

SPECIAL DISTRICT LOCAL LAWS CODE

TITLE 6. WATER AND WASTEWATER

SUBTITLE H. DISTRICTS GOVERNING GROUNDWATER

For contingent expiration of this chapter, see Section 8852.003.

CHAPTER 8852. BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8852.001. DEFINITIONS. In this chapter:

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

(1) the district is dissolved on September 1, 2011, except that:

(A) any debts incurred shall be paid;

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

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

(2) this chapter expires September 1, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

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

(1) organization, existence, or validity;

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

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

(4) legality or operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER B. DISTRICT CREATION

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

(1) David Grall;

(2) Mauro Garcia;

(3) Robert Scott;

(4) A. C. Jones IV;

(5) Mario Martinez;

(6) Israel Hinojosa;

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

(8) Jesse Howell;

(9) Pearson Knolle; and

(10) Lawrence Cornelius.

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

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

(1) the date the temporary director becomes an initial permanent director under Section [8852.024](#); or

(2) the date this chapter expires under Section [8852.003](#).

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

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

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

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

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

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

(6) Jesse Howell and Pearson Knolle, if the voters in the territory described by Section [8852.023](#)(a)(6) vote not to

confirm the creation of the district; and

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

Sec. 8852.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the Brooks County Courthouse.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

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

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

(3) the territory:

(A) in Brooks County that, as of January 1, 2009, is:

(i) outside the corporate limits of the city of Falfurrias; and

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

(B) in Hidalgo County that is:

(i) described by a metes and bounds description in Section 2 of the Act creating this chapter; and

(ii) not in the Kenedy County Groundwater

Conservation District as of January 1, 2009;

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

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

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

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

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

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

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

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

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

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

(g) The district may not impose a maintenance tax unless the

tax is confirmed under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

Sec. 8852.026. RIGHT OF CERTAIN LANDOWNERS TO WITHDRAW FROM DISTRICT. A person who owns a tract of land in Brooks or Hidalgo County that adjoins the boundaries of the Kenedy County Groundwater Conservation District as of the effective date of the Act creating this chapter may petition the Kenedy County Groundwater Conservation District for annexation into that district. Notwithstanding any other law, the Kenedy County Groundwater Conservation District may annex territory described by a petition under this section. Territory annexed by the Kenedy County Groundwater Conservation District under this section not later than January 1, 2010, is disannexed at that time from the district created by this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

Sec. 8852.027. LIMITATION OF POWERS OF TEMPORARY BOARD. (a) The temporary board may exercise only the powers described by Sections [8852.022](#), [8852.023](#), and [8852.025](#).

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

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

(2) develop a draft or final management plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER C. BOARD OF DIRECTORS

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

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

(A) one director who represents the municipal interests of the territory described by Section [8852.023](#)(a)(1), if the territory described by Section [8852.023](#)(a)(1) is included in the district; and

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

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

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

(B) two directors who represent the agricultural

interests of the territory described by Section 8852.023(a)(5), if the territory described by Section 8852.023(a)(5) is included in the district;

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

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

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

(b) A director is entitled to receive reimbursement for the director's reasonable expenses incurred while engaging in activities on behalf of the district in accordance with Sections



36.060(b) and (c), Water Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER D. POWERS AND DUTIES

Sec. 8852.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Except as otherwise provided by this chapter, the district has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, and Section 59, Article XVI, Texas Constitution, applicable to groundwater conservation districts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

Sec. 8852.103. EXEMPTIONS FROM PERMIT REQUIREMENTS. (a) Section 36.117, Water Code, applies to the district except that for the purposes of applying that section to the district, "domestic use" and "livestock use" have the meanings assigned by Subsection (b).

(b) In this section:

(1) "Domestic use":

(A) means the use of groundwater by an individual

or a household to support domestic activities, including the use of groundwater for:

- (i) drinking, washing, or culinary purposes;

- (ii) irrigating a lawn or a family garden or orchard;

- (iii) watering domestic animals; or

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

(B) does not include the use of water:

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

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

- (1) the availability of water in the district;

- (2) the conditions of any aquifer that overlies the district;

- (3) subsidence in the district;

- (4) existing permit holders or other groundwater users in the district; and

- (5) any applicable approved regional water plan or

certified district management plan.

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

(c) Sections 36.122(c), (i), and (j), Water Code, do not apply to a requirement or limitation imposed under this section.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER F. DISSOLUTION

Sec. 8852.201. SUBCHAPTER CUMULATIVE. The provisions of this subchapter are cumulative of the provisions of Subchapter [I](#), Chapter [36](#), Water Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. [2456](#)), Sec. 1, eff. June 19, 2009.

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

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

(1) validate the signatures on the petition; and

(2) if the signatures are validated, order an election on the next uniform election date under Section [41.001](#), Election

Code.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

Sec. 8852.204. BALLOT. The ballot for an election under this subchapter must be printed to permit voting for or against the proposition: "The dissolution of the Brush Country Groundwater Conservation District."

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1396 (S.B. 2456), Sec. 1, eff. June 19, 2009.