

## **BILL ANALYSIS**

C.S.S.B. 1798  
By: Armbrister  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The land proposed to be included within the authority is located within Fort Bend County, with a small amount of land within Harris County. The Fort Bend County land proposed to be included within the authority is located within Area AA@ of the Fort Bend Subsidence District (the "Subsidence District"). The Subsidence District has issued groundwater reduction regulations that require use of water sources other than groundwater. Currently the water needs of the area are provided by Awater districts@ through groundwater wells. The Subsidence District requires major water users (such as water districts) in Area AA@ to convert to alternative water sources at the following rates: 30% by the year 2013 and 60% by the year 2025. In addition, a combined Groundwater Reduction Plan must be submitted by the affected entities to the Subsidence District by January 2008. Creation of the authority would provide a mechanism to prepare a combined Groundwater Reduction Plan for entities within the authority. The authority would be able to provide alternate sources of water, facilitate compliance with Subsidence District regulations, and reduce groundwater withdrawals. The authority can charge fees, user fees, rates, charges, and special assessments to accomplish the purposes for which it is created. The authority cannot levy ad valorem property taxes.

The purpose of the bill is to create a special authority primarily in Fort Bend County, Texas and a small portion of Harris County, Texas, which will be a political subdivision of the State of Texas and will finance public water works and improvements, provide water, facilitate compliance with applicable subsidence district regulations, and encourage the reduction of groundwater withdrawals. The authority will have powers similar to those given to the West Harris County Regional Water Authority.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Adds the provisions described below as Chapter 8813 of the Special District Local Laws Code.

#### **CHAPTER 8813. NORTH FORT BEND WATER AUTHORITY**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

SECTION 8813.001 (1) **B** (11) Defines terms used within the Act.

SECTION 8813.002 Creates the authority as a political subdivision of the state and finds that the authority will accomplish the purposes of Section 59, Art. XVI of the Texas Constitution, including acquisition and provision of water, reduction of groundwater withdrawals, conservation of groundwater, prevention of waste of groundwater, the control of subsidence.

SECTION 8813.003 Provides that no confirmation election is required for creation of the Authority.

SECTION 8813.04 (a) - (b) Finds that the boundaries and field notes of the authority form closure and declares that a mistake made in the field notes in no way affects (1) the organization, existence and validity of the authority, (2) its rights to issue bonds or notes or pay principal and interest on such bonds or notes, (3) its rights to impose or collect a fee, user fee, rate, charge or special assessment, or (4) the legality or operation of the authority. (c) Provides that local

governments created within the authority's boundaries after the effective date of the Act shall be subject to the rights, powers, privileges, and rules of the authority.

SECTION 8813.005 (a) Allows a district or municipality that on the effective date of the Act is located wholly or partly within the authority's territory to petition for exclusion by a petition signed by a majority of the applicable governing body.

(b) Allows water districts and municipalities to file a petition for exclusion of their territory from the boundaries of the authority, which must be granted if: (1) it includes an accurate legal description of the boundaries of the territory to be excluded; and (2) is filed with the authority prior to 60 days following the effective date of the Act.

(c) Provides that the authority is not obligated to serve, or include in the authority's groundwater reduction plan, any such excluded district or municipality.

(d) Provides that if a district or municipality files a petition for exclusion within 60 days of the Act's effective date, the authority may not impose fees, rates, charges or assessments on the applicable district or municipality unless it is subsequently annexed pursuant to Section 8813.006.

(e) Provides that if such an excluded district or municipality files with the authority a petition for annexation, the authority may annex such district or municipality according to terms and conditions set by the authority, including the payment of charges that were avoided while the district or municipality was outside the authority.

SECTION 8813.006 (a) Provides that a municipality's annexation of territory within the authority shall have no effect on the authority's powers, boundaries, contracts, or the authority's ability to assess fees, user fees, rates, charges, or special assessments inside or outside the territory annexed by the municipality.

(b) Allows land to be annexed into the authority according to the same procedures set forth in chapter 49, Water Code.

(c) Allows a district or municipality to be annexed into the authority if that district or municipality files a petition with the authority requesting annexation.

(d) Provides that all land annexed by water districts within the authority that is not already within the authority shall become part of the authority's boundaries upon the effective date of any such annexation.

(e) Provides for continuing validity of authority's bonds regardless of annexation.

(f) If a municipality annexes territory of the authority for limited purposes under Subchapter F, Chapter 43, Local Government Code, it does not have the right to (1) receive notices from the authority under Section 8813.103; (2) participate in appointment of directors; or (3) participate in the capital cost funding procedures provided by the authority under Section 8813.104.

SECTION 8813.007 (a) Provides that, except as otherwise provided for, Chapter 49 of the Water Code applies to the authority.

(b) Provides that this Chapter does not prevail or preempt a provision of Chapter 36, Water Code, Chapter 8801 of this code, or Chapter 1045, Acts of the 71<sup>st</sup> Legislature, Regular Session, 1989, that is being implemented by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable.

SECTION 8813.008 Finds that: (i) all land, property, and persons within the authority will be benefited by the improvements and services to be provided by the authority; (ii) the authority is created to serve a public use and benefit; (iii) the creation of the authority will serve to promote the health, safety, and general welfare of persons within the authority and the general public; any fees, user fees, rates, charges, or special assessments levied by the authority are necessary to pay for the costs of accomplishing the purposes of the authority as set forth in Section 59, Article XVI, Texas Constitution, and this Act, including without limitation the reduction of groundwater withdrawals, facilitating compliance with applicable subsidence district requirements, and all services, facilities, and systems provided by the authority.

SECTIONS 8813.009 B 8813.020 Reserved for expansion

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

SECTION 8813.021 (a) Names the initial 7 directors and their precincts.

(b) Provides for the length of the initial directors' terms of office.

SECTION 8813.002 Provides that Subchapter A-1 expires on September 1, 2010.

SECTIONS 8813.023 B 8813.050 Reserved for expansion

## SUBCHAPTER B. BOARD OF DIRECTORS

- SECTION 8813.051 (a) Establishes a 7 director governing board for the authority.  
(b) Provides for staggered four-year terms expiring on May 15<sup>th</sup> of even-numbered years.
- SECTION 8813.052 (a) Provides that to be eligible to serve as a director of the authority or to be listed on a ballot for a director precinct, an individual: (1) must be at least 18 years old, (2) a resident of the authority, and (3) served for a total of no less than four years as a director of one or more districts.  
(b) Provides that to serve as a director representing Fulshear, and individual must meet (1) and (2) of subsection (a) above and have served as the mayor or a member of the city council of Fulshear for any period or a director of one or more districts for a total of at least four years.
- SECTION 8813.053 Provides that the common law doctrine of incompatibility shall not disqualify an official or employee of a municipality from serving as a director of the authority; and that a director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that same public entity.
- SECTION 8813.054 Provides that Chapter 171, Local Government Code, governs conflicts of interest of board members.
- SECTION 8813.055 (a) Divides the authority into 7 single-member director precincts as described in Section 3 of this Act.  
(b) Provides that the board may redraw the single-member director precincts in a manner that is reasonable and equitable: (1) after any change in the boundaries of the authority; or (2) by a resolution redrawing the director precincts adopted by a two-thirds majority of the board based on changed circumstances.
- SECTION 8813.056 (a) Provides that the governing bodies of the districts and municipalities located within each director precinct shall jointly appoint one director to the board pursuant to the voting procedures set forth herein.  
(b) Declares that if a district or municipality is located within two or more director precincts, then the district or municipality is considered to be located only within the director precinct in which the greatest amount of its territory is located.  
(c) Declares that voting entitlement of a district or municipality is determined by dividing the total water usage for such district or municipality within the director precinct in which it is located for the calendar year preceding the year in which votes are due by the sum of the total water usage for that year of all districts and municipalities within such director precinct, by multiplying the quotient by 100, and by rounding the product to the nearest tenth; and that the board shall provide the presiding officer of each governing body of a district or municipality within each director precinct written notice of the number of votes computed for that governing body to cast.  
(d) Provides that for purposes of Subsection (c) the board shall determine the amount of water usage of all districts and municipalities within each director precinct.  
(e) Provides that in the appropriate even-numbered year, the governing body of each water district and municipality may nominate one candidate for the director precinct in which such district or municipality is located by submitting the name of its candidate to the presiding officer of the authority by February 15<sup>th</sup> of that year and if more than one name is submitted, the ballot procedure.  
(f) Declares that no individual may be listed as a candidate on the ballot of more than one director precinct.

- (g) Provides the procedure by which the districts and municipalities vote for a candidate on the ballot for the director precinct in which the district or municipality is located.
- (h) Allows the board to adopt rules regarding (1) the manner and timing of calculations under this section; (2) reporting water usage to the authority by districts and municipalities; and (3) the conduct and process of appointment of directors.

SECTION 8813.057 Provides for a vacancy in the office of director to be filled by appointment by the governing bodies of the district and municipalities within the vacant director precinct.

SECTION 8813.058 (a) Declares the board may meet as many times as it deems appropriate.

(b) Provides governmental immunity for directors.

SECTION 8813.059 (a) Allows the board to employ a general manager and delegate to the general manager all operations.

(b) Allows the board to delegate to the general manager employment and compensation of all authority personnel, other than that of the general manager.

SECTIONS 8813.060 B 8813.100 Reserved for expansion.

### SUBCHAPTER C. POWERS AND DUTIES

SECTION 8813.101 (a) Grants the authority the power to: (1) provide for the preservation of groundwater and reduction of groundwater withdrawals; (2) acquire water supplies, conserve, store, transport, treat, purify, distribute, sell, deliver, and allocate water; (3) enter into contracts; (4) coordinate water services; (5) provide wholesale and retail water services; (6) adopt policies establishing the manner in which the authority requests proposals for services; (7) determine whether to adopt administrative policies in addition to those set forth in Section 49.199, Water Code; and (8) administer and enforce the provisions of this chapter.

(b) Declares that Sections 49.451-49.455, Water Code do not apply to the authority.

(c) Precludes the authority providing retail water service to a retail user within the authority's boundaries that is located within the boundaries of a district or municipality on the date the authority awards a contract for construction or executes a contract for acquisition of water facilities to serve that retail user, unless (1) it obtains the district or municipality's written consent or (2) the retail user owns or operates a well.

(d) Provides that if a retail user that does not own or operate a well is added to the boundaries of the district or municipality after the authority has awarded a construction contract or executed a contract for acquisition of water facilities to serve such user, the authority may provide services to the retail user without obtaining the district's or municipality's consent.

SECTION 8813.102 Provides that the authority may adopt rules to implement this chapter and procedures before the board.

SECTION 8813.103 (a) Allows the authority to establish fees, user fees, rates, and charges to fulfill the authority's purposes and regulatory functions.

(b) Allows the authority to establish a fee or user fee upon a well owner within the authority based on the amount of water pumped from the well.

(c) Requires the board to make reasonable efforts to send districts and municipalities written notice of date, time and location of the board meeting where the board intends to adopt a charge under subsection (b) and the amount of the proposed charge.

(d) Provides that the board shall exempt from the charge under Subsection (b) classes of wells that are not subject to any groundwater reduction requirement imposed by the Harris-

Galveston Coastal Subsidence District or the Fort Bend Subsidence District, as applicable; and that the board may not apply the charge under subsection (b) to a well (1) with a casing diameter of less than five inches that solely serves a single-family dwelling or (2) a well regulated under chapter 27, Water Code.

- (e) Provides that for purposes of Subsection (d), a well is subject to groundwater reduction requirement if the applicable subsidence district has adopted or adopts a requirement for such reduction, including a groundwater reduction requirement for a future date.
- (f) Allows the authority's fees, user fees, rates, and charges to be sufficient to: (1) achieve water conservation; (2) prevent waste of water; (3) serve as a disincentive to pumping groundwater; (4) develop, implement or enforce a groundwater reduction plan; (5) accomplish the purposes of this chapter, including making available alternative water supplies; (6) enable the authority to meet operation and maintenance expenses; (7) pay notes, bonds, and other obligations issued and; (8) to satisfy all rate covenants relating to the issuance of such notes, bonds and other obligations.
- (g) Allows the authority to charge rates for water purchased from the authority.
- (h) Allows the authority to impose fees and charges for the importation of water.

- SECTION 8813.104
- (a) Requires the authority to use best efforts in negotiating with another entity in the purchase of water for resale to local governments to determine the authority's capital costs associated therewith.
  - (b) Provides districts and municipalities the opportunity to fund their individual share of capital costs through any lawful source of revenue, including without limitation bond funds or fees and charges.
  - (c) Allows the authority to adopt procedures for districts and municipalities to receive credits from the authority.
  - (d) Allows for capital cost calculations.
  - (e) Provides that this section does not impair the authority's ability to issue bonds or notes or invalidate fees, user fees, charges, rates or assessments of the authority.

SECTION 8813.105 Provides the procedures for levying special assessments, but such assessments may only be levied on the basis of number of gallons of groundwater pumped from wells within the authority that are subject to a groundwater reduction requirement imposed by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable, and in no event on the basis of groundwater pumped from a well with a casing diameter of less than five inches that serves only a single-family dwelling or a well that is regulated by Chapter 27, Water Code.

SECTION 8813.106 Provides that the authority may charge interest and penalties for late payments due the authority, but interest is limited to the interest rate allowed by Section 2251.025, Government Code; and provides that the board may exclude a person, or territory or well owned or controlled by a person, from the authority's groundwater reduction plan for failure to timely make payments due the authority.

SECTION 8813.107 Provides that the authority is entitled to reasonable attorney's fees in order to enforce its rules; and that the authority is entitled to reasonable attorney's fees and collection expenses in order to collect delinquent payments owed to the authority.

SECTION 8813.108 Provides that the authority has a lien on a water well for unpaid fees and user fees due to the authority under Section 8813.013(b) for pumpage from the well, and for any related penalties, interest, collection expenses, and reasonable attorney's fees incurred by the authority.

- SECTION 8813.109
- (a) Provides a civil penalty of up to \$5,000 for each violation or each day of a continuing violation of an authority rule or order.
  - (b) Allows the authority to sue in district court to recover such civil penalty.
  - (c) Allows the authority to seek injunctive relief regarding violation of an authority rule or order.

- (d) Allows the authority to seek injunctive relief and a civil penalty in the same proceeding.

SECTION 8813.110 Allows the authority to adopt a water supply or drought contingency plan for the authority or any portion thereof.

SECTION 8813.111 (a) Allows the authority to adopt a groundwater reduction plan or to participate in a groundwater reduction plan with persons outside the authority, which plan may: (1) specify the measures to be taken to reduce groundwater withdrawals; (2) identify alternative sources of water to be provided to those affected; (3) identify the rates, terms and conditions under which such alternative sources of water will be provided, which may be changed from time to time as deemed necessary by the authority; (4) specify the dates and extent to which persons or water districts within the authority's boundaries shall reduce or cease reliance on groundwater and accept water from the alternative source(s); (5) include such other terms and measures as are consistent with the powers and duties of the authority; (6) exceed the minimum requirements imposed by the Harris-Galveston Coastal Subsidence District or the Fort Bend Subsidence District, as applicable, including any applicable groundwater reduction requirements; and (7) be amended from time to time at the discretion of the authority.

- (b) Provides that fees, user fees, rates, charges and special assessments of the authority may be imposed for a person's participation in and benefit derived from the authority's groundwater reduction plan.

SECTION 8813.112 (a) Provides that the authority may (1) acquire water treatment or supply systems and facilities; (2) design, finance, operate, maintain, or construct a water treatment or supply system, or other facilities necessary to accomplish the purposes of the authority and provide water inside or outside its boundaries; (3) lease or sell water treatment or supply system or other facilities necessary or convenient to accomplish the authority's purposes; (4) contract with any person to operate or maintain a water treatment or supply system; and (5) acquire water rights under any law or permit;

- (b) Allows the authority to contract with persons to include them in the authority's groundwater reduction plan, to sell water to the person, or to sell excess capacity from the authority's water system.

- (c) Allows the authority to require that plans and specifications for water lines serving more than one water district or more than one person owning or holding a well permit issued by the Harris-Galveston Coastal Subsidence District or the Fort Bend Subsidence District, be approved by the authority.

SECTION 8813.113 Provides that the authority may store, sell, or reuse water or any by-product from the authority's operations.

SECTION 8813.114 (a) Allows the authority to enter into contracts for the performance any purpose or function of the authority, and a contract may be of unlimited duration.

- (b) Allows the authority to purchase, acquire, finance, or lease an interest in a project used for any purpose or function of the authority.

- (c) The authority may contract for: (1) the purchase, sale, or lease of water or water rights; (2) the performance of activities within the powers of the authority through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, or appliances; or (3) the design, construction, ownership, maintenance, or operation of any works, improvements, facilities, plants, equipment, or appliances of the authority or another person.

- (d) Allows the authority to purchase surplus property from this State, the United States or another public entity through a negotiated contract without bids.

- SECTION 8813.115 (a) Allows the authority to cooperate with and request the assistance of other governmental entities in accomplishing the purposes of this chapter.
- (b) Provides that the Fort Bend Subsidence District may contract with the authority to carry out purposes of the authority.
- (c) Declares that in an attempt to minimize costs associated with preparing a groundwater reduction plan, the board shall consider the usefulness of water supply studies and plans prepared by the North Harris County Regional Water Authority, the West Harris County Regional Water Authority, the City of Houston, or other governmental entities, to the extent such studies or plans are available and applicable to the authority.

SECTION 8813.116 Declares that the authority is authorized to accept a gift or grant from money collected by the Fort Bend Subsidence District to fund the construction, maintenance, or operation of a water treatment or supply system.

SECTION 8813.117 Provides the manner in which the authority's funds may be disbursed.

SECTION 8813.118 Declares that the authority may not levy an ad valorem tax.

- SECTION 8813.119 (a) Provides for the power of eminent domain inside the authority's boundaries to further authorized purposes, powers, or duties of the authority, and outside the authority's boundaries for purposes of pumping, storing, treating, and transporting water.
- (b) Provides that the right of eminent domain shall be exercised as provided in chapter 21, Property Code, except that the authority is not required to give bond for appeal or bond for costs and is not required to deposit more than the amount of any award in any suit.
- (c) Declares that the authority may not condemn land for the purpose of acquiring water rights.

SECTIONS 8813.120 B 8813.150 Reserved for Expansion

#### SUBCHAPTER D. BONDS AND NOTES

SECTION 8813.151 (a)-(j) Authorizes the authority to issue bonds and notes, including refunding bonds and notes, and specifies that the authority may pledge revenues from its tolls, charges, rates, fees, user fees, special assessments, water related revenues, grants or gifts, contracts of the authority.

SECTION 2. (a)-(d) Describes the boundaries of the authority

SECTION 3. (a)(1) B (7) Describes the seven director precincts of the authority.

SECTION 4. (a)-(c) Finds that all notice and consent requirements for the enactment of the Act have been met.

SECTION 5. Effective date clause.

#### EFFECTIVE DATE

Upon Passage unless the Act fails to receive the necessary vote, then the Act takes effect September 1, 2005.

#### COMPARISON OF ORIGINAL TO SUBSTITUTE

CAPTION: No longer includes the words "impose a tax."

SECTION 1:

SECTION 8813.001. Adds a definition of "Person"

SECTION 8813.002.

Adds that the authority is a political subdivision of the state and that the authority is necessary to accomplish the purposes of acquisition and provision of water, reduction of groundwater withdrawals, conservation of groundwater,

prevention of waste of groundwater, the control of subsidence.

SECTION 8813.008

Adds this Section as a new Section.

SECTION 8813.053

No longer references the authority's exemption from Section 49.052, Water Code.

SECTION 8813.054

No longer contains language similar to conflict of interest provisions in Chapter 171, Local Government Code. Specifies that Chapter 171, Local Government Code, governs conflicts of interest of board members.

SECTION 8813.151

Adds that the authority may issue refunding bonds and notes to refund any of its bonds or notes.

SECTION 2:

(a) Makes corrections to the field notes describing the authority's boundaries.

(b) Adds Fort Bend County Water Control and Improvement District No. 2 to the list of entities whose territory is not included within the authority's boundaries.

SECTION 3:

Makes corrections to the field notes describing the 7 directors precincts.