

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1440
By: Campbell; Zaffirini
Agriculture, Water & Rural Affairs
5/5/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The bill would expand the Barton Springs-Edwards Aquifer Groundwater Conservation District to cover areas that are currently unprotected and unmanaged in Hays County, known as “white zones.”

These white zones in Hays County have recently been the target of some who would like to pump groundwater completely unfettered and with no regard for neighboring wells or the long term health of our Central Texas Aquifers. By expanding the Barton Springs-Edwards Aquifer Groundwater Conservation District we hope to prevent similar problems from happening in the future.

C.S.S.B. 1440 provides a transition period for owners of existing wells in the territory being added to the district or persons who have entered into contracts before the effective date of the Act to drill or operate a well. It further clarifies the jurisdiction and territory of the district, places a cap on proposed fees, and makes changes to the board of directors.

C.S.S.B. 1440 amends current law relating to the territory, jurisdiction, board composition, elections, and powers of the Barton Springs-Edwards Aquifer Conservation District, including its authority to regulate certain wells for the production of groundwater, and imposes a cap on certain fees.

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 Section 8802.003, Special District Local Laws Code, as follows:

Sec. 8802.003. DISTRICT TERRITORY. (a) Creates this subsection from existing text. Provides that the Barton Springs-Edwards Aquifer Conservation District (district) is composed of:

(1) the territory described by the Texas Water Commission’s August 15, 1986, order, as that territory may have been modified:

(A) by actions of the board of directors of the district (board) through resolutions dated August 8, 1987, August 13, 1987, January 24, 2002, May 10, 2002, and June 23, 2011; or

(B) under Subchapter J (Adding Territory to District), Chapter 36 (Groundwater Conservation Districts), Water Code, or other law;

(2) the shared territory described by Section 8802.0035(a); and

(3) the territory described as set forth.

(b) Requires that any boundary reference under Subsection (a)(3) to a highway, street, road, avenue, boulevard, or lane mean the centerline of the boundary.

Makes nonsubstantive changes.

SECTION 2. Amends Subchapter A, Chapter 8802, Special District Local Laws Code, by adding Section 8802.0035, as follows:

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

(1) inside the boundaries of the Edwards Aquifer Authority;

(2) in Hays County; and

(3) not within the boundaries existing as of January 1, 1989, of any other district with the authority to regulate groundwater under Chapter 36, Water Code, or prior laws.

(b) Provides that 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) Provides that 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) Provides that the district has jurisdiction over groundwater and any well that is drilled to produce water from the Edwards Aquifer or any other aquifer in the territory described by Section 8802.003(a)(1) or (3). Requires the district, for territory annexed in accordance with board resolutions dated January 24, 2002, to share jurisdiction with the Plum Creek Conservation District, which also includes that territory. Requires that jurisdiction be shared under the terms of an agreement authorized by Chapter 791 (Interlocal Cooperation Contracts), Government Code, in a manner that ensures that the districts do not exercise their jurisdiction in the shared territory at the same time and for the same purpose.

(e) Provides that the district's jurisdiction over any well that is drilled to produce water in the territory described in Section 8802.003(a)(1), including a well that is used to recover water that has been injected as part of an aquifer storage and recovery project, applies to the territory described by Section 8802.003(a)(3) and all wells for which the district has jurisdiction in the shared territory described by this section.

SECTION 3. Amends Sections 8802.051 and 8802.052, Special District Local Laws Code, as follows:

Sec. 8802.051. DIRECTORS; TERMS. (a) Provides that the district is governed by a board of seven, rather than five, directors who serve staggered four-year terms.

(b) Requires three directors to be elected by voters residing in the territory composed of director districts four and five as adopted by the district on November 17, 2011, and the territory described by Section 8802.003(a)(3), rather than requires at least two directors to be elected by voters residing in the city of Austin.

(c) Requires four directors to be elected by voters residing outside the territory described by Subsection (b) and requires two of the four directors to reside in Hays County.

Sec. 8802.052. ELECTION DATE. Requires that an election be held to elect the appropriate number of directors on the uniform election date in November of each even-numbered year, rather than on the spring uniform election date of each even-numbered year.

SECTION 4. Amends Section 8802.053, Special District Locals Laws Code, by amending Subsections (a), (c), and (d) and adding Subsection (f), as follows:

(a) Provides that the district is divided into seven, rather than five, numbered, single-member districts for electing directors.

(c) Requires the board, when the board revises the single-member districts under this subsection, to place three of the districts entirely inside and four of the districts entirely outside the territory described by Section 8802.051(b). Deletes existing text requiring the board, when the board revises the single-member districts under this subsection, to place two of the districts entirely within the boundaries of the city of Austin, as those boundaries exist at that time, or within the boundaries of the city of Austin, as those boundaries exist at that time, but also including unincorporated areas or other municipalities that are surrounded wholly or partly by the boundaries of the city of Austin if the areas or municipalities are noncontiguous to the territory of any other single-member district.

(d) Requires the board, if the district is required to create single-member districts that do not comply with Sections 8802.051(b) and (c) to satisfy standards under federal law, to revise the single-member districts as the board considers appropriate under the federal law standards. Deletes existing text providing that changes in the boundaries of the city of Austin between revisions of the single-member districts under Subsection (c) do not affect the boundaries of the single-member districts.

(f) Requires directors elected to fill any vacant positions, at the first regularly scheduled election of directors after the board is expanded from five to seven directors, to cast lots to determine which of those directors shall serve a two-year term and which shall serve a four-year term. Requires that lots be determined so that not more than four directors' terms expire in any even-numbered year.

SECTION 5. Amends Section 8802.1045, Special Districts Local Laws Code, by adding Subsection (g), as follows:

(g) Prohibits the board, notwithstanding Subsection (b) (relating to an annual production fee for the amount of water permitted under a certain permit), before January 1, 2017, from charging an annual production fee higher than the rates set forth under Subsection (a) (prohibiting the board from charging an annual production fee of more than \$1 per acre-foot for water permitted for agriculture use or 17 cents per thousand gallons for water permitted for any other purpose) for a well located in the territory described by Section 8802.003(a)(3) or 8802.0035(a). Prohibits the district from increasing the annual production fee under this subsection by more than 10 cents per thousand gallons per year beginning January 1, 2018, for water permitted for nonagricultural purposes, until the annual production fee is equal to the maximum amount set forth in Subsection (b).

SECTION 6. Amends Section 8802.105, Special District Local Laws Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Defines "Consumer Price Index."

(a-1) Creates this subsection from existing Subsection (a). Authorizes the board, each year, to assess against the City of Austin a water use fee in an amount not to exceed the lesser of \$1 million as adjusted to reflect the percentage change during the preceding year in the Consumer Price Index or 60 percent of the total funding the district expects to receive for the next fiscal year from water use fees assessed against Austin and other

nonexempt users in that year as computed under Subsection (b), rather than subject to the computation under Subsection (b).

SECTION 7. Amends Subchapter C, Chapter 8802, Special District Local Laws Code, by adding Section 8802.111, as follows:

Sec. 8802.111. **AUTHORITY TO CONSIDER MITIGATION PLAN.** (a) Authorizes the district, if an applicant for a permit or permit amendment submits to the district with the permit application or permit amendment application a plan for mitigating any negative impacts to groundwater resources or to other wells that may arise from the production of groundwater by the well or wells for which the permit or permit amendment is sought, to:

(1) consider the plan for mitigation in deciding whether to grant or deny the application; and

(2) include special terms and conditions requiring mitigation in a permit or permit amendment that is approved by the board for the applicant.

(b) Authorizes the district and an applicant, regardless of whether an applicant for a permit or permit amendment submits to the district a plan for mitigation, to negotiate a plan to mitigate any negative impacts to groundwater resources or to other wells that may arise from the production of groundwater by the well or wells for which the permit or permit amendment is sought, and authorizes the district to include the negotiated mitigation plan as a special term or condition of the permit or permit amendment. Prohibits the district from requiring an applicant to agree to a mitigation plan that was not submitted by the applicant.

(c) Authorizes a mitigation plan described by Subsection (a) or (b) to include payment of a fee by the applicant for a permit or permit amendment to the district in an amount sufficient to mitigate the effects of reduced artesian pressure or the drawdown of the water table on other wells in the district. Requires the district, if the mitigation plan is approved by the district as a special term or condition of the permit as submitted by, or as negotiated with, the applicant, to establish written procedures for the use of revenue derived from fees paid by the applicant as part of the mitigation plan and to include the written procedures as a special term or condition of the permit or permit amendment. Authorizes the written procedures to include use of the mitigation plan fee revenue to deepen water wells or to lower pumps, to drill and equip new wells, or to take other measures to mitigate impacts on water wells that are negatively impacted by the production of groundwater by the well or wells for which the permit or permit amendment is approved by the district.

(d) Provides that nothing in this section shall be construed to limit the authority of the district to include as a special term or condition of a permit a requirement that the permit holder reduce or cease groundwater production during certain hydrological conditions.

SECTION 8. (a) Defines “district” and “maximum production capacity.”

(b) Requires 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 added territory described by Sections 8802.003(a)(3) or 8802.0035(a), Special District Local Laws Code, as added by this Act, that is subject to the jurisdiction of the district, as clarified by this Act, to 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. Authorizes the person to file the permit application for an amount of groundwater production not to exceed the maximum production capacity of the well.

(c) Requires the district to issue a temporary permit to a person who files an application under Subsection (b) of this section without a hearing on the application not later than the 30th day after the date of receipt of the application. Requires the district to issue the temporary permit for the groundwater production amount set forth in the application. Requires that the temporary permit issued under this subsection 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 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.

(d) Provides that the temporary permit issued under Subsection (c) of this section does not confer any rights or privileges to the permit holder other than those set forth in this section. Requires the district, after issuing the temporary permit, to process the permit application for notice, hearing, and consideration for issuance of a regular permit in the same manner that the district processes other permit applications not described by this section. Authorizes the district, after notice and hearing, to issue an order reducing the amount of groundwater that may be produced under a temporary permit under this section only if the district determines that the amount of groundwater being produced under the temporary permit is causing a failure to achieve applicable adopted desired future conditions for the aquifer. Provides that the district bears the burden of proof in demonstrating that the amount of groundwater being produced under a temporary permit is causing a failure to achieve applicable adopted desired future conditions for the aquifer. Provides that 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.

(e) Authorizes the holder of a temporary permit subject to a district order under Subsection (d) of this section to reduce the amount of groundwater production from the permitted well to contest the reduction by requesting a contested case hearing to be conducted by the State Office of Administrative Hearings (SOAH) in the manner provided by Sections 36.416 (Hearings Conducted by State Office of Administrative Hearings; Rules), 36.4165 (Final Decision; Contested Case Hearings), and 36.418 (Rules; Contested Case Hearings; Applicability of Administrative Procedure Act), Water Code. Requires the district to contract with SOAH to conduct the hearing as provided by those sections of the Water Code. Requires SOAH, to the extent possible, to expedite a hearing under this subsection.

SECTION 9. (a) Provides that the legislature validates and confirms all acts and proceedings of the board that were taken before the effective date of this Act.

(b) Provides that Subsection (a) of this section does not apply to any matter that on the effective date of this Act is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court or has been held invalid by a final judgment of a court.

SECTION 10. (a) Requires the board, not later than three months after the effective date of this Act, to appoint one temporary director to the board to represent the territory described by Section 8802.003(a)(3), Special District Local Laws Code, as added by this Act, and one temporary

director to represent the territory described by Section 8802.0035(a), Special District Local Laws Code, as added by this Act.

(b) Requires the temporary directors appointed under Subsection (a) of this section to serve at large until the next general election of directors of the district under Section 8802.052, Special District Local Laws Code, as amended by this Act.

(c) Requires the board to adjust the board member terms of office to conform to the new election date under Section 8802.052, Special District Local Laws Code, as amended by this Act.

SECTION 11. Provides that all requirements of the constitution and the 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. Effective date: upon passage or September 1, 2015