

BILL ANALYSIS

C.S.S.B. 1983
By: Estes
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under Chapter 35, Water Code, the Texas Commission on Environmental Quality (TCEQ) may designate areas of the state that are currently experiencing critical groundwater supply problems, or are expected to experience such problems within the next 25 year period. These areas are referred to as Priority Groundwater Management Areas (PGMAs). In December 2006, the TCEQ issued a draft report recommending creation of a PGMA that covers 20 North Texas counties, including Hood, Montague, Parker, and Wise counties. Chapter 35, Water Code, requires that the TCEQ either create one or more groundwater conservation districts within the PGMA area, recommend that areas within the PGMA be added to existing districts, or both, within two years following issuance of its final order designating the PGMA.

While the TCEQ's PGMA designation for the 20 North Texas counties has yet to be finalized, the designation is widely expected to occur this year. C.S.S.B. 1983 would create, subject to voter confirmation, the Upper Trinity Groundwater Conservation District—a proposed four-county district to be comprised of Hood, Montague, Parker, and Wise counties. The district would be organized as a fee-based district, with the powers to manage the groundwater resources within its boundaries pursuant to the authority granted by article XVI, Section 59, of the Texas Constitution and by Chapter 36, Water Code.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1.

Adds Chapter 8830, Upper Trinity Groundwater Conservation District, to Subtitle H, Title 6, Special Districts Local Laws Code.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8830.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 8830.002. NATURE OF DISTRICT; FINDINGS. Provides that the district is a groundwater conservation district in Hood, Montague, Parker, and Wise Counties created under and essential to accomplishing the purposes of Article XVI, Section 59, Texas Constitution. Further provides that the district is created to serve a public use and benefit; property included within the district will benefit from the district's works and projects; and fees imposed by the district are necessary.

Sec. 8830.003. CONFIRMATION ELECTION REQUIRED. Provides that if the creation of the district is not confirmed at a confirmation election held before September 1, 2009, this chapter expires on September 1, 2012 and the district is dissolved on September 1, 2009, except that debts must be paid and assets must be transferred to the counties comprising the district.

Sec. 8830.004. INITIAL DISTRICT TERRITORY. Provides that initial boundaries of the district are coextensive with the boundaries of Hood, Montague, Parker, and Wise Counties.

Sec. 8830.005. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Provides that, except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

Sec. 8830.006. CONSTRUCTION OF CHAPTER. Provides that this chapter shall be liberally construed to achieve legislative intent and the purpose of Chapter 36, Water Code and that powers granted by this chapter and Chapter 36, Water Code, shall be broadly interpreted.

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8830.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Requires eight temporary directors to be appointed pursuant to Section 8830.051(a), which requires two directors each from the four counties comprising the district.

(b) Requires temporary directors to be appointed within 90 days of the effective date of the bill. If less than eight temporary directors have been appointed within 90 days, allows filling the vacancy as outlined in Subsection (c).

(c) Requires temporary directors to fill any vacancy by appointing a person to fill the vacancy in a manner that ensures representational requirements are met.

(d) Requires a temporary director to be a registered voter in the appointing county.

(e) Requires a temporary director to qualify under Section 36.055, Water Code (sworn statement, bond, and oath of office).

(f) Provides that the terms of the temporary directors end on the earlier of the time that the temporary directors become initial permanent directors or this chapter expires, if the confirmation election is not held in the specified time frame.

Sec. 8830.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. Requires a majority of the temporary directors, as soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code (Sworn Statement, Bond, and Oath of Office), to convene the organizational meeting of the district at a location agreeable to a majority of the directors or at the Poolville Junior High School in Parker County.

Sec. 8830.023. CONFIRMATION ELECTION. (a) Requires the temporary directors to hold an election to confirm the creation of the district.

(b) Provides that Section 41.001(a), Election Code (setting forth the uniform dates of the general or special elections), does not apply to a confirmation election held as provided by this section.

(c) Except as otherwise provided, requires the confirmation election to be conducted in accordance with the Election Code and Sections 36.017(b), (c), (e)-(g), Water Code (designation of election precincts and polling places, publication of notice of election, delivery of election returns and canvass of votes, and declaration of results).

(d) Provides the ballot language to be used in the confirmation election.

(e) Authorizes the temporary directors, if a majority of the votes cast at the election are not in favor of the creation of the district, to hold a subsequent confirmation election.

Sec. 8830.024. INITIAL PERMANENT DIRECTORS; INITIAL TERMS. Provides that, if the creation of the district is confirmed at the confirmation election, the temporary directors will become the initial permanent directors and the two directors from each county shall draw lots to determine which director's term will expire on June 1 of the first odd-numbered year after the confirmation election and which director's term will expire on June 1 of the next odd-numbered year.

Sec. 8830.025. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires September 1, 2012.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8830.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of eight directors, with two directors each appointed by the commissioners courts of Hood, Montague, Parker, and Wise Counties.

(b) Provides that directors serve staggered four-year terms, expiring on June 1 of odd-numbered years.

(c) Allows a director to serve multiple consecutive terms.

Sec. 8830.052. DIRECTOR ELGIBILITY; QUALIFICATION. (a) Requires a director to be a registered voter in the appointing county.

(b) Requires a director to qualify under Section 36.055, Water Code (Sworn Statement, Bond, and Oath of Office).

Sec. 8830.053. VACANCIES. In the event of a vacancy, requires the remaining directors to appoint a person to fill the vacancy in a manner that meets the representational requirements (two directors from each county).

Sec. 8830.054. COMPENSATION; REIMBURSEMENT. (a) Prohibits a director from receiving compensation for the performance of director's duties.

(b) Allows a director to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8830.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Provides that, except as otherwise provided in this chapter, the district has all the powers and duties applicable to groundwater conservation districts provided by general law, including Chapter 36, Water Code, and Article XVI, Section 59, Texas Constitution.

Sec. 8830.102. CONTRACTS. Allows the district to enter into contracts with any public or private person, for any purpose authorized by law.

Sec. 8830.103. APPLICABILITY OF DISTRICT REGULATIONS. Provides that, except as exempted by Section 36.117, Water Code, or this chapter, all persons are subject to groundwater regulation under this chapter.

Sec. 8830.104. WELL SPACING RULES; EXEMPTIONS. Requires the district to exempt from well spacing requirements wells already completed on or before the effective date, but provides that a well may lose its exemption if it is modified to substantially increase the capacity of the well after the implementation of well spacing requirements by the district. Except as provided by this section, allows the district to require a well or class of wells to comply with well spacing requirements, even if the well or class of wells is exempt from permitting under Chapter 36, Water Code. Further requires the district to apply well spacing requirements uniformly based on the size or capacity of the well, regardless of the type of groundwater use.

Sec. 8830.105. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. Allows the district to adopt rules requiring the owner or operator of an exempt well or class of wells to register the well with the district and, except for domestic and livestock wells exempt from permitting, report groundwater withdrawals. Reporting requirements must be reasonable.

Sec. 8830.106. ENFORCEMENT. Provides that the district may enforce this chapter in accordance with Chapter 36, Water Code. To provide a disincentive for unauthorized groundwater productions, provides the district with the authority to assess an additional fee to any person producing groundwater in violation of district rules. The fee cannot exceed ten times the amount of a fee assessed under Section 8830.152 (District Revenues).

Sec. 8830.107. NO EMINENT DOMAIN POWER. Prohibits the district from exercising eminent domain power.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8830.151. TAXES PROHIBITED. Prohibits the district from imposing a tax. Provides that Sections 36.020(a) and 36.201-36.204, Water Code (which relate to the levy of taxes) do not apply to the district.

Sec. 8830.152. DISTRICT REVENUES. (a) Allows the district to assess and use proceeds from production fees based on the amount of groundwater authorized by permit to be withdrawn or the amount of water actually withdrawn from the well. Allows the district to use revenue generated by fees assessed for any lawful purpose.

(b) Establishes limits on fees of \$1.00 per acre-foot for groundwater used for agricultural purposes or thirty cents per thousand gallons for water used for other purposes.

(c) Prior to the adoption of its management plan, allows the district to establish, assess, and enforce the collection of production fees and to establish and enforce metering and reporting requirements.

(d) Allows the district to establish by rule a temporary or permanent discounted fee rate for persons who prepay production fees to the district.

SECTION 2.

Provides that legal notice has been published and furnished to all entities as required by law and the constitution and that the governor has submitted the notice and Act to the Texas Commission on Environmental Quality. Further provides that the Texas Commission on Environmental Quality has filed its recommendations with required elected officials within the required time and that all requirements of the constitution, state laws, and rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 3.

Provides that the Act takes effect immediately if it receives the necessary vote. Otherwise the Act takes effect on September 1, 2007.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute deletes language contained in the original bill providing for the waiver of sovereign immunity to suit and liability of a government entity (SECTION 1, Sec. 8830.103(b); and SECTION 2 of the original bill). Remaining bill and code sections in the committee substitute are renumbered accordingly.

With regard to certain exempt wells, the committee substitute adds language in SECTION 1, Sec. 8830.105 not contained in the original bill that excepts domestic and livestock wells exempt from permitting requirements from being required to report groundwater withdrawals.

The committee substitute deletes a provision in the original bill that provided that Section 36.121, Water Code, does not apply to the district (SECTION 1, Sec. 8830.107 of the original bill). Remaining code sections are renumbered accordingly.

The committee substitute deletes a provision in the original bill (SECTION 1, Sec. 8830.152(c)) which authorized the district to assess fees exempt from permitting under Sec. 36.117, Water Code, and set forth certain conditions regarding the basis for such production fees. Remaining subsections are renumbered accordingly.