

House Bill 3405
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

Sec. 8802.0035. SHARED TERRITORY; JURISDICTION.

(a) The territory of the district includes any territory that is:

(1) inside the boundaries of:

(A) the Edwards Aquifer Authority; and

(B) Hays County; and

(2) not within the boundaries of the Plum Creek Conservation District as those boundaries existed on February 1, 2015.

(b) 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) The district has jurisdiction over 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) Except for the district and the Edwards Aquifer Authority, no district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, has authority in the shared territory described by Subsection (a) to regulate the spacing of water wells or the production from water wells.

(e) The district has jurisdiction over any well that is drilled to produce water from the Edwards Aquifer or any other aquifer in the territory described by Section 8802.003.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

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

Sec. 8802.0035. SHARED TERRITORY; JURISDICTION.

(a) The territory of the district includes any territory that is:

(1) inside the boundaries of:

(A) the Edwards Aquifer Authority; and

(B) Hays County; and

(2) not within the boundaries of the Plum Creek Conservation District as those boundaries existed on February 1, 2015.

(b) 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) 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) Except for the district and the Edwards Aquifer Authority, no district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, has authority in the shared territory described by Subsection (a) to regulate the spacing of water wells or the production from water wells.

(e) The district has jurisdiction over any well that is drilled to produce water from the Edwards Aquifer or any other aquifer in the territory described by Section 8802.003.

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

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No equivalent provision.

SECTION 2. As soon as practicable after the effective date of this Act, and in conformance with the requirements of Section 8802.053, Special District Local Laws Code, the board of directors of the Barton Springs-Edwards Aquifer Conservation District shall revise the single-member districts as the board considers appropriate to reflect the changes in territory made by Section 8802.0035, Special District Local Laws Code, as added by this Act.

No equivalent provision.

SECTION __. Section 8802.1045, Special District Local Laws Code, is amended by adding Subsection (g) to read as follows:

(g) This subsection applies only to a well located in the shared territory described by Section 8802.0035. Notwithstanding Subsection (b), the district may not charge an annual production fee of more than 17 cents per thousand gallons of water produced under a permit from a well under this subsection, if the water is permitted for any use other than agricultural use. [FA2]

SECTION 2. As soon as practicable after the effective date of this Act, and in conformance with Chapter 36, Water Code, the board of directors of the Barton Springs-Edwards Aquifer Conservation District may increase the number of board members and shall revise the single-member districts as the board considers appropriate to reflect the changes in territory made by Section 8802.0035, Special District Local Laws Code, as added by this Act. It is the intent of the legislature that the composition of the board reflect the territory added to the district by this Act.

SECTION 3. (a) In this section:

- (1) "District" means the Barton Springs-Edwards Aquifer Conservation District.
- (2) "Maximum production capacity" means the maximum production capacity of a well, which may be based on a 36-

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hour pump test conducted at the time the well was initially constructed or placed into service.

(b) This section applies only to the shared territory added to the district by Section 8802.0035, Special District Local Laws Code, as added by this Act.

(c) 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 territory described by Subsection (b) of this section and subject to the jurisdiction of the district under Section 8802.0035, Special District Local Laws Code, as added by this Act, shall 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. The person may file the permit application for an amount of groundwater production not to exceed the maximum production capacity of the well.

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

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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.

(e) The temporary permit issued under Subsection (d) does not confer any rights or privileges to the permit holder other than those set forth in this section. After issuing the temporary permit, the district shall process the permit application for notice, hearing, and consideration for issuance of a regular permit consistent with this section. The district, after notice and hearing, shall issue an order granting the regular permit authorizing groundwater production in the amount set forth in the temporary permit unless the district finds that authorizing groundwater production in the amount set forth in the temporary permit will cause:

(1) a failure to achieve the applicable adopted desired future conditions for the aquifer; or

(2) an unreasonable impact on existing wells.

(f) In the hearing on issuance of the regular permit under Subsection (e), the permit applicant bears the burden of proof.

(g) The holder of a temporary or regular permit subject to a district order under this section to reduce the amount of groundwater production from the permitted well may contest the reduction by requesting a contested case hearing to be conducted by the State Office of Administrative Hearings in

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the manner provided by Sections 36.416, 36.4165, and 36.418, Water Code. The district shall contract with the State Office of Administrative Hearings to conduct the hearing as provided by those sections of the Water Code. To the extent possible, the State Office of Administrative Hearings shall expedite a hearing under this subsection. The permit applicant bears the burden of proof in the hearing.

(h) For the State Office of Administrative Hearings to recommend overturning a district order reducing the amount of groundwater authorized to be produced under a temporary permit, the permit holder must demonstrate by a preponderance of the evidence that the production of the amount of groundwater authorized based on the maximum production capacity will not cause:

(1) a failure to achieve applicable adopted desired future conditions for the aquifer; or

(2) an unreasonable impact on existing wells as found in the district's order.

(i) 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.

No equivalent provision.

SECTION 4. If the addition of territory under Section 8802.0035, Special District Local Laws Code, as added by this Act, causes the annual water use fee in Section 8802.105 to exceed \$1 million, the district shall not require an assessment of greater than \$1 million annually as adjusted to

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SECTION 3. (a) The legislature validates and confirms all acts and proceedings of the board of directors of the Barton Springs-Edwards Aquifer Conservation District that were taken before the effective date of this Act.

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

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

(2) has been held invalid by a final judgment of a court.

SECTION 4. (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 under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

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

(d) All requirements of the constitution and laws of this state

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reflect the percentage change during the preceding year in the Consumer Price Index.

SECTION 5. Same as House version.

SECTION 6. Same as House version.

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and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

No equivalent provision.

SECTION 5. 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, 2015.

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SECTION __. It is the intent of the legislature that this Act apply only to the territory described by Section 8802.0035, Special District Local Laws Code, as added by this Act, and not have statewide implications. [FA3]

SECTION 7. Same as House version.

CONFERENCE