

1-1 By: Isaac, Rodriguez of Travis H.B. No. 3405
 1-2 (Senate Sponsor - Campbell)
 1-3 (In the Senate - Received from the House May 11, 2015;
 1-4 May 15, 2015, read first time and referred to Committee on
 1-5 Agriculture, Water, and Rural Affairs; May 20, 2015, reported
 1-6 adversely, with favorable Committee Substitute by the following
 1-7 vote: Yeas 6, Nays 0; May 20, 2015, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			

1-17 COMMITTEE SUBSTITUTE FOR H.B. No. 3405 By: Perry

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to the territory, jurisdiction, board composition,
 1-21 elections, and powers of the Barton Springs-Edwards Aquifer
 1-22 Conservation District, including its authority to regulate certain
 1-23 wells for the production of groundwater; imposing a cap on certain
 1-24 fees.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-26 SECTION 1. Section 8802.003, Special District Local Laws
 1-27 Code, is amended to read as follows:

1-28 Sec. 8802.003. DISTRICT TERRITORY. (a) The district is
 1-29 composed of:

1-30 (1) the territory described by the Texas Water
 1-31 Commission's August 15, 1986, order, as that territory may have
 1-32 been modified:

1-33 (A) by actions of the board through resolutions
 1-34 dated August 8, 1987, August 13, 1987, January 24, 2002, May 10,
 1-35 2002, and June 23, 2011; or

1-36 (B) under:
 1-37 (i) [~~1~~] Subchapter J, Chapter 36, Water
 1-38 Code; or

1-39 (ii) [~~2~~] other law;
 1-40 (2) the shared territory described by Section
 1-41 8802.0035(a); and

1-42 (3) the territory described as follows: beginning at a
 1-43 point at the intersection of the northeastern district boundary as
 1-44 it existed on January 1, 2015, and the Colorado River, running east
 1-45 along the southern bank of the Colorado River to a point where the
 1-46 Colorado River intersects U.S. Highway 183, then south along U.S.
 1-47 Highway 183 to a point where U.S. Highway 183 intersects the current
 1-48 eastern boundary of the district, then generally west and north
 1-49 following along the district boundary as it existed on January 1,
 1-50 2015, to the place of beginning.

1-51 (b) Any boundary reference under Subsection (a)(3) to a
 1-52 highway, street, road, avenue, boulevard, or lane shall mean the
 1-53 centerline of the boundary.

1-54 SECTION 2. Subchapter A, Chapter 8802, Special District
 1-55 Local Laws Code, is amended by adding Section 8802.0035 to read as
 1-56 follows:

1-57 Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The
 1-58 territory of the district includes any territory that is:

1-59 (1) inside the boundaries of the Edwards Aquifer
 1-60 Authority;

2-1 (2) in Hays County; and
 2-2 (3) not within the boundaries existing as of January
 2-3 1, 1989, of any other district with the authority to regulate
 2-4 groundwater under Chapter 36, Water Code, or prior laws.

2-5 (b) The Edwards Aquifer Authority has jurisdiction over any
 2-6 well that is drilled to produce water from the Edwards Aquifer in
 2-7 the shared territory described by Subsection (a).

2-8 (c) The district has jurisdiction over groundwater and any
 2-9 well that is drilled to produce water from any aquifer other than
 2-10 the Edwards Aquifer in the shared territory described by Subsection
 2-11 (a).

2-12 (d) The district has jurisdiction over groundwater and any
 2-13 well that is drilled to produce water from the Edwards Aquifer or
 2-14 any other aquifer in the territory described by Section
 2-15 8802.003(a)(1) or (3). For territory annexed in accordance with
 2-16 board resolutions dated January 24, 2002, the district shall share
 2-17 jurisdiction with the Plum Creek Conservation District, which also
 2-18 includes that territory. Jurisdiction shall be shared under the
 2-19 terms of an agreement authorized by Chapter 791, Government Code,
 2-20 in a manner that ensures that the districts do not exercise their
 2-21 jurisdiction in the shared territory at the same time and for the
 2-22 same purpose.

2-23 (e) The district's jurisdiction over any well that is
 2-24 drilled to produce water in the territory described in Section
 2-25 8802.003(a)(1), including a well that is used to recover water that
 2-26 has been injected as part of an aquifer storage and recovery
 2-27 project, applies to the territory described by Section
 2-28 8802.003(a)(3) and all wells for which the district has
 2-29 jurisdiction in the shared territory described by this section.

2-30 SECTION 3. Sections 8802.051 and 8802.052, Special District
 2-31 Local Laws Code, are amended to read as follows:

2-32 Sec. 8802.051. DIRECTORS; TERMS. (a) The district is
 2-33 governed by a board of seven [~~five~~] directors who serve staggered
 2-34 four-year terms.

2-35 (b) Three [~~At least two~~] directors must be elected by voters
 2-36 residing in the territory composed of:

2-37 (1) director districts four and five as adopted by the
 2-38 district on November 17, 2011; and

2-39 (2) the territory described by Section 8802.003(a)(3)
 2-40 [~~city of Austin~~].

2-41 (c) Four directors must be elected by voters residing
 2-42 outside the territory described by Subsection (b) and two of the
 2-43 four directors must reside in Hays County.

2-44 Sec. 8802.052. ELECTION DATE. An election shall be held to
 2-45 elect the appropriate number of directors on the [~~spring~~] uniform
 2-46 election date in November of each even-numbered year.

2-47 SECTION 4. Section 8802.053, Special District Local Laws
 2-48 Code, is amended by amending Subsections (a), (c), and (d) and
 2-49 adding Subsection (f) to read as follows:

2-50 (a) The district is divided into seven [~~five~~] numbered,
 2-51 single-member districts for electing directors.

2-52 (c) As soon as practicable after the publication of each
 2-53 federal decennial census, the board shall revise the single-member
 2-54 districts as the board considers appropriate to reflect population
 2-55 changes. When the board revises the single-member districts under
 2-56 this subsection, the board shall place three [~~two~~] of the districts
 2-57 entirely inside and four of the districts entirely outside the
 2-58 territory described by Section 8802.051(b) [~~+~~

2-59 [~~(1) entirely within the boundaries of the city of~~
 2-60 ~~Austin, as those boundaries exist at that time, or~~

2-61 [~~(2) within the boundaries of the city of Austin, as~~
 2-62 ~~those boundaries exist at that time, but also including~~
 2-63 ~~unincorporated areas or other municipalities that are surrounded~~
 2-64 ~~wholly or partly by the boundaries of the city of Austin if the~~
 2-65 ~~areas or municipalities are noncontiguous to the territory of any~~
 2-66 ~~other single-member district].~~

2-67 (d) If the district is required to create single-member
 2-68 districts that do not comply with Sections 8802.051(b) and (c) to
 2-69 satisfy standards under federal law, the board shall revise the

3-1 single-member districts as the board considers appropriate under
3-2 the federal law standards [~~Changes in the boundaries of the city of~~
3-3 ~~Austin between revisions of the single-member districts under~~
3-4 ~~Subsection (c) do not affect the boundaries of the single-member~~
3-5 ~~districts].~~

3-6 (f) At the first regularly scheduled election of directors
3-7 after the board is expanded from five to seven directors, directors
3-8 elected to fill any vacant positions shall cast lots to determine
3-9 which of those directors shall serve a two-year term and which shall
3-10 serve a four-year term. Lots must be determined so that not more
3-11 than four directors' terms expire in any even-numbered year.

3-12 SECTION 5. Section 8802.1045, Special District Local Laws
3-13 Code, is amended by adding Subsection (g) to read as follows:

3-14 (g) Notwithstanding Subsection (b), before January 1, 2017,
3-15 the board may not charge an annual production fee higher than the
3-16 rates set forth under Subsection (a) for a well located in the
3-17 territory described by Section 8802.003(a)(3) or 8802.0035(a). The
3-18 district may increase the annual production fee under this
3-19 subsection by not more than 10 cents per thousand gallons per year
3-20 beginning January 1, 2018, for water permitted for nonagricultural
3-21 purposes, until the annual production fee is equal to the maximum
3-22 amount set forth in Subsection (b).

3-23 SECTION 6. Section 8802.105, Special District Local Laws
3-24 Code, is amended by amending Subsection (a) and adding Subsection
3-25 (a-1) to read as follows:

3-26 (a) In this section, "Consumer Price Index" means the annual
3-27 revised Consumer Price Index for All Urban Consumers, as published
3-28 by the Bureau of Labor Statistics of the United States Department of
3-29 Labor or a similar index if that index is unavailable. For
3-30 calculation purposes, the beginning base month is December 2014.

3-31 (a-1) Each year the board may assess against the City of
3-32 Austin a water use fee in an amount not to exceed the lesser of \$1
3-33 million as adjusted to reflect the percentage change during the
3-34 preceding year in the Consumer Price Index or 60 percent of the
3-35 total funding the district expects to receive for the next fiscal
3-36 year from water use fees assessed against Austin and other
3-37 nonexempt users in that year as computed [~~, subject to the~~
3-38 ~~computation~~] under Subsection (b).

3-39 SECTION 7. Subchapter C, Chapter 8802, Special District
3-40 Local Laws Code, is amended by adding Sections 8802.111 and
3-41 8802.112 to read as follows:

3-42 Sec. 8802.111. AUTHORITY TO CONSIDER MITIGATION PLAN. (a)
3-43 If an applicant for a permit or permit amendment submits to the
3-44 district with the permit application or permit amendment
3-45 application a plan for mitigating any negative impacts to
3-46 groundwater resources or to other wells that may arise from the
3-47 production of groundwater by the well or wells for which the permit
3-48 or permit amendment is sought, the district may:

3-49 (1) consider the plan for mitigation in deciding
3-50 whether to grant or deny the application; and

3-51 (2) include special terms and conditions requiring
3-52 mitigation in a permit or permit amendment that is approved by the
3-53 board for the applicant.

3-54 (b) Regardless of whether an applicant for a permit or
3-55 permit amendment submits to the district a plan for mitigation, the
3-56 district and an applicant may negotiate a plan to mitigate any
3-57 negative impacts to groundwater resources or to other wells that
3-58 may arise from the production of groundwater by the well or wells
3-59 for which the permit or permit amendment is sought, and the district
3-60 may include the negotiated mitigation plan as a special term or
3-61 condition of the permit or permit amendment. The district may not
3-62 require an applicant to agree to a mitigation plan that was not
3-63 submitted by the applicant.

3-64 (c) A mitigation plan described by Subsection (a) or (b) may
3-65 include payment of a fee by the applicant for a permit or permit
3-66 amendment to the district in an amount sufficient to mitigate the
3-67 effects of reduced artesian pressure or the drawdown of the water
3-68 table on other wells in the district. If the mitigation plan is
3-69 approved by the district as a special term or condition of the

4-1 permit as submitted by, or as negotiated with, the applicant, the
 4-2 district shall establish written procedures for the use of revenue
 4-3 derived from fees paid by the applicant as part of the mitigation
 4-4 plan and shall include the written procedures as a special term or
 4-5 condition of the permit or permit amendment. The written
 4-6 procedures may include use of the mitigation plan fee revenue to
 4-7 deepen water wells or to lower pumps, to drill and equip new wells,
 4-8 or to take other measures to mitigate impacts on water wells that
 4-9 are negatively impacted by the production of groundwater by the
 4-10 well or wells for which the permit or permit amendment is approved
 4-11 by the district.

4-12 (d) Nothing in this section shall be construed to limit the
 4-13 authority of the district to include as a special term or condition
 4-14 of a permit a requirement that the permit holder reduce or cease
 4-15 groundwater production during certain hydrological conditions.

4-16 Sec. 8802.112. CERTAIN PERMITS; REDUCTION ORDERS;
 4-17 CONTESTED CASE HEARINGS. (a) In this section, "maximum production
 4-18 capacity" means the maximum production capacity of a well, which
 4-19 may be based on a 36-hour pump test conducted at the time the well
 4-20 was initially constructed or placed into service.

4-21 (b) A person operating a well before the effective date of
 4-22 the Act enacting this section or who has entered into a contract
 4-23 before that date to drill or operate a well that is or will be
 4-24 located in the territory described by Section 8802.003(a)(3) or
 4-25 8802.0035(a) that is subject to the jurisdiction of the district
 4-26 shall file an administratively complete permit application with the
 4-27 district not later than three months after the effective date of the
 4-28 Act enacting this section for the drilling, equipping, completion,
 4-29 or operation of any well if the well requires a permit under the
 4-30 rules or orders of the district. The person may file the permit
 4-31 application for an amount of groundwater production not to exceed
 4-32 the maximum production capacity of the well.

4-33 (c) The district shall issue a temporary permit to a person
 4-34 who files an application under Subsection (b) without a hearing on
 4-35 the application not later than the 30th day after the date of
 4-36 receipt of the application. The district shall issue the temporary
 4-37 permit for the groundwater production amount set forth in the
 4-38 application. The temporary permit issued under this subsection
 4-39 shall provide the person with retroactive and prospective
 4-40 authorization to drill, operate, or perform another activity
 4-41 related to a well for which a permit is required by the district for
 4-42 the period of time between the effective date of the Act enacting
 4-43 this section and the date that the district takes a final,
 4-44 appealable action on issuance of a regular permit pursuant to the
 4-45 permit application if:

4-46 (1) the person's drilling, operating, or other
 4-47 activities associated with the well are consistent with the
 4-48 authorization sought in the permit application;

4-49 (2) the person timely pays to the district all
 4-50 administrative fees and fees related to the amount of groundwater
 4-51 authorized to be produced pursuant to the temporary permit in the
 4-52 same manner as other permit holders in the district; and

4-53 (3) the person complies with other rules and orders of
 4-54 the district applicable to permit holders.

4-55 (d) The temporary permit issued under Subsection (c) does
 4-56 not confer any rights or privileges to the permit holder other than
 4-57 those set forth in this section. After issuing the temporary
 4-58 permit, the district shall process the permit application for
 4-59 notice, hearing, and consideration for issuance of a regular permit
 4-60 consistent with this section. The district, after notice and
 4-61 hearing, shall issue an order granting the regular permit
 4-62 authorizing groundwater production in the amount set forth in the
 4-63 temporary permit unless the district finds that authorizing
 4-64 groundwater production in the amount set forth in the temporary
 4-65 permit issued under Subsection (c) is causing a failure to achieve
 4-66 applicable adopted desired future conditions for the aquifer.

4-67 (e) To reduce the amount of groundwater authorized to be
 4-68 produced under a temporary permit issued under Subsection (c) or a
 4-69 regular permit issued under Subsection (d), the district must show

5-1 by a preponderance of the evidence that the amount of groundwater
 5-2 being produced under the permit is causing a failure to achieve
 5-3 applicable adopted desired future conditions for the aquifer. A
 5-4 person who relies on the temporary permit granted by Subsection (c)
 5-5 to drill, operate, or engage in other activities associated with a
 5-6 water well assumes the risk that the district may grant or deny,
 5-7 wholly or partly, the permit application when the district takes
 5-8 final action after notice and hearing to issue a regular permit
 5-9 pursuant to the application.

5-10 (f) The holder of a temporary permit or a regular permit
 5-11 subject to a district order under this section to reduce the amount
 5-12 of groundwater production from the permitted well may contest any
 5-13 reduction in the amount of production from the permitted well by
 5-14 requesting a contested case hearing on the reduction order to be
 5-15 conducted by the State Office of Administrative Hearings in the
 5-16 manner provided by Sections 36.416, 36.4165, and 36.418, Water
 5-17 Code. The district shall contract with the State Office of
 5-18 Administrative Hearings to conduct the hearing as provided by those
 5-19 sections of the Water Code. To the extent possible, the State Office
 5-20 of Administrative Hearings shall expedite a hearing under this
 5-21 subsection.

5-22 (g) For the State Office of Administrative Hearings to
 5-23 uphold a district order reducing the amount of groundwater
 5-24 authorized to be produced under a temporary or regular permit, the
 5-25 district must demonstrate by a preponderance of the evidence that
 5-26 the reduction is necessary to prevent a failure to achieve
 5-27 applicable adopted desired future conditions for the aquifer.

5-28 SECTION 8. (a) The legislature validates and confirms all
 5-29 acts and proceedings of the board of directors of the Barton
 5-30 Springs-Edwards Aquifer Conservation District that were taken
 5-31 before the effective date of this Act.

5-32 (b) Subsection (a) of this section does not apply to any
 5-33 matter that on the effective date of this Act:

5-34 (1) is involved in litigation if the litigation
 5-35 ultimately results in the matter being held invalid by a final
 5-36 judgment of a court; or

5-37 (2) has been held invalid by a final judgment of a
 5-38 court.

5-39 SECTION 9. (a) Not later than three months after the
 5-40 effective date of this Act, the board of directors of the Barton
 5-41 Springs-Edwards Aquifer Conservation District shall appoint one
 5-42 temporary director to the board to represent the territory
 5-43 described by Section 8802.003(a)(3), Special District Local Laws
 5-44 Code, as added by this Act, and one temporary director to represent
 5-45 the territory described by Section 8802.0035(a), Special District
 5-46 Local Laws Code, as added by this Act.

5-47 (b) The temporary directors appointed under Subsection (a)
 5-48 of this section shall serve at large until the next general election
 5-49 of directors of the district under Section 8802.052, Special
 5-50 District Local Laws Code, as amended by this Act.

5-51 (c) The board of directors of the Barton Springs-Edwards
 5-52 Aquifer Conservation District shall adjust the board member terms
 5-53 of office to conform to the new election date under Section
 5-54 8802.052, Special District Local Laws Code, as amended by this Act.

5-55 SECTION 10. (a) The legal notice of the intention to
 5-56 introduce this Act, setting forth the general substance of this
 5-57 Act, has been published as provided by law, and the notice and a
 5-58 copy of this Act have been furnished to all persons, agencies,
 5-59 officials, or entities to which they are required to be furnished
 5-60 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
 5-61 Government Code.

5-62 (b) The governor, one of the required recipients, has
 5-63 submitted the notice and Act to the Texas Commission on
 5-64 Environmental Quality.

5-65 (c) The Texas Commission on Environmental Quality has filed
 5-66 its recommendations relating to this Act with the governor, the
 5-67 lieutenant governor, and the speaker of the house of
 5-68 representatives within the required time.

5-69 (d) All requirements of the constitution and laws of this

6-1 state and the rules and procedures of the legislature with respect
6-2 to the notice, introduction, and passage of this Act are fulfilled
6-3 and accomplished.

6-4 SECTION 11. This Act takes effect immediately if it
6-5 receives a vote of two-thirds of all the members elected to each
6-6 house, as provided by Section 39, Article III, Texas Constitution.
6-7 If this Act does not receive the vote necessary for immediate
6-8 effect, this Act takes effect September 1, 2015.

6-9

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