

CHAPTER 429

S.B. No. 988

AN ACT

validating creation of the Barton Springs-Edwards Aquifer Conservation District and amending the powers and duties of that district; providing the authority to impose penalties and water use fees; and reducing the authorized level of taxation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. NOTICE, FINDINGS, AND VALIDATION. The legislature finds that proper and 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 by the constitution and laws of this state, including the Governor of Texas, who has submitted the notice and Act to the Texas Water Commission. Also, the legislature finds that the Texas Water Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time. The general law relating to consent by political subdivisions to the creation of conservation and reclamation districts and the inclusion of land in those districts has been complied with, and 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 have been fulfilled and accomplished. The legislature hereby finds that creation of the Barton Springs-Edwards Aquifer Conservation District (the "district"), the boundaries of which are set forth by the Texas Water Commission's August 15, 1986, order, is feasible and practicable, that it would be a benefit to land in the district, and that it would be a public benefit and utility, subject only to a confirmation election of the voters in the district; and as modified herein, the legislature hereby affirms, ratifies, and validates creation of the district as an underground water conservation district under Chapter 52, Water Code, pursuant to Texas Water Commission orders dated April 9, 1986; August 15, 1986; and November 19, 1986.

SECTION 2. POWERS AND DUTIES OF DISTRICT. (a)(1) The district has the powers, duties, authority, and responsibilities provided by Chapter 52, Water Code, for underground water conservation districts, except as modified in this section.

(2) The district may not adopt rules regulating zoning or the subdivision of land.

(b)(1) Except as provided by Subdivision (2) of this subsection, the district does not have the authority to levy taxes under Section 52.351, Water Code.

(2) If the user fee authorized by this section is held unconstitutional by the Texas Supreme Court, the district may levy a property tax as provided by Sections 52.351 through 52.354, Water Code. The property tax may be set in an amount of not more than three cents for each \$100 valuation of property. An election must be called and held in the district to approve the property tax and a majority of the qualified voters voting at the election must approve the tax before the tax can be levied and collected.

(c)(1) The board of directors of the district (the "board") has by rule the authority to impose reasonable fees on each well for which a permit is issued by the district and which is not exempted from regulation by the district. The fees may be assessed on an annual basis, based upon the size of column pipe used in the wells, the production capacity of the well, or actual, authorized, or anticipated pumpage. The board may utilize fees as both a regulatory mechanism and a revenue-producing mechanism.

(2) The board shall adopt rules relating to the rates of fees, the manner and form for filing reports of fees, and the manner of collection of fees.

(3) The money collected from fees may be used by the district to manage and operate the district and to pay all or part of the principal of and interest on district bonds or notes.

(d)(1) The production capacity for exempt wells within the district, as specified in Section 52.170, Water Code, is hereby reduced from 25,000 gallons per day to 10,000 gallons per day.

(2) The number of households that may be supplied by an exempt domestic well in the district, pursuant to Subdivision (2), Section 52.170, Water Code, is hereby reduced to five or less.

(e) In addition to other remedies for violations of permits, rules, or orders, the district has the power to enforce its permits, orders, and rules as follows:

(1) If it appears that a person has violated or is violating any provision of Chapter 52, Water Code, or any order, permit, or rule of the district, the district may file civil suit in a district court of the county in which the violation occurs to obtain:

- (A) injunctive relief to restrain the person from continuing the violation;
- (B) assessment and recovery of a civil penalty of not less than \$50 or more than \$1,000 for each violation and for each day of violation; or
- (C) both injunctive relief and civil penalties.

(2) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, permit, or other order of the district, the district court shall grant injunctive relief as the facts may warrant.

(3) Initiation of legal action to obtain penalties shall be authorized by a resolution of the board of directors or by the district's general manager, if authorized by the board.

(4) The district is not required to post bond or other security with the court under this section and may recover reasonable attorney's fees and expert witness's fees in suits brought under this section.

(f)(1) The legislature finds that the City of Austin currently receives, by way of the discharge of Barton Springs, contribution to its municipal water supply in an overall volume roughly equivalent to existing usage by other nonexempt users of water from the aquifer, and that the City of Austin shall elect two of the five members of the district's board of directors.

(2) The board may assess the City of Austin, as a water use fee, each year an amount not to exceed 40 percent of the total funding of the district received from water use fees assessed against Austin and other nonexempt users.

SECTION 3. MUNICIPAL APPROVAL. Approval of inclusion of land within the district that is located within the corporate limits or extraterritorial jurisdiction of a municipality does not require approval by the municipality pursuant to the Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes).

SECTION 4. CONFIRMATION ELECTION. A confirmation election shall be held to confirm or deny the district's creation. If approved by a majority vote, the district as a whole is confirmed; if rejected by a majority of those voting, the district is not confirmed and no subsequent confirmation election may be held during the year following the election date.

SECTION 5. ANNEXATION OF SERVICE AREAS. The service areas of Creedmoor Maha Water Supply Corporation, Goforth Water Supply Corporation, or any other water supply utility relying upon the aquifer for greater than 50 percent of its water supply but having a service area not within the management area defined by the Texas Water Commission's August 15, 1986, order, may be annexed into the district on a local option basis as provided by this section. By resolution, the governing body of the water utility may request that a local option annexation election be held within the boundaries of its service area on the date of the district's confirmation election. Along with the resolution, the utility shall supply to the board a boundary description of its service area, sufficient to serve as election boundaries and district boundaries, and a deposit of funds to reimburse the district for the cost of conducting the election in the utility's service area. If approved by a majority of the voters in the utility service area, the area shall be included within the district for all purposes for so long as it continues to rely on the aquifer as a source of water supply.

SECTION 6. DISSOLUTION OF DISTRICT. Provided it has no outstanding bonds or other long-term indebtedness, the district may be dissolved by a vote of two-thirds of the voters in an election called for that purpose voting in favor of dissolving the district. A dissolution election shall be called by the board following receipt of a petition signed by

a number of registered voters in the district equivalent to 30 percent of the voters in the district's most recent election.

SECTION 7. BOARD OF DIRECTORS. (a) The board consists of five members. If a director appointed by the Texas Water Commission fails to qualify for office, the remaining directors shall appoint someone to fill the vacancy for the unexpired term. If at any time the number of qualified directors is less than three because of the failure or refusal of one or more directors to qualify or serve, because of death or incapacitation, or for any other reason, the Texas Water Commission shall appoint the necessary number of directors to fill all vacancies on the board.

(b) The initial directors shall serve until the directors elected at the election to be held on the third Saturday in May, 1988, have qualified for office.

(c) The directors elected at the first election shall draw lots for three four-year terms and two two-year terms. Thereafter, all directors shall serve four-year terms, and all director's elections shall occur on the May general election date of even-numbered years.

SECTION 8. CONVERSION OF THE DISTRICT. The district may not be converted to any other type of conservation and reclamation district under any provision of law.

SECTION 9. BORROWING MONEY. The district may borrow money for purposes of the district authorized by law according to the provisions of Subchapter J, Chapter 51, Water Code. The district may not borrow money for a period of more than one year.

SECTION 10. EXCLUSION OF A COUNTY AREA. (a) The residents of any county area of the district may, on petition of 15 percent of the registered voters within the county area of the district, request that the board of directors hold a referendum, in conjunction with the next regularly scheduled directors' election, to determine whether or not that county area will remain within the district. The petition must be submitted to the board of directors not later than the 45th day before the date of the election. The referendum shall be called and added to the ballot of the May directors' election in the county area. Approval of the withdrawal must be by the affirmative vote of a majority of the voters voting on the proposition: "The _____ county area of the Barton Springs-Edwards Aquifer Conservation District shall be withdrawn from the Barton Springs-Edwards Aquifer Conservation District." The withdrawal of any county area voting to withdraw from the district is effective on June 1 following the referendum. On and after that date, the boundaries of the district shall be redefined to exclude the county area; the levy and collection of the district's taxes or user fees within the county area shall cease; the offices held by the directors elected from the county area shall terminate; and the other matters provided by law or by agreement with any person affecting the authority and operations of the district shall be automatically redesignated and redefined to be consistent with the withdrawal of the county area.

(b) A county area may not petition for exclusion from the district before the third anniversary of the confirmation election at which the creation of the district was confirmed.

SECTION 11. Nothing contained in this Act affecting the Barton Springs-Edwards Aquifer Conservation District shall adversely affect the rights of any parties who were in litigation on or before February 1, 1987, with the Texas Water Commission or the petitioners for the creation of the Barton Springs-Edwards Aquifer Conservation District.

SECTION 12. SEVERABILITY. If any section, sentence, clause, or part of this Act shall, for any reason, be held invalid, such invalidity shall not affect the remaining portions of the Act, and it is hereby declared to be the intention of this legislature to have passed each section, sentence, clause, or part irrespective of the fact that any other section, sentence, clause, or part may be declared invalid.

SECTION 13. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 7, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 1987, by the following vote:

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Yeas 29, Nays 0. Passed the House, with amendments, on May 22, 1987, by the following vote: Yeas 148, Nays 0, one present not voting.

Approved June 17, 1987.

Effective June 17, 1987.