

1-1 By: Armbrister S.B. No. 1537
1-2 (In the Senate - Filed March 10, 2005; March 22, 2005, read
1-3 first time and referred to Subcommittee on Agriculture and Coastal
1-4 Resources; April 14, 2005, reported favorably to Committee on
1-5 Natural Resources; April 22, 2005, reported adversely, with
1-6 favorable Committee Substitute from Committee on Natural Resources
1-7 by the following vote: Yeas 11, Nays 0; April 22, 2005, sent to
1-8 printer.)

1-9 COMMITTEE SUBSTITUTE FOR S.B. No. 1537 By: Armbrister

1-10 A BILL TO BE ENTITLED
1-11 AN ACT

1-12 relating to the administration, powers, duties, and operation of
1-13 the Harris-Galveston Subsidence District and the Fort Bend
1-14 Subsidence District.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 SECTION 1. The heading to Chapter 8801, Special District
1-17 Local Laws Code, is amended to read as follows:

1-18 CHAPTER 8801. HARRIS-GALVESTON [~~COASTAL~~] SUBSIDENCE DISTRICT

1-19 SECTION 2. Section 8801.001, Special District Local Laws
1-20 Code, is amended by amending Subdivisions (1) and (3) and adding
1-21 Subdivisions (1-a), (1-b), (3-a), (4-a), (4-b), and (5-a) to read
1-22 as follows:

1-23 (1) "Agricultural crop":

1-24 (A) means food or fiber commodities that are
1-25 grown for resale or commercial purposes and that are to be used for
1-26 food, clothing, or animal feed; and

1-27 (B) includes nursery products and florist items
1-28 that are in the possession of a nursery grower.

1-29 (1-a) "Beneficial use" means any use that is useful or
1-30 beneficial to the user, including:

1-31 (A) an agricultural, gardening, domestic, stock
1-32 raising, municipal, mining, manufacturing, industrial, commercial,
1-33 or recreational use, or a use for pleasure purposes; or

1-34 (B) exploring for, producing, handling, or
1-35 treating oil, gas, sulfur, or other minerals.

1-36 (1-b) "Board" means the board of directors of the
1-37 district.

1-38 (3) "District" means the Harris-Galveston [~~Coastal~~]
1-39 Subsidence District.

1-40 (3-a) "Florist item" means a cut flower, potted plant,
1-41 blooming plant, inside foliage plant, bedding plant, corsage
1-42 flower, cut foliage, floral decoration, or live decorative
1-43 material.

1-44 (4-a) "Nursery grower" means a person who grows in any
1-45 medium more than 50 percent of the nursery products or florist items
1-46 that the person sells or leases. A person grows a nursery product
1-47 or florist item if the person cultivates or propagates the product
1-48 or item by engaging in activities associated with the production or
1-49 multiplying of stock, including the development of new plants from
1-50 cuttings, grafts, plugs, or seedlings. The term does not include a
1-51 person who merely holds or maintains a nursery product or florist
1-52 item before sale or lease.

1-53 (4-b) "Nursery product" includes a tree, shrub, vine,
1-54 cutting, graft, scion, grass, bulb, or bud that is grown or kept
1-55 for, or capable of, propagation and distribution for sale or lease.

1-56 (5-a) "Waste" means:

1-57 (A) the withdrawal of groundwater from a
1-58 groundwater reservoir at a rate and in an amount that causes or
1-59 threatens to cause intrusion into the reservoir of water unsuitable
1-60 for agricultural, gardening, domestic, or stock raising purposes;

1-61 (B) the flowing or producing of wells from a
1-62 groundwater reservoir if the water produced is not used for a
1-63 beneficial use or if the amount used is more than is reasonably

2-1 required for a beneficial use;
 2-2 (C) the escape of groundwater from a groundwater
 2-3 reservoir to any other reservoir or geologic strata that does not
 2-4 contain groundwater;
 2-5 (D) the pollution or harmful alteration of
 2-6 groundwater in a groundwater reservoir by saltwater or other
 2-7 harmful matter admitted from another stratum or from the surface of
 2-8 the ground;
 2-9 (E) wilfully or negligently causing, suffering,
 2-10 or allowing groundwater to escape or flow into a river, creek,
 2-11 natural watercourse, depression, lake, reservoir, drain, sewer,
 2-12 street, highway, road, or road ditch, or onto land that does not
 2-13 belong to the owner of the well unless the discharge is authorized
 2-14 by a permit, rule, or order issued by the commission under Chapter
 2-15 26, Water Code;
 2-16 (F) the escape of groundwater pumped for
 2-17 irrigation as irrigation tailwater onto land that does not belong
 2-18 to the owner of the well unless the occupant of the land receiving
 2-19 the discharge granted permission for the discharge; or
 2-20 (G) wilfully causing or knowingly permitting the
 2-21 water produced from an artesian well to run off the owner's land or
 2-22 to percolate through the stratum above which the water is found, as
 2-23 prescribed by Section 11.205, Water Code.
 2-24 SECTION 3. Sections 8801.002 and 8801.005, Special District
 2-25 Local Laws Code, are amended to read as follows:
 2-26 Sec. 8801.002. NATURE OF DISTRICT. The district is a
 2-27 [~~groundwater~~] conservation and reclamation district created under
 2-28 Section 59, Article XVI, Texas Constitution, and is essential to
 2-29 accomplish the purposes of that section.
 2-30 Sec. 8801.005. DISTRICT TERRITORY. The district includes
 2-31 the territory located within the boundaries of Harris County and
 2-32 Galveston County, as that territory may have been modified under:
 2-33 (1) Section 8801.006 or its predecessor statute,
 2-34 former Section 151.003(b), Water Code; or
 2-35 (2) [~~Subchapter J, Chapter 36, Water Code; or~~
 2-36 [~~3~~] other law.
 2-37 SECTION 4. Subchapter B, Chapter 8801, Special District
 2-38 Local Laws Code, is amended by amending Sections 8801.052 through
 2-39 8801.055 and adding Sections 8801.0551 and 8801.0552 to read as
 2-40 follows:
 2-41 Sec. 8801.052. FEES OF OFFICE; REIMBURSEMENT [~~APPOINTMENT~~
 2-42 ~~OF DIRECTORS ON ADDITION OF COUNTY TO DISTRICT~~]. (a) A director is
 2-43 entitled to fees of office of not more than \$150 a day for each day
 2-44 the director actually spends performing the duties of a director.
 2-45 The fees of office may not exceed \$9,000 a year [~~On addition of a~~
 2-46 ~~county to the district under Section 8801.006, two directors are~~
 2-47 ~~added to the board as follows:~~
 2-48 [~~(1) the commissioners court of the county added to~~
 2-49 ~~the district shall appoint one director, and~~
 2-50 [~~(2) the mayor of the municipality that has the~~
 2-51 ~~largest population in the added county shall appoint one director~~].
 2-52 (b) Each director is entitled to reimbursement of actual
 2-53 expenses reasonably and necessarily incurred while engaging in
 2-54 activities on behalf of the district.
 2-55 (c) To receive fees of office and reimbursement for
 2-56 expenses, each director must file with the district a verified
 2-57 statement that shows the number of days spent in the service of the
 2-58 district and a general description of the duties performed for each
 2-59 day of service. [~~The directors added to the board under Subsection~~
 2-60 ~~(a) shall draw lots to establish staggered terms of office.~~]
 2-61 Sec. 8801.053. BOARD POWERS AND DUTIES. (a) In addition
 2-62 to the powers and duties described in this chapter, the board has
 2-63 all other powers necessary or convenient to carry out its
 2-64 responsibilities and accomplish the purpose of this chapter.
 2-65 (b) The board may adopt bylaws and policies as necessary to
 2-66 accomplish its purposes.
 2-67 (c) The board may purchase materials, supplies, equipment,
 2-68 vehicles, and machinery needed by the district to accomplish its
 2-69 purposes.

3-1 Sec. 8801.054. OFFICERS. (a) Each year, at the first
 3-2 meeting after the new directors take office, the directors shall
 3-3 select from among the directors a chair [~~president~~], a vice chair
 3-4 [~~president~~], and a secretary.

3-5 (b) The chair shall preside over meetings of the board and
 3-6 execute all documents on behalf of the district. The vice chair
 3-7 shall act as chair if the chair is absent or disabled. The
 3-8 secretary shall ensure that all records and books of the district
 3-9 are properly kept and attest to the chair's signature on all
 3-10 documents. The board may authorize another director, the general
 3-11 manager, or any employee to execute documents on behalf of the
 3-12 district and to certify the authenticity of any record of the
 3-13 district.

3-14 Sec. 8801.055. MEETINGS. (a) The board shall hold regular
 3-15 meetings once each month at a time set by the board. The board may
 3-16 hold special meetings at the call of the chair [~~president~~] or on the
 3-17 written request of at least three directors.

3-18 (b) A meeting of a committee of the board at which less than
 3-19 a quorum is present is not subject to Chapter 551, Government Code.

3-20 (c) The board shall give notice of meetings of the board as
 3-21 provided by Chapter 551, Government Code. Failure to provide
 3-22 notice of a regular meeting or an insubstantial defect in notice of
 3-23 any meeting does not affect the validity of any action taken at the
 3-24 meeting.

3-25 Sec. 8801.0551. QUORUM. A majority of the membership of the
 3-26 board constitutes a quorum for any meeting, and a concurrence of a
 3-27 majority of the entire membership of the board is sufficient for
 3-28 transacting any district business.

3-29 Sec. 8801.0552. SWORN STATEMENT, BOND, AND OATH OF OFFICE.

3-30 (a) As soon as practicable after a director is appointed, the
 3-31 director shall make the sworn statement prescribed by the
 3-32 constitution for public officers.

3-33 (b) As soon as practicable after a director has made the
 3-34 sworn statement and before beginning to perform the duties of
 3-35 office, the director shall take the oath of office prescribed by the
 3-36 constitution for public officers.

3-37 (c) Before beginning to perform the duties of office, each
 3-38 director shall execute a bond for \$10,000 payable to the district
 3-39 and conditioned on the faithful performance of the director's
 3-40 duties. A director's bond must be approved by the board and paid
 3-41 for by the district.

3-42 (d) The sworn statement shall be filed as prescribed by the
 3-43 constitution. The bond and oath shall be filed with the district
 3-44 and retained in its records. A duplicate original of the oath shall
 3-45 also be filed with the secretary of state not later than the 10th
 3-46 day after the date on which the oath was executed. The new director
 3-47 may begin to perform the duties of office before the oath is filed.

3-48 SECTION 5. Subsection (a), Section 8801.057, Special
 3-49 District Local Laws Code, is amended to read as follows:

3-50 (a) The board shall employ a general manager, who serves as
 3-51 the chief administrative officer of the district. The board may
 3-52 delegate to the general manager full authority to manage district
 3-53 affairs or operate the district subject only to orders by the board.

3-54 SECTION 6. Subchapter B, Chapter 8801, Special District
 3-55 Local Laws Code, is amended by adding Sections 8801.059 through
 3-56 8801.065 to read as follows:

3-57 Sec. 8801.059. EMPLOYEE BENEFITS. (a) The board may
 3-58 provide for and administer retirement, disability, and death
 3-59 compensation funds for the employees of the district.

3-60 (b) The board may establish a public retirement system as
 3-61 provided by Chapter 810, Government Code, or provide for a deferred
 3-62 compensation plan as described by Section 457, Internal Revenue
 3-63 Code of 1986.

3-64 (c) The board may include hospitalization and medical
 3-65 benefits for its employees as part of the compensation paid to
 3-66 employees and may adopt or amend a plan or rule as necessary to
 3-67 provide hospitalization and medical benefits.

3-68 (d) The board may establish a sick leave pool for employees
 3-69 of the district in the same manner as a sick leave pool for state

4-1 employees is authorized to be created under Subchapter A, Chapter
 4-2 661, Government Code.

4-3 Sec. 8801.060. EXPENDITURES. (a) The district's money may
 4-4 be disbursed only by check, draft, order, electronic funds
 4-5 transfer, or other instrument. The board may by resolution allow
 4-6 disbursements to be transferred by federal reserve wire system to
 4-7 accounts in the name of the district.

4-8 (b) Disbursements must be signed by at least two directors
 4-9 unless the board by resolution allows certain employees of the
 4-10 district, or a combination of employees and directors, to sign
 4-11 disbursements on behalf of the board.

4-12 Sec. 8801.061. FISCAL YEAR. The fiscal year of the district
 4-13 is the calendar year.

4-14 Sec. 8801.062. ANNUAL AUDIT. (a) The board annually shall
 4-15 order an audit to be made of the financial condition of the
 4-16 district.

4-17 (b) The annual audit and other district records must be open
 4-18 for inspection during regular business hours at the principal
 4-19 office of the district.

4-20 Sec. 8801.063. ANNUAL BUDGET. (a) The board shall adopt
 4-21 an annual budget.

4-22 (b) The budget must contain a complete financial statement,
 4-23 including a statement of:

4-24 (1) the outstanding obligations of the district;

4-25 (2) the amount of cash on hand to the credit of each
 4-26 fund of the district;

4-27 (3) the amount of money received by the district from
 4-28 all sources during the previous year;

4-29 (4) the amount of money available to the district from
 4-30 all sources during the ensuing year;

4-31 (5) the amount of the balances expected at the end of
 4-32 the year in which the budget is being prepared;

4-33 (6) the estimated amount of revenues and balances
 4-34 available to cover the proposed budget; and

4-35 (7) the estimated fee revenues that will be required.

4-36 (c) The board may amend the annual budget adopted under
 4-37 Subsection (a).

4-38 Sec. 8801.064. DEPOSITORY. (a) The board shall name one
 4-39 or more banks to serve as depository for district money.

4-40 (b) District money must be deposited as received with the
 4-41 depository bank and must remain on deposit. This subsection does
 4-42 not limit the power of the board to place a portion of the
 4-43 district's money on time deposit or to purchase certificates of
 4-44 deposit or other authorized investments.

4-45 (c) To the extent that money in the depository is not
 4-46 insured by the Federal Deposit Insurance Corporation, the money
 4-47 must be secured as provided by Chapter 2257, Government Code.

4-48 Sec. 8801.065. INVESTMENTS. (a) District money may be
 4-49 invested and reinvested in accordance with Chapter 2256, Government
 4-50 Code.

4-51 (b) The board, by resolution, may provide that an authorized
 4-52 representative of the district may invest and reinvest district
 4-53 money and provide for money to be withdrawn from the appropriate
 4-54 district accounts for investments on terms that the board considers
 4-55 advisable.

4-56 SECTION 7. Sections 8801.101, 8801.102, 8801.105, and
 4-57 8801.106, Special District Local Laws Code, are amended to read as
 4-58 follows:

4-59 Sec. 8801.101. DISTRICT POWERS AND DUTIES. [~~(a)~~] Except
 4-60 as provided by Section [~~Sections 8801.102 and~~] 8801.103, the
 4-61 district has all of the rights, powers, privileges, and authority
 4-62 necessary and convenient to exercise its jurisdiction and powers as
 4-63 provided by this chapter, whether the jurisdiction and powers are
 4-64 specifically authorized by this chapter or implied from this
 4-65 chapter or other law[~~, functions, and duties provided by the~~
 4-66 general laws of this state, including Chapter 36, Water Code, that
 4-67 are applicable to groundwater conservation districts created under
 4-68 Section 59, Article XVI, Texas Constitution].

4-69 [(~~b~~) This chapter prevails over any other law in conflict or

~~inconsistent with this chapter.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. Section 8801.114, Special District Local Laws Code, is amended to read as follows:

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

(b) The district may collect any information that the board

6-1 determines is necessary to implement this chapter, including
 6-2 information regarding the use of groundwater, water conservation,
 6-3 and the practicability of recharging a groundwater reservoir.

6-4 SECTION 11. Section 8801.117, Special District Local Laws
 6-5 Code, is amended by adding Subsection (e) to read as follows:

6-6 (e) The board shall submit the report adopted under
 6-7 Subsection (d) and a copy of the most recent district plan adopted
 6-8 under Section 8801.112 to the appropriate regional water planning
 6-9 group.

6-10 SECTION 12. Section 8801.118, Special District Local Laws
 6-11 Code, is amended to read as follows:

6-12 Sec. 8801.118. MONITORING AND SUPERVISION BY DISTRICT.

6-13 (a) The district may use subsidence compaction monitors,
 6-14 water-level observation wells, and other materials and equipment to
 6-15 determine the amount of groundwater that may be withdrawn while
 6-16 allowing groundwater to rebound and stabilize to a level that will
 6-17 halt subsidence.

6-18 (b) The district may use global positioning systems and
 6-19 other geodetic survey methods to monitor land surface elevations
 6-20 and measure subsidence. The district may coordinate monitoring and
 6-21 data collection activities with other entities, including private
 6-22 entities and federal, state, or local governmental entities.

6-23 SECTION 13. Section 8801.119, Special District Local Laws
 6-24 Code, is amended by adding Subsection (c) to read as follows:

6-25 (c) The district may adopt different rules for:

6-26 (1) each aquifer, subdivision of an aquifer, or
 6-27 geologic stratum located wholly or partly within the boundaries of
 6-28 the district; or

6-29 (2) each geographic area overlying an aquifer or
 6-30 subdivision of an aquifer located wholly or partly within the
 6-31 boundaries of the district.

6-32 SECTION 14. Subchapter C, Chapter 8801, Special District
 6-33 Local Laws Code, is amended by amending Section 8801.120 and adding
 6-34 Sections 8801.121, 8801.122, and 8801.123 to read as follows:

6-35 Sec. 8801.120. WATER-METERING DEVICES. The board may
 6-36 require water-metering devices to be placed on wells in the
 6-37 district and may adopt standards for the accuracy, testing, and
 6-38 calibration of the devices.

6-39 Sec. 8801.121. REQUIRED WRITTEN POLICIES. The board shall
 6-40 adopt the following written policies:

6-41 (1) a code of ethics for district directors, officers,
 6-42 and employees, and persons who are engaged in handling investments
 6-43 for the district;

6-44 (2) a policy relating to travel expenditures;

6-45 (3) a policy relating to district investments;

6-46 (4) policies and procedures for selection,
 6-47 monitoring, or review and evaluation of professional services; and

6-48 (5) policies that ensure a better use of management
 6-49 information, including the use of:

6-50 (A) budgets to plan and control cost; and

6-51 (B) uniform reporting requirements based on
 6-52 "Audits of State and Local Governmental Units," published by the
 6-53 American Institute of Certified Public Accountants, and
 6-54 "Governmental Accounting and Financial Reporting Standards,"
 6-55 published by the Governmental Accounting Standards Board.

6-56 Sec. 8801.122. RECORDS. The board shall maintain a
 6-57 complete account of all meetings and proceedings and shall preserve
 6-58 its minutes, contracts, records, notices, accounts, receipts, and
 6-59 other records in a safe place.

6-60 Sec. 8801.123. OPEN OR UNCOVERED WELLS. (a) The district
 6-61 may require the owner or lessee of land on which an open or
 6-62 uncovered well is located to keep the well closed or capped with a
 6-63 covering capable of sustaining weight of at least 400 pounds when
 6-64 the well is not in actual use.

6-65 (b) If the owner or lessee fails or refuses to close or cap
 6-66 the well, any person, firm, or corporation employed by the district
 6-67 may enter onto the land and close or cap the well safely and
 6-68 securely.

6-69 SECTION 15. Sections 8801.151, 8801.152, and 8801.155,

7-1 Special District Local Laws Code, are amended to read as follows:
7-2 Sec. 8801.151. GROUNDWATER WITHDRAWALS SUBJECT TO BOARD
7-3 RULE. Groundwater withdrawals governed by this chapter, including
7-4 withdrawals of injected water, are subject to reasonable board
7-5 rules and orders, taking into account all factors, including
7-6 availability of surface water or alternative water supplies,
7-7 economic impact on persons and the community, degree and effect of
7-8 subsidence on the surface of land, and differing topographical and
7-9 geophysical characteristics of land areas in the district.

7-10 Sec. 8801.152. CERTAIN WELLS EXEMPT. The regulatory
7-11 provisions of this chapter do not apply to:

- 7-12 (1) a well regulated under Chapter 27, Water Code;
- 7-13 (2) a well with a casing diameter of less than five
7-14 inches that serves only a single-family dwelling; and
- 7-15 (3) any other well as provided by board rule.

7-16 Sec. 8801.155. PERMIT REQUIRED. (a) The owner or operator
7-17 of a well located in the district must obtain a permit from the
7-18 board before:

- 7-19 (1) drilling, equipping, or completing the well;
- 7-20 (2) substantially altering the size of the well or a
7-21 well pump; or
- 7-22 (3) operating the well.

7-23 (b) A well must have a valid permit if it is operational.

7-24 (c) An owner or operator commits a violation if the owner or
7-25 operator does not obtain a permit as required by Subsection (a). A
7-26 violation occurs on the first day the drilling, alteration, or
7-27 operation begins. Each day that a violation continues is a separate
7-28 violation.

7-29 SECTION 16. Subsection (b), Section 8801.157, Special
7-30 District Local Laws Code, is amended to read as follows:

7-31 (b) The board must give written notice of the date, time,
7-32 and location of the hearing to the applicant by regular mail or by
7-33 certified mail, return receipt requested.

7-34 SECTION 17. Section 8801.158, Special District Local Laws
7-35 Code, is amended by amending Subsection (b) and adding Subsection
7-36 (e) to read as follows:

7-37 (b) In deciding whether to issue a permit and in setting the
7-38 terms of the permit, the board shall consider:

- 7-39 (1) the purpose of this chapter;
- 7-40 (2) the district plan;
- 7-41 (3) the quality, quantity, and availability of surface
7-42 water or alternative water supplies at prices that are competitive
7-43 with prices charged by suppliers of surface water in the district;
- 7-44 (4) the economic impact on the applicant of a decision
7-45 to issue or deny the permit, or of the permit terms, in relation to
7-46 the effect on subsidence that would result;
- 7-47 (5) the applicant's use of water conservation
7-48 measures; ~~and~~

7-49 (6) the applicant's compliance with the requirements
7-50 of this chapter or any rule, permit, or order of the district; and
7-51 (7) all other relevant factors.

7-52 (e) The board may condition issuance of a permit under this
7-53 section on the resolution of a prior or continuing violation of this
7-54 chapter or any rule, permit, or order of the district. The board
7-55 may require an applicant to pay a civil penalty or settlement
7-56 amount, or take other necessary action, to resolve a prior or
7-57 continuing violation.

7-58 SECTION 18. Section 8801.161, Special District Local Laws
7-59 Code, is amended to read as follows:

7-60 Sec. 8801.161. PERMIT FEES. (a) When the board issues or
7-61 renews a permit, the board shall collect a permit fee from the
7-62 applicant. The fee shall be determined by a schedule based on the
7-63 term of the permit and the maximum ~~annual~~ amount of groundwater
7-64 that the board authorizes to be withdrawn from the well.

7-65 (a-1) In addition to a regular permit fee under Subsection
7-66 (a), the board may establish a disincentive permit fee to serve as a
7-67 regulatory tool by creating a disincentive to continued
7-68 over-reliance on groundwater.

7-69 (b) The board shall determine the amount of the ~~the~~ permit

8-1 fees under Subsections (a) and (a-1) [~~fee~~] after a hearing.

8-2 (b-1) The fee under Subsection (a) may not exceed 110
 8-3 percent of the highest rate that the City of Houston charges for
 8-4 surface water supplied to its customers in the district.

8-5 (c) The amount of a permit fee applicable to a well used for
 8-6 irrigating agricultural crops may not exceed [~~is the lowest of:~~

8-7 [~~(1)~~] 70 percent of the lowest amount determined under
 8-8 Subsection (b) [~~+~~

8-9 [~~(2)~~ 70 percent of a base amount of one cent for each
 8-10 ~~thousand gallons authorized to be withdrawn, except that the board~~
 8-11 ~~may adjust the base amount annually to account for increases since~~
 8-12 ~~1992 in the most recently published Consumer Price Index for All~~
 8-13 ~~Urban Consumers, All Items (Houston, Texas, Average), as compiled~~
 8-14 ~~by the Bureau of Labor Statistics, United States Department of~~
 8-15 ~~Labor; or~~

8-16 [~~(3)~~ the amount determined in accordance with
 8-17 Subsection (d)].

8-18 (d) The district may establish a fee for administrative acts
 8-19 of the district, including receiving applications for permits or
 8-20 permit amendments [~~At a hearing, the board shall calculate and~~
 8-21 ~~express as a percentage the relative contribution to subsidence by~~
 8-22 ~~wells used for irrigating agricultural crops and wells used for~~
 8-23 ~~other purposes. The board shall use information prepared by the~~
 8-24 ~~United States Geological Survey, which is presumed to be correct.~~
 8-25 ~~The permit fee for wells used for irrigating agricultural crops~~
 8-26 ~~must be such that the percentage of total permit fee revenue that~~
 8-27 ~~permit fee revenue from those wells represents equals the~~
 8-28 ~~percentage that agricultural use contributes to subsidence].~~

8-29 (e) The board shall use permit fees collected under this
 8-30 section to pay the cost of issuing permits and performing other
 8-31 regulatory functions, including making grants, loans, or
 8-32 contractual payments to achieve, facilitate, or expedite
 8-33 reductions in groundwater pumping or the development or
 8-34 distribution of alternative water supplies.

8-35 SECTION 19. The heading to Section 8801.163, Special
 8-36 District Local Laws Code, is amended to read as follows:

8-37 Sec. 8801.163. CONVERSION TO ALTERNATIVE [~~SURFACE~~] WATER
 8-38 SUPPLY.

8-39 SECTION 20. Subsections (b) and (c), Section 8801.163,
 8-40 Special District Local Laws Code, are amended to read as follows:

8-41 (b) The board may issue an order requiring a person to
 8-42 completely or partially discontinue the use of groundwater only if
 8-43 the person is able to:

8-44 (1) acquire an alternative [~~a~~] water supply [~~composed~~
 8-45 ~~of surface water]~~ needed to replace the water supply covered by the
 8-46 order; or

8-47 (2) participate in a groundwater reduction plan or
 8-48 other agreement approved by the board that complies with the
 8-49 district's regulatory requirements.

8-50 (c) A notice of public hearing must inform a person when the
 8-51 board will consider an order to convert to an alternative water
 8-52 supply [~~surface water~~].

8-53 SECTION 21. Section 8801.202, Special District Local Laws
 8-54 Code, is amended by amending Subsections (a) and (c) and adding
 8-55 Subsection (d) to read as follows:

8-56 (a) A person who is adversely affected by a rule, order, or
 8-57 other official action of the district under this chapter, including
 8-58 a person residing in or owning real property in the district whose
 8-59 residence or real property is subsiding, may appeal the action in a
 8-60 district court in any county in the district only after any
 8-61 administrative appeal to the district is finally resolved. An
 8-62 appeal under this section must be filed not later than the 45th day
 8-63 after the date any administrative appeal is finally resolved [~~the~~
 8-64 ~~action is taken]~~.

8-65 (c) An appeal under this section is governed by the
 8-66 substantial evidence rule as provided by Subchapter G, Chapter
 8-67 2001, Government Code. The burden of proof is on the petitioner,
 8-68 and the challenged rule, order, or other official action of the
 8-69 district is considered prima facie valid.

9-1 (d) The district court shall set for trial as expeditiously
9-2 as possible an appeal brought under this section and may not
9-3 postpone or continue the suit unless the reasons for postponement
9-4 or continuance are imperative.

9-5 SECTION 22. Section 8801.204, Special District Local Laws
9-6 Code, is amended by amending Subsection (b) and adding Subsection
9-7 (e) to read as follows:

9-8 (b) On application for injunctive relief and a finding that
9-9 a person is violating or threatening to violate this chapter or a
9-10 rule, permit, or other order of the district issued or adopted under
9-11 this chapter, the district court shall grant injunctive relief as
9-12 the facts warrant.

9-13 (e) In a suit to recover a civil penalty or a suit for
9-14 injunctive relief and a civil penalty, if the court finds that a
9-15 person has violated or is violating a provision of this chapter or a
9-16 rule, permit, or order of the district, the court shall assess a
9-17 civil penalty in the amount provided by this section.

9-18 SECTION 23. Subsection (a), Section 1, Chapter 1045, Acts
9-19 of the 71st Legislature, Regular Session, 1989, is amended to read
9-20 as follows:

9-21 (a) The purpose of this Act is to provide for the regulation
9-22 of the withdrawal of groundwater within the district created by
9-23 this Act to prevent subsidence, which ~~[that]~~ contributes to or
9-24 precipitates flooding, inundation, or overflow of areas within the
9-25 district, including rising waters resulting from storms or
9-26 hurricanes.

9-27 SECTION 24. Section 2, Chapter 1045, Acts of the 71st
9-28 Legislature, Regular Session, 1989, is amended by amending
9-29 Subdivision (9) and adding Subdivisions (10) through (15) to read
9-30 as follows:

9-31 (9) "Commission" means the Texas ~~[Water]~~ Commission on
9-32 Environmental Quality.

9-33 (10) "Agricultural crop":

9-34 (A) means food or fiber commodities that are
9-35 grown for resale or commercial purposes and that are to be used for
9-36 food, clothing, or animal feed; and

9-37 (B) includes nursery products and florist items
9-38 that are in the possession of a nursery grower.

9-39 (11) "Beneficial use" means any use that is useful or
9-40 beneficial to the user, including:

9-41 (A) an agricultural, gardening, domestic, stock
9-42 raising, municipal, mining, manufacturing, industrial, commercial,
9-43 or recreational use, or a use for pleasure purposes; or

9-44 (B) exploring for, producing, handling, or
9-45 treating oil, gas, sulfur, or other minerals.

9-46 (12) "Florist item" means a cut flower, potted plant,
9-47 blooming plant, inside foliage plant, bedding plant, corsage
9-48 flower, cut foliage, floral decoration, or live decorative
9-49 material.

9-50 (13) "Nursery grower" means a person who grows in any
9-51 medium more than 50 percent of the nursery products or florist items
9-52 that the person sells or leases. A person grows a nursery product
9-53 or florist item if the person cultivates or propagates the product
9-54 or item by engaging in activities associated with the production or
9-55 multiplying of stock, including the development of new plants from
9-56 cuttings, grafts, plugs, or seedlings. The term does not include a
9-57 person who merely holds or maintains a nursery product or florist
9-58 item before sale or lease.

9-59 (14) "Nursery product" includes a tree, shrub, vine,
9-60 cutting, graft, scion, grass, bulb, or bud that is grown or kept
9-61 for, or capable of, propagation and distribution for sale or lease.

9-62 (15) "Waste" means:

9-63 (A) the withdrawal of groundwater from a
9-64 groundwater reservoir at a rate and in an amount that causes or
9-65 threatens to cause intrusion into the reservoir of water unsuitable
9-66 for agricultural, gardening, domestic, or stock raising purposes;

9-67 (B) the flowing or producing of wells from a
9-68 groundwater reservoir if the water produced is not used for a
9-69 beneficial use or if the amount used is more than is reasonably

10-1 required for a beneficial use;
 10-2 (C) the escape of groundwater from a groundwater
 10-3 reservoir to any other reservoir or geologic strata that does not
 10-4 contain groundwater;

10-5 (D) the pollution or harmful alteration of
 10-6 groundwater in a groundwater reservoir by saltwater or other
 10-7 harmful matter admitted from another stratum or from the surface of
 10-8 the ground;

10-9 (E) wilfully or negligently causing, suffering,
 10-10 or allowing groundwater to escape or flow into a river, creek,
 10-11 natural watercourse, depression, lake, reservoir, drain, sewer,
 10-12 street, highway, road, or road ditch, or onto land that does not
 10-13 belong to the owner of the well unless the discharge is authorized
 10-14 by a permit, rule, or order issued by the commission under Chapter
 10-15 26, Water Code;

10-16 (F) the escape of groundwater pumped for
 10-17 irrigation as irrigation tailwater onto land that does not belong
 10-18 to the owner of the well unless the occupant of the land receiving
 10-19 the discharge granted permission for the discharge; or

10-20 (G) wilfully causing or knowingly permitting the
 10-21 water produced from an artesian well to run off the owner's land or
 10-22 to percolate through the stratum above which the water is found, as
 10-23 prescribed by Section 11.205, Water Code.

10-24 SECTION 25. Sections 3 and 4, Chapter 1045, Acts of the 71st
 10-25 Legislature, Regular Session, 1989, are amended to read as follows:

10-26 Sec. 3. CREATION; FINDING OF BENEFIT AND PUBLIC PURPOSE.
 10-27 (a) Under Article XVI, Section 59, ~~[of the]~~ Texas Constitution, a
 10-28 conservation and reclamation district is created to be known as the
 10-29 Fort Bend Subsidence District. The district is a governmental
 10-30 agency, a political subdivision of the state, and a body politic and
 10-31 corporate.

10-32 (b) The district is created to serve a public use and
 10-33 benefit.

10-34 Sec. 4. BOUNDARIES. ~~[(a)]~~ The district includes all of
 10-35 the territory within Fort Bend County.

10-36 ~~[(b) An adjoining county may be added to the district on~~
 10-37 ~~application of the commissioners court of the adjoining county and~~
 10-38 ~~compliance with the applicable provisions of Sections~~
 10-39 ~~55.730-55.744, Water Code.~~

10-40 ~~[(c) The proposition on the ballots for an election to add~~
 10-41 ~~an adjoining county to the district shall be printed to permit~~
 10-42 ~~voting for or against the proposition: "Addition of _____ County~~
 10-43 ~~to the Fort Bend Subsidence District."~~

10-44 ~~[(d) A county added to the district under this section is~~
 10-45 ~~subject to the jurisdiction of the board and this Act.]~~

10-46 SECTION 26. Chapter 1045, Acts of the 71st Legislature,
 10-47 Regular Session, 1989, is amended by adding Section 4A to read as
 10-48 follows:

10-49 Sec. 4A. NONAPPLICABILITY OF OTHER LAW. (a) Other laws
 10-50 governing the administration or operation of conservation and
 10-51 reclamation districts created under Section 52, Article III, or
 10-52 Section 59, Article XVI, Texas Constitution, including Chapters 36
 10-53 and 49, Water Code, do not apply to the district.

10-54 (b) Notwithstanding Section 36.052, Water Code, this
 10-55 chapter prevails over any other law in conflict or inconsistent
 10-56 with this Act.

10-57 SECTION 27. Subsections (h), (l), (n), (o), (p), and (r),
 10-58 Section 5, Chapter 1045, Acts of the 71st Legislature, Regular
 10-59 Session, 1989, are amended to read as follows:

10-60 (h) Selection of subsequent directors shall be made each ~~[on~~
 10-61 ~~the second Monday in]~~ January ~~[at 11 a.m. in the district's main~~
 10-62 ~~office]~~. Not later than the 20th day before the date of the board's
 10-63 January meeting, the district shall mail notice ~~[of the meeting]~~ to
 10-64 the persons designated in Subsections (b), (c), and (d) ~~[, and (e)]~~
 10-65 of this section to choose directors.

10-66 (l) Each ~~[At the initial meeting of the board and each]~~ year
 10-67 at the first meeting after new directors take office, the directors
 10-68 shall select a chairman, a vice-chairman, and a secretary. The
 10-69 chairman, vice-chairman, and secretary shall serve at the pleasure

11-1 of the board and may be removed and replaced by a majority of the
 11-2 board at any time.

11-3 (n) Each director is entitled to receive fees of office of
 11-4 not more than \$150 [~~\$50~~] a day for each day the director [~~he~~] is
 11-5 engaged in the exercise of the director's [~~his~~] duties. The fees of
 11-6 office may not exceed \$9,000 a year. Each director is also entitled
 11-7 to receive reimbursement for actual expenses reasonably and
 11-8 necessarily [~~under this Act and necessary travel and other~~
 11-9 ~~expenses~~] incurred in the exercise of the director's [~~his~~] duties
 11-10 under this Act. To receive fees of office and reimbursement for
 11-11 expenses, each director must file with the district a verified
 11-12 statement that shows the number of days spent in the service of the
 11-13 district and a general description of the duties performed for each
 11-14 day of service [~~A member of the board may not receive compensation~~
 11-15 ~~and travel and other expenses for more than 120 days in any one~~
 11-16 ~~calendar year].~~

11-17 (o) If a vacancy occurs on the board, the person or persons
 11-18 designated in Subsection (b), (c), or (d) [~~, or (e)~~] of this section
 11-19 to appoint a director for the position that is vacated shall appoint
 11-20 a director to serve the unexpired term.

11-21 (p) Each director shall make the sworn statement and take
 11-22 the oath of office prescribed by the constitution for public
 11-23 officers [~~law for county commissioners~~] and shall execute a bond in
 11-24 the amount of \$5,000, payable to the district, conditioned on the
 11-25 faithful performance of the director's [~~his~~] duties. The district
 11-26 shall pay for the bond.

11-27 (r) The board shall hold one regular meeting each month at a
 11-28 time set by the board. The board may hold special meetings at the
 11-29 call of the chairman or on the written request of at least three
 11-30 directors. A meeting of a committee of the board where less than a
 11-31 quorum is present is not subject to Chapter 551, Government Code.
 11-32 The board shall give notice of board meetings as provided by Chapter
 11-33 551, Government Code. Failure to provide notice of a regular
 11-34 meeting or an insubstantial defect in notice of any meeting does not
 11-35 affect the validity of any action taken at the meeting.

11-36 SECTION 28. Section 6, Chapter 1045, Acts of the 71st
 11-37 Legislature, Regular Session, 1989, is amended by amending
 11-38 Subsections (b), (c), and (d) and adding Subsections (e), (f), and
 11-39 (g) to read as follows:

11-40 (b) Withdrawals of groundwater, including withdrawals of
 11-41 injected water, covered by this Act are subject to reasonable
 11-42 rules, regulations, and orders adopted by the board.

11-43 (c) In adopting rules, regulations, and orders, the board
 11-44 shall consider the following factors:

11-45 (1) availability of surface water or alternative water
 11-46 supplies;

11-47 (2) economic impact on persons and the community;

11-48 (3) degree and effect of subsidence on the surface of
 11-49 the land; and

11-50 (4) differing topographical and geophysical
 11-51 characteristics of the land.

11-52 (d) The board has all other powers necessary or convenient
 11-53 to carry out its responsibilities and achieve the purpose of this
 11-54 Act, whether the powers are specifically authorized by this Act or
 11-55 implied by this Act or other law.

11-56 (e) The board may adopt bylaws and policies as necessary to
 11-57 accomplish its purposes.

11-58 (f) The board may purchase materials, supplies, equipment,
 11-59 vehicles, and machinery needed by the district to accomplish its
 11-60 purposes.

11-61 (g) The board shall adopt the following written policies:

11-62 (1) a code of ethics for district directors, officers,
 11-63 and employees, and persons who are engaged in handling investments
 11-64 for the district;

11-65 (2) a policy relating to travel expenditures;

11-66 (3) a policy relating to district investments;

11-67 (4) policies and procedures for selection,
 11-68 monitoring, or review and evaluation of professional services; and

11-69 (5) policies that ensure a better use of management

12-1 information, including the use of:

- 12-2 (A) budgets to plan and control cost; and
- 12-3 (B) uniform reporting requirements based on
- 12-4 "Audits of State and Local Governmental Units," published by the
- 12-5 American Institute of Certified Public Accountants, and
- 12-6 "Governmental Accounting and Financial Reporting Standards,"
- 12-7 published by the Governmental Accounting Standards Board.

12-8 SECTION 29. Section 7, Chapter 1045, Acts of the 71st
 12-9 Legislature, Regular Session, 1989, is amended by adding Subsection
 12-10 (e) to read as follows:

12-11 (e) The board shall determine the compensation and terms of
 12-12 office and employment for the general manager. The board may
 12-13 discharge the general manager by a vote of a majority of board
 12-14 members.

12-15 SECTION 30. The heading to Section 8, Chapter 1045, Acts of
 12-16 the 71st Legislature, Regular Session, 1989, is amended to read as
 12-17 follows:

12-18 Sec. 8. EMPLOYEES; BENEFITS.

12-19 SECTION 31. Section 8, Chapter 1045, Acts of the 71st
 12-20 Legislature, Regular Session, 1989, is amended by amending
 12-21 Subsections (a) and (b) and adding Subsections (d)-(g) to read as
 12-22 follows:

12-23 (a) The general manager [board] shall employ personnel
 12-24 necessary for the proper handling of the business and operation of
 12-25 the district and may employ attorneys, bookkeepers, engineers, and
 12-26 other expert and specialized personnel that are considered
 12-27 necessary. The general manager [board] shall determine the
 12-28 compensation to be paid by the district to the employees.

12-29 (b) ~~[The board shall determine the term of office of and the~~
 12-30 ~~compensation to be paid to the general manager. The board may~~
 12-31 ~~discharge the general manager by a majority vote.]~~ The general
 12-32 manager [board] may discharge employees of the district.

12-33 (d) The board may provide for and administer retirement,
 12-34 disability, and death compensation funds for the employees of the
 12-35 district.

12-36 (e) The board may establish a public retirement system as
 12-37 provided by Chapter 810, Government Code, or provide for a deferred
 12-38 compensation plan as described by Section 457, Internal Revenue
 12-39 Code of 1986.

12-40 (f) The board may include hospitalization and medical
 12-41 benefits for its employees as part of the compensation paid to
 12-42 employees and may adopt or amend any plan or rule as necessary to
 12-43 provide hospitalization and medical benefits.

12-44 (g) The board may establish a sick leave pool for employees
 12-45 of the district in the same manner as a sick leave pool for state
 12-46 employees is authorized to be created under Subchapter A, Chapter
 12-47 661, Government Code.

12-48 SECTION 32. Sections 10 and 11, Chapter 1045, Acts of the
 12-49 71st Legislature, Regular Session, 1989, are amended to read as
 12-50 follows:

12-51 Sec. 10. MINUTES AND RECORDS OF DISTRICT. The district
 12-52 shall keep a true and complete account of the board's meetings and
 12-53 proceedings and shall preserve the board's minutes, contracts,
 12-54 records, notices, accounts, and receipts in a ~~[fireproof vault or]~~
 12-55 safe place. The board's minutes, contracts, records, notices,
 12-56 accounts, and receipts are the property of the district and are
 12-57 subject to public inspection.

12-58 Sec. 11. SUITS. (a) The district may sue and be sued in
 12-59 the courts of this state in the name of the district by and through
 12-60 the board. If requested by the district, the attorney general shall
 12-61 represent the district in the district and appellate courts of this
 12-62 state and in the courts of the United States. The board, in its sole
 12-63 discretion, may employ attorneys to represent the district in the
 12-64 district and appellate courts of this state and in the courts of the
 12-65 United States.

12-66 (b) The general manager is the agent of the district on whom
 12-67 process, notice, or demand required or permitted by law to be served
 12-68 on the district may be served.

12-69 (c) The district is not required to give bond for appeal,

13-1 injunction, or costs in any suit to which it is a party.

13-2 (d) If the district prevails in any suit other than a suit in
 13-3 which it voluntarily intervenes, the district may seek and the
 13-4 court shall grant, in the same action, recovery for attorney's
 13-5 fees, costs for expert witnesses, and other costs incurred by the
 13-6 district before the court. The court shall set the amount of the
 13-7 attorney's fees [All courts shall take judicial notice of the
 13-8 creation of the district and of its boundaries].

13-9 SECTION 33. Subsection (a), Section 13, Chapter 1045, Acts
 13-10 of the 71st Legislature, Regular Session, 1989, is amended to read
 13-11 as follows:

13-12 (a) After notice and hearing [~~under Section 14 of this Act~~],
 13-13 the board shall adopt and enforce rules and regulations that are
 13-14 designed to expeditiously and effectively accomplish the
 13-15 provisions and purposes of this Act, including rules governing
 13-16 procedure before the board. The board may adopt rules to prevent
 13-17 the waste of water or the degradation of water quality.

13-18 SECTION 34. Subsections (b), (c), (d), and (h), Section 14,
 13-19 Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989,
 13-20 are amended to read as follows:

13-21 (b) Not later than the 10th [20th] day before the date set
 13-22 for a hearing, other than a hearing on a permit application, the
 13-23 district shall deliver or mail notice of the hearing under this
 13-24 section to each county and municipal government within the district
 13-25 and to each person that the board believes has an interest in the
 13-26 subject matter to be dealt with at the hearing.

13-27 (c) Not later than the 10th [20th] day before the date set
 13-28 for a hearing, the district shall publish notice of the hearing
 13-29 under this section once in a newspaper of general circulation in
 13-30 each county within the district.

13-31 (d) Not later than the 10th [20th] day before the date set
 13-32 for a hearing, the district shall post the notice of the hearing
 13-33 under this section at the county courthouse of each county within
 13-34 the district in the place where notices are usually posted.

13-35 (h) The board may use hearing examiners to hear any subject
 13-36 set for the hearing, but the board shall make any final decision on
 13-37 the subject. Procedures for use of hearing examiners shall be
 13-38 provided by rule [~~in the rules and regulations~~].

13-39 SECTION 35. Subsections (a) and (c) through (f), Section
 13-40 16, Chapter 1045, Acts of the 71st Legislature, Regular Session,
 13-41 1989, are amended to read as follows:

13-42 (a) The [Under Section 14 of this Act, the] board shall
 13-43 formulate a plan to control and mitigate subsidence within the
 13-44 district. The plan shall accomplish this purpose by the regulation
 13-45 of groundwater withdrawals to maintain sufficient artesian
 13-46 pressure to control and mitigate subsidence.

13-47 (c) When formulating the plan, the board shall compile and
 13-48 consider:

13-49 (1) a list of wells in the district that will be
 13-50 subject to regulation under this Act;

13-51 (2) an accurate estimate of groundwater production
 13-52 from all wells [each well] or proposed wells [well] in the district;

13-53 (3) an accurate estimate of the amount of groundwater
 13-54 that may be produced from each [~~well and each~~] area in the district
 13-55 without causing long-term static water level decline and reduction
 13-56 of artesian pressure that will lead to subsidence within the
 13-57 district;

13-58 (4) an accurate estimate of the current and future
 13-59 water needs [~~of each well owner~~] in the district;

13-60 (5) [~~an accurate estimate of the groundwater~~
 13-61 ~~production capacity of each well in the district,~~

13-62 [~~(6)~~] a list of all available sources of water in the
 13-63 district other than groundwater;

13-64 (6) [~~(7)~~] the purpose for which the water is currently
 13-65 used and for which it is proposed to be used in the future;

13-66 (7) [~~(8)~~] information relating to formulation of a
 13-67 permit system; and

13-68 (8) [~~(9)~~] other information necessary to carry out the
 13-69 management of groundwater in the district and to effectively and

14-1 expeditiously accomplish the purposes of this Act.

14-2 (d) The initial plan shall be formulated not later than 12
14-3 months after the effective date of this Act.

14-4 (e) Not later than the 60th day after the date the initial
14-5 plan is formulated, the board shall review and adopt the plan.

14-6 (f) Before a ~~the~~ plan is adopted, the board shall hold a
14-7 hearing ~~[under Section 14 of this Act]~~ to consider the proposed
14-8 plan.

14-9 SECTION 36. Section 17, Chapter 1045, Acts of the 71st
14-10 Legislature, Regular Session, 1989, is amended to read as follows:

14-11 Sec. 17. WELL REGISTRATION. The board by rule may require
14-12 the registration of any well in the district ~~[TEMPORARY REGULATION.~~
14-13 ~~During the period that the board is formulating and adopting the~~
14-14 ~~plan under Section 16 of this Act, the board shall adopt temporary~~
14-15 ~~rules and regulations relating to the withdrawal of groundwater~~
14-16 ~~that are necessary to control subsidence].~~

14-17 SECTION 37. Subsections (a), (b), and (d), Section 18,
14-18 Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989,
14-19 are amended to read as follows:

14-20 (a) The owner of a well located in the district must obtain a
14-21 permit from the board before:

- 14-22 (1) drilling, equipping, or completing the well;
14-23 (2) substantially altering the size of the well or a
14-24 well pump; or
14-25 (3) operating the well [to withdraw groundwater].

14-26 (b) A well must have a valid permit if it is operational. An
14-27 owner or operator commits a violation if the owner or operator does
14-28 not obtain a permit as required by Subsection (a) of this section.
14-29 A violation occurs on the first day the drilling, alteration, or
14-30 operation begins. Each day that a violation continues is a separate
14-31 violation [Owners of wells operating or being drilled on the
14-32 effective date of this Act must apply for a permit before January
14-33 1, 1990, and may continue to operate the well without a permit
14-34 until the application for a permit for the well is acted on by the
14-35 board].

14-36 (d) A permit is not a vested right of the permit holder. A
14-37 permit may be revoked, suspended, modified, or amended after notice
14-38 and a [public] hearing [under Section 14 of this Act] whenever
14-39 reasonably necessary to accomplish the purposes of this Act.

14-40 SECTION 38. Subsection (b), Section 19, Chapter 1045, Acts
14-41 of the 71st Legislature, Regular Session, 1989, is amended to read
14-42 as follows:

14-43 (b) Not later than the 10th ~~[20th]~~ day before the date set
14-44 for the hearing, the board shall notify the applicant by regular
14-45 mail or by certified mail, return receipt requested, of the date,
14-46 time, and location of the hearing.

14-47 SECTION 39. Section 20, Chapter 1045, Acts of the 71st
14-48 Legislature, Regular Session, 1989, is amended by amending
14-49 Subsections (a), (b), (c), and (e) and adding Subsection (f) to read
14-50 as follows:

14-51 (a) Not later than the 60th ~~[35th]~~ day after the date of the
14-52 hearing, the board shall decide whether or not to issue a permit and
14-53 shall formulate the terms of the permit, if issued.

14-54 (b) In deciding whether or not to issue a permit and in
14-55 setting the terms of the permit, the board shall consider:

- 14-56 (1) the purpose of this Act;
14-57 (2) the district plan;
14-58 (3) the quality, quantity, and availability of surface
14-59 water or alternative water supplies at prices competitive with
14-60 those charged by suppliers of surface water within the district;
14-61 ~~[and]~~

14-62 (4) the economic impact on the applicant of granting
14-63 or denying the permit or of the terms prescribed by a permit in
14-64 relation to the effect on subsidence that would result;

14-65 (5) the applicant's compliance with the requirements
14-66 of this Act or any rule, permit, or other order of the district; and

14-67 (6) any other relevant factors.

14-68 (c) The board shall grant a permit to an applicant whenever
14-69 the board finds on sufficient evidence that:

15-1 (1) there is no other adequate and available
15-2 substitute or supplemental source of surface water at prices
15-3 competitive with those charged by suppliers of surface water within
15-4 the district; and

15-5 (2) compliance with any provision of this Act, or any
15-6 rule or regulation of the district, will result in an arbitrary
15-7 taking of property or in the practical closing and elimination of
15-8 any lawful business, occupation, or activity, without sufficient
15-9 corresponding benefit or advantage to the public [people].

15-10 (e) The permit must include the following:

15-11 (1) the name and address of the permittee;

15-12 (2) the location of the well;

15-13 (3) the date the permit begins and the date the permit
15-14 expires;

15-15 (4) conditions and restrictions placed on the
15-16 withdrawal of groundwater; and

15-17 (5) ~~[adoption of water conservation measures for the~~
15-18 ~~purpose of preventing waste of groundwater, including educational~~
15-19 ~~programs; and~~

15-20 ~~[(6)]~~ any other terms and conditions necessary to
15-21 control and prevent subsidence.

15-22 (f) The board may condition issuance of a permit under this
15-23 section on the resolution of a prior or continuing violation of this
15-24 chapter or any rule, permit, or order of the district. The board
15-25 may require an applicant to pay a civil penalty or settlement
15-26 amount, or take other necessary action, to resolve a prior or
15-27 continuing violation.

15-28 SECTION 40. Section 22, Chapter 1045, Acts of the 71st
15-29 Legislature, Regular Session, 1989, is amended to read as follows:

15-30 Sec. 22. ANNUAL REPORTS. Before January 31 of each year,
15-31 each owner of a well who holds a permit under this Act shall submit a
15-32 report to the board stating the following:

15-33 (1) the person's name;

15-34 (2) the location of the well;

15-35 (3) the total amount of groundwater produced by the
15-36 well during the immediately preceding 12-month period;

15-37 (4) the total amount of groundwater produced by the
15-38 well during each separate month of the immediately preceding
15-39 12-month period;

15-40 (5) the purpose for which the groundwater was used;
15-41 and

15-42 (6) ~~[the date the permit expires; and~~

15-43 ~~[(7)]~~ any other information required by the board as
15-44 necessary for the board to control and prevent subsidence within
15-45 the district.

15-46 SECTION 41. Section 24, Chapter 1045, Acts of the 71st
15-47 Legislature, Regular Session, 1989, is amended by amending
15-48 Subsections (a) and (b) and adding Subsection (d) to read as
15-49 follows:

15-50 (a) Before March 31 of each year, the board shall hold a
15-51 hearing ~~[under Section 14 of this Act]~~ to determine the effects
15-52 during the preceding calendar year of groundwater withdrawal on the
15-53 subsidence of land within the district.

15-54 (b) At the hearing, the board shall consider the annual
15-55 reports submitted under Section 22 of this Act and the
15-56 investigation made under Section 23 of this Act in addition to
15-57 information presented ~~[represented]~~ by persons appearing before
15-58 the board.

15-59 (d) The board shall submit the report adopted under
15-60 Subsection (c) of this section and a copy of the most recent
15-61 district plan adopted under Section 16 of this Act to the
15-62 appropriate regional water planning group.

15-63 SECTION 42. Section 25, Chapter 1045, Acts of the 71st
15-64 Legislature, Regular Session, 1989, is amended to read as follows:

15-65 Sec. 25. REGULATION OF SPACING AND PRODUCTION. (a) In
15-66 order to minimize as far as practicable the drawdown of the water
15-67 table and reduction of artesian pressure and to control and prevent
15-68 subsidence, the board may provide for the spacing of wells and
15-69 regulate the production of groundwater from ~~[the]~~ wells, taking

16-1 into consideration any relevant factors, including the economic
16-2 impact on well owners and the resulting effect on subsidence.

16-3 (b) Before issuing any rule, regulation, or order under this
16-4 section, the board shall set a hearing on the proposed rule,
16-5 regulation, or order ~~[and issue notice of the hearing. Notice must~~
16-6 ~~be given and hearings conducted in the manner provided in Section 14~~
16-7 ~~of this Act].~~

16-8 (c) The district may adopt different rules for:

16-9 (1) each aquifer, subdivision of an aquifer, or
16-10 geologic stratum located wholly or partly within the boundaries of
16-11 the district; or

16-12 (2) each geographic area overlying an aquifer or
16-13 subdivision of an aquifer located wholly or partly within the
16-14 boundaries of the district.

16-15 (d) The board may issue an order requiring a person to
16-16 completely or partially discontinue the use of groundwater by:

16-17 (1) acquiring an alternative water supply needed to
16-18 replace the water supply covered by the order; or

16-19 (2) participating in a groundwater reduction plan or
16-20 other agreement approved by the board as achieving compliance with
16-21 the district's regulatory requirements.

16-22 (e) The board may issue an order or adopt a rule requiring a
16-23 person to reduce groundwater use by eliminating waste or
16-24 implementing water conservation measures.

16-25 SECTION 43. Sections 26, 28, 29, and 31, Chapter 1045, Acts
16-26 of the 71st Legislature, Regular Session, 1989, are amended to read
16-27 as follows:

16-28 Sec. 26. REQUIRING WATER-METERING DEVICES. The board may
16-29 ~~require [adopt orders after notice and hearing under Section 14 of~~
16-30 ~~this Act requiring]~~ water-metering devices to be placed on wells in
16-31 the district and may adopt standards for the accuracy, testing, and
16-32 calibration of the devices.

16-33 Sec. 28. MONITORING AND SUPERVISIONS OF DISTRICT. (a) The
16-34 district may use subsidence compaction monitors, water level
16-35 observation wells, and other materials and equipment to determine
16-36 the amount of groundwater that may be produced while allowing the
16-37 rebound and stabilization of groundwater to a level that will halt
16-38 subsidence.

16-39 (b) The district may use global positioning systems and
16-40 other geodetic survey methods to monitor land surface elevations
16-41 and measure subsidence. The district may coordinate monitoring and
16-42 data collection activities with other entities, including private
16-43 entities and federal, state, or local governmental entities.

16-44 Sec. 29. RESEARCH AND STUDIES. (a) The board may conduct
16-45 studies and research that it considers necessary to implement this
16-46 Act. The board may use the services of geologists, hydrologists,
16-47 licensed [registered] professional engineers, licensed
16-48 professional geoscientists, or other expert personnel to
16-49 accomplish the purposes of this section.

16-50 (b) The district may collect any information that the board
16-51 determines is necessary to implement this chapter, including
16-52 information regarding the use of groundwater, water conservation,
16-53 and the practicability of recharging a groundwater reservoir.

16-54 Sec. 31. CONTRACTS. The board may enter into contracts with
16-55 any person to carry out this Act. The district may enter into
16-56 contracts only in the district's name.

16-57 SECTION 44. Section 32, Chapter 1045, Acts of the 71st
16-58 Legislature, Regular Session, 1989, is amended by amending
16-59 Subsections (a), (b), and (d) and adding Subsection (e) to read as
16-60 follows:

16-61 (a) A person who is adversely affected by a rule,
16-62 regulation, order, or other official action of the board may appeal
16-63 to a district court in any county in the district. A person may file
16-64 an appeal only after any administrative appeal to the district is
16-65 finally resolved.

16-66 (b) For the purposes of this section, "a person who is
16-67 adversely affected" includes a person residing in or owning real
16-68 property in the district whose residence or real property is
16-69 subsiding. An appeal under this section must be filed not later

17-1 than the 45th day after the date any administrative appeal is
17-2 finally resolved [the rule, regulation, order, or other official
17-3 action appealed from is promulgated].

17-4 (d) In appeals taken under this section, the substantial
17-5 evidence rule, as provided by Subchapter G, Chapter 2001,
17-6 Government Code, shall be used to determine the legal propriety of a
17-7 rule, regulation, order, or other action of the board. The burden
17-8 of proof is on the petitioner, and the challenged rule, order, or
17-9 other official action of the district is considered prima facie
17-10 valid.

17-11 (e) The district court shall set for trial as expeditiously
17-12 as possible an appeal brought under this section and may not
17-13 postpone or continue the suit unless the reasons for postponement
17-14 or continuance are imperative.

17-15 SECTION 45. Sections 34 through 37, 39, and 40, Chapter
17-16 1045, Acts of the 71st Legislature, Regular Session, 1989, are
17-17 amended to read as follows:

17-18 Sec. 34. PERMIT FEE. (a) At the time a permit is issued or
17-19 renewed, the board shall collect from the permittee a permit fee,
17-20 established by schedule, based on the term of the permit and the
17-21 maximum amount of groundwater authorized by the board to be
17-22 withdrawn annually from the well. The board may also establish a
17-23 disincentive permit fee to serve as a regulatory tool by creating a
17-24 disincentive to continued overreliance on groundwater.

17-25 (b) The fee schedule shall be determined by the board after
17-26 a hearing ~~[under Section 14 of this Act].~~

17-27 (c) The board shall use the funds obtained from permit fees
17-28 to cover the costs of issuing permits and performing other
17-29 regulatory functions under this Act, including making grants,
17-30 loans, or contractual payments to achieve, facilitate, or expedite
17-31 reductions in groundwater pumping or the development or
17-32 distribution of alternative water supplies.

17-33 Sec. 35. GRANTS, PURCHASES, GIFTS, LEASES, ETC. (a) On
17-34 behalf of the district, the board may:

17-35 (1) purchase, lease, own, convey, and dispose of
17-36 property both inside and outside the district necessary or
17-37 convenient to the exercise of the powers, duties, and functions of
17-38 the board under this Act;

17-39 (2) accept grants, gifts, and devises of property;

17-40 (3) construct, purchase, lease, or acquire in some
17-41 other manner any material or property necessary to carry out this
17-42 Act; and

17-43 (4) accept gifts, grants, loans, or other
17-44 distributions of money.

17-45 (b) The district may make or accept a grant, gratuity,
17-46 advance, or loan in any form to or from any public source approved
17-47 by the board, including a governmental entity, and may enter into a
17-48 contract, agreement, or covenant that the board considers
17-49 appropriate in connection with a grant, gratuity, advance, or loan.

17-50 Sec. 36. WATER CONSERVATION MEASURES ~~[OWNERSHIP OF~~
17-51 ~~GROUNDWATER]~~. (a) The board may adopt rules requiring the use of
17-52 water conservation measures to reduce groundwater withdrawals.

17-53 (b) The district may cooperate with the commission and a
17-54 local government to establish water conservation goals,
17-55 guidelines, and plans to be used in the district.

17-56 (c) The district may contract with a local government in the
17-57 district to provide services needed to meet water conservation
17-58 requirements established by the commission ~~[The ownership and~~
17-59 ~~rights of the owner of land and his lessees and assigns in~~
17-60 ~~groundwater are recognized and nothing in this Act shall be~~
17-61 ~~construed as depriving or divesting the owner or his lessees and~~
17-62 ~~assigns of the ownership or rights, subject to rules and~~
17-63 ~~regulations and orders and other official actions of the district].~~

17-64 Sec. 37. OPEN OR UNCOVERED WELLS ~~[SURFACE WATER LAWS NOT~~
17-65 ~~APPLICABLE]~~. (a) The district may require the owner or lessee of
17-66 land on which an open or uncovered well is located to keep the well
17-67 closed or capped with a covering capable of sustaining weight of at
17-68 least 400 pounds when the well is not in actual use.

17-69 (b) If the owner or lessee fails or refuses to close or cap

18-1 the well, any person, firm, or corporation employed by the district
18-2 may enter onto the land and close or cap the well safely and
18-3 securely [The laws and administrative rules relating to the use of
18-4 surface water do not apply to groundwater].

18-5 Sec. 39. EXCLUSIONS. This Act does not apply to:

18-6 (1) wells regulated under Chapter 27, Water Code;
18-7 (2) shallow wells producing water solely to prevent
18-8 hazardous sand boils, dewater surface construction sites, or
18-9 relieve hydrostatic uplift on permanent structures and not used to
18-10 provide water for human consumption, agricultural use,
18-11 manufacturing or industrial use, or water injection;

18-12 (3) shallow wells producing water solely for
18-13 groundwater quality analysis and for monitoring migration of
18-14 subsurface contaminants or pollution and not used to provide water
18-15 for human consumption, agricultural use, manufacturing or
18-16 industrial uses, or water injection;

18-17 (4) shallow wells producing water solely for recovery
18-18 of contamination or pollution and not used to provide water for
18-19 human consumption, agricultural use, manufacturing or industrial
18-20 use, or water injection; or

18-21 (5) ~~[persons owning only one well within the district~~
18-22 ~~if the well has a casing with an inside diameter of five inches or~~
18-23 ~~less; and~~

18-24 ~~[(6) on application for an exemption on a form~~
18-25 ~~prescribed by the board, other] wells with a casing that has an~~
18-26 ~~inside diameter of five inches or less that serve only a~~
18-27 ~~single-family dwelling [and have a negligible effect on subsidence~~
18-28 ~~within the district].~~

18-29 Sec. 40. DISBURSEMENT OF FUNDS. The district's money may be
18-30 disbursed by:

18-31 (1) check, draft, order, or other instruments, signed
18-32 by the person or persons authorized to do so by the board's bylaws
18-33 or by resolution of the board; or

18-34 (2) electronic funds transfer.

18-35 SECTION 46. The heading to Section 41, Chapter 1045, Acts of
18-36 the 71st Legislature, Regular Session, 1989, is amended to read as
18-37 follows:

18-38 Sec. 41. ACCOUNTS AND INDEPENDENT AUDIT; BUDGET.

18-39 SECTION 47. Section 41, Chapter 1045, Acts of the 71st
18-40 Legislature, Regular Session, 1989, is amended by amending
18-41 Subsection (b) and adding Subsections (c) and (d) to read as
18-42 follows:

18-43 (b) ~~[The board shall deliver a copy of the audit to the~~
18-44 ~~commissioners court of each county in the district.]~~ The board
18-45 shall keep one copy of the audit at the district office, open to
18-46 inspection by any interested person during normal office hours.

18-47 (c) The fiscal year of the district is the calendar year.

18-48 (d) The board shall adopt an annual budget containing a
18-49 complete financial statement. The board may amend the annual
18-50 budget.

18-51 SECTION 48. The heading to Section 42, Chapter 1045, Acts of
18-52 the 71st Legislature, Regular Session, 1989, is amended to read as
18-53 follows:

18-54 Sec. 42. DEPOSITORY BANKS; INVESTMENTS.

18-55 SECTION 49. Section 42, Chapter 1045, Acts of the 71st
18-56 Legislature, Regular Session, 1989, is amended by amending
18-57 Subsections (a), (c), and (d) and adding Subsections (h) and (i) to
18-58 read as follows:

18-59 (a) The board shall designate one or more banks within the
18-60 district to serve as depository for ~~[the funds of the] district~~
18-61 money. All [Except as provided by Subsection (b) of this section,
18-62 all funds of the] district money shall be deposited in a depository
18-63 bank. This subsection does not limit the power of the board to
18-64 place a portion of the district's money on time deposit or to
18-65 purchase certificates of deposit or other authorized investments.

18-66 (c) To the extent that money [funds] in a depository bank or
18-67 a trustee bank is [are] not invested or insured by the Federal
18-68 Deposit Insurance Corporation, the money [they] shall be secured in
18-69 the manner provided by Chapter 2257, Government Code [law for the

~~security of county funds].~~

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

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

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

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

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

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

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

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

SECTION 52. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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