

BILL ANALYSIS

Senate Research Center

S.B. 2456
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Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2456 seeks to create the Brush Country Groundwater Conservation District, encompassing Brooks, Jim Hogg, and Jim Wells counties in their entirety, and the northern portion of Hidalgo County. This legislation also provides for taxing authority.

As part of the statewide plan to consolidate water conservation and management plans through the formation of regional groundwater conservation districts (GCDs), these three whole counties and the constituencies in northern Hidalgo County agreed to form a GCD. This GCD is expected to formalize the region's water management plan and present a unified voice to the groundwater management area.

There are several competing interests coming together under the umbrella of this GCD, namely small municipalities, farmers, and ranchers, all of whom depend on the water resources in South Texas. These groups participated in the GCD legislation drafting process.

S.B. 2456 amends current law relating to the creation of the Brush Country Groundwater Conservation District and provides authority to impose a tax and issue bonds.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 6, Special District Local Laws Code, by adding Chapter 8852, as follows:

CHAPTER 8852. BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8852.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 8852.002. NATURE OF DISTRICT. Provides that the Brush Country Groundwater Conservation District (district) is a groundwater conservation district created under and essential to accomplish the purposes of Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 8852.003. CONFIRMATION ELECTION REQUIRED. Provides that if the creation of the district is not confirmed in at least one of the territories described by Section 8852.023 at a confirmation election held before September 1, 2011:

- (1) the district is dissolved on September 1, 2011, except that any debts incurred shall be paid, any assets that remain after the payment of debts shall be transferred in equal amounts to Jim Hogg, Brooks, Hidalgo Counties, and Jim Wells Counties; and the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires on September 1, 2013.

Sec. 8852.004. INITIAL DISTRICT TERRITORY. (a) Provides that the district is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) Provides that the boundaries described in Section 2 of the Act creating this chapter form a closure. Provides that a mistake made in describing the district's boundaries in the legislative process does not affect the district's organization, existence, or validity; right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond; right to impose an assessment or tax; or legality or operation.

Sec. 8852.005. CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed to achieve the legislative intent and purposes of Chapter 36 (Groundwater Conservation Districts), Water Code. Requires that a power granted by Chapter 36, Water Code, or this chapter be broadly interpreted to achieve that intent and those purposes.

[Reserves Sections 8852.006-8852.020 for expansion.]

SUBCHAPTER B. DISTRICT CREATION

Sec. 8852.021. TEMPORARY DIRECTORS. (a) Provides that the temporary board consists of:

- (1) David Grall;
- (2) Mauro Garcia;
- (3) Robert Scott;
- (4) A.C. Jones IV;
- (5) Mario Martinez;
- (6) Israel Hinojosa;
- (7) a person appointed by the commissioners courts of Brooks and Jim Hogg Counties within 60 days of the effective date of this Act;
- (8) Jesse Howell;
- (9) Pearson Knolle; and
- (10) Lawrence Cornelius.

(b) Requires the remaining temporary directors, if there is a vacancy on the temporary board, to select a qualified person to fill the vacancy.

(c) Provides that unless the temporary director's term expires under Subsection (d), a temporary director serves until the earlier of the date the temporary director becomes an initial permanent director under Section 8852.024; or the date this chapter expires under Section 8852.003.

(d) Provides that the following temporary directors' terms expire on the date of the canvass of the election to confirm the creation of the district:

- (1) David Grall and Mauro Garcia, if the voters in the territory described by Section 8852.023(a)(3) vote not to confirm the creation of the district;

- (2) Robert Scott, if the voters in the territory described by Section 8852.023(a)(1) vote not to confirm the creation of the district;
- (3) A.C. Jones IV and Mario Martinez, if the voters in the territory described by Section 8852.023(a)(5) vote not to confirm the creation of the district;
- (4) Israel Hinojosa, if the voters in the territory described by Section 8852.023(a)(4) vote not to confirm the creation of the district;
- (5) a person appointed by the commissioners courts of Brooks and Jim Hogg Counties, if the creation of the district is confirmed by voters of none of the territories described by Section 8852.023;
- (6) Jesse Howell and Pearson Knolle, if the voters in the territory described by Section 8852.023(a)(6) vote not to confirm the creation of the district; and
- (7) Lawrence Cornelius, if the voters in the territory described by Section 8852.023(a)(2) vote not to confirm the creation of the district.

Sec. 8852.022. 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 (Sworn Statement, Bond, and Oath of Office), Water Code, to convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. Requires that the organizational meeting, if an agreement on location cannot be reached, be at the Brooks County Courthouse.

Sec. 8852.023. CONFIRMATION ELECTION. (a) Requires the temporary board to hold an election in each of the following territories in the district to confirm the creation of the district and the imposition of a maintenance tax:

- (1) the territory in the corporate limits of the city of Falfurrias as of January 1, 2009;
- (2) the territory in the corporate limits of the city of Alice as of January 1, 2009;
- (3) the territory in Brooks County that, as of January 1, 2009, is outside the corporate limits of the city of Falfurrias, and not in the Kenedy County Groundwater Conservation District, and in Hidalgo County that is described by a metes and bounds description in Section 2 of the Act creating this chapter, and not in the Kenedy County Groundwater Conservation District as of January 1, 2009;
- (4) the territory in the certificated retail water service area of the Jim Hogg County Water Control and Improvement District No. 2 as of January 1, 2009;
- (5) the territory in Jim Hogg County that is outside the certificated retail water service area of the Jim Hogg County Water Control and Improvement District No. 2 as of January 1, 2009; and
- (6) the territory in Jim Wells County that, as of January 1, 2009, is outside the corporate limits of the city of Alice, and not in the Kenedy County Groundwater Conservation District.

(b) Provides that Section 41.001(a) (relating to each general or special election in the state to be held on certain dates), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Requires that an election under this section, except as provided by this section, be conducted as provided by Sections 36.017(b) (relating to temporary directors being required to designate election precincts and polling places for the election) (c) (relating to the temporary directors publishing notice of the election in a newspaper), and (e) (relating to the presiding judge of each polling place delivering the returns of the election to the temporary board), Water Code, and the Election Code.

(d) Requires that the ballot for the election be printed to provide for voting for or against the proposition: "The creation of the Brush Country Groundwater Conservation District and the levy of an ad valorem tax in the district at a rate not to exceed three cents for each \$100 of assessed valuation."

(e) Provides that if the majority of voters in a territory described by Subsection (a) voting at an election held under this section vote to confirm the creation of the district, that territory is included in the district. Provides that if the majority of voters in a territory described by Subsection (a) voting at an election held under this section vote not to confirm the creation of the district, that territory is excluded from the district.

(f) Authorizes the temporary board or any successor board, if the majority of voters in any of the territories described by Subsection (a) voting at an election held under this section vote not to confirm the creation of the district, to hold a subsequent confirmation election in that territory.

(g) Prohibits the district from imposing a maintenance tax unless the tax is confirmed under this section.

Sec. 8852.024. INITIAL PERMANENT DIRECTORS. (a) Provides that if the creation of the district is confirmed at an election held under Section 8852.023 in one or more territories in the district, each temporary director who represents a territory that is included in the district becomes an initial permanent director of the district.

(b) Requires the initial permanent directors to draw lots to determine which directors serve a term expiring on June 1 of the first even-numbered year after the confirmation election and which directors serve a term expiring on June 1 of the next even-numbered year.

Sec. 8852.025. GIFTS AND GRANTS. Authorizes the temporary board to solicit and accept gifts and grants, including services, on the district's behalf from any public or private source to provide revenue for the district before a confirmation election is held under Section 8852.023.

Sec. 8852.026. RIGHT OF CERTAIN LANDOWNERS TO WITHDRAW FROM DISTRICT. Authorizes a person who owns a tract of land in Brooks or Hidalgo County that adjoins the boundaries of the Kenedy County Groundwater Conservation District as the effective date of the Act creating this chapter to petition the Kenedy County Groundwater Conservation District for annexation into that district. Authorizes the Kenedy County Groundwater Conservation District, notwithstanding any other law, to annex territory described by a petition under this section. Provides that territory annexed by the Kenedy County Groundwater Conservation District under this section not later than January 1, 2010, is disannexed at that time from the district created by this chapter.

Sec. 8852.027. LIMITATION OF POWERS OF TEMPORARY BOARD. (a) Authorizes the temporary board to exercise only the powers described by Sections 8852.022, 8852.023, and 8852.025.

(b) Prohibits the temporary board, except as required by a law or rule relating to participation in a groundwater management area in which the district is located,

from adopting rules, including rules regarding wells, or developing a draft or final management plan.

[Reserves Sections 8852.028-8852.050 for expansion.]

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 8852.051. APPOINTMENT OF DIRECTORS; TERMS. (a) Requires the Commissioners Courts of Brooks County, Jim Hogg County, and Jim Wells County not later than June 1 of each even-numbered year, to appoint directors as follows:

(1) the Commissioners Court of Brooks County shall appoint:

(A) one director who represents the municipal interests of the territory described by Section 8852.023(a)(1), if the territory described by Section 8852.023(a)(1) is included in the district; and

(B) two directors who represent the agricultural interests of the territory described by Sections 8852.023(a)(3)(A) and (B), if the territory described by Sections 8852.023(a)(3)(A) and (B) is included in the district;

(2) the Commissioners Court of Jim Hogg County shall appoint:

(A) one director who represents the interests of Jim Hogg County in the territory described by Section 8852.023(a)(4), if the territory described by Section 8852.023(a)(4) is included in the district; and

(B) two directors who represent the agricultural interests of the territory described by Section 8852.023(a)(5), if the territory described by Section 8852.023(a)(5) is included in the district;

(3) the Commissioners Court of Jim Wells County shall appoint:

(A) one director who represents the municipal interests of the territory described by Section 8852.023(a)(2), if the territory described by Section 8852.023(a)(2) is included in the district; and

(B) two directors who represent the agricultural interests of the territory described by Section 8852.023(a)(6), if the territory described by Section 8852.023(a)(6) is included in the district; and

(4) the Commissioners Courts of Brooks County and Jim Hogg County jointly shall appoint one director to represent the industrial and mining interests of Jim Hogg and Brooks Counties.

(b) Provides that directors serve staggered four-year terms that expire on June 1 of an even-number year.

Sec. 8852.052. ELIGIBILITY. (a) Provides that a director is not disqualified from service because the director is an employee, manager, director of the board, or officer of a groundwater producer that is or is authorized to be regulated by the district.

(b) Provides that a temporary director whose term of office expires under Section 8852.021(d) is not eligible for appointment as a director.

Sec. 8852.053. COMPENSATION; REIMBURSEMENT. (a) Provides that notwithstanding Section 36.060 (Fees of Office; Reimbursement), Water Code, a director is not entitled to receive compensation for performing the duties of a director.

(b) Entitles a director to receive reimbursement for the director's reasonable expenses incurred while engaging in activities on behalf of the district in accordance with Sections 36.060(b) (relating to director entitlement to receive reimbursement of actual expenses) and (c) (relating to each director filing with the district a verified statement showing the number of days actually spent in the service of the district), Water Code.

Sec. 8852.054. VACANCY. Requires that a vacancy in the office of director be filled by appointment of the board in a manner consistent with the representational requirements of Section 8852.051. Provides that the appointed director serves only for the remainder of the unexpired term to which the director was appointed.

[Reserves Sections 8852.055-8852.100 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 8852.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Provides that except as otherwise provided by this chapter, the district has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, and Section 59, Article XVI, Texas Constitution, applicable to groundwater conservation districts.

Sec. 8852.102. CONTRACTS. Authorizes the district to enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8852.103. EXEMPTIONS FROM PERMIT REQUIREMENTS. (a) Provides that Section 36.117 (Exemptions; Exception; Limitations), Water Code, applies to the district except that for the purposes of applying that section to the district, "domestic use" and "livestock use" have the meanings assigned by Subsection (b).

(b) Defines "domestic use" and "livestock use."

Sec. 8852.104. EFFECTS OF TRANSFER. (a) Requires the district, in reviewing a proposed transfer of groundwater out of the district in accordance with Section 36.122(f) (relating to the district in reviewing a proposed transfer of groundwater out of the district to perform certain duties), Water Code, to determine whether the proposed transfer would have a negative effect on the availability of water in the district, the conditions of any aquifer that overlies the district, subsidence in the district, existing permit holders or other groundwater users in the district, and any applicable approved regional water plan or certified district management plan.

(b) Authorizes the district, if the district determines under Subsection (a) that the transfer would have a negative effect, in addition to the conditions authorized by Section 36.122 (Transfer of Groundwater Out of District), Water Code, to impose other requirements or limitations on the permit that are designed to minimize the effect.

(c) Provides that Sections 36.122(c) (relating to the district not being authorized to impose more restrictive permit conditions on transporters), (i) (relating to the period specified by Subsection (h)(2)), and (j) (relating to a term under Subsection (i)(1) to automatically be extended to the terms agreed to under Subsection (i)(2)), Water Code, do not apply to a requirement or limitation imposed under this section.

(d) Authorizes the district to impose a fee or surcharge as an export fee. Provides that the restrictions under Section 36.122(e) (relating to the district imposing a reasonable fee or surcharge for an export fee), Water Code, do not apply to a fee or surcharge imposed under this subsection.

Sec. 8852.105. **APPLICABILITY OF DISTRICT REGULATIONS.** Provides that groundwater regulations adopted by the district under this chapter apply to all persons except as exempted under Section 36.117, Water Code, or this chapter.

Sec. 8852.106. **NO EMINENT DOMAIN POWER.** Prohibits the district from exercising the power of eminent domain.

Sec. 8852.107. **LANDOWNERS' RIGHTS.** Provides that the rights of landowners and their lessees and assigns in groundwater in the district are recognized. Provides that nothing in this chapter shall be construed to deprive or divest the owners or their lessees and assigns of their rights, subject to district rules.

Sec. 8852.108. **LIMITATION ON RULEMAKING POWER NOT APPLICABLE.** Provides that Section 36.121 (Limitation on Rulemaking Power of Districts Over Wells in Certain Counties), Water Code, does not apply to the district.

[Reserves Sections 8852.109-8852.150 for expansion.]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 8852.151. **REVENUE.** Authorizes the district, to pay the maintenance and operating costs of the district and to pay any bonds or notes issued by the district, to impose ad valorem taxes at a rate not to exceed three cents on each \$100 of assessed valuation of taxable property in the district.

Sec. 8852.152. **GRANTS, GIFTS, AND DONATIONS.** Authorizes the district to solicit and accept grants, gifts, and donations from any public or private source.

[Reserves Sections 8852.153-8852.200 for expansion.]

SUBCHAPTER F. DISSOLUTION

Sec. 8852.201. **SUBCHAPTER CUMULATIVE.** Provides that the provisions of this subchapter are cumulative of the provisions of Subchapter I (Performance Review and Dissolution), Chapter 36, Water Code.

Sec. 8852.202. **DISSOLUTION BY ELECTION.** (a) Requires the board, after January 1, 2016, to order an election on the question of dissolving the district if the board receives a petition requesting that an election be held for that purpose that is signed by at least 15 percent of the district's registered voters.

(b) Requires the directors, not later than the 30th day after the date the board received the petition, to validate the signatures on the petition, and if the signatures are validated, order an election on the next uniform election date under Section 41.001 (Uniform Election Dates), Election Code.

(c) Requires that the order calling the election state the nature of the election, including the proposition that is to appear on the ballot.

Sec. 8852.203. **NOTICE OF ELECTION.** Requires that notice of an election under this subchapter be provided by posting a copy of the order calling the election in at least one conspicuous place for at least 10 days before the day of the election at the county courthouse in Brooks County, Jim Hogg County, Jim Wells County, and Hidalgo County.

Sec. 8852.204. **BALLOT.** Requires that the ballot for an election under this subchapter be printed to permit voting for or against the proposition: "The dissolution of the Brush Country Groundwater Conservation District."

Sec. 8852.205. **ELECTION RESULTS; DISPOSITION OF ASSETS.** Requires the board, if a majority of the votes in an election under this subchapter favor dissolution, to

find that the district is dissolved; and Section 36.310 (Assets Escheat), Water Code, applies for the purpose of disposition of the district's assets.

SECTION 2. Sets forth the initial boundaries of the district.

SECTION 3. Provides that all requirements of the constitution and the laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. Effective date: upon passage or September 1, 2009.