

## BILL ANALYSIS

Senate Research Center

S.B. 726  
By: Eltife  
Natural Resources  
8/11/2009  
Enrolled

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Constitution authorizes the creation of groundwater conservation districts to manage and conserve groundwater.

S.B. 726 provides for the creation of the Harrison County Groundwater Conservation District and the Prairielands Groundwater Conservation District and provides authority to impose a tax and issue bonds. The bill prohibits the Harrison County Groundwater Conservation District from exercising the power of eminent domain.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 6, Special District Local Laws Code, by adding Chapters 8850 and 8855, as follows:

#### CHAPTER 8850. HARRISON COUNTY GROUNDWATER CONSERVATION DISTRICT

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8850.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 8850.002. NATURE OF DISTRICT. Provides that the Harrison County Groundwater Conservation District (district) is created under and essential to accomplish the purposes of Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation), Article XVI, Texas Constitution.

Sec. 8850.003. CONFIRMATION ELECTION REQUIRED. Provides that if the creation of the district is not confirmed at a confirmation election held under Section 8850.023 before December 31, 2010:

(1) the district is dissolved December 31, 2010, except that any debts incurred are required to be paid, any assets that remain after the payment of debts are required to be transferred to Harrison County, and the organization of the district is required to be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8850.004. INITIAL DISTRICT TERRITORY. Provides that the initial boundaries of the district are coextensive with the boundaries of Harrison County, Texas.

Sec. 8850.005. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Provides that, except as otherwise provided by this chapter, Chapter 36 (Groundwater Conservation Districts), Water Code, applies to the district.

[Reserves Sections 8850.006-8850.020 for expansion.]

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8850.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Requires that five temporary directors be appointed, not later than the 45th day after the effective date of the Act enacting this chapter, as follows:

(1) requires the Harrison County Commissioners Court to appoint four temporary directors, with one of the temporary directors appointed from each of the four commissioners precincts in the county to represent the precincts in which the temporary directors reside; and

(2) requires the county judge of Harrison County to appoint one temporary director who resides in the district to represent the district at large.

(b) Requires that of the temporary directors, at least one director represent rural water suppliers in the district, one represent agricultural interests in the district, and one represent industrial interests in the district.

(c) Requires the Harrison County Commissioners Court to appoint a person to fill a vacancy in a manner that meets the representational requirements of this section if there is a vacancy on the temporary board of directors of the district.

(d) Provides that temporary directors serve until the earlier of the date initial directors are elected under Section 8850.023 or the fourth anniversary of the effective date of the Act creating this chapter.

(e) Requires successor temporary directors to be appointed in the manner provided by Subsections (a) and (b) to serve terms that expire on the date this subchapter expires under Section 8850.026 if initial directors have not been elected under Section 8850.023 and the terms of the temporary directors have expired.

Sec. 8850.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. Requires a majority of the temporary directors, as soon as practicable after all the temporary directors have qualified under Section 36.055 (Sworn Statement, Bond, and Oath of Office), Water Code, to convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. Requires that the organizational meeting be held at the Harrison County Courthouse if an agreement on location cannot be reached.

Sec. 8850.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) Requires the temporary directors to hold an election to confirm the creation of the district and to elect the initial directors of the district.

(b) Requires the temporary directors to have placed on the ballot the names of all candidates for an initial director's position who have filed an application for a place on the ballot as provided by Section 52.003 (Placing Candidate's Name on Ballot), Election Code.

(c) Requires that the ballot be printed to provide for voting for or against the proposition: "The creation of the Harrison County Groundwater Conservation District."

(d) Requires that, if the district levies a maintenance tax for payment of expenses, the ballot be printed to provide for voting for or against the proposition: "The levy of a maintenance tax at a rate not to exceed 1.5 cents for each \$100 of assessed valuation."

(e) Provides that Section 41.001(a) (regarding uniform election dates), Election Code, does not apply to an election held under this section.

(f) Requires that an election under this section be conducted as provided by Sections 36.017(b) (regarding polling places), (c) (regarding notice of the election), (d) (regarding language of ballot), (e) (regarding election returns), (f) (regarding favorable vote), (g) (regarding unfavorable vote), (h) (regarding district authority), and (i) (regarding unfavorable vote for maintenance tax), Water Code, and the Election Code, except as provided by this section. Provides that the provision of Section 36.017(d), Water Code, relating to the election of permanent directors does not apply to an election under this section.

Sec. 8850.024. INITIAL DIRECTORS. (a) Requires that the directors elected take office as initial directors of the district and serve on the board of directors until permanent directors are elected under Section 8850.025 or 8850.053 if creation of the district is confirmed at an election held under Section 8850.023.

(b) Requires the four initial directors representing the commissioners precincts to draw lots to determine which two are required to serve a term expiring June 1 following the first regularly scheduled election of directors under Section 8850.025, and which two are required to serve a term expiring June 1 following the second regularly scheduled election of directors. Requires the at-large director to serve a term expiring June 1 following the second regularly scheduled election of directors.

Sec. 8850.025. INITIAL ELECTION OF PERMANENT DIRECTORS. Requires that an election be held in the district for the election of two directors to replace the initial directors who, under Section 8850.024(b), serve a term expiring June 1 following that election on the uniform election date prescribed by Section 41.001, Election Code, in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election.

Sec. 8850.026. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires September 1, 2014.

[Reserves Sections 8850.027-8850.050 for expansion.]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8850.051. DIRECTORS; TERMS. (a) Provides that the district is governed by a board of five directors.

(b) Provides that directors serve staggered four-year terms, with two or three directors' terms expiring June 1 of each even-numbered year.

(c) Authorizes a director to serve consecutive terms.

Sec. 8850.052. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) Requires the directors of the district to be elected according to the commissioners precinct method as provided by this section.

(b) Requires that one director be elected by the voters of the entire district, and one director be elected from each county commissioners precinct by the voters of that precinct.

(c) Requires a person to be a registered voter in the district to be eligible to be a candidate for or to serve as director at large, except as provided by Subsection (e). Requires a person to be a registered voter of that precinct to be candidate for or to serve as director from a county commissioners precinct.

(d) Requires a person to indicate on the application for a place on the ballot the precinct that the person seeks to represent or that the person seeks to represent the district at large.

(e) Requires a director in office on the effective date of the change, or a director elected or appointed before the effective date of the change whose term of office begins on or after the effective date of the change, when the boundaries of the county commissioners precincts are redrawn after each federal decennial census to reflect population changes, to serve in the precinct to which elected or appointed even though the change in boundaries places the person's residence outside the precinct for which the person was elected or appointed.

Sec. 8850.053. ELECTION DATE. Requires that the district hold an election to elect the appropriate number of directors on the uniform election date prescribed by Section 41.001, Election Code, in May of each even-numbered year.

Sec. 8850.054. COMPENSATION. (a) Provides that Sections 36.060(a) (regarding a director's compensation), (b) (regarding reimbursement of expenses), and (d) (regarding Subsection (a) prevailing over any other law), Water Code, do not apply to the district.

(b) Entitles a director to receive compensation of not more than \$50 a day for each day the director actually spends performing the duties of a director. Prohibits compensation from exceeding \$3,000 a year.

(c) Authorizes the board of directors of the district (board) to authorize a director to receive reimbursement for the director's reasonable expenses incurred while engaging in activities on behalf of the board.

Sec. 8850.055. BOARD ACTION. Requires a majority vote of a quorum for board action. Provides that if there is a tie vote, the proposed action fails.

[Reserves Sections 8850.056-8850.100 for expansion.]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8850.101. GENERAL POWERS. Provides that the district has all of the rights, powers, privileges, functions, and duties provided by the general law of this state applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution, except as otherwise provided by this chapter.

Sec. 8850.102. PROHIBITION ON DISTRICT PURCHASE, SALE, TRANSPORT, OR DISTRIBUTION OF WATER. Prohibits the district from purchasing, selling, transporting, or distributing surface water or groundwater for any purpose.

Sec. 8850.103. PROHIBITION ON DISTRICT USE OF EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain.

[Reserves Sections 8850.104-8850.150 for expansion.]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8850.151. LIMITATION ON TAXES. Prohibits the district from imposing ad valorem taxes at a rate that exceeds 1.5 cents on each \$100 valuation of taxable property in the district.

Sec. 8850.152. FEES. (a) Authorizes the board by rule to impose reasonable fees on each well for which a permit is issued by the district and that is not exempt from district regulation.

(b) Authorizes a production fee to be based on the size of column pipe used by the well or the amount of water actually withdrawn from the well, or the amount authorized or anticipated to be withdrawn.

(c) Requires the board to base the initial production fee on the criteria listed in Subsection (b)(2). Prohibits the initial production fee from exceeding 25 cents per acre-foot for water used for agricultural irrigation or 4.25 cents per thousand gallons for water used for any other purpose and authorizes the initial production fee to be increased at a cumulative rate not to exceed three percent per year.

(d) Authorizes the district to assess an export fee on groundwater from a well that is produced for transport outside the district in addition to the production fee authorized under this section.

(e) Authorizes fees authorized by this section to be assessed annually, used to pay the cost of district operations, and used for any other purpose allowed under Chapter 36 (Groundwater Conservation Districts), Water Code.

Sec. 8850.153. **LIMITATION ON INDEBTEDNESS.** Authorizes the district to issue bonds and notes under Subchapter F (Bonds and Notes), Chapter 36, Water Code, except that the total indebtedness created by that issuance is prohibited from exceeding \$500,000 at any time.

## CHAPTER 8855. PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8855.001. **DEFINITIONS.** Defines "board," "director," and "district."

Sec. 8855.002. **NATURE OF DISTRICT; FINDINGS.** (a) Provides that the Prairielands Groundwater Conservation District (district) is a groundwater conservation district initially composed of Ellis, Hill, Johnson, and Somervell Counties created under and essential to accomplish the purposes of Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

(b) Provides that the district is created to serve a public use and benefit.

(c) Provides that all of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by this chapter and by Chapter 36 (Groundwater Conservation Districts), Water Code.

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

Sec. 8855.003. **DISTRICT TERRITORY.** Provides that the initial boundaries of the district are coextensive with the boundaries of Ellis, Hill, Johnson, and Somervell Counties.

Sec. 8855.004. **APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW.** Provides that Chapter 36, Water Code, applies to the district, except as otherwise provided by this chapter.

Sec. 8855.005. **CONSTRUCTION OF CHAPTER.** Requires that this chapter be liberally construed to achieve the purposes expressed by this chapter and Chapter 36, Water Code. Requires that a power granted by this chapter or Chapter 36, Water Code, be broadly interpreted to achieve that intent and those purposes.

[Reserves Sections 8855.006-8855.020 for expansion.]

#### SUBCHAPTER B. INITIAL ORGANIZATION

Sec. 8855.021. APPOINTMENT OF INITIAL DIRECTORS. (a) Provides that the district is governed by a board of directors (board) of eight initial directors appointed as provided by Section 8855.051(a).

(b) Requires initial directors to be appointed not later than the 90th day after the effective date of the Act enacting this chapter. Requires that each unfilled initial director position, if after the 90th day fewer than eight initial directors have been appointed, be considered a vacancy and filled by the remaining initial directors.

(c) Requires the appointing county commissioners court for the vacant position, except as provided under Subsection (b) for failure to appoint an initial director, if a vacancy occurs on the board in a position for which an initial director has previously been appointed, to appoint a person to fill the vacancy in a manner that meets the representational requirements of Section 8855.051.

(d) Requires a person to be a registered voter in the appointing county to be eligible to serve as an initial director.

(e) Requires each initial director to qualify to serve as a director under Section 36.055 (Sworn Statement, Bond, and Oath of Office), Water Code.

Sec. 8855.022. ORGANIZATIONAL MEETING OF INITIAL DIRECTORS. Requires a majority of the initial directors, as soon as practicable after all the initial directors have qualified under Section 36.055, to convene the organizational meeting of the district at a location in the district agreeable to a majority of the directors. Requires that the organizational meeting be held at a suitable location on the Hill College campus in Cleburne, Johnson County, Texas, if an agreement on location cannot be reached.

Sec. 8855.023. INITIAL TERMS. (a) Requires the two initial directors appointed from each county to draw lots to determine which director serves an initial term expiring August 31, 2011, and which director serves an initial term expiring August 31, 2013.

(b) Requires each successor director to be appointed and to serve in accordance with the provisions of Subchapter C.

[Reserves Sections 8855.024-8855.050 for expansion.]

#### SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 8855.051. GOVERNING BODY; TERMS. (a) Provides that the district, except as provided by Subchapter D, is governed by a board of eight directors appointed as follows: two directors appointed by the Ellis County Commissioners Court, two directors appointed by the Hill County Commissioners Court, two directors appointed by the Johnson County Commissioners Court, and two directors appointed by the Somervell County Commissioners Court.

(b) Provides that directors serve staggered four-year terms, with the term of one director from each of the four counties expiring on August 31 of each odd-numbered year.

(c) Authorizes a director to serve multiple consecutive terms.

Sec. 8855.052. DIRECTOR ELIGIBILITY; QUALIFICATION. (a) Requires a person to be a registered voter in the appointing county to be eligible to serve as a director.

(b) Requires each director to qualify to serve under Section 36.055, Water Code.

Sec. 8855.053. VACANCIES. Requires the appointing county commissioners court for the vacant position, if a vacancy occurs on the board, to appoint a person to fill the vacancy. Provides that Section 36.051(c) (relating to vacancies in the office of the director), Water Code, does not apply to the district.

Sec. 8855.054. COMPENSATION; REIMBURSEMENT. (a) Prohibits a director, notwithstanding Sections 36.060(a) (relating to directors fees) and (d) (relating to Subsection 36.052(a) notwithstanding, Subsection (a) prevailing over any other law in conflict with or inconsistent with that subsection), Water Code, from receiving compensation for performing the duties of director.

(b) Entitles a director to reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

[Reserves Sections 8855.055-8855.070 for expansion.]

#### SUBCHAPTER D. DISTRICT EXPANSION

Sec. 8855.071. EXPANSION OF DISTRICT BOUNDARIES. (a) Requires the district territory described in Section 8855.003, after the effective date of the Act enacting this chapter, to be expanded to include all of the territory within Navarro County, and requires the governing board described in Section 8855.051(a) to be expanded to 10 members and include two directors appointed by the Navarro County Commissioners Court, if pursuant to Chapter 35 (Groundwater Studies), Water Code, the Texas Commission on Environmental Quality (TCEQ) designates all or any portion of the territory within Navarro County as a priority groundwater management area and following the designation described by Subsection (a)(1), the commissioners court of Navarro County adopts certain resolutions.

(b) Requires persons appointed under this section to qualify to serve under Section 36.055, Water Code.

(c) Requires the two directors appointed under this section, at the first regular meeting of the board following the qualification of both directors, to draw lots to determine which director serves a term expiring August 31 of the first odd-numbered year after the directors' appointment, and which director serves a term expiring August 31 of the next odd-numbered year.

(d) Requires a director appointed under this section to otherwise serve in accordance with Subchapter C.

[Reserves Sections 8855.072-8855.100 for expansion.]

#### SUBCHAPTER E. POWERS AND DUTIES

Sec. 8855.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Provides that the district, except as provided by this chapter, has the powers and duties provided by the general law of this state applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution, including Chapter 36, Water Code.

Sec. 8855.102. CONTRACTS. Authorizes the district to enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8855.103. APPLICABILITY OF DISTRICT REGULATIONS. Provides that groundwater regulation under this chapter applies to all persons except as exempted from permitting under Section 36.117 (Exemptions; Exception; Limitations), Water Code, or this chapter.

Sec. 8855.104. WELL SPACING RULES; EXEMPTIONS. (a) Requires the district, except as provided by Subsection (b), to 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) Authorizes the district to provide by rule that a well is authorized to 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) Authorizes the district, except as provided by this section and notwithstanding Section 8855.103, to 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. Requires the district to 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. 8855.105. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. Authorizes the district to 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 Section 36.117(b)(1) (relating to prohibiting a district to require any permit issued by the district for a well used solely for domestic use or for providing water for livestock or poultry), to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8855.106. ENFORCEMENT. (a) Authorizes the district to enforce this chapter against any person in the manner provided by Chapter 36, Water Code. Authorizes the district, in lieu of a remedy available to the district under Section 36.102 (Enforcement of Rules), Water Code, or in addition to those remedies, to impose a fee in addition to a fee assessed under Section 8855.152 on a person producing groundwater in violation of a district order or rule, including the failure or refusal to comply with any district order or rule relating to reducing or ceasing groundwater use. Provides that the purpose of a fee authorized by this subsection is to serve as a disincentive to producing groundwater except as authorized by the district.

(b) Prohibits a fee imposed under Subsection (a) from exceeding an amount equal to 10 times the amount of a fee assessed under Section 8855.152.

[Reserves Sections 8855.107-8855.150 for expansion.]

#### SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 8855.151. TAXES PROHIBITED. Prohibits the district from imposing a tax. Provides that Sections 36.020(a) (relating to authorizing the temporary directors to include a proposition for the issuance of bonds or notes) and 36.201 (Levy of Taxes), 36.202 (Board Authority), 36.203 (Tax Rate), and 36.204 (Tax Appraisal, Assessment and Collection), Water Code, do not apply to the district.

Sec. 8855.152. DISTRICT REVENUES. (a) Authorizes the district by rule, resolution, or order to establish, amend, pledge, encumber, spend 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. Authorizes the district to use revenue generated by fees it assesses for any lawful purpose.

(b) Prohibits a fee authorized by Subsection (a), notwithstanding any provision of general law to the contrary, from exceeding \$1 per acre-foot annually for groundwater used for agricultural purposes or 30 cents per thousand gallons annually for groundwater used for nonagricultural purposes.



(c) Authorizes the district, notwithstanding any provision of general law or this chapter to the contrary, if any, to 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 exempt from permitting under Section 36.177(b)(1) (relating to prohibiting a district from requiring any permit issued by the district for a well used solely for domestic use or for providing water on certain land), Water Code. Requires that a production fee assessed by the district under this subsection be based on the amount of groundwater actually withdrawn from the well and prohibits it from exceeding the amount established by the district for permitted uses under Subsection (b)(2) (relating to a certain fee not exceeding 30 cents) of this section.

(d) Authorizes the district by rule, resolution, or order before the adoption of its management plan, notwithstanding Section 36.1071(f) (relating to requiring the district to adopt necessary rules), Water Code, to establish, assess, and enforce the collection of production fees under this section and establish and enforce metering and reporting requirements, except for a well exempt from permitting under Section 36.177(b)(1), Water Code.

(e) Authorizes the district by rule to 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.

SECTION 2. (a) Provides that 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 (Notice for Local and Special Laws), Government Code.

(b) Provides that the governor has submitted the notice and Act to TCEQ.

(c) Provides that TCEQ 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) Provides that 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. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2009.

(b) Effective date, Chapter 8855, Special District Local Laws Code, as added by Section 1 of this Act: September 1, 2009.