

BILL ANALYSIS

Senate Research Center

S.B. 1686
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Natural Resources
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DIGEST AND PURPOSE

Texas faces a difficult challenge in developing water policies that serve both state and regional interests. The Texas Constitution authorizes the creation of groundwater conservation districts to plan, develop, and regulate the use of water. As proposed, S.B. 1686 creates the West Galveston Island Conservation District, subject to approval at a confirmation election, to manage Galveston County's groundwater resources.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of directors of the Bolivar Conservation District in SECTION 24 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE FINDINGS; PURPOSES. Provides findings of purpose.

SECTION 2. CONSTRUCTION OF ACT. Requires this Act to be liberally construed in conformity with the findings and purposes in Section 1. Provides that, if any provision of general law is in conflict or inconsistent with this Act, this Act prevails. Provides that any general law not in conflict or inconsistent with this Act is adopted and incorporated by reference.

SECTION 3. DEFINITIONS. Defines "board," "bond," "commission," "county," and "district."

SECTION 4. GOVERNMENTAL AGENCY; TORT CLAIMS. Provides that the Bolivar Conservation District (district) is a governmental agency, a body politic and corporate, and a political subdivision of the state. Provides that the district is a unit of government for purposes of Chapter 101 (Tort Claims), Civil Practice and Remedies Code, and operations of the district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

SECTION 5. BOUNDARIES OF THE DISTRICT. Sets forth the boundaries of the district.

SECTION 6. FINDINGS RELATING TO BOUNDARIES. Provides that the boundaries and field notes of the district form a closure. Provides that, if a mistake is made in the field notes or in copying the field notes in the legislative process, it does not affect the district's organization, existence, or validity; 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; right to impose or collect an assessment or ad valorem taxes; or legality or operation.

SECTION 7. CONFIRMATION ELECTION. Sets forth guidelines regarding a confirmation election to determine if the district is required to be created.

SECTION 8. ANNEXATION. Authorizes the district to annex land as provided by Subchapter J (Annexation or Exclusion of Land), Chapter 49, Water Code, subject to the approval of the

commissioners court of Galveston County (county).

SECTION 9. EXCLUDING TERRITORY. Authorizes the board of directors of the district (board), at any time during which the district does not have outstanding bonds, to, on its own motion, call a hearing on the question of the exclusion of land from the district in the manner provided by Chapter 49J (Annexation or Exclusion of Land), Water Code, if the exclusions are practicable, just, or desirable. Requires the board to call a hearing on the exclusion of land or other property from the district if a landowner or property owner in the district files with the secretary of the board a written petition requesting the hearing before the issuance of bonds.

SECTION 10. NUMBER OF DIRECTORS; TERMS. Provides that the district is governed by a board of five directors who serve staggered terms of four years, with three directors' terms expiring June 1 of an odd-numbered year and two directors' terms expiring June 1 of the following odd-numbered year.

SECTION 11. QUALIFICATIONS OF DIRECTORS. Sets forth eligibility requirements for directors.

SECTION 12. APPOINTMENT OF DIRECTORS. Sets forth guidelines regarding the appointment of directors. Authorizes a director to serve successive terms.

SECTION 13. REMOVAL OF DIRECTOR. Sets forth guidelines regarding the removal of a director.

SECTION 14. BOARD VACANCY. Requires a vacancy in the office of director to be filled by appointment by the remaining members of the board for the unexpired term.

SECTION 15. DIRECTOR'S BOND AND OATH. Requires a director, as soon as practicable after appointment, to execute a \$10,000 bond payable to the district and conditioned on the faithful performance of the director's duties. Requires each director's bond to be approved by the board, and requires each director to take the oath of office prescribed by the constitution for public officers. Requires the bond and oath to be filed with the district and retained in its records.

SECTION 16. OFFICERS. Requires directors, after they are appointed and have qualified by executing a bond and taking the oath, to organize by electing a president, a vice president, a secretary, and any other officers the board considers necessary.

SECTION 17. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. Provides that, in accordance with Section 49.060 (Fees of Office; Reimbursement), Water Code, a director is entitled to compensation for service on the board and is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

SECTION 18. QUORUM. Provides that one-half of the directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district.

SECTION 19. GENERAL POWERS OF DISTRICT. Provides that the district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Section 59 (Conservation and Development of Natural Resources; Conservation and Reclamation Districts), Article XVI, of the Texas Constitution, including those conferred by Chapter 54 (Municipal Utility Districts), Water Code, with respect to the purposes for which it is created. Authorizes the district to contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54, Water Code.

SECTION 20. SPECIFIC POWERS. Sets forth guidelines regarding the specific powers of the district.

SECTION 21. USE AND ALTERATION OF LAND AND PUBLIC WAYS. Sets forth guidelines regarding use and alteration of land and public ways within the district.

SECTION 22. NO EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain. Authorizes the county to exercise its power of eminent domain to implement a district facility or improvement.

SECTION 23. MANAGEMENT BY BOARD OF DIRECTORS. Provides that the responsibility for the management, operation, and control of the property belonging to the district is vested in the board.

SECTION 24. SPECIFIC POWERS AND DUTIES OF BOARD. Authorizes the board to perform certain stated functions. Sets forth guidelines regarding the district's money. Authorizes the board by resolution to authorize a designated representative to supervise the substitution of securities pledged to secure the district's money. Authorizes the board to adopt and enforce reasonable rules and regulations governing the administration of the district and its programs and projects. Authorizes the name of the district to be established or changed by resolution of the board.

SECTION 25. HEARINGS EXAMINER; ADMINISTRATIVE PROCEDURE ACT. Authorizes the board to appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments), Local Government Code. Authorizes the hearings examiner to be an employee of the district or a member of the board. Requires the hearing to be conducted in accordance with Chapter 2001 (Administrative Procedure), Government Code.

SECTION 26. GENERAL POWERS RELATING TO ASSESSMENTS. Authorizes the board to levy and collect an assessment for any purpose authorized by this chapter only if the assessment is approved by the commissioners court. Authorizes the board to undertake an improvement project or service that confers a special benefit on all or a definable part of the district. Authorizes the board to impose and collect a special assessment on property in that area, based on the benefit conferred by the improvement project or service, to pay all or part of the cost of the project or service. Authorizes the board, if the board determines that there is a benefit to the district, to provide an improvement or service to an area outside the boundaries of the district.

SECTION 27. SPECIFIC POWERS RELATING TO ASSESSMENTS. Authorizes an improvement project or service provided by the district to include certain items.

SECTION 28. PROPOSED ASSESSMENTS. Authorizes an improvement project or service to be financed under this Act after notice of a hearing is given as required by Section 30 and the board holds a public hearing on the advisability of the improvement project or service and the proposed assessment.

SECTION 29. PETITION REQUIRED. Prohibits the board from financing an improvement project or service under this chapter unless a written petition has been filed with the board requesting the improvement project or service. Requires the petition to be signed by at least 25 persons who own real property in the district if more than 25 persons own real property in the district according to the most recent certified property tax rolls.

SECTION 30. NOTICE OF HEARING. Requires notice of the hearing to be given in a newspaper with general circulation in the county by a certain date. Requires the notice to include certain items. Requires written notice containing the information required by this section to be mailed by certified mail, return receipt requested, by a certain date. Requires the notice to be mailed to each property owner in the district who will be subject to assessment at the current address of the property to be assessed as reflected on the tax rolls.

SECTION 31. CONCLUSION OF HEARING; FINDINGS. Authorizes a hearing on the

improvement project or service, whether conducted by the board or a hearings examiner, to be adjourned from time to time. Requires the board, at the conclusion of the hearing, to make findings by resolution or order relating to certain issues. Requires the hearing examiner, if appointed to conduct the hearing, to, after conclusion of the hearing, file with the board a report stating the examiner's findings and conclusions.

SECTION 32. AREA TO BE ASSESSED. (a) Authorizes the area of the district to be assessed according to the findings of the board to be the entire district or any part of the district and to be less than the area proposed in the notice of the hearing.

(b) Prohibits the area to be assessed, except as provided by Subsection (c), from including property that is not within the district boundaries at the time of the hearing unless there is an additional hearing preceded by the required notice.

(c) Authorizes the owner of improvements constructed or land annexed to the district after the district has imposed an assessment to waive the right to notice and an assessment hearing and to agree to the imposition and payment of an assessment at an agreed rate for improvements constructed or land annexed to the district.

SECTION 33. OBJECTIONS; LEVY OF ASSESSMENT. (a) Requires the board, at a hearing on proposed assessments, to, at any adjournment of the hearing or after consideration of the hearings examiner's report, hear and rule on all objections to each proposed assessment.

(b) Authorizes the board to amend a proposed assessment for any parcel.

(c) Requires the board, after all objections have been heard and action has been taken with regard to those objections, to, by order or resolution, levy the assessment as a special assessment on the property and to specify the method of payment of the assessment. Authorizes board to provide that the assessment be paid in periodic installments, including interest.

(d) Requires periodic installments to be in amounts sufficient to meet annual costs for services and improvements as provided by this chapter and continue for the number of years required to retire indebtedness or pay for the services to be rendered. Authorizes the board to provide interest charges or penalties for failure to make timely payment and also to impose an amount to cover delinquencies and expenses of collection.

(e) Authorizes the board, if an assessment is imposed for more than one service or improvement project, to provide that an assessment collected for one improvement project or service is authorized to be borrowed to be used for another improvement project or service.

(f) Requires the board to establish a procedure for the distribution or use of any assessment in excess of those necessary to finance the improvement project or service for which the assessment was collected.

SECTION 34. APPORTIONMENT OF COST. Requires the portion of the cost of an improvement project or service to be assessed against the property in the district to be apportioned by the board based on the special benefits accruing to the property because of the improvement project or service. Sets forth guidelines regarding assessments of the cost.

SECTION 35. ASSESSMENT ROLL. Requires the board, if the total cost of an improvement project or service is determined, to impose the assessment against each parcel of land against which an assessment may be imposed in the district. Authorizes the board, with regard to an assessment for services, to impose an annual assessment that may be lower but not higher than the initial assessment.

Requires the board to have an assessment roll prepared showing the assessment against each property and the board's basis for the assessment. Requires the assessment roll to be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

- (a) Provides that an assessment bears interest at a rate specified by the board that is prohibited from exceeding the interest rate permitted by Chapter 1204 (Interest Rate), Government Code.
- (b) Requires interest on an assessment between the effective date of the order or resolution imposing the assessment and the date the first installment and any related penalty is payable to be added to the first installment. Requires the interest or penalties on all unpaid installments to be added to each subsequent installment until paid.
- (c) Sets forth guidelines regarding assessments, reassessments or assessments resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, expenses of collection, and reasonable attorney's fees incurred by the district.
- (d) Provides that the lien is effective from the date of the resolution of the board imposing the assessment until the assessment is paid. Authorizes the board to enforce the lien in the same manner that the board is authorized enforce an ad valorem tax lien against real property.
- (e) Authorizes the owner of any property assessed to pay at any time the entire assessment against any lot or parcel with accrued interest to the date of the payment.

SECTION 36. SUPPLEMENTAL ASSESSMENTS. Authorizes the board, after notice and hearing in the manner required for original assessments, to make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement project or service or covering delinquencies or costs of collection.

SECTION 37. APPEAL. Sets forth guidelines regarding the appeal of an assessment. Authorizes the board, if an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the board, or determined to be invalid by the board, to make a reassessment or new assessment of the parcel.

SECTION 38. APPROVAL OF COMMISSIONERS COURT. Prohibits any assessment or ad valorem tax, or a combination thereof, including any apportionment of any assessment, from being valid or enforceable unless approved by the commissioners court.

SECTION 39. APPEAL OF ORDER. Authorizes a person against whom an assessment is made by board order, if notice has been given as required by this subchapter, to appeal the assessment to a district court in the county in the manner provided for the appeal of contested cases under Chapter 2001 (Administrative Procedure), Government Code. Provides that review by the district court is by trial de novo.

SECTION 40. EXEMPTIONS, PUBLIC UTILITIES. Prohibits the district from imposing an assessment on the property, equipment, or facilities of a public utility. Defines "utility" for purposes of this subsection.

SECTION 41. EXEMPTIONS: GOVERNMENTAL ENTITIES; ASSESSMENTS. Requires certain payments of assessments to be established by contract. Authorizes certain entities to contract with the district under terms and conditions those entities consider advisable to provide for the payment of assessments.

SECTION 42. TAX LEVY FOR BONDS. Requires the board, at the time bonds payable in whole or in part from taxes are issued, to levy a continuing direct annual ad valorem tax for each year while all or part of the bonds are outstanding on all taxable property within the district in sufficient amount to pay the interest on the bonds as it becomes due and to create a sinking fund for the payment of the principal of the bonds when due or the redemption price at any earlier required redemption date and to pay the expenses of assessing and collecting the taxes.

SECTION 43. ESTABLISHMENT OF TAX RATE IN EACH YEAR. (a) Requires the board to consider certain factors in determining the actual rate to be levied in each year.

(b) Authorizes the board to make certain considerations in determining the amount of anticipated taxes which should be levied each year. Requires the board to levy a tax in the first full year after issuance of its first series of bonds.

SECTION 44. OPERATION AND MAINTENANCE TAX. (a) Authorizes the district to levy and collect a tax for operation and maintenance purposes, including funds for certain specific purposes.

(b) Prohibits an operation and maintenance tax from being levied by the district until it is approved by a majority of the qualified voters within the district voting at an election held for that purpose. Requires the board, after such a tax has been authorized by the district's voters, to be authorized to levy the tax and have it assessed and collected as other district taxes.

(c) Authorizes an operation and maintenance tax election to be held at the same time and in conjunction with any other district election. Authorizes the election to be called by a separate election order or as part of any other election order.

(d) Authorizes the proposition in an operation and maintenance tax election to be for a specific maximum rate or for an unlimited rate.

(e) Authorizes the funds, if the district has any surplus operation and maintenance tax funds that are not needed for the purposes for which they were collected, to be used for any lawful purpose.

SECTION 45. FUNDS AVAILABLE FOR PAYMENT OF PROJECTS AND SERVICES.

(a) Authorizes certain costs to be paid from certain funds.

(b) Authorizes the board, during the progress of an improvement project or service, to issue temporary notes to pay the costs of the improvement project or service and issue bonds on completion.

(c) Authorizes the costs of more than one improvement project or service to be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

SECTION 46. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) Authorizes the board to issue bonds, notes or other obligations in one or more series payable from and secured by certain funds for the payment of certain costs. Authorizes bonds, notes, or other obligations to be liens on all or part of the revenue derived from improvements authorized under this chapter, including installment payments of special assessments, ad valorem taxes, or from any other source pledged to their payment.

(b) Requires the district to have the power to issue bonds and requires the bonds to be approved in the manner set forth in Chapter 375J (Bonds), Local Government Code.

(c) Requires bonds, notes, or other obligations to be issued and approved by the board of directors of the district without the consent of the county, any municipality, or the Texas Natural Resource Conservation Commission.

SECTION 47. ELECTION TO APPROVE ISSUANCE OF BONDS. (a) Prohibits certain bonds from being issued unless the bonds are approved by a majority of the qualified voters in the district voting at an election held for that purpose.

(b) Provides that bonds that are not secured by assessments or ad valorem taxes, or a combination thereof, are not subject to the requirement of an election and authorizes them to be issued without an election.

(c) Requires an election required by this section to be conducted in accordance with Chapter 375 (Municipal Management Districts in General), Local Government Code.

SECTION 48. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS. Provides that construction contracts of the district are subject to the competitive bidding requirements of Subchapter I (Construction, Equipment, Materials, and Machinery Contracts), Chapter 49, Water Code.

SECTION 49. SUPERSEDES OTHER LAW. Provides that this Act states the required procedures necessary for the district to award contracts and supersedes any law or other requirement with respect to award of contracts.

SECTION 50. DISSOLUTION BY BOARD VOTE. Authorizes the board of the district, except as provided by Section 53, by majority vote to dissolve the district at any time.

SECTION 51. DISSOLUTION BY COUNTY ORDER. Authorizes the commissioners court of the county, except as provided by Section 53, by a vote of not less than two-thirds, to adopt a resolution dissolving the district.

SECTION 52. LIMITATION. Prohibits the district from being dissolved if the district has any outstanding bonded indebtedness until that bonded indebtedness is repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SECTION 53. CONTRACTS WITH DISTRICT. (a) Authorizes certain entities, without further authorization, to contract with the district to implement a project of the district or aid and assist the district in providing the services authorized under this chapter. Sets forth guidelines for a contract under this section.

(b) Authorizes the district to enter into a contract, lease, or agreement with or make or accept grants and loans to or from certain entities.

(c) Authorizes the district to perform all acts necessary for the full exercise of the powers vested in the district on terms and conditions and for the term the board may determine to be advisable

SECTION 54. Presents legislative findings.

SECTION 55. Sets forth, notwithstanding the requirements of Section 12, the initial board of directors of the Bolivar Conservation District. Provides that, of the initial board members, the members appointed for positions 1 through 3 serve until June 1, 2005, and the members appointed for positions 4 through 5 serve until June 1, 2003.

SECTION 56. EFFECTIVE DATE. Effective date: upon passage or September 1, 2001.

