

## **BILL ANALYSIS**

Senate Research Center

S.B. 1544  
By: Averitt  
Natural Resources  
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As Filed

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

Ellis, Johnson, Hill, and Somervell Counties have each been designated as part of a priority groundwater management area (PGMA) by the Texas Commission on Environmental Quality (TCEQ). The PGMA designation means that the counties are experiencing or are expected to experience critical groundwater declines over the next 25 years. Unless these counties attain creation of a groundwater conservation district through the legislative process during the 81st Texas Legislature, TCEQ itself will create a district whose exact boundaries, ability to levy taxes, and governing board structure is presently not known. In light of that uncertainty and the desire to create a regional fee-based district rather than wait for TCEQ to take action, the commissioners courts of Ellis, Johnson, Hill, Somervell, and Navarro Counties came together to negotiate consensus groundwater conservation district legislation that all five counties could support. S.B. 1544 represents that consensus legislation, and will create a four-county, fee-based groundwater conservation district in Ellis, Johnson, Hill, and Somervell counties that allows for the inclusion of Navarro County in the future if it is ever designated by TCEQ as part of a PGMA.

As proposed, S.B. 1544 creates the fee-based Prairielands Groundwater Conservation District to manage and protect the groundwater resources within Ellis, Johnson, Hill, and Somervell Counties, with possible inclusion of Navarro County at a later date if Navarro County is designated as part of a PGMA by TCEQ.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Prairielands Groundwater Conservation District in SECTION 1 (Sections 8840.104, 8840.105, and 8840.152, Special District Local Laws Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle H, Title 6, Special District Local Laws Code, by adding Chapter 8840, as follows:

#### CHAPTER 8840. PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8840.001. DEFINITIONS. Defines "board," "director," "district," and "person."

Sec. 8840.002. NATURE OF DISTRICT; FINDINGS. (a) Provides that the Prairielands Groundwater Conservation District (district) is a groundwater conservation district initially composed of Ellis, Hill, Johnson, and Somervell Counties created under and essential to accomplish the purposes of Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

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

(c) Provides that all of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be

accomplished by the district under powers conferred by this chapter and by Chapter 36 (Groundwater Conservation Districts), Water Code.

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

Sec. 8840.003. DISTRICT TERRITORY. Requires that the initial territory of the district encompass all of the territory within Ellis, Hill, Johnson, and Somervell Counties.

Sec. 8840.004. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Provides that Chapter 36, Water Code, applies to the district, except as otherwise provided by this chapter.

Sec. 8840.005. CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed to achieve the purposes of the district and the purpose of Chapter 36, Water Code. Requires that a power granted by Chapter 36, Water Code, or this chapter be broadly interpreted to achieve that intent and those purposes.

[Reserves Sections 8840.006-8840.020 for expansion.]

#### SUBCHAPTER B. INITIAL ORGANIZATION

Sec. 8840.021. APPOINTMENT OF INITIAL DIRECTORS. (a) Provides that the district is governed by a board of directors (board) of eight initial directors appointed as provided by Section 8840.051(a).

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

(c) Requires the appointing county commissioners court for the vacant position, except as provided under Subsection (b) for failure to appoint an initial director, if a vacancy occurs on the board in a position for which an initial director has previously been appointed, to appoint a person to fill the vacancy in a manner that meets the representational requirements of Section 8840.051.

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

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

Sec. 8840.022. ORGANIZATIONAL MEETING OF INITIAL DIRECTORS. Requires a majority of the initial directors, as soon as practicable after all the initial directors have qualified under Section 36.055, to convene the organizational meeting of the district at a location in the district agreeable to a majority of the directors. Requires that the organizational meeting be held at a suitable location on the Hill College campus in Cleburne, Johnson County, Texas, if an agreement on location cannot be reached.

Sec. 8840.023. INITIAL TERMS. (a) Requires the two directors appointed from each county to draw lots to determine which director serves an initial term expiring August 31, 2011, and which director serves an initial term expiring August 31, 2013.

(b) Requires each director, following the expiration of the initial terms, to be appointed and to serve in accordance with the provisions of Subchapter C.

[Reserves Sections 8840.024-8840.050 for expansion.]

## SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 8840.051. GOVERNING BODY; TERMS. (a) Provides that the district, except as otherwise provided by Subchapter D, is governed by a board of eight directors appointed as follows: two directors appointed by the Ellis County Commissioners Court, two directors appointed by the Hill County Commissioners Court, two directors appointed by the Johnson County Commissioners Court, and two directors appointed by the Somervell County Commissioners Court.

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

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

Sec. 8840.052. DIRECTOR ELIGIBILITY; QUALIFICATION. (a) Requires a person to be a registered voter in the appointing county to be eligible to serve as a director.

(b) Requires each director to qualify to serve in the manner provided by Section 36.055, Water Code.

Sec. 8840.053. VACANCIES. Requires the appointing county commissioners court for the vacant position, if a vacancy occurs on the board, to appoint a person to fill the vacancy. Provides that Section 36.051(c) (relating to vacancies in the office of the director), Water Code, does not apply to the district.

Sec. 8840.054. COMPENSATION; REIMBURSEMENT. (a) Prohibits a director, notwithstanding Sections 36.060(a) (relating to directors fees) and (d) (relating to Subsection 36.052(a) notwithstanding, Subsection (a) prevailing over any other law in conflict with or inconsistent with that subsection), Water Code, from receiving compensation for performing the duties of director.

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

[Reserves Sections 8840.055-8840.070 for expansion.]

## SUBCHAPTER D. DISTRICT EXPANSION

Sec. 8840.071. EXPANSION OF DISTRICT BOUNDARIES. (a) Requires the district territory described in Section 8840.003, after the effective date of the Act enacting this chapter, to be expanded to include all of the territory within Navarro County, and requires the governing board described in Section 8840.051(a) to be expanded to include two directors appointed by the Navarro County Commissioners Court, if under Chapter 35 (Groundwater Studies), Water Code, the Texas Commission on Environmental Quality (TCEQ) designates all or any portion of the territory within Navarro County as a priority groundwater management area and following the designation described by Subdivision (1), the commissioner court of Navarro County adopts certain resolutions.

(b) Requires persons appointed under this section to qualify to serve in the manner provided for in Section 36.055, Water Code.

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

(d) Requires directors appointed under this section to otherwise serve in accordance with the provisions of Subchapter C.

[Reserves Sections 8840.072-8840.100 for expansion.]

#### SUBCHAPTER E. POWERS AND DUTIES

Sec. 8840.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Provides that the district, except as provided by this chapter, has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, and Section 59, Article XVI, Texas Constitution, applicable to groundwater conservation districts.

Sec. 8840.102. CONTRACTS. Authorizes the district to enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8840.103. APPLICABILITY OF DISTRICT REGULATIONS. Provides that groundwater regulation under this chapter applies to all persons except as exempted from permitting under Section 36.117 (Exemptions; Exception; Limitations), Water Code, or this chapter.

Sec. 8840.104. WELL SPACING RULES; EXEMPTIONS. (a) Requires the district, except as provided by Subsection (b), to exempt from the well spacing requirements adopted by the district any well that is completed on or before the effective date of those requirements.

(b) Authorizes the district to provide by rule that a well is authorized to lose its exemption under this section if the well is modified in a manner that substantially increases the capacity of the well after the effective date of the well spacing requirements adopted by the district.

(c) Authorizes the district, except as provided by this section and notwithstanding Section 8840.103, to require any well or class of wells exempt from permitting under Chapter 36, Water Code, to comply with the well spacing requirements adopted by the district. Requires the district to apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

Sec. 8840.105. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. Authorizes the district to adopt rules that require the owner or operator of a well or class of wells exempt from permitting under Section 36.117, Water Code, to register the well with the district and, except for a well exempt from permitting under Subsection (b)(1) (relating to prohibiting a district to require any permit issued by the district for a well used solely for domestic use or for providing water for livestock or poultry) of that section, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8840.106. CERTAIN CONSIDERATIONS FOR PRODUCTION PERMITS. Requires the district, in addition to matters the district is required to consider under Section 36.113 (Permits for Wells; Permit Amendments), Water Code, before granting or denying a permit or permit amendment for a new well, to also consider whether the proposed use of groundwater includes supplementing water levels in, or filling, a pond lake, reservoir, or other surface impoundment to enhance the aesthetic nature of landscape. Authorizes evaporative and other losses of groundwater associated with these uses, for purposes of this chapter, to be designated by the district as waste if the board determines that the losses will have an unreasonably adverse impact on the conservation of groundwater resources within the district or the ability of the district to achieve the goals and objectives of its management plan.

Sec. 8840.107. ENFORCEMENT. (a) Authorizes the district to enforce this chapter against any person in the manner provided by Chapter 36, Water Code. Authorizes the district, in lieu of a remedy available to the district under Section 36.102 (Enforcement of Rules), Water Code, or in addition to those remedies, to impose a fee in addition to a fee

assessed under Section 8840.152 on a person producing groundwater in violation of a rule of the district, including the failure or refusal to comply with any order or rule of the district to reduce or cease groundwater usage. Provides that the purpose of a fee authorized under this subsection is to serve as a disincentive to producing groundwater except as authorized by the district.

(b) Prohibits a fee imposed under Subsection (a) from exceeding an amount equal to 10 times the amount of a fee assessed under Section 8840.152.

[Reserves Sections 8840.108-8840.150 for expansion.]

#### SUBCHAPTER D. [sic] GENERAL FINANCIAL PROVISIONS

Sec. 8840.151. TAXES PROHIBITED. Prohibits the district from imposing a tax. Provides that Sections 36.020(a) (relating to authorizing the temporary directors to include a proposition for the issuance of bonds or notes) and 36.201 (Levy of Taxes), 36.202 (Board Authority), 36.203 (Tax Rate), and 36.204 (Tax Appraisal, Assessment and Collection), Water Code, do not apply to the district.

Sec. 8840.152. DISTRICT REVENUES. (a) Authorizes the district by rule, resolution, or order to establish, amend, pledge, encumber, expend the proceeds from, and assess to any person production fees based on the amount of groundwater authorized by permit to be withdrawn from a well, or on the amount of water actually withdrawn, to enable the district to fulfill its purposes and regulatory functions as provided by this chapter. Authorizes the district to use revenues generated by fees it assesses for any lawful purpose.

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

(c) Authorizes the district, notwithstanding any provision of general law or this chapter to the contrary, to assess a production fee under this section for groundwater produced from a well or class of wells exempt from permitting under Section 36.117, Water Code, except for a well exempt from permitting under Section 36.177(b)(1) (relating to prohibiting a district from requiring any permit issued by the district for a well used solely for domestic use or for providing water on certain land), Water Code. Requires that a production fee assessed by the district under this subsection be based on the amount of groundwater actually withdrawn from the well and prohibits it from exceeding the amount established by the district for permitted uses under Subsection (b)(2) (relating to a certain fee not exceeding 30 cents).

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

(e) Authorizes the district by rule to establish a temporary or permanent discounted fee rate for persons who prepay production fees to the district under this section on or before the dates established by district rule.

SECTION 2. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313 (Notice for Local and Special Laws), Government Code.

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

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 3. Effective date: September 1, 2009.