

By: Armbrister

S.B. No. 1537

A BILL TO BE ENTITLED

AN ACT

relating to the administration, powers, duties, and operation of the Harris-Galveston Subsidence District and the Fort Bend Subsidence District.

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

SECTION 1. The heading to Chapter 8801, Special District Local Laws Code, is amended to read as follows:

CHAPTER 8801. HARRIS-GALVESTON [~~COASTAL~~] SUBSIDENCE DISTRICT

SECTION 2. Section 8801.001, Special District Local Laws Code, is amended by amending Subdivisions (1) and (3) and adding Subdivisions (1-a), (1-b), (3-a), (4-a), (4-b), and (5-a) to read as follows:

(1) "Agricultural crop":

(A) means food or fiber commodities that are grown for resale or commercial purposes and that are to be used for food, clothing, or animal feed; and

(B) includes nursery products and florist items that are in the possession of a nursery grower.

(1-a) "Beneficial use" means any use that is useful or beneficial to the user, including:

(A) an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or

(B) exploring for, producing, handling, or

1 treating oil, gas, sulfur, or other minerals.

2           (1-b) "Board" means the board of directors of the  
3 district.

4           (3) "District" means the Harris-Galveston [~~Coastal~~]  
5 Subsidence District.

6           (3-a) "Florist item" means a cut flower, potted plant,  
7 blooming plant, inside foliage plant, bedding plant, corsage  
8 flower, cut foliage, floral decoration, or live decorative  
9 material.

10           (4-a) "Nursery grower" means a person who grows in any  
11 medium more than 50 percent of the nursery products or florist items  
12 that the person sells or leases. A person grows a nursery product  
13 or florist item if the person cultivates or propagates the product  
14 or item by engaging in activities associated with the production or  
15 multiplying of stock, including the development of new plants from  
16 cuttings, grafts, plugs, or seedlings. The term does not include a  
17 person who merely holds or maintains a nursery product or florist  
18 item before sale or lease.

19           (4-b) "Nursery product" includes a tree, shrub, vine,  
20 cutting, graft, scion, grass, bulb, or bud that is grown or kept  
21 for, or capable of, propagation and distribution for sale or lease.

22           (5-a) "Waste" means:

23                   (A) the withdrawal of groundwater from a  
24 groundwater reservoir at a rate and in an amount that causes or  
25 threatens to cause intrusion into the reservoir of water unsuitable  
26 for agricultural, gardening, domestic, or stock raising purposes;

27                   (B) the flowing or producing of wells from a

1 groundwater reservoir if the water produced is not used for a  
2 beneficial use or if the amount used is more than is reasonably  
3 required for a beneficial use;

4 (C) the escape of groundwater from a groundwater  
5 reservoir to any other reservoir or geologic strata that does not  
6 contain groundwater;

7 (D) the pollution or harmful alteration of  
8 groundwater in a groundwater reservoir by saltwater or other  
9 harmful matter admitted from another stratum or from the surface of  
10 the ground;

11 (E) wilfully or negligently causing, suffering,  
12 or allowing groundwater to escape or flow into a river, creek,  
13 natural watercourse, depression, lake, reservoir, drain, sewer,  
14 street, highway, road, or road ditch, or onto land that does not  
15 belong to the owner of the well unless the discharge is authorized  
16 by a permit, rule, or order issued by the commission under Chapter  
17 26, Water Code;

18 (F) the escape of groundwater pumped for  
19 irrigation as irrigation tailwater onto land that does not belong  
20 to the owner of the well unless the occupant of the land receiving  
21 the discharge granted permission for the discharge; or

22 (G) wilfully causing or knowingly permitting the  
23 water produced from an artesian well to run off the owner's land or  
24 to percolate through the stratum above which the water is found, as  
25 prescribed by Section 11.205, Water Code.

26 SECTION 3. Sections 8801.002 and 8801.005, Special District  
27 Local Laws Code, are amended to read as follows:

1           Sec. 8801.002. NATURE OF DISTRICT. The district is a  
2 ~~[groundwater]~~ conservation and reclamation district created under  
3 Section 59, Article XVI, Texas Constitution, and is essential to  
4 accomplish the purposes of that section.

5           Sec. 8801.005. DISTRICT TERRITORY. The district includes  
6 the territory located within the boundaries of Harris County and  
7 Galveston County, as that territory may have been modified under:

8                   (1) Section 8801.006 or its predecessor statute,  
9 former Section 151.003(b), Water Code; or

10                   (2) ~~[Subchapter J, Chapter 36, Water Code; or~~  
11 ~~[(3)]~~ other law.

12           SECTION 4. Subchapter B, Chapter 8801, Special District  
13 Local Laws Code, is amended by amending Sections 8801.052 through  
14 8801.055 and adding Sections 8801.0551 and 8801.0552 to read as  
15 follows:

16           Sec. 8801.052. FEES OF OFFICE; REIMBURSEMENT ~~[APPOINTMENT~~  
17 ~~OF DIRECTORS ON ADDITION OF COUNTY TO DISTRICT]~~. (a) A director is  
18 entitled to fees of office of not more than \$150 a day for each day  
19 the director actually spends performing the duties of a director.  
20 The fees of office may not exceed \$9,000 a year ~~[On addition of a~~  
21 ~~county to the district under Section 8801.006, two directors are~~  
22 ~~added to the board as follows:~~

23                   ~~[(1) the commissioners court of the county added to~~  
24 ~~the district shall appoint one director; and~~

25                   ~~[(2) the mayor of the municipality that has the~~  
26 ~~largest population in the added county shall appoint one director].~~

27           (b) Each director is entitled to reimbursement of actual

1 expenses reasonably and necessarily incurred while engaging in  
2 activities on behalf of the district.

3 (c) To receive fees of office and reimbursement for  
4 expenses, each director must file with the district a verified  
5 statement that shows the number of days spent in the service of the  
6 district and a general description of the duties performed for each  
7 day of service. [~~The directors added to the board under Subsection~~  
8 ~~(a) shall draw lots to establish staggered terms of office.~~]

9 Sec. 8801.053. BOARD POWERS AND DUTIES. (a) In addition  
10 to the powers and duties described in this chapter, the board has  
11 all other powers necessary or convenient to carry out its  
12 responsibilities and accomplish the purpose of this chapter.

13 (b) The board may adopt bylaws and policies as necessary to  
14 accomplish its purposes.

15 (c) The board may purchase materials, supplies, equipment,  
16 vehicles, and machinery needed by the district to accomplish its  
17 purposes.

18 Sec. 8801.054. OFFICERS. (a) Each year, at the first  
19 meeting after the new directors take office, the directors shall  
20 select from among the directors a chair [~~president~~], a vice chair  
21 [~~president~~], and a secretary.

22 (b) The chair shall preside over meetings of the board and  
23 execute all documents on behalf of the district. The vice chair  
24 shall act as chair if the chair is absent or disabled. The  
25 secretary shall ensure that all records and books of the district  
26 are properly kept and attest to the chair's signature on all  
27 documents. The board may authorize another director, the general

1 manager, or any employee to execute documents on behalf of the  
2 district and to certify the authenticity of any record of the  
3 district.

4       Sec. 8801.055. MEETINGS. (a) The board shall hold regular  
5 meetings once each month at a time set by the board. The board may  
6 hold special meetings at the call of the chair [~~president~~] or on the  
7 written request of at least three directors.

8       (b) A meeting of a committee of the board at which less than  
9 a quorum is present is not subject to Chapter 551, Government Code.

10       (c) The board shall give notice of meetings of the board as  
11 provided by Chapter 551, Government Code. Failure to provide  
12 notice of a regular meeting or an insubstantial defect in notice of  
13 any meeting does not affect the validity of any action taken at the  
14 meeting.

15       Sec. 8801.0551. QUORUM. A majority of the membership of the  
16 board constitutes a quorum for any meeting, and a concurrence of a  
17 majority of the entire membership of the board is sufficient for  
18 transacting any district business.

19       Sec. 8801.0552. SWORN STATEMENT, BOND, AND OATH OF OFFICE.

20       (a) As soon as practicable after a director is appointed, the  
21 director shall make the sworn statement prescribed by the  
22 constitution for public officers.

23       (b) As soon as practicable after a director has made the  
24 sworn statement and before beginning to perform the duties of  
25 office, the director shall take the oath of office prescribed by the  
26 constitution for public officers.

27       (c) Before beginning to perform the duties of office, each

1 director shall execute a bond for \$10,000 payable to the district  
2 and conditioned on the faithful performance of the director's  
3 duties. A director's bond must be approved by the board and paid  
4 for by the district.

5 (d) The sworn statement shall be filed as prescribed by the  
6 constitution. The bond and oath shall be filed with the district  
7 and retained in its records. A duplicate original of the oath shall  
8 also be filed with the secretary of state not later than the 10th  
9 day after the date on which the oath was executed. The new director  
10 may begin to perform the duties of office before the oath is filed.

11 SECTION 5. Subsection (a), Section 8801.057, Special  
12 District Local Laws Code, is amended to read as follows:

13 (a) The board shall employ a general manager, who serves as  
14 the chief administrative officer of the district. The board may  
15 delegate to the general manager full authority to manage district  
16 affairs or operate the district subject only to orders by the board.

17 SECTION 6. Subchapter B, Chapter 8801, Special District  
18 Local Laws Code, is amended by adding Sections 8801.059 through  
19 8801.065 to read as follows:

20 Sec. 8801.059. EMPLOYEE BENEFITS. (a) The board may  
21 provide for and administer retirement, disability, and death  
22 compensation funds for the employees of the district.

23 (b) The board may establish a public retirement system as  
24 provided by Chapter 810, Government Code, or provide for a deferred  
25 compensation plan as described by Section 457, Internal Revenue  
26 Code of 1986.

27 (c) The board may include hospitalization and medical

1 benefits for its employees as part of the compensation paid to  
2 employees and may adopt or amend a plan or rule as necessary to  
3 provide hospitalization and medical benefits.

4 (d) The board may establish a sick leave pool for employees  
5 of the district in the same manner as a sick leave pool for state  
6 employees is authorized to be created under Subchapter A, Chapter  
7 661, Government Code.

8 Sec. 8801.060. EXPENDITURES. (a) The district's money may  
9 be disbursed only by check, draft, order, electronic funds  
10 transfer, or other instrument. The board may by resolution allow  
11 disbursements to be transferred by federal reserve wire system to  
12 accounts in the name of the district.

13 (b) Disbursements must be signed by at least two directors  
14 unless the board by resolution allows certain employees of the  
15 district, or a combination of employees and directors, to sign  
16 disbursements on behalf of the board.

17 Sec. 8801.061. FISCAL YEAR. The fiscal year of the district  
18 is the calendar year.

19 Sec. 8801.062. ANNUAL AUDIT. (a) The board annually shall  
20 order an audit to be made of the financial condition of the  
21 district.

22 (b) The annual audit and other district records must be open  
23 for inspection during regular business hours at the principal  
24 office of the district.

25 Sec. 8801.063. ANNUAL BUDGET. (a) The board shall adopt  
26 an annual budget.

27 (b) The budget must contain a complete financial statement,



1 including a statement of:

2 (1) the outstanding obligations of the district;

3 (2) the amount of cash on hand to the credit of each  
4 fund of the district;

5 (3) the amount of money received by the district from  
6 all sources during the previous year;

7 (4) the amount of money available to the district from  
8 all sources during the ensuing year;

9 (5) the amount of the balances expected at the end of  
10 the year in which the budget is being prepared;

11 (6) the estimated amount of revenues and balances  
12 available to cover the proposed budget; and

13 (7) the estimated fee revenues that will be required.

14 (c) The board may amend the annual budget adopted under  
15 Subsection (a).

16 Sec. 8801.064. DEPOSITORY. (a) The board shall name one  
17 or more banks to serve as depository for district money.

18 (b) District money must be deposited as received with the  
19 depository bank and must remain on deposit. This subsection does  
20 not limit the power of the board to place a portion of the  
21 district's money on time deposit or to purchase certificates of  
22 deposit or other authorized investments.

23 (c) To the extent that money in the depository is not  
24 insured by the Federal Deposit Insurance Corporation, the money  
25 must be secured as provided by Chapter 2257, Government Code.

26 Sec. 8801.065. INVESTMENTS. (a) District money may be  
27 invested and reinvested in accordance with Chapter 2256, Government

1 Code.

2 (b) The board, by resolution, may provide that an authorized  
3 representative of the district may invest and reinvest district  
4 money and provide for money to be withdrawn from the appropriate  
5 district accounts for investments on terms that the board considers  
6 advisable.

7 SECTION 7. Sections 8801.101, 8801.102, 8801.105, and  
8 8801.106, Special District Local Laws Code, are amended to read as  
9 follows:

10 Sec. 8801.101. DISTRICT POWERS AND DUTIES. [~~(a)~~] Except  
11 as provided by Section [~~Sections 8801.102 and~~] 8801.103, the  
12 district has all of the rights, powers, privileges, and authority  
13 necessary and convenient to exercise its jurisdiction and powers as  
14 provided by this chapter, whether the jurisdiction and powers are  
15 specifically authorized by this chapter or implied from this  
16 chapter or other law[~~, functions, and duties provided by the~~  
17 ~~general laws of this state, including Chapter 36, Water Code, that~~  
18 ~~are applicable to groundwater conservation districts created under~~  
19 ~~Section 59, Article XVI, Texas Constitution)].~~

20 [~~(b) This chapter prevails over any other law in conflict or~~  
21 ~~inconsistent with this chapter.~~]

22 Sec. 8801.102. NONAPPLICABILITY OF OTHER LAW. (a) Other  
23 laws governing the administration or operation of conservation and  
24 reclamation districts created under Section 52, Article III, or  
25 Section 59, Article XVI, Texas Constitution, including Chapters 36  
26 and 49, Water Code, do not apply to the district.

27 (b) Notwithstanding Section 36.052, Water Code, this

1 chapter prevails over any other law in conflict or inconsistent  
2 with this chapter [~~EXEMPTIONS. Sections 36.104, 36.114, 36.117,~~  
3 ~~and 36.201-36.204, Water Code, do not apply to the district~~].

4 Sec. 8801.105. SUITS BY OR AGAINST THE DISTRICT;  
5 REPRESENTATION BY ATTORNEY GENERAL. (a) The district may sue and  
6 be sued in the courts of this state in the name of the district by  
7 and through the board.

8 (b) At the request of the district, the [The] attorney  
9 general shall defend the district in suits brought against the  
10 district in all district and appellate courts of this state and in  
11 the courts of the United States.

12 (c) The district may engage outside attorneys to initiate or  
13 defend suits on behalf of the district.

14 (d) The general manager is the agent of the district on whom  
15 process, notice, or demand required or permitted by law to be served  
16 on the district may be served.

17 (e) The district is not required to give bond for appeal,  
18 injunction, or costs in any suit to which it is a party.

19 (f) If the district prevails in any suit other than a suit in  
20 which it voluntarily intervenes, the district may seek and the  
21 court shall grant, in the same action, recovery for attorney's  
22 fees, costs for expert witnesses, and other costs incurred by the  
23 district before the court. The court shall set the amount of the  
24 attorney's fees.

25 Sec. 8801.106. GRANTS; CONTRACTS. (a) The district may  
26 make or accept a grant, gratuity, advance, or loan in any form to or  
27 from any public source approved by the board, including a

1 governmental entity, and may enter into a contract, agreement, or  
2 covenant that the board considers appropriate in connection with a  
3 grant, gratuity, advance, or loan.

4 (b) The district may enter into contracts only in the  
5 district's name.

6 (c) The district may purchase property from another  
7 governmental entity by negotiated contract without securing  
8 appraisals or advertising for bids.

9 (d) The district may use the reverse auction procedure, as  
10 defined by Section 2155.062, Government Code, for purchasing.

11 SECTION 8. Subsection (a), Section 8801.108, Special  
12 District Local Laws Code, is amended to read as follows:

13 (a) After notice and hearing, the board shall adopt rules  
14 designed to expeditiously and effectively implement this chapter  
15 and accomplish its purpose, including rules governing procedures  
16 before the board. The board may adopt rules to prevent the waste of  
17 groundwater or the degradation of water quality. The board shall  
18 enforce the rules.

19 SECTION 9. Subsection (c), Section 8801.110, Special  
20 District Local Laws Code, is amended to read as follows:

21 (c) Written notice of a hearing other than a hearing on a  
22 permit application must be given to:

23 (1) each county and municipal government in the  
24 district; and

25 (2) each person that the board believes has an  
26 interest in the subject matter of the hearing.

27 SECTION 10. Section 8801.114, Special District Local Laws

1 Code, is amended to read as follows:

2 Sec. 8801.114. DISTRICT RESEARCH. (a) The district may  
3 conduct studies and research that the board considers necessary to  
4 implement this chapter. In conducting studies and research, the  
5 district may use the services of geologists, hydrologists, licensed  
6 professional engineers, licensed professional geoscientists, or  
7 other expert personnel.

8 (b) The district may collect any information that the board  
9 determines is necessary to implement this chapter, including  
10 information regarding the use of groundwater, water conservation,  
11 and the practicability of recharging a groundwater reservoir.

12 SECTION 11. Section 8801.117, Special District Local Laws  
13 Code, is amended by adding Subsection (e) to read as follows:

14 (e) The board shall submit the report adopted under  
15 Subsection (d) and a copy of the most recent district plan adopted  
16 under Section 8801.112 to the appropriate regional water planning  
17 group.

18 SECTION 12. Section 8801.118, Special District Local Laws  
19 Code, is amended to read as follows:

20 Sec. 8801.118. MONITORING AND SUPERVISION BY DISTRICT.

21 (a) The district may use subsidence compaction monitors,  
22 water-level observation wells, and other materials and equipment to  
23 determine the amount of groundwater that may be withdrawn while  
24 allowing groundwater to rebound and stabilize to a level that will  
25 halt subsidence.

26 (b) The district may use global positioning systems and  
27 other geodetic survey methods to monitor land surface elevations

1 and measure subsidence. The district may coordinate monitoring and  
2 data collection activities with other entities, including private  
3 entities and federal, state, or local governmental entities.

4 SECTION 13. Section 8801.119, Special District Local Laws  
5 Code, is amended by adding Subsection (c) to read as follows:

6 (c) The district may adopt different rules for:

7 (1) each aquifer, subdivision of an aquifer, or  
8 geologic stratum located wholly or partly within the boundaries of  
9 the district; or

10 (2) each geographic area overlying an aquifer or  
11 subdivision of an aquifer located wholly or partly within the  
12 boundaries of the district.

13 SECTION 14. Subchapter C, Chapter 8801, Special District  
14 Local Laws Code, is amended by amending Section 8801.120 and adding  
15 Sections 8801.121, 8801.122, and 8801.123 to read as follows:

16 Sec. 8801.120. WATER-METERING DEVICES. The board may  
17 require water-metering devices to be placed on wells in the  
18 district and may adopt standards for the accuracy, testing, and  
19 calibration of the devices.

20 Sec. 8801.121. REQUIRED WRITTEN POLICIES. The board shall  
21 adopt the following written policies:

22 (1) a code of ethics for district directors, officers,  
23 and employees, and persons who are engaged in handling investments  
24 for the district;

25 (2) a policy relating to travel expenditures;

26 (3) a policy relating to district investments;

27 (4) policies and procedures for selection,

1 monitoring, or review and evaluation of professional services; and  
2 (5) policies that ensure a better use of management  
3 information, including the use of:

4 (A) budgets to plan and control cost; and

5 (B) uniform reporting requirements based on  
6 "Audits of State and Local Governmental Units," published by the  
7 American Institute of Certified Public Accountants, and  
8 "Governmental Accounting and Financial Reporting Standards,"  
9 published by the Governmental Accounting Standards Board.

10 Sec. 8801.122. RECORDS. The board shall maintain a  
11 complete account of all meetings and proceedings and shall preserve  
12 its minutes, contracts, records, notices, accounts, receipts, and  
13 other records in a safe place.

14 Sec. 8801.123. OPEN OR UNCOVERED WELLS. (a) The district  
15 may require the owner or lessee of land on which an open or  
16 uncovered well is located to keep the well closed or capped with a  
17 covering capable of sustaining weight of at least 400 pounds when  
18 the well is not in actual use.

19 (b) If the owner or lessee fails or refuses to close or cap  
20 the well, any person, firm, or corporation employed by the district  
21 may enter onto the land and close or cap the well safely and  
22 securely.

23 SECTION 15. Sections 8801.151, 8801.152, and 8801.155,  
24 Special District Local Laws Code, are amended to read as follows:

25 Sec. 8801.151. GROUNDWATER WITHDRAWALS SUBJECT TO BOARD  
26 RULE. Groundwater withdrawals governed by this chapter, including  
27 withdrawals of injected water, are subject to reasonable board

1 rules and orders, taking into account all factors, including  
2 availability of surface water or alternative water supplies,  
3 economic impact on persons and the community, degree and effect of  
4 subsidence on the surface of land, and differing topographical and  
5 geophysical characteristics of land areas in the district.

6 Sec. 8801.152. CERTAIN WELLS EXEMPT. The regulatory  
7 provisions of this chapter do not apply to:

- 8 (1) a well regulated under Chapter 27, Water Code;  
9 (2) a well with a casing diameter of less than five  
10 inches that serves only a single-family dwelling; and  
11 (3) any other well as provided by board rule.

12 Sec. 8801.155. PERMIT REQUIRED. (a) The owner or operator  
13 of a well located in the district must obtain a permit from the  
14 board before:

- 15 (1) drilling, equipping, or completing the well;  
16 (2) substantially altering the size of the well or a  
17 well pump; or  
18 (3) operating the well.

19 (b) A well must have a valid permit if it is operational.

20 (c) An owner or operator commits a violation if the owner or  
21 operator does not obtain a permit as required by Subsection (a). A  
22 violation occurs on the first day the drilling, alteration, or  
23 operation begins. Each day that a violation continues is a separate  
24 violation.

25 SECTION 16. Subsection (b), Section 8801.157, Special  
26 District Local Laws Code, is amended to read as follows:

- 27 (b) The board must give written notice of the date, time,



1 and location of the hearing to the applicant by regular mail or by  
2 certified mail, return receipt requested.

3 SECTION 17. Section 8801.158, Special District Local Laws  
4 Code, is amended by amending Subsection (b) and adding Subsection  
5 (e) to read as follows:

6 (b) In deciding whether to issue a permit and in setting the  
7 terms of the permit, the board shall consider:

8 (1) the purpose of this chapter;

9 (2) the district plan;

10 (3) the quality, quantity, and availability of surface  
11 water or alternative water supplies at prices that are competitive  
12 with prices charged by suppliers of surface water in the district;

13 (4) the economic impact on the applicant of a decision  
14 to issue or deny the permit, or of the permit terms, in relation to  
15 the effect on subsidence that would result;

16 (5) the applicant's use of water conservation  
17 measures; ~~and~~

18 (6) the applicant's compliance with the requirements  
19 of this chapter or any rule, permit, or order of the district; and

20 (7) all other relevant factors.

21 (e) The board may condition issuance of a permit under this  
22 section on the resolution of a prior or continuing violation of this  
23 chapter or any rule, permit, or order of the district. The board  
24 may require an applicant to pay a civil penalty or settlement  
25 amount, or take other necessary action, to resolve a prior or  
26 continuing violation.

27 SECTION 18. Section 8801.161, Special District Local Laws

1 Code, is amended to read as follows:

2 Sec. 8801.161. PERMIT FEES. (a) When the board issues or  
3 renews a permit, the board shall collect a permit fee from the  
4 applicant. The fee shall be determined by a schedule based on the  
5 term of the permit and the maximum ~~[annual]~~ amount of groundwater  
6 that the board authorizes to be withdrawn from the well.

7 (a-1) In addition to a regular permit fee under Subsection  
8 (a), the board may establish a disincentive permit fee to serve as a  
9 regulatory tool by creating a disincentive to continued  
10 over-reliance on groundwater.

11 (b) The board shall determine the amount of the ~~[a]~~ permit  
12 fees under Subsections (a) and (a-1) ~~[fee]~~ after a hearing.

13 (b-1) The fee under Subsection (a) may not exceed 110  
14 percent of the highest rate that the City of Houston charges for  
15 surface water supplied to its customers in the district.

16 (c) The amount of a permit fee applicable to a well used for  
17 irrigating agricultural crops may not exceed ~~[is the lowest of:~~

18 ~~[(1)] 70 percent of the lowest amount determined under~~  
19 ~~Subsection (b) [+~~

20 ~~[(2) 70 percent of a base amount of one cent for each~~  
21 ~~thousand gallons authorized to be withdrawn, except that the board~~  
22 ~~may adjust the base amount annually to account for increases since~~  
23 ~~1992 in the most recently published Consumer Price Index for All~~  
24 ~~Urban Consumers, All Items (Houston, Texas, Average), as compiled~~  
25 ~~by the Bureau of Labor Statistics, United States Department of~~  
26 ~~Labor, or~~

27 ~~[(3) the amount determined in accordance with~~

1 ~~Subsection (d)]~~.

2 (d) The district may establish a fee for administrative acts  
3 of the district, including receiving applications for permits or  
4 permit amendments [~~At a hearing, the board shall calculate and~~  
5 ~~express as a percentage the relative contribution to subsidence by~~  
6 ~~wells used for irrigating agricultural crops and wells used for~~  
7 ~~other purposes. The board shall use information prepared by the~~  
8 ~~United States Geological Survey, which is presumed to be correct.~~  
9 ~~The permit fee for wells used for irrigating agricultural crops~~  
10 ~~must be such that the percentage of total permit fee revenue that~~  
11 ~~permit fee revenue from those wells represents equals the~~  
12 ~~percentage that agricultural use contributes to subsidence]~~.

13 (e) The board shall use permit fees collected under this  
14 section to pay the cost of issuing permits and performing other  
15 regulatory functions, including making grants, loans, or  
16 contractual payments to achieve, facilitate, or expedite  
17 reductions in groundwater pumping or the development or  
18 distribution of alternative water supplies.

19 SECTION 19. The heading to Section 8801.163, Special  
20 District Local Laws Code, is amended to read as follows:

21 Sec. 8801.163. CONVERSION TO ALTERNATIVE [~~SURFACE~~] WATER  
22 SUPPLY.

23 SECTION 20. Subsections (b) and (c), Section 8801.163,  
24 Special District Local Laws Code, are amended to read as follows:

25 (b) The board may issue an order requiring a person to  
26 completely or partially discontinue the use of groundwater only if  
27 the person is able to:

1           (1) acquire an alternative [a] water supply [~~composed~~  
2 ~~of surface water~~] needed to replace the water supply covered by the  
3 order; or

4           (2) participate in a groundwater reduction plan or  
5 other agreement approved by the board that complies with the  
6 district's regulatory requirements.

7           (c) A notice of public hearing must inform a person when the  
8 board will consider an order to convert to an alternative water  
9 supply [~~surface water~~].

10           SECTION 21. Section 8801.202, Special District Local Laws  
11 Code, is amended by amending Subsections (a) and (c) and adding  
12 Subsection (d) to read as follows:

13           (a) A person who is adversely affected by a rule, order, or  
14 other official action of the district under this chapter, including  
15 a person residing in or owning real property in the district whose  
16 residence or real property is subsiding, may appeal the action in a  
17 district court in any county in the district only after any  
18 administrative appeal to the district is finally resolved. An  
19 appeal under this section must be filed not later than the 45th day  
20 after the date any administrative appeal is finally resolved [~~the~~  
21 ~~action is taken~~].

22           (c) An appeal under this section is governed by the  
23 substantial evidence rule as provided by Subchapter G, Chapter  
24 2001, Government Code. The burden of proof is on the petitioner,  
25 and the challenged rule, order, or other official action of the  
26 district is considered prima facie valid.

27           (d) The district court shall set for trial as expeditiously

1 as possible an appeal brought under this section and may not  
2 postpone or continue the suit unless the reasons for postponement  
3 or continuance are imperative.

4 SECTION 22. Section 8801.204, Special District Local Laws  
5 Code, is amended by amending Subsection (b) and adding Subsection  
6 (e) to read as follows:

7 (b) On application for injunctive relief and a finding that  
8 a person is violating or threatening to violate this chapter or a  
9 rule, permit, or other order of the district issued or adopted under  
10 this chapter, the district court shall grant injunctive relief as  
11 the facts warrant.

12 (e) In a suit to recover a civil penalty or a suit for  
13 injunctive relief and a civil penalty, if the court finds that a  
14 person has violated or is violating a provision of this chapter or a  
15 rule, permit, or order of the district, the court shall assess a  
16 civil penalty in the amount provided by this section.

17 SECTION 23. Subsection (a), Section 1, Chapter 1045, Acts  
18 of the 71st Legislature, Regular Session, 1989, is amended to read  
19 as follows:

20 (a) The purpose of this Act is to provide for the regulation  
21 of the withdrawal of groundwater within the district created by  
22 this Act to prevent subsidence, which [~~that~~] contributes to or  
23 precipitates flooding, inundation, or overflow of areas within the  
24 district, including rising waters resulting from storms or  
25 hurricanes.

26 SECTION 24. Section 2, Chapter 1045, Acts of the 71st  
27 Legislature, Regular Session, 1989, is amended by amending

1 Subdivision (9) and adding Subdivisions (10) through (15) to read  
2 as follows:

3 (9) "Commission" means the Texas [~~Water~~] Commission on  
4 Environmental Quality.

5 (10) "Agricultural crop":

6 (A) means food or fiber commodities that are  
7 grown for resale or commercial purposes and that are to be used for  
8 food, clothing, or animal feed; and

9 (B) includes nursery products and florist items  
10 that are in the possession of a nursery grower.

11 (11) "Beneficial use" means any use that is useful or  
12 beneficial to the user, including:

13 (A) an agricultural, gardening, domestic, stock  
14 raising, municipal, mining, manufacturing, industrial, commercial,  
15 or recreational use, or a use for pleasure purposes; or

16 (B) exploring for, producing, handling, or  
17 treating oil, gas, sulfur, or other minerals.

18 (12) "Florist item" means a cut flower, potted plant,  
19 blooming plant, inside foliage plant, bedding plant, corsage  
20 flower, cut foliage, floral decoration, or live decorative  
21 material.

22 (13) "Nursery grower" means a person who grows in any  
23 medium more than 50 percent of the nursery products or florist items  
24 that the person sells or leases. A person grows a nursery product  
25 or florist item if the person cultivates or propagates the product  
26 or item by engaging in activities associated with the production or  
27 multiplying of stock, including the development of new plants from

1 cuttings, grafts, plugs, or seedlings. The term does not include a  
2 person who merely holds or maintains a nursery product or florist  
3 item before sale or lease.

4 (14) "Nursery product" includes a tree, shrub, vine,  
5 cutting, graft, scion, grass, bulb, or bud that is grown or kept  
6 for, or capable of, propagation and distribution for sale or lease.

7 (15) "Waste" means:

8 (A) the withdrawal of groundwater from a  
9 groundwater reservoir at a rate and in an amount that causes or  
10 threatens to cause intrusion into the reservoir of water unsuitable  
11 for agricultural, gardening, domestic, or stock raising purposes;

12 (B) the flowing or producing of wells from a  
13 groundwater reservoir if the water produced is not used for a  
14 beneficial use or if the amount used is more than is reasonably  
15 required for a beneficial use;

16 (C) the escape of groundwater from a groundwater  
17 reservoir to any other reservoir or geologic strata that does not  
18 contain groundwater;

19 (D) the pollution or harmful alteration of  
20 groundwater in a groundwater reservoir by saltwater or other  
21 harmful matter admitted from another stratum or from the surface of  
22 the ground;

23 (E) wilfully or negligently causing, suffering,  
24 or allowing groundwater to escape or flow into a river, creek,  
25 natural watercourse, depression, lake, reservoir, drain, sewer,  
26 street, highway, road, or road ditch, or onto land that does not  
27 belong to the owner of the well unless the discharge is authorized

1 by a permit, rule, or order issued by the commission under Chapter  
2 26, Water Code;

3 (F) the escape of groundwater pumped for  
4 irrigation as irrigation tailwater onto land that does not belong  
5 to the owner of the well unless the occupant of the land receiving  
6 the discharge granted permission for the discharge; or

7 (G) wilfully causing or knowingly permitting the  
8 water produced from an artesian well to run off the owner's land or  
9 to percolate through the stratum above which the water is found, as  
10 prescribed by Section 11.205, Water Code.

11 SECTION 25. Sections 3 and 4, Chapter 1045, Acts of the 71st  
12 Legislature, Regular Session, 1989, are amended to read as follows:

13 Sec. 3. CREATION; FINDING OF BENEFIT AND PUBLIC PURPOSE.

14 (a) Under Article XVI, Section 59, [of the] Texas Constitution, a  
15 conservation and reclamation district is created to be known as the  
16 Fort Bend Subsidence District. The district is a governmental  
17 agency, a political subdivision of the state, and a body politic and  
18 corporate.

19 (b) The district is created to serve a public use and  
20 benefit.

21 Sec. 4. BOUNDARIES. ~~[(a)]~~ The district includes all of  
22 the territory within Fort Bend County.

23 ~~[(b) An adjoining county may be added to the district on~~  
24 ~~application of the commissioners court of the adjoining county and~~  
25 ~~compliance with the applicable provisions of Sections~~  
26 ~~55.730-55.744, Water Code.~~

27 ~~[(c) The proposition on the ballots for an election to add~~



1 ~~an adjoining county to the district shall be printed to permit~~  
2 ~~voting for or against the proposition: "Addition of \_\_\_\_\_ County~~  
3 ~~to the Fort Bend Subsidence District."~~

4 ~~[(d) A county added to the district under this section is~~  
5 ~~subject to the jurisdiction of the board and this Act.]~~

6 SECTION 26. Chapter 1045, Acts of the 71st Legislature,  
7 Regular Session, 1989, is amended by adding Section 4A to read as  
8 follows:

9 Sec. 4A. NONAPPLICABILITY OF OTHER LAW. (a) Other laws  
10 governing the administration or operation of conservation and  
11 reclamation districts created under Section 52, Article III, or  
12 Section 59, Article XVI, Texas Constitution, including Chapters 36  
13 and 49, Water Code, do not apply to the district.

14 (b) Notwithstanding Section 36.052, Water Code, this  
15 chapter prevails over any other law in conflict or inconsistent  
16 with this Act.

17 SECTION 27. Subsections (h), (l), (n), (o), (p), and (r),  
18 Section 5, Chapter 1045, Acts of the 71st Legislature, Regular  
19 Session, 1989, are amended to read as follows:

20 (h) Selection of subsequent directors shall be made each ~~on~~  
21 ~~the second Monday in~~ January ~~[at 11 a.m. in the district's main~~  
22 ~~office]~~. Not later than the 20th day before the date of the board's  
23 January meeting, the district shall mail notice ~~[of the meeting]~~ to  
24 the persons designated in Subsections (b), (c), and (d) ~~[, and (e)]~~  
25 of this section to choose directors.

26 (l) Each ~~[At the initial meeting of the board and each]~~ year  
27 at the first meeting after new directors take office, the directors

1 shall select a chairman, a vice-chairman, and a secretary. The  
2 chairman, vice-chairman, and secretary shall serve at the pleasure  
3 of the board and may be removed and replaced by a majority of the  
4 board at any time.

5 (n) Each director is entitled to receive fees of office of  
6 not more than \$150 [~~\$50~~] a day for each day the director [~~he~~] is  
7 engaged in the exercise of the director's [~~his~~] duties. The fees of  
8 office may not exceed \$9,000 a year. Each director is also entitled  
9 to receive reimbursement for actual expenses reasonably and  
10 necessarily [~~under this Act and necessary travel and other~~  
11 ~~expenses~~] incurred in the exercise of the director's [~~his~~] duties  
12 under this Act. To receive fees of office and reimbursement for  
13 expenses, each director must file with the district a verified  
14 statement that shows the number of days spent in the service of the  
15 district and a general description of the duties performed for each  
16 day of service [~~A member of the board may not receive compensation~~  
17 ~~and travel and other expenses for more than 120 days in any one~~  
18 ~~calendar year~~].

19 (o) If a vacancy occurs on the board, the person or persons  
20 designated in Subsection (b), (c), or (d) [~~, or (e)~~] of this section  
21 to appoint a director for the position that is vacated shall appoint  
22 a director to serve the unexpired term.

23 (p) Each director shall make the sworn statement and take  
24 the oath of office prescribed by the constitution for public  
25 officers [~~law for county commissioners~~] and shall execute a bond in  
26 the amount of \$5,000, payable to the district, conditioned on the  
27 faithful performance of the director's [~~his~~] duties. The district

1 shall pay for the bond.

2 (r) The board shall hold one regular meeting each month at a  
3 time set by the board. The board may hold special meetings at the  
4 call of the chairman or on the written request of at least three  
5 directors. A meeting of a committee of the board where less than a  
6 quorum is present is not subject to Chapter 551, Government Code.  
7 The board shall give notice of board meetings as provided by Chapter  
8 551, Government Code. Failure to provide notice of a regular  
9 meeting or an insubstantial defect in notice of any meeting does not  
10 affect the validity of any action taken at the meeting.

11 SECTION 28. Section 6, Chapter 1045, Acts of the 71st  
12 Legislature, Regular Session, 1989, is amended by amending  
13 Subsections (b), (c), and (d) and adding Subsections (e), (f), and  
14 (g) to read as follows:

15 (b) Withdrawals of groundwater, including withdrawals of  
16 injected water, covered by this Act are subject to reasonable  
17 rules, regulations, and orders adopted by the board.

18 (c) In adopting rules, regulations, and orders, the board  
19 shall consider the following factors:

20 (1) availability of surface water or alternative water  
21 supplies;

22 (2) economic impact on persons and the community;

23 (3) degree and effect of subsidence on the surface of  
24 the land; and

25 (4) differing topographical and geophysical  
26 characteristics of the land.

27 (d) The board has all other powers necessary or convenient

1 to carry out its responsibilities and achieve the purpose of this  
2 Act, whether the powers are specifically authorized by this Act or  
3 implied by this Act or other law.

4 (e) The board may adopt bylaws and policies as necessary to  
5 accomplish its purposes.

6 (f) The board may purchase materials, supplies, equipment,  
7 vehicles, and machinery needed by the district to accomplish its  
8 purposes.

9 (g) The board shall adopt the following written policies:

10 (1) a code of ethics for district directors, officers,  
11 and employees, and persons who are engaged in handling investments  
12 for the district;

13 (2) a policy relating to travel expenditures;

14 (3) a policy relating to district investments;

15 (4) policies and procedures for selection,  
16 monitoring, or review and evaluation of professional services; and

17 (5) policies that ensure a better use of management  
18 information, including the use of:

19 (A) budgets to plan and control cost; and

20 (B) uniform reporting requirements based on  
21 "Audits of State and Local Governmental Units," published by the  
22 American Institute of Certified Public Accountants, and  
23 "Governmental Accounting and Financial Reporting Standards,"  
24 published by the Governmental Accounting Standards Board.

25 SECTION 29. Section 7, Chapter 1045, Acts of the 71st  
26 Legislature, Regular Session, 1989, is amended by adding Subsection  
27 (e) to read as follows:

1       (e) The board shall determine the compensation and terms of  
2 office and employment for the general manager. The board may  
3 discharge the general manager by a vote of a majority of board  
4 members.

5       SECTION 30. The heading to Section 8, Chapter 1045, Acts of  
6 the 71st Legislature, Regular Session, 1989, is amended to read as  
7 follows:

8       Sec. 8. EMPLOYEES; BENEFITS.

9       SECTION 31. Section 8, Chapter 1045, Acts of the 71st  
10 Legislature, Regular Session, 1989, is amended by amending  
11 Subsections (a) and (b) and adding Subsections (d)-(g) to read as  
12 follows:

13       (a) The general manager [~~board~~] shall employ personnel  
14 necessary for the proper handling of the business and operation of  
15 the district and may employ attorneys, bookkeepers, engineers, and  
16 other expert and specialized personnel that are considered  
17 necessary. The general manager [~~board~~] shall determine the  
18 compensation to be paid by the district to the employees.

19       (b) [~~The board shall determine the term of office of and the~~  
20 ~~compensation to be paid to the general manager. The board may~~  
21 ~~discharge the general manager by a majority vote.] The general  
22 manager [~~board~~] may discharge employees of the district.~~

23       (d) The board may provide for and administer retirement,  
24 disability, and death compensation funds for the employees of the  
25 district.

26       (e) The board may establish a public retirement system as  
27 provided by Chapter 810, Government Code, or provide for a deferred

1 compensation plan as described by Section 457, Internal Revenue  
2 Code of 1986.

3 (f) The board may include hospitalization and medical  
4 benefits for its employees as part of the compensation paid to  
5 employees and may adopt or amend any plan or rule as necessary to  
6 provide hospitalization and medical benefits.

7 (g) The board may establish a sick leave pool for employees  
8 of the district in the same manner as a sick leave pool for state  
9 employees is authorized to be created under Subchapter A, Chapter  
10 661, Government Code.

11 SECTION 32. Sections 10 and 11, Chapter 1045, Acts of the  
12 71st Legislature, Regular Session, 1989, are amended to read as  
13 follows:

14 Sec. 10. MINUTES AND RECORDS OF DISTRICT. The district  
15 shall keep a true and complete account of the board's meetings and  
16 proceedings and shall preserve the board's minutes, contracts,  
17 records, notices, accounts, and receipts in a [~~fireproof vault or~~]  
18 safe place. The board's minutes, contracts, records, notices,  
19 accounts, and receipts are the property of the district and are  
20 subject to public inspection.

21 Sec. 11. SUITS. (a) The district may sue and be sued in  
22 the courts of this state in the name of the district by and through  
23 the board. If requested by the district, the attorney general shall  
24 represent the district in the district and appellate courts of this  
25 state and in the courts of the United States. The board, in its sole  
26 discretion, may employ attorneys to represent the district in the  
27 district and appellate courts of this state and in the courts of the

1 United States.

2 (b) The general manager is the agent of the district on whom  
3 process, notice, or demand required or permitted by law to be served  
4 on the district may be served.

5 (c) The district is not required to give bond for appeal,  
6 injunction, or costs in any suit to which it is a party.

7 (d) If the district prevails in any suit other than a suit in  
8 which it voluntarily intervenes, the district may seek and the  
9 court shall grant, in the same action, recovery for attorney's  
10 fees, costs for expert witnesses, and other costs incurred by the  
11 district before the court. The court shall set the amount of the  
12 attorney's fees [~~All courts shall take judicial notice of the~~  
13 ~~creation of the district and of its boundaries~~].

14 SECTION 33. Subsection (a), Section 13, Chapter 1045, Acts  
15 of the 71st Legislature, Regular Session, 1989, is amended to read  
16 as follows:

17 (a) After notice and hearing [~~under Section 14 of this Act~~],  
18 the board shall adopt and enforce rules and regulations that are  
19 designed to expeditiously and effectively accomplish the  
20 provisions and purposes of this Act, including rules governing  
21 procedure before the board. The board may adopt rules to prevent  
22 the waste of water or the degradation of water quality.

23 SECTION 34. Subsections (b), (c), (d), and (h), Section 14,  
24 Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989,  
25 are amended to read as follows:

26 (b) Not later than the 10th [~~20th~~] day before the date set  
27 for a hearing, other than a hearing on a permit application, the

1 district shall deliver or mail notice of the hearing under this  
2 section to each county and municipal government within the district  
3 and to each person that the board believes has an interest in the  
4 subject matter to be dealt with at the hearing.

5 (c) Not later than the 10th [~~20th~~] day before the date set  
6 for a hearing, the district shall publish notice of the hearing  
7 under this section once in a newspaper of general circulation in  
8 each county within the district.

9 (d) Not later than the 10th [~~20th~~] day before the date set  
10 for a hearing, the district shall post the notice of the hearing  
11 under this section at the county courthouse of each county within  
12 the district in the place where notices are usually posted.

13 (h) The board may use hearing examiners to hear any subject  
14 set for the hearing, but the board shall make any final decision on  
15 the subject. Procedures for use of hearing examiners shall be  
16 provided by rule [~~in the rules and regulations~~].

17 SECTION 35. Subsections (a) and (c) through (f), Section  
18 16, Chapter 1045, Acts of the 71st Legislature, Regular Session,  
19 1989, are amended to read as follows:

20 (a) The [~~Under Section 14 of this Act, the~~] board shall  
21 formulate a plan to control and mitigate subsidence within the  
22 district. The plan shall accomplish this purpose by the regulation  
23 of groundwater withdrawals to maintain sufficient artesian  
24 pressure to control and mitigate subsidence.

25 (c) When formulating the plan, the board shall compile and  
26 consider:

27 (1) a list of wells in the district that will be



1 subject to regulation under this Act;

2 (2) an accurate estimate of groundwater production  
3 from all wells [~~each well~~] or proposed wells [~~well~~] in the district;

4 (3) an accurate estimate of the amount of groundwater  
5 that may be produced from each [~~well and each~~] area in the district  
6 without causing long-term static water level decline and reduction  
7 of artesian pressure that will lead to subsidence within the  
8 district;

9 (4) an accurate estimate of the current and future  
10 water needs [~~of each well owner~~] in the district;

11 (5) [~~an accurate estimate of the groundwater~~  
12 ~~production capacity of each well in the district,~~

13 [~~6~~] a list of all available sources of water in the  
14 district other than groundwater;

15 (6) [~~7~~] the purpose for which the water is currently  
16 used and for which it is proposed to be used in the future;

17 (7) [~~8~~] information relating to formulation of a  
18 permit system; and

19 (8) [~~9~~] other information necessary to carry out the  
20 management of groundwater in the district and to effectively and  
21 expeditiously accomplish the purposes of this Act.

22 (d) The initial plan shall be formulated not later than 12  
23 months after the effective date of this Act.

24 (e) Not later than the 60th day after the date the initial  
25 plan is formulated, the board shall review and adopt the plan.

26 (f) Before a plan [~~the~~] plan is adopted, the board shall hold a  
27 hearing [~~under Section 14 of this Act~~] to consider the proposed

1 plan.

2 SECTION 36. Section 17, Chapter 1045, Acts of the 71st  
3 Legislature, Regular Session, 1989, is amended to read as follows:

4 Sec. 17. WELL REGISTRATION. The board by rule may require  
5 the registration of any well in the district [~~TEMPORARY REGULATION.~~  
6 ~~During the period that the board is formulating and adopting the~~  
7 ~~plan under Section 16 of this Act, the board shall adopt temporary~~  
8 ~~rules and regulations relating to the withdrawal of groundwater~~  
9 ~~that are necessary to control subsidence~~].

10 SECTION 37. Subsections (a), (b), and (d), Section 18,  
11 Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989,  
12 are amended to read as follows:

13 (a) The owner of a well located in the district must obtain a  
14 permit from the board before:

15 (1) drilling, equipping, or completing the well;

16 (2) substantially altering the size of the well or a  
17 well pump; or

18 (3) operating the well [~~to withdraw groundwater~~].

19 (b) A well must have a valid permit if it is operational. An  
20 owner or operator commits a violation if the owner or operator does  
21 not obtain a permit as required by Subsection (a) of this section.  
22 A violation occurs on the first day the drilling, alteration, or  
23 operation begins. Each day that a violation continues is a separate  
24 violation [~~Owners of wells operating or being drilled on the~~  
25 ~~effective date of this Act must apply for a permit before January~~  
26 ~~1, 1990, and may continue to operate the well without a permit~~  
27 ~~until the application for a permit for the well is acted on by the~~

1 ~~board~~].

2 (d) A permit is not a vested right of the permit holder. A  
3 permit may be revoked, suspended, modified, or amended after notice  
4 and a ~~[public]~~ hearing ~~[under Section 14 of this Act]~~ whenever  
5 reasonably necessary to accomplish the purposes of this Act.

6 SECTION 38. Subsection (b), Section 19, Chapter 1045, Acts  
7 of the 71st Legislature, Regular Session, 1989, is amended to read  
8 as follows:

9 (b) Not later than the 10th ~~[20th]~~ day before the date set  
10 for the hearing, the board shall notify the applicant by regular  
11 mail or by certified mail, return receipt requested, of the date,  
12 time, and location of the hearing.

13 SECTION 39. Section 20, Chapter 1045, Acts of the 71st  
14 Legislature, Regular Session, 1989, is amended by amending  
15 Subsections (a), (b), (c), and (e) and adding Subsection (f) to read  
16 as follows:

17 (a) Not later than the 60th ~~[35th]~~ day after the date of the  
18 hearing, the board shall decide whether or not to issue a permit and  
19 shall formulate the terms of the permit, if issued.

20 (b) In deciding whether or not to issue a permit and in  
21 setting the terms of the permit, the board shall consider:

22 (1) the purpose of this Act;

23 (2) the district plan;

24 (3) the quality, quantity, and availability of surface  
25 water or alternative water supplies at prices competitive with  
26 those charged by suppliers of surface water within the district;  
27 ~~[and]~~

1           (4) the economic impact on the applicant of granting  
2 or denying the permit or of the terms prescribed by a permit in  
3 relation to the effect on subsidence that would result;

4           (5) the applicant's compliance with the requirements  
5 of this Act or any rule, permit, or other order of the district; and

6           (6) any other relevant factors.

7           (c) The board shall grant a permit to an applicant whenever  
8 the board finds on sufficient evidence that:

9           (1) there is no other adequate and available  
10 substitute or supplemental source of surface water at prices  
11 competitive with those charged by suppliers of surface water within  
12 the district; and

13           (2) compliance with any provision of this Act, or any  
14 rule or regulation of the district, will result in an arbitrary  
15 taking of property or in the practical closing and elimination of  
16 any lawful business, occupation, or activity, without sufficient  
17 corresponding benefit or advantage to the public [~~people~~].

18           (e) The permit must include the following:

19           (1) the name and address of the permittee;

20           (2) the location of the well;

21           (3) the date the permit begins and the date the permit  
22 expires;

23           (4) conditions and restrictions placed on the  
24 withdrawal of groundwater; and

25           (5) [~~adoption of water conservation measures for the~~  
26 ~~purpose of preventing waste of groundwater, including educational~~  
27 ~~programs; and~~

1           ~~[(6)]~~ any other terms and conditions necessary to  
2 control and prevent subsidence.

3           (f) The board may condition issuance of a permit under this  
4 section on the resolution of a prior or continuing violation of this  
5 chapter or any rule, permit, or order of the district. The board  
6 may require an applicant to pay a civil penalty or settlement  
7 amount, or take other necessary action, to resolve a prior or  
8 continuing violation.

9           SECTION 40. Section 22, Chapter 1045, Acts of the 71st  
10 Legislature, Regular Session, 1989, is amended to read as follows:

11           Sec. 22. ANNUAL REPORTS. Before January 31 of each year,  
12 each owner of a well who holds a permit under this Act shall submit a  
13 report to the board stating the following:

14           (1) the person's name;

15           (2) the location of the well;

16           (3) the total amount of groundwater produced by the  
17 well during the immediately preceding 12-month period;

18           (4) the total amount of groundwater produced by the  
19 well during each separate month of the immediately preceding  
20 12-month period;

21           (5) the purpose for which the groundwater was used;

22 and

23           (6) ~~[the date the permit expires, and~~

24           ~~[(7)]~~ any other information required by the board as  
25 necessary for the board to control and prevent subsidence within  
26 the district.

27           SECTION 41. Section 24, Chapter 1045, Acts of the 71st

1 Legislature, Regular Session, 1989, is amended by amending  
2 Subsections (a) and (b) and adding Subsection (d) to read as  
3 follows:

4 (a) Before March 31 of each year, the board shall hold a  
5 hearing [~~under Section 14 of this Act~~] to determine the effects  
6 during the preceding calendar year of groundwater withdrawal on the  
7 subsidence of land within the district.

8 (b) At the hearing, the board shall consider the annual  
9 reports submitted under Section 22 of this Act and the  
10 investigation made under Section 23 of this Act in addition to  
11 information presented [~~represented~~] by persons appearing before  
12 the board.

13 (d) The board shall submit the report adopted under  
14 Subsection (c) of this section and a copy of the most recent  
15 district plan adopted under Section 16 of this Act to the  
16 appropriate regional water planning group.

17 SECTION 42. Section 25, Chapter 1045, Acts of the 71st  
18 Legislature, Regular Session, 1989, is amended to read as follows:

19 Sec. 25. REGULATION OF SPACING AND PRODUCTION. (a) In  
20 order to minimize as far as practicable the drawdown of the water  
21 table and reduction of artesian pressure and to control and prevent  
22 subsidence, the board may provide for the spacing of wells and  
23 regulate the production of groundwater from [~~the~~] wells, taking  
24 into consideration any relevant factors, including the economic  
25 impact on well owners and the resulting effect on subsidence.

26 (b) Before issuing any rule, regulation, or order under this  
27 section, the board shall set a hearing on the proposed rule,

1 regulation, or order [~~and issue notice of the hearing. Notice must~~  
2 ~~be given and hearings conducted in the manner provided in Section 14~~  
3 ~~of this Act~~].

4 (c) The district may adopt different rules for:

5 (1) each aquifer, subdivision of an aquifer, or  
6 geologic stratum located wholly or partly within the boundaries of  
7 the district; or

8 (2) each geographic area overlying an aquifer or  
9 subdivision of an aquifer located wholly or partly within the  
10 boundaries of the district.

11 (d) The board may issue an order requiring a person to  
12 completely or partially discontinue the use of groundwater by:

13 (1) acquiring an alternative water supply needed to  
14 replace the water supply covered by the order; or

15 (2) participating in a groundwater reduction plan or  
16 other agreement approved by the board as achieving compliance with  
17 the district's regulatory requirements.

18 (e) The board may issue an order or adopt a rule requiring a  
19 person to reduce groundwater use by eliminating waste or  
20 implementing water conservation measures.

21 SECTION 43. Sections 26, 28, 29, and 31, Chapter 1045, Acts  
22 of the 71st Legislature, Regular Session, 1989, are amended to read  
23 as follows:

24 Sec. 26. REQUIRING WATER-METERING DEVICES. The board may  
25 require [~~adopt orders after notice and hearing under Section 14 of~~  
26 ~~this Act requiring~~] water-metering devices to be placed on wells in  
27 the district and may adopt standards for the accuracy, testing, and

1 calibration of the devices.

2       Sec. 28. MONITORING AND SUPERVISIONS OF DISTRICT. (a) The  
3 district may use subsidence compaction monitors, water level  
4 observation wells, and other materials and equipment to determine  
5 the amount of groundwater that may be produced while allowing the  
6 rebound and stabilization of groundwater to a level that will halt  
7 subsidence.

8       (b) The district may use global positioning systems and  
9 other geodetic survey methods to monitor land surface elevations  
10 and measure subsidence. The district may coordinate monitoring and  
11 data collection activities with other entities, including private  
12 entities and federal, state, or local governmental entities.

13       Sec. 29. RESEARCH AND STUDIES. (a) The board may conduct  
14 studies and research that it considers necessary to implement this  
15 Act. The board may use the services of geologists, hydrologists,  
16 licensed [~~registered~~] professional engineers, licensed  
17 professional geoscientists, or other expert personnel to  
18 accomplish the purposes of this section.

19       (b) The district may collect any information that the board  
20 determines is necessary to implement this chapter, including  
21 information regarding the use of groundwater, water conservation,  
22 and the practicability of recharging a groundwater reservoir.

23       Sec. 31. CONTRACTS. The board may enter into contracts with  
24 any person to carry out this Act. The district may enter into  
25 contracts only in the district's name.

26       SECTION 44. Section 32, Chapter 1045, Acts of the 71st  
27 Legislature, Regular Session, 1989, is amended by amending



1 Subsections (a), (b), and (d) and adding Subsection (e) to read as  
2 follows:

3 (a) A person who is adversely affected by a rule,  
4 regulation, order, or other official action of the board may appeal  
5 to a district court in any county in the district. A person may file  
6 an appeal only after any administrative appeal to the district is  
7 finally resolved.

8 (b) For the purposes of this section, "a person who is  
9 adversely affected" includes a person residing in or owning real  
10 property in the district whose residence or real property is  
11 subsiding. An appeal under this section must be filed not later  
12 than the 45th day after the date any administrative appeal is  
13 finally resolved [~~the rule, regulation, order, or other official~~  
14 ~~action appealed from is promulgated~~].

15 (d) In appeals taken under this section, the substantial  
16 evidence rule, as provided by Subchapter G, Chapter 2001,  
17 Government Code, shall be used to determine the legal propriety of a  
18 rule, regulation, order, or other action of the board. The burden  
19 of proof is on the petitioner, and the challenged rule, order, or  
20 other official action of the district is considered prima facie  
21 valid.

22 (e) The district court shall set for trial as expeditiously  
23 as possible an appeal brought under this section and may not  
24 postpone or continue the suit unless the reasons for postponement  
25 or continuance are imperative.

26 SECTION 45. Sections 34 through 37, 39, and 40, Chapter  
27 1045, Acts of the 71st Legislature, Regular Session, 1989, are

1 amended to read as follows:

2           Sec. 34. PERMIT FEE. (a) At the time a permit is issued or  
3 renewed, the board shall collect from the permittee a permit fee,  
4 established by schedule, based on the term of the permit and the  
5 maximum amount of groundwater authorized by the board to be  
6 withdrawn annually from the well. The board may also establish a  
7 disincentive permit fee to serve as a regulatory tool by creating a  
8 disincentive to continued overreliance on groundwater.

9           (b) The fee schedule shall be determined by the board after  
10 a hearing [~~under Section 14 of this Act~~].

11           (c) The board shall use the funds obtained from permit fees  
12 to cover the costs of issuing permits and performing other  
13 regulatory functions under this Act, including making grants,  
14 loans, or contractual payments to achieve, facilitate, or expedite  
15 reductions in groundwater pumping or the development or  
16 distribution of alternative water supplies.

17           Sec. 35. GRANTS, PURCHASES, GIFTS, LEASES, ETC. (a) On  
18 behalf of the district, the board may:

19           (1) purchase, lease, own, convey, and dispose of  
20 property both inside and outside the district necessary or  
21 convenient to the exercise of the powers, duties, and functions of  
22 the board under this Act;

23           (2) accept grants, gifts, and devises of property;

24           (3) construct, purchase, lease, or acquire in some  
25 other manner any material or property necessary to carry out this  
26 Act; and

27           (4) accept gifts, grants, loans, or other

1 distributions of money.

2 (b) The district may make or accept a grant, gratuity,  
3 advance, or loan in any form to or from any public source approved  
4 by the board, including a governmental entity, and may enter into a  
5 contract, agreement, or covenant that the board considers  
6 appropriate in connection with a grant, gratuity, advance, or loan.

7 Sec. 36. WATER CONSERVATION MEASURES [~~OWNERSHIP OF~~  
8 ~~GROUNDWATER~~]. (a) The board may adopt rules requiring the use of  
9 water conservation measures to reduce groundwater withdrawals.

10 (b) The district may cooperate with the commission and a  
11 local government to establish water conservation goals,  
12 guidelines, and plans to be used in the district.

13 (c) The district may contract with a local government in the  
14 district to provide services needed to meet water conservation  
15 requirements established by the commission [~~The ownership and~~  
16 ~~rights of the owner of land and his lessees and assigns in~~  
17 ~~groundwater are recognized and nothing in this Act shall be~~  
18 ~~construed as depriving or divesting the owner or his lessees and~~  
19 ~~assigns of the ownership or rights, subject to rules and~~  
20 ~~regulations and orders and other official actions of the district].~~

21 Sec. 37. OPEN OR UNCOVERED WELLS [~~SURFACE WATER LAWS NOT~~  
22 ~~APPLICABLE~~]. (a) The district may require the owner or lessee of  
23 land on which an open or uncovered well is located to keep the well  
24 closed or capped with a covering capable of sustaining weight of at  
25 least 400 pounds when the well is not in actual use.

26 (b) If the owner or lessee fails or refuses to close or cap  
27 the well, any person, firm, or corporation employed by the district

1 may enter onto the land and close or cap the well safely and  
2 securely [~~The laws and administrative rules relating to the use of~~  
3 ~~surface water do not apply to groundwater~~].

4 Sec. 39. EXCLUSIONS. This Act does not apply to:

5 (1) wells regulated under Chapter 27, Water Code;

6 (2) shallow wells producing water solely to prevent  
7 hazardous sand boils, dewater surface construction sites, or  
8 relieve hydrostatic uplift on permanent structures and not used to  
9 provide water for human consumption, agricultural use,  
10 manufacturing or industrial use, or water injection;

11 (3) shallow wells producing water solely for  
12 groundwater quality analysis and for monitoring migration of  
13 subsurface contaminants or pollution and not used to provide water  
14 for human consumption, agricultural use, manufacturing or  
15 industrial uses, or water injection;

16 (4) shallow wells producing water solely for recovery  
17 of contamination or pollution and not used to provide water for  
18 human consumption, agricultural use, manufacturing or industrial  
19 use, or water injection; or

20 (5) [~~persons owning only one well within the district~~  
21 ~~if the well has a casing with an inside diameter of five inches or~~  
22 ~~less, and~~

23 [~~(6) on application for an exemption on a form~~  
24 ~~prescribed by the board, other~~] wells with a casing that has an  
25 inside diameter of five inches or less that serve only a  
26 single-family dwelling [~~and have a negligible effect on subsidence~~  
27 ~~within the district~~].

1           Sec. 40.   DISBURSEMENT OF FUNDS.  The district's money may be  
2   disbursed by:

3                 (1) check, draft, order, or other instruments, signed  
4   by the person or persons authorized to do so by the board's bylaws  
5   or by resolution of the board; or

6                 (2) electronic funds transfer.

7           SECTION 46.  The heading to Section 41, Chapter 1045, Acts of  
8   the 71st Legislature, Regular Session, 1989, is amended to read as  
9   follows:

10           Sec. 41.  ACCOUNTS AND INDEPENDENT AUDIT; BUDGET.

11           SECTION 47.  Section 41, Chapter 1045, Acts of the 71st  
12   Legislature, Regular Session, 1989, is amended by amending  
13   Subsection (b) and adding Subsections (c) and (d) to read as  
14   follows:

15           (b) ~~[The board shall deliver a copy of the audit to the~~  
16   ~~commissioners court of each county in the district.]~~  The board  
17   shall keep one copy of the audit at the district office, open to  
18   inspection by any interested person during normal office hours.

19           (c) The fiscal year of the district is the calendar year.

20           (d) The board shall adopt an annual budget containing a  
21   complete financial statement.  The board may amend the annual  
22   budget.

23           SECTION 48.  The heading to Section 42, Chapter 1045, Acts of  
24   the 71st Legislature, Regular Session, 1989, is amended to read as  
25   follows:

26           Sec. 42.  DEPOSITORY BANKS; INVESTMENTS.

27           SECTION 49.  Section 42, Chapter 1045, Acts of the 71st

1 Legislature, Regular Session, 1989, is amended by amending  
2 Subsections (a), (c), and (d) and adding Subsections (h) and (i) to  
3 read as follows:

4 (a) The board shall designate one or more banks within the  
5 district to serve as depository for ~~[the funds of the]~~ district  
6 money. ~~All [Except as provided by Subsection (b) of this section,~~  
7 ~~all funds of the]~~ district money shall be deposited in a depository  
8 bank. This subsection does not limit the power of the board to  
9 place a portion of the district's money on time deposit or to  
10 purchase certificates of deposit or other authorized investments.

11 (c) To the extent that money ~~[funds]~~ in a depository bank or  
12 a trustee bank is ~~[are]~~ not invested or insured by the Federal  
13 Deposit Insurance Corporation, the money ~~[they]~~ shall be secured in  
14 the manner provided by Chapter 2257, Government Code ~~[law for the~~  
15 ~~security of county funds]~~.

16 (d) Before designating a depository bank, the board shall  
17 issue a notice stating the time and place the board will meet for  
18 that purpose and shall invite ~~[the]~~ banks in the district to submit  
19 applications to be designated depositories. The term of service  
20 for depositories shall be prescribed by the board. ~~[The board shall~~  
21 ~~publish the notice once in a newspaper of general circulation in the~~  
22 ~~district or mail a copy of the notice to each bank in the district.]~~

23 (h) District money may be invested and reinvested in  
24 accordance with Chapter 2256, Government Code.

25 (i) The board, by resolution, may provide that an authorized  
26 representative of the district may invest and reinvest district  
27 money and provide for money to be withdrawn from the appropriate

1 district accounts for investments on terms that the board considers  
2 advisable.

3 SECTION 50. Section 43, Chapter 1045, Acts of the 71st  
4 Legislature, Regular Session, 1989, is amended by amending  
5 Subsections (b) and (c) and adding Subsection (e) to read as  
6 follows:

7 (b) At the request of the board [~~district~~], or the general  
8 manager if authorized by the board, the attorney general shall  
9 institute the action. However, the district in its sole discretion  
10 may employ attorneys of its choice to institute the action.

11 (c) The district [~~board~~] is not required to post bond or  
12 other security with the court [~~under this section~~].

13 (e) In a suit to recover a civil penalty or a suit for  
14 injunctive relief and a civil penalty, if the court finds that a  
15 person has violated or is violating a provision of this Act or a  
16 rule, permit, or order of the district, the court shall assess a  
17 civil penalty in the amount provided by this section.

18 SECTION 51. Sections 8801.006 and 8801.153, Subsection (d),  
19 Section 8801.163, and Sections 8801.164 and 8801.203, Special  
20 District Local Laws Code, and Subsections (e), (g), and (k),  
21 Section 5, Subsection (c), Section 19, Section 33, Subsection (b),  
22 Section 42, and Sections 44 and 45, Chapter 1045, Acts of the 71st  
23 Legislature, Regular Session, 1989, are repealed.

24 SECTION 52. This Act takes effect immediately if it  
25 receives a vote of two-thirds of all the members elected to each  
26 house, as provided by Section 39, Article III, Texas Constitution.  
27 If this Act does not receive the vote necessary for immediate

S.B. No. 1537

1 effect, this Act takes effect September 1, 2005.