

SPECIAL DISTRICT LOCAL LAWS CODE

TITLE 6. WATER AND WASTEWATER

SUBTITLE H. DISTRICTS GOVERNING GROUNDWATER

CHAPTER 8834. FORT BEND SUBSIDENCE DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8834.001. DEFINITIONS. In this chapter:

(1) "Agricultural crop":

(A) means food or fiber commodities that are grown for resale or commercial purposes and that are to be used for food, clothing, or animal feed; and

(B) includes nursery products and florist items that are in the possession of a nursery grower.

(1-a) "Beneficial use" means any use that is useful or beneficial to the user, including:

(A) an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or

(B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals.

(2) "Board" means the district's board of directors.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "District" means the Fort Bend Subsidence District.

(4-a) "Florist item" means a cut flower, a potted plant, a blooming plant, an inside foliage plant, a bedding plant, a corsage flower, cut foliage, a floral decoration, or live decorative material.

(5) "Groundwater" means water existing below the earth's surface in the district. The term does not include water produced with oil in the production of oil and gas.

(5-a) "Nursery grower" means a person who grows in any medium more than 50 percent of the nursery products or florist items that the person sells or leases. A person grows a nursery product or florist item if the person cultivates or propagates the product or item by engaging in activities associated with the production or multiplying of stock, including the development of new plants from cuttings, grafts, plugs, or seedlings. The term does not include a person who merely holds or maintains a nursery product or florist item before sale or lease.

(5-b) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown or kept for, or capable of, propagation and distribution for sale or lease.

(5-c) "Regional water supplier" means a political subdivision of this state that has:

- (A) the authority to conserve, store, transport, treat, distribute, sell, and deliver water to any person; and
- (B) an approved groundwater reduction plan.

(6) "Subsidence" means the lowering in elevation of the surface of land by groundwater withdrawal.

(7) "Waste" means:

(A) groundwater withdrawal from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) groundwater withdrawal from a groundwater reservoir through a well if the water withdrawn is not used for a beneficial use or if the amount used is more than is reasonably required for a beneficial use;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or other

harmful matter admitted from another stratum or from the surface of the ground;

(E) unless the discharge is authorized by a permit, rule, or order issued by the commission under Chapter 26, Water Code, wilfully or negligently causing, suffering, or allowing groundwater to escape or flow:

(i) into a river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch; or

(ii) onto land that does not belong to the owner of the well;

(F) unless the occupant of the land receiving the discharge granted permission for the discharge, the escape of groundwater pumped for irrigation as irrigation tailwater onto land that does not belong to the owner of the well; or

(G) wilfully causing or knowingly permitting the water withdrawn from an artesian well to run off the owner's land or to percolate through the stratum above which the water is found, as prescribed by Section 11.205, Water Code.

(7-a) "Water conservation" means a measure that seeks to make a water supply available for alternative or future use. The term includes best management practices, improved efficiency or accountability, recycling, reuse, pollution prevention, and reduction in consumption, loss, or waste.

(8) "Well" means a facility, device, or method used to withdraw groundwater.

(8-a) "Well owner" means a person who has an ownership interest in a well, operates a well, owns land on which a well is located, or owns the water withdrawn or to be withdrawn from a well.

(9) "Withdrawal" means the act of extracting by pumping or another method.

Sec. 8834.002. NATURE OF DISTRICT. The district is:

(1) a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution; and

(2) a political subdivision of the state.

Sec. 8834.003. PURPOSE; LEGISLATIVE INTENT. (a) The purpose of this chapter is to provide for the regulation of groundwater withdrawal in the district to prevent subsidence, which contributes to or precipitates flooding or overflow in the district, including rising water resulting from a storm or hurricane.

(b) The legislature intends that the district administer and enforce this chapter and exercise the district's rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of this chapter.

Sec. 8834.004. FINDINGS OF PUBLIC USE AND BENEFIT. The district is created to serve a public use and benefit.

Sec. 8834.005. DISTRICT TERRITORY. The district includes the territory in Fort Bend County unless the district's territory has been modified under other law.

Sec. 8834.006. CERTAIN OTHER STATUTES INAPPLICABLE. (a) Other laws governing the administration or operation of a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, including Chapters 36 and 49, Water Code, do not apply to the district.

(b) Notwithstanding Section 36.052, Water Code, this chapter prevails over any other law in conflict or inconsistent with this chapter.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 8834.051. DIRECTORS. (a) The district is governed by a board of 17 directors appointed as provided by this section.

(b) Directors serve two-year terms.

(c) A director must be a qualified voter of the district.

(d) The persons designated by Subsections (e), (f), (g), and (h) shall appoint directors in January to fill vacancies caused by the expiration of directors' terms. The district shall mail notice regarding the necessity of an appointment to the persons designated by Subsections (e), (f), (g), and (h) not later than the 20th day before the date of the board's January meeting.

(e) The mayor of each of the following municipalities shall appoint a director from the mayor's respective municipality:

- (1) Houston;
- (2) Missouri City;
- (3) Stafford;
- (4) Sugar Land;
- (5) Rosenberg;
- (6) Richmond; and
- (7) Fulshear.

(f) The Commissioners Court of Fort Bend County shall appoint:

- (1) two directors who represent agricultural interests and live in an unincorporated area;
 - (2) two directors who represent industrial interests;
- and
- (3) two directors who represent business interests.

(g) The mayors of Fort Bend County municipalities other than those listed in Subsection (e) shall appoint one director jointly.

(g-1) The mayors described by Subsections (e) and (g) jointly shall appoint one director who represents the district at large.

(h) The board of directors of the North Fort Bend Water Authority shall appoint two directors.

(i) The directors shall serve staggered terms as follows:

(1) five members appointed under Subsection (e) and four members appointed under Subsection (f) shall serve terms expiring on January 1 of odd-numbered years; and

(2) two members appointed under Subsection (e), two members appointed under Subsection (f), one member appointed under Subsection (g), one member appointed under Subsection (g-1), and two members appointed under Subsection (h) shall serve terms expiring on January 1 of even-numbered years.

Sec. 8834.052. BOARD POWERS AND DUTIES. (a) The board has all powers necessary or convenient to carry out its responsibilities and accomplish the purpose of this chapter, whether the powers are specifically authorized by this chapter or are implied by this chapter or other law.

(b) The board shall administer this chapter as provided by Section 8834.003.

Sec. 8834.053. OFFICIAL BOARD ACTIONS. The affirmative vote of a majority of the directors is required for any official board action.

Sec. 8834.054. DIRECTOR'S BOND. (a) A director shall execute a bond that is:

- (1) for \$5,000;
- (2) payable to the district; and
- (3) conditioned on the faithful performance of the director's duties.

(b) The district shall pay for the bond.

Sec. 8834.055. OFFICERS. (a) Each year, at the first meeting after the new directors take office, the directors shall select a chair, a vice chair, and a secretary.

(b) An officer selected under Subsection (a) serves at the will of the board and may be removed and replaced by a majority of the board at any time.

(c) The chair shall preside over meetings of the board. If the chair is not present, the vice chair shall preside.

(d) The secretary shall ensure that all records and books of the district are properly kept and attest to the chair's signature on all documents. The board may authorize another director, the general manager, or any employee or contractor to execute documents on behalf of the district and to certify the authenticity of any record of the district.

Sec. 8834.056. MEETINGS. (a) The board shall hold regular meetings at a time set by the board.

(b) The board may hold a special meeting at the call of the chair or on the written request of at least three directors.

Sec. 8834.057. APPLICABILITY OF OPEN MEETINGS LAW. (a) The board shall give notice of board meetings as provided by Chapter 551, Government Code. Failure to provide notice of a regular meeting or an insubstantial defect in notice of any meeting does not affect the validity of any action taken at the meeting.

(b) A meeting of a committee of the board is not subject to Chapter 551, Government Code, if less than a quorum of the board is present at the meeting.

Sec. 8834.058. COMPENSATION AND REIMBURSEMENT OF DIRECTORS. (a) A director is entitled to receive fees of office of not more than \$150 a day for each day the director is engaged in the exercise of the director's duties. The fees of office may not exceed \$9,000 a year.

(b) A director is entitled to receive reimbursement for actual expenses reasonably and necessarily incurred in the exercise of the director's duties under this chapter.

(c) To receive fees of office and reimbursement for expenses, a director must file with the district a verified statement that:

(1) shows the number of days spent in the service of the district; and

(2) provides a general description of the duties performed for each day of service.

Sec. 8834.059. VACANCIES. If a vacancy occurs on the board, the person or persons designated by Section 8834.051 to appoint a director for the position that is vacated shall appoint a director to serve the unexpired term.

Sec. 8834.060. DISTRICT POLICIES. The board shall adopt the following written policies:

(1) a code of ethics for district directors, officers, and employees and for persons engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments;

(4) policies and procedures for the selection, monitoring, or review and evaluation of professional services; and

(5) policies that ensure a better use of management information, including the use of:

(A) budgets to plan and control cost; and

(B) uniform reporting requirements based on "Audits of State and Local Governmental Units," published by the American Institute of Certified Public Accountants, and "Governmental Accounting and Financial Reporting Standards," published by the Governmental Accounting Standards Board.

Sec. 8834.061. GENERAL MANAGER. (a) The board may employ a general manager to serve as the chief administrative officer

of the district. The district may contract with any person to perform the general manager's duties.

(b) The board may delegate to the general manager the authority to manage and operate the affairs of the district subject only to orders of the board.

(c) The duties of the general manager include:

- (1) administering board orders;
- (2) coordinating with state, federal, and local agencies;
- (3) supervising development of district plans and programs;
- (4) preparing and submitting the annual budget to the board; and
- (5) performing other duties assigned by the board.

(d) The general manager shall execute a bond that is:

- (1) in an amount set by the board;
- (2) payable to the district; and
- (3) conditioned on the general manager's faithful performance of the general manager's duties.

(e) The district shall pay for the bond described under Subsection (d).

(f) The board shall determine the compensation and terms of office and employment for the general manager.

(g) The board by a vote of a majority of board members may discharge the general manager.

Sec. 8834.062. PERSONNEL. (a) The general manager shall employ personnel necessary to properly handle district business and operation. The general manager may employ attorneys, bookkeepers, engineers, and other expert and specialized personnel considered necessary.

(b) The general manager shall determine the compensation paid to district employees.

(c) The general manager may discharge a district employee.

Sec. 8834.063. BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may:

(1) establish a public retirement system as provided by Chapter 810, Government Code; or

(2) provide for a deferred compensation plan as described by Section 457, Internal Revenue Code of 1986.

(c) The board may:

(1) include hospitalization and medical benefits for district employees as part of the compensation paid to the employees; and

(2) adopt or amend a plan or rule as necessary to provide the benefits described by Subdivision (1).

(d) The board may establish a sick leave pool for district employees in the manner provided for state employees by Subchapter A, Chapter 661, Government Code.

Sec. 8834.064. BOND FOR EMPLOYEE RESPONSIBLE FOR MONEY.

(a) The board shall require an employee who collects, pays, or handles district money to provide a good and sufficient bond that is:

(1) in an amount sufficient to safeguard the district;

(2) payable to the district; and

(3) conditioned on:

(A) the faithful performance of the employee's duties; and

(B) accounting for all district money and property under the employee's control.

(b) The district shall pay for the bond.

Sec. 8834.065. DISTRICT OFFICE. The board shall maintain its principal office in the district for conducting district business. The office must be in the district.

Sec. 8834.066. MAINTENANCE OF RECORDS; PUBLIC INSPECTION.

(a) The district shall:

(1) keep a complete account of board meetings and proceedings; and

(2) maintain in a safe place the board's minutes, contracts, records, notices, accounts, and receipts.

(b) The board's minutes, contracts, records, notices, accounts, and receipts are:

(1) the property of the district; and

(2) subject to public inspection.

Sec. 8834.067. SEAL. The board shall adopt a seal.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8834.101. DISTRICT PLAN. (a) The board shall formulate a plan to control and mitigate subsidence in the district.

(b) The plan must:

(1) regulate groundwater withdrawals to maintain sufficient artesian pressure to control and mitigate subsidence; and

(2) specify in as much detail as practicable the acts, procedures, performance, and avoidance that are necessary to carry out the purpose of this chapter.

(c) When formulating the plan, the board shall compile and consider:

(1) a list of wells in the district subject to regulation under this chapter;

(2) a list of all available sources of water, other than groundwater, in the district;

(3) the purpose for which the water is used and for which it is proposed to be used;

(4) accurate estimates of:

(A) groundwater withdrawal from all wells or proposed wells in the district;

(B) the amount of groundwater that may be withdrawn from each area in the district without causing:

(i) long-term static water level decline; and

(ii) reduction of artesian pressure that will lead to subsidence in the district; and

(C) current and future water needs in the district;

(5) information relating to formulating a permit system; and

(6) other information necessary to manage groundwater in the district and to effectively and expeditiously carry out the purpose of this chapter.

Sec. 8834.102. ADOPTION OF DISTRICT PLAN. (a) The board shall hold a hearing to consider a plan formulated under Section 8834.101.

(b) After the hearing, the board shall:

(1) make any changes it considers necessary according to evidence and material presented at the hearing; and

(2) adopt the plan.

(c) The board may amend or repeal a plan adopted under this section and may adopt a new plan as provided by this section for the adoption of the original plan.

(d) An adopted plan remains in effect until a new plan is adopted.

Sec. 8834.103. WATER CONSERVATION MEASURES. (a) The board may adopt rules requiring the use of water conservation measures to reduce groundwater withdrawals.

(b) The district may cooperate with the commission and a local government to establish water conservation goals, guidelines, and plans to be used in the district.

(c) The district may contract with a local government in the district to provide services needed to meet water conservation requirements that the commission establishes.

Sec. 8834.104. ANNUAL GROUNDWATER WITHDRAWAL DETERMINATION. (a) The board shall hold an annual hearing to determine the effects during the preceding calendar year of groundwater withdrawal on subsidence in the district.

(b) At the hearing, the board shall consider information provided under Sections 8834.107 and 8834.214 and information presented by persons appearing before the board.

(c) After the hearing, the board shall:

- (1) consider all information presented to it;
- (2) determine groundwater withdrawal in the district during the preceding calendar year; and
- (3) make findings on the effects during the preceding calendar year of groundwater withdrawal on subsidence in the district.

(d) The board's findings and determinations under Subsection (c) shall be included in a report adopted by the board. The report shall be made available for examination by any interested person.

(e) The board shall submit the report adopted under Subsection (d) and a copy of the most recent district plan adopted under Section 8834.101 to the appropriate regional water planning group.

Sec. 8834.105. MONITORING AND SUPERVISION BY DISTRICT.

(a) The district may use subsidence compaction monitors, water-level observation wells, and other materials and equipment to determine the amount of groundwater that may be withdrawn while allowing groundwater to rebound and stabilize to a level that will halt subsidence.

(b) The district may use global positioning systems and other geodetic survey methods to monitor land surface elevations and measure subsidence.

(c) The district may coordinate monitoring and data collection activities with other entities, including private entities and federal, state, or local governmental entities.

Sec. 8834.106. DISTRICT RESEARCH. (a) The board may conduct studies and research that the board considers necessary to implement this chapter.

(b) The district may collect any information that the board determines is necessary to implement this chapter, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir.

(c) The board may use the services of geologists, hydrologists, licensed engineers, licensed geoscientists, or other expert personnel to accomplish the purposes of this section.

Sec. 8834.107. STUDIES BY BOARD STAFF. At least once each year and at any other time the board considers necessary, the board may have its staff make a complete study of the groundwater in the district and determine:

- (1) the water level;
- (2) the rates and amounts of groundwater withdrawal;

and

(3) other information relating to groundwater withdrawal that may affect subsidence in the district.

Sec. 8834.108. SALE OR DISTRIBUTION OF WATER PROHIBITED. The district may not sell or distribute surface water or groundwater.

Sec. 8834.109. ACCESS TO PROPERTY. (a) To carry out technical and other investigations necessary to implement this chapter, the board and its agents and employees are entitled to access to all property in the district.

(b) Before entering property for the purposes of this section, the person seeking access shall:

(1) give notice to the owner of the property as provided by district rules; and

(2) present proper credentials.

(c) The board and its agents and employees who enter private property shall observe the establishment's rules concerning safety, internal security, and fire protection.

Sec. 8834.110. GENERAL POWERS RELATED TO PROPERTY AND CONTRACTS. (a) The board may:

(1) purchase, lease, own, convey, and dispose of property both inside and outside district territory necessary or convenient to exercise the board's powers, duties, and functions under this chapter;

(2) construct, purchase, lease, or acquire in some other manner any material or property, including supplies, equipment, vehicles, or machinery, necessary to carry out this chapter;

(3) accept a grant, gift, or devise of property; or

(4) accept a grant, gift, loan, or other distribution of money.

(b) The district may make or accept a grant, gratuity, advance, or loan in any form to or from any public source approved by the board, including a governmental entity.

(c) The district may enter into a contract, covenant, or agreement the board considers appropriate related to a grant, gratuity, advance, or loan.

(d) The board may enter into a contract with any person to carry out this chapter.

(e) The district may enter into contracts only in the district's name.

Sec. 8834.111. COOPERATION WITH GOVERNMENTAL ENTITIES. In implementing this chapter, the board may request the assistance of and cooperate with a local government or an agency of this state or of the United States, including the Texas Water Development Board, the commission, and the United States Geological Survey.

Sec. 8834.112. RULES. (a) After notice and hearing, the board shall adopt rules designed to expeditiously and effectively implement this chapter and accomplish its purpose, including rules governing procedures before the board. The board shall enforce the rules.

(b) The board may adopt rules to prevent the waste of water or the degradation of water quality.

(c) The board shall compile its rules in a book and make the book available for use and inspection at the district's principal office. The district shall provide copies of its rules on payment of the reproduction cost.

Sec. 8834.113. CONSIDERATIONS FOR RULES AND ORDERS. When adopting a rule or issuing an order, the board shall consider:

(1) the availability of surface water or alternative water supplies;

(2) the economic effects on persons and the community;

(3) the degree and effect of subsidence on the surface of the land; and

(4) the differing topographical and geophysical characteristics of the land.

Sec. 8834.114. HEARINGS. (a) At a regular meeting of the board, the board shall set the date, time, and location for a hearing to be held under this chapter.

(b) The board may hold a hearing at any location in the district and recess a hearing from day to day.

(c) Any person may appear at a hearing and present testimony, evidence, exhibits, or other information in person or by counsel, or both.

(d) The board may use a hearing examiner to hear a subject set for the hearing.

(e) The board shall make the final decision on a subject heard by a hearing examiner. Procedures for use of hearing examiners shall be provided by rule.

Sec. 8834.115. NOTICE OF HEARINGS. (a) Not later than the 10th day before the date set for a hearing other than a permit application hearing, the district shall deliver or mail notice of the hearing to:

(1) each county, regional water supplier, and municipal government in the district; and

(2) each person that the board considers to have an interest in the subject matter of the hearing.

(b) Not later than the 10th day before the date set for a hearing, the district shall:

(1) publish notice of the hearing once in a newspaper of general circulation in each county in the district; and

(2) provide a copy of the notice of the hearing to the county clerk to be posted at the county courthouse of each county in the district in the place where notices are usually posted.

Sec. 8834.116. BOARD BYLAWS AND POLICIES. The board may adopt bylaws and policies as necessary to accomplish its purposes.

Sec. 8834.117. AUTHORITY TO ISSUE SUBPOENAS AND ADMINISTER OATHS. (a) The board may issue a subpoena to compel the testimony of a person or the production of a document if the testimony or document is necessary to carry out the board's powers, duties, and functions under this chapter.

(b) On application by the board, a district court shall enforce a subpoena issued under Subsection (a) in the same manner as a subpoena issued by the court.

(c) The board may administer an oath to a person who testifies before the board.

Sec. 8834.118. SUITS. (a) The district may sue and be sued in the courts of this state in the name of the district by and through the board.

(b) If requested by the district, the attorney general shall represent the district in the district courts and appellate courts of this state and in the courts of the United States.

(c) The board, in the board's sole discretion, may employ attorneys to represent the district in the district courts and appellate courts of this state and the courts of the United States.

(d) The general manager is the agent of the district on whom process, notice, or demand required or permitted by law to be served on the district may be served.

(e) The district is not required to give a bond for appeal, injunction, or costs in any suit to which the district is a party.

(f) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The court shall set the amount of the attorney's fees.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8834.151. DISBURSEMENT OF MONEY. The district may disburse its money by:

- (1) a check, draft, order, or other instrument signed by a person authorized under a board bylaw or board resolution; or
- (2) electronic funds transfer.

Sec. 8834.152. DISTRICT ACCOUNTS. The district shall keep a complete system of the district's accounts.

Sec. 8834.153. FISCAL YEAR. The district's fiscal year is the calendar year.

Sec. 8834.154. BUDGET. (a) The board shall adopt an annual budget containing a complete financial statement.

(b) The board may amend the annual budget.

Sec. 8834.155. AUDIT. The district shall have its affairs audited each year by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability. The district shall pay for the audit.

Sec. 8834.156. COPY OF AUDIT. The board shall keep one copy of the audit prepared under Section 8834.155 at the district office open to inspection by any interested person during normal office hours.

Sec. 8834.157. DEPOSITORY AND INVESTMENTS. (a) Except as provided by Subsection (g), the board shall designate one or more banks in the district to serve as a depository for district money. All district money shall be deposited in a depository

bank. This subsection does not limit the power of the board to place a portion of the district's money on time deposit or to purchase certificates of deposit or other authorized investments.

(b) The board shall prescribe the term of service for depositories.

(c) To the extent that money in a depository bank or a trustee bank is not invested or insured by the Federal Deposit Insurance Corporation, the money must be secured in the manner provided by Chapter 2257, Government Code.

(d) Before designating a depository bank, the board shall issue a notice stating the time and location the board will meet for that purpose and shall invite banks in the district to submit applications to be designated depositories.

(e) The board shall consider the management and condition of each bank that applies under Subsection (d) and designate as a depository the bank or banks that:

(1) offer the most favorable terms and conditions for handling district money;

(2) the board finds have proper management; and

(3) are in a condition to warrant handling of district money.

(f) Membership on the district's board of an officer or director of a bank does not disqualify the bank from being designated as a depository bank.

(g) If the board does not receive any applications before the meeting under Subsection (d), the board shall designate as a depository a bank or banks inside or outside the district under terms the board finds advantageous to the district.

(h) District money may be invested and reinvested as provided by Chapter 2256, Government Code.

(i) The board by resolution may provide that an authorized district representative may invest and reinvest district money and provide for money to be withdrawn from the appropriate district accounts for investments on terms that the board considers advisable.

Sec. 8834.158. INVESTMENT OFFICER. (a) Notwithstanding Section 2256.005(f), Government Code, the board may contract with a person to act as investment officer of the district.

(b) The investment officer shall:

(1) not later than the first anniversary of the date the officer takes office or assumes the officer's duties, attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Government Code; and

(2) attend at least four hours of additional investment training within each two-year period after the first year.

(c) Training under this section must be from an independent source approved by:

(1) the board; or

(2) a designated investment committee advising the investment officer.

(d) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapter 2256, Government Code.

SUBCHAPTER E. REGULATORY PROVISIONS

Sec. 8834.201. GROUNDWATER WITHDRAWALS SUBJECT TO BOARD RULE. (a) Groundwater withdrawals governed by this chapter, including withdrawals of injected water, are subject to reasonable board rules and orders.

(b) The board may issue permits to drill new wells and by rule may provide exemptions from the permit requirements. The district shall grant a permit to drill and operate a new well inside a platted subdivision if water service from a retail public utility is not available to the lot where the well is to be located.

(c) In this section, "retail public utility" has the meaning assigned by Section 13.002, Water Code.

Sec. 8834.202. CERTAIN GROUNDWATER USES EXEMPT. The permit requirements of this chapter do not apply to:

- (1) a well regulated under Chapter 27, Water Code;
- (2) a well that:
 - (A) has a casing with an inside diameter of not more than five inches; and
 - (B) serves only a single-family dwelling; or
- (3) a shallow well that:
 - (A) is not used to provide water for:
 - (i) human consumption;
 - (ii) agriculture;
 - (iii) manufacturing or industry; or
 - (iv) water injection; and
 - (B) withdraws water solely:
 - (i) to prevent hazardous sand boils, dewater surface construction sites, or relieve hydrostatic uplift on permanent structures;
 - (ii) for groundwater quality analysis and for monitoring migration of subsurface contaminants or pollution; or
 - (iii) for recovery of contamination or pollution.

Sec. 8834.203. REGULATION OF SPACING AND GROUNDWATER WITHDRAWAL. (a) To minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure and to control and prevent subsidence, the board may provide for the spacing of wells in the district and may regulate groundwater withdrawal from wells, taking into consideration:

- (1) the economic impact on well owners;
- (2) the resulting effect on subsidence; and
- (3) other relevant factors.

(b) Before adopting a rule or issuing an order under this section, the board shall set a hearing on the proposed rule or order.

(c) The district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic stratum located wholly or partly in the district's territory; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located wholly or partly in the district's territory.

Sec. 8834.204. WATER-METERING DEVICES. The board may:

(1) require water-metering devices to be placed on wells in the district; and

(2) adopt standards for the accuracy, testing, and calibration of the devices.

Sec. 8834.205. WELL REGISTRATION. The board by rule may require the registration of any well in the district.

Sec. 8834.206. PERMIT REQUIRED. (a) A well owner must obtain a permit from the board before:

(1) drilling, equipping, or completing the well;

(2) substantially altering the size of the well or a well pump; or

(3) operating the well.

(b) An operational well must have a permit.

(c) A well owner commits a violation if the well owner does not obtain a permit as required by Subsection (a). A violation occurs on the first day the drilling, equipping, completing, altering, or operation begins. Each day that a violation continues is a separate violation.

Sec. 8834.207. APPLICATION FOR PERMIT. (a) A person must submit an application and an application fee to the board to obtain a permit under this chapter.

(b) The application must state:

- (1) the person's name and address;
- (2) the location and wellhead elevation of the well or proposed well;
- (3) the amount of water being withdrawn or proposed to be withdrawn; and
- (4) any other information required by the board as necessary for the board to control and prevent subsidence in the district.

(c) The board shall use the application fee to process applications.

Sec. 8834.208. NOTICE AND HEARING ON PERMIT APPLICATION.

(a) The board shall hold a hearing on each permit application.

(b) Not later than the 10th day before the date set for the hearing, the board shall notify the applicant by regular mail or by certified mail, return receipt requested, of the date, time, and location of the hearing.

(c) The board may consider at a hearing as many permit applications as the board considers necessary.

Sec. 8834.209. ISSUANCE OF PERMIT. (a) Not later than the 60th day after the date of the hearing on a permit application, the board shall:

- (1) decide whether to issue the permit; and
- (2) prescribe the terms of the permit, if it decides to issue the permit.

(b) In deciding whether to issue a permit and in prescribing the terms of the permit, the board shall consider:

- (1) the purpose of this chapter;
- (2) the district plan;

(3) the quality, quantity, and availability of surface water or alternative water supplies at prices that are competitive with prices charged by suppliers of surface water in the district;

(4) the economic effect on the applicant of a decision to issue or deny the permit, or of the permit terms, in relation to the effect on subsidence that would result;

(5) the applicant's compliance with this chapter or any district rule, permit, or order; and

(6) all other relevant factors.

(c) The board shall issue a permit to an applicant if the board finds on sufficient evidence that:

(1) there is no other adequate and available substitute or supplemental source of alternative water supplies at prices competitive with the prices charged by suppliers of alternative water supplies in the district; and

(2) compliance with any provision of this chapter or any district rule will result in an arbitrary taking of property or in the practical closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the public.

(d) The permit must state the terms prescribed by the board. The permit must include:

(1) the name and address of the permit holder;

(2) the location of the well;

(3) the date the permit begins and the date the permit expires;

(4) conditions and restrictions placed on groundwater withdrawal; and

(5) other terms necessary to control and prevent subsidence.

(e) The board may condition the issuance of a permit under this section on the resolution of a previous or continuing violation of this chapter or of any district rule, permit, or order. The board may require an applicant to pay a civil

penalty or settlement amount, or take other necessary action, to resolve a previous or continuing violation.

Sec. 8834.210. TERM OF PERMIT. (a) A permit issued under this chapter expires on the first anniversary of the date of issuance, unless the board specifies a different period.

(b) To aid the district in the effective and expeditious performance of its duties, the board may issue a permit for a term not to exceed five years if the issuance does not impair the district's ability to control and prevent subsidence in the district.

(c) A permit is not a vested right of the permit holder. The board may revoke, suspend, or amend a permit after notice and hearing when reasonably necessary to accomplish the purpose of this chapter.

Sec. 8834.211. RENEWAL OF PERMIT. The board may renew a permit in the manner provided for issuing an original permit.

Sec. 8834.212. PERMIT FEES. (a) When the board issues or renews a permit, the board shall collect a permit fee from the applicant. The fee shall be determined by a schedule based on:

- (1) the term of the permit; and
- (2) the maximum annual amount of groundwater the board authorizes to be withdrawn from the well.

(b) The board may establish a disincentive permit fee to serve as a regulatory tool by creating a disincentive to continued overreliance on groundwater.

(c) The board shall determine the fee schedule after a hearing.

(d) The board shall use permit fees collected under this section to pay the cost of issuing permits and performing other regulatory functions under this chapter, including making grants, loans, or contractual payments to achieve, facilitate,

or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

Sec. 8834.213. TRANSFERRING PERMIT. (a) A permit is transferable only if the permit holder and the new owner of the well notify the district by certified mail, return receipt requested, of:

- (1) the transfer of ownership of the well; and
- (2) the name and address of the new owner.

(b) On receipt of the information required under Subsection (a), the district shall issue an amended permit with the new owner of the well listed as the permit holder. The remaining terms of the permit remain unchanged.

Sec. 8834.214. ANNUAL REPORT. (a) Before January 31 each year, a well owner who is required to hold a permit under this chapter shall submit to the board a report stating:

- (1) the well owner's name;
 - (2) the location of the well;
 - (3) the total amount of groundwater withdrawn from the well during the preceding calendar year;
 - (4) the total amount of groundwater withdrawn from the well during each month of the preceding calendar year;
 - (5) the purpose for which the groundwater was used;
- and

(6) any other information required by the board that the board considers necessary for the board to control and prevent subsidence in the district.

(b) A well owner whose well is aggregated with other wells permitted and managed by a regional water supplier shall file the report required by Subsection (a) with the regional water supplier instead of the district. A regional water supplier shall submit to the board the report required by Subsection (a) for all wells owned, managed, or permitted by that supplier not later than March 31 of each year.

Sec. 8834.215. REDUCTION OF GROUNDWATER USE. (a) The board by order may require a person to completely or partially discontinue the use of groundwater by:

(1) acquiring an alternative water supply needed to replace the water supply covered by the order; or

(2) participating in a groundwater reduction plan or other agreement the board approves as complying with the district's regulatory requirements.

(b) The board by order or rule may require a person to reduce groundwater use by eliminating waste or implementing water conservation measures.

Sec. 8834.216. OPEN OR UNCOVERED WELLS. (a) The district may require the owner or lessee of land on which an open or uncovered well is located to keep the well closed or capped with a covering capable of supporting not less than 400 pounds when the well is not in actual use.

(b) If the owner or lessee fails or refuses to close or cap a well as required, a person employed by the district may enter the land and close or cap the well safely and securely.

SUBCHAPTER F. APPEAL AND ENFORCEMENT PROVISIONS

Sec. 8834.251. APPEAL OF DISTRICT ACTIONS. (a) A person who is adversely affected by a rule, order, or other official action of the board, including a person residing in or owning real property in the district whose residence or real property is subsiding, may appeal the action to a district court in any county in the district after any administrative appeal is finally resolved.

(b) An appeal under this section must be filed not later than the 45th day after the date any administrative appeal is finally resolved.

(c) On written request from a person who is adversely affected, the board shall make written findings and conclusions

regarding a rule, order, or other official action of the district. The board shall provide a certified copy of the findings and conclusions to the person not later than the 35th day after the date the request was made.

(d) An appeal under this section of the legal propriety of a rule, order, or other action of the board is governed by the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The burden of proof is on the petitioner, and the challenged rule, order, or other official action of the district is considered prima facie valid.

(e) The district court shall set for trial as expeditiously as possible an appeal brought under this section and may not postpone or continue the suit unless the reasons for postponement or continuance are imperative.

Sec. 8834.252. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If a person has violated, is violating, or is threatening to violate this chapter or a district rule, permit, or order, the district may institute an action in a district court in the district for:

- (1) an injunction to restrain the person from continuing the violation or the threat of violation;
- (2) a civil penalty of not less than \$50 and not more than \$5,000 for each violation and for each day of violation; or
- (3) both injunctive relief and a civil penalty.

(b) The attorney general shall institute an action under this section at the request of the board, or at the request of the general manager if authorized by the board. The district in its sole discretion may employ attorneys of its choice to institute the action.

(c) The district is not required to post bond or other security with the court.

(d) The district court shall grant the injunctive relief requested under Subsection (a) as the facts warrant if the court

finds that a person is violating or threatening to violate this chapter or a district rule, permit, or order.

(e) The district court shall assess a civil penalty requested under Subsection (a) in the amount provided by that subsection if the court finds that a person has violated or is violating this chapter or a district rule, permit, or order.