

By: Rios Ybarra

H.B. No. 4705

Substitute the following for H.B. No. 4705:

By: King of Zavala

C.S.H.B. No. 4705

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Brush Country Groundwater Conservation District; providing authority to impose a tax and issue bonds.

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

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

CHAPTER 8852. BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8852.001. DEFINITIONS. In this chapter:

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

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

(3) "District" means the Brush Country Groundwater Conservation District.

Sec. 8852.002. NATURE OF DISTRICT. The district is a groundwater conservation district created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8852.003. CONFIRMATION ELECTION REQUIRED. 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,

1 except that:

2 (A) any debts incurred shall be paid;

3 (B) any assets that remain after the payment of
4 debts shall be transferred in equal amounts to Jim Hogg, Brooks,
5 Hidalgo, and Jim Wells Counties; and

6 (C) the organization of the district shall be
7 maintained until all debts are paid and remaining assets are
8 transferred; and

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

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

13 (b) The boundaries described in Section 2 of the Act
14 creating this chapter form a closure. A mistake made in describing
15 the district's boundaries in the legislative process does not
16 affect the district's:

17 (1) organization, existence, or validity;

18 (2) right to issue any type of bond for the purposes
19 for which the district is created or to pay the principal of and
20 interest on a bond;

21 (3) right to impose an assessment or tax; or

22 (4) legality or operation.

23 Sec. 8852.005. CONSTRUCTION OF CHAPTER. This chapter shall
24 be liberally construed to achieve the legislative intent and
25 purposes of Chapter 36, Water Code. A power granted by Chapter 36,
26 Water Code, or this chapter shall be broadly interpreted to achieve
27 that intent and those purposes.

1 [Sections 8852.006-8852.020 reserved for expansion]

2 SUBCHAPTER B. DISTRICT CREATION

3 Sec. 8852.021. TEMPORARY DIRECTORS. (a) The temporary
4 board consists of:

- 5 (1) David Grall;
- 6 (2) Mauro Garcia;
- 7 (3) Robert Scott;
- 8 (4) A. C. Jones IV;
- 9 (5) Mario Martinez;
- 10 (6) Israel Hinojosa;
- 11 (7) William P. Goranson;
- 12 (8) Jesse Howell;
- 13 (9) Pearson Knolle; and
- 14 (10) Lawrence Cornelius.

15 (b) If there is a vacancy on the temporary board, the
16 remaining temporary directors shall select a qualified person to
17 fill the vacancy.

18 (c) Unless the temporary director's term expires under
19 Subsection (d), a temporary director serves until the earlier of:

- 20 (1) the date the temporary director becomes an initial
21 permanent director under Section 8852.024; or
- 22 (2) the date this chapter expires under Section
23 8852.003.

24 (d) The following temporary directors' terms expire on the
25 date of the canvass of the election to confirm the creation of the
26 district:

- 27 (1) David Grall and Mauro Garcia, if the voters in the

1 territory described by Section 8852.023(a)(3) vote not to confirm
2 the creation of the district;

3 (2) Robert Scott, if the voters in the territory
4 described by Section 8852.023(a)(1) vote not to confirm the
5 creation of the district;

6 (3) A. C. Jones IV and Mario Martinez, if the voters in
7 the territory described by Section 8852.023(a)(5) vote not to
8 confirm the creation of the district;

9 (4) Israel Hinojosa, if the voters in the territory
10 described by Section 8852.023(a)(4) vote not to confirm the
11 creation of the district;

12 (5) William P. Goranson, if the creation of the
13 district is confirmed by voters of none of the territories
14 described by Section 8852.023;

15 (6) Jesse Howell and Pearson Knolle, if the voters in
16 the territory described by Section 8852.023(a)(6) vote not to
17 confirm the creation of the district; and

18 (7) Lawrence Cornelius, if the voters in the territory
19 described by Section 8852.023(a)(2) vote not to confirm the
20 creation of the district.

21 Sec. 8852.022. ORGANIZATIONAL MEETING OF TEMPORARY
22 DIRECTORS. As soon as practicable after all the temporary
23 directors have qualified under Section 36.055, Water Code, a
24 majority of the temporary directors shall convene the
25 organizational meeting of the district at a location within the
26 district agreeable to a majority of the directors. If an agreement
27 on location cannot be reached, the organizational meeting shall be

1 at the Brooks County Courthouse.

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

6 (1) the territory in the corporate limits of the city
7 of Falfurrias as of January 1, 2009;

8 (2) the territory in the corporate limits of the city
9 of Alice as of January 1, 2009;

10 (3) the territory:

11 (A) in Brooks County that, as of January 1, 2009,
12 is:

13 (i) outside the corporate limits of the
14 city of Falfurrias; and

15 (ii) not in the Kenedy County Groundwater
16 Conservation District; and

17 (B) in Hidalgo County that is:

18 (i) described by a metes and bounds
19 description in Section 2 of the Act creating this chapter; and

20 (ii) not in the Kenedy County Groundwater
21 Conservation District as of January 1, 2009;

22 (4) the territory in the certificated retail water
23 service area of the Jim Hogg County Water Control and Improvement
24 District No. 2 as of January 1, 2009;

25 (5) the territory in Jim Hogg County that is outside
26 the certificated retail water service area of the Jim Hogg County
27 Water Control and Improvement District No. 2 as of January 1, 2009;

1 and

2 (6) the territory in Jim Wells County that, as of
3 January 1, 2009, is:

4 (A) outside the corporate limits of the city of
5 Alice; and

6 (B) not in the Kenedy County Groundwater
7 Conservation District.

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

10 (c) Except as provided by this section, an election under
11 this section must be conducted as provided by Sections 36.017(b),
12 (c), and (e), Water Code, and the Election Code.

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

18 (e) If the majority of voters in a territory described by
19 Subsection (a) voting at an election held under this section vote to
20 confirm the creation of the district, that territory is included in
21 the district. If the majority of voters in a territory described by
22 Subsection (a) voting at an election held under this section vote
23 not to confirm the creation of the district, that territory is
24 excluded from the district.

25 (f) If the majority of voters in any of the territories
26 described by Subsection (a) voting at an election held under this
27 section vote not to confirm the creation of the district, the

1 temporary board or any successor board may hold a subsequent
2 confirmation election in that territory.

3 (g) The district may not impose a maintenance tax unless the
4 tax is confirmed under this section.

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

10 (b) The initial permanent directors shall draw lots to
11 determine which directors serve a term expiring on June 1 of the
12 first even-numbered year after the confirmation election and which
13 directors serve a term expiring on June 1 of the next even-numbered
14 year.

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

20 Sec. 8852.026. RIGHT OF CERTAIN LANDOWNERS TO WITHDRAW FROM
21 DISTRICT. A person who owns a tract of land in Brooks or Hidalgo
22 County that adjoins the boundaries of the Kenedy County Groundwater
23 Conservation District as of the effective date of the Act creating
24 this chapter may petition the Kenedy County Groundwater
25 Conservation District for annexation into that district.
26 Notwithstanding any other law, the Kenedy County Groundwater
27 Conservation District may annex territory described by a petition

1 under this section. Territory annexed by the Kenedy County
2 Groundwater Conservation District under this section not later than
3 January 1, 2010, is disannexed at that time from the district
4 created by this chapter.

5 [Sections 8852.027-8852.050 reserved for expansion]

6 SUBCHAPTER C. BOARD OF DIRECTORS

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

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

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

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

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

23 (A) one director who represents the interests of
24 Jim Hogg County in the territory described by Section
25 8852.023(a)(4), if the territory described by Section
26 8852.023(a)(4) is included in the district; and

27 (B) two directors who represent the agricultural

1 interests of the territory described by Section 8852.023(a)(5), if
2 the territory described by Section 8852.023(a)(5) is included in
3 the district;

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

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

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

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

17 (b) Directors serve staggered four-year terms that expire
18 on June 1 of an even-numbered year.

19 Sec. 8852.052. ELIGIBILITY. (a) A director is not
20 disqualified from service because the director is an employee,
21 manager, director of the board, or officer of a groundwater
22 producer that is or may be regulated by the district.

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

25 Sec. 8852.053. COMPENSATION; REIMBURSEMENT. (a)
26 Notwithstanding Section 36.060, Water Code, a director is not
27 entitled to receive compensation for performing the duties of a

1 director.

2 (b) A director is entitled to receive reimbursement for the
3 director's reasonable expenses incurred while engaging in
4 activities on behalf of the district in accordance with Sections
5 36.060(b) and (c), Water Code.

6 Sec. 8852.054. VACANCY. A vacancy in the office of director
7 shall be filled by appointment of the board in a manner consistent
8 with the representational requirements of Section 8852.051. The
9 appointed director serves only for the remainder of the unexpired
10 term to which the director was appointed.

11 [Sections 8852.055-8852.100 reserved for expansion]

12 SUBCHAPTER D. POWERS AND DUTIES

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

19 Sec. 8852.102. CONTRACTS. The district may enter into a
20 contract with any person, public or private, for any purpose
21 authorized by law.

22 Sec. 8852.103. EXEMPTIONS FROM PERMIT REQUIREMENTS. (a)
23 Section 36.117, Water Code, applies to the district except that for
24 the purposes of applying that section to the district, "domestic
25 use" and "livestock use" have the meanings assigned by Subsection
26 (b).

27 (b) In this section:

1 (1) "Domestic use":

2 (A) means the use of groundwater by an individual
3 or a household to support domestic activities, including the use of
4 groundwater for:

5 (i) drinking, washing, or culinary
6 purposes;

7 (ii) irrigating a lawn or a family garden or
8 orchard;

9 (iii) watering domestic animals; or

10 (iv) water recreation, including aquatic
11 and wildlife enjoyment; and

12 (B) does not include the use of water:

13 (i) to support an activity for which
14 consideration is given or received or for which the product of the
15 activity is sold; or

16 (ii) by or for a public water system.

17 (2) "Livestock use" means the use of groundwater for
18 the open-range watering of livestock, exotic livestock, game
19 animals, or fur-bearing animals. For purposes of this subdivision,
20 "livestock" and "exotic livestock" have the meanings assigned by
21 Sections 1.003 and 142.001, Agriculture Code, respectively, and
22 "game animal" and "fur-bearing animal" have the meanings assigned
23 by Sections 63.001 and 71.001, Parks and Wildlife Code,
24 respectively. Livestock use does not include use by or for a public
25 water system.

26 Sec. 8852.104. EFFECTS OF TRANSFER. (a) In reviewing a
27 proposed transfer of groundwater out of the district in accordance

1 with Section 36.122(f), Water Code, the district shall determine
2 whether the proposed transfer would have a negative effect on:

3 (1) the availability of water in the district;

4 (2) the conditions of any aquifer that overlies the
5 district;

6 (3) subsidence in the district;

7 (4) existing permit holders or other groundwater users
8 in the district; and

9 (5) any applicable approved regional water plan or
10 certified district management plan.

11 (b) If the district determines under Subsection (a) that the
12 transfer would have a negative effect, the district may, in
13 addition to the conditions authorized by Section 36.122, Water
14 Code, impose other requirements or limitations on the permit that
15 are designed to minimize the effect.

16 (c) Sections 36.122(c), (i), and (j), Water Code, do not
17 apply to a requirement or limitation imposed under this section.

18 (d) The district may impose a fee or surcharge as an export
19 fee. The restrictions under Section 36.122(e), Water Code, do not
20 apply to a fee or surcharge imposed under this subsection.

21 Sec. 8852.105. APPLICABILITY OF DISTRICT REGULATIONS.
22 Groundwater regulations adopted by the district under this chapter
23 apply to all persons except as exempted under Section 36.117, Water
24 Code, or this chapter.

25 Sec. 8852.106. NO EMINENT DOMAIN POWER. The district may
26 not exercise the power of eminent domain.

27 Sec. 8852.107. LANDOWNERS' RIGHTS. The rights of

1 landowners and their lessees and assigns in groundwater in the
2 district are recognized. Nothing in this chapter shall be
3 construed to deprive or divest the owners or their lessees and
4 assigns of their rights, subject to district rules.

5 Sec. 8852.108. LIMITATION ON RULEMAKING POWER NOT
6 APPLICABLE. Section 36.121, Water Code, does not apply to the
7 district.

8 [Sections 8852.109-8852.150 reserved for expansion]

9 SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

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

15 Sec. 8852.152. GRANTS, GIFTS, AND DONATIONS. The district
16 may solicit and accept grants, gifts, and donations from any public
17 or private source.

18 [Sections 8852.153-8852.200 reserved for expansion]

19 SUBCHAPTER F. DISSOLUTION

20 Sec. 8852.201. SUBCHAPTER CUMULATIVE. The provisions of
21 this subchapter are cumulative of the provisions of Subchapter I,
22 Chapter 36, Water Code.

23 Sec. 8852.202. DISSOLUTION BY ELECTION. (a) After January
24 1, 2016, the board shall order an election on the question of
25 dissolving the district if the board receives a petition requesting
26 that an election be held for that purpose that is signed by at least
27 15 percent of the district's registered voters.

1 (b) Not later than the 30th day after the date the board
2 receives the petition, the directors shall:

3 (1) validate the signatures on the petition; and

4 (2) if the signatures are validated, order an election
5 on the next uniform election date under Section 41.001, Election
6 Code.

7 (c) The order calling the election must state the nature of
8 the election, including the proposition that is to appear on the
9 ballot.

10 Sec. 8852.203. NOTICE OF ELECTION. Notice of an election
11 under this subchapter must be provided by posting a copy of the
12 order calling the election in at least one conspicuous place for at
13 least 10 days before the day of the election at the county
14 courthouse in Brooks County, Jim Hogg County, Jim Wells County, and
15 Hidalgo County.

16 Sec. 8852.204. BALLOT. The ballot for an election under
17 this subchapter must be printed to permit voting for or against the
18 proposition: "The dissolution of the Brush Country Groundwater
19 Conservation District."

20 Sec. 8852.205. ELECTION RESULTS; DISPOSITION OF ASSETS. If
21 a majority of the votes in an election under this subchapter favor
22 dissolution:

23 (1) the board shall find that the district is
24 dissolved; and

25 (2) Section 36.310, Water Code, applies for the
26 purpose of disposition of the district's assets.

27 SECTION 2. The Brush Country Groundwater Conservation

1 District initially includes all the territory contained in the
2 following area:

3 (a) all real property within the boundaries of Jim Hogg
4 County, Texas;

5 (b) all real property in Brooks County save and except all
6 of those portions of Brooks County that, as of the effective date of
7 this Act, are located within the Kenedy County Groundwater
8 Conservation District;

9 (c) all real property in Jim Wells County save and except
10 all of those portions of Jim Wells County that, as of January 1,
11 2009, are located within the Kenedy County Groundwater Conservation
12 District; and

13 (d) all real property in Hidalgo County contained in the
14 following described area:

15 10,953.38 acres of land, more or less, out of the Guadalupe
16 Sanchez Grant, Abstract 481, Brooks County, Texas, also known as
17 the "La Rucia Grant", and any adjoining surveys, the said 10,953.38
18 acres being more particularly described as follows:

19 COMMENCING at a Stone marking the southwest corner of the
20 Juan Garza Diaz Grant, Abstract 192, Brooks County, Texas, and
21 Abstract 82, in Hidalgo County, Texas, being also an inner corner of
22 the Argyle McAllen 8827.00 acre-tract as described in that certain
23 Oil, Gas and Mineral Lease executed by Argyle McAllen in favor of
24 Shell Oil Company, dated January 10, 1958, and recorded in Volume
25 210, Page 342, of the Oil and Gas Records of said County;

26 THENCE North 01° 15' 50" East with the east line of the said
27 "La Rucia Grant" and with a fence, a distance of 322.2 varas to a

1 fence corner marking the south-east corner and BEGINNING POINT of
2 the herein described tract;

3 THENCE in a westerly direction with the said fence, being
4 also the north line of the said McAllen 8827.00-acre tract and with
5 the north line of the Argyle McAllen 23,597.00 acre tract as
6 described in the Oil, Gas and Mineral lease executed by Argyle
7 McAllen in favor of Shell Oil Company, dated September 5, 1947, and
8 recorded in Volume 74, page 112, of the Oil and Gas Records of
9 Hidalgo County, Texas; thence with said line the following courses
10 and distances: North 85° 06' 40" West, 3538.3 varas; North 84° 39'
11 20" West, 2104.4 varas; and North 81° 32' 50" West, 725.3 varas to a
12 southeast corner of the J. C. McGill, Jr., et al 640-acre tract,
13 being a part of a 38,644.1-acre tract, being also a point on the
14 east line of the Texas-Mexico R. R. Survey No. 189, Abstract 157;

15 THENCE North 00° 55' East with the said fence and the east
16 lines of the said Tex-Mex R. R. Survey No. 189, the Tex-Mex R. R.
17 Survey No. 190, Abstract 785, and the Tex-Mex R. R. Survey No. 191,
18 Abstract 158, a total distance of 5076.5 varas to a point for
19 corner, from which a Mesquite Marked "X" bears South 61° 45' East
20 74.0 varas;

21 THENCE, North 00° 54' East with the said fence and with the
22 east line of the Jose Antonio Morales Garcia and Apolinario Morales
23 Garcia Grant, known as the "San Antonio Grant", Abstract 214,
24 Brooks County, Abstract 578, Hidalgo County, and Abstract 103 in
25 Starr County, a distance of 4280.8 varas to the fence corner, the
26 southwest corner of the Louella Jones Borglum 7036.01-acre tract
27 (called 8576.50 acres);

1 THENCE, South 89° 40' East with the south fence and with the
2 south line of the said Borglum 7036.01 acre tract a distance of
3 6202.3 varas to a fence corner marking the southeast corner of the
4 same, being also a point on the west line of the Juan Garza Diaz
5 Grant, also known as the "Vargas Grant", Abstract 192, in Brooks
6 County, and Abstract 82, in Hidalgo County, Texas;

7 THENCE South 00° 04' West with the said fence and the west line
8 of the said "Vargas Grant", a distance of 9924.7 varas to the PLACE
9 OF BEGINNING and containing 10,953.38 acres of land, more or less.

10 SECTION 3. (a) The legal notice of the intention to
11 introduce this Act, setting forth the general substance of this
12 Act, has been published as provided by law, and the notice and a
13 copy of this Act have been furnished to all persons, agencies,
14 officials, or entities to which they are required to be furnished
15 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
16 Government Code.

17 (b) The governor has submitted the notice and Act to the
18 Texas Commission on Environmental Quality.

19 (c) The Texas Commission on Environmental Quality has filed
20 its recommendations relating to this Act with the governor,
21 lieutenant governor, and speaker of the house of representatives
22 within the required time.

23 (d) All requirements of the constitution and laws of this
24 state and the rules and procedures of the legislature with respect
25 to the notice, introduction, and passage of this Act are fulfilled
26 and accomplished.

27 SECTION 4. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2009.