

By: Hinojosa

S.B. No. 2456

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the creation of the Brush Country Groundwater  
3 Conservation District; providing authority to impose a tax and  
4 issue bonds.

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

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

8 CHAPTER 8852. BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 8852.001. DEFINITIONS. In this chapter:

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

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

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

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

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

24 (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, and  
5 Hidalgo 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 on September 1, 2011.

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.

[Sections 8852.006-8852.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

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

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_
- (7) \_\_\_\_\_.

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

(c) Temporary directors serve until the earlier of:

- (1) the date the temporary director becomes an initial permanent director under Section 8852.024;
- (2) the date of the canvass of the election in which the voters of the territory represented by the temporary director vote not to confirm the creation of the district under Section 8852.023, if the voters of at least one territory in the district vote to confirm the district's creation; or
- (3) the date this chapter expires under Section 8852.003.

Sec. 8852.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a

1 majority of the temporary directors shall convene the  
2 organizational meeting of the district at a location within the  
3 district agreeable to a majority of the directors. If an agreement  
4 on location cannot be reached, the organizational meeting shall be  
5 at the Brooks County Courthouse.

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

10 (1) the territory in the corporate limits of the City  
11 of Falfurrias as of January 1, 2009;

12 (2) the territory:

13 (A) in Brooks County that, as of January 1, 2009,  
14 is:

15 (i) outside the corporate limits of the  
16 City of Falfurrias; and

17 (ii) not in the Kenedy County Groundwater  
18 Conservation District; and

19 (B) in Hidalgo County that is:

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

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

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

27 (4) the territory in Jim Hogg County that is outside

1 the certificated retail water service area of the Jim Hogg County  
2 Water Control and Improvement District No. 2 as of January 1, 2009.

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

5 (c) Except as provided by this section, an election under  
6 this section must be conducted as provided by Sections 36.017(b),  
7 (c), and (e)-(i), Water Code, and the Election Code.

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

13 (e) If the majority of voters in a territory described by  
14 Subsection (a) voting at an election held under this section vote to  
15 confirm the creation of the district, that territory is included in  
16 the district. If the majority of voters in a territory described by  
17 Subsection (a) voting at an election held under this section vote  
18 not to confirm the creation of the district, that territory is  
19 excluded from the district.

20 (f) If the majority of voters in any of the territories  
21 described by Subsection (a) voting at an election held under this  
22 section vote not to confirm the creation of the district, the  
23 temporary board may hold a subsequent confirmation election in that  
24 territory.

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

27 Sec. 8852.024. INITIAL PERMANENT DIRECTORS. (a) If the

1 creation of the district is confirmed at an election held under  
2 Section 8852.023 in one or more territories in the district, each  
3 temporary director who represents a territory that is included in  
4 the district becomes an initial permanent director of the district.

5 (b) The initial permanent directors shall draw lots to  
6 determine which directors serve a term expiring on June 1 of the  
7 first even-numbered year after the confirmation election and which  
8 directors serve a term expiring on June 1 of the next even-numbered  
9 year.

10 Sec. 8852.025. GIFTS AND GRANTS. The temporary board may  
11 solicit and accept gifts and grants on the district's behalf from  
12 any public or private source to provide revenue for the district  
13 before a confirmation election is held under Section 8852.023.

14 [Sections 8852.026-8852.050 reserved for expansion]

15 SUBCHAPTER B. BOARD OF DIRECTORS

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

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

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

26 (B) two directors who represent the agricultural  
27 interests of the territory described by Section 8852.023(a)(2), if

1 the territory described by Section 8852.023(a)(2) is included in  
2 the district;

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

5 (A) one director who represents the interests of  
6 Jim Hogg County in the territory described by Section  
7 8852.023(a)(3), if the territory described by Section  
8 8852.023(a)(3) is included in the district; and

9 (B) two directors who represent the agricultural  
10 interests of the territory described by Section 8852.023(a)(4), if  
11 the territory described by Section 8852.023(a)(4) is included in  
12 the district; and

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

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

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

22 (b) A temporary director whose term of office expires under  
23 Section 8852.021(c)(2) is not eligible for appointment as a  
24 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 C. 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 D. 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 E. 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, and Hidalgo County.

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

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

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

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

26        SECTION 2. The Brush Country Groundwater Conservation  
27 District initially includes all the territory contained in the

1 following area:

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

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

8 (c) all real property in Hidalgo County contained in the  
9 following described area:

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

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

21 THENCE North 01° 15' 50" East with the east line of the said  
22 "La Rucia Grant" and with a fence, a distance of 322.2 varas to a  
23 fence corner marking the south-east corner and BEGINNING POINT of  
24 the herein described tract;

25 THENCE in a westerly direction with the said fence, being  
26 also the north line of the said McAllen 8827.00-acre tract and with  
27 the north line of the Argyle McAllen 23,597.00 acre tract as

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1 described in the Oil, Gas and Mineral lease executed by Argyle  
2 McAllen in favor of Shell Oil Company, dated September 5, 1947, and  
3 recorded in Volume 74, page 112, of the Oil and Gas Records of  
4 Hidalgo County, Texas; thence with said line the following courses  
5 and distances: North  $85^{\circ} 06' 40''$  West, 3538.3 varas; North  $84^{\circ} 39'$   
6  $20''$  West, 2104.4 varas; and North  $81^{\circ} 32' 50''$  West, 725.3 varas to a  
7 southeast corner of the J. C. McGill, Jr., et al 640-acre tract,  
8 being a part of a 38,644.1-acre tract, being also a point on the  
9 east line of the Texas-Mexico R. R. Survey No. 189, Abstract 157;

10       THENCE North  $00^{\circ} 55'$  East with the said fence and the east  
11 lines of the said Tex-Mex R. R. Survey No. 189, the Tex-Mex R. R.  
12 Survey No. 190, Abstract 785, and the Tex-Mex R. R. Survey No. 191,  
13 Abstract 158, a total distance of 5076.5 varas to a point for  
14 corner, from which a Mesquite Marked "X" bears South  $61^{\circ} 45'$  East  
15 74.0 varas;

16       THENCE, North  $00^{\circ} 54'$  East with the said fence and with the  
17 east line of the Jose Antonio Morales Garcia and Apolinario Morales  
18 Garcia Grant, known as the "San Antonio Grant", Abstract 214,  
19 Brooks County, Abstract 578, Hidalgo County, and Abstract 103 in  
20 Starr County, a distance of 4280.8 varas to the fence corner, the  
21 southwest corner of the Louella Jones Borglum 7036.01-acre tract  
22 (called 8576.50 acres);

23       THENCE, South  $89^{\circ} 40'$  East with the south fence and with the  
24 south line of the said Borglum 7036.01 acre tract a distance of  
25 6202.3 varas to a fence corner marking the southeast corner of the  
26 same, being also a point on the west line of the Juan Garza Diaz  
27 Grant, also known as the "Vargas Grant", Abstract 192, in Brooks

1 County, and Abstract 82, in Hidalgo County, Texas;

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

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

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

14           (c) The Texas Commission on Environmental Quality has filed  
15 its recommendations relating to this Act with the governor,  
16 lieutenant governor, and speaker of the house of representatives  
17 within the required time.

18           (d) All requirements of the constitution and laws of this  
19 state and the rules and procedures of the legislature with respect  
20 to the notice, introduction, and passage of this Act are fulfilled  
21 and accomplished.

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