

1-1 By: Estes S.B. No. 2497  
1-2 (In the Senate - Filed April 2, 2009; April 6, 2009, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 22, 2009, reported favorably by the following vote: Yeas 8,  
1-5 Nays 0; April 22, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the creation of the North Texas Groundwater  
1-9 Conservation District; providing authority to issue bonds.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subtitle H, Title 6, Special District Local Laws  
1-12 Code, is amended by adding Chapter 8856 to read as follows:

1-13 CHAPTER 8856. NORTH TEXAS GROUNDWATER CONSERVATION DISTRICT

1-14 SUBCHAPTER A. GENERAL PROVISIONS

1-15 Sec. 8856.001. DEFINITIONS. In this chapter:

1-16 (1) "Board" means the board of directors of the  
1-17 district.

1-18 (2) "Director" means a member of the board.

1-19 (3) "District" means the North Texas Groundwater  
1-20 Conservation District.

1-21 Sec. 8856.002. NATURE OF DISTRICT; FINDINGS. (a) The  
1-22 district is a groundwater conservation district in Collin, Cooke,  
1-23 and Denton Counties created under and essential to accomplish the  
1-24 purposes of Section 59, Article XVI, Texas Constitution.

1-25 (b) The district is created to serve a public use and  
1-26 benefit.

1-27 (c) All of the land and other property included within the  
1-28 boundaries of the district will be benefited by the works and  
1-29 projects that are to be accomplished by the district under powers  
1-30 conferred by this chapter and by Chapter 36, Water Code.

1-31 (d) Any fees imposed by the district under this chapter are  
1-32 necessary to pay for the costs of accomplishing the purposes of the  
1-33 district, including the conservation and management of groundwater  
1-34 resources, as provided by this chapter and Section 59, Article XVI,  
1-35 Texas Constitution.

1-36 Sec. 8856.003. PUBLIC HEARING IN EACH COUNTY. (a) Not  
1-37 later than December 1, 2009, the commissioners court of each county  
1-38 in the district shall hold a public hearing on the topic of  
1-39 including the territory of the county in the district.

1-40 (b) After the public hearings and not later than December  
1-41 31, 2009, the commissioners court of each county shall vote to  
1-42 confirm or reject the county's inclusion in the district. The  
1-43 commissioners court shall adopt a resolution reflecting the result  
1-44 of that vote and provide a copy of the resolution to the temporary  
1-45 directors.

1-46 Sec. 8856.004. CONFIRMATION REQUIRED. (a) The creation of  
1-47 the district is confirmed only if the commissioners courts of two or  
1-48 more of the counties in the district submit a resolution confirming  
1-49 the county's inclusion in the district to the temporary board. If  
1-50 the commissioners court of a county does not submit a resolution  
1-51 confirming the county's inclusion in the district to the temporary  
1-52 board, that county is not included in the district. The temporary  
1-53 board shall provide a copy of the resolutions and the final district  
1-54 boundaries to the Texas Commission on Environmental Quality.

1-55 (b) If the creation of the district is not confirmed as  
1-56 provided by Subsection (a) before January 1, 2010:

1-57 (1) the district is dissolved on January 1, 2010,  
1-58 except that:

1-59 (A) any debts incurred shall be paid;

1-60 (B) any assets that remain after the payment of  
1-61 debts shall be transferred in equal amounts to Collin, Cooke, and  
1-62 Denton Counties; and

1-63 (C) the organization of the district shall be  
1-64 maintained until all debts are paid and remaining assets are

transferred; and

(2) this chapter expires September 1, 2011.

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

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

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

[Sections 8856.008-8856.020 reserved for expansion]

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8856.021. APPOINTMENT OF TEMPORARY DIRECTORS.

(a) The district is initially governed by a board of nine temporary directors appointed as provided by Sections 8856.051(b) and (d).

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

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

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

(e) Each temporary director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(f) Temporary directors serve until the earlier of:

(1) the time the temporary directors become the initial permanent directors under Section 8856.023; or

(2) the date this chapter expires under Section 8856.004.

Sec. 8856.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location in the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the Pilot Point High School in Denton County.

Sec. 8856.023. INITIAL PERMANENT DIRECTORS; INITIAL TERMS.

(a) If the creation of the district is confirmed under Section 8856.004, the temporary directors from the counties that are included in the district become the initial permanent directors.

(b) If the Commissioners Courts of Collin, Cooke, and Denton Counties confirm the inclusion of those counties in the district, the three directors appointed from each county shall draw lots as follows to determine:

(1) for Denton and Cooke Counties, which director's term expires June 1, 2011, and which two directors' terms expire June 1, 2013; and

(2) for Collin County, which two directors' terms expire June 1, 2011, and which director's term expires June 1, 2013.

(c) If the commissioners courts of only two of the counties confirm the inclusion of those counties in the district, the three directors appointed from each county shall draw lots as follows to determine:

(1) for the first county to confirm, which director's term expires June 1, 2011, and which two directors' terms expire June 1, 2013; and

(2) for the second county to confirm, which two directors' terms expire June 1, 2011, and which director's term expires June 1, 2013.

Sec. 8856.024. EXPIRATION OF SUBCHAPTER. This subchapter

3-1 expires September 1, 2011.

3-2 [Sections 8856.025-8856.050 reserved for expansion]

3-3 SUBCHAPTER B. BOARD OF DIRECTORS

3-4 Sec. 8856.051. GOVERNING BODY; TERMS. (a) The district is  
 3-5 governed by a board of six or nine directors appointed as provided  
 3-6 by this section.

3-7 (b) If the Commissioners Courts of Collin, Cooke, and Denton  
 3-8 Counties confirm the inclusion of those counties in the district,  
 3-9 nine directors shall be appointed as follows:

3-10 (1) the Collin County Commissioners Court shall  
 3-11 appoint three directors;

3-12 (2) the Cooke County Commissioners Court shall appoint  
 3-13 three directors; and

3-14 (3) the Denton County Commissioners Court shall  
 3-15 appoint three directors.

3-16 (c) If the commissioners courts of only two of the counties  
 3-17 confirm the inclusion of those counties in the district, the  
 3-18 commissioners court of each of those counties shall appoint three  
 3-19 directors.

3-20 (d) The commissioners court of each appointing county shall  
 3-21 appoint two of the three directors from that county as follows:

3-22 (1) one director from a slate of not more than three  
 3-23 nominees submitted by the largest municipal groundwater producer in  
 3-24 the county; and

3-25 (2) one director from a slate of not more than three  
 3-26 nominees submitted by the other groundwater producers in that  
 3-27 county.

3-28 (e) Directors serve staggered four-year terms, with the  
 3-29 term of one or two directors from each appointing county expiring on  
 3-30 June 1 of each odd-numbered year.

3-31 (f) A director may serve multiple consecutive terms.

3-32 (g) A position on the board may not be construed to be a  
 3-33 civil office of emolument for any purpose, including a purpose  
 3-34 described by Section 40, Article XVI, Texas Constitution.

3-35 (h) A person who qualifies to serve on the board may serve as  
 3-36 a director and participate in all votes relating to the business of  
 3-37 the district regardless of any common law doctrine of  
 3-38 incompatibility. Section 36.051, Water Code, does not apply to the  
 3-39 district.

3-40 Sec. 8856.052. DIRECTOR ELIGIBILITY; QUALIFICATION.

3-41 (a) To be eligible to serve as a director, a person must be a  
 3-42 registered voter in the appointing county.

3-43 (b) Each director must qualify to serve in the manner  
 3-44 provided by Section 36.055, Water Code.

3-45 Sec. 8856.053. VACANCIES. If a vacancy occurs on the board,  
 3-46 the commissioners court that appointed the director who vacated the  
 3-47 office shall appoint a person to fill the vacancy in a manner that  
 3-48 meets the representational requirements of Section 8856.051.

3-49 Sec. 8856.054. COMPENSATION; REIMBURSEMENT.

3-50 (a) Notwithstanding Sections 36.060(a) and (d), Water Code, a  
 3-51 director may not receive compensation for performing the duties of  
 3-52 director.

3-53 (b) A director is entitled to reimbursement of actual  
 3-54 expenses reasonably and necessarily incurred while engaging in  
 3-55 activities on behalf of the district.

3-56 Sec. 8856.055. BOARD CHAIR. The board shall select one of  
 3-57 its members to serve as the chair for a two-year term. The position  
 3-58 of chair must rotate among the counties in the district every two  
 3-59 years in alphabetical order by county.

3-60 [Sections 8856.056-8856.100 reserved for expansion]

3-61 SUBCHAPTER C. POWERS AND DUTIES

3-62 Sec. 8856.101. GROUNDWATER CONSERVATION DISTRICT POWERS  
 3-63 AND DUTIES. Except as provided by this chapter, the district has  
 3-64 the powers and duties provided by the general law of this state,  
 3-65 including Chapter 36, Water Code, applicable to groundwater  
 3-66 conservation districts created under Section 59, Article XVI, Texas  
 3-67 Constitution.

3-68 Sec. 8856.102. CONTRACTS. The district may enter into a  
 3-69 contract with any person, public or private, for any purpose

authorized by law.

Sec. 8856.103. APPLICABILITY OF DISTRICT REGULATIONS. Groundwater regulation under this chapter applies to all persons except as exempted from the requirement to obtain a permit for a well under Section 36.117, Water Code, or this chapter.

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

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

(c) Except as provided by this section and notwithstanding Section 8856.103, the district may require any well or class of wells exempt from permitting under Chapter 36, Water Code, to comply with the well spacing requirements adopted by the district. The district shall apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

Sec. 8856.105. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. The district may adopt rules that require the owner or operator of a well or class of wells exempt from permitting under Section 36.117, Water Code, to register the well with the district and, except for a well exempt from permitting under Subsection (b)(1) of that section, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

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

(b) A fee imposed under Subsection (a) may not exceed an amount equal to 10 times the amount of a fee assessed under Section 8856.152.

Sec. 8856.107. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

[Sections 8856.108-8856.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8856.151. TAXES PROHIBITED. The district may not impose a tax. Sections 36.020(a) and 36.201-36.204, Water Code, do not apply to the district.

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

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

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

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

(c) Notwithstanding any provision of general law or this chapter to the contrary, if any, the district may assess a production fee under this section for groundwater produced from a well or class of wells exempt from permitting under Section 36.117,

Water Code, except for a well exempted under Subsection (b)(1) of that section. A production fee assessed by the district under this subsection must be based on the amount of groundwater actually withdrawn from the well and may not exceed the amount established by the district for permitted uses under Subsection (b)(2) of this section.

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

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

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

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

(f) The district may not charge an export fee to a producer of groundwater withdrawn from a well in the district who distributes the water to any part of the territory under the provider's certificate of public convenience and necessity even if the territory is outside the district's boundaries.

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

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

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

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

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

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