

By: King of Parker

H.B. No. 4052

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation, administration, powers, duties,
3 operations and financing of the Upper Trinity Groundwater
4 Conservation District.

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

6 SECTION 1. Subtitle H, Title 6, Special District Laws Code,
7 is amended by adding Chapter 8814 to read as follows:

8 CHAPTER 8814. UPPER TRINITY GROUNDWATER CONSERVATION DISTRICT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 8814.001. DEFINITIONS. In this chapter:

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

13 (2) "Director" means a member of the board.

14 (3) "District" means the Upper Trinity Groundwater
15 Conservation District.

16 Sec. 8814.002. DISTRICT TERRITORY. The district is
17 coextensive with and thus encompasses all of the territory within
18 Hood County, Montague County, Parker County, and Wise County,
19 Texas, subject to a confirmation election under Section 8814.009.

20 Sec. 8814.003. NATURE OF DISTRICT; FINDING OF BENEFIT. The
21 district is a groundwater conservation district created under and
22 essential to accomplishing the purposes of Article XVI, Section 59,
23 Texas Constitution. The district is created to serve a public use
24 and benefit. All of the land and other property included within the

1 boundaries of the district will be benefited by the works and
2 projects that are to be accomplished by the district under the
3 powers delegated to it by this chapter and by Chapter 36, Water
4 Code. Any fees imposed by the district under this chapter are
5 necessary to pay for the costs of accomplishing the purposes of the
6 district as set forth in Section 59, Article XVI, Texas
7 Constitution, and this Act, including the conservation and
8 management of groundwater resources.

9 Sec. 8814.004. APPLICABILITY OF OTHER LAW. Except as
10 otherwise provided by this chapter, Chapter 36, Water Code, applies
11 to the district.

12 Sec. 8814.005. CONSTRUCTION OF CHAPTER. (a) This chapter
13 shall be liberally construed to achieve the legislative intent and
14 purpose of Chapter 36, Water Code. All powers delegated by Chapter
15 36, Water Code, and by this chapter, shall be broadly interpreted to
16 achieve the intent and purposes of each enactment.

17 (b) This chapter prevails over any provision of general law,
18 including Chapter 36, Water Code, that is in conflict or is
19 inconsistent with this chapter.

20 (c) Notwithstanding Subsection (b) of this section, the
21 following provisions prevail over a conflicting or inconsistent
22 provision of this chapter:

- 23 (1) Sections 36.107 through 36.108, Water Code;
24 (2) Sections 36.159 through 36.161, Water Code; and
25 (3) Subchapter I, Chapter 36, Water Code.

26 (d) Chapter 49, Water Code, does not apply to the district.

27 Sec. 8814.006. CONFIRMATION ELECTION REQUIRED. (a) If the

1 creation of the district is not confirmed at a confirmation
2 election held pursuant to Section 8814.009 before September 1,
3 2009:

4 (1) the district is dissolved on September 1, 2009,
5 except that:

6 (A) any debts incurred shall be paid;

7 (B) any assets that remain after the payment of
8 debts shall be transferred in equal proportion to Hood County,
9 Montague County, Parker County, and Wise County; and

10 (C) the organization of the district shall be
11 maintained until all the debts are paid and remaining assets are
12 transferred; and

13 (2) this chapter expires on September 1, 2012.

14 SUBCHAPTER A-1. TEMPORARY PROVISIONS

15 Sec. 8814.007. APPOINTMENT OF TEMPORARY DIRECTORS. (a)
16 The district will initially be governed by a board of eight
17 temporary directors. This temporary board will consist of the
18 following:

19 (1) Two temporary directors appointed by the Hood
20 County Commissioners Court;

21 (2) Two temporary directors appointed by the Montague
22 County Commissioners Court;

23 (3) Two temporary directors appointed by the Parker
24 County Commissioners Court;

25 (4) Two temporary directors appointed by the Wise
26 County Commissioners Court.

27 (b) Each of the temporary directors shall be appointed

1 within 90 days of the effective date of this chapter. If, after the
2 passage of 90 days from the effective date of this chapter, fewer
3 than eight temporary directors have been appointed, then the
4 unfilled temporary directors positions shall each be considered a
5 vacancy, and shall be filled in accordance with Subsection (c) of
6 this section.

7 (c) If a vacancy occurs on the temporary board, the
8 remaining temporary directors shall appoint a person to fill the
9 vacancy in a manner that meets the representational requirements of
10 this section.

11 (d) To be eligible to serve as a temporary director, a
12 person must be a registered voter in the district and in the county
13 of appointment.

14 (e) Each temporary director must qualify to serve as a
15 director in the manner provided for by Section 36.055, Water Code.

16 (f) The temporary directors shall serve until the earlier
17 of:

18 (1) the time the temporary directors become permanent
19 directors as provided for in Section 8814.010; or

20 (2) the date this chapter expires under Section
21 8814.006.

22 Sec. 8814.008. ORGANIZATIONAL MEETING OF TEMPORARY
23 DIRECTORS. As soon as practicable after each of the eight temporary
24 directors have qualified under Section 36.055, Water Code, a
25 majority of the temporary directors shall convene the
26 organizational meeting of the district at a location within the
27 district agreeable to a majority of the temporary directors. If an

1 agreement on location cannot be reached, the organizational meeting
2 shall be at the Poolville Junior High School in Parker County.

3 Sec. 8814.009. CONFIRMATION ELECTION. (a) The temporary
4 directors shall order an election to be held within the boundaries
5 of the district to approve the creation of the district.

6 (b) Section 41.001(a), Election Code, does not apply to a
7 confirmation election held as provided by this section.

8 (c) Except as otherwise provided by this section, a
9 confirmation election must be conducted as provided by Sections
10 36.017(b), (c), (e)-(g), Water Code, and the Election Code.

11 (d) The ballot for the election must be printed to provide
12 for voting for or against the following proposition: "The creation
13 of a non-taxing, locally controlled groundwater conservation
14 district to be known as the Upper Trinity Groundwater Conservation
15 District, in lieu and instead of anticipated action by the Texas
16 Commission on Environmental Quality to otherwise establish a
17 conservation and reclamation district within the same or larger
18 area."

19 (e) If a majority of the votes cast at the election are not
20 in favor of the creation of the district, the temporary directors
21 may order a subsequent confirmation election to be held in
22 accordance with this section.

23 Sec. 8814.010. PERMANENT DIRECTORS. (a) Upon confirmation
24 of the district by the voters within the district at an election
25 called for that purpose, within 60 days following the completion of
26 canvassing of the votes in said election, the permanent directors
27 shall be appointed to the board pursuant to and in accordance with

1 Subchapter B of this chapter.

2 (b) If, at the close of the 60-day period provided in
3 Subsection (a), fewer than eight permanent directors have been
4 appointed, then the unfilled permanent directors positions shall
5 each be considered a vacancy, and shall be filled in accordance with
6 Section 8814.007(c).

7 Sec. 8814.011. COMMENCEMENT OF PERMANENT TERMS; INITIAL
8 TERMS. (a) The permanent terms referenced in Section 8814.013(b)
9 shall commence on the first occurring June 1 of an odd-numbered year
10 following the appointment of permanent directors pursuant to
11 Section 8814.010.

12 (b) The two permanent directors from each county first
13 appointed pursuant to Section 8814.010 shall draw lots to determine
14 which permanent director from that county shall serve a two-year
15 permanent term and which permanent director from that county shall
16 serve a four-year permanent term. Said permanent terms will
17 commence on the date provided in Subsection (a).

18 (c) The initial terms for the permanent directors appointed
19 pursuant to Section 8814.010 shall extend from the time first
20 appointed pursuant to Section 8814.010 through the end of the
21 directors' first permanent term, as determined by Subsection (b).

22 Sec. 8814.012. EXPIRATION OF SUBCHAPTER. This subchapter
23 expires on September 1, 2012.

24 SUBCHAPTER B. BOARD OF DIRECTORS

25 Sec. 8814.013. GOVERNING BODY; TERMS. (a) The district is
26 governed by a board of eight directors. The board will consist of
27 the following:

1 (1) two directors appointed by the Hood County
2 Commissioners Court;

3 (2) two directors appointed by the Montague County
4 Commissioners Court;

5 (3) two directors appointed by the Parker County
6 Commissioners Court;

7 (4) two directors appointed by the Wise County
8 Commissioners Court.

9 (b) Directors serve staggered four-year terms, with the
10 terms expiring on June 1 of odd numbered years.

11 (c) A director serves until the director's successor has
12 qualified.

13 (d) A director may serve multiple, successive terms.

14 Sec. 8814.014. ELIGIBILITY; QUALIFICATION TO SERVE. (a)
15 To be eligible to serve as a director, a person must be a registered
16 voter in the district and in the county of appointment.

17 (b) Each director must qualify to serve as a director in the
18 manner provided for by Section 36.055, Water Code.

19 Sec. 8814.015. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF
20 EXPENSES. (a) Notwithstanding Section 36.060(a) and (d), Water
21 Code, a director is prohibited from receiving fees of office for
22 performing the duties of director.

23 (b) Notwithstanding Subsection (a), a director is entitled
24 to reimbursement of actual expenses reasonably and necessarily
25 incurred while engaging in activities on behalf of the district.

26 SUBCHAPTER C. POWERS AND DUTIES

27 Sec. 8814.016. DISTRICT POWERS AND DUTIES. Except as

1 otherwise provided in this chapter, the district has all of the
2 rights, powers, privileges, authority, functions and duties
3 provided to by the general law of this state, including Chapter 36,
4 Water Code, and otherwise by Article XVI, Section 59, Texas
5 Constitution.

6 Sec. 8814.017. EXEMPTION OF CERTAIN WELLS FROM DISTRICT
7 WELL SPACING REQUIREMENTS. Wells already completed and existing
8 within the district on the effective date of this chapter are exempt
9 from any well spacing requirements of the district. A well may lose
10 its exemption under this section if provided by district rule if it
11 is subsequently replaced, re-equipped, or re-completed in a manner
12 that increases the capacity of the well from its capacity on the
13 effective date of this chapter.

14 Sec. 8814.018. APPLICABILITY OF DISTRICT REGULATIONS. (a)
15 All persons are subject to groundwater regulation under this
16 chapter, except as exempted under Section 36.117, Water Code, or
17 this chapter. For a person that is a government or governmental
18 subdivision or agency, sovereign immunity to suit and to liability
19 is waived for the purpose of the district's implementation and
20 enforcement of this chapter, Chapter 36, Water Code, and the rules
21 of the district.

22 (b) Notwithstanding Subsection (a), the district may
23 require any well or class of wells exempt from permitting under
24 Chapter 36, Water Code, to comply with any spacing regulations
25 established by district rule.

26 Sec. 8814.019. PROHIBITION ON CERTAIN ACTIVITIES. (a) The
27 district by rule may prohibit a person from holding or otherwise

1 storing groundwater produced from wells within the district in a
2 surface impoundment if said water is subsequently:

- 3 (1) made available for commercial sale; or
4 (2) withdrawn or diverted from said holding or storage
5 impoundment for use in commercial or industrial activity.

6 (b) This section does not apply to provision of groundwater
7 for municipal, domestic, or livestock use.

8 Sec. 8814.020. CONTRACTS. The district may enter into
9 contracts with any person, including any public or private entity,
10 for any purpose otherwise authorized by law.

11 Sec. 8814.021. REPORTING REQUIREMENTS FOR CERTAIN EXEMPT
12 WELLS. In lieu of the requirement to obtain a permit from the
13 district for the drilling, equipping, operating, or completing of
14 wells or for substantially altering the size of the wells or well
15 pumps as required by Section 36.113, Water Code, a person drilling
16 or operating a water well exempted under Section 36.117(b)(2),
17 Water Code, shall in accordance with district rules register the
18 well with the district and report periodically to the district the
19 total amount of water withdrawn.

20 Sec. 8814.022. NON-APPLICABILITY. Section 36.121, Water
21 Code, does not apply to the district.

22 Sec. 8814.023. ENFORCEMENT. The district may enforce this
23 chapter in the manner set forth under Chapter 36, Water Code. In
24 lieu of the enforcement remedies available to the district under
25 Section 36.102, Water Code, or in addition to those remedies, the
26 district may assess to any person producing water in violation of
27 the rules or regulations of the district, including failure or

1 refusal to timely comply with any order, rule, or regulation of the
2 district to reduce or cease groundwater usage, an additional fee
3 not to exceed ten times the amount of the fee assessed to the person
4 under Section 8814.025 of this chapter to serve as a disincentive to
5 producing groundwater.

6 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

7 Sec. 8814.024. TAXES PROHIBITED. The district may not
8 impose a tax. Sections 36.020(a) and 36.201-36.204, Water Code, do
9 not apply to the district.

10 Sec. 8814.025. DISTRICT REVENUES. (a) The district by
11 rule, resolution, or order may establish, adjust from time to time,
12 pledge, encumber, expend the proceeds from, and assess to any
13 person production fees based upon the amount of water authorized by
14 permit to be withdrawn from a well, or based upon the amount of
15 water actually withdrawn, to enable the district to fulfill its
16 purposes and regulatory functions as provided by this chapter. The
17 district may use revenues generated by any fees assessed by the
18 district for any lawful purpose.

19 (b) Notwithstanding any provision of general law to the
20 contrary, the fees authorized by Subsection (a) of this section
21 shall not exceed:

22 (1) one dollar (\$1.00) per acre-foot annually for
23 water used for agricultural use; or

24 (2) thirty cents (\$0.30) per thousand gallons annually
25 for water used for any other purpose.

26 (c) Notwithstanding any provision of general law or this
27 chapter to the contrary, if any, the district may assess a

1 production fee under this section for water produced from a well
2 that is exempt from permitting by the district under Section
3 36.117(b)(2), Water Code. Production fees assessed by the district
4 to the owner or operator of a well described by this subsection
5 shall be based upon the amount of water actually withdrawn from the
6 well and shall not exceed the amount established by the district for
7 permitted uses under Subsection (b)(2).

8 (d) Notwithstanding Section 36.1071(f), Water Code, the
9 district may, prior to the adoption of its management plan, by rule,
10 resolution, or order:

11 (1) establish, assess, and enforce the collection of
12 fees; and

13 (2) establish and enforce metering and reporting
14 requirements.

15 (e) The district by rule may establish a temporary or
16 permanent discounted fee rate for persons who pre-pay fees to the
17 district under this section on or before dates established by
18 district rule.

19 SECTION 2. (a) The proper and legal notice of the intention
20 to introduce this Act, setting forth the general substance of this
21 Act, has been published as provided by law, and the notice and a
22 copy of this Act have been furnished to all persons, agencies,
23 officials, or entities to which they are required to be furnished by
24 the constitution and other laws of this state, including the
25 governor, who has submitted the notice and the Act to the Texas
26 Commission on Environmental Quality.

27 (b) The Texas Commission on Environmental Quality has filed

1 its recommendations relating to this Act with the governor,
2 lieutenant governor, and speaker of the house of representatives
3 within the required time.

4 (c) All requirements of the constitution and laws of this
5 state and the rules and procedures of the legislature with respect
6 to notice, introduction and passage of this Act are fulfilled and
7 accomplished.

8 (d) The Legislature finds that sovereign immunity to suit
9 and to liability by a government or governmental subdivision or
10 agency is already waived for the purpose of implementation and
11 enforcement of Chapter 36, Water Code, by a groundwater
12 conservation district notwithstanding the changes in law made by
13 this Act.

14 SECTION 3. (a) This Act takes effect immediately if it
15 receives the vote of two-thirds of all the members elected to each
16 House, as provided for by Article III, Section 39, of the Texas
17 Constitution. If this Act does not receive the vote necessary for
18 immediate effect, this Act takes effect on September 1, 2007.

19 (b) If the creation of the district is not confirmed at a
20 confirmation election before September 1, 2009, this Act expires on
21 September 1, 2012.