

BILL ANALYSIS

S.B. 2497
By: Estes
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Collin, Cooke, and Denton counties are included in the newly designated Priority Groundwater Management Area and desire to join together to form the North Texas Groundwater Conservation District.

S.B. 2497 relates to the creation of the North Texas Groundwater Conservation District; providing authority to issue bonds.

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. Amends Subtitle H, Title 6, Special District Local Laws Code, by adding Chapter 8856, as follows:

CHAPTER 8856. NORTH TEXAS GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8856.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 8856.002. NATURE OF DISTRICT; FINDINGS. (a) Provides that the North Texas Groundwater Conservation District (district) is a groundwater conservation district in Collin, Cooke, and Denton Counties 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.

(b) Provides that the district is created to serve a public use and benefit.

(c) Provides that all of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by this chapter and by Chapter 36 (Groundwater Conservation Districts), Water Code.

(d) Provides that any fees imposed by the district under this chapter are necessary to pay for the costs of accomplishing the purposes of the district, including the conservation and management of groundwater resources, as provided by this chapter and Section 59, Article XVI, Texas Constitution.

Sec. 8856.003. PUBLIC HEARING IN EACH COUNTY. (a) Requires the commissioners court of each county in the district, not later than December 1, 2009, to hold a public hearing on the topic of including the territory of the county in the district.

(b) Requires the commissioners court of each county, after the public hearings and not later than December 31, 2009, to vote to confirm or reject the county's

inclusion in the district. Requires the commissioners court to adopt a resolution reflecting the result of that vote and provide a copy of the resolution to the temporary directors.

Sec. 8856.004. **CONFIRMATION REQUIRED.** (a) Provides that the creation of the district is confirmed only if the commissioners courts of two or more of the counties in the district submit a resolution confirming the county's inclusion in the district to the temporary board. Provides that a county is not included in the district if the commissioners court of that county does not submit a resolution confirming the county's inclusion in the district to the temporary board. Requires the temporary board to provide a copy of the resolutions and the final district boundaries to the Texas Commission on Environmental Quality (TCEQ).

(b) Provides that if the creation of the district is not confirmed as provided by Subsection (a) before January 1, 2010:

(1) the district is dissolved on January 1, 2010, except that any debts incurred shall be paid; any assets that remain after the payment of debts shall be transferred in equal amounts to Collin, Cooke, and Denton 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 September 1, 2011.

Sec. 8856.005. **INITIAL DISTRICT TERRITORY.** Provides that the initial boundaries of the district are coextensive with the boundaries of Collin, Cooke, and Denton Counties.

Sec. 8856.006. **APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW.** Provides that Chapter 36, Water Code, applies to the district, except as otherwise provided by this chapter.

Sec. 8856.007. **CONSTRUCTION OF CHAPTER.** Requires this chapter to be liberally construed to achieve the legislative intent and purposes of Chapter 36, Water Code. Requires a power granted by Chapter 36, Water Code, or this chapter to be broadly interpreted to achieve that intent and those purposes.

[Reserves Sections 8856.008-8856.020 for expansion.]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8856.021. **APPOINTMENT OF TEMPORARY DIRECTORS.** (a) Provides that the district is initially governed by a board of nine temporary directors appointed as provided by Sections 8856.051(b) and (d).

(b) Requires temporary directors to be appointed not later than the 90th day after the effective date of the Act enacting this chapter. Requires that each unfilled position, if after the 90th day fewer than nine temporary directors have been appointed, be considered a vacancy and filled in accordance with Subsection (c).

(c) Requires the remaining temporary directors, if a vacancy occurs on the temporary board, to appoint a person to fill the vacancy in a manner that meets the representational requirements of this section.

(d) Requires a person, to be eligible to serve as a temporary director, to be a registered voter in the appointing county.

(e) Requires each temporary director to qualify to serve as a director in the manner provided by Section 36.055 (Sworn Statement, Bond, and Oath of Office), Water Code.

(f) Provides that temporary directors serve until the earlier of the time the temporary directors become the initial permanent directors under Section 8856.023, or the date this chapter expires under Section 8856.004.

Sec. 8856.022. 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, to convene the organizational meeting of the district at a location in 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 Pilot Point High School in Denton County.

Sec. 8856.023. INITIAL PERMANENT DIRECTORS; INITIAL TERMS. (a) Provides that the temporary directors from the counties that are included in the district become the initial permanent directors if the creation of the district is confirmed under Section 8856.004.

(b) Requires the three directors appointed from each county, if the commissioners courts of Collin, Cooke, and Denton Counties confirm the inclusion of those counties in the district, to draw lots as follows to determine for Denton and Cooke Counties, which director's term expires June 1, 2011, and which two directors' terms expire June 1, 2013; and for Collin County, which two directors' terms expire June 1, 2011, and which director's term expires June 1, 2013.

(c) Requires the three directors appointed from each county, if the commissioners courts of only two of the counties confirm the inclusion of those counties in the district, to draw lots as follows to determine for the first county to confirm, which director's term expires June 1, 2011, and which two directors' terms expire June 1, 2013; and for the second county to confirm, which two directors' terms expire June 1, 2011, and which director's term expires June 1, 2013.

Sec. 8856.024. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires September 1, 2011.

[Reserves Sections 8856.025-8856.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8856.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of six or nine directors appointed as provided by this section.

(b) Requires nine directors, if the commissioners courts of Collin, Cooke, and Denton Counties confirm the inclusion of those counties in the district, to be appointed in a certain manner.

(c) Requires the commissioners court of each of those counties, if the commissioners courts of only two of the counties confirm the inclusion of those counties in the district, to appoint three directors.

(d) Requires the commissioners court of each appointing county to appoint two of the three directors from that county in a certain manner.

(e) Provides that directors serve staggered four-year terms, with the term of one or two directors from each appointing county expiring on June 1 of each odd-numbered year.

(f) Authorizes a director to serve multiple consecutive terms.

(g) Prohibits a position on the board from being construed to be a civil office of emolument for any purpose, including a purpose described by Section 40 (Holding More than One Office; Exceptions; Right to Vote), Article XVI, Texas Constitution.

(h) Authorizes a person who qualifies to serve on the board to serve as a director and participate in all votes relating to the business of the district regardless of any common law doctrine of incompatibility. Provides that Section 36.051 (Board of Directors), Water Code, does not apply to the district.

Sec. 8856.052. DIRECTOR ELIGIBILITY; QUALIFICATION. (a) Requires a person, to be eligible to serve as a director, to be a registered voter in the appointing county.

(b) Requires each director to qualify to serve in the manner provided by Section 36.055, Water Code.

Sec. 8856.053. VACANCIES. Requires the commissioners court that appointed the director who vacated the office, if a vacancy occurs on the board, to appoint a person to fill the vacancy in a manner that meets the representational requirements of Section 8856.051.

Sec. 8856.054. COMPENSATION; REIMBURSEMENT. (a) Prohibits a director, notwithstanding Sections 36.060(a) (relating to a director being entitled to receive fees of office of not more than \$150 a day) and (d) (relating to Section 36.052(a) prevailing over any other law in conflict with or inconsistent with that subsection), Water Code, from receiving compensation for performing the duties of director.

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

Sec. 8856.055. BOARD CHAIR. Requires the board to select one of its members to serve as the chair for a two-year term. Requires the position of chair to rotate among the counties in the district every two years in alphabetical order by county.

[Reserves Sections 8856.056-8856.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8856.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Provides that the district, except as provided by this chapter, has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8856.102. CONTRACTS. Authorizes the district to enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8856.103. APPLICABILITY OF DISTRICT REGULATIONS. Provides that groundwater regulation under this chapter applies to all persons except as exempted from the requirement to obtain a permit for a well under Section 36.117 (Exemptions; Exceptions; Limitations), Water Code, or this chapter.

Sec. 8856.104. WELL SPACING RULES; EXEMPTIONS. (a) Requires the district, except as provided by Subsection (b), to exempt from the well spacing requirements adopted by the district any well that is completed on or before the effective date of those requirements.

(b) Authorizes the district to provide by rule that a well may lose its exemption under this section if the well is modified in a manner that substantially increases the capacity of the well after the effective date of the well spacing requirements adopted by the district.

(c) Authorizes the district, except as provided by this section and notwithstanding Section 8856.103, to require any well or class of wells exempt from permitting under Chapter 36, Water Code, to comply with the well spacing requirements

adopted by the district. Requires the district to apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

Sec. 8856.105. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. Authorizes the district to adopt rules that require the owner or operator of a well or class of wells exempt from permitting under Section 36.117, Water Code, to register the well with the district and, except for a well exempt from permitting under Subsection (b)(1) (relating to prohibiting a district from requiring any permit issued by the district for a well used solely for domestic use or for providing water for livestock or poultry) of that section, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8856.106. ENFORCEMENT. (a) Authorizes the district to enforce this chapter in the manner provided by Chapter 36, Water Code. Authorizes the district, in lieu of a remedy available to the district under Section 36.102 (Enforcement of Rules), Water Code, or in addition to those remedies, to impose a fee in addition to a fee assessed under Section 8856.152 on a person producing groundwater in violation of a rule of the district, including the failure or refusal to comply with any order or rule of the district to reduce or cease groundwater usage. Provides that the purpose of a fee authorized under this subsection is to serve as a disincentive to producing groundwater except as authorized by the district.

(b) Prohibits a fee imposed under Subsection (a) from exceeding an amount equal to 10 times the amount of a fee assessed under Section 8856.152.

Sec. 8856.107. NO EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain.

[Reserves Sections 8856.108-8856.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8856.151. TAXES PROHIBITED. Prohibits the district from imposing a tax. Provides that Sections 36.020(a) (relating to authorizing the temporary directors to include a proposition for the issuance of bonds or notes and levy certain taxes) and 36.201 (Levy of Taxes), 36.202 (Board Authority), 36.203 (Tax Rate), and 36.204 (Tax Appraisal, Assessment and Collection), Water Code, do not apply to the district.

Sec. 8856.152. DISTRICT REVENUES. (a) Authorizes the district by rule, resolution, or order to establish, amend, pledge, encumber, expend the proceeds from, and assess to any person production fees based on the amount of groundwater authorized by permit to be withdrawn from a well or on the amount of water actually withdrawn, to enable the district to fulfill its purposes and regulatory functions as provided by this chapter. Authorizes the district to use revenues generated by fees it assesses for any lawful purpose.

(b) Prohibits a fee, notwithstanding any provision of general law to the contrary, authorized by Subsection (a) from exceeding \$1 per acre-foot annually for groundwater used for agricultural purposes or 30 cents per thousand gallons annually for groundwater used for nonagricultural purposes.

(c) Authorizes the district, notwithstanding any provision of general law or this chapter to the contrary, if any, to assess a production fee under this section for groundwater produced from a well or class of wells exempt from permitting under Section 36.117, Water Code, except for a well exempted under Subsection (b)(1) of that section. Requires that a production fee assessed by the district under this subsection be based on the amount of groundwater actually withdrawn from the well and is prohibited from exceeding the amount established by the district for permitted uses under Subsection (b)(2) (relating to 30 cents per thousand gallons annually for groundwater used for nonagricultural purposes).

of this section.

(d) Authorizes the district, notwithstanding Section 36.1071(f) (relating to requiring the district to adopt rules necessary to implement the management plan), Water Code, by rule, resolution, or order before the adoption of its management plan to establish, assess, and enforce the collection of production fees under this section and establish and enforce metering and reporting requirements, except for a well exempt from permitting under Section 36.117(b)(1), Water Code.

(e) Authorizes the district by rule to establish a temporary or permanent discounted fee rate for persons who prepay production fees to the district under this section on or before the dates established by district rule.

(f) Prohibits the district from charging an export fee to a producer of groundwater withdrawn from a well in the district who distributes the water to any part of the territory under the provider's certificate of public convenience and necessity even if the territory is outside the district's boundaries.

SECTION 2. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) Provides that the governor has submitted the notice and Act to TCEQ.

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) Provides that all requirements of the constitution and 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 3. Provides the effective date of this Act.

EFFECTIVE DATE

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, 2009.