majority of the temporary directors
6 shall convene the organizational meeting of the district at a
7 location within the district agreeable to a majority of the
8 directors. If no location can be agreed upon, the organizational
9 meeting shall be at the Upshur County Courthouse.

10 SECTION 9. METHOD OF ELECTING DIRECTORS: COMMISSIONERS
11 PRECINCTS. (a) The directors of the district shall be elected
12 according to the commissioners precinct method as provided by this
13 section.

14 (b) One director shall be elected by the voters of the
15 entire district, and two directors shall be elected from each
16 county commissioners precinct by the voters of that precinct.

17 (c) Except as provided by Subsection (e) of this section, to
18 be eligible to be a candidate for or to serve as director at large, a
19 person must be a registered voter in the district. To be a
20 candidate for or to serve as director from a county commissioners
21 precinct, a person must be a registered voter of that precinct.

22 (d) A person shall indicate on the application for a place
23 on the ballot:

24 (1) the precinct that the person seeks to represent;
25 or

26 (2) that the person seeks to represent the district at
27 large.

1 (e) When the boundaries of the county commissioners
2 precincts are redrawn after each federal decennial census to
3 reflect population changes, a director in office on the effective
4 date of the change, or a director elected or appointed before the
5 effective date of the change whose term of office begins on or after
6 the effective date of the change, shall serve in the precinct to
7 which elected or appointed even though the change in boundaries
8 places the person's residence outside the precinct for which the
9 person was elected or appointed.

10 SECTION 10. CONFIRMATION AND INITIAL DIRECTORS' ELECTION.

11 (a) The temporary directors shall call and hold an election to
12 confirm the creation of the district.

13 (b) At the confirmation and initial directors' election,
14 the temporary directors shall have placed on the ballot the name of
15 any candidate filing for an initial director's position and blank
16 spaces to write in the names of other persons. A temporary director
17 who is eligible to be a candidate under Section 9 of this Act may
18 file for a position as an initial director.

19 (c) Section 41.001(a), Election Code, does not apply to a
20 confirmation and initial directors' election held as provided by
21 this section.

22 (d) Except as provided by this section, a confirmation and
23 initial directors' election must be conducted as provided by
24 Sections 36.017(b)-(i), Water Code, and the Election Code.

25 (e) The two initial directors elected to represent each
26 commissioners precinct shall draw lots to decide which of the two
27 directors shall serve a term lasting until the first regularly

1 scheduled election of directors under Section 11 of this Act and
2 which of the two directors shall serve until the second regularly
3 scheduled election of directors. The at-large director shall serve
4 until the second regularly scheduled election of directors.

5 SECTION 11. ELECTION OF DIRECTORS. (a) On the first
6 Saturday in May of the first even-numbered year after the year in
7 which the district is authorized to be created at a confirmation
8 election, an election shall be held in the district for the election
9 of four directors for the positions held by the four initial
10 directors serving shorter terms from the confirmation election.

11 (b) On the first Saturday in May of each subsequent
12 even-numbered year following the election, the appropriate number
13 of directors shall be elected.

14 SECTION 12. GENERAL POWERS. Except as otherwise provided
15 by this Act, the district has all of the rights, powers, privileges,
16 authority, functions, and duties provided by the general law of
17 this state, including Chapter 36, Water Code, applicable to
18 groundwater conservation districts created under Section 59,
19 Article XVI, Texas Constitution.

20 SECTION 13. LIMITATION ON TAXATION. The district may not
21 impose an ad valorem tax at a rate that exceeds one-half cent on
22 each \$100 of assessed valuation of taxable property in the
23 district.

24 SECTION 14. FEES. (a) The board may by rule impose
25 reasonable fees on each well:

26 (1) for which a permit is issued by the district; and

27 (2) that is not exempt from district regulation.

1 (b) A production fee may be based on:

2 (1) the size of column pipe used by the well; or

3 (2) the amount of water actually withdrawn from the
4 well, or the amount authorized or anticipated to be withdrawn.

5 (c) The board shall base the initial production fee on the
6 criteria listed in Subsection (b)(2) of this section. The initial
7 production fee:

8 (1) may not exceed:

9 (A) \$0.25 per acre-foot for water used for
10 agricultural irrigation; or

11 (B) \$0.0425 per thousand gallons for water used
12 for any other purpose; and

13 (2) may be increased at a cumulative rate not to exceed
14 three percent per year.

15 (d) In addition to the production fee authorized under this
16 section, the district may assess an export fee on groundwater from a
17 well that is produced for transport outside the district.

18 (e) Fees authorized by this section may be:

19 (1) assessed annually; and

20 (2) used to pay the cost of district operations.

21 SECTION 15. GROUNDWATER WELLS UNDER RAILROAD COMMISSION
22 JURISDICTION. (a) Except as provided by this section, a
23 groundwater well drilled or operated within the district under a
24 permit issued by the Railroad Commission of Texas is under the
25 exclusive jurisdiction of the railroad commission and is exempt
26 from regulation by the district.

27 (b) Groundwater produced in an amount authorized by a

1 railroad commission permit may be used within or exported from the
2 district without a permit from the district.

3 (c) To the extent groundwater is produced in excess of
4 railroad commission authorization, the holder of the railroad
5 commission permit:

6 (1) shall apply to the district for the appropriate
7 permit for the excess production; and

8 (2) is subject to the applicable regulatory fees.

9 (d) The district may impose a production fee or an export
10 fee on groundwater produced from a well that was drilled to support
11 mining activities and that is otherwise exempt from regulation by
12 the district under Subsection (a) of this section if that
13 groundwater is used for municipal purposes or by a public utility as
14 defined by Section 13.002, Water Code. Any fee imposed under this
15 subsection may not exceed the fee imposed on other groundwater
16 producers in the district.

17 SECTION 16. EXEMPTION FROM FEES. (a) Except as provided by
18 Subsection (b) of this section, the district may not assess a fee on
19 a well drilled by a nonprofit rural water supply corporation, water
20 district, or other political subdivision if the well's production
21 is for use within the district.

22 (b) The district by emergency order of the board may impose
23 a reasonable and temporary production fee on a well described by
24 Subsection (a) of this section if:

25 (1) severe drought or other district emergency makes
26 the fee necessary; and

27 (2) the term of the order does not exceed 180 days.

1 SECTION 17. LIMITATION ON INDEBTEDNESS. The district may
2 issue bonds and notes under Subchapter F, Chapter 36, Water Code,
3 except that the total indebtedness created by that issuance may not
4 exceed \$500,000 at any time.

5 SECTION 18. PROHIBITION AGAINST DISTRICT PURCHASE, SALE,
6 TRANSPORT, OR DISTRIBUTION OF WATER. The district may not
7 purchase, sell, transport, or distribute surface water or
8 groundwater for any purpose.

9 SECTION 19. PROHIBITION AGAINST DISTRICT USE OF EMINENT
10 DOMAIN POWERS. The district may not exercise the power of eminent
11 domain under Section 36.105, Water Code.

12 SECTION 20. REGIONAL COOPERATION. To provide for regional
13 continuity, the district shall:

14 (1) participate as needed in coordination meetings
15 with other groundwater districts in its designated management area;

16 (2) coordinate the collection of data with other
17 groundwater conservation districts in its designated management
18 area in such a way as to achieve relative uniformity of data type
19 and quality;

20 (3) coordinate efforts to monitor water quality with
21 other groundwater conservation districts in its designated
22 management area, local governments, and state agencies;

23 (4) provide groundwater level data to other
24 groundwater conservation districts in its designated management
25 area;

26 (5) investigate any groundwater or aquifer pollution
27 with the intention of locating its source;

1 (6) notify other groundwater conservation districts
2 in its designated management area and all appropriate agencies of
3 any groundwater pollution detected;

4 (7) annually provide to other groundwater
5 conservation districts in its designated management area an
6 inventory of water wells and an estimate of groundwater production
7 within the district; and

8 (8) include other groundwater conservation districts
9 in its designated management area on the mailing lists for district
10 newsletters, seminars, public education events, news articles, and
11 field days.

12 SECTION 21. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS.

13 (a) The legal notice of the intention to introduce this Act,
14 setting forth the general substance of this Act, has been published
15 as provided by law, and the notice and a copy of this Act have been
16 furnished to all persons, agencies, officials, or entities to which
17 they are required to be furnished under Section 59, Article XVI,
18 Texas Constitution, and Chapter 313, Government Code.

19 (b) The governor has submitted the notice and Act to the
20 Texas Commission on Environmental Quality.

21 (c) The Texas Commission on Environmental Quality has filed
22 its recommendations relating to this Act with the governor,
23 lieutenant governor, and speaker of the house of representatives
24 within the required time.

25 (d) All requirements of the constitution and laws of this
26 state and the rules and procedures of the legislature with respect
27 to the notice, introduction, and passage of this Act are fulfilled

1 and accomplished.

2 SECTION 22. EFFECTIVE DATE; EXPIRATION DATE. (a) This Act
3 takes effect September 1, 2003.

4 (b) If the creation of the district is not confirmed at a
5 confirmation election held under Section 10 of this Act before
6 September 1, 2005, this Act expires on that date.