Chapter 1396

S.B. No. 2456

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AN ACT
relating to the creation of the Brush Country Groundwater
Conservation District; providing authority to impose a tax and
issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Subtitle H, Title 6, Special District Local Laws
Code, is amended by adding Chapter 8852 to read as follows:
CHAPTER 8852. BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS
Sec. 8852.001. DEFINITIONS. In this chapter:
(1) "Board" means the board of directors of the
district.
(2) "Director" means a member of the board.
(3) "District" means the Brush Country Groundwater
Conservation District.

Sec. 8852.002. NATURE OF DISTRICT. The district is a
groundwater conservation district created under and essential to
accomplish the purposes of Section 59, Article XVI, Texas
Constitution.

Sec. 8852.003. CONFIRMATION ELECTION REQUIRED. If the
creation of the district is not confirmed in at least one of the
territories described by Section 8852.023 at a confirmation
election held before September 1, 2011:
(1) the district is dissolved on September 1, 2011,
except that:

  (A) any debts incurred shall be paid;

  (B) any assets that remain after the payment of
debts shall be transferred in equal amounts to Jim Hogg, Brooks,
Hidalgo, and Jim Wells Counties; and

  (C) the organization of the district shall be
maintained until all debts are paid and remaining assets are
transferred; and

  (2) this chapter expires September 1, 2013.

Sec. 8852.004. INITIAL DISTRICT TERRITORY. (a) The
district is initially composed of the territory described by
Section 2 of the Act creating this chapter.

  (b) The boundaries described in Section 2 of the Act
creating this chapter form a closure. A mistake made in describing
the district's boundaries in the legislative process does not
affect the district's:

  (1) organization, existence, or validity;

  (2) right to issue any type of bond for the purposes
for which the district is created or to pay the principal of and
interest on a bond;

  (3) right to impose an assessment or tax; or

  (4) legality or operation.

Sec. 8852.005. CONSTRUCTION OF CHAPTER. This chapter shall
be liberally construed to achieve the legislative intent and
purposes of Chapter 36, Water Code. A power granted by Chapter 36,
Water Code, or this chapter shall be broadly interpreted to achieve
that intent and those purposes.
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[Sections 8852.006-8852.020 reserved for expansion]

SUBCHAPTER B. DISTRICT CREATION

Sec. 8852.021. TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1) David Grall;
(2) Mauro Garcia;
(3) Robert Scott;
(4) A. C. Jones IV;
(5) Mario Martinez;
(6) Israel Hinojosa;
(7) a person appointed by the commissioners courts of Brooks and Jim Hogg Counties within 60 days of the effective date of this Act;
(8) Jesse Howell;
(9) Pearson Knolle; and
(10) Lawrence Cornelius.

(b) If there is a vacancy on the temporary board, the remaining temporary directors shall select a qualified person to fill the vacancy.

(c) Unless the temporary director's term expires under Subsection (d), a temporary director serves until the earlier of:

(1) the date the temporary director becomes an initial permanent director under Section 8852.024; or

(2) the date this chapter expires under Section 8852.003.

(d) The following temporary directors' terms expire on the date of the canvass of the election to confirm the creation of the
district:

(1) David Grall and Mauro Garcia, if the voters in the territory described by Section 8852.023(a)(3) vote not to confirm the creation of the district;

(2) Robert Scott, if the voters in the territory described by Section 8852.023(a)(1) vote not to confirm the creation of the district;

(3) A. C. Jones IV and Mario Martinez, if the voters in the territory described by Section 8852.023(a)(5) vote not to confirm the creation of the district;

(4) Israel Hinojosa, if the voters in the territory described by Section 8852.023(a)(4) vote not to confirm the creation of the district;

(5) a person appointed by the commissioners courts of Brooks and Jim Hogg Counties, if the creation of the district is confirmed by voters of none of the territories described by Section 8852.023;

(6) Jesse Howell and Pearson Knolle, if the voters in the territory described by Section 8852.023(a)(6) vote not to confirm the creation of the district; and

(7) Lawrence Cornelius, if the voters in the territory described by Section 8852.023(a)(2) vote not to confirm the creation of the district.

Sec. 8852.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the
organizational meeting of the district at a location within the
district agreeable to a majority of the directors. If an agreement
on location cannot be reached, the organizational meeting shall be
at the Brooks County Courthouse.

Sec. 8852.023. CONFIRMATION ELECTION. (a) The temporary
board shall hold an election in each of the following territories in
the district to confirm the creation of the district and the
imposition of a maintenance tax:

(1) the territory in the corporate limits of the city
of Falfurrias as of January 1, 2009;

(2) the territory in the corporate limits of the city
of Alice as of January 1, 2009;

(3) the territory:

(A) in Brooks County that, as of January 1, 2009,
is;

(i) outside the corporate limits of the
city of Falfurrias; and

(ii) not in the Kenedy County Groundwater
Conservation District; and

(B) in Hidalgo County that is:

(i) described by a metes and bounds
description in Section 2 of the Act creating this chapter; and

(ii) not in the Kenedy County Groundwater
Conservation District as of January 1, 2009;

(4) the territory in the certificated retail water
service area of the Jim Hogg County Water Control and Improvement
District No. 2 as of January 1, 2009;
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(5) the territory in Jim Hogg County that is outside the certificated retail water service area of the Jim Hogg County Water Control and Improvement District No. 2 as of January 1, 2009; and

(6) the territory in Jim Wells County that, as of January 1, 2009, is:

(A) outside the corporate limits of the city of Alice; and

(B) not in the Kenedy County Groundwater Conservation District.

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

(c) Except as provided by this section, an election under this section must be conducted as provided by Sections 36.017(b), (c), and (e), Water Code, and the Election Code.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the Brush Country Groundwater Conservation District and the levy of an ad valorem tax in the district at a rate not to exceed three cents for each $100 of assessed valuation."

(e) If the majority of voters in a territory described by Subsection (a) voting at an election held under this section vote to confirm the creation of the district, that territory is included in the district. If the majority of voters in a territory described by Subsection (a) voting at an election held under this section vote not to confirm the creation of the district, that territory is excluded from the district.
(f) If the majority of voters in any of the territories described by Subsection (a) voting at an election held under this section vote not to confirm the creation of the district, the temporary board or any successor board may hold a subsequent confirmation election in that territory.

(g) The district may not impose a maintenance tax unless the tax is confirmed under this section.

Sec. 8852.024. INITIAL PERMANENT DIRECTORS. (a) If the creation of the district is confirmed at an election held under Section 8852.023 in one or more territories in the district, each temporary director who represents a territory that is included in the district becomes an initial permanent director of the district.

(b) The initial permanent directors shall draw lots to determine which directors serve a term expiring on June 1 of the first even-numbered year after the confirmation election and which directors serve a term expiring on June 1 of the next even-numbered year.

Sec. 8852.025. GIFTS AND GRANTS. The temporary board may solicit and accept gifts and grants, including services, on the district's behalf from any public or private source to provide revenue for the district before a confirmation election is held under Section 8852.023.

Sec. 8852.026. RIGHT OF CERTAIN LANDOWNERS TO WITHDRAW FROM DISTRICT. A person who owns a tract of land in Brooks or Hidalgo County that adjoins the boundaries of the Kenedy County Groundwater Conservation District as of the effective date of the Act creating this chapter may petition the Kenedy County Groundwater
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Conservation District for annexation into that district.

Notwithstanding any other law, the Kenedy County Groundwater Conservation District may annex territory described by a petition under this section. Territory annexed by the Kenedy County Groundwater Conservation District under this section not later than January 1, 2010, is disannexed at that time from the district created by this chapter.

Sec. 8852.027. LIMITATION OF POWERS OF TEMPORARY BOARD.

(a) The temporary board may exercise only the powers described by Sections 8852.022, 8852.023, and 8852.025.

(b) Except as required by a law or rule relating to participation in a groundwater management area in which the district is located, the temporary board may not:

(1) adopt rules, including rules regarding wells; or

(2) develop a draft or final management plan.

[Sections 8852.028-8852.050 reserved for expansion]

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 8852.051. APPOINTMENT OF DIRECTORS; TERMS. (a) Not later than June 1 of each even-numbered year, the Commissioners Courts of Brooks County, Jim Hogg County, and Jim Wells County shall appoint directors as follows:

(1) the Commissioners Court of Brooks County shall appoint:

(A) one director who represents the municipal interests of the territory described by Section 8852.023(a)(1), if the territory described by Section 8852.023(a)(1) is included in the district; and
(B) two directors who represent the agricultural
interests of the territory described by Sections 8852.023(a)(3)(A)
and (B), if the territory described by Sections 8852.023(a)(3)(A)
and (B) is included in the district;
(2) the Commissioners Court of Jim Hogg County shall
appoint:
(A) one director who represents the interests of
Jim Hogg County in the territory described by Section
8852.023(a)(4), if the territory described by Section
8852.023(a)(4) is included in the district; and
(B) two directors who represent the agricultural
interests of the territory described by Section 8852.023(a)(5), if
the territory described by Section 8852.023(a)(5) is included in
the district;
(3) the Commissioners Court of Jim Wells County shall
appoint:
(A) one director who represents the municipal
interests of the territory described by Section 8852.023(a)(2), if
the territory described by Section 8852.023(a)(2) is included in
the district; and
(B) two directors who represent the agricultural
interests of the territory described by Section 8852.023(a)(6), if
the territory described by Section 8852.023(a)(6) is included in
the district; and
(4) the Commissioners Courts of Brooks County and Jim
Hogg County jointly shall appoint one director to represent the
industrial and mining interests of Jim Hogg and Brooks Counties.
(b) Directors serve staggered four-year terms that expire on June 1 of an even-numbered year.

Sec. 8852.052. ELIGIBILITY. (a) A director is not disqualified from service because the director is an employee, manager, director of the board, or officer of a groundwater producer that is or may be regulated by the district.

(b) A temporary director whose term of office expires under Section 8852.021(d) is not eligible for appointment as a director.

Sec. 8852.053. COMPENSATION; REIMBURSEMENT.

(a) Notwithstanding Section 36.060, Water Code, a director is not entitled to receive compensation for performing the duties of a director.

(b) A director is entitled to receive reimbursement for the director’s reasonable expenses incurred while engaging in activities on behalf of the district in accordance with Sections 36.060(b) and (c), Water Code.

Sec. 8852.054. VACANCY. A vacancy in the office of director shall be filled by appointment of the board in a manner consistent with the representational requirements of Section 8852.051. The appointed director serves only for the remainder of the unexpired term to which the director was appointed.

[Sections 8852.055-8852.100 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 8852.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Except as otherwise provided by this chapter, the district 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. 8852.102. CONTRACTS. The district may enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8852.103. EXEMPTIONS FROM PERMIT REQUIREMENTS.

(a) Section 36.117, Water Code, applies to the district except that for the purposes of applying that section to the district, "domestic use" and "livestock use" have the meanings assigned by Subsection (b).

(b) In this section:

(1) "Domestic use":

(A) means the use of groundwater by an individual or a household to support domestic activities, including the use of groundwater for:

(i) drinking, washing, or culinary purposes;

(ii) irrigating a lawn or a family garden or orchard;

(iii) watering domestic animals; or

(iv) water recreation, including aquatic and wildlife enjoyment; and

(B) does not include the use of water:

(i) to support an activity for which consideration is given or received or for which the product of the activity is sold; or

(ii) by or for a public water system.
(2) "Livestock use" means the use of groundwater for the open-range watering of livestock, exotic livestock, game animals, or fur-bearing animals. For purposes of this subdivision, "livestock" and "exotic livestock" have the meanings assigned by Sections 1.003 and 142.001, Agriculture Code, respectively, and "game animal" and "fur-bearing animal" have the meanings assigned by Sections 63.001 and 71.001, Parks and Wildlife Code, respectively. Livestock use does not include use by or for a public water system.

Sec. 8852.104. EFFECTS OF TRANSFER. (a) In reviewing a proposed transfer of groundwater out of the district in accordance with Section 36.122(f), Water Code, the district shall determine whether the proposed transfer would have a negative effect on:

(1) the availability of water in the district;
(2) the conditions of any aquifer that overlies the district;
(3) subsidence in the district;
(4) existing permit holders or other groundwater users in the district; and
(5) any applicable approved regional water plan or certified district management plan.

(b) If the district determines under Subsection (a) that the transfer would have a negative effect, the district may, in addition to the conditions authorized by Section 36.122, Water Code, impose other requirements or limitations on the permit that are designed to minimize the effect.

(c) Sections 36.122(c), (i), and (j), Water Code, do not
apply to a requirement or limitation imposed under this section.

(d) The district may impose a fee or surcharge as an export fee. The restrictions under Section 36.122(e), Water Code, do not apply to a fee or surcharge imposed under this subsection.

Sec. 8852.105. APPLICABILITY OF DISTRICT REGULATIONS. Groundwater regulations adopted by the district under this chapter apply to all persons except as exempted under Section 36.117, Water Code, or this chapter.

Sec. 8852.106. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 8852.107. LANDOWNERS' RIGHTS. The rights of landowners and their lessees and assigns in groundwater in the district are recognized. Nothing in this chapter shall be construed to deprive or divest the owners or their lessees and assigns of their rights, subject to district rules.

Sec. 8852.108. LIMITATION ON RULEMAKING POWER NOT APPLICABLE. Section 36.121, Water Code, does not apply to the district.

[Sections 8852.109-8852.150 reserved for expansion]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 8852.151. REVENUE. To pay the maintenance and operating costs of the district and to pay any bonds or notes issued by the district, the district may impose ad valorem taxes at a rate not to exceed three cents on each $100 of assessed valuation of taxable property in the district.

Sec. 8852.152. GRANTS, GIFTS, AND DONATIONS. The district may solicit and accept grants, gifts, and donations from any public
or private source.

[Sections 8852.153-8852.200 reserved for expansion]

SUBCHAPTER F. DISSOLUTION

Sec. 8852.201. SUBCHAPTER CUMULATIVE. The provisions of this subchapter are cumulative of the provisions of Subchapter I, Chapter 36, Water Code.

Sec. 8852.202. DISSOLUTION BY ELECTION. (a) After January 1, 2016, the board shall order an election on the question of dissolving the district if the board receives a petition requesting that an election be held for that purpose that is signed by at least 15 percent of the district's registered voters.

(b) Not later than the 30th day after the date the board receives the petition, the directors shall:

(1) validate the signatures on the petition; and

(2) if the signatures are validated, order an election on the next uniform election date under Section 41.001, Election Code.

(c) The order calling the election must state the nature of the election, including the proposition that is to appear on the ballot.

Sec. 8852.203. NOTICE OF ELECTION. Notice of an election under this subchapter must be provided by posting a copy of the order calling the election in at least one conspicuous place for at least 10 days before the day of the election at the county courthouse in Brooks County, Jim Hogg County, Jim Wells County, and Hidalgo County.

Sec. 8852.204. BALLOT. The ballot for an election under
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this subchapter must be printed to permit voting for or against the
proposition: "The dissolution of the Brush Country Groundwater
Conservation District."

Sec. 8852.205. ELECTION RESULTS; DISPOSITION OF ASSETS. If
a majority of the votes in an election under this subchapter favor
dissolution:

(1) the board shall find that the district is
dissolved; and

(2) Section 36.310, Water Code, applies for the
purpose of disposition of the district's assets.

SECTION 2. The Brush Country Groundwater Conservation
District initially includes all the territory contained in the
following area:

(a) all real property within the boundaries of Jim Hogg
County, Texas;

(b) all real property in Brooks County save and except all
of those portions of Brooks County that, as of the effective date of
this Act, are located within the Kenedy County Groundwater
Conservation District;

(c) all real property in Jim Wells County save and except
all of those portions of Jim Wells County that, as of January 1,
2009, are located within the Kenedy County Groundwater Conservation
District; and

(d) all real property in Hidalgo County contained in the
following described area and which is not located within the Kenedy
County Groundwater Conservation District as of the effective date
of this Act:
10,953.38 acres of land, more or less, out of the Guadalupe
Sanchez Grant, Abstract 481, Brooks County, Texas, also known as
the "La Rucia Grant", and any adjoining surveys, the said 10,953.38
acres being more particularly described as follows:

COMMENCING at a Stone marking the southwest corner of the
Juan Garza Diaz Grant, Abstract 192, Brooks County, Texas, and
Abstract 82, in Hidalgo County, Texas, being also an inner corner of
the Argyle McAllen 8827.00 acre-tract as described in that certain
Oil, Gas and Mineral Lease executed by Argyle McAllen in favor of
Shell Oil Company, dated January 10, 1958, and recorded in Volume
210, Page 342, of the Oil and Gas Records of said County;

THENCE North 01° 15' 50" East with the east line of the said
"La Rucia Grant" and with a fence, a distance of 322.2 varas to a
fence corner marking the south-east corner and BEGINNING POINT of
the herein described tract;

THENCE in a westerly direction with the said fence, being
also the north line of the said McAllen 8827.00-acre tract and with
the north line of the Argyle McAllen 23,597.00 acre tract as
described in the Oil, Gas and Mineral lease executed by Argyle
McAllen in favor of Shell Oil Company, dated September 5, 1947, and
recorded in Volume 74, page 112, of the Oil and Gas Records of
Hidalgo County, Texas; thence with said line the following courses
and distances: North 85° 06' 40" West, 3538.3 varas; North 84° 39'
20" West, 2104.4 varas; and North 81° 32' 50" West, 725.3 varas to a
southeast corner of the J. C. McGill, Jr., et al 640-acre tract,
being a part of a 38,644.1-acre tract, being also a point on the
east line of the Texas-Mexico R. R. Survey No. 189, Abstract 157;
THENCE North 00° 55' East with the said fence and the east
lines of the said Tex-Mex R. R. Survey No. 189, the Tex-Mex R. R.
Survey No. 190, Abstract 785, and the Tex-Mex R. R. Survey No. 191,
Abstract 158, a total distance of 5076.5 varas to a point for
corner, from which a Mesquite Marked "X" bears South 61° 45' East
74.0 varas;

THENCE, North 00° 54' East with the said fence and with the
east line of the Jose Antonio Morales Garcia and Apolinario Morales
Garcia Grant, known as the "San Antonio Grant", Abstract 214,
Brooks County, Abstract 578, Hidalgo County, and Abstract 103 in
Starr County, a distance of 4280.8 varas to the fence corner, the
southwest corner of the Louella Jones Borglum 7036.01-acre tract
(called 8576.50 acres);

THENCE, South 89° 40' East with the south fence and with the
south line of the said Borglum 7036.01 acre tract a distance of
6202.3 varas to a fence corner marking the southeast corner of the
same, being also a point on the west line of the Juan Garza Diaz
Grant, also known as the "Vargas Grant", Abstract 192, in Brooks
County, and Abstract 82, in Hidalgo County, Texas;

THENCE South 00° 04' West with the said fence and the west line
of the said "Vargas Grant", a distance of 9924.7 varas to the PLACE
OF BEGINNING and containing 10,953.38 acres of land, more or less.

SECTION 3. (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
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under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor 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, lieutenant governor, and speaker of the house of representatives within the required time.

(d) 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. 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, 2009.
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David Dewhurst  
President of the Senate

I hereby certify that S.B. No. 2456 passed the Senate on April 30, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 29, 2009, by the following vote: Yeas 31, Nays 0.

Joe Straus  
Speaker of the House

I hereby certify that S.B. No. 2456 passed the House, with amendments, on May 26, 2009, by the following vote: Yeas 145, Nays 0, two present not voting.

Frank Swindall  
Secretary of the Senate

Robert Heinen  
Chief Clerk of the House

Approved:

19 Jun '09  
Date

Rick Perry  
Governor

Filed in the Office of the Secretary of State  
2 Pm  
Jun 19 2009

Colby Shuter  

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