

1-1 By: Hughes (Senate Sponsor - Ratliff) H.B. No. 3635
1-2 (In the Senate - Received from the House May 24, 2003;
1-3 May 24, 2003, read first time and referred to Committee on Natural
1-4 Resources; May 26, 2003, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 26, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the creation, administration, powers, duties,
1-9 operation, and financing of the Upshur County Groundwater
1-10 Conservation District.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. DEFINITIONS. In this Act:

1-13 (1) "Board" means the board of directors of the Upshur
1-14 County Groundwater Conservation District.

1-15 (2) "Designated management area" means an area
1-16 designated as a management area under Section 35.004, Water Code.

1-17 (3) "Director" means a member of the board.

1-18 (4) "District" means the Upshur County Groundwater
1-19 Conservation District.

1-20 SECTION 2. CREATION. (a) A groundwater conservation
1-21 district, to be known as the Upshur County Groundwater
1-22 Conservation District, is created in Upshur County, subject to
1-23 approval at a confirmation election under Section 10 of this Act.

1-24 (b) The district is a governmental agency and a political
1-25 subdivision of this state.

1-26 SECTION 3. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The
1-27 district is created to serve a public use and benefit.

1-28 (b) The district is created under and is essential to
1-29 accomplish the purposes of Section 59, Article XVI, Texas
1-30 Constitution.

1-31 (c) The district is created to:

1-32 (1) provide for the protection, recharging, and
1-33 prevention of waste of groundwater in the Upshur County area;

1-34 (2) control subsidence caused by the withdrawal of
1-35 water from the groundwater reservoirs in that area; and

1-36 (3) regulate the transport of groundwater out of the
1-37 boundaries of the district.

1-38 (d) All of the land and other property included within the
1-39 boundaries of the district will be benefited by the works and
1-40 projects that are to be accomplished by the district under powers
1-41 conferred by Section 59, Article XVI, Texas Constitution.

1-42 SECTION 4. BOUNDARIES. The boundaries of the district are
1-43 coextensive with the boundaries of Upshur County, Texas.

1-44 SECTION 5. APPLICABILITY OF OTHER LAW. This Act prevails
1-45 over any provision of general law that is in conflict or
1-46 inconsistent with this Act, including any provision of Chapter 36,
1-47 Water Code.

1-48 SECTION 6. BOARD OF DIRECTORS. (a) The district is governed
1-49 by a board of nine directors.

1-50 (b) Temporary directors are appointed under Section 7 of
1-51 this Act and serve until initial directors are elected under
1-52 Section 10 of this Act.

1-53 (c) Four of the initial directors serve until the first
1-54 election of permanent directors under Section 11 of this Act. Five
1-55 of the initial directors serve until the second election of
1-56 permanent directors under Section 11 of this Act.

1-57 (d) Permanent directors serve staggered four-year terms.

1-58 (e) Each director, including temporary directors, must
1-59 qualify to serve as director in the manner provided by Section
1-60 36.055, Water Code.

1-61 (f) A director may serve consecutive terms.

1-62 (g) If there is a vacancy in the office of temporary
1-63 director, the Upshur County Commissioners Court shall appoint a
1-64 person to fill the vacancy in accordance with the appointment

2-1 method under Section 7 of this Act.

2-2 (h) A director is entitled to receive fees of office of not
2-3 more than \$50 a day for each day the director actually spends
2-4 performing the duties of a director. The fees of office may not
2-5 exceed \$3,000 a year.

2-6 (i) The board may authorize a director to receive
2-7 reimbursement for the director's reasonable expenses incurred
2-8 while engaging in activities on behalf of the board.

2-9 (j) A majority vote of a quorum is required for board
2-10 action. If there is a tie vote, the proposed action fails.

2-11 SECTION 7. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Not
2-12 later than the 45th day after the effective date of this Act:

2-13 (1) the Upshur County Commissioners Court shall
2-14 appoint two temporary directors from each of the four commissioners
2-15 precincts to represent the precincts in which they reside; and

2-16 (2) the county judge of Upshur County shall appoint
2-17 one temporary director who resides in the district to represent the
2-18 district at large.

2-19 (b) Of the temporary directors, at least one must represent
2-20 the interests of rural water suppliers in the district, one must
2-21 represent agricultural interests in the district, and one must
2-22 represent industrial interests in the district.

2-23 SECTION 8. ORGANIZATIONAL MEETING. As soon as practicable
2-24 after all the temporary directors have qualified according to
2-25 Section 6(e) of this Act, a majority of the temporary directors
2-26 shall convene the organizational meeting of the district at a
2-27 location within the district agreeable to a majority of the
2-28 directors. If no location can be agreed upon, the organizational
2-29 meeting shall be at the Upshur County Courthouse.

2-30 SECTION 9. METHOD OF ELECTING DIRECTORS: COMMISSIONERS
2-31 PRECINCTS. (a) The directors of the district shall be elected
2-32 according to the commissioners precinct method as provided by this
2-33 section.

2-34 (b) One director shall be elected by the voters of the
2-35 entire district, and two directors shall be elected from each
2-36 county commissioners precinct by the voters of that precinct.

2-37 (c) Except as provided by Subsection (e) of this section, to
2-38 be eligible to be a candidate for or to serve as director at large, a
2-39 person must be a registered voter in the district. To be a
2-40 candidate for or to serve as director from a county commissioners
2-41 precinct, a person must be a registered voter of that precinct.

2-42 (d) A person shall indicate on the application for a place
2-43 on the ballot:

2-44 (1) the precinct that the person seeks to represent;
2-45 or

2-46 (2) that the person seeks to represent the district at
2-47 large.

2-48 (e) When the boundaries of the county commissioners
2-49 precincts are redrawn after each federal decennial census to
2-50 reflect population changes, a director in office on the effective
2-51 date of the change, or a director elected or appointed before the
2-52 effective date of the change whose term of office begins on or after
2-53 the effective date of the change, shall serve in the precinct to
2-54 which elected or appointed even though the change in boundaries
2-55 places the person's residence outside the precinct for which the
2-56 person was elected or appointed.

2-57 SECTION 10. CONFIRMATION AND INITIAL DIRECTORS' ELECTION.
2-58 (a) The temporary directors shall call and hold an election to
2-59 confirm the creation of the district.

2-60 (b) At the confirmation and initial directors' election,
2-61 the temporary directors shall have placed on the ballot the name of
2-62 any candidate filing for an initial director's position and blank
2-63 spaces to write in the names of other persons. A temporary director
2-64 who is eligible to be a candidate under Section 9 of this Act may
2-65 file for a position as an initial director.

2-66 (c) Section 41.001(a), Election Code, does not apply to a
2-67 confirmation and initial directors' election held as provided by
2-68 this section.

2-69 (d) Except as provided by this section, a confirmation and

3-1 initial directors' election must be conducted as provided by
3-2 Sections 36.017(b)-(i), Water Code, and the Election Code.

3-3 (e) The two initial directors elected to represent each
3-4 commissioners precinct shall draw lots to decide which of the two
3-5 directors shall serve a term lasting until the first regularly
3-6 scheduled election of directors under Section 11 of this Act and
3-7 which of the two directors shall serve until the second regularly
3-8 scheduled election of directors. The at-large director shall serve
3-9 until the second regularly scheduled election of directors.

3-10 SECTION 11. ELECTION OF DIRECTORS. (a) On the first
3-11 Saturday in May of the first even-numbered year after the year in
3-12 which the district is authorized to be created at a confirmation
3-13 election, an election shall be held in the district for the election
3-14 of four directors for the positions held by the four initial
3-15 directors serving shorter terms from the confirmation election.

3-16 (b) On the first Saturday in May of each subsequent
3-17 even-numbered year following the election, the appropriate number
3-18 of directors shall be elected.

3-19 SECTION 12. GENERAL POWERS. Except as otherwise provided
3-20 by this Act, the district has all of the rights, powers, privileges,
3-21 authority, functions, and duties provided by the general law of
3-22 this state, including Chapter 36, Water Code, applicable to
3-23 groundwater conservation districts created under Section 59,
3-24 Article XVI, Texas Constitution.

3-25 SECTION 13. LIMITATION ON TAXATION. The district may not
3-26 impose an ad valorem tax at a rate that exceeds one-half cent on
3-27 each \$100 of assessed valuation of taxable property in the
3-28 district.

3-29 SECTION 14. FEES. (a) The board may by rule impose
3-30 reasonable fees on each well:

3-31 (1) for which a permit is issued by the district; and

3-32 (2) that is not exempt from district regulation.

3-33 (b) A production fee may be based on:

3-34 (1) the size of column pipe used by the well; or

3-35 (2) the amount of water actually withdrawn from the
3-36 well, or the amount authorized or anticipated to be withdrawn.

3-37 (c) The board shall base the initial production fee on the
3-38 criteria listed in Subsection (b)(2) of this section. The initial
3-39 production fee:

3-40 (1) may not exceed:

3-41 (A) \$0.25 per acre-foot for water used for
3-42 agricultural irrigation; or

3-43 (B) \$0.0425 per thousand gallons for water used
3-44 for any other purpose; and

3-45 (2) may be increased at a cumulative rate not to exceed
3-46 three percent per year.

3-47 (d) In addition to the production fee authorized under this
3-48 section, the district may assess an export fee on groundwater from a
3-49 well that is produced for transport outside the district.

3-50 (e) Fees authorized by this section may be:

3-51 (1) assessed annually; and

3-52 (2) used to pay the cost of district operations.

3-53 SECTION 15. GROUNDWATER WELLS UNDER RAILROAD COMMISSION
3-54 JURISDICTION. (a) Except as provided by this section, a
3-55 groundwater well drilled or operated within the district under a
3-56 permit issued by the Railroad Commission of Texas is under the
3-57 exclusive jurisdiction of the railroad commission and is exempt
3-58 from regulation by the district.

3-59 (b) Groundwater produced in an amount authorized by a
3-60 railroad commission permit may be used within or exported from the
3-61 district without a permit from the district.

3-62 (c) To the extent groundwater is produced in excess of
3-63 railroad commission authorization, the holder of the railroad
3-64 commission permit:

3-65 (1) shall apply to the district for the appropriate
3-66 permit for the excess production; and

3-67 (2) is subject to the applicable regulatory fees.

3-68 (d) The district may impose a production fee or an export
3-69 fee on groundwater produced from a well that was drilled to support

4-1 mining activities and that is otherwise exempt from regulation by
 4-2 the district under Subsection (a) of this section if that
 4-3 groundwater is used for municipal purposes or by a public utility as
 4-4 defined by Section 13.002, Water Code. Any fee imposed under this
 4-5 subsection may not exceed the fee imposed on other groundwater
 4-6 producers in the district.

4-7 SECTION 16. EXEMPTION FROM FEES. (a) Except as provided by
 4-8 Subsection (b) of this section, the district may not assess a fee on
 4-9 a well drilled by a nonprofit rural water supply corporation, water
 4-10 district, or other political subdivision if the well's production
 4-11 is for use within the district.

4-12 (b) The district by emergency order of the board may impose
 4-13 a reasonable and temporary production fee on a well described by
 4-14 Subsection (a) of this section if:

4-15 (1) severe drought or other district emergency makes
 4-16 the fee necessary; and

4-17 (2) the term of the order does not exceed 180 days.

4-18 SECTION 17. LIMITATION ON INDEBTEDNESS. The district may
 4-19 issue bonds and notes under Subchapter F, Chapter 36, Water Code,
 4-20 except that the total indebtedness created by that issuance may not
 4-21 exceed \$500,000 at any time.

4-22 SECTION 18. PROHIBITION AGAINST DISTRICT PURCHASE, SALE,
 4-23 TRANSPORT, OR DISTRIBUTION OF WATER. The district may not
 4-24 purchase, sell, transport, or distribute surface water or
 4-25 groundwater for any purpose.

4-26 SECTION 19. PROHIBITION AGAINST DISTRICT USE OF EMINENT
 4-27 DOMAIN POWERS. The district may not exercise the power of eminent
 4-28 domain under Section 36.105, Water Code.

4-29 SECTION 20. REGIONAL COOPERATION. To provide for regional
 4-30 continuity, the district shall:

4-31 (1) participate as needed in coordination meetings
 4-32 with other groundwater districts in its designated management area;

4-33 (2) coordinate the collection of data with other
 4-34 groundwater conservation districts in its designated management
 4-35 area in such a way as to achieve relative uniformity of data type
 4-36 and quality;

4-37 (3) coordinate efforts to monitor water quality with
 4-38 other groundwater conservation districts in its designated
 4-39 management area, local governments, and state agencies;

4-40 (4) provide groundwater level data to other
 4-41 groundwater conservation districts in its designated management
 4-42 area;

4-43 (5) investigate any groundwater or aquifer pollution
 4-44 with the intention of locating its source;

4-45 (6) notify other groundwater conservation districts
 4-46 in its designated management area and all appropriate agencies of
 4-47 any groundwater pollution detected;

4-48 (7) annually provide to other groundwater
 4-49 conservation districts in its designated management area an
 4-50 inventory of water wells and an estimate of groundwater production
 4-51 within the district; and

4-52 (8) include other groundwater conservation districts
 4-53 in its designated management area on the mailing lists for district
 4-54 newsletters, seminars, public education events, news articles, and
 4-55 field days.

4-56 SECTION 21. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS.
 4-57 (a) The legal notice of the intention to introduce this Act,
 4-58 setting forth the general substance of this Act, has been published
 4-59 as provided by law, and the notice and a copy of this Act have been
 4-60 furnished to all persons, agencies, officials, or entities to which
 4-61 they are required to be furnished under Section 59, Article XVI,
 4-62 Texas Constitution, and Chapter 313, Government Code.

4-63 (b) The governor has submitted the notice and Act to the
 4-64 Texas Commission on Environmental Quality.

4-65 (c) The Texas Commission on Environmental Quality has filed
 4-66 its recommendations relating to this Act with the governor,
 4-67 lieutenant governor, and speaker of the house of representatives
 4-68 within the required time.

4-69 (d) All requirements of the constitution and laws of this

5-1 state and the rules and procedures of the legislature with respect
5-2 to the notice, introduction, and passage of this Act are fulfilled
5-3 and accomplished.

5-4 SECTION 22. EFFECTIVE DATE; EXPIRATION DATE. (a) This Act
5-5 takes effect September 1, 2003.

5-6 (b) If the creation of the district is not confirmed at a
5-7 confirmation election held under Section 10 of this Act before
5-8 September 1, 2005, this Act expires on that date.

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