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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 27, 2015

The Honorable Joe Straus
Texas House of Representatives
Capitol Station
PO Box 2910
Austin, Texas 78768-2910

Re: Responsibility of the Texas Commission on Environmental Quality (TCEQ) Pursuant to Article XVI, Section 59(d), Texas Constitution

House Bill (HB) 4038, as Filed by Representative Paul Workman-Relating to the creation of the Western Travis County Groundwater Conservation District; providing general law authority to issue bonds; providing authority to impose fees.

Dear Speaker Straus:

The following comments are provided pursuant to the Constitutional requirements referenced above. Under those requirements, the TCEQ must submit, to the Governor, Lieutenant Governor and Speaker of the House of Representatives, the TCEQ's recommendations on specific legislation affecting water districts. We recommend that these comments be considered in the evaluation of the proposed legislation.

Sincerely,

A handwritten signature in cursive script that reads "Kellye Rila".

Kellye Rila, Director
Water Availability Division

cc: The Honorable Jim Keffer, Chairman, House Natural Resources Committee
Representative Paul Workman, Texas House of Representatives

Enclosure

HB 4038, as Introduced by Representative Paul Workman Texas Commission on Environmental Quality's Comments

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), has determined that:

House Bill 4038, as authored by Representative Paul Workman, would create the Western Travis County Groundwater Conservation District (District) in Western Travis County with the powers and duties of Water Code, Chapter 36 related to the general law for groundwater conservation districts (GCDs). The boundaries of the District are boundaries that include Travis County territory southwest of the Colorado River and Lake Travis and northwest of the boundary of the Barton Springs Edwards Aquifer Conservation District and does not include territory in the corporate limits or extraterritorial jurisdiction of the City of Bee Cave, the City of Lakeway, the City of West Lake Hills, the Village of Briarcliff, or the Village of the Hills. The purpose of the District is to benefit property by providing for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and to control subsidence caused by the withdrawal of groundwater under powers conferred by Article XVI, Section 59 of the Texas Constitution. Creation of the District is not subject to a confirmation election.

Comments on Powers/Duties Different from Similar Types of Districts: Unlike general law GCDs, the bill provides five temporary directors be appointed within 90 days of the effective date of the Act, with the Travis County Commissioner appointing two, and the Travis County Judge, State Representative, and State Senator each appointing one. The temporary directors are required to hold an organizational meeting and select officers within 45 days of the date the last temporary director is appointed. The temporary directors are required to hold an initial directors' election not later than the uniform election date in November 2017, with the five initial directors being elected at large. The bill provides that the temporary directors will determine if staggered terms are in the best interest of the District and will determine if initial directors serve staggered two- and four-year terms or if all five directors serve concurrent four-year terms. All subsequent elected directors will serve four-year terms. Under the Water Code, general law GCD directors are elected by the single-precinct method.

Unlike general law GCDs, temporary directors may not exercise authorities granted by Water Code, relating to certain elections, taxes, bonds and notes, the power of eminent domain, management plan development and joint planning responsibilities, or adding territory or combining with another GCD. The management plan development and joint planning responsibilities, or adding territory or combining with another GCD prohibitions do not extend to the initial directors upon their election.

Unlike general law GCDs, the bill provides that groundwater withdrawals may not be regulated, permitted, or metered by the District for exempt wells that include wells used for domestic purposes for a single private residential household incapable of producing more than 25,000 gallons of water per day, and wells used for conventional farming and ranching activities including aquaculture, feedlot, or poultry operations. The bill provides that the District may not assess a construction fee on exempt wells. The bill provides that wells used for dewatering and monitoring in the production of coal or lignite is exempt from District permit requirements, regulations, and fees. The bill provides that all owners of non-exempt wells must obtain a District permit and pay any required fees before using groundwater. The bill prohibits the District from entering property to inspect an exempt well without the property owner's permission. The bill prohibits the District from exercising the power of eminent domain.

Unlike general law GCDs, the bill provides that the District may charge and collect a new well construction fee not to exceed \$1,000 and levy and collect a water utility service connection fee not to exceed \$1,000 for each new water service connection made after September 1, 2015, unless the water utility has surface water as its sole source of water. The bill provides that all taxes and other fees are prohibited. Under the Water Code, general law GCDs fund operation and maintenance expenses through ad valorem taxes or well production fees.

Overlapping Services: The boundaries of the District are the Travis County territory southwest of the Colorado River and Lake Travis and northwest of the boundary of the Barton Springs Edwards Aquifer Conservation District and does not include territory in the corporate limits

or extraterritorial jurisdiction of the City of Bee Cave, the City of Lakeway, the City of West Lake Hills, the Village of Briarcliff, or the Village of the Hills. GCD functions do not conflict with services provided by other types of water districts or utilities.

TCEQ's Supervision: As with general law GCDs, the TCEQ will have general supervisory authority, including bond review authority and authority as it is related to the District's development and implementation of a management plan; the District would not have to comply with TCEQ financial auditing requirements.

LETTER OF TRANSMITTAL
HOUSE OF REPRESENTATIVES
STATE OF TEXAS

HB 4038
Bill Number

TO: The Honorable Governor of Texas
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to transmit to you and the Texas Commission on Environmental Quality copies of a bill relating to a conservation and reclamation district and copies of the notice of intention to introduce the bill. One copy is for your files and one for you to forward to the Texas Commission on Environmental Quality, under Section 59(d), Article XVI, Constitution of the State of Texas.

3/13/2015

Date transmitted to
Governor's Office


Chief Clerk
House of Representatives

TO: Texas Commission on Environmental Quality
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to forward to you a copy of a bill relating to conservation and reclamation district and a copy of the notice of intention to introduce the bill.

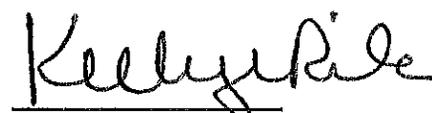
March 16, 2015

Date transmitted to
Texas Commission on Environmental Quality


Governor

TO: The Honorable Speaker of the House
The Honorable President of the Senate
The Honorable Governor of Texas
SUBJECT: A Bill Relating to a Conservation and Reclamation District

Attached are recommendations of the Texas Commission on Environmental Quality in compliance with Section 59(d), Article XVI, Constitution of the State of Texas.


Texas Commission on Environmental Quality



By: Workman

H.B. No. 4038

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of the Western Travis County Groundwater
3 Conservation District; providing general law authority to issue
4 bonds; providing authority to impose fees.

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 8871 to read as follows:

8 CHAPTER 8871. WESTERN TRAVIS COUNTY GROUNDWATER CONSERVATION

9 DISTRICT

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 8871.001. DEFINITIONS. In this chapter:

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

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

14 (3) "District" means the Western Travis County
15 Groundwater Conservation District.

16 Sec. 8871.002. NATURE OF DISTRICT. The district is a
17 groundwater conservation district in Travis County created under
18 and essential to accomplish the purposes of Section 59, Article
19 XVI, Texas Constitution.

20 Sec. 8871.003. FINDINGS OF PUBLIC USE AND BENEFIT. (a) The
21 district is created to serve a public use and benefit.

22 (b) All land and other property included in the district
23 will benefit from the works and projects accomplished by the
24 district under the powers conferred by Section 59, Article XVI,

1 Texas Constitution.

2 Sec. 8871.004. INITIAL DISTRICT TERRITORY. (a) The
3 district is initially composed of the territory described by
4 Section 2 of the Act creating this chapter.

5 (b) The boundaries and field notes contained in Section 2 of
6 the Act creating this chapter form a closure. A mistake made in the
7 field notes or in copying the field notes in the legislative process
8 does not affect the district's:

9 (1) organization, existence, or validity;

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

13 (3) legality or operation.

14 Sec. 8871.005. CONFIRMATION ELECTION NOT REQUIRED. An
15 election to confirm the creation of the district is not required.

16 SUBCHAPTER B. TEMPORARY AND INITIAL DIRECTORS

17 Sec. 8871.021. APPOINTMENT OF TEMPORARY DIRECTORS;
18 VACANCIES; TERMS. (a) Five persons who reside in the district
19 shall be appointed as temporary directors not later than the 90th
20 day after the effective date of the Act creating this chapter as
21 follows:

22 (1) the county judge of Travis County shall appoint
23 one temporary director;

24 (2) the county commissioner for the county
25 commissioners precinct in which the district is located shall
26 appoint two temporary directors;

27 (3) the state representative who represents the house

1 district in which the district is located shall appoint one
2 temporary director; and

3 (4) the state senator who represents the senate
4 district in which the district is principally located shall appoint
5 one temporary director.

6 (b) If a temporary director fails to qualify for office or a
7 vacancy occurs on the temporary board, the remaining temporary
8 directors shall appoint a person to fill the vacancy. If at any time
9 there are fewer than three temporary directors, the state
10 representative under Subsection (a)(3) shall appoint the necessary
11 number of persons to fill all vacancies on the board.

12 (c) Temporary directors serve until the date initial
13 directors are elected at an election held under Section 8871.024.

14 Sec. 8871.022. ORGANIZATIONAL MEETING. (a) Not later than
15 the 45th day after the date on which the fifth temporary director is
16 appointed under Section 8871.021, the temporary directors shall
17 hold the organizational meeting of the district.

18 (b) The temporary directors shall select from among
19 themselves a president, a vice president, and a secretary.

20 Sec. 8871.023. AUTHORITY OF TEMPORARY DIRECTORS. (a)
21 Except as provided by Subsections (c) and (d) or otherwise by this
22 subchapter, the temporary directors of the district have the same
23 permitting and general management powers as those provided for
24 initial and permanent directors under this chapter and Chapter 36,
25 Water Code.

26 (b) The temporary directors or their designees have the
27 authority to enter any public or private property located in the

1 district to inspect a water well as provided by Section 36.123,
2 Water Code.

3 (c) Except as provided by Section 8871.024, the temporary
4 directors do not have the authority granted by the following
5 provisions of Chapter 36, Water Code:

6 (1) Sections 36.017, 36.019, 36.020, and 36.059;

7 (2) Sections 36.105, 36.1071, 36.1072, 36.1073, and
8 36.108;

9 (3) Sections 36.171-36.181;

10 (4) Sections 36.201-36.204; and

11 (5) Subchapters J and K.

12 (d) The temporary directors may regulate the transfer of
13 groundwater out of the district as provided by Section 36.122,
14 Water Code, but may not prohibit the transfer of groundwater out of
15 the district.

16 Sec. 8871.024. INITIAL DIRECTORS' ELECTION. (a) The
17 temporary directors shall order an election in the district to be
18 held not later than the uniform election date in November 2017 to
19 elect the initial directors.

20 (b) At the initial directors' election, the temporary board
21 shall have placed on the ballot the names of the candidates who are
22 eligible under Section 8871.052 for each of the five positions on
23 the board.

24 (c) Section 41.001(a), Election Code, applies to an
25 election held under this section.

26 (d) Except as provided by this section, the initial
27 directors' election must be conducted as provided by the Election

1 Code and Sections 36.017(b), (c), and (e), Water Code.

2 Sec. 8871.025. INITIAL DIRECTORS. (a) Promptly after the
3 election has been held under Section 8871.024 and the votes have
4 been canvassed, the temporary directors shall:

5 (1) declare for each board position the person who
6 receives the most votes for that position to be elected as the
7 initial director for that position; and

8 (2) include the results of the initial directors'
9 election in the district's election report to the Texas Commission
10 on Environmental Quality.

11 (b) The temporary directors shall determine whether
12 staggered terms are in the best interest of the district and shall
13 set the terms of the initial directors as follows:

14 (1) to establish staggered terms, two initial
15 directors serve two-year terms and three initial directors serve
16 four-year terms; or

17 (2) to establish non-staggered terms, all five initial
18 directors serve four-year terms.

19 SUBCHAPTER C. BOARD OF DIRECTORS

20 Sec. 8871.051. GOVERNING BODY; TERMS. (a) The district is
21 governed by a board of five directors elected at large.

22 (b) Directors elected after the election held under Section
23 8871.024 serve four-year terms.

24 Sec. 8871.052. ELIGIBILITY. To be eligible to be a
25 candidate for or to serve as a director, a person must be a resident
26 of the district.

27 SUBCHAPTER D. POWERS AND DUTIES

1 Sec. 8871.101. GROUNDWATER CONSERVATION DISTRICT POWERS
2 AND DUTIES. Except as otherwise provided by this chapter, the
3 district has the powers and duties provided by the general law of
4 this state, including Chapter 36, Water Code, applicable to
5 groundwater conservation districts created under Section 59,
6 Article XVI, Texas Constitution.

7 Sec. 8871.102. EXEMPT WELLS. (a) Groundwater withdrawals
8 from the following wells may not be regulated, permitted, or
9 metered by the district:

10 (1) a well used for domestic use by a single private
11 residential household and incapable of producing more than 25,000
12 gallons per day; and

13 (2) a well used for conventional farming and ranching
14 activities, including such intensive operations as aquaculture,
15 livestock feedlots, or poultry operations.

16 (b) The district may not charge or collect a well
17 construction fee for a well described by Subsection (a)(2).

18 (c) A well owner must obtain a permit and pay any required
19 fees, including a well construction fee, before using any
20 groundwater withdrawn from a well for purposes other than those
21 exempted by this section.

22 (d) A well used for dewatering and monitoring in the
23 production of coal or lignite is exempt from permit requirements,
24 regulations, and fees imposed by the district.

25 (e) The district may not enter property to inspect an exempt
26 well without the property owner's permission.

27 Sec. 8871.103. NO EMINENT DOMAIN POWER. The district may

1 not exercise the power of eminent domain.

2 SUBCHAPTER E. FINANCIAL PROVISIONS

3 Sec. 8871.151. WELL CONSTRUCTION FEE. The district may
4 charge and collect a new well construction fee not to exceed \$1,000
5 for a new well.

6 Sec. 8871.152. PERMIT RENEWAL APPLICATION FEE. The
7 district may charge and collect a permit renewal application fee
8 not to exceed \$400.

9 Sec. 8871.153. SERVICE CONNECTION FEE. (a) This section
10 does not apply to a water utility that has surface water as its sole
11 source of water.

12 (b) The district may levy and collect a water utility
13 service connection fee not to exceed \$1,000 for each new water
14 service connection made after September 1, 2015.

15 Sec. 8871.154. TAXES AND OTHER FEES PROHIBITED. The
16 district may not:

17 (1) impose a tax; or

18 (2) assess or collect any fees except as authorized by
19 Section 8871.151, 8871.152, or 8871.153.

20 SECTION 2. (a) Except as provided by Subsection (b), the
21 Western Travis County Groundwater Conservation District initially
22 includes all the territory contained in the following area:

23 Beginning at the point of intersection of the current western
24 boundary of the Barton Springs-Edwards Aquifer Conservation
25 District and the Colorado River, then following westerly along the
26 southern border of the Colorado River and Lake Travis to the western
27 Travis County Boundary, then proceeding south along the western

1 Travis County Boundary to the intersection of the Travis County
2 boundary and the Hays County boundary, then south east along the
3 southern Travis County boundary to the current western boundary of
4 the Barton Springs Edwards Aquifer Conservation District; then
5 north-east along the western boundary of the Barton Springs-Edwards
6 Aquifer Conservation District, the point of beginning.

7 (b) The territory of the Western Travis County Groundwater
8 Conservation District does not include any territory that on the
9 effective date of this Act is in the corporate limits or
10 extraterritorial jurisdiction of:

- 11 (1) the City of Bee Cave;
- 12 (2) the City of Lakeway;
- 13 (3) the City of West Lake Hills;
- 14 (4) the Village of Briarcliff; or
- 15 (5) the Village of the Hills.

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

23 (b) The governor, one of the required recipients, has
24 submitted the notice and Act to the Texas Commission on
25 Environmental Quality.

26 (c) The Texas Commission on Environmental Quality has filed
27 its recommendations relating to this Act with the governor, the

1 lieutenant governor, and the speaker of the house of
2 representatives within the required time.

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

7 SECTION 4. This Act takes effect September 1, 2015.