

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/29/15  
Date

Honorable Dan Patrick  
President of the Senate

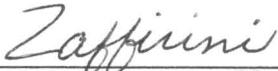
Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HOUSE BILL 3405 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



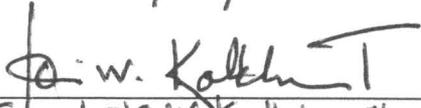
Sen. Donna Campbell



Sen. Judith Zaffirini



Sen. Leroy Taylor

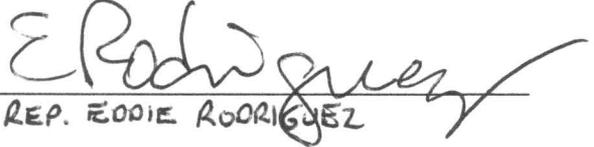


Sen. Lois W. Kolkhorst

On the part of the Senate  
Sen. Kirk Watson



REP. JASON ISAAC



REP. EDDIE RODRIGUEZ



REP. JAMES FRANK

REP. JIM KEEFER



On the part of the House  
REP. DONNA HOWARD

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CORRECTED

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 3405

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the territory, jurisdiction, and powers of the  
3 Barton Springs-Edwards Aquifer Conservation District, including  
4 its authority to regulate certain wells for the production of  
5 groundwater; imposing a cap on certain fees.

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

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

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

12 (1) inside the boundaries of:

13 (A) the Edwards Aquifer Authority; and

14 (B) Hays County; and

15 (2) not within the boundaries of the Plum Creek  
16 Conservation District as those boundaries existed on February 1,  
17 2015.

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

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

1       (d) Except for the district and the Edwards Aquifer  
2 Authority, no district or authority created under Section 52,  
3 Article III, or Section 59, Article XVI, Texas Constitution, has  
4 authority in the shared territory described by Subsection (a) to  
5 regulate the spacing of water wells or the production from water  
6 wells.

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

10       (f) The district's jurisdiction over any well that is  
11 drilled to produce water in the territory described in Section  
12 8802.003, including a well that is used to recover water that  
13 has been injected as part of an aquifer storage and recovery  
14 project, applies to all wells for which the district has  
15 jurisdiction in the shared territory described by this section.

16       SECTION 2. Section 8802.1045, Special District Local Laws  
17 Code, is amended by adding Subsection (g) to read as follows:

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

24       SECTION 3. As soon as practicable after the effective date  
25 of this Act, and in conformance with the requirements of Section  
26 8802.053, Special District Local Laws Code, the board of  
27 directors of the Barton Springs-Edwards Aquifer Conservation

1 District shall revise the single-member districts as the board  
2 considers appropriate to reflect the changes in territory made  
3 by Section 8802.0035, Special District Local Laws Code, as added  
4 by this Act.

5 SECTION 4. (a) In this section:

6 (1) "District" means the Barton Springs-Edwards  
7 Aquifer Conservation District.

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

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

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

1 well.

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

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

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

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

25 (e) The temporary permit issued under Subsection (d) does  
26 not confer any rights or privileges to the permit holder other  
27 than those set forth in this section. After issuing the

1 temporary permit, the district shall process the permit  
2 application for notice, hearing, and consideration for issuance  
3 of a regular permit consistent with this section. The district,  
4 after notice and hearing, shall issue an order granting the  
5 regular permit authorizing groundwater production in the amount  
6 set forth in the temporary permit unless the district finds that  
7 authorizing groundwater production in the amount set forth in  
8 the temporary permit will cause:

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

11 (2) an unreasonable impact on existing wells.

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

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

26 (h) For the State Office of Administrative Hearings to  
27 recommend overturning a district order reducing the amount of

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

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

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

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

16 SECTION 5. If the addition of territory under Section  
17 8802.0035, Special District Local Laws Code, as added by this  
18 Act, causes the annual water use fee in Section 8802.105 to  
19 exceed \$1 million, the district shall not require an assessment  
20 of greater than \$1 million annually as adjusted to reflect the  
21 percentage change during the preceding year in the Consumer  
22 Price Index.

23 SECTION 6. (a) The legislature validates and confirms all  
24 acts and proceedings of the board of directors of the Barton  
25 Springs-Edwards Aquifer Conservation District that were taken  
26 before the effective date of this Act.

27 (b) Subsection (a) of this section does not apply to any

1 matter that on the effective date of this Act:

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

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

7 SECTION 7. (a) The legal notice of the intention to  
8 introduce this Act, setting forth the general substance of this  
9 Act, has been published as provided by law, and the notice and a  
10 copy of this Act have been furnished to all persons, agencies,  
11 officials, or entities to which they are required to be  
12 furnished under Section 59, Article XVI, Texas Constitution, and  
13 Chapter 313, Government Code.

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

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

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

25 SECTION 8. It is the intent of the legislature that this  
26 Act apply only to the territory described by Section 8802.0035,  
27 Special District Local Laws Code, as added by this Act, and not

1 have statewide implications.

2 SECTION 9. This Act takes effect immediately if it  
3 receives a vote of two-thirds of all the members elected to each  
4 house, as provided by Section 39, Article III, Texas  
5 Constitution. If this Act does not receive the vote necessary  
6 for immediate effect, this Act takes effect September 1, 2015.

House Bill 3405  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

Sec. 8802.0035. SHARED TERRITORY; JURISDICTION.

(a) The territory of the district includes any territory that is:

(1) inside the boundaries of:

(A) the Edwards Aquifer Authority; and

(B) Hays County; and

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

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

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

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

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

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

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

Sec. 8802.0035. SHARED TERRITORY; JURISDICTION.

(a) The territory of the district includes any territory that is:

(1) inside the boundaries of:

(A) the Edwards Aquifer Authority; and

(B) Hays County; and

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

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

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

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

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

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

CONFERENCE

SENATE

**House Bill 3405**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)  
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

No equivalent provision.

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

(g) This subsection applies only to a well located in the shared territory described by Section 8802.0035. Notwithstanding Subsection (b), the district may not charge an annual production fee of more than 17 cents per thousand gallons of water produced under a permit from a well under this subsection, if the water is permitted for any use other than agricultural use. [FA2]

SENATE

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

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

HOUSE

No equivalent provision.

SECTION 3. (a) In this section:  
(1) "District" means the Barton Springs-Edwards Aquifer Conservation District.  
(2) "Maximum production capacity" means the maximum production capacity of a well, which may be based on a 36-

SENATE

**House Bill 3405**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

hour pump test conducted at the time the well was initially constructed or placed into service.

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

(c) A person operating a well before the effective date of this Act or who has entered into a contract before the effective date of this Act to drill or operate a well that is or will be located in the territory described by Subsection (b) of this section and subject to the jurisdiction of the district under Section 8802.0035, Special District Local Laws Code, as added by this Act, shall file an administratively complete permit application with the district not later than three months after the effective date of this Act for the drilling, equipping, completion, or operation of any well if the well requires a permit under the rules or orders of the district. The person may file the permit application for an amount of groundwater production not to exceed the maximum production capacity of the well.

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

**House Bill 3405**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

permit pursuant to the permit application if:

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

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

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

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

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

(2) an unreasonable impact on existing wells.

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

(g) The holder of a temporary or regular permit subject to a district order under this section to reduce the amount of groundwater production from the permitted well may contest the reduction by requesting a contested case hearing to be conducted by the State Office of Administrative Hearings in

**House Bill 3405**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

the manner provided by Sections 36.416, 36.4165, and 36.418, Water Code. The district shall contract with the State Office of Administrative Hearings to conduct the hearing as provided by those sections of the Water Code. To the extent possible, the State Office of Administrative Hearings shall expedite a hearing under this subsection. The permit applicant bears the burden of proof in the hearing.

(h) For the State Office of Administrative Hearings to recommend overturning a district order reducing the amount of groundwater authorized to be produced under a temporary permit, the permit holder must demonstrate by a preponderance of the evidence that the production of the amount of groundwater authorized based on the maximum production capacity will not cause:

- (1) a failure to achieve applicable adopted desired future conditions for the aquifer; or
- (2) an unreasonable impact on existing wells as found in the district's order.

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

SECTION 4. If the addition of territory under Section 8802.0035, Special District Local Laws Code, as added by this Act, causes the annual water use fee in Section 8802.105 to exceed \$1 million, the district shall not require an assessment of greater than \$1 million annually as adjusted to

No equivalent provision.

SENATE

**House Bill 3405**  
**Senate Amendments**  
**Section-by-Section Analysis**

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

reflect the percentage change during the preceding year in the Consumer Price Index.

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

SECTION 5. Same as House version.

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

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

SECTION 4. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

SECTION 6. Same as House version.

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

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

(d) All requirements of the constitution and laws of this state

SAME

SAME

**House Bill 3405**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)  
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

**No equivalent provision.**

SECTION \_\_. It is the intent of the legislature that this Act apply only to the territory described by Section 8802.0035, Special District Local Laws Code, as added by this Act, and not have statewide implications. [FA3]

SENATE

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

SECTION 7. Same as House version.

SAME

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 30, 2015**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

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

**No significant fiscal implication to the State is anticipated.**

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

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

**Local Government Impact**

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

**Source Agencies:** 360 State Office of Administrative Hearings

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

**Certification of Compliance with  
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on HB3405 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Jason Isaac  
(name)

5-29-2015  
(date)