

By: Phillips

H.B. No. 4736

Substitute the following for H.B. No. 4736:

By: Martinez Fischer

C.S.H.B. No. 4736

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Red River Groundwater Conservation District; providing authority to 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 8859 to read as follows:

CHAPTER 8859. RED RIVER GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8859.001. 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 Red River Groundwater Conservation District.

(4) "Water services district" means a district created under the authority of Section 59, Article XVI, or Section 52, Article III, Texas Constitution, with the authority to provide retail water service in the district.

(5) "Water supply corporation" means a water supply corporation operating under Chapter 67, Water Code.

Sec. 8859.002. NATURE OF DISTRICT; FINDINGS. (a) The district is a groundwater conservation district in Grayson and Fannin Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

1       (b) The district is created to serve a public use and  
2 benefit.

3       (c) All of the land and other property included within the  
4 boundaries of the district will be benefited by the works and  
5 projects that are to be accomplished by the district under powers  
6 conferred by this chapter and by Chapter 36, Water Code.

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

12       Sec. 8859.003. INITIAL DISTRICT TERRITORY. The initial  
13 boundaries of the district are coextensive with the boundaries of  
14 Grayson and Fannin Counties.

15       Sec. 8859.004. APPLICABILITY OF OTHER GROUNDWATER  
16 CONSERVATION DISTRICT LAW. (a) Except as otherwise provided by  
17 this chapter, Chapter 36, Water Code, applies to the district.

18       (b) Subchapter B, Chapter 36, Water Code, does not apply to  
19 the district.

20       Sec. 8859.005. CONSTRUCTION OF CHAPTER. This chapter shall  
21 be liberally construed to achieve the legislative intent and  
22 purposes of Chapter 36, Water Code. A power granted by Chapter 36,  
23 Water Code, or this chapter shall be broadly interpreted to achieve  
24 that intent and those purposes.

25       [Sections 8859.006-8859.020 reserved for expansion]

26               SUBCHAPTER A-1. TEMPORARY PROVISIONS

27       Sec. 8859.021. INITIAL DIRECTORS; APPOINTMENT. (a) Not

1 later than the 30th day after the effective date of the Act creating  
2 this chapter, the persons designated by Sections 8859.053(a)(1),  
3 (2), (3), and (4) to appoint directors shall appoint initial  
4 directors as prescribed by Section 8859.053 and in writing shall  
5 submit the appointed directors' names to the county judge of Fannin  
6 County. The persons responsible for making nominations for the  
7 appointments under Sections 8859.053(a)(2) and (3) shall submit  
8 initial director nominations to the commissioners court of Fannin  
9 County not later than the 20th day after the effective date of the  
10 Act enacting this chapter.

11 (b) Not later than the 30th day after the effective date of  
12 the Act creating this chapter, the county judge of Fannin County  
13 shall set the date, time, and location for a meeting of the  
14 representatives designated under Subsection (d) for the  
15 appointment of initial directors by the entities that Sections  
16 8859.053(a)(5) and (6) authorize to appoint directors.

17 (c) The county judge of Fannin County shall give notice of  
18 the meeting required by Subsection (b) not later than the 20th day  
19 before the date of the meeting by:

20 (1) providing a notice to the county clerk of Fannin  
21 County for public posting; and

22 (2) mailing a notice to the commissioners court of  
23 Grayson County.

24 (d) The governing body of each entity described by Sections  
25 8859.053(a)(5) and (6) shall designate a representative to attend  
26 the meeting described by Subsection (b) and to cast the vote on  
27 behalf of the entity. Failure of a governing body to designate a

1 representative or of a representative to cast a vote does not  
2 invalidate the appointment of the initial directors.

3 (e) The county judge of Fannin County shall preside at the  
4 meeting described in Subsection (b) and may require representatives  
5 described by Subsection (d) to provide evidence demonstrating  
6 representation of an appropriate entity and qualification under  
7 Section 8859.053(f). The county judge of Fannin County in writing  
8 shall certify to the board and to the executive director of the  
9 Texas Commission on Environmental Quality the results of the  
10 meeting described in Subsection (b), including:

11 (1) the identity of each representative described by  
12 Subsection (d) who attended the meeting; and

13 (2) the names and terms of each initial director  
14 appointed.

15 (f) If the county judge of Fannin County does not perform  
16 any duty established by this section before the 90th day after the  
17 effective date of the Act creating this chapter, the executive  
18 director of the Texas Commission on Environmental Quality shall  
19 perform that duty as soon as practicable after that date.

20 Sec. 8859.022. INITIAL DIRECTORS; TERMS OF OFFICE. (a) The  
21 following initial directors shall serve from the date of  
22 appointment until August 31, 2011:

23 (1) the initial director appointed by the  
24 commissioners court of Fannin County under Section 8859.053(a)(1);

25 (2) one initial director appointed by the governing  
26 body of the municipality under Section 8859.053(a)(4); and

27 (3) the initial director appointed by the governing

1 bodies of the municipalities under Section 8859.053(a)(5).

2 (b) The following initial directors shall serve from the  
3 date of appointment until August 31, 2013:

4 (1) the two initial directors appointed by the  
5 commissioners court of Fannin County under Sections 8859.053(a)(2)  
6 and (3);

7 (2) one initial director appointed by the governing  
8 body of the municipality described by Section 8859.053(a)(4); and

9 (3) the initial director appointed by the governing  
10 boards described by Section 8859.053(a)(6).

11 (c) The governing body of the municipality that appoints  
12 initial directors under Section 8859.053(a)(4) shall indicate in  
13 the submission for each appointment the length of the term for the  
14 appointment as described by Subsection (b).

15 Sec. 8859.023. INITIAL DIRECTORS; QUALIFICATIONS. (a) To  
16 be eligible to serve as an initial director:

17 (1) a person appointed under Section 8859.053(a)(1),  
18 (2), or (3) must be a registered voter of Fannin County; and

19 (2) a person appointed under Section 8859.053(a)(4),  
20 (5), or (6) must be a registered voter of Grayson County.

21 (b) Each initial director must qualify to serve as a  
22 director in the manner provided by Section 36.055, Water Code.

23 Sec. 8859.024. ORGANIZATIONAL MEETING OF INITIAL  
24 DIRECTORS. (a) As soon as practicable after all the initial  
25 directors have qualified under Section 36.055, Water Code, a  
26 majority of the initial directors shall convene the organizational  
27 meeting of the district at the Grayson County courthouse or at

1 another location in the district agreeable to a majority of the  
2 initial directors.

3 (b) The initial directors shall elect officers of the  
4 initial board in accordance with Section 36.054(b), Water Code, at  
5 its organizational meeting.

6 Sec. 8859.025. EXPIRATION OF SUBCHAPTER. This subchapter  
7 expires December 31, 2013.

8 [Sections 8859.026-8859.050 reserved for expansion]

9 SUBCHAPTER B. BOARD OF DIRECTORS

10 Sec. 8859.051. GOVERNING BODY; TERMS. (a) The district is  
11 governed by a board of seven directors appointed as provided by this  
12 section.

13 (b) Directors serve staggered four-year terms, with the  
14 terms of three or four directors from each appointing county  
15 expiring on August 31 of each odd-numbered year.

16 (c) A director serves until the director's successor has  
17 qualified to serve.

18 Sec. 8859.052. DIRECTOR ELIGIBILITY; QUALIFICATION. (a)  
19 To be eligible to serve as a director:

20 (1) a person appointed under Section 8859.053(a)(1),  
21 (2), or (3) must be a registered voter of Fannin County; and

22 (2) a person appointed under Section 8859.053(a)(4),  
23 (5), or (6) must be a registered voter of Grayson County.

24 (b) Each director must qualify to serve in the manner  
25 provided by Section 36.055, Water Code.

26 (c) A person who qualifies as a director may participate in  
27 all votes relating to the business of the district, regardless of

1 any common law doctrine or statutory prohibition related to  
2 conflicts of interest or incompatibility.

3 (d) Section 36.058, Water Code, does not apply to a  
4 director.

5 Sec. 8859.053. APPOINTMENT OF DIRECTORS. (a) The board  
6 consists of seven directors as follows:

7 (1) one director appointed by the commissioners court  
8 of Fannin County at the discretion of the commissioners court;

9 (2) one director appointed by the commissioners court  
10 of Fannin County selected from a list of nominees submitted to the  
11 commissioners court by the governing bodies of the municipalities  
12 in Fannin County;

13 (3) one director appointed by the commissioners court  
14 of Fannin County selected from a list of nominees submitted to the  
15 commissioners court by the water services districts and water  
16 supply corporations that provide retail water service to customers  
17 in Fannin County, subject to the limitation provided by Subsection  
18 (f);

19 (4) two directors appointed by the governing body of  
20 the municipality in Grayson County that has the largest annual  
21 production of groundwater by volume for the four years preceding  
22 the appointment;

23 (5) one director appointed jointly by the governing  
24 bodies of the municipalities in Grayson County other than the  
25 municipality described by Subdivision (4); and

26 (6) one director appointed jointly by the governing  
27 boards of all water services districts and water supply

1 corporations that provide retail water service to customers in  
2 Grayson County, subject to the limitation provided by Subsection  
3 (f).

4 (b) Directors must be appointed not later than the second  
5 Monday in August of each odd-numbered year.

6 (c) Not later than the 60th day before the second Monday in  
7 August of each odd-numbered year, the district shall mail written  
8 notice to each entity authorized to make an appointment under  
9 Subsection (a).

10 (d) The board by rule shall adopt a procedure for the  
11 written submission of appointments to the district.

12 (e) An entity that Subsection (a)(2) or (3) authorizes to  
13 nominate persons for director shall submit a list of nominees not  
14 later than the 30th day before the date the appointment is to be  
15 made under this section. If an entity designated by Subsection  
16 (a)(2) or (3) does not submit the list before that date, the  
17 commissioners court of Fannin County may appoint a director to the  
18 position for which the list was not received at the discretion of  
19 the commissioners court.

20 (f) A water services district or water supply corporation in  
21 Grayson and Fannin Counties may not participate in the appointment  
22 of a director unless that district or corporation used groundwater  
23 produced from wells located within the district to provide retail  
24 water service in the district during the calendar year of the  
25 appointment or the calendar year preceding the appointment. The  
26 board may require evidence of eligibility to participate.

27 Sec. 8859.054. VACANCIES. If a vacancy occurs on the board,



1 the entity that appointed the director who vacated the office shall  
2 appoint a person to fill the vacancy for the unexpired term in the  
3 manner provided for the vacant position by Section 8859.053.

4 Sec. 8859.055. COMPENSATION; REIMBURSEMENT. (a)

5 Notwithstanding Sections 36.060(a) and (d), Water Code, a director  
6 may not receive compensation for performing the duties of director.

7 (b) A director is entitled to reimbursement of actual  
8 expenses reasonably and necessarily incurred while engaging in  
9 activities on behalf of the district.

10 (c) A position on the board is not a civil office of  
11 emolument for any purpose, including a purpose described in Section  
12 40, Article XVI, Texas Constitution.

13 Sec. 8859.056. QUORUM; CONCURRENCE FOR TRANSACTING  
14 BUSINESS. (a) A majority of the board membership constitutes a  
15 quorum for any meeting and a concurrence of a majority of the board  
16 shall be sufficient to transact district business, except as  
17 provided by Subsection (b).

18 (b) A concurrence of not fewer than six directors is  
19 required for transacting the following district business:

20 (1) establishing or amending a groundwater production  
21 fee assessed by the district based on the amount of groundwater  
22 authorized by permit to be withdrawn from a well or on the amount of  
23 water actually withdrawn from a well;

24 (2) adopting the annual budget of the district; and

25 (3) except as provided by Subsection (c), granting or  
26 denying a permit or permit amendment for a well that is intended to  
27 produce water within the district which will be transported in any

1 amount for use outside the boundaries of the district.

2 (c) A concurrence of a majority of the board is sufficient  
3 to grant or deny a permit or permit amendment submitted by a retail  
4 public utility that provides retail water service in the district  
5 and intends to:

6 (1) produce water from a well located:

7 (A) within the district; and

8 (B) inside the boundaries or a certificated  
9 service area of a retail public utility; and

10 (2) transport the water outside the district, so long  
11 as the water is used within the same certificated service area or  
12 boundary of the retail public utility.

13 Sec. 8859.057. DECENNIAL REVIEW OF DISTRICT  
14 REPRESENTATION. (a) Not later than January 1, 2019, and every 10  
15 years following that date, the board shall complete a review of the  
16 adequacy of representation of water users on the board based on  
17 groundwater production and use within the district.

18 (b) Not later than the 20th day following the date the  
19 review is complete, the board shall submit the review described in  
20 Subsection (a) and any recommendation the board may have relating  
21 to the reapportionment of directors or the representational  
22 structure of the board to each member of the house of  
23 representatives and each member of the senate whose state  
24 legislative district includes territory in the district.

25 [Sections 8859.058-8859.100 reserved for expansion]

26 SUBCHAPTER C. POWERS AND DUTIES

27 Sec. 8859.101. GROUNDWATER CONSERVATION DISTRICT POWERS

1 AND DUTIES. Except as provided by this chapter, the district has  
2 the powers and duties provided by the general law of this state,  
3 including Chapter 36, Water Code, applicable to groundwater  
4 conservation districts created under Section 59, Article XVI, Texas  
5 Constitution.

6 Sec. 8859.102. CONTRACTS. The district may enter into a  
7 contract with any person, public or private, for any purpose  
8 authorized by law.

9 Sec. 8859.103. APPLICABILITY OF DISTRICT RULES REGULATING  
10 GROUNDWATER. District rules regulating groundwater adopted under  
11 this chapter apply to all persons except as exempted under Section  
12 36.117, Water Code, or this chapter.

13 Sec. 8859.104. WELL SPACING RULES; EXEMPTIONS. (a) Except  
14 as provided by Subsection (b), the district shall exempt from the  
15 well spacing requirements adopted by the district any well that is  
16 completed on or before the effective date of those requirements.

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

22 (c) Except as provided by this section and notwithstanding  
23 Section 8859.103, the district may require any well or class of  
24 wells exempt from permitting under Chapter 36, Water Code, to  
25 comply with the well spacing requirements adopted by the district.  
26 The district shall apply well spacing requirements uniformly to any  
27 well or class of wells based on the size or capacity of the well and

1 without regard to the type of use of the groundwater produced by the  
2 well.

3 Sec. 8859.105. REGISTRATION AND REPORTING REQUIREMENTS FOR  
4 CERTAIN EXEMPT WELLS. The district may adopt rules that require the  
5 owner or operator of a well or class of wells exempt from permitting  
6 under Section 36.117, Water Code, to register the well with the  
7 district and, except for a well exempt from permitting under  
8 Subsection (b)(1) of that section, to report groundwater  
9 withdrawals from the well using reasonable and appropriate  
10 reporting methods and frequency.

11 Sec. 8859.106. ENFORCEMENT. (a) The district may enforce  
12 this chapter in the manner provided by Chapter 36, Water Code. In  
13 lieu of a remedy available to the district under Section 36.102,  
14 Water Code, or in addition to those remedies, the district may  
15 impose a fee in addition to a fee assessed under Section 8859.152 on  
16 a person producing groundwater in violation of a rule of the  
17 district, including the failure or refusal to comply with any order  
18 or rule of the district to reduce or cease groundwater usage. The  
19 purpose of a fee authorized under this subsection is to serve as a  
20 disincentive to producing groundwater except as authorized by the  
21 district.

22 (b) A fee imposed under Subsection (a) may not exceed an  
23 amount equal to 10 times the amount of a fee assessed under Section  
24 8859.152.

25 [Sections 8859.107-8859.150 reserved for expansion]

26 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

27 Sec. 8859.151. TAXES PROHIBITED. The district may not

1 impose a tax. Sections 36.201-36.204, Water Code, do not apply to  
2 the district.

3 Sec. 8859.152. DISTRICT REVENUES. (a) The district by  
4 rule, resolution, or order may establish, amend, pledge, encumber,  
5 expend the proceeds from, and assess to any person production fees  
6 based on the amount of groundwater authorized by permit to be  
7 withdrawn from a well or on the amount of water actually withdrawn,  
8 to enable the district to fulfill its purposes and regulatory  
9 functions as provided by this chapter. The district may use  
10 revenues generated by fees it assesses for any lawful purpose.

11 (b) Notwithstanding any provision of general law to the  
12 contrary, a fee authorized by Subsection (a) may not exceed:

13 (1) \$1 per acre-foot annually for groundwater used for  
14 agricultural purposes; or

15 (2) 30 cents per thousand gallons annually for  
16 groundwater used for nonagricultural purposes.

17 (c) Notwithstanding any provision of general law or this  
18 chapter to the contrary, the district may assess a production fee  
19 under this section for groundwater produced from a well or class of  
20 wells exempt from permitting under Section 36.117, Water Code,  
21 except for a well exempt from permitting under Subsection (b)(1) of  
22 that section. A production fee assessed by the district under this  
23 subsection must be based on the amount of groundwater actually  
24 withdrawn from the well and may not exceed the amount established by  
25 the district for permitted uses under Subsection (b)(2) of this  
26 section.

27 (d) Notwithstanding Section 36.1071(f), Water Code, the

1 district by rule, resolution, or order before the adoption of its  
2 management plan may:

3 (1) establish, assess, and enforce the collection of  
4 production fees under this section; and

5 (2) establish and enforce metering and reporting  
6 requirements, except for a well exempt from permitting under  
7 Section 36.117(b)(1), Water Code.

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

12 (f) The district may not assess a fee for transporting water  
13 that is produced from a well located inside the district and inside  
14 a certificated service area of a retail public utility and  
15 transported outside of the district, if the water is used in the  
16 same certificated service area of the retail public utility.

17 SECTION 2. The legislature finds that for the purpose of  
18 Section 8859.053(a)(4), Special District Local Laws Code, as added  
19 by this Act, the City of Sherman is the municipality in Grayson  
20 County with the largest annual production of groundwater by volume  
21 for the four years preceding the effective date of this Act.

22 SECTION 3. (a) The legal notice of the intention to  
23 introduce this Act, setting forth the general substance of this  
24 Act, has been published as provided by law, and the notice and a  
25 copy of this Act have been furnished to all persons, agencies,  
26 officials, or entities to which they are required to be furnished  
27 under Section 59, Article XVI, Texas Constitution, and Chapter 313,

1 Government Code.

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

4 (c) The Texas Commission on Environmental Quality has filed  
5 its recommendations relating to this Act with the governor,  
6 lieutenant governor, and speaker of the house of representatives  
7 within the required time.

8 (d) All requirements of the constitution and laws of this  
9 state and the rules and procedures of the legislature with respect  
10 to the notice, introduction, and passage of this Act are fulfilled  
11 and accomplished.

12 SECTION 4. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2009.