

BILL ANALYSIS

Senate Research Center
81R23592 SLB-F

S.B. 2529
By: Estes
Natural Resources
4/20/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Environmental Quality (TCEQ) recently designated Fannin County and Grayson County as part of the North-Central Texas Trinity and Woodbine Aquifers Priority Groundwater Management Area (PGMA) pursuant to Chapter 35 (Groundwater Studies), Water Code. This PGMA designation indicates that the counties are currently experiencing or are expected to experience critical groundwater declines within the next 25 years and requires TCEQ to create a groundwater conservation district to include Fannin and Grayson counties unless the counties first create a district through the legislative process during the 81st Legislature. In response to the PGMA designation, Fannin and Grayson counties formed a steering committee comprised of local officials and representatives of water suppliers from both counties to work together to create a groundwater conservation district through the legislative process rather than waiting for TCEQ to create a potentially tax-based district whose territorial boundaries, administration, and management structure are currently unascertainable. This bill will create a two-county, fee-based groundwater conservation district to include all of the territory within these two counties.

As proposed, S.B. 2529 creates the fee-based Red River Groundwater Conservation District to conserve and protect the groundwater resources of Fannin and Grayson counties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 6, Special District Local Laws Code, by adding Chapter 8859, as follows:

CHAPTER 8859. RED RIVER GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8859.001. DEFINITIONS. Defines "board," "director," "district," "water services district," and "water supply corporation."

Sec. 8859.002. NATURE OF DISTRICT; FINDINGS. (a) Provides that the Red River Groundwater Conservation District (district) is a groundwater conservation district in Grayson and Fannin Counties created under and essential to accomplish the purposes of Section 59 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), 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. 8859.003. INITIAL DISTRICT TERRITORY. Provides that the initial boundaries of the district are coextensive with the boundaries of Grayson and Fannin Counties.

Sec. 8859.004. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. (a) Provides that except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

(b) Provides that Subchapter B (Creation of District), Chapter 36, Water Code, does not apply to the district.

Sec. 8859.005. CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed to achieve the legislative intent and purposes of Chapter 36, Water Code, and a power granted by Chapter 36, Water Code, or this chapter be broadly interpreted to achieve that intent and those purposes.

[Reserves Sections 8859.006-8859.020 for expansion.]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8859.021. INITIAL DIRECTORS; APPOINTMENT. (a) Requires the persons designated by Sections 8859.053(a)(1), (2), (3), and (4) to appoint directors, not later than the 30th day after the effective date of the Act creating this chapter, to appoint initial directors as prescribed by Section 8859.053 and in writing to submit the appointed directors' names to the county judge of Fannin County. Requires the persons responsible for making nominations for the appointments under Sections 8859.053(a)(2) and (3) to submit initial director nominations to the commissioners court of Fannin County not later than the 20th day after the effective date of the Act enacting this chapter.

(b) Requires the county judge of Fannin County, not later than the 30th day after the effective date of the Act creating this chapter, to set the date, time, and location for a meeting of the representatives designated under Subsection (d) for the appointment of initial directors by the entities that Sections 8859.053(a)(5) and (6) authorize to appoint directors.

(c) Requires the county judge of Fannin County to give notice of the meeting required by Subsection (b) not later than the 20th day before the date of the meeting by providing a notice to the county clerk of Fannin County for public posting and mailing a notice to the commissioners court of Grayson County.

(d) Requires the governing body of each entity described by Sections 8859.053(a)(5) and (6) to designate a representative to attend the meeting described by Subsection (b) and to cast the vote on behalf of the entity but provides that failure to do so does not invalidate the appointment of the initial directors.

(e) Requires the county judge of Fannin County to preside at the meeting described in Subsection (b) and authorizes the county judge to require representatives described by Subsection (d) to provide evidence demonstrating representation of an appropriate entity and qualification under Section 8859.053(f). Requires the county judge of Fannin County in writing to certify to the board and to the executive director of the Texas Commission on Environmental Quality (executive director) the results of the meeting described in Subsection (b), including the identity of each representative described by Subsection (d) who attended the meeting and the names and terms of each initial director appointed.

(f) Requires the executive director, if the county judge of Fannin County does not perform any duty established by this section before the 90th day after the effective date of the Act creating this chapter, to perform that duty as soon as practicable after that date.

Sec. 8859.022. INITIAL DIRECTORS; TERMS OF OFFICE. (a) Sets forth certain initial directors required to serve from the date of appointment until August 31, 2011.

(b) Sets forth certain initial directors required to serve from the date of appointment until August 31, 2013.

(c) Requires the governing body of the municipality that appoints initial directors under Section 8859.053(a)(4) to indicate in the submission for each appointment the length of the term for the appointment as described by Subsection (b).

Sec. 8859.023. INITIAL DIRECTORS; QUALIFICATIONS. (a) Provides that to be eligible to serve as an initial director a person appointed under Section 8859.053(a)(1), (2), or (3) is required to be a registered voter of Fannin County and a person appointed under Section 8859.053(a)(4), (5), or (6) a registered voter of Grayson County.

(b) 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. 8859.024. ORGANIZATIONAL MEETING OF INITIAL DIRECTORS. (a) Requires a majority of the initial directors, as soon as practicable after all the initial directors have qualified under Section 36.055, Water Code, to convene the organizational meeting of the district at the Grayson County courthouse or at another location in the district agreeable to a majority of the initial directors.

(b) Requires the initial directors to elect officers of the initial board in accordance with Section 36.054(b) (relating to the requirement that the board meet and elect officers), Water Code, at its organizational meeting.

Sec. 8859.025. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires December 31, 2013.

[Reserves Sections 8859.026-8859.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8859.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of seven directors appointed as provided by this section.

(b) Provides that directors serve staggered four-year terms, with the terms of three or four directors from each appointing county expiring on August 31 of each odd-numbered year.

(c) Provides that a director serves until the director's successor has qualified to serve.

Sec. 8859.052. DIRECTOR ELIGIBILITY; QUALIFICATION. (a) Provides that to be eligible to serve as a director a person appointed under Section 8859.053(a)(1), (2), or (3) is required to be a registered voter of Fannin County and a person appointed under Section 8859.053(a)(4), (5), or (6) is required to be a registered voter of Grayson County.

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

(c) Authorizes a person who qualifies as a director to participate in all votes relating to the business of the district, regardless of any common law doctrine or statutory prohibition related to conflicts of interest or incompatibility.

(d) Provides that Section 36.058, Water Code, does not apply to a director.

Sec. 8859.053. APPOINTMENT OF DIRECTORS. (a) Sets forth the composition of the board.

(b) Requires directors to be appointed not later than the second Monday in August of each odd-numbered year.

(c) Requires the district, not later than the 60th day before the second Monday in August of each odd-numbered year, to mail written notice to each entity authorized to make an appointment under Subsection (a).

(d) Requires the board by rule to adopt a procedure for the written submission of appointments to the district.

(e) Requires an entity that Subsection (a)(2) or (3) authorizes to nominate persons for director to submit a list of nominees not later than the 30th day before the date the appointment is to be made under this section. Authorizes the commissioners court of Fannin County, if an entity designated by Subsection (a)(2) or (3) does not submit the list before that date, to appoint a director to the position for which the list was not received at the discretion of the commissioners court.

(f) Prohibits a water services district or water supply corporation in Grayson and Fannin Counties from participating in the appointment of a director unless that district or corporation used groundwater produced from wells located within the district to provide retail water service in the district during the calendar year of the appointment or the calendar year preceding the appointment. Authorizes the board to require evidence of eligibility to participate.

Sec. 8859.054. VACANCIES. Requires the entity that appointed the director who vacated the office, if a vacancy occurs on the board, to appoint a person to fill the vacancy for the unexpired term in the manner provided for the vacant position by Section 8859.053.

Sec. 8859.055. COMPENSATION; REIMBURSEMENT. (a) Prohibits a director, notwithstanding Sections 36.060(a) and (d), 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.

(c) Provides that a position on the board is not a civil office of emolument for any purpose, including a purpose described in Section 40, Article XVI, Texas Constitution.

Sec. 8859.056. QUORUM; CONCURRENCE FOR TRANSACTING BUSINESS. (a) Provides that a majority of the board membership constitutes a quorum for any meeting and a concurrence of a majority of the board shall be sufficient to transact district business, except as provided by Subsection (b).

(b) Provides that a concurrence of not fewer than six directors is required for transacting certain district business:

(c) Provides that a concurrence of a majority of the board is sufficient to grant or deny a permit or permit amendment submitted by a retail public utility that provides retail water service in the district and intends to produce water from a well located within the district and inside the boundaries or a certificated service

area of a retail public utility; and transport the water outside the district, so long as the water is used within the same certificated service area or boundary of the retail public utility.

Sec. 8859.057. DECENNIAL REVIEW OF DISTRICT REPRESENTATION. (a) Requires the board, not later than January 1, 2019, and every 10 years following that date, to complete a review of the adequacy of representation of water users on the board based on groundwater production and use within the district.

(b) Requires the board, not later than the 20th day following the date the review is complete, to submit the review described in Subsection (a) and any recommendation the board may have relating to the reapportionment of directors or the representational structure of the board to each member of the house of representatives and each member of the senate whose state legislative district includes territory in the district.

[Reserves Sections 8859.058-8859.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8859.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Provides that except as provided by this chapter, the district has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8859.102. CONTRACTS. Authorizes the district to enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8859.103. APPLICABILITY OF DISTRICT RULES REGULATING GROUNDWATER. Provides that district rules regulating groundwater adopted under this chapter apply to all persons except as exempted under Section 36.117 (Exemptions; Exception; Limitations), Water Code, or this chapter.

Sec. 8859.104. 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 by rule to provide that a well may 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 8859.103, 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. 8859.105. 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) of that section, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8859.106. ENFORCEMENT. (a) Authorizes the district to enforce this chapter 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 8859.152 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 8859.152.

[Reserves Sections 8859.107-8859.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8859.151. TAXES PROHIBITED. Prohibits the district from imposing a tax. Provides that Sections 36.201-36.204, Water Code, do not apply to the district.

Sec. 8859.152. 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 Subsection (b)(1) of that section. 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 the fee from exceeding the amount established by the district for permitted uses under Subsection (b)(2) of this section.

(d) Authorizes the district by rule, resolution, or order before the adoption of its management plan, notwithstanding Section 36.1071(f) (relating to the adoption of 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 36.117(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.

(f) Prohibits the district from assessing a fee for transporting water that is produced from a well located inside the district and inside a certificated service area of a retail public utility and transported outside of the district, if the water is used in the same certificated service area of the retail public utility.

SECTION 2. Provides that the legislature finds that for the purpose of Section 8859.053(a)(4), Special District Local Laws Code, as added by this Act, the City of Sherman is the municipality in Grayson County with the largest annual production of groundwater by volume for the four years preceding the effective date of this Act.

SECTION 3. 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 4. Effective date: upon passage or September 1, 2009.