

By: Armbrister

S.B. No. 1537

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Chapter 8801, Special Districts Code, is amended to read as follows:

CHAPTER 8801. HARRIS-GALVESTON COASTAL SUBSIDENCE DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8801.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "District" means the Harris-Galveston Coastal Subsidence District.

(4) "Groundwater" means water located beneath the earth's surface. The term does not include water produced with oil in the production of oil and gas.

(5) "Subsidence" means the lowering of the elevation of the surface of land by groundwater withdrawal.

(6) "Water conservation" means a measure that seeks to make a water supply available for alternative or future use. The term includes best management practices, improved efficiency or

1 accountability, recycling, reuse, pollution prevention, and  
2 reduction in consumption, loss, or waste.

3 (7) "Well" means a facility, device, or method used to  
4 withdraw groundwater from the groundwater supply.

5 (8) "Well owner" means a person who has an ownership  
6 interest in a well, operates a well, owns land on which a well is  
7 located, or owns the water withdrawn or to be withdrawn from a well.

8 (9) "Withdrawal" means the act of extracting by  
9 pumping or some other method.

10 (10) "Agricultural crop" means food or fiber  
11 commodities grown for resale or commercial purposes, that provide  
12 food, clothing, or animal feed, and also includes nursery products  
13 and florist items while in the hands of a nursery grower.

14 (11) "Florist item" means a cut flower, potted plant,  
15 blooming plant, inside foliage plant, bedding plant, corsage  
16 flower, cut foliage, floral decoration, or live decorative  
17 material.

18 (12) "Nursery grower" means a person who grows, in any  
19 medium, more than 50 percent of the nursery products or florist  
20 items that the person either sells or leases, regardless of the  
21 variety sold, leased, or grown. For the purposes of this  
22 definition, "grow" means the actual cultivation or propagation of  
23 the nursery product or florist item beyond the mere holding or  
24 maintaining of the item prior to sale or lease and typically  
25 includes activities associated with the production or multiplying  
26 of stock such as the development of new plants from cuttings,  
27 grafts, plugs, or seedlings.

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

5           (14) "Beneficial use" means use for:

6                   (A) agricultural, gardening, domestic, stock  
7 raising, municipal, mining, manufacturing, industrial, commercial,  
8 recreational, or pleasure purposes;

9                   (B) exploring for, producing, handling, or  
10 treating oil, gas, sulphur, or other minerals; or

11                   (C) any other purpose that is useful and  
12 beneficial to the user.

13           (15) "Waste" means any one or more of the following:

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

18                   (B) the flowing or producing of wells from a  
19 groundwater reservoir if the water produced is not used for a  
20 beneficial use or if the amount used is more than is reasonably  
21 required for a beneficial use;

22                   (C) escape of groundwater from a groundwater  
23 reservoir to any other reservoir or geologic strata that does not  
24 contain groundwater;

25                   (D) pollution or harmful alteration of  
26 groundwater in a groundwater reservoir by saltwater or by other  
27 deleterious matter admitted from another stratum or from the

1 surface of the ground;

2 (E) wilfully or negligently causing, suffering,  
3 or allowing groundwater to escape or flow into any river, creek,  
4 natural watercourse, depression, lake, reservoir, drain, sewer,  
5 street, highway, road, or road ditch, or onto any land other than  
6 that of the owner of the well unless such discharge is authorized by  
7 permit, rule, or order issued by the commission under Chapter 26;

8 (F) groundwater pumped for irrigation that  
9 escapes as irrigation tailwater onto land other than that of the  
10 owner of the well unless permission has been granted by the occupant  
11 of the land receiving the discharge; or

12 (G) for water produced from an artesian well,  
13 "waste" has the meaning assigned by Section 11.205.

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

18 Sec. 8801.003. PURPOSE; LEGISLATIVE INTENT. (a) The  
19 purpose of this chapter is to provide for the regulation of  
20 groundwater withdrawal in the district to end subsidence, which  
21 contributes to or precipitates flooding or overflow of the  
22 district, including rising water resulting from a storm or  
23 hurricane.

24 (b) The legislature intends that the district shall  
25 administer and enforce this chapter and exercise the district's  
26 rights, powers, and duties in a manner that will effectively and  
27 expeditiously accomplish the purpose of this chapter.

1           Sec. 8801.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)  
2 The district is created to serve a public use and benefit.

3           (b) The works and projects accomplished by the district  
4 under powers conferred by Section 59, Article XVI, Texas  
5 Constitution, will benefit all the land and other property included  
6 in the district.

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

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

12           (2) [~~Subchapter J, Chapter 36, Water Code; or~~

13           ~~(3)~~] other law.

14           ~~[Sec. 8801.006. ADDITION OF ADJACENT COUNTY TO DISTRICT.~~

15           ~~(a) A county adjoining the district may be added to the district:~~

16           ~~(1) on application by the commissioners court of the~~  
17 ~~adjoining county; and~~

18           ~~(2) by complying with the procedures provided by~~  
19 ~~Subchapter K, Chapter 36, Water Code.~~

20           ~~(b) A county added to the district under this section is~~  
21 ~~subject to this chapter and the jurisdiction of the board.]~~

22           SUBCHAPTER B. DISTRICT ADMINISTRATION

23           Sec. 8801.051. DIRECTORS. (a) The district is governed by  
24 a board composed of 19 directors appointed as provided by this  
25 section. Directors serve for two-year, staggered terms. A  
26 director must be a qualified voter of the district.

27           (b) The mayor of the municipality with the largest

1 population of any municipality in the district shall appoint six  
2 directors from that municipality. One of those directors must be a  
3 representative of industry.

4 (c) The mayor of the municipality with the second largest  
5 population of any municipality in the district shall appoint one  
6 director from that municipality.

7 (d) The mayors of all municipalities in Galveston County  
8 shall jointly appoint two directors from those municipalities.

9 (e) The mayor of Baytown shall appoint one director from the  
10 municipality of Baytown.

11 (f) The Commissioners Court of Harris County shall appoint  
12 three directors who are not residents of the municipality that has  
13 the largest population of any municipality in the district. One of  
14 those directors must be a representative of agriculture, one must  
15 be a representative of industry, and one must be a representative of  
16 municipal utility districts and a resident of a municipal utility  
17 district in the district.

18 (g) The Commissioners Court of Galveston County shall  
19 appoint three directors. One of those directors must be a  
20 representative of municipal utility districts and a resident of a  
21 municipal utility district in the district.

22 (h) The president of the Clear Lake City Water Authority and  
23 the mayors of the municipalities of Deer Park, Galena Park, La  
24 Porte, Nassau Bay, and Seabrook shall jointly appoint one director  
25 from Harris County.

26 (i) The mayors of the municipalities of West University  
27 Place, Southside Place, Bellaire, and Jacinto City shall jointly

1 appoint one director from Harris County.

2 (j) The mayors of the municipalities of Humble, Piney Point  
3 Village, Hedwig Village, Bunker Hill Village, Hunters Creek  
4 Village, Hilshire Village, and Spring Valley shall jointly appoint  
5 one director from Harris County.

6 Sec. 8801.052. FEES OF OFFICE; REIMBURSEMENT. (a) A  
7 director is entitled to receive fees of office of not more than \$150  
8 a day for each day the director actually spends performing the  
9 duties of a director. The fees of office may not exceed \$9,000 a  
10 year.

11 (b) Each director is also entitled to receive reimbursement  
12 of actual expenses reasonably and necessarily incurred while  
13 engaging in activities on behalf of the district.

14 (c) In order to receive fees of office and to receive  
15 reimbursement for expenses, each director shall file with the  
16 district a verified statement showing the number of days actually  
17 spent in the service of the district and a general description of  
18 the duties performed for each day of service.

19 ~~[APPOINTMENT OF DIRECTORS ON ADDITION OF COUNTY TO~~  
20 ~~DISTRICT. (a) On addition of a county to the district under~~  
21 ~~Section 8801.006, two directors are added to the board as follows:~~

22 ~~(1) the commissioners court of the county added to the~~  
23 ~~district shall appoint one director, and~~

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

26 ~~(b) The directors added to the board under Subsection (a)~~  
27 ~~shall draw lots to establish staggered terms of office.]~~

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

5           (b) The board may adopt bylaws and policies to govern the  
6 affairs of the district to perform its purposes. The board shall  
7 also have the right to purchase all materials, supplies, equipment,  
8 vehicles, and machinery needed by the district to perform its  
9 purposes.

10          Sec. 8801.054. OFFICERS. (a) Each year, at the first  
11 meeting after the new directors take office, the directors shall  
12 select from among the directors a chairman [~~president~~], a  
13 vice-chairman [~~president~~], and a secretary.

14          (b) The chairman shall preside over meetings of the board  
15 and shall execute all documents on behalf of the district. The  
16 vice-chairman shall act as chairman in case of the absence or  
17 disability of the chairman. The secretary is responsible for  
18 seeing that all records and books of the district are properly kept  
19 and shall attest the chairman's signature on all documents. The  
20 board may authorize another director, the general manager, or any  
21 employee to execute documents on behalf of the district and to  
22 certify as to the authenticity of any record of the district.

23          Sec. 8801.055. MEETINGS. (a) The board shall hold regular  
24 meetings once each month at a time set by the board. The board may  
25 hold special meetings at the call of the chairman [~~president~~] or on  
26 the written request of at least three directors.

27          (b) A meeting of a committee of the board where less than a



1 quorum is present is not subject to the provisions of the Open  
2 Meetings Act, Chapter 551, Government Code.

3 (c) Notice of meetings of the board shall be given as set  
4 forth in the Open Meetings Act, Chapter 551, Government Code.  
5 Neither failure to provide notice of a regular meeting nor an  
6 insubstantial defect in notice of any meeting shall affect the  
7 validity of any action taken at the meeting.

8 Sec. 8801.0551. QUORUM. A majority of the membership of  
9 the board constitutes a quorum for any meeting, and a concurrence of  
10 a majority of the entire membership of the board is sufficient for  
11 transacting any business of the district.

12 Sec. 8801.0552. SWORN STATEMENT, BOND, AND OATH OF  
13 OFFICE. (a) As soon as practicable after a director is appointed,  
14 that director shall make the sworn statement prescribed by the  
15 constitution for public office.

16 (b) As soon as practicable after a director has made the  
17 sworn statement, and before beginning to perform the duties of  
18 office, that director shall take the oath of office prescribed by  
19 the constitution for public officers.

20 (c) Before beginning to perform the duties of office, each  
21 director shall execute a bond for \$10,000 payable to the district  
22 and conditioned on the faithful performance of that director's  
23 duties. All bonds of the directors shall be approved by the board  
24 and paid for by the district.

25 (d) The sworn statement shall be filed as prescribed by the  
26 constitution. The bond and oath shall be filed with the district  
27 and retained in its records. A duplicate original of the oath shall

1 also be filed with the secretary of state within 10 days after its  
2 execution and need not be filed before the new director begins to  
3 perform the duties of office.

4       Sec. 8801.056. VACANCIES. If a vacancy occurs on the  
5 board, a person representing the same area as the vacating director  
6 shall be appointed as provided by Section 8801.051 to serve the  
7 unexpired term.

8       Sec. 8801.057. GENERAL MANAGER. (a) The board shall  
9 employ a general manager, who serves as the chief administrative  
10 officer of the district. The board may delegate to the general  
11 manager full authority to manage and operate the affairs of the  
12 district subject only to orders of the board.

13       (b) The duties of the general manager include:

14             (1) administering board orders;

15             (2) coordinating with state, federal, and local  
16 agencies;

17             (3) overseeing development of district plans and  
18 programs; and

19             (4) performing other duties assigned by the board.

20       (c) The board shall determine the compensation and terms of  
21 office and employment for the general manager.

22       (d) The board by majority vote may discharge the general  
23 manager.

24       Sec. 8801.058. EMPLOYEES; BOND. (a) The general manager  
25 shall employ persons necessary to properly handle district business  
26 and operation. The general manager may employ attorneys,  
27 bookkeepers, engineers, and other expert and specialized personnel

1 considered necessary.

2 (b) The general manager shall determine the compensation  
3 paid to district employees.

4 (c) The general manager may discharge a district employee.

5 (d) The board shall require an employee who collects, pays,  
6 or handles district funds to furnish a good and sufficient bond.  
7 The bond must be in an amount sufficient to safeguard the district  
8 and must be:

9 (1) payable to the district; and

10 (2) conditioned on the faithful performance of the  
11 employee's duties and on accounting for all district funds and  
12 property in the employee's hands.

13 (e) The district shall pay for the bond described by  
14 Subsection (d).

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

18 (b) The board may establish a public retirement system in  
19 accordance with the provisions of Chapter 810, Government Code.  
20 The board may also provide for a deferred compensation plan  
21 described by Section 457 of the Internal Revenue Code of 1986 (26  
22 U.S.C. Section 457).

23 (c) The board may include hospitalization and medical  
24 benefits to its employees as part of the compensation paid to  
25 employees and may adopt any plan, rule, or regulation in connection  
26 with it and amend or change the plan, rule, or regulation as it may  
27 determine.

1       (d) The board may establish a sick leave pool for employees  
2 of the district in the same manner as that authorized for the  
3 creation of a sick leave pool for state employees by Subchapter A,  
4 Chapter 661, Government Code.

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

10       (b) Disbursements shall be signed by at least two directors,  
11 except the board may by resolution allow certain employees of the  
12 district, or a combination of employees and directors, to sign  
13 disbursements on behalf of the board.

14       Sec. 8801.061. FISCAL YEAR. The district shall be operated  
15 on the basis of a fiscal year equal to a calender year.

16       Sec. 8801.062. ANNUAL AUDIT. (a) Annually the board shall  
17 have an audit made of the financial condition of the district.

18       (b) The annual audit and other district records must be open  
19 to inspection during regular business hours at the principal office  
20 of the district.

21       Sec. 8801.063. ANNUAL BUDGET. (a) The board shall adopt an  
22 annual budget.

23       (b) The budget shall contain a complete financial  
24 statement, including a statement of:

- 25               (1) the outstanding obligations of the district;  
26               (2) the amount of cash on hand to the credit of each  
27 fund of the district;

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

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

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

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

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

10          (c) The annual budget may be amended on the board's  
11 approval.

12          Sec. 8801.064. DEPOSITORY. (a) The board shall name one or  
13 more banks to serve as depository for district funds.

14          (b) District funds shall be deposited as received with the  
15 depository bank and shall remain on deposit. This subsection does  
16 not limit the power of the board to place a portion of the  
17 district's funds on time deposit or to purchase certificates of  
18 deposit or other authorized investments.

19          (c) To the extent that funds in the depository are not  
20 insured by the Federal Deposit Insurance Corporation, they shall be  
21 secured in the manner provided by law for the security of funds by  
22 the Public Funds Collateral Act, Chapter 2257, Government Code.

23          Sec. 8801.065. INVESTMENTS. (a) Funds of the district may  
24 be invested and reinvested in accordance with the provisions of the  
25 Public Funds Investment Act, Chapter 2256, Government Code.

26          (b) The board, by resolution, may provide that an authorized  
27 representative of the district may invest and reinvest the funds of

1 the district and provide for money to be withdrawn from the  
2 appropriate accounts of the district for investments on such terms  
3 as the board considers advisable.

4 SUBCHAPTER C. POWERS AND DUTIES

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

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

17 Sec. 8801.102. OTHER LAWS NOT APPLICABLE. (a) Other laws  
18 governing the administration or operations of districts created  
19 under Section 52, Article III, or Section 59, Article XVI, Texas  
20 Constitution, including Chapters 36 and 49, Water Code, shall not  
21 apply to the district.

22 (b) Notwithstanding Section 36.052, Water Code, this  
23 chapter prevails over any other law in conflict or inconsistent  
24 with this chapter. [~~EXEMPTIONS. Sections 36.104, 36.114, 36.117,~~  
25 ~~and 36.201-36.204, Water Code, do not apply to the district.~~]

26 Sec. 8801.103. SALE OR DISTRIBUTION OF WATER PROHIBITED.  
27 The district may not sell or distribute surface water or

1 groundwater for any purpose.

2           Sec. 8801.104. AUTHORITY TO COMPEL TESTIMONY, ADMINISTER  
3 OATHS, AND ISSUE SUBPOENAS. If necessary to carry out its powers,  
4 duties, and functions under this chapter, the board may:

5                   (1) compel the testimony of a person;

6                   (2) administer an oath to a person compelled to  
7 testify before the board or a person designated by the board; and

8                   (3) issue a subpoena to compel the testimony of a  
9 person and the production of a document.

10           Sec. 8801.105. SUITS; REPRESENTATION BY ATTORNEY GENERAL.

11 (a) The district may sue and be sued in the courts of this state in  
12 the name of the district by and through the board. All courts shall  
13 take judicial notice of the creation of the district and of its  
14 boundaries.

15 (b) At the request of the district, the [The] attorney  
16 general shall defend the district in suits brought against the  
17 district in all district and appellate courts of this state and in  
18 the courts of the United States.

19 (c) Nothing in this chapter shall be construed to prohibit  
20 the district from engaging outside attorneys to initiate or defend  
21 suits on behalf of the district.

22 (d) The general manager shall be the agent of the district  
23 on whom process, notice, or demand required or permitted by law to  
24 be served upon the district may be served.

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

27 (f) If the district prevails in any suit other than a suit in

1 which it voluntarily intervenes, the district may seek and the  
2 court shall grant, in the same action, recover for attorney's fees,  
3 costs for expert witnesses, and other costs incurred by the  
4 district before the court. The amount of the attorney's fees shall  
5 be fixed by the court.

6       Sec. 8801.106. GRANTS; CONTRACTS. (a) The district may  
7 make or accept a grant, gratuity, advance, or loan in any form to or  
8 from any public source approved by the board, including a  
9 governmental entity, and may enter into a contract, agreement, or  
10 covenant that the board considers appropriate in connection with a  
11 grant, gratuity, advance, or loan.

12       (b) The district shall contract, and be contracted with, in  
13 the name of the district.

14       (c) The district may purchase property from any other  
15 governmental entity by negotiated contract without the necessity of  
16 securing appraisals or advertising for bids.

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

19       Sec. 8801.107. COOPERATION WITH GOVERNMENTAL ENTITIES. In  
20 implementing this chapter, the board may request the assistance of  
21 and cooperate with a local government or an agency of this state or  
22 of the United States.

23       Sec. 8801.108. RULES. (a) After notice and hearing, the  
24 board shall adopt rules designed to expeditiously and effectively  
25 implement this chapter and accomplish its purpose, including rules  
26 governing procedures before the board. The board may adopt rules  
27 intended to prevent the waste of groundwater or the degradation of



1 water quality. The board shall enforce the rules.

2 (b) The board shall compile its rules in a book and make the  
3 rules available for use and inspection at the district's principal  
4 office.

5 Sec. 8801.109. HEARINGS. (a) Board hearings must be  
6 conducted as provided by this section and Section 8801.110.

7 (b) At a regular meeting of the board, the board shall set  
8 the dates, times, and locations for hearings to be held under this  
9 chapter. The board may hold hearings at any location in the  
10 district and may recess a hearing from day to day.

11 (c) A person may appear at a hearing and present testimony,  
12 evidence, exhibits, or other information in person or by counsel,  
13 or both.

14 (d) The board may use hearing examiners to hear a subject  
15 set for the hearing, but the board must make the decision on the  
16 subject. Procedures for use of hearing examiners shall be provided  
17 by rule.

18 Sec. 8801.110. NOTICE OF HEARINGS. (a) Except as provided  
19 by this section, notice of hearings shall be provided according to  
20 Chapter 551, Government Code.

21 (b) At a meeting at which the board sets a hearing, the board  
22 shall direct the general manager of the district to give notice of  
23 the hearing.

24 (c) For hearings other than hearings on permit  
25 applications, written [~~Written~~] notice must be given to:

26 (1) each county and municipal government in the  
27 district; and

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

3           (d) Notice of a hearing must be published at least once in a  
4 newspaper of general circulation in each county in the district.

5           (e) A copy of the notice must be posted in the place where  
6 notices are usually posted at the county courthouse of each county  
7 in the district.

8           Sec. 8801.111. DISTRICT PLAN. (a) The board shall  
9 formulate a plan to control and prevent subsidence in the district.

10          (b) The plan must:

11           (1) reduce groundwater withdrawals to amounts that  
12 will restore and maintain sufficient artesian pressure to control  
13 and prevent subsidence; and

14           (2) specify in as much detail as practicable the acts,  
15 procedures, performance, and avoidance that are necessary to  
16 accomplish the purpose of this chapter.

17          (c) Information gathered for formulating the plan must  
18 include:

19           (1) a list of all wells in the district that are  
20 subject to regulation under this chapter;

21           (2) a list of all available sources of water, other  
22 than groundwater, in the district;

23           (3) the purposes for which the water described by  
24 Subdivision (2) is used and for which it is proposed to be used;

25           (4) accurate estimates of:

26           (A) groundwater withdrawal from all wells or  
27 proposed wells in the district;

1                   (B) the amount of groundwater that may be  
2 withdrawn from each area in the district without causing a  
3 reduction of artesian pressure that will lead to subsidence in the  
4 district; and

5                   (C) current and future water needs in the  
6 district;

7                   (5) information relating to formulating a permit  
8 system; and

9                   (6) other information and material necessary to manage  
10 groundwater in the district and to effectively and expeditiously  
11 accomplish the purpose of this chapter.

12           Sec. 8801.112. ADOPTION OF DISTRICT PLAN. (a) The board  
13 shall hold a hearing to consider a plan formulated under Section  
14 8801.111.

15           (b) After the hearing, the board shall:

16                   (1) make any changes it considers necessary according  
17 to evidence and material presented at the hearing; and

18                   (2) adopt the plan.

19           (c) The board may amend or repeal a plan adopted under this  
20 section and may adopt a new plan as provided by this section for the  
21 adoption of the original plan.

22           (d) An adopted plan remains in effect until a new plan is  
23 adopted.

24           Sec. 8801.113. WATER CONSERVATION MEASURES. (a) The  
25 board may adopt rules requiring the use of water conservation  
26 measures to reduce groundwater withdrawals.

27           (b) The district may cooperate with the commission and any

1 local government to establish water conservation goals,  
2 guidelines, and plans to be used in the district.

3 (c) The district may contract with a local government in the  
4 district to provide services needed to meet water conservation  
5 requirements that the commission establishes.

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

11 (b) The district may collect any information the board deems  
12 necessary, including information regarding the use of groundwater,  
13 water conservation, and the practicability of recharging a  
14 groundwater reservoir.

15 Sec. 8801.115. STUDIES BY BOARD STAFF. At least once each  
16 year and at any other time the board considers necessary, the board  
17 shall have its staff and, if necessary, the staff of the Texas Water  
18 Development Board make a complete study of the groundwater in the  
19 district and determine:

20 (1) the water level;

21 (2) the rates and amounts of groundwater withdrawal;

22 and

23 (3) other information relating to groundwater  
24 withdrawal that may effect subsidence in the district.

25 Sec. 8801.116. ACCESS TO PROPERTY. (a) To perform  
26 technical and other investigations needed to implement this  
27 chapter, the board and its agents and employees are entitled to

1 access to all property in the district.

2 (b) Before entering property for the purposes of this  
3 section, the person seeking access shall:

4 (1) give notice to the owner of the property as  
5 provided by district rules; and

6 (2) present proper credentials.

7 (c) The board and its agents and employees who enter private  
8 property shall observe the establishment's rules concerning  
9 safety, internal security, and fire protection.

10 Sec. 8801.117. ANNUAL GROUNDWATER WITHDRAWAL  
11 DETERMINATION. (a) Not later than March 31 of each year, the board  
12 shall hold a hearing to determine the effects of groundwater  
13 withdrawal during the preceding calendar year on subsidence in the  
14 district.

15 (b) At the hearing, the board shall consider information  
16 provided under Sections 8801.115 and 8801.162 and information  
17 presented by persons appearing before the board.

18 (c) After the hearing, the board shall:

19 (1) consider all information presented to it;

20 (2) determine groundwater withdrawal in the district  
21 during the preceding calendar year; and

22 (3) make findings on the effects of groundwater  
23 withdrawal during the preceding calendar year on subsidence in the  
24 district.

25 (d) The board's findings and determinations under  
26 Subsection (c) shall be included in a report adopted by the board.  
27 The board shall make the report available for examination by any

1 interested person.

2 (e) The report adopted under Subsection (d) shall be  
3 submitted to the appropriate regional water planning group along  
4 with a copy of the most recently approved district plan adopted  
5 under Section 8801.112.

6 Sec. 8801.118. MONITORING AND SUPERVISION BY DISTRICT. (a)  
7 The district may use subsidence compaction monitors, water-level  
8 observation wells, and other materials and equipment to determine  
9 the amount of groundwater that may be withdrawn while allowing  
10 groundwater to rebound and stabilize to a level that will halt  
11 subsidence.

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

17 Sec. 8801.119. REGULATION OF SPACING AND GROUNDWATER  
18 WITHDRAWAL. (a) To minimize as far as practicable the drawdown of  
19 the water table and the reduction of artesian pressure and to  
20 control and prevent subsidence, the board may provide for the  
21 spacing of wells in the district and may regulate groundwater  
22 withdrawal from wells, taking into consideration the economic  
23 impact on well owners, the resulting effect on subsidence, and  
24 other relevant factors.

25 (b) Before issuing an order or rule under this section, the  
26 board shall set a hearing on the proposed order or rule.

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

1           (1) each aquifer, subdivision of an aquifer, or  
2 geologic strata located in whole or in part within the boundaries of  
3 the district; or

4           (2) each geographic area overlying an aquifer or  
5 subdivision of an aquifer located in whole or in part within the  
6 boundaries of the district.

7           Sec. 8801.120. WATER-METERING DEVICES. The board may  
8 require water-metering devices to be placed on wells in the  
9 district and may adopt standards for meter accuracy, testing, and  
10 calibration.

11           Sec. 8801.121. POLICIES. The board shall adopt the  
12 following in writing:

13           (1) a code of ethics for district directors, officers,  
14 employees, and persons who are engaged in handling investments for  
15 the district;

16           (2) a policy relating to travel expenditures;

17           (3) a policy relating to district investments;

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

20           (5) policies that ensure a better use of management  
21 information, including:

22           (A) budgets for use in planning and controlling  
23 cost;

24           (B) an audit or finance committee of the board;  
25 and

26           (C) uniform reporting requirements that use  
27 "Audits of State and Local Governmental Units" as a guide on audit

1 working papers and that uses "Governmental Accounting and Financial  
2 Reporting Standards."

3 Sec. 8801.122. RECORDS. The board shall keep a complete  
4 account of all its meetings and proceedings and shall preserve its  
5 minutes, contracts, records, notices, accounts, receipts, and  
6 other records in a safe place.

7 Sec. 8801.123. OPEN OR UNCOVERED WELLS. (a) The district  
8 may require the owner or lessee of land on which an open or  
9 uncovered well is located to keep the well permanently closed or  
10 capped with a covering capable of sustaining weight of at least 400  
11 pounds, except when the well is in actual use.

12 (b) If the owner or lessee fails or refuses to close or cap  
13 the well, any person, firm, or corporation employed by the district  
14 may go on the land and close or cap the well safely and securely.

15 SUBCHAPTER D. REGULATORY PROVISIONS

16 Sec. 8801.151. GROUNDWATER WITHDRAWALS SUBJECT TO BOARD  
17 RULE. Groundwater withdrawals governed by this chapter are  
18 subject to reasonable board rules and orders, taking into account  
19 all factors, including availability of surface water, economic  
20 impact on persons and the community, degree and effect of  
21 subsidence on the surface of land, and differing topographical and  
22 geophysical characteristics of land areas in the district.

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

25 (1) a well regulated under Chapter 27, Water Code;

26 (2) a well with a casing diameter of less than five  
27 inches that solely serves a single-family dwelling; and



1 (3) any other well as provided by board rule.

2 Sec. 8801.153. RESTRICTION ON REQUIREMENTS FOR CERTAIN  
3 MUNICIPALITIES. The board may require a municipality with a  
4 population of less than 100,000 to reduce its groundwater  
5 withdrawal by more than 50 percent in a three-year period only if  
6 the board determines at a public hearing that the reduction:

7 (1) would not cause the municipality to have an  
8 inadequate supply of water for its residents; and

9 (2) would not cause an increase of 50 percent or more  
10 in water rates for the municipality or its residents.

11 Sec. 8801.154. WELL REGISTRATION. The board by rule may  
12 require the registration of any well in the district.

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

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

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

19 (3) operating the well.

20 (b) A well must remain permitted as long as the well is  
21 operational.

22 (c) A violation occurs on the first day the drilling,  
23 alteration, or operation begins, and each day of a continuing  
24 violation constitutes a separate violation.

25 Sec. 8801.156. APPLICATION FOR PERMIT. (a) A person must  
26 submit an application to the board to obtain a permit under this  
27 chapter.

1 (b) The application must state:

2 (1) the name and address of the person requesting the  
3 permit;

4 (2) the location and wellhead elevation of the well or  
5 proposed well;

6 (3) the amount of water being withdrawn or proposed to  
7 be withdrawn; and

8 (4) any other information necessary for the board to  
9 control and prevent subsidence in the district.

10 (c) The board shall set a reasonable fee for processing an  
11 application. The application must be accompanied by the fee.

12 Sec. 8801.157. NOTICE AND HEARING ON PERMIT. (a) On  
13 receiving an application for a permit, the board shall issue notice  
14 and set a time for a hearing on the application.

15 (b) The board must give written notice of the date, time,  
16 and location of the hearing to the applicant [~~by certified mail,~~  
17 ~~return receipt requested~~]. Notice to the applicant may be given by  
18 regular mail or by certified mail, return receipt requested.

19 (c) The board may consider as many applications for permits  
20 as necessary at a hearing.

21 Sec. 8801.158. ISSUANCE OF PERMIT. (a) Within a  
22 reasonable period after a permit hearing under Section 8801.157,  
23 but not later than the 60th day after the date of the hearing, the  
24 board shall:

25 (1) decide whether to issue the permit; and

26 (2) set the terms of the permit if it decides to issue  
27 the permit.

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

3 (1) the purpose of this chapter;

4 (2) the district plan;

5 (3) the quality, quantity, and availability of surface  
6 water at prices that are competitive with prices charged by  
7 suppliers of surface water in the district;

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

11 (5) the applicant's use of water conservation  
12 measures; ~~and~~

13 (6) the applicant's compliance with the requirements  
14 of this chapter or any rule, permit, or other order of the district;  
15 and

16 (7) all other relevant factors.

17 (c) The board shall issue a permit to an applicant if, on  
18 presentation of adequate proof, the board finds that:

19 (1) there is no other adequate and available  
20 substitute or supplemental source of surface water at prices  
21 competitive with the prices charged by suppliers of surface water  
22 in the district; and

23 (2) compliance with any provision of this chapter or  
24 any district rule will result in an arbitrary taking of property or  
25 in the practical closing and elimination of a lawful business,  
26 occupation, or activity without sufficient corresponding benefit  
27 or advantage to the public.

1 (d) The permit must state the terms prescribed by the board.

2 The permit must include:

3 (1) the name and address of the person to whom the  
4 permit is issued;

5 (2) the location of the well;

6 (3) the date the permit expires;

7 (4) conditions and restrictions placed on groundwater  
8 withdrawal; and

9 (5) other terms necessary to control and prevent  
10 subsidence.

11 (e) The board may condition issuance of a permit on the  
12 resolution, including by payment of a civil penalty, of a prior or  
13 continuing violation of this chapter or any rule, permit, or order  
14 of the district.

15 Sec. 8801.159. TERM OF PERMIT. (a) A permit issued under  
16 this chapter may be for a term not to exceed five years as set by the  
17 board.

18 (b) A permit does not become a vested right of the permit  
19 holder. The board may revoke or suspend a permit or amend its terms  
20 after notice and hearing when reasonably necessary to accomplish  
21 the purpose of this chapter.

22 Sec. 8801.160. RENEWAL OF PERMIT. The board may renew a  
23 permit for a well in the manner provided for obtaining the original  
24 permit.

25 Sec. 8801.161. PERMIT FEES. (a) When the board issues or  
26 renews a permit, the board shall collect a permit fee from the  
27 applicant. The fee shall be determined by a schedule based on the

1 term of the permit and the maximum annual amount of groundwater that  
2 the board authorizes to be withdrawn from the well. In addition to  
3 the regular permit fee described above, the board may also  
4 establish a disincentive permit fee to serve as a regulatory tool by  
5 creating a disincentive to continued over-reliance on groundwater.

6 (b) The board shall determine the amount of a regular or  
7 disincentive permit fee after a hearing. The regular permit fee may  
8 not exceed 110 percent of the highest rate that the City of Houston  
9 charges for surface water supplied to its customers in the  
10 district.

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

13 ~~(1)] 70 percent of the lowest amount determined under~~  
14 ~~Subsection (b) [+~~

15 ~~(2) 70 percent of a base amount of one cent for each~~  
16 ~~thousand gallons authorized to be withdrawn, except that the board~~  
17 ~~may adjust the base amount annually to account for increases since~~  
18 ~~1992 in the most recently published Consumer Price Index for All~~  
19 ~~Urban Consumers, All Items (Houston, Texas, Average), as compiled~~  
20 ~~by the Bureau of Labor Statistics, United States Department of~~  
21 ~~Labor, or~~

22 ~~(3) the amount determined in accordance with~~  
23 ~~Subsection (d)].~~

24 (d) The district may set fees for administrative acts of the  
25 district, such as receiving applications for permits or permit  
26 amendments. ~~[At a hearing, the board shall calculate and express as~~  
27 ~~a percentage the relative contribution to subsidence by wells used~~

1 ~~for irrigating agricultural crops and wells used for other~~  
2 ~~purposes. The board shall use information prepared by the United~~  
3 ~~States Geological Survey, which is presumed to be correct. The~~  
4 ~~permit fee for wells used for irrigating agricultural crops must be~~  
5 ~~such that the percentage of total permit fee revenue that permit fee~~  
6 ~~revenue from those wells represents equals the percentage that~~  
7 ~~agricultural use contributes to subsidence.]~~

8 (e) The board shall use permit fees collected under this  
9 section to pay the cost of issuing permits and performing other  
10 regulatory functions, including, without limitation, making  
11 grants, loans, or contractual payments to achieve, facilitate, or  
12 expedite reductions in groundwater pumping or the development or  
13 distribution of alternative water supplies.

14 Sec. 8801.162. ANNUAL REPORT. Before January 31 each year,  
15 a well owner who holds a permit under this chapter shall submit to  
16 the board a report stating:

- 17 (1) the well owner's name;
- 18 (2) the total amount of groundwater withdrawn from the  
19 well during the preceding 12-month period;
- 20 (3) the total amount of groundwater withdrawn from the  
21 well during each month of the preceding 12-month period;
- 22 (4) the purpose for which the groundwater was used;
- 23 and
- 24 (5) any other information the board considers  
25 necessary.

26 Sec. 8801.163. CONVERSION TO SURFACE WATER. (a) In this  
27 section, "alternative water supply" means a water supply that a

1 person needs to acquire from sources other than the person's own  
2 groundwater supply to comply with a board order issued under this  
3 section.

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

7 (1) acquire [a] an alternative water supply [composed  
8 of surface water] needed to replace the water supply covered by the  
9 order; or

10 (2) participate in a groundwater reduction plan or  
11 other agreement recognized by the board as achieving compliance  
12 with the district's regulatory requirements.

13 (c) A notice of public hearing must inform a person when the  
14 board will consider an order to convert to surface water.

15 ~~(d) [In addition to the percentage of groundwater that a~~  
16 ~~board order authorizes a person to use, the person may use in the~~  
17 ~~current permit year a percentage of groundwater that is equal to the~~  
18 ~~percentage result of multiplying the annual average percentage of~~  
19 ~~groundwater, as determined under Section 8801.164(d), delivered to~~  
20 ~~the person during the preceding permit year by the total percentage~~  
21 ~~of alternative water supply required by the board's order for the~~  
22 ~~current year.~~

23 ~~(e)]~~ This section does not limit the board's authority to  
24 issue an order or adopt a rule requiring a person to reduce  
25 groundwater use by eliminating waste or implementing water  
26 conservation.

27 ~~[Sec. 8801.164. MONITORING OF ALTERNATIVE WATER SUPPLY.]~~

1 ~~(a) In this section, "alternative water supply" has the meaning~~  
2 ~~assigned by Section 8801.163.~~

3 ~~(b) If a person who is issued an order under Section~~  
4 ~~8801.163 acquires an alternative water supply and files with the~~  
5 ~~commission a written request for monitoring the supply, the~~  
6 ~~commission shall monitor annually the water delivered to the person~~  
7 ~~from the date of the request to the expiration of the annual permit~~  
8 ~~to determine the percentage of the water that is surface water and~~  
9 ~~the percentage that is groundwater.~~

10 ~~(c) If required under Subsection (b) to monitor water~~  
11 ~~deliveries, the commission shall monitor the deliveries at random~~  
12 ~~times at all points of connection between the purchaser's and~~  
13 ~~seller's water systems. Samples taken through monitoring must be~~  
14 ~~analyzed by water chemists employed by or contracting with the~~  
15 ~~commission. The water chemist making each analysis shall issue a~~  
16 ~~certified written analysis of the percentages of surface water and~~  
17 ~~groundwater included in the sample.~~

18 ~~(d) Not later than the 15th day after the last day of each~~  
19 ~~permit year, the commission shall issue a certified written~~  
20 ~~analysis based on all samples collected that states the annual~~  
21 ~~average percentages of surface water and groundwater that the~~  
22 ~~seller provided to the purchaser for the permit year.~~

23 ~~(e) The commission shall make results of an analysis under~~  
24 ~~this section available on request to the purchaser, seller, or~~  
25 ~~board.~~

26 ~~(f) The commission shall assess reasonable fees to cover the~~  
27 ~~costs of water sampling and analysis under this section. The~~



1 ~~commission shall assess one-half of the fees to the purchaser and~~  
2 ~~one-half to the seller.]~~

3 SUBCHAPTER E. APPEAL AND ENFORCEMENT PROVISIONS

4 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A  
5 person who is required to convert to surface water under this  
6 chapter and who purchases that water supply wholesale from a  
7 political subdivision as defined by Section 12.013(b), Water Code,  
8 may appeal to the commission the rates the political subdivision  
9 charges to the person. Chapter 12, Water Code, and rules adopted  
10 under that chapter apply to an appeal under this section.

11 (b) The commission shall hear the appeal not later than the  
12 180th day after the date the appeal is filed.

13 (c) The commission shall issue a final decision on the  
14 appeal not later than the 60th day after the date the hearing ends.

15 Sec. 8801.202. APPEAL OF DISTRICT ACTIONS. (a) A person  
16 who is adversely affected by rule, order, or other official action  
17 of the district under this chapter, including a person residing in  
18 or owning real property in the district whose residence or real  
19 property is subsiding, may appeal the action in a district court in  
20 any county in the district. The suit may only be filed after all  
21 administrative appeals to the district are final. An appeal under  
22 this section must be filed not later than the 45th day after the  
23 date the final action is taken.

24 (b) On a written request from a person residing in or owning  
25 real property in the district, the board shall make written  
26 findings and conclusions regarding a rule, order, or other official  
27 action of the district. The board shall provide certified copies of

1 those findings and conclusions to the person not later than the 35th  
2 day after the date the board receives the request.

3 (c) An appeal under this section is governed by the  
4 substantial evidence rule as provided by Subchapter G, Chapter  
5 2001, Government Code. The burden of proof is on the petitioner,  
6 and the challenged law, rule, order, or act shall be deemed prima  
7 facie valid.

8 (d) A suit brought under this section shall be advanced for  
9 trial and determined as expeditiously as possible. No postponement  
10 or continuance shall be granted except for reasons considered  
11 imperative by the court.

12 [~~Sec. 8801.203. ALTERNATIVE APPEAL OF CERTAIN DISTRICT~~  
13 ~~ACTIONS TO COMMISSION. (a) As an alternative to the appeal~~  
14 ~~procedure provided by Section 8801.202, a person who is granted a~~  
15 ~~permit authorizing groundwater withdrawal in an amount less than~~  
16 ~~the person requested may appeal the board's final decision to the~~  
17 ~~commission. The person must file the appeal not later than the 60th~~  
18 ~~day after the date the board issues its final order.~~

19 ~~(b) On a written request from a person proposing to appeal~~  
20 ~~an order under this section, the board shall make written findings~~  
21 ~~and conclusions regarding the order. The board shall provide~~  
22 ~~certified copies of the findings and conclusions to the person not~~  
23 ~~later than the 35th day after the date the board receives the~~  
24 ~~request.~~

25 ~~(c) The effect of a board order is stayed until the~~  
26 ~~commission's decision on an appeal under this section is final.~~

27 ~~(d) An appeal to the commission under this section is~~

1 ~~governed by the substantial evidence rule as provided by Subchapter~~  
2 ~~G, Chapter 2001, Government Code.~~

3 ~~(c) The commission may:~~

4 ~~(1) adopt rules necessary to implement this section,~~  
5 ~~and~~

6 ~~(2) adopt and assess reasonable and necessary fees~~  
7 ~~adequate to recover the commission's costs in administering this~~  
8 ~~section.~~

9 ~~(f) An appeal of a final commission decision is to a~~  
10 ~~district court in Travis County. The appeal shall be under the~~  
11 ~~substantial evidence rule. A party appealing a decision of the~~  
12 ~~district court is not required to provide an appeal bond.]~~

13 Sec. 8801.204. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If it  
14 appears that a person has violated or is violating or threatening to  
15 violate this chapter or a rule, permit, or other order of the  
16 district issued or adopted under this chapter, the district may  
17 institute an action in a district court in the district for:

18 (1) injunctive relief to restrain the person from  
19 continuing the violation or threat of violation;

20 (2) the assessment and recovery of a civil penalty of  
21 not less than \$50 and not more than \$5,000 for each violation and  
22 for each day of a continuing violation; or

23 (3) both injunctive relief and civil penalties.

24 (b) On application for injunctive relief and a finding that  
25 a person is violating or threatening to violate this chapter or a  
26 rule, permit, or other order of the district issued or adopted under  
27 this chapter, the district court shall grant injunctive relief as

1 the facts warrant.

2 (c) At the request of the board, or the general manager if  
3 authorized by the board, the attorney general shall institute and  
4 conduct an action in the name of the district for injunctive relief  
5 or to recover a civil penalty, or both.

6 (d) The district is not required to post a bond or other  
7 security with the court.

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

13 SECTION 2. Chapter 1045, 1989 Tex. Gen. Laws 4251 (H.B. No.  
14 2819), is amended to read as follows:

15 Section 1. PURPOSE AND INTENT. (a) The purpose of this Act  
16 is to provide for the regulation of the withdrawal of groundwater  
17 within the district created by this Act to prevent subsidence,  
18 which ~~that~~ contributes to or precipitates flooding, inundation,  
19 or overflow of areas within the district, including rising waters  
20 resulting from storms or hurricanes.

21 (b) It is the intent of the legislature that the district  
22 created by this Act shall administer and enforce the terms of this  
23 Act and shall exercise its rights, powers, and duties in a manner  
24 that will effectively and expeditiously accomplish the purposes of  
25 this Act.

26 Section 2. DEFINITIONS. In this Act:

27 (1) "Person" includes a corporation, individual,

1 organization, government, governmental subdivision or agency,  
2 business trust, estate, trust partnership, or association, and any  
3 other legal entity.

4 (2) "District" means the Fort Bend Subsidence  
5 District.

6 (3) "Board" means the board of directors of the Fort  
7 Bend Subsidence District.

8 (4) "Groundwater" means water existing below the  
9 earth's surface within the district, but does not include water  
10 produced with oil in the production of oil and gas.

11 (5) "Well" means a facility, device, or method used to  
12 withdraw groundwater.

13 (6) "Withdraw" means the act of extracting groundwater  
14 by pumping or some other method.

15 (7) "Drill" means drilling, equipping, or completing  
16 wells or substantially altering the size of wells or well pumps.

17 (8) "Subsidence" means the lowering in elevation of  
18 the surface of land by the withdrawal of groundwater.

19 (9) "Commission" means the Texas ~~Water~~ Commission on  
20 Environmental Quality.

21 (10) "Agricultural crop" means food or fiber  
22 commodities grown for resale or commercial purposes, that provide  
23 food, clothing, or animal feed, and also includes nursery products  
24 and florist items while in the hands of a nursery grower.

25 (11) "Florist item" means a cut flower, potted plant,  
26 blooming plant, inside foliage plant, bedding plant, corsage  
27 flower, cut foliage, floral decoration, or live decorative

1 material.

2 (12) "Nursery grower" means a person who grows, in any  
3 medium, more than 50 percent of the nursery products or florist  
4 items that the person either sells or leases, regardless of the  
5 variety sold, leased, or grown. For the purposes of this  
6 definition, "grow" means the actual cultivation or propagation of  
7 the nursery product or florist item beyond the mere holding or  
8 maintaining of the item prior to sale or lease and typically  
9 includes activities associated with the production or multiplying  
10 of stock such as the development of new plants from cuttings,  
11 grafts, plugs, or seedlings.

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

16 (14) "Beneficial use" means use for:

17 (A) agricultural, gardening, domestic, stock  
18 raising, municipal, mining, manufacturing, industrial, commercial,  
19 recreational, or pleasure purposes;

20 (B) exploring for, producing, handling, or  
21 treating oil, gas, sulphur, or other minerals; or

22 (C) any other purpose that is useful and  
23 beneficial to the user.

24 (15) "Waste" means any one or more of the following:

25 (A) withdrawal of groundwater from a groundwater  
26 reservoir at a rate and in an amount that causes or threatens to  
27 cause intrusion into the reservoir of water unsuitable for

1 agricultural, gardening, domestic, or stock raising purposes;

2 (B) the flowing or producing of wells from a  
3 groundwater reservoir if the water produced is not used for a  
4 beneficial use or if the amount used is more than is reasonably  
5 required for a beneficial use;

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

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

13 (E) wilfully or negligently causing, suffering,  
14 or allowing groundwater to escape or flow into any river, creek,  
15 natural watercourse, depression, lake, reservoir, drain, sewer,  
16 street, highway, road, or road ditch, or onto any land other than  
17 that of the owner of the well unless such discharge is authorized by  
18 permit, rule, or order issued by the commission under Chapter 26;

19 (F) groundwater pumped for irrigation that  
20 escapes as irrigation tailwater onto land other than that of the  
21 owner of the well unless permission has been granted by the occupant  
22 of the land receiving the discharge; or

23 (G) for water produced from an artesian well,  
24 "waste" has the meaning assigned by Section 11.205.

25 Section 3. CREATION; FINDING OF BENEFIT AND PUBLIC PURPOSE.

26 (a) Under Article XVI, Section 59, of the Texas Constitution, a  
27 conservation and reclamation district is created to be known as the

1 Fort Bend Subsidence District. The district is a governmental  
2 agency, a political subdivision of the state, and a body politic and  
3 corporate.

4 (b) The district is created to serve a public use and  
5 benefit.

6 Section 4. BOUNDARIES. [~~(a)~~] The district includes all of  
7 the territory within Fort Bend County.

8 [~~(b) An adjoining county may be added to the district on~~  
9 ~~application of the commissioners court of the adjoining county and~~  
10 ~~compliance with the applicable provisions of Sections~~  
11 ~~55.730-55.744, Water Code.~~

12 [~~(c) The proposition on the ballots for an election to add~~  
13 ~~an adjoining county to the district shall be printed to permit~~  
14 ~~voting for or against the proposition: "Addition of \_\_\_\_\_ County to~~  
15 ~~the Fort Bend Subsidence District."~~

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

18 Section 5. BOARD OF DIRECTORS. (a) The district is  
19 governed by a board of 13 directors.

20 (b) One director from each of the following cities in Fort  
21 Bend County shall be appointed by the mayor of the respective city:

- 22 (1) Houston;
- 23 (2) Missouri City;
- 24 (3) Stafford;
- 25 (4) Sugar Land;
- 26 (5) Rosenberg; and
- 27 (6) Richmond.



1 (c) The Commissioners Court of Fort Bend County shall  
2 appoint two directors who represent agricultural interests and live  
3 in an unincorporated area, two directors who represent industrial  
4 interests, and two directors who represent business interests.

5 (d) One director shall be appointed by the mayors of the  
6 incorporated cities within the county not listed in Subsection (b)  
7 of this section.

8 ~~(e) [If an adjoining county is added to the district, four  
9 members shall be added to the board. Two members shall be chosen by  
10 the commissioners court of the county added to the district. One  
11 member each shall be chosen by the mayors of the two cities in the  
12 county added to the district that have the largest populations  
13 according to the most recent federal decennial census. The four new  
14 members shall draw lots to establish staggered terms of office.~~

15 ~~(f)]~~ All directors must be residents of and qualified voters  
16 in the district.

17 ~~[(g) The county judge of Fort Bend County shall set a date,  
18 time, and place for a meeting of the persons designated in  
19 Subsections (b), (c), and (d) of this section to choose the initial  
20 directors. The county judge shall choose a date not later than the  
21 30th day after the effective date of this Act. The county judge  
22 shall mail notices of the meeting to the persons designated to  
23 choose the directors. The county judge shall appoint a person to  
24 preside at the meeting. The directors chosen at the meeting shall  
25 assume their positions not later than the fifth day after the date  
26 of the meeting.]~~

27 ~~[(h)]~~ (f) Selection of subsequent directors shall be made

1 ~~[on the second Monday in]~~ each January ~~[at 11 a.m. in the district's~~  
2 ~~main office]~~. Not later than the 20th day before the date of the the  
3 board's January meeting, the district shall mail notice ~~[of the~~  
4 ~~meeting]~~ to the persons designated in Subsections (b), (c), and  
5 (d) ~~[, and (e)]~~ of this section to choose directors.

6 ~~[(i)]~~ (g) The terms of office for the initial directors  
7 shall be as follows:

8 (1) five members chosen under Subsection (b) of this  
9 section and four members chosen under Subsection (c) of this  
10 section shall serve for terms expiring January 31, 1991; and

11 (2) one member chosen under Subsection (b) of this  
12 section, two members chosen under Subsection (c) of this section,  
13 and the member chosen under Subsection (d) of this section shall  
14 serve for terms expiring January 31, 1990.

15 ~~[(j)]~~ (h) Except as provided by Subsection ~~[(i)]~~ (g) of this  
16 section, members of the board shall serve for terms of two years.

17 ~~[(k) At the time the county judge of Fort Bend County sets~~  
18 ~~the meeting required by Subsection (g) of this section, the county~~  
19 ~~judge shall set the date, time, and place for the initial meeting of~~  
20 ~~the board. No later than the 20th day before the date of the initial~~  
21 ~~meeting of the board, the county judge shall mail notices of the~~  
22 ~~meeting to the initial directors.]~~

23 ~~[(l)]~~ (i) ~~[At the initial meeting of the board and each]~~  
24 Each year at the first meeting after new directors take office, the  
25 directors shall select a chairman, a vice-chairman, and a  
26 secretary. The chairman, vice-chairman, and secretary shall serve  
27 at the pleasure of the board and may be removed and replaced by a

1 majority of the board at any time.

2 ~~[(m)]~~ (j) The chairman shall preside over meetings of the  
3 board. If the chairman is not present, the vice-chairman shall  
4 preside.

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

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

23 ~~[(p)]~~ (m) Each director shall make the sworn statement and  
24 take 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 his duties. The district shall pay for the

1 bond.

2 [~~(g)~~] (n) A majority of the directors constitute a quorum  
3 for transaction of business of the district. An official act of the  
4 board is not valid without the affirmative vote of a majority of the  
5 directors.

6 [~~(r)~~] (o) The board shall hold one regular meeting each  
7 month at a time set by the board. The board may hold special  
8 meetings at the call of the chairman or on the written request of at  
9 least three directors. A meeting of a committee of the board where  
10 less than a quorum is present is not subject to the provisions of  
11 the Open Meetings Act, Chapter 551, Government Code. Notice of  
12 meetings of the board shall be given as set forth in the Open  
13 Meetings Act, Chapter 551, Government Code. Neither failure to  
14 provide notice of a regular meeting nor an insubstantial defect in  
15 notice of any meeting shall affect the validity of any action taken  
16 at the meeting.

17 Section 6. POWERS AND DUTIES IN GENERAL; OTHER LAWS NOT  
18 APPLICABLE. (a) The board shall administer this Act as provided by  
19 Section 1 of this Act.

20 (b) Withdrawals of groundwater covered by this Act are  
21 subject to reasonable rules, regulations, and orders adopted by the  
22 board.

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

- 25 (1) availability of surface water;  
26 (2) economic impact on persons and the community;  
27 (3) degree and effect of subsidence on the surface of

1 the land; and

2 (4) differing topographical and geophysical  
3 characteristics of the land.

4 (d) In addition to the powers and duties described by this  
5 Act, the [The] board has all other powers necessary or convenient to  
6 carry out its responsibilities and achieve the purpose of this Act,  
7 whether such powers are specifically authorized by this Act or  
8 implied by this Act or other law.

9 (e) Other laws governing the administration or operation of  
10 districts created under Section 52, Article III, or Section 59,  
11 Article XVI, Texas Constitution, including Chapters 36 and 49,  
12 Water Code, shall not apply to the district. Notwithstanding  
13 Section 36.052, Water Code, this Act prevails over any other law in  
14 conflict or inconsistent with this Act.

15 (f) The board may adopt bylaws and policies to govern the  
16 affairs of the district to perform its purposes. The board shall  
17 also have the right to purchase all materials, supplies, equipment,  
18 vehicles, and machinery needed by the district to perform its  
19 purposes.

20 (g) The board shall adopt the following in writing:

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

24 (2) a policy relating to travel expenditures;

25 (3) a policy relating to district investments;

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

1           (5) policies that ensure a better use of management  
2 information, including:

3                   (A) budgets for use in planning and controlling  
4 cost;

5                   (B) an audit or finance committee of the board;  
6 and

7                   (C) uniform reporting requirements that use  
8 "Audits of State and Local Governmental Units" as a guide on audit  
9 working papers and that uses "Governmental Accounting and Financial  
10 Reporting Standards."

11           Section 7. GENERAL MANAGER. (a) The board may employ a  
12 general manager who shall be the chief administrative officer of  
13 the district. The board may delegate to the general manager the  
14 authority to manage and operate the affairs of the district subject  
15 only to orders of the board.

16           (b) The duties of the general manager include:

17                   (1) administration of the orders of the board;

18                   (2) coordination with state, federal, and local  
19 agencies;

20                   (3) supervision of the development of plans and  
21 programs of the district;

22                   (4) preparation and submission of the annual budget to  
23 the board; and

24                   (5) other duties assigned by the board.

25           (c) The general manager shall execute a bond in an amount  
26 determined by the board payable to the district, conditioned on the  
27 faithful performance of his duties. The district shall pay for the

1 bond.

2 (d) The district may contract with any person to perform the  
3 duties of general manager.

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

7 Section 8. EMPLOYEES; BENEFITS. (a) The [~~board~~] general  
8 manager shall employ personnel necessary for the proper handling of  
9 the business and operation of the district and may employ  
10 attorneys, bookkeepers, engineers, and other expert and  
11 specialized personnel that are considered necessary. The [~~board~~]  
12 general manager shall determine the compensation to be paid by the  
13 district to the employees.

14 (b) [~~The board shall determine the term of office of and the~~  
15 ~~compensation to be paid to the general manager. The board may~~  
16 ~~discharge the general manager by a majority vote.~~] The [~~board~~]  
17 general manager may discharge employees of the district.

18 (c) The board shall require an employee who collects, pays,  
19 or handles funds of the district to furnish good and sufficient  
20 bond, payable to the district, for a sufficient amount to safeguard  
21 the district. The bond shall be conditioned on the faithful  
22 performance of the employee's duties and on accounting for all  
23 funds and property of the district under the employee's control.  
24 The district shall pay for the bond.

25 (d) The board may provide for and administer retirement,  
26 disability, and death compensation funds for the employees of the  
27 district. The board may establish a public retirement system in

1 accordance with the provisions of Chapter 810, Government Code.  
2 The board may also provide for a deferred compensation plan  
3 described by Section 457 of the Internal Revenue Code of 1986 (26  
4 U.S.C. Section 457). The board may include hospitalization and  
5 medical benefits to its employees as part of the compensation paid  
6 to employees and may adopt any plan, rule, or regulation in  
7 connection with it and amend or change the plan, rule, or regulation  
8 as it may determine. The board may establish a sick leave pool for  
9 employees of the district in the same manner as that authorized for  
10 the creation of a sick leave pool for state employees by Subchapter  
11 A, Chapter 661, Government Code.

12 Section 9. DISTRICT OFFICE. The board shall maintain its  
13 principal office for conducting the business of the district. The  
14 office must be located inside the district.

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

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



1 district and appellate courts of this state and in the courts of the  
2 United States. All courts shall take judicial notice of the  
3 creation of the district and of its boundaries.

4 (b) The general manager shall be the agent of the district  
5 on whom process, notice, or demand required or permitted by law to  
6 be served upon the district may be served.

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

9 (d) If the district prevails in any suit other than a suit in  
10 which it voluntarily intervenes, the district may seek and the  
11 court shall grant, in the same action, recover for attorney's fees,  
12 costs for expert witnesses, and other costs incurred by the  
13 district before the court. The amount of the attorney's fees shall  
14 be fixed by the court.

15 Section 12. SEAL. The board shall adopt a seal.

16 Section 13. RULES AND REGULATION. (a) After notice and  
17 hearing [~~under Section 14 of this Act~~], the board shall adopt and  
18 enforce rules and regulations that are designed to expeditiously  
19 and effectively accomplish the provisions and purposes of this Act,  
20 including rules governing procedure before the board. The board  
21 may adopt rules intended to prevent the waste of groundwater or the  
22 degradation of water quality.

23 (b) The board shall compile its rules and regulations in a  
24 book and make the book available for use and inspection at the  
25 district's principal office. The district shall provide copies of  
26 its rules and regulations on payment of the cost of reproduction.

27 Section 14. HEARINGS. (a) At regular meetings of the

1 board, the board shall set the dates, times, and locations for  
2 hearings to be held under this Act.

3 (b) For hearings other than hearings on permit  
4 applications, not [~~Not~~] later than the 10th [~~20th~~] day before the  
5 date set for a hearing, the district shall deliver or mail notice of  
6 the hearing under this section to each county and municipal  
7 government within the district and to each person that the board  
8 believes has an interest in the subject matter to be dealt with at  
9 the hearing.

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

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

18 (e) Any person who desires to appear at a hearing and  
19 present testimony, evidence, exhibits, or other information may do  
20 so in person, by counsel, or both.

21 (f) The board may hold hearings at any location within the  
22 district.

23 (g) The board may recess a hearing from day to day.

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

1           Section 15. COMPELLING TESTIMONY, SWEARING WITNESSES, AND  
2 SUBPOENAS. The board may subpoena a person to testify if the  
3 person's testimony is necessary to carry out the powers, duties and  
4 functions of the board under this Act. The board may administer  
5 oaths to persons who testify before the board. The board may  
6 subpoena documents if the documents are necessary to carry out the  
7 powers, duties, and functions of the board under this Act. On  
8 application of the board, a district court shall enforce the  
9 subpoena in the same manner as a subpoena issued by the court.

10           Section 16. DISTRICT PLAN. (a) [~~Under Section 14 of this~~  
11 ~~Act, the~~] The board shall formulate a plan to control and mitigate  
12 subsidence within the district. The plan shall accomplish this  
13 purpose by the regulation of groundwater withdrawals to maintain  
14 sufficient artesian pressure to control and mitigate subsidence.

15           (b) The plan shall specify, in as much detail as  
16 practicable, the acts, procedures, performance, and avoidance that  
17 are necessary to carry out the purposes of this Act.

18           (c) When formulating the plan, the board shall compile and  
19 consider:

20           (1) a list of wells in the district that will be  
21 subject to regulation under this Act;

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

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

1 district;

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

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

6 ~~(6)]~~ a list of all available sources of water in the  
7 district other than groundwater;

8 [~~(7)]~~ (6) the purpose for which the water is currently  
9 used and for which it is proposed to be used in the future;

10 [~~(8)]~~ (7) information relating to formulation of a  
11 permit system; and

12 [~~(9)]~~ (8) other information necessary to carry out the  
13 management of groundwater in the district and to effectively and  
14 expeditiously accomplish the purposes of this Act.

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

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

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

21 (g) After the hearing, the board shall make any changes it  
22 considers necessary based on evidence and material presented at the  
23 hearing and shall adopt the plan.

24 (h) The plan adopted under this section may be amended or  
25 repealed. A new plan may be adopted in the manner provided in this  
26 section for the adoption of the original plan. A plan, once  
27 adopted, shall remain in effect until the adoption of a new plan.

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

7           Section 18. PERMIT REQUIREMENT. (a) The owner of a well  
8 located in the district must obtain a permit from the board [~~to~~  
9 ~~withdraw groundwater~~] before:

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

11                   (2) substantially altering the size of the well or a  
12 well pump; or

13                   (3) operating the well.

14           (b) A well must remain permitted as long as the well is  
15 operational. A violation occurs on the first day the drilling,  
16 alteration, or operation begins, and each day of a continuing  
17 violation constitutes a separate violation [~~Owners of wells~~  
18 ~~operating or being drilled on the effective date of this Act must~~  
19 ~~apply for a permit before January 1, 1990, and may continue to~~  
20 ~~operate the well without a permit until the application for a permit~~  
21 ~~for the well is acted on by the board].~~

22           (c) A permit issued under this Act is valid for a term of one  
23 year from the date it is issued unless a longer or shorter term is  
24 specified by the board. The board may issue a permit for a term not  
25 to exceed five years in order to aid the district in the effective  
26 and expeditious performance of its duties if issuance of the permit  
27 does not impair the ability of the district to control and prevent

1 subsidence within the district.

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

7 (e) Permits may be renewed in the same manner as permits are  
8 issued.

9 (f) To obtain a permit, a person must submit an application  
10 and an application fee to the board. The application must state:

11 (1) the person's name;

12 (2) the person's address;

13 (3) the location and wellhead elevation of the well or  
14 proposed well;

15 (4) the amount of water being produced or proposed to  
16 be produced; and

17 (5) any other information required by the board as  
18 necessary for the board to control and prevent subsidence in the  
19 district.

20 (g) The board shall use the application fee to process  
21 applications.

22 Section 19. NOTICE AND HEARING ON PERMIT. (a) The board  
23 shall hold a hearing on each application.

24 (b) Not later than the 10th [~~20th~~] day before the date set  
25 for the hearing, the board shall notify the applicant [~~by certified~~  
26 ~~mail, return receipt requested,~~] of the date, time, and location of  
27 the hearing. Notice to the applicant may be given by regular mail

1 or by certified mail, return receipt requested.

2 (c) ~~[Except as provided by this section, the hearing shall~~  
3 ~~be conducted and notice of hearing given under Section 14 of this~~  
4 ~~Act.~~

5 ~~[(d)]~~ The board may consider as many applications for  
6 permits as it considers necessary at a hearing.

7 Section 20. ISSUANCE OF PERMIT. (a) Not later than the  
8 60th ~~[35th]~~ day after the date of the hearing, the board shall  
9 decide whether or not to issue a permit and shall formulate the  
10 terms of the permit, if issued.

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

13 (1) the purpose of this Act;

14 (2) the district plan;

15 (3) the quality, quantity, and availability of surface  
16 water at prices competitive with those charged by suppliers of  
17 surface water within the district; ~~[and]~~

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

21 (5) the applicant's compliance with the requirements  
22 of this chapter or any rule, permit, or other order of the district;  
23 and

24 (6) any other relevant factors.

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

27 (1) there is no other adequate and available

1 substitute or supplemental source of surface water at prices  
2 competitive with those charges by suppliers of surface water within  
3 the district; and

4 (2) compliance with any provision of this Act~~[7]~~ or  
5 any rule or regulation of the district will result in an arbitrary  
6 taking of property or in the practical closing and elimination of  
7 any lawful business, occupation, or activity, without sufficient  
8 corresponding benefit or advantage to the public ~~[people]~~.

9 (d) If the board decides to issue the permit, the permit  
10 must state the terms prescribed by the board.

11 (e) The permit must include the following:

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

13 (2) the location of the well;

14 (3) the date the permit begins and the date the permit  
15 expires;

16 (4) conditions and restrictions placed on the  
17 withdrawal of groundwater; and

18 (5) ~~[adoption of water conservation measures for the~~  
19 ~~purpose of preventing waste of groundwater, including educational~~  
20 ~~programs, and~~

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

23 (f) The board may condition the issuance of a permit on the  
24 resolution, including by payment of a civil penalty, or a prior or  
25 continuing violation of this Act or any rule, permit, or order of  
26 the district.

27 Section 21. PERMIT NOT TRANSFERABLE. A permit issued under



1 this Act is not transferable unless the permittee and new owner  
2 notify the district by certified mail, return receipt requested, of  
3 the transfer of ownership of the well and provide the name and  
4 address of the new owner. On receipt of that information, the  
5 district shall issue an amended permit with the new owner of the  
6 well as permittee. The remaining terms of the permit shall remain  
7 unchanged.

8 Section 22. ANNUAL REPORTS. Before January 31 of each year,  
9 each owner of a well who holds a permit under this Act shall submit a  
10 report to the board stating the following:

- 11 (1) the person's name;
- 12 (2) the location of the well;
- 13 (3) the total amount of groundwater produced by the  
14 well during the immediately preceding 12-month period;
- 15 (4) the total amount of groundwater produced by the  
16 well during each separate month of the immediately preceding  
17 12-month period;
- 18 (5) the purpose for which the groundwater was used;
- 19 and
- 20 (6) ~~[the date the permit expires, and~~  
21 ~~(7)]~~ any other information required by the board as  
22 necessary for the board to control and prevent subsidence within  
23 the district.

24 Section 23. BOARD INVESTIGATION. At least once each year  
25 and at any other time that the board considers necessary, the board  
26 may have its staff make a complete study of the groundwater  
27 situation within the district and determine the water level, rates

1 of withdrawal, amounts of withdrawal, and other information  
2 relating to withdrawal of groundwater that may affect the  
3 subsidence of land within the district.

4 Section 24. ANNUAL GROUNDWATER WITHDRAWAL DETERMINATION.

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

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

14 (c) After the hearing, the board shall consider all the  
15 information presented to it and shall determine the groundwater  
16 withdrawal in the district during the preceding calender year and  
17 shall make findings of the effects of groundwater withdrawal during  
18 that year on the subsidence of land within the district. A report  
19 of the board's findings and determinations shall be made available  
20 for examination by any interested person.

21 (d) The report adopted under Subsection (c) shall be  
22 submitted to the appropriate regional water planning group along  
23 with a copy of the most recently approved district plan adopted  
24 under Section 16.

25 Section 25. REGULATION OF SPACING AND PRODUCTION. (a) In  
26 order to minimize as far as practicable the drawdown of the water  
27 table and reduction of artesian pressure and to control and prevent

1 subsidence, the board may provide for the spacing of wells and  
2 regulate the production of groundwater from ~~the~~ wells, taking  
3 into consideration any relevant factors, including the economic  
4 impact on well owners and the resulting effect on subsidence.

5 (b) Before issuing any rule, regulation, or order under this  
6 section, the board shall set a hearing on the proposed rule,  
7 regulation, or order ~~[and issue notice of the hearing. Notice must  
8 be given and hearings conducted in the manner provided in Section 14  
9 of this Act].~~

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

11 (1) each aquifer, subdivision of an aquifer, or  
12 geologic strata located in whole or in part within the boundaries of  
13 the district; or

14 (2) each geographic area overlying an aquifer or  
15 subdivision of an aquifer located in whole or in part within the  
16 boundaries of the district.

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

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

21 (2) participating in a groundwater reduction plan or  
22 other agreement recognized by the board as achieving compliance  
23 with the district's regulatory requirements.

24 (e) The board may issue an order or adopt a rule requiring a  
25 person to reduce groundwater use by eliminating waste or  
26 implementing water conservation.

27 Section 26. REQUIRING WATER-METERING DEVICES. The board

1 may ~~[adopt orders after notice and hearing under Section 14 of this~~  
2 ~~Act requiring]~~ require water-metering devices to be placed on wells  
3 in the district and may adopt standards for meter accuracy,  
4 testing, and calibration.

5 Section 27. ACCESS TO PROPERTY. (a) To carry out technical  
6 and other investigations necessary to the implementation of this  
7 Act, the board and its agents and employees are entitled to access  
8 to all property within the district.

9 (b) Before entering property for the purpose stated in  
10 Subsection (a) of this section, the person seeking access shall  
11 give notice to the owner of the property in the manner provided by  
12 the rules and regulations of the district and shall present proper  
13 credentials.

14 (c) The board, and its agents and employees who enter  
15 private property, shall observe the establishment's rules and  
16 regulations concerning safety, internal security, and fire  
17 protection.

18 Section 28. MONITORING AND SUPERVISIONS OF DISTRICT. (a)  
19 The district may use subsidence compaction monitors, water level  
20 observation wells, and other materials and equipment to determine  
21 the amount of groundwater that may be produced while allowing the  
22 rebound and stabilization of groundwater to a level that will halt  
23 subsidence.

24 (b) The district may use global positioning systems and  
25 other geodetic survey methods to monitor land surface elevations  
26 and measure subsidence. The district may coordinate monitoring and  
27 data-collection activities with other entities, including private

1 entities and federal, state, or local governmental entities.

2 Section 29. RESEARCH AND STUDIES. (a) The board may  
3 conduct studies and research that it considers necessary to  
4 implement this Act. The board may use the services of geologists,  
5 hydrologists, registered professional engineers, or other expert  
6 personnel to accomplish the purposes of this section.

7 (b) The district may collect any information the board deems  
8 necessary, including information regarding the use of groundwater,  
9 water conservation, and the practicability of recharging a  
10 groundwater reservoir.

11 Section 30. COOPERATION WITH AND ASSISTANCE OF OTHER  
12 GOVERNMENTAL ENTITIES. The board may cooperate with and request  
13 the assistance of the Texas Water Development Board, the  
14 commission, the United States Geological Survey, local  
15 governments, and other agencies of the United States and the State  
16 of Texas in implementing this Act.

17 Section 31. CONTRACTS. The board may enter into contracts  
18 with any person to carry out this Act. The district shall contract,  
19 and be contracted with, in the name of the district.

20 Section 32. APPEAL OF DISTRICT ACTIONS TO A DISTRICT COURT.

21 (a) A person who is adversely affected by a rule,  
22 regulation, order, or other official action of the board may appeal  
23 to a district court in any county in the district.

24 (b) For the purposes of this section, "a person who is  
25 adversely affected" includes a person residing in or owning real  
26 property in the district whose residence or real property is  
27 subsiding. The appeal may only be filed after all administrative

1 appeals to the district are final. An appeal under this section  
2 must be filed not later than the 45th day after the date the rule,  
3 regulation, order, or other official action appealed from is  
4 promulgated.

5 (c) On written request of a person who is adversely  
6 affected, the board shall make written findings and conclusions  
7 with respect to a rule, regulation, order or other official action  
8 of the district. Not later than the 35th day after the request was  
9 made, the board shall provide a certified copy of the findings and  
10 conclusions to the person who made the request.

11 (d) In appeals taken under this section, the substantial  
12 evidence rule, as provided by Subchapter G, Chapter 2001,  
13 Government Code, shall be used to determine the legal propriety of a  
14 rule, regulation, order, or other action of the board. The burden  
15 of proof is on the petitioner, and the challenged law, rule, order,  
16 or act shall be deemed prima facie valid.

17 (e) A suit brought under this section shall be advanced for  
18 trial and determined as expeditiously as possible. No postponement  
19 or continuance shall be granted except for reasons considered  
20 imperative by the court.

21 [~~Section 33. APPEAL OF CERTAIN DISTRICT ACTIONS TO THE~~  
22 ~~COMMISSION. (a) As an alternative to the appeal provided by~~  
23 ~~Section 32 of this Act, a person who is granted a permit authorizing~~  
24 ~~withdrawal of groundwater in an amount less than requested by that~~  
25 ~~person may appeal the board's final decision to the commission. The~~  
26 ~~appeal shall be filed not later than the 60th day after the date of~~  
27 ~~the final order of the board.~~

1       ~~(b) On written request of the person proposing to appeal an~~  
2 ~~order under Subsection (a) of this section, the board shall make~~  
3 ~~written findings and conclusions with respect to the order and~~  
4 ~~shall provide certified copies of the findings and conclusions to~~  
5 ~~the person making the request not later than the 35th day after the~~  
6 ~~date on which the written request is submitted to the board.~~

7       ~~(c) The effect of a board order is stayed until the decision~~  
8 ~~of the commission in an appeal under this section is final.~~

9       ~~(d) The review on appeal to the commission under this~~  
10 ~~section is governed by the substantial evidence rule as provided by~~  
11 ~~Section 19(e), Administrative Procedure and Texas Register Act~~  
12 ~~(Article 6252-13a, Vernon's Texas Civil Statutes).~~

13       ~~(e) The commission may adopt necessary rules to carry out~~  
14 ~~the provisions of this section.~~

15       ~~(f) An appeal from a final decision of the commission is to a~~  
16 ~~district court in Travis County and is governed by the substantial~~  
17 ~~evidence rule. Any party to the proceedings before the commission~~  
18 ~~may appeal a decision of the district court in the manner provided~~  
19 ~~for other civil actions but a party appealing a decision of a~~  
20 ~~district court is not required to provide an appeal bond.~~

21       ~~(g) Under this section, the commission may adopt and assess~~  
22 ~~reasonable and necessary fees adequate to recover the costs of the~~  
23 ~~commission in administering this section.]~~

24       Section 34. PERMIT FEE. (a) At the time a permit is issued  
25 or renewed, the board shall collect from the permittee a permit fee,  
26 established by schedule, based on the term of the permit and the  
27 maximum amount of groundwater authorized by the board to be

1 withdrawn annually from the well. The board may also establish a  
2 disincentive permit fee to serve as a regulatory tool by creating a  
3 disincentive to continued over-reliance on groundwater.

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

6 (c) The board shall use the funds obtained from permit fees  
7 to cover the costs of issuing permits and performing other  
8 regulatory functions under this Act, including, without  
9 limitation, making grants, loans, or contractual payments to  
10 achieve, facilitate, or expedite reductions in groundwater pumping  
11 or the development or distribution of alternative water supplies.

12 Section 35. GRANTS, PURCHASES, GIFTS, LEASES, ETC. (a) On  
13 behalf of the district, the board may:

14 (1) purchase, lease, own, convey, and dispose of  
15 property both inside and outside the district necessary or  
16 convenient to the exercise of the powers, duties, and functions of  
17 the board under this Act;

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

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

22 (4) accept gifts, grants, loans, or other  
23 distributions of money.

24 (b) The district may make or accept a grant, gratuity,  
25 advance, or loan in any form to or from any public source approved  
26 by the board, including a governmental entity, and may enter into a  
27 contract, agreement, or covenant that the board considers



1 appropriate in connection with a grant, gratuity, advance, or loan.

2 Section 36. WATER CONSERVATION MEASURES. (a) The board may  
3 adopt rules requiring the use of water conservation measures to  
4 reduce groundwater withdrawals.

5 (b) The district may cooperate with the commission and any  
6 local government to establish water conservation goals,  
7 guidelines, and plans to be used in the district.

8 (c) The district may contract with a local government in the  
9 district to provide services needed to meet water conservation  
10 requirements that the commission establishes. [~~OWNERSHIP OF~~  
11 ~~GROUNDWATER. The ownership and rights of the owner of land and his~~  
12 ~~lessees and assigns in groundwater are recognized and nothing in~~  
13 ~~this Act shall be construed as depriving or divesting the owner or~~  
14 ~~his lessees and assigns of the ownership or rights, subject to rules~~  
15 ~~and regulations and orders and other official actions of the~~  
16 ~~district.]~~

17 Section 37. OPEN OR UNCOVERED WELLS. (a) The district may  
18 require the owner or lessee of land on which an open or uncovered  
19 well is located to keep the well permanently closed or capped with a  
20 covering capable of sustaining weight of at least 400 pounds,  
21 except when the well is in actual use.

22 (b) If the owner or lessee fails or refuses to close or cap  
23 the well, any person, firm, or corporation employed by the district  
24 may go on the land and close or cap the well safely and securely.  
25 [~~SURFACE WATER LAWS NOT APPLICABLE. The laws and administrative~~  
26 ~~rules relating to the use of surface water do not apply to~~  
27 ~~groundwater.]~~

1           Section 38. SALE AND DISTRIBUTION OF WATER PROHIBITED. The  
2 district may not sell or distribute surface water or groundwater  
3 for any purpose.

4           Section 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;

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 solely serve a  
26 single-family dwelling ~~[and have a negligible effect on subsidence~~  
27 ~~within the district].~~

1 Section 40. DISBURSEMENT OF FUNDS. (a) The district's  
2 money may be disbursed by check, draft, order, or other  
3 instruments, signed by the person or persons authorized to do so by  
4 the board's bylaws or by resolution of the board. The district's  
5 money may also be disbursed by electronic fund transfer.

6 Section 41. ACCOUNTS AND INDEPENDENT AUDIT; BUDGET. (a)  
7 The district shall keep a complete system of accounts and shall have  
8 its affairs audited each year by an independent certified public  
9 accountant or a firm of independent certified public accountants of  
10 recognized integrity and ability. The district shall pay for the  
11 audit.

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

16 (c) The district shall be operated on the basis of a fiscal  
17 year equal to a calendar year.

18 (d) The board shall adopt an annual budget containing a  
19 complete financial statement. The annual budget may be amended on  
20 the board's approval.

21 Section 42. DEPOSITORY BANKS; INVESTMENTS. (a) The board  
22 shall designate one or more banks within the district to serve as  
23 depository for the funds of the district. [~~Except as provided by~~  
24 ~~subsection (b) of this section, all]~~ All funds of the district shall  
25 be deposited in a depository bank. This subsection does not limit  
26 the power of the board to place a portion of the district's funds on  
27 time deposit or to purchase certificates of deposit or other

1 authorized investments.

2 (b) ~~[To the extent provided in a trust indenture, bond~~  
3 ~~proceeds and funds pledged to pay bonds may be deposited with the~~  
4 ~~trustee bank named in the trust indenture and shall be remitted to~~  
5 ~~the bank of payment for the payment of the principal of and interest~~  
6 ~~on the bonds.~~

7 ~~(c)]~~ (c) To the extent that funds in a depository bank or a  
8 trustee bank are not invested or insured by the Federal Deposit  
9 Insurance Corporation, they shall be secured in the manner provided  
10 by law for the security of ~~county~~ funds by the Public Funds  
11 Investment Act, Chapter 2257, Government Code.

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

20 ~~[(e)]~~ (d) The board shall consider the management and  
21 condition of the banks that apply and shall designate as  
22 depositories the bank or banks that offer the most favorable terms  
23 and conditions for handling of the funds of the district and that  
24 the board finds have proper management and are in condition to  
25 warrant handling of district funds.

26 ~~[(f)]~~ (e) Membership on the board of an officer or director  
27 of a bank does not disqualify the bank from being designated as

1 depository.

2 [~~(g)~~] (f) If no applications are received before the  
3 meeting, the board shall designate a bank or banks within or outside  
4 the district on terms and conditions it finds advantageous to the  
5 district.

6 (g) Funds of the district may be invested and reinvested in  
7 accordance with the provisions of the Public Funds Investment Act,  
8 Chapter 2256, Government Code. The board, by resolution, may  
9 provide that an authorized representative of the district may  
10 invest and reinvest the funds of the district and provide for money  
11 to be withdrawn from the appropriate accounts of the district for  
12 investments on such terms as the board considers advisable.

13 Section 43. PENALTIES. (a) If a person has violated, is  
14 violating, or is threatening to violate a provision of this Act or a  
15 rule, regulation, permit, or other order of the district, the  
16 district may bring a civil action in a district court within the  
17 district for an injunction to restrain the person from continuing  
18 the violation or threat of violation, for a civil penalty of not  
19 less than \$50 nor more than \$5,000 for each violation and for each  
20 day of violation, or for both injunctive relief and civil penalty.

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

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

27 (d) On application for injunctive relief and a finding that

1 a person is violating or threatening to violate any provision of  
2 this Act or any rule, permit, or other order of the district, the  
3 district court shall grant any injunctive relief the facts may  
4 warrant.

5 (e) In a suit to recover a civil penalty or for both  
6 injunctive relief and a civil penalty, if the court finds that a  
7 person has violated or is violating a provision of this chapter or a  
8 rule, permit, or order of the district, the court shall assess a  
9 civil penalty in the amount provided by this section.

10 Section 44. LEGISLATIVE FINDING OF AUTHORITY. The  
11 legislature finds that the requirements of Article XVI, Sections  
12 59(d) and (e), of the Texas Constitution have been performed and  
13 accomplished and that the legislature has the power and authority  
14 to enact this Act.

15 Section 45. EMERGENCY. The importance of this legislation  
16 and crowded condition of the calenders in both houses create an  
17 emergency and an imperative public necessity that the  
18 constitutional rule requiring bills to be read on three several  
19 days in each house be suspended, and this rule is hereby suspended,  
20 and that this Act take effect and be in force from and after its  
21 passage, and it is so enacted.

22 SECTION 3. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2005.