

BILL ANALYSIS

Senate Research Center
84R29805 SGA-F

C.S.H.B. 3405
By: Isaac; Rodriguez, Eddie (Campbell)
Agriculture, Water & Rural Affairs
5/19/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that there is an area in Hays County that is not within the boundaries of a groundwater conservation district, and the parties contend that this is a problem. C.S.H.B. 3405 seeks to remedy this problem.

C.S.H.B. 3405 amends current law 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, and imposes a cap on certain fees.

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 Section 8802.003, Special District Local Laws Code, as follows:

Sec. 8802.003. DISTRICT TERRITORY. (a) Creates this subsection from existing text. Provides that the Barton Springs-Edwards Aquifer Conservation District (district) is composed of:

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

(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

(B) under:

(i) Subchapter J (Adding Territory to District), Chapter 36, Water Code; or

(ii) other law;

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

(3) the territory described as follows: beginning at a point at the intersection of the northeastern district boundary as it existed on January 1, 2015, and the Colorado River, running east along the southern bank of the Colorado River to a point where the Colorado River intersects U.S. Highway 183, then south along U.S. Highway 183 to a point where U.S. Highway 183 intersects the current eastern boundary of the district, then generally west and north following along the district boundary as it existed on January 1, 2015, to the place of beginning.

(b) Requires that any boundary reference under Subsection (a)(3) to a highway, street, road, avenue, boulevard, or lane mean the centerline of the boundary.

SECTION 2. Amends Subchapter A, Chapter 8802, Special District Local Laws Code, by adding Section 8802.0035, as follows:

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

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

(2) in Hays County; and

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

(b) Provides that 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) Provides that the district has jurisdiction over groundwater and 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) Provides that the district has jurisdiction over groundwater and any well that is drilled to produce water from the Edwards Aquifer or any other aquifer in the territory described by Section 8802.003(a)(1) or (3). Requires the district, for territory annexed in accordance with board resolutions dated January 24, 2002, to share jurisdiction with the Plum Creek Conservation District, which also includes that territory. Requires that jurisdiction be shared under the terms of an agreement authorized by Chapter 791 (Interlocal Cooperation Contracts), Government Code, in a manner that ensures that the districts do not exercise their jurisdiction in the shared territory at the same time and for the same purpose.

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

SECTION 3. Amends Sections 8802.051 and 8802.052, Special District Local Laws Code, as follows:

Sec. 8802.051. DIRECTORS; TERMS. (a) Provides that the district is governed by a board of seven, rather than five, directors who serve staggered four-year terms.

(b) Requires that three directors be elected by voters residing in the territory composed of:

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

(2) the territory described by Section 8802.003(a)(3).

Deletes existing text requiring that at least two directors be elected by voters residing in the city of Austin.

(c) Requires that four directors be elected by voters residing outside the territory described by Subsection (b). Requires that two of the four directors reside in Hays County.

Sec. 8802.052. ELECTION DATE. Requires that an election be held to elect the appropriate number of directors on the uniform election date in November of each even-numbered year, rather than on the spring uniform election date each even-numbered year.

SECTION 4. Amends Section 8802.053, Special District Local Laws Code, by amending Subsections (a), (c), and (d) and adding Subsection (f), as follows:

(a) Provides that the district is divided into seven, rather than five, numbered, single-member districts for electing directors.

(c) Requires the board, when the board revises the single-member districts under this subsection, to place three of the districts entirely inside and four of the districts entirely outside the territory described by Section 8802.051(b).

Deletes existing text requiring the board, when the board revises the single-member districts under this subsection, to place two of the districts entirely within the boundaries of the city of Austin, as those boundaries exist at that time, or within the boundaries of the city of Austin, as those boundaries exist at that time, but also including unincorporated areas or other municipalities that are surrounded wholly or partly by the boundaries of the city of Austin if the areas or municipalities are noncontiguous to the territory of any other single-member district.

(d) Requires the board, if the district is required to create single-member districts that do not comply with Sections 8802.051(b) and (c) to satisfy standards under federal law, to revise the single-member districts as the board considers appropriate under the federal law standards.

Deletes existing text providing that the changes in the boundaries of the city of Austin between revisions of the single-member districts under Subsection (c) do not affect the boundaries of the single-member districts.

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

SECTION 5. Amends Section 8802.1045, Special District Local Laws Code, by adding Subsection (g), as follows:

(g) Prohibits the board, notwithstanding Subsection (b), before January 1, 2017, from charging an annual production fee higher than the rates set forth under Subsection (a) for a well located in the territory described by Section 8802.003(a)(3) or 8802.0035(a). Authorizes the district to increase the annual production fee under this subsection by not more than 10 cents per thousand gallons per year beginning January 1, 2018, for water permitted for nonagricultural purposes, until the annual production fee is equal to the maximum amount set forth in Subsection (b).

SECTION 6. Amends Section 8802.105, Special District Local Laws Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Defines "Consumer Price Index" in this section.

(a-1) Provides that each year the board may assess against the City of Austin a water use fee in an amount not to exceed the lesser of \$1 million as adjusted to reflect the percentage change during the preceding year in the Consumer Price Index or 60 percent

of the total funding the district expects to receive for the next fiscal year from water use fees assessed against Austin and other nonexempt users in that year as computed under Subsection (b). Makes a nonsubstantive change.

SECTION 7. Amends Subchapter C, Chapter 8802, Special District Local Laws Code, by adding Sections 8802.111 and 8802.112, as follows:

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

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

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

(b) Authorizes the district and an applicant, regardless of whether an applicant for a permit or permit amendment submits to the district a plan for mitigation, to negotiate a plan to mitigate any negative impacts to groundwater resources or to other wells that may arise from the production of groundwater by the well or wells for which the permit or permit amendment is sought, and the district may include the negotiated mitigation plan as a special term or condition of the permit or permit amendment. Prohibits the district from requiring an applicant to agree to a mitigation plan that was not submitted by the applicant.

(c) Provides that a mitigation plan described by Subsection (a) or (b) may include payment of a fee by the applicant for a permit or permit amendment to the district in an amount sufficient to mitigate the effects of reduced artesian pressure or the drawdown of the water table on other wells in the district. Requires the district, if the mitigation plan is approved by the district as a special term or condition of the permit as submitted by, or as negotiated with, the applicant, to establish written procedures for the use of revenue derived from fees paid by the applicant as part of the mitigation plan and include the written procedures as a special term or condition of the permit or permit amendment. Provides that the written procedures may include use of the mitigation plan fee revenue to deepen water wells or to lower pumps, to drill and equip new wells, or to take other measures to mitigate impacts on water wells that are negatively impacted by the production of groundwater by the well or wells for which the permit or permit amendment is approved by the district.

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

Sec. 8802.112. **CERTAIN PERMITS; REDUCTION ORDERS; CONTESTED CASE HEARINGS.** (a) Defines "maximum production capacity" in this section.

(b) Requires a person operating a well before the effective date of the Act enacting this section or who has entered into a contract before that date to drill to operate a well that is or will be located in the territory described by Section 8802.003(a)(3) or 8802.0035(a) that is subject to the jurisdiction of the district to file an administratively complete permit application with the district not later than three months after the effective date of the Act enacting this section for the drilling, equipping, completion, or operation of any well if the well requires a permit under the rules or orders of the district. Authorizes the person to file the

permit application for an amount of groundwater production not to exceed the maximum production capacity of the well.

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

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

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

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

(d) Provides that the temporary permit issued under Subsection (c) does not confer any rights or privileges to the permit holder other than those set forth in this section. Requires the district, after issuing the temporary permit, to process the permit application for notice, hearing, and consideration for issuance of a regular permit consistent with this section. Requires the district, after notice and hearing, to issue an order granting the regular permit authorizing groundwater production in the amount set forth in the temporary permit unless the district finds that authorizing groundwater production in the amount set forth in the temporary permit issued under Subsection (c) is causing a failure to achieve applicable adopted desired future conditions for the aquifer.

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

(f) Authorizes the holder of a temporary permit or a regular permit subject to a district order under this section to reduce the amount of groundwater production from the permitted well to contest any reduction in the amount of production from the permitted well by requesting a contested case hearing on the reduction order to be conducted by the State Office of Administrative Hearings (SOAH) in the manner provided by Sections 36.416 (Hearings Conducted by State Office of Administrative Hearings; Rules), 36.4165 (Final Decision; Contested Case Hearings), and 36.418 (Rules; Contested Case Hearings; Applicability of Administrative Procedure Act), Water Code. Requires the district to contract with SOAH to conduct the hearing as provided by those sections of the Water Code. Requires SOAH, to the extent possible, to expedite a hearing under this subsection.

(g) Requires the district, for SOAH to uphold a district order reducing the amount of groundwater authorized to be produced under a temporary or regular permit, to demonstrate by a preponderance of the evidence that the reduction is necessary to prevent a failure to achieve applicable adopted desired future conditions for the aquifer.

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

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

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

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

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

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

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

SECTION 10. Provides that all requirements of the constitution and the 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 11. Effective date: upon passage or September 1, 2015.