

By: Phillips

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 XXXX to read as follows:

CHAPTER XXXX. RED RIVER GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. XXXX.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) "Special 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 corporation as defined under Section 67.001, Water Code.

Sec. XXXX.002. NATURE OF DISTRICT; FINDINGS. (a) The district is a groundwater conservation district comprised of all of the territory within Grayson and Fannin Counties created under and essential to accomplish the purposes of Section 59, Article XVI,

1 Texas Constitution.

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

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

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

13 Sec. XXXX.003. DISTRICT TERRITORY. The territory of the
14 district shall encompass all of the territory within Grayson County
15 and Fannin County.

16 Sec. XXXX.004. APPLICABILITY OF OTHER GROUNDWATER
17 CONSERVATION DISTRICT LAW. Except as otherwise provided by this
18 chapter, Chapter 36, Water Code, applies to the district.
19 Subchapter B, Chapter 36, Water Code, does not apply to the
20 district.

21 Sec. XXXX.005. CONSTRUCTION OF CHAPTER. This chapter shall
22 be liberally construed to achieve the purposes expressed herein,
23 and the purposes of Chapter 36, Water Code. A power granted by
24 Chapter 36, Water Code, or this chapter shall be broadly
25 interpreted to achieve that intent and those purposes.

26 [Sections XXXX.006-XXXX.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

1 Sec. XXXX.021. BOARD OF DIRECTORS. (a) The district is
2 governed by a board of seven directors.

3 (b) Initial directors serve until permanent directors are
4 appointed pursuant to Section XXXX.022.

5 (c) Permanent directors each serve a term that expires on
6 August 31 at the conclusion of four years. New terms shall begin on
7 September 1 following the expiration of the preceding term.

8 (d) Each director must qualify to serve as a director in
9 accordance with Section 36.055, Water Code.

10 (e) A director serves until the director's successor has
11 qualified to serve.

12 (f) To be eligible for appointment as a director, a person
13 must be registered to vote in the appointing county.

14 (g) A position on the board shall not be construed to be a
15 civil office of emolument for any purpose, including a purpose
16 described in Section 40, Article XVI, Texas Constitution. A person
17 who qualifies to serve on the board shall be qualified to serve as a
18 director and participate in all votes relating to the business of
19 the district regardless of any common law doctrine or any statutory
20 conflicts of interest, incompatibility, or similar provision to the
21 contrary. Section 36.058, Water Code, does not apply to the
22 district.

23 Sec. XXXX.022. APPOINTMENT OF DIRECTORS. (a) The
24 permanent directors shall be appointed as follows:

25 (1) the Commissioners Court of Fannin County shall
26 select and appoint one director at its sole discretion;
27

1 (2) the Commissioners Court of Fannin County shall
2 appoint one director selected from among nominees made to the
3 Commissioners Court prior to the date of the appointment by the
4 governing bodies of the municipalities in Fannin County;

5 (3) the Commissioners Court of Fannin County shall
6 appoint one director selected from among nominees made to the
7 Commissioners Court prior to the date of the appointment by the
8 special districts and water supply corporations that provide retail
9 water service to customers in Fannin County;

10 (4) the governing body of the municipality in Grayson
11 County with the largest annual production of groundwater by volume
12 for the preceding four years shall appoint two directors;

13 (5) the governing bodies of the municipalities in
14 Grayson County, other than the governing body of the municipality
15 described in Subsection (a)(4), shall jointly appoint one director;
16 and

17 (6) the governing boards of all special districts and
18 water supply corporations that provide retail water service to
19 customers in Grayson County shall jointly appoint one director.

20 (b) Permanent directors shall be appointed not later than
21 the second Monday in each August prior to the beginning of a new
22 term under Section XXXX.021(c).

23 (c) Not later than the 60th day before the deadline for
24 appointments provided in Subsection (b), the district shall mail
25 written notice to each person required to make an appointment
26 pursuant to Subsection (a) that the appointment is due.

27 (d) The board shall by rule adopt an appointment process for

1 permanent directors providing for the written submission of
2 appointments to the district by those persons designated in
3 Subsection (a) to appoint permanent directors.

4 (e) If there is a vacancy on the board, the appropriate
5 person designated under Subsection (a) shall appoint a director to
6 serve the remainder of the unexpired term.

7 (f) The persons responsible for providing nominations under
8 Subsections (a)(2) and (3) shall have until 30 days before the
9 director appointments are due under the applicable provisions of
10 this chapter to submit their nominations to the Commissioners Court
11 of Fannin County.

12 (g) If at least one nomination for each director position to
13 be appointed under Subsections (a)(2) and (3) is not provided to the
14 Commissioners Court of Fannin County by the deadline established in
15 Subsection (f), the Commissioners Court of Fannin County may make
16 the required number of appointments from nominees of the court's
17 own choosing.

18 (h) Notwithstanding anything to the contrary in this
19 chapter, a municipality, special district, or water supply
20 corporation otherwise authorized to participate in the director
21 appointments described under Subsection (a)(2), (3), (5), or (6), is
22 not eligible to participate in the applicable appointment process
23 described under those subsections unless it has actually used
24 groundwater produced from wells located within the district to
25 provide retail water service in the district within the calendar
26 year of the appointment or preceding calendar year. In
27 implementing Subsection (d), the board may require a municipality,

1 special district, or water supply corporation to provide evidence
2 of groundwater use as described by this subsection as a condition of
3 eligibility to participate in the appointments process.

4 Sec. XXXX.023. APPOINTMENT OF INITIAL DIRECTORS. (a) Not
5 later than the 30th day after the effective date of the Act enacting
6 this chapter, the persons designated in Sections XXXX.022(a)(1),
7 (2), (3) and (4) to appoint permanent directors shall appoint
8 initial directors as prescribed by Section XXXX.022 and shall
9 submit the names of their appointments in writing to the county
10 judge of Fannin County. The persons responsible for providing
11 nominations under Sections XXXX.022(a)(2) and (3) shall have until
12 10 days before the initial director appointments are due to submit
13 their nominations to the Commissioners Court of Fannin County.

14 (b) Not later than the 30th day after the effective date of
15 the Act enacting this chapter, the county judge of Fannin County
16 shall set the date, time and location for a meeting of the
17 representatives designated under Subsection (d) of this section
18 for the appointment of initial directors by those persons
19 authorized to appoint permanent directors under Sections
20 XXXX.022(a)(5) and (6).

21 (c) The county judge of Fannin County shall give notice of
22 the meeting required pursuant to Subsection (b) by providing notice
23 to the county clerk of Fannin County for public posting and by
24 mailing the notice to the Commissioners Court of Grayson County no
25 less than 20 days before the date of the meeting.

26 (d) The governing body of each entity identified in Sections
27 XXXX.022(a)(5) and (6) shall designate a representative to attend

1 the meeting described in Subsection (b). Failure of a governing
2 body to designate a representative shall not invalidate the
3 appointment process for initial directors.

4 (e) The governing body of each entity identified in Sections
5 XXXX.022(a)(5) and (6) is entitled to one vote for its respective
6 appointment, which shall be cast by the representative designated
7 pursuant to Subsection (d).

8 (f) The county judge of Fannin County shall preside at the
9 meeting described under Subsection (b) and may require persons in
10 attendance to provide evidence demonstrating their representative
11 authority under Subsection (e) and demonstrating their
12 qualification to participate as groundwater users under Section
13 XXXX.022(h). The county judge of Fannin County shall certify in
14 writing to the board and to the executive director of the Texas
15 Commission on Environmental Quality the results of the meeting,
16 including:

17 (1) the identity of each representative described
18 under Subsection (d) of this section that was in attendance at the
19 meeting; and

20 (2) the names of each appointment made pursuant to
21 Subsection (b).

22 (g) The county judge of Fannin County shall also include in
23 the certification required pursuant to Subsection (f) the names
24 and, where appropriate, the terms, of each appointment made
25 pursuant to Subsection (a).

26 (h) If the county judge of Fannin County fails to perform
27 any of the duties set forth under section prior to the expiration of

1 90 days after the effective date of the Act enacting this chapter,
2 the executive director of the Texas Commission on Environmental
3 Quality shall perform any duties not performed by the county judge
4 so as to accomplish the appointment of initial directors under this
5 section.

6 Sec. XXXX.024. TERMS OF OFFICE FOR INITIAL DIRECTORS. (a)

7 The following initial directors shall serve from the date of
8 appointment until August 31, 2011:

9 (1) the initial director selected and appointed by the
10 Commissioners Court of Fannin County under Section XXXX.022(a)(1);

11 (2) one initial director appointed by the governing
12 body of the municipality under Section XXXX.022(a)(4); and

13 (3) the initial director appointed by the governing
14 bodies of the municipalities under Section XXXX.022(a)(5).

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

17 (1) the initial directors appointed by the
18 Commissioners Court of Fannin County under Sections XXXX.022(a)(2)
19 and (3);

20 (3) one initial director appointed by the governing
21 body of the municipality under Section XXXX.022(a)(4); and

22 (3) the initial director appointed by the governing
23 boards of all special districts and water supply corporations that
24 provide retail water service to customers in Grayson County under
25 Section XXXX.022(a)(6).

26 (c) The person responsible for the appointment of directors
27 under Section XXXX.022(a)(4) shall, for each initial director

1 appointment, indicate in its submission made pursuant to Section
2 XXXX.023(a) whether the initial director is to serve a term ending
3 August 31, 2011, or August 31, 2013.

4 Sec. XXXX.025. ORGANIZATIONAL MEETING. (a) As soon as is
5 practicable after all of the initial directors have been appointed,
6 a majority of initial directors shall convene an organizational
7 meeting of the district at a location within the district that is
8 determined by a majority of the initial directors.

9 (b) If the majority of initial directors cannot agree upon a
10 location for the organizational meeting required pursuant to
11 Subsection (a), the meeting shall be held at the Grayson County
12 Courthouse.

13 Sec. XXXX.026. BOARD OFFICERS. The initial directors
14 shall, at the organizational meeting, elect officers of the board
15 in accordance with Section 36.054(b), Water Code.

16 Sec. XXXX.027. QUORUM; CONCURRENCE FOR TRANSACTING
17 BUSINESS. (a) A majority of the board membership constitutes a
18 quorum for any meeting and a concurrence of a majority of the board
19 shall be sufficient to transact the business of the district,
20 except as provided by Subsection (b).

21 (b) Notwithstanding Section 36.053, Water Code, a
22 concurrence of no fewer than six directors is required for
23 transacting the following business of the district:

24 (1) establishing or amending any groundwater
25 production fees assessed by the district based on the amount of
26 groundwater authorized by permit to be withdrawn from a well or on
27 the amount of water actually withdrawn, as set forth under Section

1 XXXX.152;

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

3 (3) except as provided by Subsection (c), taking
4 action to grant or deny a permit or permit amendment application for
5 a well to produce water within the district which will be
6 subsequently transported for use, in whole or in part, outside of
7 the boundaries district.

8 (c) A concurrence of a majority of the board membership
9 shall be sufficient to take action to grant or deny a permit or
10 permit amendment application by a retail public utility that
11 provides retail water service in the district for a well to produce
12 water within the district and inside the boundaries or certificated
13 service area of a retail public utility and transport the water to a
14 location of use outside of the district if the water is used within
15 the same certificated service area or boundaries of the same retail
16 public utility.

17 Sec. XXXX.028. DECENNIAL REVIEW OF DISTRICT
18 REPRESENTATION. (a) The board shall complete a review not later
19 than January 1, 2019, and every 10 years thereafter, of the adequacy
20 of representation of water users on the board based on groundwater
21 production and use within the district.

22 (b) The board shall submit a report to each member of the
23 House of Representatives and each member of the Senate of the State
24 of Texas whose legislative district includes territory in the
25 district not later than 20 days following the completion of the
26 report required pursuant to Subsection (a) describing the review
27 conducted and providing any recommendations by the board regarding

1 changes to the apportionment of directors and the representational
2 structure of the board.

3 Sec. XXXX.029. COMPENSATION; REIMBURSEMENT. (a)
4 Notwithstanding Sections 36.060(a) and (d), Water Code, a director
5 may not receive compensation for performing the duties of director.

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

9 [Sections XXXX.030-XXXX.100 reserved for expansion]

10 SUBCHAPTER C. POWERS AND DUTIES

11 Sec. XXXX.101. GROUNDWATER CONSERVATION DISTRICT POWERS
12 AND DUTIES. Except as provided by this chapter, the district has
13 the powers and duties provided by the general law of this state,
14 including Chapter 36, Water Code, and Section 59, Article XVI,
15 Texas Constitution, applicable to groundwater conservation
16 districts.

17 Sec. XXXX.102. CONTRACTS. The district may enter into a
18 contract with any person, public or private, for any purpose
19 authorized by law.

20 Sec. XXXX.103. APPLICABILITY OF DISTRICT REGULATIONS.
21 Groundwater regulation under this chapter applies to all persons
22 except as exempted from permitting under Section 36.117, Water
23 Code, or this chapter.

24 Sec. XXXX.104. WELL SPACING RULES; EXEMPTIONS. (a) Except
25 as provided by Subsection (b), the district shall exempt from the
26 well spacing requirements adopted by the district any well that is
27 completed on or before the effective date of those requirements.

1 (b) The district may provide by rule that a well may lose its
2 exemption under this section if the production capacity of the
3 well, or the well pump or related equipment, is substantially
4 altered so that the capacity of the well or pump after the effective
5 date of the well spacing requirements adopted by the district is
6 materially enhanced.

7 (c) Except as provided by this section and notwithstanding
8 Section XXXX.103, the district may require any well or class of
9 wells exempt from permitting under Chapter 36, Water Code, to
10 comply with the well spacing requirements adopted by the district.
11 The district shall apply well spacing requirements uniformly to any
12 well or class of wells based on the size or capacity of the well and
13 without regard to the type of use of the groundwater produced by the
14 well.

15 Sec. XXXX.105. REGISTRATION AND REPORTING REQUIREMENTS FOR
16 CERTAIN EXEMPT WELLS. The district may adopt rules that require the
17 owner or operator of a well or class of wells exempt from permitting
18 under Section 36.117, Water Code, to register the well with the
19 district and, except for a well exempt from permitting under
20 Subsection (b)(1) of that section, to report groundwater
21 withdrawals from the well using reasonable and appropriate
22 reporting methods and frequency.

23 Sec. XXXX.106. ENFORCEMENT. (a) The district may enforce
24 this chapter against any person in the manner provided by Chapter
25 36, Water Code. In lieu of a remedy available to the district under
26 Section 36.102, Water Code, or in addition to those remedies, the
27 district may impose a fee in addition to a fee assessed under

1 Section XXXX.152 on a person producing groundwater in violation of
2 a rule of the district, including the failure or refusal to comply
3 with any order or rule of the district to reduce or cease
4 groundwater usage. The purpose of a fee authorized under this
5 subsection is to serve as a disincentive to producing groundwater
6 except as authorized by the district.

7 (b) A fee imposed under Subsection (a) may not exceed an
8 amount equal to 10 times the amount of a fee assessed under Section
9 XXXX.152.

10 [Sections XXXX.107-XXXX.150 reserved for expansion]

11 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

12 Sec. XXXX.151. TAXES PROHIBITED. The district may not
13 impose a tax. Sections 36.020(a) and 36.201-36.204, Water Code, do
14 not apply to the district.

15 Sec. XXXX.152. DISTRICT REVENUES. (a) The district by
16 rule, resolution, or order may establish, amend, pledge, encumber,
17 expend the proceeds from, and assess to any person production fees
18 based on the amount of groundwater authorized by permit to be
19 withdrawn from a well or on the amount of water actually withdrawn,
20 to enable the district to fulfill its purposes and regulatory
21 functions as provided by this chapter. The district may use
22 revenues generated by fees it assesses for any lawful purpose.

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

25 (1) \$1 for each acre-foot of groundwater produced
26 annually and used for agricultural purposes; or

27 (2) 30 cents for each one thousand gallons of

1 groundwater produced annually and used for nonagricultural
2 purposes.

3 (c) Notwithstanding any provision of general law or this
4 chapter to the contrary, the district may assess a production fee
5 under this section for groundwater produced from a well or class of
6 wells exempt from permitting under Section 36.117, Water Code,
7 except for a well exempt from permitting under Section
8 36.117(b)(1), Water Code. A production fee assessed by the
9 district under this subsection must be based on the amount of
10 groundwater actually withdrawn from the well and may not exceed the
11 amount established by the district for permitted uses under
12 Subsection (b)(2) of this section.

13 (d) Notwithstanding Section 36.1071(f), Water Code, the
14 district by rule, resolution, or order before the adoption of its
15 management plan may:

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

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

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

25 (f) The district may not assess fees for transporting water
26 that is produced within the district inside the boundaries or
27 certificated service area of a retail public utility by a retail

1 public utility that provides retail water service in the district
2 to a location of use outside of the district if the water is used
3 within the same certificated service area or boundaries of the same
4 retail public utility.

5 SECTION 2. The Legislature finds that for purposes of
6 Section XXXX.022(a)(4), Special District Local Laws Code, as added
7 by this Act, the City of Sherman is the municipality in Grayson
8 County with the largest annual production of groundwater by volume
9 for the preceding four years as of the effective date of this Act.

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 September 1, 2009.