

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1896  
By: Madla  
Intergovernmental Relations  
5/12/2005  
Committee Report (Substituted)

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

Texas faces a difficult challenge to develop water policies that serve state and regional interests. The Texas Constitution authorizes the creation of groundwater districts to plan, develop, and regulate the use of water. C.S.S.B. 1896 creates the Val Verde County Groundwater Conservation District, subject to approval at a confirmation election, to manage Val Verde's groundwater resources.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Val Verde County Groundwater Conservation District in SECTION 4 (Sections 8804.152, 8804.163, and 8804.202, Special District Local Laws Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. DEFINITIONS. Defines "board," "director," and "district."

SECTION 2. CREATION. Provides that a groundwater conservation district, to be known as the Val Verde County Groundwater Conservation District (district), is created in Val Verde County, subject to approval at a confirmation election under Section 8 of this Act.

SECTION 3. FINDINGS OF BENEFIT. Sets forth the purposes and benefits of the district.

SECTION 4. CONTINUING PROVISIONS OF DISTRICT. Amends Subtitle H, Title 6, Special District Local Laws Code, by adding Chapter 8804, as follows:

#### **CHAPTER 8804. VAL VERDE COUNTY GROUNDWATER CONSERVATION DISTRICT**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 8804.001. DEFINITIONS. Defines "agricultural use," "agriculture," "board," "director," "district," "domestic use," and "political subdivision."

Sec. 8804.002. NATURE OF DISTRICT. Provides that the district is a groundwater conservation district in Val Verde County created under Section 59 (Conservation and Development of Natural Resources and parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution.

Sec. 8804.003. DISTRICT PURPOSE. Sets forth the purposes of the district.

[Reserves Sections 8804.004-8804.050 for expansion.]

##### **SUBCHAPTER B. TERRITORY**

Sec. 8804.051. BOUNDARIES. Provides that the boundaries of the district are coextensive with the boundaries of Val Verde County, Texas.

[Reserves Sections 8804.052-8804.100 for expansion.]

## SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 8804.101. BOARD. Provides that the board of directors of the district (board) consists of seven directors.

Sec. 8804.102. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) Requires the directors of the district to be elected according to the commissioners precinct method as provided by this section.

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

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

(d) Requires a person to make certain indications on the application for a place on the ballot.

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

Sec. 8804.103. ELECTION DATE. Requires the district to hold an election to elect the appropriate number of directors on the uniform election date prescribed by Section 41.001 (Uniform Election Dates), Election Code, in November of each even-numbered year.

Sec. 8804.104. TERMS. (a) Provides that directors serve staggered four-year terms.

(b) Authorizes a director to serve for consecutive terms.

Sec. 8804.105. COMPENSATION. (a) Provides that a director is not entitled to receive fees of office for performing the duties of a director.

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

[Reserves Sections 8804.106-8804.150 for expansion.]

## SUBCHAPTER D. POWERS AND DUTIES

Sec. 8804.151. POWERS AND DUTIES. Provides that except as otherwise provided by this chapter, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36 (Groundwater Conservation Districts), Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8804.152. PERMIT TO TRANSFER GROUNDWATER. (a) Requires the district by rule to require a person to obtain a permit from the district to transfer groundwater out of the district and regulate the terms of a transfer of groundwater out of the district.

(b) Requires the district to develop rules under this section that are consistent with the requirements of Section 36.122 (Transfer of Groundwater Out of District), Water Code.

(c) Requires the district to use a groundwater availability model, and not historical use, as the basis for issuing permits.

(d) Provides that a permit issued under this section, except for a permit issued under Section 8804.153(a), does not establish historical use.

(e) Provides that in the event of a conflict between the information provided by the groundwater study conducted under Section 8804.161 and the recommendations submitted under Section 8804.164 regarding the minimum flow requirements for any spring in the district, the Texas Water Development Board (TWDB) study under Section 8804.161 controls for the purposes of development of rules under this section.

Sec. 8804.153. PERMITS FOR USE SOLELY INSIDE DISTRICT. (a) Requires the district to grant the City of Del Rio (city) a permit in the city's name that authorizes the city to pump from all city wells a stated cumulative amount of not less than 15,000 acre-feet of water annually for use solely inside the district. Requires the district to amend the city's permit to authorize the city to pump from all city wells a stated cumulative amount of not less than 20,000 acre-feet of water annually for use solely inside the district if the study performed under Section 8804.162 finds that sufficient groundwater is available. Provides that this subsection does not limit the city's right to apply for or obtain a permit to transfer groundwater under Section 8804.152.

(b) Requires the district to grant to a nonprofit rural water supply corporation, water district, or other political subdivision a permit that authorizes the water supply corporation, water district, or other political subdivision to pump from its wells annually a volume of water that is not less than the volume equal to twice its greatest water usage in a calendar year before the date the district is confirmed at an election held for that purpose, for use solely inside the district.

Sec. 8804.154. AGRICULTURAL USE PERMIT. (a) Requires, except as provided by Section 8804.155, the district to grant any application for an agricultural use permit for any well that is used solely for agricultural use inside the district. Requires the district to issue an agricultural use permit in an amount that is not less than five acre-feet of water per acre actually cultivated per year. Provides that an agricultural use permit is nontransferable and expires on the date the well ceases to be used solely for agricultural use inside the district.

(b) Provides that this section does not limit the well owner's right to apply for or obtain a permit to transfer groundwater under Section 8804.152.

Sec. 8804.155. LIMITATION ON WELL PERMIT REQUIREMENTS. (a) Prohibits the district from requiring a person to obtain a permit from the district for certain purposes.

(b) Requires the district to require a permit for certain wells that cease to be used solely for agricultural use. Authorizes the district to impose a fee on the well in a certain manner.

(c) Requires an owner of a well described by this section to register the well with the district.

(d) Entitles a well owner to a permit exemption under this section only if water from the well is used solely inside the district. Requires the well owner to obtain a permit if water from a well is not used solely inside the district.

Sec. 8804.156. REPLACEMENT WELL. (a) Provides that a new well that replaces an abandoned or decommissioned well is subject to the same permit requirements or exemption as the well it replaces if the replacement well meets certain specifications.

(b) Prohibits the district from requiring a person who repairs or modifies a well to obtain a permit for certain wells.

Sec. 8804.157. PROHIBITION ON DISTRICT PURCHASE, SALE, TRANSPORT, OR DISTRIBUTION OF WATER. Prohibits the district from purchasing, selling, transporting, or distributing surface water or groundwater for any purpose.

Sec. 8804.158. PROHIBITION ON DISTRICT USE OF EMINENT DOMAIN. Prohibits the district from exercising the power of eminent domain.

Sec. 8804.159. REGIONAL COOPERATION. Requires the district to take certain steps to provide for regional continuity.

Sec. 8804.160. WATER CONSERVATION INITIATIVE. Authorizes the district to create a water conservation initiative as described by Section 11.32, Tax Code.

Sec. 8804.161. TEXAS WATER DEVELOPMENT BOARD STUDY. Requires the staff of the TWDB, at least once every 10 years and at any other time the board considers necessary to implement certain rules, to make a complete study of the groundwater in the district and make certain determinations.

Sec. 8804.162. LOCAL STUDY OF GROUNDWATER AVAILABILITY. (a) Requires, except as provided by Subsection (b), not later than the 10th anniversary of the date on which the district is confirmed, the district to complete a study to determine whether there is sufficient groundwater to amend the permit granted under Section 8804.153(a) to the city as authorized by Section 8804.153(a).

(b) Requires the city, in place of the district's study, to perform a study of the groundwater availability in the district and requires the board may rely on the city's study if the city's study meets the criteria of the TWDB study required by Section 8804.161 and the TWDB study has not been completed or is otherwise unavailable.

Sec. 8804.163. MORATORIUM ON TRANSFER PERMITS. (a) Requires the district, except as provided by Subsection (d), to impose a moratorium on the issuance of permits for the transfer of groundwater during each period set aside to conduct and consider a groundwater study under Section 8804.161.

(b) Requires the district, except for the initial study, by rule to specify the length of the period set aside to conduct and consider groundwater studies under Section 8804.161.

(c) Prohibits the district from issuing a permit for the transfer of groundwater until certain conditions are met.

(d) Authorizes the board by emergency order to issue a permit during a moratorium on the affirmative vote of at least five directors.

Sec. 8804.164. SPRING FLOW AND GROUNDWATER AVAILABILITY ADVISORY PANEL. (a) Requires the board, not later than the 90th day after the date which the first permanent directors are elected, to appoint a spring flow and groundwater availability advisory panel (panel) to determine the minimum spring flow of each spring and the groundwater availability in the district and recommend to the board the maximum groundwater withdrawal rate that should be permitted by the district to achieve or maintain at least those minimum flows and that groundwater availability.

(b) Sets forth the composition of the panel.

(c) Requires the panel to develop and submit to the board recommendations for limitations on groundwater withdrawal rates consistent with maintaining minimum spring flows and groundwater availability. Requires the panel to take certain information into consideration in developing the recommendations.

(d) Requires the district to provide the panel with certain information and support.

(e) Requires the board to review the recommendations submitted by the advisory panel under Subsection (c) and to consider them in conjunction with other factors, including the present and future needs for water related to water supply planning in Val Verde County.

(f) Authorizes the board to accept or reject the advisory panel's recommendations, but prohibits the board from changing the determination of the panel regarding the limitation on groundwater withdrawal rates necessary to achieve or maintain at least the minimum spring flows and groundwater availability.

[Reserves Sections 8804.165-8804.200 for expansion.]

#### SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 8804.201. LIMITATION ON TAXES. (a) Prohibits the district from levying ad valorem taxes at a rate that exceeds five cents on each \$100 of assessed valuation of taxable property in the district.

(b) Prohibits the district from levying ad valorem taxes at a rate that exceeds 2-1/2 cents on each \$100 of assessed valuation of taxable property in the district for the first two tax years after the district's confirmation.

(c) Requires the district, not later than the seventh anniversary of the date on which the district is confirmed, to maintain in reserve at all times not less than six months and not more than two years of operating capital. Sets certain requirements of the district's reserve operating capital at any time exceeds the amount needed to operate the district for two years.

Sec. 8804.202. FEES. (a) Authorizes the board by rule to impose reasonable fees on certain wells.

(b) Authorizes the production fee to be based on certain information.

(c) Requires the board to base the initial production fee on certain criteria. Prohibits the initial production fee from exceeding certain limits.

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

(e) Sets forth certain guidelines for fees authorized by this section.

Sec. 8804.203. EXEMPTION FROM FEES. (a) Prohibits the district, except as provided by Subsection (b), from imposing a fee on a well drilled by a nonprofit rural water supply corporation, water district, or other political subdivision if the well's production is for use within the district.

(b) Authorizes the district by emergency order of the board to impose a reasonable and temporary production fee on a well described by Subsection (a) under certain conditions.

SECTION 5. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Requires certain steps to be taken pertaining to the appointment of temporary directors not later than the 45th day after the effective date of this Act.

(b) Sets forth certain representation requirements of the temporary directors.

(c) Requires, if there is a vacancy on the temporary board of directors of the district, the authority who appointed the temporary director whose position is vacant to fill the vacancy in a manner that meets the representational requirements of this section.

(d) Provides that temporary directors serve until the earliest of certain dates.

SECTION 6. LIMITED POWERS AND DUTIES OF TEMPORARY BOARD OF DIRECTORS. (a) Sets forth duties of the temporary board.

(b) Provides that the temporary board does not have rulemaking or permitting authority.

(c) Provides that any procedures, fees, or policies established by the temporary board are subject to ratification by the permanent directors elected under Section 10 of this Act.

SECTION 7. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. Requires, as soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors to convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. Requires, if no location can be agreed upon, the organizational meeting to be at the Val Verde County Courthouse.

SECTION 8. CONFIRMATION ELECTION. (a) Requires the temporary directors to hold an election to confirm the creation of the district.

(b) Provides that Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Requires, except as provided by this section, a confirmation election to be conducted as provided by Sections 36.017(b)-(i), Water Code, and the Election Code.

(d) Authorizes the district to hold a subsequent confirmation election if the previous confirmation election fails to pass. Prohibits a subsequent confirmation election from being held sooner than one year after the date of the previous confirmation election.

(e) Requires the confirmation election ballot to be printed to permit voting for or against the proposition. Sets forth specific language of proposition.

(f) Provides that if a majority of voters voting in a confirmation election under this section do not vote in favor of the ballot proposition, the proposition fails and the temporary board is dissolved. Authorizes the authorities that appointed the temporary board to agree to establish a new temporary board in the manner provided by Section 5 of this Act. Provides that a person who served on the original or subsequent temporary board is eligible to serve on another temporary board. Provides that each temporary board has the duties and powers provided by this section and Sections 6 and 7 of this Act.

(g) Provides that if the establishment of the district is not confirmed at an election held under this section before September 1, 2010, the district is dissolved. Sets forth certain guidelines for the dissolution of the district.

SECTION 9. INITIAL DIRECTORS. Provides that if creation of the district is confirmed at an election held under Section 7 of this Act, the temporary directors of the district become the initial directors of the district and serve on the board of directors until permanent directors are elected under Section 10 of this Act.

(b) Provides that the initial directors have the powers and duties of the temporary directors. Requires the initial directors to hold an election for permanent directors under Section 10 of this Act.

SECTION 10. ELECTION OF PERMANENT DIRECTORS. (a) Provides that the initial directors serve until the first regularly scheduled election of directors under Subsection (b) of this section.

(b) Requires, on the uniform election date prescribed by Section 41.001, Election Code, in November of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election to be held in the district for the election of seven directors. Requires the elected directors to draw lots to determine which three directors are required to serve terms lasting until the first regularly scheduled election under Section 8804.103, Special District Local Laws Code, as added by this Act, and which four are required to serve until the second regularly scheduled directors election.

SECTION 11. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice introduction, and passage of this Act are fulfilled and accomplished.

SECTION 12. STUDY COMPLETION. Requires that not later than the last day of the 18th month after the date the district is confirmed at an election held for that purpose, the Texas Water Development Board complete the initial study required by Section 8804.161, Special District Local Laws Code, as added by this Act, and deliver the findings of the study to the board.

SECTION 13. EXPIRATION. (a) Provides that if the creation of the district is not confirmed at a confirmation election held under Section 8 of this Act before September 1, 2010, this Act expires on that date.

(b) Provides that the expiration of this Act does not affect the liability of the district to pay any debt incurred or the transfer of any assets remaining to Val Verde County as required by Section 8(g) of this Act.

SECTION 14. EFFECTIVE DATE. Effective date: upon passage or September 1, 2005.