

AN ACT

1
2 relating to the creation of the Brush Country Groundwater
3 Conservation District; providing authority to impose a tax and
4 issue bonds.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle H, Title 6, Special District Local Laws
7 Code, is amended by adding Chapter 8852 to read as follows:

8 CHAPTER 8852. BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 8852.001. DEFINITIONS. In this chapter:

11 (1) "Board" means the board of directors of the
12 district.

13 (2) "Director" means a member of the board.

14 (3) "District" means the Brush Country Groundwater
15 Conservation District.

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

20 Sec. 8852.003. CONFIRMATION ELECTION REQUIRED. If the
21 creation of the district is not confirmed in at least one of the
22 territories described by Section 8852.023 at a confirmation
23 election held before September 1, 2011:

24 (1) the district is dissolved on September 1, 2011,

1 except that:

2 (A) any debts incurred shall be paid;

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

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

9 (2) this chapter expires September 1, 2013.

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

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

17 (1) organization, existence, or validity;

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

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

22 (4) legality or operation.

23 Sec. 8852.005. CONSTRUCTION OF CHAPTER. This chapter shall
24 be liberally construed to achieve the legislative intent and
25 purposes of Chapter 36, Water Code. A power granted by Chapter 36,
26 Water Code, or this chapter shall be broadly interpreted to achieve
27 that intent and those purposes.

1 [Sections 8852.006-8852.020 reserved for expansion]

2 SUBCHAPTER B. DISTRICT CREATION

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

5 (1) David Grall;

6 (2) Mauro Garcia;

7 (3) Robert Scott;

8 (4) A. C. Jones IV;

9 (5) Mario Martinez;

10 (6) Israel Hinojosa;

11 (7) a person appointed by the commissioners courts of
12 Brooks and Jim Hogg Counties within 60 days of the effective date of
13 this Act;

14 (8) Jesse Howell;

15 (9) Pearson Knolle; and

16 (10) Lawrence Cornelius.

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

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

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

24 (2) the date this chapter expires under Section
25 8852.003.

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

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1 district:

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

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

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

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

14 (5) a person appointed by the commissioners courts of
15 Brooks and Jim Hogg Counties, if the creation of the district is
16 confirmed by voters of none of the territories described by Section
17 8852.023;

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

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

24 Sec. 8852.022. ORGANIZATIONAL MEETING OF TEMPORARY
25 DIRECTORS. As soon as practicable after all the temporary
26 directors have qualified under Section 36.055, Water Code, a
27 majority of the temporary directors shall convene the

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1 organizational meeting of the district at a location within the
2 district agreeable to a majority of the directors. If an agreement
3 on location cannot be reached, the organizational meeting shall be
4 at the Brooks County Courthouse.

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

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

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

13 (3) the territory:
14 (A) in Brooks County that, as of January 1, 2009,

15 is:
16 (i) outside the corporate limits of the
17 city of Falfurrias; and

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

20 (B) in Hidalgo County that is:
21 (i) described by a metes and bounds
22 description in Section 2 of the Act creating this chapter; and

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

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

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

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

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

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

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

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

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

21 (e) If the majority of voters in a territory described by
22 Subsection (a) voting at an election held under this section vote to
23 confirm the creation of the district, that territory is included in
24 the district. If the majority of voters in a territory described by
25 Subsection (a) voting at an election held under this section vote
26 not to confirm the creation of the district, that territory is
27 excluded from the district.

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

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

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

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

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

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

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

8 Sec. 8852.027. LIMITATION OF POWERS OF TEMPORARY BOARD.

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

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

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

15 (2) develop a draft or final management plan.

16 [Sections 8852.028-8852.050 reserved for expansion]

17 SUBCHAPTER C. BOARD OF DIRECTORS

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

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

24 (A) one director who represents the municipal
25 interests of the territory described by Section 8852.023(a)(1), if
26 the territory described by Section 8852.023(a)(1) is included in
27 the district; and

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1 (B) two directors who represent the agricultural
2 interests of the territory described by Sections 8852.023(a)(3)(A)
3 and (B), if the territory described by Sections 8852.023(a)(3)(A)
4 and (B) is included in the district;

5 (2) the Commissioners Court of Jim Hogg County shall
6 appoint:

7 (A) one director who represents the interests of
8 Jim Hogg County in the territory described by Section
9 8852.023(a)(4), if the territory described by Section
10 8852.023(a)(4) is included in the district; and

11 (B) two directors who represent the agricultural
12 interests of the territory described by Section 8852.023(a)(5), if
13 the territory described by Section 8852.023(a)(5) is included in
14 the district;

15 (3) the Commissioners Court of Jim Wells County shall
16 appoint:

17 (A) one director who represents the municipal
18 interests of the territory described by Section 8852.023(a)(2), if
19 the territory described by Section 8852.023(a)(2) is included in
20 the district; and

21 (B) two directors who represent the agricultural
22 interests of the territory described by Section 8852.023(a)(6), if
23 the territory described by Section 8852.023(a)(6) is included in
24 the district; and

25 (4) the Commissioners Courts of Brooks County and Jim
26 Hogg County jointly shall appoint one director to represent the
27 industrial and mining interests of Jim Hogg and Brooks Counties.

1 (b) Directors serve staggered four-year terms that expire
2 on June 1 of an even-numbered year.

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

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

9 Sec. 8852.053. COMPENSATION; REIMBURSEMENT.
10 (a) Notwithstanding Section 36.060, Water Code, a director is not
11 entitled to receive compensation for performing the duties of a
12 director.

13 (b) A director is entitled to receive reimbursement for the
14 director's reasonable expenses incurred while engaging in
15 activities on behalf of the district in accordance with Sections
16 36.060(b) and (c), Water Code.

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

22 [Sections 8852.055-8852.100 reserved for expansion]

23 SUBCHAPTER D. POWERS AND DUTIES

24 Sec. 8852.101. GROUNDWATER CONSERVATION DISTRICT POWERS
25 AND DUTIES. Except as otherwise provided by this chapter, the
26 district has the powers and duties provided by the general law of
27 this state, including Chapter 36, Water Code, and Section 59,

1 Article XVI, Texas Constitution, applicable to groundwater
2 conservation districts.

3 Sec. 8852.102. CONTRACTS. The district may enter into a
4 contract with any person, public or private, for any purpose
5 authorized by law.

6 Sec. 8852.103. EXEMPTIONS FROM PERMIT REQUIREMENTS.

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

11 (b) In this section:

12 (1) "Domestic use":

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

16 (i) drinking, washing, or culinary
17 purposes;

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

20 (iii) watering domestic animals; or

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

23 (B) does not include the use of water:

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

27 (ii) by or for a public water system.

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

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

- 14 (1) the availability of water in the district;
15 (2) the conditions of any aquifer that overlies the
16 district;
17 (3) subsidence in the district;
18 (4) existing permit holders or other groundwater users
19 in the district; and
20 (5) any applicable approved regional water plan or
21 certified district management plan.

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

27 (c) Sections 36.122(c), (i), and (j), Water Code, do not

1 apply to a requirement or limitation imposed under this section.

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

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

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

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

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

19 [Sections 8852.109-8852.150 reserved for expansion]

20 SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

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

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

1 or private source.

2 [Sections 8852.153-8852.200 reserved for expansion]

3 SUBCHAPTER F. DISSOLUTION

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

7 Sec. 8852.202. DISSOLUTION BY ELECTION. (a) After January
8 1, 2016, the board shall order an election on the question of
9 dissolving the district if the board receives a petition requesting
10 that an election be held for that purpose that is signed by at least
11 15 percent of the district's registered voters.

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

14 (1) validate the signatures on the petition; and

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

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

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

27 Sec. 8852.204. BALLOT. The ballot for an election under

1 this subchapter must be printed to permit voting for or against the
2 proposition: "The dissolution of the Brush Country Groundwater
3 Conservation District."

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

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

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

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

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

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

20 (c) all real property in Jim Wells County save and except
21 all of those portions of Jim Wells County that, as of January 1,
22 2009, are located within the Kenedy County Groundwater Conservation
23 District; and

24 (d) all real property in Hidalgo County contained in the
25 following described area and which is not located within the Kenedy
26 County Groundwater Conservation District as of the effective date
27 of this Act:

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1 10,953.38 acres of land, more or less, out of the Guadalupe
2 Sanchez Grant, Abstract 481, Brooks County, Texas, also known as
3 the "La Rucia Grant", and any adjoining surveys, the said 10,953.38
4 acres being more particularly described as follows:

5 COMMENCING at a Stone marking the southwest corner of the
6 Juan Garza Diaz Grant, Abstract 192, Brooks County, Texas, and
7 Abstract 82, in Hidalgo County, Texas, being also an inner corner of
8 the Argyle McAllen 8827.00 acre-tract as described in that certain
9 Oil, Gas and Mineral Lease executed by Argyle McAllen in favor of
10 Shell Oil Company, dated January 10, 1958, and recorded in Volume
11 210, Page 342, of the Oil and Gas Records of said County;

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

16 THENCE in a westerly direction with the said fence, being
17 also the north line of the said McAllen 8827.00-acre tract and with
18 the north line of the Argyle McAllen 23,597.00 acre tract as
19 described in the Oil, Gas and Mineral lease executed by Argyle
20 McAllen in favor of Shell Oil Company, dated September 5, 1947, and
21 recorded in Volume 74, page 112, of the Oil and Gas Records of
22 Hidalgo County, Texas; thence with said line the following courses
23 and distances: North 85° 06' 40" West, 3538.3 varas; North 84° 39'
24 20" West, 2104.4 varas; and North 81° 32' 50" West, 725.3 varas to a
25 southeast corner of the J. C. McGill, Jr., et al 640-acre tract,
26 being a part of a 38,644.1-acre tract, being also a point on the
27 east line of the Texas-Mexico R. R. Survey No. 189, Abstract 157;

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1 THENCE North 00° 55' East with the said fence and the east
2 lines of the said Tex-Mex R. R. Survey No. 189, the Tex-Mex R. R.
3 Survey No. 190, Abstract 785, and the Tex-Mex R. R. Survey No. 191,
4 Abstract 158, a total distance of 5076.5 varas to a point for
5 corner, from which a Mesquite Marked "X" bears South 61° 45' East
6 74.0 varas;

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

14 THENCE, South 89° 40' East with the south fence and with the
15 south line of the said Borglum 7036.01 acre tract a distance of
16 6202.3 varas to a fence corner marking the southeast corner of the
17 same, being also a point on the west line of the Juan Garza Diaz
18 Grant, also known as the "Vargas Grant", Abstract 192, in Brooks
19 County, and Abstract 82, in Hidalgo County, Texas;

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

23 SECTION 3. (a) The legal notice of the intention to
24 introduce this Act, setting forth the general substance of this
25 Act, has been published as provided by law, and the notice and a
26 copy of this Act have been furnished to all persons, agencies,
27 officials, or entities to which they are required to be furnished

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1 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
2 Government Code.

3 (b) The governor has submitted the notice and Act to the
4 Texas Commission on Environmental Quality.

5 (c) The Texas Commission on Environmental Quality has filed
6 its recommendations relating to this Act with the governor,
7 lieutenant governor, and speaker of the house of representatives
8 within the required time.

9 (d) All requirements of the constitution and laws of this
10 state and the rules and procedures of the legislature with respect
11 to the notice, introduction, and passage of this Act are fulfilled
12 and accomplished.

13 SECTION 4. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2009.

S.B. No. 2456

David Newkum
President of the Senate

Jim Strawn
Speaker of the House

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.

Datsy Spaw
Secretary of the Senate

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.

Robert Heney
Chief Clerk of the House

Approved:

19 JUN '09
Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK

JUN 19 2009

Colby Shuter III