

AN ACT

relating to the territory, jurisdiction, and powers of the Barton Springs-Edwards Aquifer Conservation District, including its authority to regulate certain wells for the production of groundwater; imposing a cap on certain fees.

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

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).

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

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

10 (f) The district's jurisdiction over any well that is
11 drilled to produce water in the territory described in Section
12 8802.003, including a well that is used to recover water that has
13 been injected as part of an aquifer storage and recovery project,
14 applies to all wells for which the district has jurisdiction in the
15 shared territory described by this section.

16 SECTION 2. Section 8802.1045, Special District Local Laws
17 Code, is amended by adding Subsection (g) to read as follows:

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

24 SECTION 3. As soon as practicable after the effective date
25 of this Act, and in conformance with the requirements of Section
26 8802.053, Special District Local Laws Code, the board of directors
27 of the Barton Springs-Edwards Aquifer Conservation District shall

1 revise the single-member districts as the board considers
2 appropriate to reflect the changes in territory made by Section
3 8802.0035, Special District Local Laws Code, as added by this Act.

4 SECTION 4. (a) In this section:

5 (1) "District" means the Barton Springs-Edwards
6 Aquifer Conservation District.

7 (2) "Maximum production capacity" means the maximum
8 production capacity of a well, which may be based on a 36-hour pump
9 test conducted at the time the well was initially constructed or
10 placed into service.

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

14 (c) A person operating a well before the effective date of
15 this Act or who has entered into a contract before the effective
16 date of this Act to drill or operate a well that is or will be
17 located in the territory described by Subsection (b) of this
18 section and subject to the jurisdiction of the district under
19 Section 8802.0035, Special District Local Laws Code, as added by
20 this Act, shall file an administratively complete permit
21 application with the district not later than three months after the
22 effective date of this Act for the drilling, equipping, completion,
23 or operation of any well if the well requires a permit under the
24 rules or orders of the district. The person may file the permit
25 application for an amount of groundwater production not to exceed
26 the maximum production capacity of the well.

27 (d) The district shall issue a temporary permit to a person

1 who files an application under Subsection (c) of this section
2 without a hearing on the application not later than the 30th day
3 after the date of receipt of the application. The district shall
4 issue the temporary permit for the groundwater production amount
5 set forth in the application. The temporary permit issued under
6 this subsection shall provide the person with retroactive and
7 prospective authorization to drill, operate, or perform another
8 activity related to a well for which a permit is required by the
9 district for the period of time between the effective date of this
10 Act and the date that the district takes a final, appealable action
11 on issuance of a regular permit pursuant to the permit application
12 if:

13 (1) the person's drilling, operating, or other
14 activities associated with the well are consistent with the
15 authorization sought in the permit application;

16 (2) the person timely pays to the district all
17 administrative fees and fees related to the amount of groundwater
18 authorized to be produced pursuant to the temporary permit in the
19 same manner as other permit holders in the district; and

20 (3) the person complies with other rules and orders of
21 the district applicable to permit holders.

22 (e) The temporary permit issued under Subsection (d) does
23 not confer any rights or privileges to the permit holder other than
24 those set forth in this section. After issuing the temporary
25 permit, the district shall process the permit application for
26 notice, hearing, and consideration for issuance of a regular permit
27 consistent with this section. The district, after notice and

1 hearing, shall issue an order granting the regular permit
2 authorizing groundwater production in the amount set forth in the
3 temporary permit unless the district finds that authorizing
4 groundwater production in the amount set forth in the temporary
5 permit will cause:

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

8 (2) an unreasonable impact on existing wells.

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

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

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

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

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

5 (i) A person who relies on the temporary permit granted by
6 this section to drill, operate, or engage in other activities
7 associated with a water well assumes the risk that the district may
8 grant or deny, wholly or partly, the permit application when the
9 district takes final action after notice and hearing to issue a
10 regular permit pursuant to the application.

11 SECTION 5. If the addition of territory under Section
12 8802.0035, Special District Local Laws Code, as added by this Act,
13 causes the annual water use fee in Section 8802.105 to exceed \$1
14 million, the district shall not require an assessment of greater
15 than \$1 million annually as adjusted to reflect the percentage
16 change during the preceding year in the Consumer Price Index.

17 SECTION 6. (a) The legislature validates and confirms all
18 acts and proceedings of the board of directors of the Barton
19 Springs-Edwards Aquifer Conservation District that were taken
20 before the effective date of this Act.

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

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

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

1 SECTION 7. (a) The legal notice of the intention to
2 introduce this Act, setting forth the general substance of this
3 Act, has been published as provided by law, and the notice and a
4 copy of this Act have been furnished to all persons, agencies,
5 officials, or entities to which they are required to be furnished
6 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
7 Government Code.

8 (b) The governor, one of the required recipients, has
9 submitted the notice and Act to the Texas Commission on
10 Environmental Quality.

11 (c) The Texas Commission on Environmental Quality has filed
12 its recommendations relating to this Act with the governor, the
13 lieutenant governor, and the speaker of the house of
14 representatives within the required time.

15 (d) All requirements of the constitution and laws of this
16 state and the rules and procedures of the legislature with respect
17 to the notice, introduction, and passage of this Act are fulfilled
18 and accomplished.

19 SECTION 8. It is the intent of the legislature that this Act
20 apply only to the territory described by Section 8802.0035, Special
21 District Local Laws Code, as added by this Act, and not have
22 statewide implications.

23 SECTION 9. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 3405 was passed by the House on May 8, 2015, by the following vote: Yeas 126, Nays 15, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3405 on May 29, 2015, and requested the appointment of a conference committee to consider the differences between the two houses; that the House adopted the conference committee report on H.B. No. 3405 on May 31, 2015, by the following vote: Yeas 143, Nays 1, 1 present, not voting, and that the House adopted H.C.R. No. 149 authorizing certain corrections in H.B. No. 3405 on June 1, 2015, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 3405

I certify that H.B. No. 3405 was passed by the Senate, with amendments, on May 22, 2015, by the following vote: Yeas 28, Nays 3; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; that the Senate adopted the conference committee report on H.B. No. 3405 on May 30, 2015, by the following vote: Yeas 27, Nays 4, and that the Senate adopted H.C.R. No. 149 authorizing certain corrections in H.B. No. 3405 on June 1, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor