

SENATE AMENDMENTS

2nd Printing

By: Isaac, Rodriguez of Travis

H.B. No. 3405

A BILL TO BE ENTITLED

AN ACT

relating to the territory and authority of the Barton Springs-Edwards Aquifer Conservation District to regulate certain wells for the production of groundwater.

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

SECTION 1. Subchapter A, Chapter 8802, Special District Local Laws Code, is amended by adding Section 8802.0035 to read as follows:

Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The territory of the district includes any territory that is:

(1) inside the boundaries of:

(A) the Edwards Aquifer Authority; and

(B) Hays County; and

(2) not within the boundaries of the Plum Creek Conservation District as those boundaries existed on February 1, 2015.

(b) The Edwards Aquifer Authority has jurisdiction over any well that is drilled to produce water from the Edwards Aquifer in the shared territory described by Subsection (a).

(c) The district has jurisdiction over any well that is drilled to produce water from any aquifer other than the Edwards Aquifer in the shared territory described by Subsection (a).

(d) Except for the district and the Edwards Aquifer Authority, no district or authority created under Section 52,

1 Article III, or Section 59, Article XVI, Texas Constitution, has
2 authority in the shared territory described by Subsection (a) to
3 regulate the spacing of water wells or the production from water
4 wells.

5 (e) The district has jurisdiction over any well that is
6 drilled to produce water from the Edwards Aquifer or any other
7 aquifer in the territory described by Section 8802.003.

8 SECTION 2. As soon as practicable after the effective date
9 of this Act, and in conformance with the requirements of Section
10 8802.053, Special District Local Laws Code, the board of directors
11 of the Barton Springs-Edwards Aquifer Conservation District shall
12 revise the single-member districts as the board considers
13 appropriate to reflect the changes in territory made by Section
14 8802.0035, Special District Local Laws Code, as added by this Act.

15 SECTION 3. (a) The legislature validates and confirms all
16 acts and proceedings of the board of directors of the Barton
17 Springs-Edwards Aquifer Conservation District that were taken
18 before the effective date of this Act.

19 (b) Subsection (a) of this section does not apply to any
20 matter that on the effective date of this Act:

21 (1) is involved in litigation if the litigation
22 ultimately results in the matter being held invalid by a final
23 judgment of a court; or

24 (2) has been held invalid by a final judgment of a
25 court.

26 SECTION 4. (a) The legal notice of the intention to
27 introduce this Act, setting forth the general substance of this

1 Act, has been published as provided by law, and the notice and a
2 copy of this Act have been furnished to all persons, agencies,
3 officials, or entities to which they are required to be furnished
4 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
5 Government Code.

6 (b) The governor, one of the required recipients, has
7 submitted the notice and Act to the Texas Commission on
8 Environmental Quality.

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

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

17 SECTION 5. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

Letay Spaw
Secretary of the Senate

By: Campbell

H.B. No. 3405

Substitute the following for H.B. No. 3405:

By: Ally

C.S. H.B. No. 3405

A BILL TO BE ENTITLED

1

AN ACT

2

relating to the territory, jurisdiction, board composition,
elections, and powers of the Barton Springs-Edwards Aquifer
Conservation District, including its authority to regulate certain
wells for the production of groundwater; imposing a cap on certain
fees.

7

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

8

SECTION 1. Section 8802.003, Special District Local Laws
Code, is amended to read as follows:

10

Sec. 8802.003. DISTRICT TERRITORY. (a) The district is
composed of:

12

(1) the territory described by the Texas Water
Commission's August 15, 1986, order, as that territory may have
been modified:

15

(A) by actions of the board through resolutions
dated August 8, 1987, August 13, 1987, January 24, 2002, May 10,
2002, and June 23, 2011; or

18

(B) under:

19

(i) [~~1~~] Subchapter J, Chapter 36, Water
Code; or

21

(ii) [~~2~~] other law;

22

(2) the shared territory described by Section
8802.0035(a); and

24

(3) the territory described as follows: beginning at a

1 point at the intersection of the northeastern district boundary as
2 it existed on January 1, 2015, and the Colorado River, running east
3 along the southern bank of the Colorado River to a point where the
4 Colorado River intersects U.S. Highway 183, then south along U.S.
5 Highway 183 to a point where U.S. Highway 183 intersects the current
6 eastern boundary of the district, then generally west and north
7 following along the district boundary as it existed on January 1,
8 2015, to the place of beginning.

9 (b) Any boundary reference under Subsection (a)(3) to a
10 highway, street, road, avenue, boulevard, or lane shall mean the
11 centerline of the boundary.

12 SECTION 2. Subchapter A, Chapter 8802, Special District
13 Local Laws Code, is amended by adding Section 8802.0035 to read as
14 follows:

15 Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The
16 territory of the district includes any territory that is:

17 (1) inside the boundaries of the Edwards Aquifer
18 Authority;

19 (2) in Hays County; and

20 (3) not within the boundaries existing as of January
21 1, 1989, of any other district with the authority to regulate
22 groundwater under Chapter 36, Water Code, or prior laws.

23 (b) The Edwards Aquifer Authority has jurisdiction over any
24 well that is drilled to produce water from the Edwards Aquifer in
25 the shared territory described by Subsection (a).

26 (c) The district has jurisdiction over groundwater and any
27 well that is drilled to produce water from any aquifer other than

1 the Edwards Aquifer in the shared territory described by Subsection
2 (a).

3 (d) The district has jurisdiction over groundwater and any
4 well that is drilled to produce water from the Edwards Aquifer or
5 any other aquifer in the territory described by Section
6 8802.003(a)(1) or (3). For territory annexed in accordance with
7 board resolutions dated January 24, 2002, the district shall share
8 jurisdiction with the Plum Creek Conservation District, which also
9 includes that territory. Jurisdiction shall be shared under the
10 terms of an agreement authorized by Chapter 791, Government Code,
11 in a manner that ensures that the districts do not exercise their
12 jurisdiction in the shared territory at the same time and for the
13 same purpose.

14 (e) The district's jurisdiction over any well that is
15 drilled to produce water in the territory described in Section
16 8802.003(a)(1), including a well that is used to recover water that
17 has been injected as part of an aquifer storage and recovery
18 project, applies to the territory described by Section
19 8802.003(a)(3) and all wells for which the district has
20 jurisdiction in the shared territory described by this section.

21 SECTION 3. Sections 8802.051 and 8802.052, Special District
22 Local Laws Code, are amended to read as follows:

23 Sec. 8802.051. DIRECTORS; TERMS. (a) The district is
24 governed by a board of seven [~~five~~] directors who serve staggered
25 four-year terms.

26 (b) Three [~~At least two~~] directors must be elected by voters
27 residing in the territory composed of:

1 (1) director districts four and five as adopted by the
2 district on November 17, 2011; and

3 (2) the territory described by Section 8802.003(a)(3)
4 [city of Austin].

5 (c) Four directors must be elected by voters residing
6 outside the territory described by Subsection (b) and two of the
7 four directors must reside in Hays County.

8 Sec. 8802.052. ELECTION DATE. An election shall be held to
9 elect the appropriate number of directors on the [~~spring~~] uniform
10 election date in November of each even-numbered year.

11 SECTION 4. Section 8802.053, Special District Local Laws
12 Code, is amended by amending Subsections (a), (c), and (d) and
13 adding Subsection (f) to read as follows:

14 (a) The district is divided into seven [~~five~~] numbered,
15 single-member districts for electing directors.

16 (c) As soon as practicable after the publication of each
17 federal decennial census, the board shall revise the single-member
18 districts as the board considers appropriate to reflect population
19 changes. When the board revises the single-member districts under
20 this subsection, the board shall place three [~~two~~] of the districts;
21 entirely inside and four of the districts entirely outside the
22 territory described by Section 8802.051(b) [+]

23 ~~[(1) entirely within the boundaries of the city of~~
24 ~~Austin, as those boundaries exist at that time, or~~

25 ~~[(2) within the boundaries of the city of Austin, as~~
26 ~~those boundaries exist at that time, but also including~~
27 ~~unincorporated areas or other municipalities that are surrounded~~

1 ~~wholly or partly by the boundaries of the city of Austin if the~~
2 ~~areas or municipalities are noncontiguous to the territory of any~~
3 ~~other single-member district].~~

4 (d) If the district is required to create single-member
5 districts that do not comply with Sections 8802.051(b) and (c) to
6 satisfy standards under federal law, the board shall revise the
7 single-member districts as the board considers appropriate under
8 the federal law standards [~~Changes in the boundaries of the city of~~
9 ~~Austin between revisions of the single-member districts under~~
10 ~~Subsection (c) do not affect the boundaries of the single-member~~
11 ~~districts].~~

12 (f) At the first regularly scheduled election of directors
13 after the board is expanded from five to seven directors, directors
14 elected to fill any vacant positions shall cast lots to determine
15 which of those directors shall serve a two-year term and which shall
16 serve a four-year term. Lots must be determined so that not more
17 than four directors' terms expire in any even-numbered year.

18 SECTION 5. Section 8802.1045, Special District Local Laws
19 Code, is amended by adding Subsection (g) to read as follows:

20 (g) Notwithstanding Subsection (b), before January 1, 2017,
21 the board may not charge an annual production fee higher than the
22 rates set forth under Subsection (a) for a well located in the
23 territory described by Section 8802.003(a)(3) or 8802.0035(a). The
24 district may increase the annual production fee under this
25 subsection by not more than 10 cents per thousand gallons per year
26 beginning January 1, 2018, for water permitted for nonagricultural
27 purposes, until the annual production fee is equal to the maximum

1 amount set forth in Subsection (b).

2 SECTION 6. Section 8802.105, Special District Local Laws
3 Code, is amended by amending Subsection (a) and adding Subsection
4 (a-1) to read as follows:

5 (a) In this section, "Consumer Price Index" means the annual
6 revised Consumer Price Index for All Urban Consumers, as published
7 by the Bureau of Labor Statistics of the United States Department of
8 Labor or a similar index if that index is unavailable. For
9 calculation purposes, the beginning base month is December 2014.

10 (a-1) Each year the board may assess against the City of
11 Austin a water use fee in an amount not to exceed the lesser of \$1
12 million as adjusted to reflect the percentage change during the
13 preceding year in the Consumer Price Index or 60 percent of the
14 total funding the district expects to receive for the next fiscal
15 year from water use fees assessed against Austin and other
16 nonexempt users in that year as computed [~~subject to the~~
17 ~~computation~~] under Subsection (b).

18 SECTION 7. Subchapter C, Chapter 8802, Special District
19 Local Laws Code, is amended by adding Sections 8802.111 and
20 8802.112 to read as follows:

21 Sec. 8802.111. AUTHORITY TO CONSIDER MITIGATION PLAN. (a)
22 If an applicant for a permit or permit amendment submits to the
23 district with the permit application or permit amendment
24 application a plan for mitigating any negative impacts to
25 groundwater resources or to other wells that may arise from the
26 production of groundwater by the well or wells for which the permit
27 or permit amendment is sought, the district may:

1 (1) consider the plan for mitigation in deciding
2 whether to grant or deny the application; and

3 (2) include special terms and conditions requiring
4 mitigation in a permit or permit amendment that is approved by the
5 board for the applicant.

6 (b) Regardless of whether an applicant for a permit or
7 permit amendment submits to the district a plan for mitigation, the
8 district and an applicant may negotiate a plan to mitigate any
9 negative impacts to groundwater resources or to other wells that
10 may arise from the production of groundwater by the well or wells
11 for which the permit or permit amendment is sought, and the district
12 may include the negotiated mitigation plan as a special term or
13 condition of the permit or permit amendment. The district may not
14 require an applicant to agree to a mitigation plan that was not
15 submitted by the applicant.

16 (c) A mitigation plan described by Subsection (a) or (b) may
17 include payment of a fee by the applicant for a permit or permit
18 amendment to the district in an amount sufficient to mitigate the
19 effects of reduced artesian pressure or the drawdown of the water
20 table on other wells in the district. If the mitigation plan is
21 approved by the district as a special term or condition of the
22 permit as submitted by, or as negotiated with, the applicant, the
23 district shall establish written procedures for the use of revenue
24 derived from fees paid by the applicant as part of the mitigation
25 plan and shall include the written procedures as a special term or
26 condition of the permit or permit amendment. The written
27 procedures may include use of the mitigation plan fee revenue to

1 deepen water wells or to lower pumps, to drill and equip new wells,
2 or to take other measures to mitigate impacts on water wells that
3 are negatively impacted by the production of groundwater by the
4 well or wells for which the permit or permit amendment is approved
5 by the district.

6 (d) Nothing in this section shall be construed to limit the
7 authority of the district to include as a special term or condition
8 of a permit a requirement that the permit holder reduce or cease
9 groundwater production during certain hydrological conditions.

10 Sec. 8802.112. CERTAIN PERMITS; REDUCTION ORDERS;
11 CONTESTED CASE HEARINGS. (a) In this section, "maximum production
12 capacity" means the maximum production capacity of a well, which
13 may be based on a 36-hour pump test conducted at the time the well
14 was initially constructed or placed into service.

15 (b) A person operating a well before the effective date of
16 the Act enacting this section or who has entered into a contract
17 before that date to drill or operate a well that is or will be
18 located in the territory described by Section 8802.003(a)(3) or
19 8802.0035(a) that is subject to the jurisdiction of the district
20 shall file an administratively complete permit application with the
21 district not later than three months after the effective date of the
22 Act enacting this section for the drilling, equipping, completion,
23 or operation of any well if the well requires a permit under the
24 rules or orders of the district. The person may file the permit
25 application for an amount of groundwater production not to exceed
26 the maximum production capacity of the well.

27 (c) The district shall issue a temporary permit to a person

1 who files an application under Subsection (b) without a hearing on
2 the application not later than the 30th day after the date of
3 receipt of the application. The district shall issue the temporary
4 permit for the groundwater production amount set forth in the
5 application. The temporary permit issued under this subsection
6 shall provide the person with retroactive and prospective
7 authorization to drill, operate, or perform another activity
8 related to a well for which a permit is required by the district for
9 the period of time between the effective date of the Act enacting
10 this section and the date that the district takes a final,
11 appealable action on issuance of a regular permit pursuant to the
12 permit application if:

13 (1) the person's drilling, operating, or other
14 activities associated with the well are consistent with the
15 authorization sought in the permit application;

16 (2) the person timely pays to the district all
17 administrative fees and fees related to the amount of groundwater
18 authorized to be produced pursuant to the temporary permit in the
19 same manner as other permit holders in the district; and

20 (3) the person complies with other rules and orders of
21 the district applicable to permit holders.

22 (d) The temporary permit issued under Subsection (c) does
23 not confer any rights or privileges to the permit holder other than
24 those set forth in this section. After issuing the temporary
25 permit, the district shall process the permit application for
26 notice, hearing, and consideration for issuance of a regular permit
27 consistent with this section. The district, after notice and

1 hearing, shall issue an order granting the regular permit
2 authorizing groundwater production in the amount set forth in the
3 temporary permit unless the district finds that authorizing
4 groundwater production in the amount set forth in the temporary
5 permit issued under Subsection (c) is causing a failure to achieve
6 applicable adopted desired future conditions for the aquifer.

7 (e) To reduce the amount of groundwater authorized to be
8 produced under a temporary permit issued under Subsection (c) or a
9 regular permit issued under Subsection (d), the district must show
10 by a preponderance of the evidence that the amount of groundwater
11 being produced under the permit is causing a failure to achieve
12 applicable adopted desired future conditions for the aquifer. A
13 person who relies on the temporary permit granted by Subsection (c)
14 to drill, operate, or engage in other activities associated with a
15 water well assumes the risk that the district may grant or deny,
16 wholly or partly, the permit application when the district takes
17 final action after notice and hearing to issue a regular permit
18 pursuant to the application.

19 (f) The holder of a temporary permit or a regular permit
20 subject to a district order under this section to reduce the amount
21 of groundwater production from the permitted well may contest any
22 reduction in the amount of production from the permitted well by
23 requesting a contested case hearing on the reduction order to be
24 conducted by the State Office of Administrative Hearings in the
25 manner provided by Sections 36.416, 36.4165, and 36.418, Water
26 Code. The district shall contract with the State Office of
27 Administrative Hearings to conduct the hearing as provided by those

1 sections of the Water Code. To the extent possible, the State Office
2 of Administrative Hearings shall expedite a hearing under this
3 subsection.

4 (g) For the State Office of Administrative Hearings to
5 uphold a district order reducing the amount of groundwater
6 authorized to be produced under a temporary or regular permit, the
7 district must demonstrate by a preponderance of the evidence that
8 the reduction is necessary to prevent a failure to achieve
9 applicable adopted desired future conditions for the aquifer.

10 SECTION 8. (a) The legislature validates and confirms all
11 acts and proceedings of the board of directors of the Barton
12 Springs-Edwards Aquifer Conservation District that were taken
13 before the effective date of this Act.

14 (b) Subsection (a) of this section does not apply to any
15 matter that on the effective date of this Act:

16 (1) is involved in litigation if the litigation
17 ultimately results in the matter being held invalid by a final
18 judgment of a court; or

19 (2) has been held invalid by a final judgment of a
20 court.

21 SECTION 9. (a) Not later than three months after the
22 effective date of this Act, the board of directors of the Barton
23 Springs-Edwards Aquifer Conservation District shall appoint one
24 temporary director to the board to represent the territory
25 described by Section 8802.003(a)(3), Special District Local Laws
26 Code, as added by this Act, and one temporary director to represent
27 the territory described by Section 8802.0035(a), Special District

1 Local Laws Code, as added by this Act.

2 (b) The temporary directors appointed under Subsection (a)
3 of this section shall serve at large until the next general election
4 of directors of the district under Section 8802.052, Special
5 District Local Laws Code, as amended by this Act.

6 (c) The board of directors of the Barton Springs-Edwards
7 Aquifer Conservation District shall adjust the board member terms
8 of office to conform to the new election date under Section
9 8802.052, Special District Local Laws Code, as amended by this Act.

10 SECTION 10. (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, one of the required recipients, has
18 submitted the notice and Act to the Texas Commission on
19 Environmental Quality.

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

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

1 SECTION 11. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

FLOOR AMENDMENT NO. 1

Leta Spaw
Secretary of the Senate

BY:

Campbell

1 Amend C.S.H.B. No. 3405 (senate committee report) by
2 striking all below the enacting clause and substituting the
3 following:

4 SECTION 1. Subchapter A, Chapter 8802, Special District
5 Local Laws Code, is amended by adding Section 8802.0035 to read
6 as follows:

7 Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The
8 territory of the district includes any territory that is:

9 (1) inside the boundaries of:

10 (A) the Edwards Aquifer Authority; and

11 (B) Hays County; and

12 (2) not within the boundaries of the Plum Creek
13 Conservation District as those boundaries existed on February 1,
14 2015.

15 (b) The Edwards Aquifer Authority has jurisdiction over
16 any well that is drilled to produce water from the Edwards
17 Aquifer in the shared territory described by Subsection (a).

18 (c) The district has jurisdiction over groundwater and any
19 well that is drilled to produce water from any aquifer other
20 than the Edwards Aquifer in the shared territory described by
21 Subsection (a).

22 (d) Except for the district and the Edwards Aquifer
23 Authority, no district or authority created under Section 52,
24 Article III, or Section 59, Article XVI, Texas Constitution, has
25 authority in the shared territory described by Subsection (a) to
26 regulate the spacing of water wells or the production from water
27 wells.

28 (e) The district has jurisdiction over any well that is
29 drilled to produce water from the Edwards Aquifer or any other

1 aquifer in the territory described by Section 8802.003.

2 (f) The district's jurisdiction over any well that is
3 drilled to produce water in the territory described in Section
4 8802.003, including a well that is used to recover water that
5 has been injected as part of an aquifer storage and recovery
6 project, applies to all wells for which the district has
7 jurisdiction in the shared territory described by this section.

8 SECTION 2. As soon as practicable after the effective date
9 of this Act, and in conformance with Chapter 36, Water Code, the
10 board of directors of the Barton Springs-Edwards Aquifer
11 Conservation District may increase the number of board members
12 and shall revise the single-member districts as the board
13 considers appropriate to reflect the changes in territory made
14 by Section 8802.0035, Special District Local Laws Code, as added
15 by this Act. It is the intent of the legislature that the
16 composition of the board reflect the territory added to the
17 district by this Act.

18 SECTION 3. (a) In this section:

19 (1) "District" means the Barton Springs-Edwards
20 Aquifer Conservation District.

21 (2) "Maximum production capacity" means the maximum
22 production capacity of a well, which may be based on a 36-hour
23 pump test conducted at the time the well was initially
24 constructed or placed into service.

25 (b) This section applies only to the shared territory
26 added to the district by Section 8802.0035, Special District
27 Local Laws Code, as added by this Act.

28 (c) A person operating a well before the effective date of
29 this Act or who has entered into a contract before the effective
30 date of this Act to drill or operate a well that is or will be
31 located in the territory described by Subsection (b) of this

1 section and subject to the jurisdiction of the district under
2 Section 8802.0035, Special District Local Laws Code, as added by
3 this Act, shall file an administratively complete permit
4 application with the district not later than three months after
5 the effective date of this Act for the drilling, equipping,
6 completion, or operation of any well if the well requires a
7 permit under the rules or orders of the district. The person may
8 file the permit application for an amount of groundwater
9 production not to exceed the maximum production capacity of the
10 well.

11 (d) The district shall issue a temporary permit to a
12 person who files an application under Subsection (c) of this
13 section without a hearing on the application not later than the
14 30th day after the date of receipt of the application. The
15 district shall issue the temporary permit for the groundwater
16 production amount set forth in the application. The temporary
17 permit issued under this subsection shall provide the person
18 with retroactive and prospective authorization to drill,
19 operate, or perform another activity related to a well for which
20 a permit is required by the district for the period of time
21 between the effective date of this Act and the date that the
22 district takes a final, appealable action on issuance of a
23 regular permit pursuant to the permit application if:

24 (1) the person's drilling, operating, or other
25 activities associated with the well are consistent with the
26 authorization sought in the permit application;

27 (2) the person timely pays to the district all
28 administrative fees and fees related to the amount of
29 groundwater authorized to be produced pursuant to the temporary
30 permit in the same manner as other permit holders in the
31 district; and

1 (3) the person complies with other rules and orders
2 of the district applicable to permit holders.

3 (e) The temporary permit issued under Subsection (d) does
4 not confer any rights or privileges to the permit holder other
5 than those set forth in this section. After issuing the
6 temporary permit, the district shall process the permit
7 application for notice, hearing, and consideration for issuance
8 of a regular permit consistent with this section. The district,
9 after notice and hearing, shall issue an order granting the
10 regular permit authorizing groundwater production in the amount
11 set forth in the temporary permit unless the district finds that
12 authorizing groundwater production in the amount set forth in
13 the temporary permit will cause:

14 (1) a failure to achieve the applicable adopted
15 desired future conditions for the aquifer; or

16 (2) an unreasonable impact on existing wells.

17 (f) In the hearing on issuance of the regular permit under
18 Subsection (e), the permit applicant bears the burden of proof.

19 (g) The holder of a temporary or regular permit subject to
20 a district order under this section to reduce the amount of
21 groundwater production from the permitted well may contest the
22 reduction by requesting a contested case hearing to be conducted
23 by the State Office of Administrative Hearings in the manner
24 provided by Sections 36.416, 36.4165, and 36.418, Water Code.
25 The district shall contract with the State Office of
26 Administrative Hearings to conduct the hearing as provided by
27 those sections of the Water Code. To the extent possible, the
28 State Office of Administrative Hearings shall expedite a hearing
29 under this subsection. The permit applicant bears the burden of
30 proof in the hearing.

31 (h) For the State Office of Administrative Hearings to

1 recommend overturning a district order reducing the amount of
2 groundwater authorized to be produced under a temporary permit,
3 the permit holder must demonstrate by a preponderance of the
4 evidence that the production of the amount of groundwater
5 authorized based on the maximum production capacity will not
6 cause:

7 (1) a failure to achieve applicable adopted desired
8 future conditions for the aquifer; or

9 (2) an unreasonable impact on existing wells as found
10 in the district's order.

11 (i) A person who relies on the temporary permit granted by
12 this section to drill, operate, or engage in other activities
13 associated with a water well assumes the risk that the district
14 may grant or deny, wholly or partly, the permit application when
15 the district takes final action after notice and hearing to
16 issue a regular permit pursuant to the application.

17 SECTION 4. If the addition of territory under Section
18 8802.0035, Special District Local Laws Code, as added by this
19 Act, causes the annual water use fee in Section 8802.105 to
20 exceed \$1 million, the district shall not require an assessment
21 of greater than \$1 million annually as adjusted to reflect the
22 percentage change during the preceding year in the Consumer
23 Price Index.

24

25 SECTION 5. (a) The legislature validates and confirms all
26 acts and proceedings of the board of directors of the Barton
27 Springs-Edwards Aquifer Conservation District that were taken
28 before the effective date of this Act.

29 (b) Subsection (a) of this section does not apply to any
30 matter that on the effective date of this Act:

31 (1) is involved in litigation if the litigation

1 ultimately results in the matter being held invalid by a final
2 judgment of a court; or

3 (2) has been held invalid by a final judgment of a
4 court.

5 SECTION 6. (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
10 furnished under Section 59, Article XVI, Texas Constitution, and
11 Chapter 313, Government Code.

12 (b) The governor, one of the required recipients, has
13 submitted the notice and Act to the Texas Commission on
14 Environmental Quality.

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

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

23 SECTION 7. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas
26 Constitution. If this Act does not receive the vote necessary
27 for immediate effect, this Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

Lotay Law
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Campbell*

1 Amend the proposed floor substitute to C.S.H.B. 3405 by
2 adding the following appropriately numbered SECTION to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. Section 8802.1045, Special District Local
5 Laws Code, is amended by adding Subsection (g) to read as follows:

6 (g) This subsection applies only to a well located in the
7 shared territory described by Section 8802.0035. Notwithstanding
8 Subsection (b), the district may not charge an annual production
9 fee of more than 17 cents per thousand gallons of water produced
10 under a permit from a well under this subsection, if the water is
11 permitted for any use other than agricultural use.

FLOOR AMENDMENT NO. 3

BY: *Campbell*

1 Amend the proposed floor substitute to C.S.H.B. No. 3405 by
2 adding the following appropriately numbered SECTION to the bill
3 and renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION ____ . It is the intent of the legislature that this
5 Act apply only to the territory described by Section 8802.0035,
6 Special District Local Laws Code, as added by this Act, and not
7 have statewide implications.

ADOPTED

MAY 22 2015

Antony Spaw
Secretary of the Senate

ADOPTED

FLOOR AMENDMENT NO. 5

MAY 22 2015

BY: *Campbell*

Atay Spaw
Secretary of the Senate

1 Amend the proposed floor substitute to C.S.H.B. No. 3405 by
2 amending the caption to conform to the substance of the bill.

3

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 24, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3405** by Isaac (Relating to the territory, jurisdiction, board composition, elections, and powers of the Barton Springs-Edwards Aquifer Conservation District, including its authority to regulate certain wells for the production of groundwater; imposing a cap on certain fees.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill amends the Special District Local Laws Code relating to the territory, jurisdiction, board composition, elections and powers of the Barton Springs-Edwards Aquifer. Under the provisions of the bill, a holder of a temporary or regular permit subject to a district order to reduce the amount of water production would be permitted to contest the reduction by requesting a hearing conducted by the State Office of Administrative Hearings (SOAH). The bill would require the district to contract with SOAH to conduct the hearings. In order for SOAH to recommend overturning a district order reducing the amount of groundwater authorized, the bill would require the permit holder to demonstrate by a preponderance of the evidence that the production of the amount of groundwater authorized will not cause a failure to achieve desired future conditions of the aquifer or an unreasonable impact on existing wells.

Based on information provided by SOAH, this analysis assumes that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished utilizing existing staff and resources.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies: 360 State Office of Administrative Hearings

LBB Staff: UP, SZ, SD, EK, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 19, 2015

TO: Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3405 by Isaac (relating to the territory, jurisdiction, board composition, elections, and powers of the Barton Springs-Edwards Aquifer Conservation District, including its authority to regulate certain wells for the production of groundwater; imposing a cap on certain fees.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill amends the Special District Local Laws Code relating to the territory, jurisdiction, board composition, elections and powers of the Barton Springs-Edwards Aquifer. Under the provisions of the bill, a holder of a temporary or regular permit subject to a district order to reduce the amount of water production would be permitted to contest the reduction by requesting a hearing conducted by the State Office of Administrative Hearings (SOAH). The bill would require the district to contract with SOAH to conduct the hearings. In order for SOAH to uphold a district order to reduce the amount of water authorized to be produced under a permit, the bill would require the district to demonstrate by a preponderance of the evidence that the reduction is necessary.

Based on information provided by SOAH, this analysis assumes that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished utilizing existing staff and resources.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies: 360 State Office of Administrative Hearings

LBB Staff: UP, SZ, SD, EK, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 18, 2015

TO: Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3405 by Isaac (Relating to the territory and authority of the Barton Springs-Edwards Aquifer Conservation District to regulate certain wells for the production of groundwater.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: UP, SZ, EK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 14, 2015

TO: Honorable Jim Keffer, Chair, House Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3405** by Isaac (relating to the territory and authority of the Barton Springs-Edwards Aquifer Conservation District to regulate certain wells for the production of groundwater.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: UP, SZ, EK

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 23, 2015

TO: Honorable Jim Keffer, Chair, House Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3405 by Isaac (Relating to the territory and authority of the Barton Springs-Edwards Aquifer Conservation District to regulate certain wells for the production of groundwater.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: UP, SZ, EK