A BILL
TO BE ENTITLED

AN ACT relating to the creation, organization, powers, and duties of an underground water conservation district located in Atascosa and Wilson Counties; and declaring an emergency.

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

SUBCHAPTER A. GENERAL PROVISIONS.

Section 1. SHORT TITLE. This Act may be cited as the Evergreen Underground Water Conservation District Act.

Sec. 2. DEFINITIONS. In this Act, unless the context requires a different definition,

(1) "person" includes firm, association, partnership, and corporation;

(2) "underground water"
   (A) means water suitable for agricultural, gardening, domestic, or stock-raising uses, percolating below the earth's surface;
   (B) does not include water in a defined subterranean stream or in the underflow of a river;

(3) "district" means the Evergreen Underground Water Conservation District;

(4) "board" means the board of directors of the district.

SUBCHAPTER B. ADMINISTRATION.

Sec. 3. CREATION OF DISTRICT. The Evergreen Underground Water Conservation District is created. The district is created under Section 59, Article XVI, Constitution of the State of Texas.

Sec. 4. AREA OF DISTRICT. The district covers the same area that Wilson and Atascosa Counties, together, cover, and all other area added by the board under Section 37 of this Act, except

(1) area which is within the limits of an incorporated city or town in Wilson or Atascosa County on the effective date of this Act;

(2) area which comes within the limits of an incorporated city or town in Wilson or Atascosa County after the effective date of this Act, which the board excludes under Section 36(c) of this Act;

(3) area under which there is either no underground water or no underground water that can be brought to the surface at a cost that makes bringing it to the surface economically feasible, which the board excludes under Section 36(c) of this Act.

Sec. 5. ESTABLISHMENT OF BOARD. The board of directors of the Evergreen Underground Water Conservation District is established.

Sec. 6. COMPOSITION AND TERMS OF OFFICE. (a) The board consists of five directors.

(b) Four of the directors are elected at elections provided for in Section 10 of this Act; the fifth director is appointed by the governor. A director serves a two-year term.

(c) If a constitutional amendment is adopted authorizing directors of conservation and reclamation districts to serve six-year terms, subsection (b) of this section is repealed on the day of the first election to elect directors held under this Act after the constitutional amendment becomes effective, and the directors serve six-year terms.
election, one director from Atascosa County and one from Wilson County are elected for two-year terms; one from Atascosa County and one from Wilson County for four year terms; and one from Wilson County for a six year term. The board shall conduct biennial elections after that election, at which directors are elected to replace retiring directors, for six-year terms. The director who succeeds the director from Wilson County with a six-year term shall be from Atascosa County, and that position shall thereafter alternate between Wilson and Atascosa Counties.

(d) If a position on the board becomes vacant, a majority of the remaining directors shall appoint another person from the county of residence of the retiring director, to fill the vacated position for the unexpired term.

(e) A director serves until his successor is elected or appointed.

Sec. 7. QUALIFICATION OF DIRECTORS. A person is qualified to serve on the board who is elected or appointed to that position, and who

(1) is at least 21 years of age;
(2) owns real property in the district;
(3) is a resident of Atascosa or Wilson County.

Sec. 8. ADMINISTRATOR AND EMPLOYEES. (a) The board may employ an administrator and set his salary. The board may delegate any of its powers and duties (except those of adopting rules, a dissolution resolution, a dissolution order, and those relating to hearings, taxation, and bonds) to the administrator, who may carry out powers and duties delegated to him by the board.
(b) The administrator, with the approval of the board, may employ employees of the board and set their salaries, and hire legal counsel for the board.

Sec. 9. BOARD MEETINGS AND OFFICERS. (a) The board shall hold regular quarterly meetings. It may hold other meetings at the call of the chairman or at the request of at least two directors.
(b) A majority of the directors is a quorum for conducting business.
(c) The board shall elect its officers.

Sec. 10. ELECTIONS. (a) The board shall call an election to elect directors to the board on the second Tuesday in January of each odd-numbered year. The first election to elect directors under this Act is to be held on January 10, 1967.
(b) The board shall conduct an election held under this Act under the general laws of the state relating to elections.
(c) The board shall prepare a ballot with the names of the candidates who reside in Atascosa County and a ballot with the names of the candidates who reside in Wilson County. Voters in Atascosa County vote for residents of Atascosa County; voters in Wilson County vote for residents of Wilson County.
(d) The two persons with the highest number of votes who are residents of Atascosa County and the two persons with the highest number of votes who are residents of Wilson County are elected.
(e) The board shall pay for the cost of the elections with money of the district.

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE.

Sec. 11. PROCEDURE FOR ADOPTING AND AMENDING RULES.
(a) Before the board may adopt or amend a rule under this Act, it must publish a brief summary of the rule or the amendment in one or more newspapers as it decides is necessary to give the summary general circulation throughout the district. The board must publish the summary one time a week for two weeks.
(b) The rule or amendment takes effect on the fourteenth day after the day the summary is published the second time, unless

1. the board specifies that it takes effect at a later time; or
2. the board rescinds the order adopting the rule or amendment.
(c) The board may rescind the order for (but it may not change) a rule or amendment, from the time the summary is first published until after the rule or amendment takes effect. After the rule or amendment takes effect, the board may change or repeal it only by adopting a rule repealing or amending it.

(d) If the board rescinds an order for a rule or amendment, it may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

Sec. 12. DECLARATORY JUDGMENT ON VALIDITY OF RULES.
(a) The validity of a rule adopted under this Act may be determined upon petition for a declaratory judgment on the validity of the rule addressed to the district court sitting in the Evergreen Underground Water Conservation District, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The board shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the board to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions, exceeds the statutory authority of the board, or was adopted without complying with Section 11 of this Act.

Sec. 13. DEFINITION. In Sections 13 through 20 of this Act, "contested case" means a proceeding before the board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a board hearing.

Sec. 14. HEARING OFFICER. (a) In a contested case, the board shall employ an attorney to serve as the hearing officer in the hearing. At the hearing, the hearing officer shall

1. preside over the hearing;
2. rule on the admissibility of evidence;
3. at the direction of the board, prepare the record, decision, and order of the board and the notices for the hearing;
4. assist the board in all legal matters connected with the hearing.

(b) The hearing officer may vote only to break a tie.

(c) If the appointed member of the board is an attorney, the board may designate that he is the hearing officer, rather than employ another attorney to be the hearing officer. In that case, Subsection (b) of this section does not apply.

Sec. 15. NOTICE, HEARING, RECORDS. (a) In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, because of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, the issues shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect to the issues.

(b) The board shall prepare an official record, which includes testimony and exhibits, in each contested case, and shall prepare a mechanical recording of the proceedings. It is not necessary to transcribe the recording unless the transcription is requested for purposes of rehearing or court review.

(c) Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(d) The board shall adopt appropriate rules of procedure for notice and hearing in contested cases.

Sec. 16. RULES OF EVIDENCE. (a) In contested cases, the board may admit and give probative effect to evidence which possesses
probative value commonly accepted by reasonably prudent men in the
court of their affairs. The board shall give effect to the rules of
privilege recognized by law. It may exclude incompetent, irrelevant,
immaterial, and unduly repetitious evidence.

(b) All evidence, including records and documents in the possession
of the board of which it desires to avail itself, shall be offered and made
a part of the record in the case, and no other factual information or
evidence shall be considered in the determination of the case. Documen-
tary evidence may be received in the form of copies or excerpts, or by
incorporation by reference.

c) Every party has the right to cross-examine witnesses who
testify, and has the right to submit rebuttal evidence.

Sec. 17. OFFICIAL NOTICE. The board may take notice of
judicially cognizable facts and in addition may take notice of general,
technical, and scientific facts within its specialized knowledge. Parties
shall be notified either before or during hearing, or by reference in
preliminary reports or otherwise, of the material so noticed, and they
shall be afforded an opportunity to contest the facts so noticed. The
board may use its experience, technical competence, and specialized
knowledge in evaluating the evidence presented to it.

Sec. 18. EXAMINATION OF EVIDENCE BY BOARD. When in a
called case a majority of the directors of the board who are to
render the final decision have not heard or read the evidence, the
decision, if adverse to the party to the proceeding other than the board
itself, shall not be made until a proposal for decision, including
findings of fact and conclusions of law, has been served upon the parties
and an opportunity has been afforded to each party adversely affected
to file exceptions and present argument to a majority of the directors
who are to render the decision, who shall personally consider the whole
record or as much of it as may be cited by the parties.

Sec. 19. DECISIONS AND ORDERS. Every decision and order
adverse to a party to the proceeding, rendered by the board in a con-
ested case, shall be in writing or stated in the record and shall be
accompanied by findings of fact and conclusions of law. The findings of
fact shall consist of a concise statement of the conclusions upon each
contested issue of fact. Parties to the proceeding shall be notified of the
decision and order in person or by mail. A copy of the decision and
order and accompanying findings and conclusions shall be delivered or
mailed upon request to each party or to his attorney of record.

Sec. 20. JUDICIAL REVIEW OF CONTESTED CASES. (a) A
person aggrieved by a final decision in a contested case, whether the
decision is affirmative or negative in form, is entitled to judicial
review of the decision.

(b) Proceedings for review shall be instituted by filing a petition in
the court of civil appeals within 30 days after the service of the final
decision of the board. Copies of the petition shall be served upon the
board and all other parties of record. The court, in its discretion, may
permit other interested persons to intervene.

(c) Filing the petition does not stay enforcement of the board
decision, but the board may do so, or the reviewing court may order a
stay upon such terms as it deems proper.

(d) Within 30 days after service of the petition, or within such
further time as the court may allow, the board shall transmit to the
reviewing court the original or a certified copy of the entire record of the
proceeding under review; but, by stipulation of all parties to the review
proceeding, the record may be shortened. A party unreasonably refus-
ing to stipulate to limit the record may be taxed by the court for the
additional costs caused by his refusal. The court may require or permit
subsequent corrections or additions to the record when deemed
desirable.
(e) If, before the date set for hearing, application is made to the
court for leave to present additional evidence on the issues in the
case, and it is shown to the satisfaction of the court that the additional
evidence is material and that there were good reasons for failing to
present it in the proceeding before the board, the court may order that
the additional evidence be taken before the board upon such conditions,
as the court deems proper. The board may modify its findings and
decision by reason of the additional evidence and shall file with the
reviewing court, to become a part of the record, the additional evidence,
together with any modifications or new findings or decision.

(f) The review shall be conducted by the court and shall be confined
to the record, except that in cases of alleged irregularities in procedure
before the board, not shown in the record, testimony on the alleged
irregularities may be taken in court. The court shall, on request, hear
oral argument and receive written briefs.

(g) The court may affirm the decision of the board or remand the
case for further proceedings; or it may reverse or modify the decision
if the substantial rights of the petitioners may have been prejudiced
because the administrative findings, inferences, conclusions, or
decisions are

(1) in violation of constitutional provisions;
(2) in excess of the statutory authority or jurisdiction of the
board;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) unsupported by competent, material, and substantial evi-
dence in view of the entire record as submitted; or
(6) arbitrary or capricious.

SUBCHAPTER D. FINANCIAL PROVISIONS.

Sec. 21. TAXATION. (a) The board may levy and collect property
taxes levied on the property in the district that are necessary to enable
the board to perform the powers and functions given it in this Act.
(b) The board may not levy or collect property taxes at a rate
greater than 35 cents on the $100 valuation.
(c) The general law on water control and improvement districts,
relating to the levy and collection of taxes, applies to the levy and
collection of taxes by the board.

Sec. 22. BONDS. (a) The board may issue bonds to finance opera-
tions and construct projects authorized under this Act.
(b) The general law on water control and improvement districts,
relating to issuing bonds and retiring bond issues, applies to issuing
bonds and retiring bond issues by the board.

SUBCHAPTER E. POWERS AND DUTIES OF THE BOARD.

Sec. 23. CONSERVATION RULES. The board may adopt rules
for the purpose of conserving, preserving, protecting, and recharging
the underground water in the district.

Sec. 24. WASTE. (a) The board may adopt rules designed to
prevent waste of the underground water in the district.
(b) A person wastes underground water who
(1) withdraws the underground water at such a rate or in such
an amount as to cause the intrusion of water that is not suitable for
agricultural, gardening, domestic, or stock-raising uses;
(2) allows a well to flow or produce underground water for a
use other than
(A) an agricultural, gardening, domestic, stock-raising,
municipal, or recreational use;
(B) a use which is beneficial to the user;
(3) allows underground water to escape from one underground
water stratum to another stratum which does not contain water suitable
for agricultural, gardening, domestic, or stock-raising uses;
(4) pollutes or harmfully alters the character of the underground water; or

(5) uses the underground water to explore for, produce, handle, or treat oil, gas, sulphur, or other minerals, if rules of the board specify that special circumstances make these uses wasteful.

Sec. 25. PERMITS. (a) The board may adopt rules requiring a person to obtain a permit from the board before he may drill, equip, complete, or substantially alter the size of a well or the size of a pump used in connection with the well.

(b) The board may add whatever terms and conditions to the permit and modify the terms and conditions, that are necessary to insure that drilling, equipping, completing, or substantially altering the size of a well or the size of a pump used in connection with the well will

(1) preserve and conserve the underground water in the district;

(2) prevent any of the kinds of waste of the underground water specified in Section 24 of this Act;

(3) minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;

(4) lessen interference between wells.

(c) A permit issued under this section is conditional and the board may revoke it if the person to whom it was issued does not comply with rules adopted under Sections 23 through 28 of this Act or with the terms and conditions stated in the permit.

(d) Before the board may refuse to issue a permit, add terms or conditions to a permit modify the terms or conditions of a permit, or revoke a permit, it must offer the applicant or holder of the permit an opportunity to be heard by the board.

Sec. 26. SPACING AND PRODUCTION. (a) The board may adopt rules to

(1) provide for spacing wells to be drilled to produce water from the underground water in the district;

(2) regulate the production of wells producing water from the underground water in the district.

(b) To be valid, a rule adopted under this section must relate to minimizing as far as practicable the drawdown of the water table or the reduction of artesian pressure, or to the prevention of any of the kinds of waste of the underground water specified in Section 24 of this Act.

(c) Rules adopted under this section do not apply to wells drilled to produce water to be used by an individual, a family, or a household for

(1) drinking water and cooking;

(2) washing;

(3) irrigating a garden or orchard, if the produce of the garden or orchard is to be eaten by the individual, family, or household;

(4) watering animals used in operating a farm or as food for the individual, family, or household.

Sec. 27. RECORDS AND REPORTS. The board may adopt rules

(1) requiring that records be kept and reports be made to the board concerning

(A) drilling, equipping, and completing wells into the underground water strata in the district;

(B) taking and using underground water in the district;

(2) requiring accurate driller's logs to be kept of wells into underground water strata, and that driller's logs and any electric logs kept be filed with the board.

Sec. 28. RULES RELATING TO CAPPING WELLS. The board may adopt regulations implementing the requirements in Section 25 of this Act relating to capping uncapped wells.

Sec. 29. PROJECTS. The board, through its employees and agents, may

(1) construct and maintain dams;
(2) drain lakes, depressions, draws, and creeks;
(3) install and operate pumps and other equipment necessary to
recharge the underground water in the district;
(4) acquire land, by eminent domain or otherwise, to do the
things specified in Subdivisions (1) through (3) of this section.
Sec. 30. SURVEYS. The board may employ engineers to
(1) survey the underground water in the district and the facili-
ties for developing, producing, and using the underground water;
(2) determine the quality of the underground water available for
production and use and the improvements, developments, and charges
needed in regard to the underground water in the district.
Sec. 31. PLANS. (a) The board shall develop comprehensive plans
for
(1) efficiently using the underground water in the districts;
(2) controlling and preventing waste of the underground water.
(b) The board shall specify in the plans, to the maximum extent
practicable, the acts, procedure, performance and avoidance which are
or may be necessary to effect the plans, including specifications for
them.
(c) The board shall carry out research projects, develop informa-
tion, and determine limitations, if any, which should be made on
withdrawing underground water in the district.
(d) The board shall collect and preserve information regarding the
use of underground water in the district and the practicability of
recharging the underground water.
(e) The board shall publish plans and information developed under
this section, bring them to the attention of the users of underground
water in the district, and encourage the users to adopt and use the
information.

SUBCHAPTER F. RIGHTS AND DUTIES
OF PERSONS IN THE DISTRICT.
Sec. 32. OWNERSHIP OF WATER. The ownership and rights of
the owner of the land and his lessees and assignees in underground water
are recognized, and this Act does not in any way deprive or divest the
owner or his assign or lessees of that ownership or those rights, subject, however, to the rules adopted under this Act.
Sec. 33. RESPONSIBILITY FOR COMPLYING. The owner of
underground water brought to the surface, or his lessee, if there is
one, and the operator of a well into the underground stratum from which
the water is brought or is to be brought are jointly and severally
responsible for complying with rules adopted by the board under this
Act.
Sec. 34. ILLEGAL DRILLING AND PRODUCTION. Drilling a
well without a permit or drilling or operating a well in violation of the
terms and conditions of the permit, if a permit is required, and operat-
ing a well at a higher rate of production than the rate approved by the
board for the well, are each declared to be illegal, wasteful per se, and a nuisance.
Sec. 35. CAPPING WELLS. The owner of underground water
being produced from an underground water well shall keep the well
capped with a covering capable of sustaining a pressure of at least
400 pounds, except when the well is in use, and shall comply with rules
adopted under Section 28 of this Act. The operator of the well has
the same duty the owner of the underground water had under this section.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS.
Sec. 36. EXCLUDING LAND FROM THE DISTRICT. (a) A person
who owns land over which the board is exercising authority or claiming
jurisdiction may petition the board for a hearing to determine whether
or not the land is or should be excluded from the district under
Section 4 of this Act.
(b) At the conclusion of the hearing, the land is a part of the district if the board finds that the person has failed to establish

1. with respect to land claimed to be excluded under Section 4(1) of this Act, that the land was within the limits of an incorporated city or town on the effective date of this Act; or

2. with respect to land claimed to be excluded under Section 4(2) of this Act, that the land has been included within the limits of an incorporated city or town since the effective date of this Act, and that exclusion of the land would defeat none of the regulatory purposes of this Act; or

3. with respect to land claimed to be excluded under Section 4(3) of this Act, that there is no underground water under the land or that the underground water cannot be brought to the surface at a cost that makes bringing it to the surface economically feasible.

(c) If the board makes a contrary finding under Subsection (b)(1) of this Section, the land has never been a part of the district. If the board makes a contrary finding under Subsection (b)(2) or Subsection (b)(3) of this section, the land is excluded from the district on the day the person filed the petition with the board to determine whether or not the land should be excluded.

Sec. 37. INCLUDING LAND IN THE DISTRICT. (a) The board may order a hearing to determine whether or not land contiguous with the district but not within the district should be included in the district.

(b) At the hearing, if the board finds that the owner of the land that is the subject of the order has failed to establish that the exclusion of the land defeats none of the regulatory purposes of this Act, it shall order that the land is included in the district. The land is included on the day the order is issued.

(c) If the board makes a contrary finding, the status of the land is unchanged.

Sec. 38. DISSOLUTION. (a) The board may dissolve the district, if it finds that the continued existence of the district will not best serve a public purpose, either because conditions in the district have changed so that regulation of underground water in the district is no longer necessary, or because it would be more efficient to have that regulation performed by some other agency.

(b) To dissolve the district, the board shall adopt a resolution proposing dissolution using the procedure for adopting rules provided for in Section 11 of this Act. After the resolution becomes effective, the board shall appoint a trustee, who shall settle the affairs of the district as quickly as possible. The trustee serves at the pleasure of the board, and is entitled to reasonable compensation set by the board.

(c) The trustees shall reduce to possession, and money, all assets and resources of the district, and shall apply the money to discharging the outstanding obligations of the district, having regard to specific funds. If it is necessary to do so, the board shall levy, assess, and collect additional taxes to pay all necessary expenses and outstanding obligations of the district.

(d) When all expenses and outstanding obligations are paid and the trustee's account is verified, the board shall discharge the trustee.

When the trustee is discharged, the board shall enter of record its final order of dissolution and record the order in the deed records of the counties in which the district is located. The district is dissolved on the date specified in the order. The board shall file a copy of the dissolution order with the Texas Water Commission and mail a copy to the Texas Legislative Council.

(e) The board shall pay to the counties in the district a proportionate part of all money in the possession of the district not needed to pay for expenses and outstanding obligations of the district when it is dissolved.
Sec. 39. APPLICATION. The provisions of this Act do not apply to a well drilled under a permit from the Railroad Commission of Texas.

SUBCHAPTER H. ENFORCEMENT PROVISIONS.

Sec. 40. SUITS BY PRIVATE PERSONS. (a) A person who has an estate in land any part of which is within one-half mile of a well which is being drilled or operated in a manner declared to be illegal in Section 34 of this Act may sue or restrain or enjoin the illegal drilling or operation or both. He may also sue to recover damages he has suffered because of the illegal operation and for any further relief he is entitled to at law or equity.

(b) In a suit for damages under this section, the operation of the well in violation of rules adopted by the board is prima facie evidence of illegal and illegitimate drainage.

(c) The suit for damages may be brought in the county where the illegal well is located or in the county where any part of the affected land of the plaintiff is located.

(d) The cause of action and the rights created by this section are cumulative, and do not impair the rights of any other person or the enforcement powers of the board.

(e) A suit brought under this section shall be advanced for trial and be determined as expeditiously as possible, and no postponement or continuance of the suit (including a first motion for postponement or continuance) may be granted except for reasons deemed imperative by the court.

Sec. 41. SUITS BY THE BOARD. The board shall sue for injunctions, mandatory injunctions, and other appropriate remedies, to compel persons to comply with rules adopted by the board and with the provisions of Section 35 of this Act.

SUBCHAPTER I. TEMPORARY PROVISIONS.

Sec. 42. INITIAL BOARD. (a) On the effective date of this Act, the following persons are the directors of the board: Mr. Charles H. Troell of Atascosa County; Mr. Stanley Brauchle, Sr. of Atascosa County; Mr. W. Curtis Ray of Wilson County; Mr. A. D. Richardson of Wilson County; and Mr. Merrill L. Connally of Wilson County.

(b) The term of office of the initial board members is from the effective date of this Act until January 10, 1957.

Sec. 43. EXPIRATION DATE. If the board dissolves the district under Section 38 of this Act, this Act expires on the day the dissolution order is effective.

Sec. 44. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and the Rule is hereby suspended.
FORM C

(For a favorable report on a bill where a "committee substitute" was recommended by the committee.)

COMMITTEE REPORT

Date 3-22-65

HON. BEN BARNES
Speaker of the House of Representatives.

Sir:

We, your Committee on CONSERVATION AND RECLAMATION, to whom was referred H.B. No. 116, have had the same under consideration and beg to report back with recommendation that it do pass, and be not printed.

Committee Substitute was recommended and is to be printed in lieu of the original bill.

V.-Chairman.

(A "committee substitute" in the case of a bill is in the form of two suggested amendments, a new body and a new caption. Under the Rules a committee may authorize the printing of the "committee substitute" in lieu of the original bill. If the original caption is adequate, the "committee substitute" should be only a new body; and in such case the original caption should be printed along with the suggested new body.)
Amend Committee Amendment No. 1 to House Bill No. 116 as printed, as follows:

(1) on page 1, line 62, after the word "from" strike "Wilson" and substitute "Atascosa";

(2) on page 2, line 3, strike "Wilson" and substitute "Atascosa";

(3) on page 2, line 4, strike "Atascosa" and substitute "Wilson".

DATE APR 6 1965

READ AND ADOPTED

Skeff Hallman
CHIEF CLERK
HOUSE OF REPRESENTATIVES
Amend House Bill No. 116 by striking all below the enacting clause and substituting the following:

SUBCHAPTER A. GENERAL PROVISIONS.

Section 1. SHORT TITLE. This Act may be cited as the Evergreen Underground Water Conservation District Act.

Sec. 2. DEFINITIONS. In this Act, unless the context requires a different definition:

(1) "person" includes firm, association, partnership, and corporation;

(2) "underground water" (A) means water suitable for agricultural, gardening, domestic, or stock raising uses percolating below the earth's surface;

(B) does not include water in a defined subterranean stream or in the underflow of a river;

(3) "District" means the Evergreen Underground Water Conservation District;

(4) "Board" means the Board of Directors of the District.

SUBCHAPTER B. ADMINISTRATION.

Sec. 3. CREATION OF DISTRICT. The Evergreen Underground Water Conservation District is created. The District is created under Section 59, Article XVI, Constitution of the State of Texas.

Sec. 4. AREA OF DISTRICT. The District shall comprise all of the territory contained within Wilson and Atascosa Counties and for all practical purposes the boundaries of said counties are coterminous with the boundaries of a sub-division of an underground water reservoir hereafter designated by the Board of Water Engineers, except

(1) area which is within the limits of an incorporated city or town in Wilson or Atascosa County on the effective date of this Act;

(2) area which comes within the limits of an incorporated city or town in Wilson or Atascosa County after the effective date of this Act, which the Board excludes under Section 36(c) of this Act;

(3) area under which there is either no underground water or no underground water that can be brought to the surface at a cost that makes bringing it to the surface economically feasible, which the Board excludes under Section 36(c) of this Act.

Sec. 5. ESTABLISHMENT OF BOARD. The Board of Directors of the Evergreen Underground Water Conservation District is established.

Sec. 6. COMPOSITION AND TERMS OF OFFICE. (a) The Board consists of five directors.

(b) Four of the directors are elected at elections provided for in Section 10 of this Act; the fifth director is appointed by the Governor. A director serves a two-year term.

(c) If a Constitutional Amendment is adopted authorizing directors of conservation and reclamation districts to serve six-year terms, Subsection (b) of this Section is repealed on the day of the first election to elect directors held under this Act after the Constitutional Amendment becomes effective, and the directors serve six-year terms. At that election, one director from Atascosa County and one from Wilson County are elected for two-year terms; one from Atascosa County and one from Wilson County for four-year terms; and one from Wilson County for a six-year term. The Board shall conduct biennial elections after that election, at which directors are elected to replace retiring directors, for six-year terms.

The director who succeeds the director from
Wilson County with a six-year term shall be from Atascosa County, and that position shall thereafter alternate between Wilson and Atascosa Counties.

(d) If a position on the Board becomes vacant, a majority of the remaining directors shall appoint another person from the county of residence of the retiring director to fill the vacated position for the unexpired term.

(e) A director serves until his successor is elected or appointed.

Sec. 7. QUALIFICATION OF DIRECTORS. A person is qualified to serve on the Board who is elected or appointed to that position, and who

(1) is at least 21 years of age;
(2) owns real property in the district;
(3) is a resident of Atascosa or Wilson County.

Sec. 8. ADMINISTRATOR AND EMPLOYEES. (a) The Board may employ an administrator and set his salary. The Board may delegate any of its powers and duties (except those of adopting rules, a dissolution resolution, a dissolution order, and those relating to hearings, taxation, and bonds) to the administrator, who may carry out powers and duties delegated to him by the Board.

(b) The administrator, with the approval of the Board, may employ employees of the Board and set their salaries, and hire legal counsel for the Board.

Sec. 9. BOARD MEETINGS AND OFFICERS. (a) The Board shall hold regular quarterly meetings. It may hold other meetings at the call of the chairman or at the request of at least two directors.

(b) A majority of the directors is a quorum for conducting business.

(c) The Board shall elect its officers.

(d) The General Laws relating to filing bonds by directors of districts applies to directors of the District.

Sec. 10. ELECTIONS. (a) The Board shall call an election to elect directors to the Board on the second Tuesday in January of each odd-numbered year. The first election to elect directors under this Act is to be held on January 10, 1967.

(b) The Board shall conduct an election held under this Act under the General Laws of the state relating to elections.

(c) The Board shall prepare a ballot with the names of the candidates who reside in Atascosa County and a ballot with the names of the candidates who reside in Wilson County. Voters in Atascosa County vote for residents of Atascosa County; voters in Wilson County vote for residents of Wilson County.

(d) The two persons with the highest number of votes who are residents of Atascosa County and the two persons with the highest number of votes who are residents of Wilson County are elected.

(e) The Board shall pay for the cost of the elections with money of the District.

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE.

Sec. 11. PROCEDURE FOR ADOPTING AND AMENDING RULES.

(a) Before the Board may adopt or amend a rule under this Act, it must publish a brief summary of the rule or the amendment in one or more newspapers as it deems necessary to give the summary general circulation throughout the district. The Board must publish the summary one time a week for two weeks.

(b) The rule or amendment takes effect on the fourteenth day after the day the summary is published the second time, unless

(1) the Board specifies that it takes effect at a later time; or
(2) the Board rescinds the order adopting the rule or amendment.

(c) The Board may rescind the order for (but it may not change) a rule or amendment, from the time the summary is first published until after the rule or amendment takes effect. After the rule or amendment takes effect, the Board may change or repeal it only by adopting a rule repealing or amending it.
(d) If the Board rescinds an order for a rule or amendment, it may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

Sec. 12. DEclaratory JUDGMENT ON VALIDITY OF RULES.

(a) The validity of a rule adopted under this Act may be determined upon petition for a declaratory judgment on the validity of the rule addressed to the district court sitting in the Evergreen Underground Water Conservation District, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The Board shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions, exceeds the statutory authority of the board, or was adopted without complying with Section 11 of this Act.

Sec. 13. DEFINITION. In Sections 13 through 20 of this Act, "contested case" means a proceeding before the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Board hearing.

Sec. 14. HEARING OFFICER. (a) In a contested case, the Board shall employ an attorney to serve as the hearing officer in the hearing.

At the hearing, the hearing officer shall

(1) preside over the hearing;
(2) rule on the admissibility of evidence;
(3) at the direction of the Board, prepare the record, decision, and order of the Board and the notices for the hearing;
(4) assist the Board in all legal matters connected with the hearing.

(b) The hearing officer may vote only to break a tie.

(c) If the appointed member of the Board is an attorney, the Board may designate that he is the hearing officer, rather than employ another attorney to be the hearing officer. In that case, Subsection (b) of this Section does not apply.

Sec. 15. NOTICE, HEARING, RECORDS. (a) In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, because of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, the issues shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect to the issues.

(b) The Board shall prepare an official record, which includes testimony and exhibits, in each contested case, and shall prepare a mechanical recording of the proceedings. It is not necessary to transcribe the recording unless the transcription is requested for purposes of rehearing or court review.

(c) Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(d) The Board shall adopt appropriate rules of procedure for notice and hearing in contested cases.

Sec. 16. RULES OF EVIDENCE. (a) In contested cases, the Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.
(b) All evidence, including records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(c) Every party has the right to cross-examine witnesses who testify, and has the right to submit rebuttal evidence.

Sec. 17. OFFICIAL NOTICE. The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, and scientific facts within its specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may use its experience, technical competence, and specialized knowledge in evaluating the evidence presented to it.

Sec. 18. EXAMINATION OF EVIDENCE BY BOARD. When in a contested case a majority of the directors of the Board who are to render the final decision have not heard or read the evidence, the decision, if adverse to the party to the proceeding other than the Board itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the directors who are to render the decision, who shall personally consider the whole record or as much of it as may be cited by the parties.

Sec. 19. DECISIONS AND ORDERS. Every decision and order adverse to a party to the proceeding, rendered by the Board in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or to his attorney of record.

Sec. 20. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person aggrieved by a final decision in a contested case, whether the decision is affirmative or negative in form, is entitled to judicial review of the decision.

(b) Proceedings for review shall be instituted by filing a petition in a district court within the district within 30 days after the service of the final decision of the Board. Copies of the petition shall be served upon the Board and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(c) Filing the petition does not stay enforcement of the Board decision; but the Board may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within 30 days after service of the petition, or within such further time as the court may allow, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs caused by his refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional
evidence is material and that there were good reasons for failing to present it in the proceeding before the Board, the court may order that the additional evidence be taken before the Board upon such conditions as the court deems proper. The Board may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the court and shall be confined to the record, except that in cases of alleged irregularities in procedure before the board, not shown in the record, testimony on the alleged irregularities may be taken in court. The court shall, on request, hear oral argument and receive written briefs.

(g) The court may affirm the decision of the Board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are

(1) in violation of constitutional provisions;
(2) in excess of the statutory authority or jurisdiction of the Board;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
(6) arbitrary or capricious.

SUBCHAPTER D. FINANCIAL PROVISIONS.

Sec. 21. TAXATION. (a) The Board may levy and collect property taxes levied on the property in the District that are necessary to enable the Board to perform the powers and functions given it in this Act.

(b) The Board may not levy or collect property taxes at a rate greater than 35 cents on the $100 valuation.

(c) The General Law on water control and improvement districts, relating to the levy and collection of taxes and to elections held on tax levies, applies to the levy and collection of taxes by the Board.

Sec. 22. BONDS. (a) The Board may issue bonds to finance operations and construct projects authorized under this Act.

(b) The General Law on water control and improvement districts, relating to issuing bonds and retiring bond issues, elections on bond issues, elections on assuming tax liabilities for bonds, and procedures for determining the liability of property proposed to be excluded from a district, applies to issuing bonds and retiring bond issues by the Board.

SUBCHAPTER E. POWERS AND DUTIES OF THE BOARD.

Sec. 23. CONSERVATION RULES. The Board may adopt rules for the purpose of conserving, preserving, protecting, and recharging the underground water in the District.

Sec. 24. WASTE. The Board may adopt rules designed to prevent waste of the underground water in the District. Nothing contained herein shall in any way amend, alter, or otherwise change the declaration of water priorities and appropriation thereof as set out in Article 7471, Revised Civil Statutes of Texas, 1925.
Sec. 25. PERMITS. (a) The Board may adopt rules requiring a 
person to obtain a permit from the Board before he may drill, equip, 
complete, or substantially alter the size of a well or the size of a pump 
used in connection with the well.

(b) The Board may add whatever terms and conditions to the permit 
and modify the terms and conditions, that are necessary to insure that 
drilling, equipping, completing, or substantially altering the size of 
a well or the size of a pump used in connection with the well will 
(1) preserve and conserve the underground water in the District;
(2) prevent any of the kinds of waste of the underground water 
specified in Section 24 of this Act;
(3) minimize as far as practicable the drawdown of the water 
table or the reduction of artesian pressure;
(4) lessen interference between wells.

(c) A permit issued under this Section is conditional and the Board 
may revoke it if the person to whom it was issued does not comply with 
rules adopted under Sections 23 through 28 of this Act or with the terms 
and conditions stated in the permit.

(d) Before the Board may refuse to issue a permit, add terms or 
conditions to a permit, modify the terms or conditions of a permit, or 
revoke a permit, it must offer the applicant or holder of the permit 
an opportunity to be heard by the Board.

Sec. 26. SPACING AND PRODUCTION. (a) The Board may adopt 
rules to

(1) provide for spacing wells to be drilled to produce water 
from the underground water in the District;
(2) regulate the production of wells producing water from the 
underground water in the District.

(b) To be valid, a rule adopted under this Section must relate to 
minimizing as far as practicable the drawdown of the water table or the 
reduction of artesian pressure, or to the prevention of any of the kinds 
of waste of the underground water specified in Section 24 of this Act.

(c) Rules adopted under this Section do not apply to wells drilled to 
produce water to be used by an individual, a family, or a household for 
(1) drinking water and cooking;
(2) washing;
(3) irrigating a garden or orchard, if the produce of the garden 
or orchard is to be eaten by the individual, family, or household;
(4) watering animals used in operating a farm or as food for 
the individual, family, or household.

Sec. 27. RECORDS AND REPORTS. The Board may adopt rules 
(1) requiring that records be kept and reports be made to the 
Board concerning 
(A) drilling, equipping, and completing wells into the 
underground water strata in the district;
(B) taking and using underground water in the District;
(2) requiring accurate driller's logs to be kept of wells into 
underground water strata, and that driller's logs and any electric logs 
kept be filed with the Board.

Sec. 28. RULES RELATING TO CAPPING WELLS. The Board 
may adopt regulations implementing the requirements in Section 35 of 
this Act relating to capping uncapped wells.

Sec. 29. PROJECTS. The Board, through its employees and agents, 
may

(1) construct and maintain dams;
(2) drain lakes, depressions, draws, and creeks;
(3) install and operate pumps and other equipment necessary to 
recharge the underground water in the district.
(4) acquire land within the District by eminent domain or otherwise, to do the things specified in Subdivisions (1) through (3) of this section.

Sec. 30. SURVEYS. The Board may employ engineers to
(1) survey the underground water in the District and the facilities for developing, producing, and using the underground water;
(2) determine the quality of the underground water available for production and use and the improvements, developments, and recharges needed in regard to the underground water in the District.

Sec. 31. PLANS. (a) The Board shall develop comprehensive plans for
(1) efficiently using the underground water in the District;
(2) controlling and preventing waste of the underground water.

(b) The Board shall specify in the plans, to the maximum extent practicable, the acts, procedure, performance and avoidance which are or may be necessary to effect the plans, including specifications for them.

(c) The Board shall carry out research projects, develop information, and determine limitations, if any, which should be made on withdrawing underground water in the District.

(d) The Board shall collect and preserve information regarding the use of underground water in the District and the practicability of recharging the underground water.

(e) The Board shall publish plans and information developed under this section, bring them to the attention of the users of underground water in the District, and encourage the users to adopt and use the information. The Board shall make plans and information developed under this section available to the Texas Water Commission.

SUBCHAPTER F. RIGHTS AND DUTIES OF PERSONS IN THE DISTRICT.

Sec. 32. OWNERSHIP OF WATER. The ownership and rights of the owner of the land and his lessees and assigns in underground water are recognized, and this Act does not in any way deprive or divest the owner or his assigns or lessees of that ownership or those rights, subject, however, to the rules adopted under this Act.

Sec. 33. RESPONSIBILITY FOR COMPLYING. The owner of underground water brought to the surface, or his lessee, if there is one, and the operator of a well into the underground stratum from which the water is brought or is to be brought are jointly and severally responsible for complying with rules adopted by the Board under this Act.

Sec. 34. ILLEGAL DRILLING AND PRODUCTION. Drilling a well without a permit or drilling or operating a well in violation of the terms and conditions of the permit, if a permit is required, and operating a well at a higher rate of production than the rate approved by the Board for the well, are each declared to be illegal, wasteful per se, and a nuisance.

Sec. 35. CAPPING WELLS. The owner of underground water being produced from an underground artesian well shall keep the flowing well capped with a covering capable of sustaining a pressure of at least 400 pounds, except when the well is in use, and shall comply with rules adopted under Section 28 of this Act. The operator of the well has the same duty the owner of the underground water had under this section.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS.

Sec. 36. EXCLUDING LAND FROM THE DISTRICT. (a) A person who owns land over which the Board is exercising authority or claiming jurisdiction may petition the Board for a hearing to determine whether or not the land is or should be excluded from the district under Section 4 of this Act.
(b) At the conclusion of the hearing, the land is a part of the District if the Board finds that the person has failed to establish

(1) with respect to land claimed to be excluded under Section 4(1) of this Act, that the land was within the limits of an incorporated city or town on the effective date of this Act; or

(2) with respect to land claimed to be excluded under Section 4(2) of this Act, that the land has been included within the limits of an incorporated city or town since the effective date of this Act, and that exclusion of the land would defeat none of the regulatory purposes of this Act; or

(3) with respect to land claimed to be excluded under Section 4(3) of this Act, that there is no underground water under the land or that the underground water cannot be brought to the surface at a cost that makes bringing it to the surface economically feasible.

(c) If the board makes a contrary finding under Subsection (b)(1) of this Section, the land has never been a part of the District. If the Board makes a contrary finding under Subsection (b)(2) or Subsection (b)(3) of this Section, the land is excluded from the District on the day the person filed the petition with the Board to determine whether or not the land should be excluded.

Sec. 37. INCLUDING LAND IN THE DISTRICT. Land may be included in the District under the provisions of the General Law relating to water control and improvement districts.

Sec. 38. DISSOLUTION. (a) The Board may dissolve the District, if it finds that the continued existence of the District will not best serve a public purpose, either because conditions in the District have changed so that regulation of underground water in the District is no longer necessary, or because it would be more efficient to have that regulation performed by some other agency.

(b) To dissolve the District, the Board shall adopt a resolution proposing dissolution using the procedure for adopting rules provided for in Section 11 of this Act. After the resolution becomes effective, the Board shall appoint a trustee, who shall settle the affairs of the District as quickly as possible. The trustee serves at the pleasure of the Board, and is entitled to reasonable compensation set by the Board.

(c) The trustees shall reduce to possession, and money, all assets and resources of the District, and shall apply the money to discharging the outstanding obligations of the District, having regard to specific funds. If it is necessary to do so, the Board shall levy, assess, and collect additional taxes to pay all necessary expenses and outstanding obligations of the District.

(d) When all expenses and outstanding obligations are paid and the trustee's account is verified, the Board shall discharge the trustee.

When the trustee is discharged, the Board shall enter of record its final order of dissolution and record the order in the deed records of the counties in which the District is located. The District is dissolved on the date specified in the order. The Board shall file a copy of the dissolution order with the Texas Water Commission and mail a copy to the Texas Legislative Council.

(e) The Board shall pay to the counties in the District a proportionate part of all money in the possession of the District not needed to pay for expenses and outstanding obligations of the District when it is dissolved.
Sec. 39. APPLICATION. The provisions of this Act do not apply to a well drilled under a permit from the Railroad Commission of Texas.

SUBCHAPTER H. ENFORCEMENT PROVISIONS.

Sec. 40. SUITS BY PRIVATE PERSONS. (a) A person who has an estate in land any part of which is within one-half mile of a well which is being drilled or operated in a manner declared to be illegal in Section 34 of this Act may sue or restrain or enjoin the illegal drilling or operation or both. He may also sue to recover damages he has suffered because of the illegal operation and for any further relief he is entitled to at law or equity.

(b) In a suit for damages under this Section, the operation of the well in violation of rules adopted by the Board is prima facie evidence of illegal and illegitimate drainage.

(c) The suit for damages may be brought in the county where the illegal well is located in the county where any part of the affected land of the plaintiff is located.

(d) The cause of action and the rights created by this Section are cumulative, and do not impair the rights of any other person or the enforcement powers of the Board.

(e) A suit brought under this Section shall be advanced for trial and be determined as expeditiously as possible, and no postponement or continuance of the suit (including a first motion for postponement or continuance) may be granted except for reasons deemed imperative by the court.

Sec. 41. SUITS BY THE BOARD. The Board shall sue for injunctions, mandatory injunctions, and other appropriate remedies, to compel persons to comply with rules adopted by the Board and with the provisions of Section 35 of this Act.

SUBCHAPTER I. TEMPORARY PROVISIONS.

Sec. 42. INITIAL BOARD. (a) On the effective date of this Act, the following persons are the directors of the Board: Mr. Charles H. Trorell of Atascosa County; Mr. Stanley Brauchle, Sr. of Atascosa County; Mr. W. Curtis Ray of Wilson County; Mr. A. D. Richardson of Wilson County; and Mr. Merrill L. Connelly of Wilson County.

(b) The term of office of the initial Board members is from the effective date of this Act until January 10, 1967.

Sec. 43. EXPIRATION DATE. If the Board dissolves the District under Section 38 of this Act, this Act expires on the day the dissolution order is effective.

Sec. 44. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the Calendar in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.
relating to the creation, organization, powers, and duties of an
underground water conservation district located in Atascosa and
Wilson counties; and declaring an emergency.

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

SUBCHAPTER A. GENERAL PROVISIONS,

Section 1. SHORT TITLE. This Act may be cited as the
Evergreen Underground Water Conservation District Act.

Sec. 2. DEFINITIONS. In this Act, unless the context
requires a different definition,

(1) "person" includes firm, association, partnership, and
corporation;

(2) "underground water"
(A) means water suitable for agricultural, gardening,
domestic, or stockraising uses percolating below the earth's
surface;

(B) does not include water in a defined subterranean stream
or in the underflow of a river;

(3) "District" means the Evergreen Underground Water
Conservation District;

(4) "Board" means the Board of Directors of the District.

SUBCHAPTER B. ADMINISTRATION.

Sec. 3. CREATION OF DISTRICT. The Evergreen Underground
Water Conservation District is created. The District is created
under Section 59, Article XVI, Constitution of the State of Texas.
Sec. 4. AREA OF DISTRICT. The District shall comprise all of the territory contained within Wilson and Atascosa counties and for all practical purposes the boundaries of said counties are coterminous with the boundaries of a subdivision of an underground water reservoir heretofore designated by the Board of Water Engineers, except

(1) area which is within the limits of an incorporated city or town in Wilson or Atascosa county on the effective date of this Act;

(2) area which comes within the limits of an incorporated city or town in Wilson or Atascosa county after the effective date of this Act, which the Board excludes under Section 36(c) of this Act;

(3) area under which there is either no underground water or no underground water that can be brought to the surface at a cost that makes bringing it to the surface economically feasible, which the Board excludes under Section 36(c) of this Act.

Sec. 5. ESTABLISHMENT OF BOARD. The Board of Directors of the Evergreen Underground Water Conservation District is established.

Sec. 6. COMPOSITION AND TERMS OF OFFICE. (a) The Board consists of five directors.

(b) Four of the directors are elected at elections provided for in Section 10 of this Act; the fifth director is appointed by the Governor. A director serves a two-year term.
(c) If a Constitutional Amendment is adopted authorizing directors of conservation and reclamation districts to serve six-year terms, Subsection (b) of this Section is repealed on the day of the first election to elect directors held under this Act after the Constitutional Amendment becomes effective, and the directors serve six-year terms. At that election, one director from Atascosa County and one from Wilson County are elected for two-year terms; one from Atascosa County and one from Wilson County for four-year terms; and one from Atascosa County for a six-year term. The Board shall conduct biennial elections after that election, at which directors are elected to replace retiring directors, for six-year terms. The director who succeeds the director from Atascosa County with a six-year term shall be from Wilson County, and that position shall thereafter alternate between Wilson and Atascosa counties.

(d) If a position on the Board becomes vacant, a majority of the remaining directors shall appoint another person from the county of residence of the retiring director to fill the vacated position for the unexpired term.

(e) A director serves until his successor is elected or appointed.

Sec. 7. QUALIFICATION OF DIRECTORS. A person is qualified to serve on the Board who is elected or appointed to that position, and who

(1) is at least 21 years of age;
(2) owns real property in the District;
(3) is a resident of Atascosa or Wilson county.

Sec. 8. ADMINISTRATOR AND EMPLOYEES. (a) The Board may employ an administrator and set his salary. The Board may delegate any of its powers and duties (except those of adopting rules, a dissolution resolution, a dissolution order, and those relating to hearings, taxation, and bonds) to the administrator, who may carry out powers and duties delegated to him by the Board.

(b) The administrator, with the approval of the Board, may employ employees of the Board and set their salaries, and hire legal counsel for the Board.

Sec. 9. BOARD MEETINGS AND OFFICERS. (a) The Board shall hold regular quarterly meetings. It may hold other meetings at the call of the chairman or at the request of at least two directors.

(b) A majority of the directors is a quorum for conducting business.

(c) The Board shall elect its officers.

(d) The General Law relating to filing bonds by directors of districts applies to directors of the District.

Sec. 10. ELECTIONS. (a) The Board shall call an election to elect directors to the Board on the second Tuesday in January of each odd-numbered year. The first election to elect directors under this Act is to be held on January 10, 1967.

(b) The Board shall conduct an election held under this Act under the General Laws of the state relating to elections.
(c) The Board shall prepare a ballot with the names of the candidates who reside in Atascosa County and a ballot with the names of the candidates who reside in Wilson County. Voters in Atascosa County vote for residents of Atascosa County; voters in Wilson County vote for residents of Wilson County.

(d) The two persons with the highest number of votes who are residents of Atascosa County and the two persons with the highest number of votes who are residents of Wilson County are elected.

(e) The Board shall pay for the cost of the elections with money of the District.

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE.

Sec. 11. PROCEDURE FOR ADOPTING AND AMENDING RULES.

(a) Before the Board may adopt or amend a rule under this Act, it must publish a brief summary of the rule or the amendment in one or more newspapers as it decides is necessary to give the summary general circulation throughout the District. The Board must publish the summary one time a week for two weeks.

(b) The rule or amendment takes effect on the fourteenth day after the day the summary is published the second time, unless

(1) the Board specifies that it takes effect at a later time; or

(2) the Board rescinds the order adopting the rule or amendment.

(c) The Board may rescind the order for (but it may not change) a rule or amendment, from the time the summary is first
published until after the rule or amendment takes effect. After the rule or amendment takes effect, the Board may change or repeal it only by adopting a rule repealing or amending it.

(d) If the Board rescinds an order for a rule or amendment, it may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

Sec. 12. DECLARATORY JUDGMENT ON VALIDITY OF RULES. (a) The validity of a rule adopted under this Act may be determined upon petition for a declaratory judgment on the validity of the rule addressed to the district court sitting in the Evergreen Underground Water Conservation District, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The Board shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions, exceeds the statutory authority of the Board, or was adopted without complying with Section 11 of this Act.

Sec. 13. DEFINITION. In Sections 13 through 20 of this Act, "contested case" means a proceeding before the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Board hearing.
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(1) preside over the hearing;
(2) rule on the admissibility of evidence;
(3) at the direction of the Board, prepare the record, decision, and order of the Board and the notices for the hearing;
(4) assist the Board in all legal matters connected with the hearing.

(b) The hearing officer may vote only to break a tie.

(c) If the appointed member of the Board is an attorney, the Board may designate that he is the hearing officer, rather than employ another attorney to be the hearing officer. In that case, Subsection (b) of this Section does not apply.

Sec. 15. NOTICE, HEARING, RECORDS. (a) In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, because of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, the issues shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect to the issues.

(b) The Board shall prepare an official record, which includes testimony and exhibits, in each contested case, and shall
prepare a mechanical recording of the proceedings. It is not necessary to transcribe the recording unless the transcription is requested for purposes of rehearing or court review.

(c) Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(d) The Board shall adopt appropriate rules of procedure for notice and hearing in contested cases.

Sec. 16. RULES OF EVIDENCE. (a) In contested cases, the Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(b) All evidence, including records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(c) Every party has the right to cross-examine witnesses who testify, and has the right to submit rebuttal evidence.

Sec. 17. OFFICIAL NOTICE. The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, and scientific facts within its specialized knowledge. Parties shall be notified either before or during
hearing, or by reference in preliminary reports or otherwise, of
the material so noticed, and they shall be afforded an opportunity
to contest the facts so noticed. The Board may use its experience,
technical competence, and specialized knowledge in evaluating the
evidence presented to it.

Sec. 18. EXAMINATION OF EVIDENCE BY BOARD. When in a
contested case a majority of the directors of the Board who are to
render the final decision have not heard or read the evidence, the
decision, if adverse to the party to the proceeding other than the
Board itself, shall not be made until a proposal for decision,
including findings of fact and conclusions of law, has been served
upon the parties and an opportunity has been afforded to each
party adversely affected to file exceptions and present argument
to a majority of the directors who are to render the decision, who
shall personally consider the whole record or as much of it as may
be cited by the parties.

Sec. 19. DECISIONS AND ORDERS. Every decision and order
adverse to a party to the proceeding, rendered by the Board in a
contested case, shall be in writing or stated in the record and
shall be accompanied by findings of fact and conclusions of law.
The findings of fact shall consist of a concise statement of the
conclusions upon each contested issue of fact. Parties to the
proceeding shall be notified of the decision and order in person
or by mail. A copy of the decision and order and accompanying
findings and conclusions shall be delivered or mailed upon request
to each party or to his attorney of record.
Sec. 20. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person aggrieved by a final decision in a contested case, whether the decision is affirmative or negative in form, is entitled to judicial review of the decision.

(b) Proceedings for review shall be instituted by filing a petition in a district court within the District within 30 days after the service of the final decision of the Board. Copies of the petition shall be served upon the Board and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(c) Filing the petition does not stay enforcement of the Board decision; but the Board may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within 30 days after service of the petition, or within such further time as the court may allow, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs caused by his refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were
good reasons for failing to present it in the proceeding before the Board, the court may order that the additional evidence be taken before the Board upon such conditions as the court deems proper. The Board may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the court and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Board, not shown in the record, testimony on the alleged irregularities may be taken in court. The court shall, on request, hear oral argument and receive written briefs.

(g) The court may affirm the decision of the Board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are

(1) in violation of constitutional provisions;
(2) in excess of the statutory authority or jurisdiction of the Board;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
(6) arbitrary or capricious.

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SUBCHAPTER D, FINANCIAL PROVISIONS,

Sec. 21. TAXATION. (a) The Board may levy and collect property taxes levied on the property in the District that are necessary to enable the Board to perform the powers and functions given it in this Act.

(b) The Board may not levy or collect property taxes at a rate greater than 35 cents on the One Hundred Dollar valuation.

(c) The General Law on water control and improvement districts, relating to the levy and collection of taxes and to elections held on tax levies, applies to the levy and collection of taxes by the Board.

Sec. 22. BONDS. (a) The Board may issue bonds to finance operations and construct projects authorized under this Act.

(b) The General Law on water control and improvement districts, relating to issuing bonds and retiring bond issues, elections on bond issues, elections on assuming tax liabilities for bonds, and procedures for determining the liability of property proposed to be excluded from a district, applies to issuing bonds and retiring bond issues by the Board.

SUBCHAPTER E, POWERS AND DUTIES OF THE BOARD.

Sec. 23. CONSERVATION RULES. The Board may adopt rules for the purpose of conserving, preserving, protecting, and recharging the underground water in the District.

Sec. 24. WASTE. The Board may adopt rules designed to prevent waste of the underground water in the District. Nothing contained herein shall in any way amend, alter, or otherwise change
the declaration of water priorities and appropriation thereof as set out in Article 7471, Revised Civil Statutes of Texas, 1925.

Sec. 25. PERMITS. (a) The Board may adopt rules requiring a person to obtain a permit from the Board before he may drill, equip, complete, or substantially alter the size of a well or the size of a pump used in connection with the well.

(b) The Board may add whatever terms and conditions to the permit, and modify the terms and conditions, that are necessary to insure that drilling, equipping, completing, or substantially altering the size of a well or the size of a pump used in connection with the well will

(1) preserve and conserve the underground water in the District;

(2) prevent any of the kinds of waste of the underground water specified in Section 24 of this Act;

(3) minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;

(4) lessen interference between wells.

(c) A permit issued under this Section is conditional and the Board may revoke it if the person to whom it was issued does not comply with rules adopted under Sections 23 through 28 of this Act or with the terms and conditions stated in the permit.

(d) Before the Board may refuse to issue a permit, add terms or conditions to a permit, modify the terms or conditions of a permit, or revoke a permit, it must offer the applicant or holder of the permit an opportunity to be heard by the Board.
Sec. 26. SPACING AND PRODUCTION. (a) The Board may adopt rules to

(1) provide for spacing wells to be drilled to produce water from the underground water in the District;

(2) regulate the production of wells producing water from the underground water in the District.

(b) To be valid, a rule adopted under this Section must relate to minimizing as far as practicable the drawdown of the water table or the reduction of artesian pressure, or to the prevention of any of the kinds of waste of the underground water specified in Section 24 of this Act.

(c) Rules adopted under this Section do not apply to wells drilled to produce water to be used by an individual, a family, or a household for

(1) drinking water and cooking;

(2) washing;

(3) irrigating a garden or orchard, if the produce of the garden or orchard is to be eaten by the individual, family, or household;

(4) watering animals used in operating a farm or as food for the individual, family, or household.

Sec. 27. RECORDS AND REPORTS. The Board may adopt rules

(1) requiring that records be kept and reports be made to the Board concerning

(A) drilling, equipping, and completing wells into the underground water strata in the District;

(B) taking and using underground water in the District;
(2) requiring accurate driller's logs to be kept of wells into underground water strata, and that driller's logs and any electric logs kept be filed with the Board.

Sec. 28. RULES RELATING TO CAPPING WELLS. The Board may adopt regulations implementing the requirements in Section 35 of this Act relating to capping uncapped wells.

Sec. 29. PROJECTS. The Board, through its employees and agents, may

(1) construct and maintain dams;
(2) drain lakes, depressions, draws, and creeks;
(3) install and operate pumps and other equipment necessary to recharge the underground water in the district;
(4) acquire land within the District, by eminent domain or otherwise, to do the things specified in Subdivisions (1) through (3) of this Section.

Sec. 30. SURVEYS. The Board may employ engineers to

(1) survey the underground water in the District and the facilities for developing, producing, and using the underground water;
(2) determine the quality of the underground water available for production and use and the improvements, developments, and recharges needed in regard to the underground water in the District.

Sec. 31. PLANS. (a) The Board shall develop comprehensive plans for

(1) efficiently using the underground water in the District;
(2) controlling and preventing waste of the underground water.
(b) The Board shall specify in the plans, to the maximum extent practicable, the acts, procedure, performance and avoidance which are or may be necessary to effect the plans, including specifications for them.

(c) The Board shall carry out research projects, develop information, and determine limitations, if any, which should be made on withdrawing underground water in the District.

(d) The Board shall collect and preserve information regarding the use of underground water in the District and the practicability of recharging the underground water.

(e) The Board shall publish plans and information developed under this Section, bring them to the attention of the users of underground water in the District, and encourage the users to adopt and use the information. The Board shall make plans and information developed under this Section available to the Texas Water Commission.

**SUBCHAPTER F, RIGHTS AND DUTIES OF PERSONS IN THE DISTRICT.**

Sec. 32. OWNERSHIP OF WATER. The ownership and rights of the owner of the land and his lessees and assigns in underground water are recognized, and this Act does not in any way deprive or divest the owner or his assigns or lessees of that ownership or those rights, subject, however, to the rules adopted under this Act.

Sec. 33. RESPONSIBILITY FOR COMPLYING. The owner of underground water brought to the surface, or his lessee, if there is one, and the operator of a well into the underground stratum from
which the water is brought or is to be brought are jointly and severally responsible for complying with rules adopted by the Board under this Act.

Sec. 34. ILLEGAL DRILLING AND PRODUCTION. Drilling a well without a permit or drilling or operating a well in violation of the terms and conditions of the permit, if a permit is required, and operating a well at a higher rate of production than the rate approved by the Board for the well, are each declared to be illegal, wasteful per se, and a nuisance.

Sec. 35. CAPPING WELLS. The owner of underground water being produced from an underground artesian water well shall keep the flowing well capped with a covering capable of sustaining a pressure of at least 400 pounds, except when the well is in use, and shall comply with rules adopted under Section 28 of this Act. The operator of the well has the same duty the owner of the underground water had under this section.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS.

Sec. 36. EXCLUDING LAND FROM THE DISTRICT. (a) A person who owns land over which the Board is exercising authority or claiming jurisdiction may petition the Board for a hearing to determine whether or not the land is or should be excluded from the District under Section 4 of this Act.

(b) At the conclusion of the hearing, the land is a part of the District if the Board finds that the person has failed to establish

(1) with respect to land claimed to be excluded under Section 4(1) of this Act, that the land was within the limits of an incorporated city or town on the effective date of this Act; or
(2) with respect to land claimed to be excluded under Section 4(2) of this Act, that the land has been included within the limits of an incorporated city or town since the effective date of this Act, and that exclusion of the land would defeat none of the regulatory purposes of this Act; or

(3) with respect to land claimed to be excluded under Section 4(3) of this Act, that there is no underground water under the land or that the underground water cannot be brought to the surface at a cost that makes bringing it to the surface economically feasible.

(c) If the Board makes a contrary finding under Subsection (b)(1) of this Section, the land has never been a part of the District. If the Board makes a contrary finding under Subsection (b)(2) or Subsection (b)(3) of this Section, the land is excluded from the District on the day the person filed the petition with the Board to determine whether or not the land should be excluded.

Sec. 37. INCLUDING LAND IN THE DISTRICT. Land may be included in the District under the provisions of the General Law relating to water control and improvement districts.

Sec. 38. DISSOLUTION. (a) The Board may dissolve the District, if it finds that the continued existence of the District will not best serve a public purpose, either because conditions in the District have changed so that regulation of underground water in the District is no longer necessary, or because it would be more efficient to have that regulation performed by some other agency.
(b) To dissolve the District, the Board shall adopt a resolution proposing dissolution using the procedure for adopting rules provided for in Section 11 of this Act. After the resolution becomes effective, the Board shall appoint a trustee, who shall settle the affairs of the District as quickly as possible. The trustee serves at the pleasure of the Board, and is entitled to reasonable compensation set by the Board.

(c) The trustees shall reduce to possession, and money, all assets and resources of the District, and shall apply the money to discharging the outstanding obligations of the District, having regard to specific funds. If it is necessary to do so, the Board shall levy, assess, and collect additional taxes to pay all necessary expenses and outstanding obligations of the District.

(d) When all expenses and outstanding obligations are paid and the trustee's account is verified, the Board shall discharge the trustee. When the trustee is discharged, the Board shall enter of record its final order of dissolution and record the order in the deed records of the counties in which the District is located. The District is dissolved on the date specified in the order. The Board shall file a copy of the dissolution order with the Texas Water Commission and mail a copy to the Texas Legislative Council.

(e) The Board shall pay to the counties in the District a proportionate part of all money in the possession of the District not needed to pay for expenses and outstanding obligations of the District when it is dissolved.
Sec. 39. APPLICATION. The provisions of this Act do not apply to a well drilled under a permit from the Railroad Commission of Texas.

SUBCHAPTER H. ENFORCEMENT PROVISIONS.

Sec. 40. SUITS BY PRIVATE PERSONS. (a) A person who has an estate in land any part of which is within one-half mile of a well which is being drilled or operated in a manner declared to be illegal in Section 34 of this Act may sue or restrain or enjoin the illegal drilling or operation or both. He may also sue to recover damages he has suffered because of the illegal operation and for any further relief he is entitled to at law or equity.

(b) In a suit for damages under this Section, the operation of the well in violation of rules adopted by the Board is prima facie evidence of illegal and illegitimate drainage.

(c) The suit for damages may be brought in the county where the illegal well is located or in the county where any part of the affected land of the plaintiff is located.

(d) The cause of action and the rights created by this Section are cumulative, and do not impair the rights of any other person or the enforcement powers of the Board.

(e) A suit brought under this Section shall be advanced for trial and be determined as expeditiously as possible, and no postponement or continuance of the suit (including a first motion for postponement or continuance) may be granted except for reasons deemed imperative by the court.

Sec. 41. SUITS BY THE BOARD. The Board shall sue for injunctions, mandatory injunctions, and other appropriate remedies,
to compel persons to comply with rules adopted by the Board and with the provisions of Section 35 of this Act.

SUBCHAPTER I. TEMPORARY PROVISIONS,

Sec. 42. INITIAL BOARD. (a) On the effective date of this Act, the following persons are the directors of the Board: Mr. Charles H. Troell of Atascosa County; Mr. Stanley Brauchle, Sr. of Atascosa County; Mr. W. Curtis Ray of Wilson County; Mr. A. D. Richardson of Wilson County; and Mr. Merrill L. Connally of Wilson County.

(b) The term of office of the initial Board members is from the effective date of this Act until January 10, 1967.

Sec. 43. EXPIRATION DATE. If the Board dissolves the District under Section 38 of this Act, this Act expires on the day the dissolution order is effective.

Sec. 44. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the Calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.
Honorable Preston Smith  
President of the Senate  
Sir:  

We, your Committee on Counties, Cities, and Towns to which was referred H.E. No. 116, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do ___ pass _________, and be printed.

[Signature]
Chairman

[Signature]
Ward

[Signature]
Shinn
AN ACT

relating to the creation, organization, powers, and duties of an underground water conservation district located in Atascosa and Wilson counties; and declaring an emergency.

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

SUBCHAPTER A. GENERAL PROVISIONS.

Section 1. SHORT TITLE. This Act may be cited as the Evergreen Underground Water Conservation District Act.

Sec. 2. DEFINITIONS. In this Act, unless the context requires a different definition,

(1) "person" includes firm, association, partnership, and corporation;

(2) "underground water"

(A) means water suitable for agricultural, gardening, domestic, or stockraising uses percolating below the earth's surface;

(B) does not include water in a defined subterranean stream or in the underflow of a river;

(3) "District" means the Evergreen Underground Water Conservation District;

(4) "Board" means the Board of Directors of the District.

SUBCHAPTER B. ADMINISTRATION.

Sec. 3. CREATION OF DISTRICT. The Evergreen Underground Water Conservation District is created. The District is created under Section 59, Article XVI, Constitution of the State of Texas.
Sec. 4. AREA OF DISTRICT. The District shall comprise all of the territory contained within Wilson and Atascosa counties and for all practical purposes the boundaries of said counties are coterminous with the boundaries of a subdivision of an underground water reservoir heretofore designated by the Board of Water Engineers, except

(1) area which is within the limits of an incorporated city or town in Wilson or Atascosa county on the effective date of this Act;

(2) area which comes within the limits of an incorporated city or town in Wilson or Atascosa county after the effective date of this Act, which the Board excludes under Section 36(e) of this Act;

(3) area under which there is either no underground water or no underground water that can be brought to the surface at a cost that makes bringing it to the surface economically feasible, which the Board excludes under Section 36(e) of this Act.

Sec. 5. ESTABLISHMENT OF BOARD. The Board of Directors of the Evergreen Underground Water Conservation District is established.

Sec. 6. COMPOSITION AND TERMS OF OFFICE. (a) The Board consists of five directors.

(b) Four of the directors are elected at elections provided for in Section 10 of this Act; the fifth director is appointed by the Governor. A director serves a two-year term.
(c) If a Constitutional Amendment is adopted authorizing directors of conservation and reclamation districts to serve six-year terms, Subsection (b) of this Section is repealed on the day of the first election to elect directors held under this Act after the Constitutional Amendment becomes effective, and the directors serve six-year terms. At that election, one director from Atascosa County and one from Wilson County are elected for two-year terms; one from Atascosa County and one from Wilson County for four-year terms; and one from Atascosa County for a six-year term. The board shall conduct biennial elections after that election, at which directors are elected to replace retiring directors, for six-year terms. The director who succeeds the director from Atascosa County with a six-year term shall be from Wilson County, and that position shall thereafter alternate between Wilson and Atascosa counties.

(d) If a position on the Board becomes vacant, a majority of the remaining directors shall appoint another person from the county of residence of the retiring director to fill the vacated position for the unexpired term.

(e) A director serves until his successor is elected or appointed.

Sec. 7. QUALIFICATION OF DIRECTORS. A person is qualified to serve on the Board who is elected or appointed to that position, and who

(1) is at least 21 years of age;
(2) owns real property in the District;

(3) is a resident of Atascosa or Wilson county.

Sec. 8. ADMINISTRATOR AND EMPLOYEES. (a) The Board may employ an administrator and set his salary. The Board may delegate any of its powers and duties (except those of adopting rules, a dissolution resolution, a dissolution order, and those relating to hearings, taxation, and bonds) to the administrator, who may carry out powers and duties delegated to him by the Board.

(b) The administrator, with the approval of the Board, may employ employees of the Board and set their salaries, and hire legal counsel for the Board.

Sec. 9. BOARD MEETINGS AND OFFICERS. (a) The Board shall hold regular quarterly meetings. It may hold other meetings at the call of the chairman or at the request of at least two directors.

(b) A majority of the directors is a quorum for conducting business.

(c) The Board shall elect its officers.

(d) The General Law relating to filing bonds by directors of districts applies to directors of the District.

Sec. 10. ELECTIONS. (a) The Board shall call an election to elect directors to the Board on the second Tuesday in January of each odd-numbered year. The first election to elect directors under this Act is to be held on January 10, 1967.

(b) The Board shall conduct an election held under this Act under the General Laws of the state relating to elections.
(c) The Board shall prepare a ballot with the names of the candidates who reside in Atascosa County and a ballot with the names of the candidates who reside in Wilson County. Voters in Atascosa County vote for residents of Atascosa County; voters in Wilson County vote for residents of Wilson County.

(d) The two persons with the highest number of votes who are residents of Atascosa County and the two persons with the highest number of votes who are residents of Wilson County are elected.

(e) The Board shall pay for the cost of the elections with money of the District.

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE.

Sec. 11. PROCEDURE FOR ADOPTING AND AMENDING RULES.

(a) Before the Board may adopt or amend a rule under this Act, it must publish a brief summary of the rule or the amendment in one or more newspapers as it decides is necessary to give the summary general circulation throughout the District. The Board must publish the summary one time a week for two weeks.

(b) The rule or amendment takes effect on the fourteenth day after the day the summary is published the second time, unless

1. the Board specifies that it takes effect at a later time; or

2. the Board rescinds the order adopting the rule or amendment.

(c) The Board may rescind the order for (but it may not change) a rule or amendment, from the time the summary is first
published until after the rule or amendment takes effect. After the rule or amendment takes effect, the Board may change or repeal it only by adopting a rule repealing or amending it.

(d) If the Board rescinds an order for a rule or amendment, it may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

Sec. 12. DECLARATORY JUDGMENT ON VALIDITY OF RULES. (a) The validity of a rule adopted under this Act may be determined upon petition for a declaratory judgment on the validity of the rule addressed to the district court sitting in the Evergreen Underground Water Conservation District, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The Board shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions, exceeds the statutory authority of the Board, or was adopted without complying with Section 11 of this Act.

Sec. 13. DEFINITION. In Sections 13 through 20 of this Act, "contested case" means a proceeding before the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Board hearing.
Sec. 14. HEARING OFFICER. (a) In a contested case, the Board shall employ an attorney to serve as the hearing officer in the hearing. At the hearing, the hearing officer shall

(1) preside over the hearing;

(2) rule on the admissibility of evidence;

(3) at the direction of the Board, prepare the record, decision, and order of the Board and the notices for the hearing;

(4) assist the Board in all legal matters connected with the hearing.

(b) The hearing officer may vote only to break a tie.

(c) If the appointed member of the Board is an attorney, the Board may designate that he is the hearing officer, rather than employ another attorney to be the hearing officer. In that case, Subsection (b) of this Section does not apply.

Sec. 15. NOTICE, HEARING, RECORDS. (a) In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, because of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, the issues shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect to the issues.

(b) The Board shall prepare an official record, which includes testimony and exhibits, in each contested case, and shall
prepare a mechanical recording of the proceedings. It is not necessary to transcribe the recording unless the transcription is requested for purposes of rehearing or court review.

(c) Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(d) The Board shall adopt appropriate rules of procedure for notice and hearing in contested cases.

Sec. 16. RULES OF EVIDENCE. (a) In contested cases, the Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(b) All evidence, including records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(c) Every party has the right to cross-examine witnesses who testify, and has the right to submit rebuttal evidence.

Sec. 17. OFFICIAL NOTICE. The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, and scientific facts within its specialized knowledge. Parties shall be notified either before or during
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hearing, or by reference in preliminary reports or otherwise, of
the material so noticed, and they shall be afforded an opportunity
to contest the facts so noticed. The Board may use its experience,
technical competence, and specialized knowledge in evaluating the
evidence presented to it.

Sec. 18. EXAMINATION OF EVIDENCE BY BOARD. When in a
contested case a majority of the directors of the Board who are to
render the final decision have not heard or read the evidence, the
decision, if adverse to the party to the proceeding other than the
Board itself, shall not be made until a proposal for decision,
including findings of fact and conclusions of law, has been served
upon the parties and an opportunity has been afforded to each
party adversely affected to file exceptions and present argument
to a majority of the directors who are to render the decision, who
shall personally consider the whole record or as much of it as may
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adverse to a party to the proceeding, rendered by the Board in a
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The findings of fact shall consist of a concise statement of the
conclusions upon each contested issue of fact. Parties to the
proceeding shall be notified of the decision and order in person
or by mail. A copy of the decision and order and accompanying
findings and conclusions shall be delivered or mailed upon request
to each party or to his attorney of record.
Sec. 20. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person aggrieved by a final decision in a contested case, whether the decision is affirmative or negative in form, is entitled to judicial review of the decision.

(b) Proceedings for review shall be instituted by filing a petition in a district court within the District within 30 days after the service of the final decision of the Board. Copies of the petition shall be served upon the Board and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(c) Filing the petition does not stay enforcement of the Board decision; but the Board may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within 30 days after service of the petition, or within such further time as the court may allow, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs caused by his refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were
good reasons for failing to present it in the proceeding before the Board, the court may order that the additional evidence be taken before the Board upon such conditions as the court deems proper. The Board may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the court and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Board, not shown in the record, testimony on the alleged irregularities may be taken in court. The court shall, on request, hear oral argument and receive written briefs.

(g) The court may affirm the decision of the Board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are

1. in violation of constitutional provisions;
2. in excess of the statutory authority or jurisdiction of the Board;
3. made upon unlawful procedure;
4. affected by other error of law;
5. unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
6. arbitrary or capricious.
SUBCHAPTER D. FINANCIAL PROVISIONS.

Sec. 21. TAXATION. (a) The Board may levy and collect property taxes levied on the property in the District that are necessary to enable the Board to perform the powers and functions given it in this Act.

(b) The Board may not levy or collect property taxes at a rate greater than 35 cents on the One Hundred Dollar valuation.

(c) The General Law on water control and improvement districts, relating to the levy and collection of taxes and to elections held on tax levies, applies to the levy and collection of taxes by the Board.

Sec. 22. BONDS. (a) The Board may issue bonds to finance operations and construct projects authorized under this Act.

(b) The General Law on water control and improvement districts, relating to issuing bonds and retiring bond issues, elections on bond issues, elections on assuming tax liabilities for bonds, and procedures for determining the liability of property proposed to be excluded from a district, applies to issuing bonds and retiring bond issues by the Board.

SUBCHAPTER E. POWERS AND DUTIES OF THE BOARD.

Sec. 23. CONSERVATION RULES. The Board may adopt rules for the purpose of conserving, preserving, protecting, and recharging the underground water in the District.

Sec. 24. WASTE. The Board may adopt rules designed to prevent waste of the underground water in the District. Nothing contained herein shall in any way amend, alter, or otherwise change
the declaration of water priorities and appropriation thereof as set out in Article 7471, Revised Civil Statutes of Texas, 1925.

Sec. 25. PERMITS. (a) The Board may adopt rules requiring a person to obtain a permit from the Board before he may drill, equip, complete, or substantially alter the size of a well or the size of a pump used in connection with the well.

(b) The Board may add whatever terms and conditions to the permit, and modify the terms and conditions, that are necessary to insure that drilling, equipping, completing, or substantially altering the size of a well or the size of a pump used in connection with the well will

(1) preserve and conserve the underground water in the District;

(2) prevent any of the kinds of waste of the underground water specified in Section 24 of this Act;

(3) minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;

(4) lessen interference between wells.

(c) A permit issued under this Section is conditional and the Board may revoke it if the person to whom it was issued does not comply with rules adopted under Sections 23 through 26 of this Act or with the terms and conditions stated in the permit.

(d) Before the Board may refuse to issue a permit, add terms or conditions to a permit, modify the terms or conditions of a permit, or revoke a permit, it must offer the applicant or holder of the permit an opportunity to be heard by the Board.
Sec. 26. SPACING AND PRODUCTION. (a) The Board may adopt rules to

(1) provide for spacing wells to be drilled to produce water from the underground water in the District;

(2) regulate the production of wells producing water from the underground water in the District.

(b) To be valid, a rule adopted under this Section must relate to minimizing as far as practicable the drawdown of the water table or the reduction of artesian pressure, or to the prevention of any of the kinds of waste of the underground water specified in Section 24 of this Act.

(c) Rules adopted under this Section do not apply to wells drilled to produce water to be used by an individual, a family, or a household for

(1) drinking water and cooking;

(2) washing;

(3) irrigating a garden or orchard, if the produce of the garden or orchard is to be eaten by the individual, family, or household;

(4) watering animals used in operating a farm or as food for the individual, family, or household.

Sec. 27. RECORDS AND REPORTS. The Board may adopt rules requiring that records be kept and reports be made to the Board concerning

(A) drilling, equipping, and completing wells into the underground water strata in the District;

(B) taking and using underground water in the District;
(2) requiring accurate driller's logs to be kept of wells into underground water strata, and that driller's logs and any electric logs kept be filed with the Board.

Sec. 28. RULES RELATING TO CAPPING WELLS. The Board may adopt regulations implementing the requirements in Section 35 of this Act relating to capping uncapped wells.

Sec. 29. PROJECTS. The Board, through its employees and agents, may
(1) construct and maintain dams;
(2) drain lakes, depressions, draws, and creeks;
(3) install and operate pumps and other equipment necessary to recharge the underground water in the district;
(4) acquire land within the District, by eminent domain or otherwise, to do the things specified in Subdivisions (1) through (3) of this Section.

Sec. 30. SURVEYS. The Board may employ engineers to
(1) survey the underground water in the District and the facilities for developing, producing, and using the underground water;
(2) determine the quality of the underground water available for production and use and the improvements, developments, and recharges needed in regard to the underground water in the District.

Sec. 31. PLANS. (a) The Board shall develop comprehensive plans for
(1) efficiently using the underground water in the District;
(2) controlling and preventing waste of the underground water.
(b) The Board shall specify in the plans, to the maximum extent practicable, the acts, procedure, performance and avoidance which are or may be necessary to effect the plans, including specifications for them.

(c) The Board shall carry out research projects, develop information, and determine limitations, if any, which should be made on withdrawing underground water in the District.

(d) The Board shall collect and preserve information regarding the use of underground water in the District and the practicability of recharging the underground water.

(e) The Board shall publish plans and information developed under this Section, bring them to the attention of the users of underground water in the District, and encourage the users to adopt and use the information. The Board shall make plans and information developed under this Section available to the Texas Water Commission.

SUBCHAPTER F. RIGHTS AND DUTIES OF PERSONS IN THE DISTRICT.

Sec. 32. OWNERSHIP OF WATER. The ownership and rights of the owner of the land and his lessees and assigns in underground water are recognized, and this Act does not in any way deprive or divest the owner or his assigns or lessees of that ownership or those rights, subject, however, to the rules adopted under this Act.

Sec. 33. RESPONSIBILITY FOR COMPLYING. The owner of underground water brought to the surface, or his lessee, if there is one, and the operator of a well into the underground stratum from.
which the water is brought or is to be brought are jointly and
severally responsible for complying with rules adopted by the Board
under this Act.

Sec. 34. ILLEGAL DRILLING AND PRODUCTION. Drilling a well
without a permit or drilling or operating a well in violation of the
terms and conditions of the permit, if a permit is required, and
operating a well at a higher rate of production than the rate
approved by the Board for the well, are each declared to be illegal,
wasteful per se, and a nuisance.

Sec. 35. CAPPING WELLS. The owner of underground water being
produced from an underground artesian water well shall keep the
flowing well capped with a covering capable of sustaining a
pressure of at least 400 pounds, except when the well is in use,
and shall comply with rules adopted under Section 23 of this Act.
The operator of the well has the same duty the owner of the under-
ground water had under this section.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS.

Sec. 36. EXCLUDING LAND FROM THE DISTRICT. (a) A person
who owns land over which the Board is exercising authority or
claiming jurisdiction may petition the Board for a hearing to
determine whether or not the land is or should be excluded from the
District under Section 4 of this Act.

(b) At the conclusion of the hearing, the land is a part of
the District if the Board finds that the person has failed to
establish

(1) with respect to land claimed to be excluded under
Section 4(1) of this Act, that the land was within the limits of an
incorporated city or town on the effective date of this Act; or
H. E. No. 116

(2) with respect to land claimed to be excluded under Section 4(2) of this Act, that the land has been included within the limits of an incorporated city or town since the effective date of this Act, and that exclusion of the land would defeat none of the regulatory purposes of this Act; or

(3) with respect to land claimed to be excluded under Section 4(3) of this Act, that there is no underground water under the land or that the underground water cannot be brought to the surface at a cost that makes bringing it to the surface economically feasible.

(c) If the Board makes a contrary finding under Subsection (b)(1) of this Section, the land has never been a part of the District. If the Board makes a contrary finding under Subsection (b)(2) or Subsection (b)(3) of this Section, the land is excluded from the District on the day the person filed the petition with the Board to determine whether or not the land should be excluded.

Sec. 37. INCLUDING LAND IN THE DISTRICT. Land may be included in the District under the provisions of the General Law relating to water control and improvement districts.

Sec. 38. DISSOLUTION. (a) The Board may dissolve the District, if it finds that the continued existence of the District will not best serve a public purpose, either because conditions in the District have changed so that regulation of underground water in the District is no longer necessary, or because it would be more efficient to have that regulation performed by some other agency.
(b) To dissolve the District, the Board shall adopt a resolution proposing dissolution using the procedure for adopting rules provided for in Section 11 of this Act. After the resolution becomes effective, the Board shall appoint a trustee, who shall settle the affairs of the District as quickly as possible. The trustee serves at the pleasure of the Board, and is entitled to reasonable compensation set by the Board.

(c) The trustees shall reduce to possession, and money, all assets and resources of the District, and shall apply the money to discharging the outstanding obligations of the District, having regard to specific funds. If it is necessary to do so, the Board shall levy, assess, and collect additional taxes to pay all necessary expenses and outstanding obligations of the District.

(d) When all expenses and outstanding obligations are paid and the trustee's account is verified, the Board shall discharge the trustee. When the trustee is discharged, the Board shall enter of record its final order of dissolution and record the order in the deed records of the counties in which the District is located. The District is dissolved on the date specified in the order. The Board shall file a copy of the dissolution order with the Texas Water Commission and mail a copy to the Texas Legislative Council.

(e) The Board shall pay to the counties in the District a proportionate part of all money in the possession of the District not needed to pay for expenses and outstanding obligations of the District when it is dissolved.
Sec. 39. APPLICATION. The provisions of this Act do not apply to a well drilled under a permit from the Railroad Commission of Texas.

SUBCHAPTER H. ENFORCEMENT PROVISIONS.

Sec. 40. SUITS BY PRIVATE PERSONS. (a) A person who has an estate in land any part of which is within one-half mile of a well which is being drilled or operated in a manner declared to be illegal in Section 34 of this Act may sue or restrain or enjoin the illegal drilling or operation or both. He may also sue to recover damages he has suffered because of the illegal operation and for any further relief he is entitled to at law or equity.

(b) In a suit for damages under this Section, the operation of the well in violation of rules adopted by the Board is prima facie evidence of illegal and illegitimate drainage.

(c) The suit for damages may be brought in the county where the illegal well is located or in the county where any part of the affected land of the plaintiff is located.

(d) The cause of action and the rights created by this Section are cumulative, and do not impair the rights of any other person or the enforcement powers of the Board.

(e) A suit brought under this Section shall be advanced for trial and be determined as expeditiously as possible, and no postponement or continuance of the suit (including a first motion for postponement or continuance) may be granted except for reasons deemed imperative by the court.

Sec. 41. SUITS BY THE BOARD. The Board shall sue for injunctions, mandatory injunctions, and other appropriate remedies,
to compel persons to comply with rules adopted by the Board and with the provisions of Section 35 of this Act.

SUBCHAPTER I. TEMPORARY PROVISIONS.

Sec. 42. INITIAL BOARD. (a) On the effective date of this Act, the following persons are the directors of the Board:
Mr. Charles H. Troell of Atascosa County; Mr. Stanley Brauchle, Sr. of Atascosa County; Mr. W. Curtis Ray of Wilson County; Mr. A. D. Richardson of Wilson County; and Mr. Merrill L. Connally of Wilson County.

(b) The term of office of the initial Board members is from the effective date of this Act until January 10, 1967.

Sec. 43. EXPIRATION DATE. If the Board dissolves the District under Section 38 of this Act, this Act expires on the day the dissolution order is effective.

Sec. 44. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the Calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.

______________________________  ________________________________
Lieutenant Governor  Speaker of the House
President of the Senate

I hereby certify that H. B. No. 116 was passed by the House on April 6, 1965, by a non-record vote.

______________________________
Chief Clerk of the House
H. B. No. 116

I hereby certify that H. B. No. 116 was passed by the Senate on April 29, 1965, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: 5-18-65

Date

Governor

[Signature]
H. B. No. 116

A BILL TO BE ENTITLED

AN ACT relating to the creation, organization, powers, and duties of an underground water conservation district located in Atascosa and Wilson Counties; and declaring an emergency.

FILMed JAN 28 1965

READ 1ST TIME AND REFERRED TO COMMITTEE ON CONSERVATION & RECLAMATION FEB 2 1965

REPORTED FAVORABLY AS AMENDED MAR 23 1965

DELIVERED MAR 23 1965 H. O. R.

RETURNED FROM PRINTER, SENT TO SPEAKER MAR 2 1965

APR 6 1965 READ SECOND TIME AMENDED AND ORDERed ENGROSSED BY NON-RECORD VOTE

Dorothy Hallman
Chief Clerk, House of Representatives

APR 6 1965 READ THIRD TIME AND PASSED

Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

APR 6 1965 MOTION TO RECONSIDER THE VOTE IN WHICH H.B. 116 WAS ADOPTED/PASSED AND TO TABLE THE MOTION TO RECONSIDER PREVAILED PASSED BY A NON-RECORD VOTE OF AYES AND NOES

Dorothy Hallman
Chief Clerk, House of Representatives

APR 6 1965 RULE REQUIRING BILLS TO BE READ ON THREE SEVERAL DAYS SUSPENDED BY A FOUR-FIFTHS VOTE.

YEAS 143 NAYS 21

Dorothy Hallman
Chief Clerk, House of Representatives
A BILL TO BE ENTITLED

AN ACT

relating to the creation, organization, powers, and duties of an underground water conservation district located in Atascosa and Wilson counties; and declaring an emergency.

1-28-65 Filed.

2-2-65 Read first time and referred to Committee on Conservation and Reclamation.

3-23-65 Reported favorably as amended, sent to printer.

3-23-65 Returned from printer, sent to Speaker.

4-6-65 Read second time, amended and ordered engrossed by a non-record vote.

4-6-65 Constitutional Rule requiring bills to be read on three several days suspended by a four-fifths vote: Yea 143, Nays 2.

4-6-65 Read third time and passed by a non-record vote.

Dorothea Hallman
Chief Clerk, H. of R.

4-6-65 Sent to Engrossing Clerk.

4-6-65 Engrossed.

APR 7 1965
IN THE SENATE
Received from
the House.

APR 12 1965
Read first time
and referred to Committee
on Counties, Cities and Towns.

APR 13 1965
Reported Favorably.

APR 29 1965
Read second time,
and passed to third reading.

APR 29 1965
Senate Rule 32 and
Constitutional Rule (Sec. 32, Art. III)
suspended by a vote of 31 yeas, 0 nays, to place bill on third reading and final passage.

APR 29 1965
Read third time and passed
by the following vote:

Yea 31 Nays 0

Charles Schnabel
Secretary of the Senate

APR 30 1965
Sent to House.
APR 30 1965

RETURNED FROM SENATE

Dorothy Hallman

Chief Clerk, House of Representatives

APR 30 1965

SENT TO ENROLLING CLERK