

BILL ANALYSIS

Senate Research Center

C.S.S.B. 623
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Natural Resources
4/3/2003
Committee Report (Substituted)
(REVISED)

DIGEST AND PURPOSE

Currently, special water districts, including municipal utility districts, water control and improvement districts, and levee improvement districts, are governed by Chapters 49, 51, 54, and 57 of the Water Code. A district may not contract with a municipality for longer than 40 years. C.S.S.B. 623 removes the 40-year restriction; clarifies that districts can issue both non-negotiable and negotiable revenue notes; clarifies that an election is not required to add a pledge of revenues to tax bonds; eliminates certain loopholes through which districts avoid Texas Commission on Environmental Quality review and approval of unlimited tax bonds; authorizes districts to impose restrictions on the development of the property as deemed reasonable by the board of directors; allows public safety and security exemptions to the bid requirements for districts; empowers districts to reuse and recycle water for irrigation and other uses for conservation; and clarifies the use of the engineer's report in the creation of the district and any bond authorization.

RULEMAKING AUTHORITY

Rulemaking authority is granted to a district that operates a water supply and distribution system in SECTION 18 (Section 54.202, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 388.005(a), Health and Safety Code, to include a district as defined by Sections 49.001, and 36.001, Water Code, that had a total annual electricity expense of less than \$200,000 in the previous fiscal year of the district, in the definition of "political subdivision."

SECTION 2. Amends Section 49.068, Water Code, as follows:

Sec. 49.068. CONTRACTS WITH GOVERNMENTAL AGENCIES. (a) Created from existing text.

(b) Authorizes a municipality to contract with a district and provides that the term of the contract under this subsection may be of unlimited duration, the provisions of any other law or home-rule municipal charter notwithstanding

SECTION 3. Amends Section 49.103, Water Code, by adding Subsection (h) to require the secretary of the board, or the secretary's designee, if authorized by the board in the proceedings calling a director election, to, on receipt of the certification required by Section 2.052(b), Election Code, post a notice that the election is not to be held. Requires the notice to be posted, on or before the commencement of early voting, at each polling place that would have been used in the election. Provides that if the notice is timely posted the board or the board's designee is not required to perform certain functions.

SECTION 4. Amends Section 49.106(a), Water Code, to provide that the mandated engineer's report is not part of the proposition or propositions to be voted on or a contract with the voters.

SECTION 5. Amends Section 49.153(a), Water Code, to authorize the board, without the necessity of an election, to borrow money on nonnegotiable notes of the district, in addition to the negotiable notes already authorized, to be paid solely from the revenues derived from the

ownership of all or any designated part of the district's works, plants, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

SECTION 6. Amends Section 49.181(a), Water Code, to provide that a district may not issue bonds unless the Texas Commission on Environmental Quality (TCEQ) determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. Provides that this section does not apply to refunding of bonds under certain conditions.

SECTION 7. Amends Section 49.194, Water Code, by adding Subsection (g) to authorize all submissions to the executive director required by this section to be made electronically.

SECTION 8. Amends Sections 49.226(a), (c), and (d), Water Code, as follows:

- (a) Authorizes, in connection with the sale of surplus land, the board, in its discretion, to impose restrictions on the development and use of the land.
- (c) Requires the district, before a public sale of real property, rather than either a public or private sale, to give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.
- (d) Requires the proceeds of the sale of property originally acquired with bond proceeds, if the district has outstanding bonds secured by a pledge of tax revenues, to be applied to retire outstanding bonds of the district or to be held and treated as surplus bond proceeds and spent only as provided by TCEQ rules relating to surplus bond proceeds.

SECTION 9. Amends Section 49.234(a), Water Code, as added by Section 15, Chapter 1423, Acts of the 77th Legislature, Regular Session, 2001, to prohibit a district or corporation that has not received funding under Subchapter K, Chapter 17, from requiring a property owner who has installed an on-site wastewater holding or treatment facility before the adoption of the rule to connect to the district's or corporation's wastewater collection system.

SECTION 10. Amends Section 49.271, Water Code, by adding Subsection (e) to authorize a district contract for construction work to include economic incentives for early completion of the work or economic disincentives for late completion of the work.

SECTION 11. Amends Section 49.273, Water Code, by adding Subsection (l) to provide that the board is not required to advertise or seek competitive bids for security and surveillance systems or components of or additions to district facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents and acts of war, if the board finds that doing so would compromise the safety and security of district facilities or residents.

SECTION 12. Amends Section 49.278(a), Water Code, to provide that this subchapter does not apply to a list of items including contracts for the purchase of electricity for use by the district.

SECTION 13. Amends Section 49.303, Water Code, as follows:

Sec. 49.303. EXCLUDING LAND FROM DISTRICT. (a) Allows a district to exclude land or other property from the district under this subchapter if the district has no outstanding bonds payable in whole or in part from taxes.

- (b) Authorizes the board, on its own motion, if a district has no outstanding bonds payable in whole or in part from taxes, to call a hearing on the question of the exclusion of land or other property from the district under the provision of this subchapter, if the exclusions are practicable, just, or desirable.

Deletes text of existing Subsection (b) requiring the board to call a hearing on the exclusion of land or other property from the district in certain instances.

(c) Authorizes the board, if a district has no outstanding bonds payable in whole or in part from taxes, to hold a hearing on the exclusion of land or other property from the district if a landowner or property owner submits a signed petition to the secretary of the board evidencing the consent of the owners of a majority of the acreage proposed to be excluded and a majority of the taxable property in the district, as reflected by the most recent certified tax roll of the district.

(d) Makes a nonsubstantive change.

(e) Prohibits a district from excluding land or other property from the district under this subchapter if the district has issued bonds payable in whole or in part from taxes and those bonds are outstanding.

SECTION 14. Amends Section 49.304(a), Water Code, to delete current language regarding a written petition requesting an exclusion hearing.

SECTION 15. Amends Sections 49.351(a), (k), and (l), Water Code, as follows:

(a) Authorizes a district providing potable water or sewer service to household users to establish, operate, and maintain a fire department to perform all fire-fighting services, rather than activities, within the district as provided in this subchapter and to issue bonds or impose a mandatory fee, with voter approval, for financing a plan approved in accordance with this section, including the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(k) Makes a conforming change.

(l) Makes a conforming change.

SECTION 16. Amends Section 49.455(d), Water Code, to require the information form required by this section to be filed with the county clerk within 48 hours after the district is officially created.

SECTION 17. Amends Section 54.201(b), Water Code, to provide that a district is authorized to take certain actions necessary to accomplish the purposes of the district authorized by the constitution, this code, or any other law, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to accomplish certain goals

SECTION 18. Amends Chapter 54D, Water Code, by adding Section 54.202, as follows:

Sec. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES. (a) Authorizes a district that operates a water supply and distribution system to serve land within its boundaries by rule to prohibit the installation of private on-site water wells on land within the district that is served by the district's water system. Provides that a district that has not received funding under Chapter 17K may not require a property owner who has installed an on-site water well before the adoption of the rule to connect to the district's water system.

(b) Requires a district that prohibits an installation described by Subsection (a) to agree to pay the owner of a particular tract the costs of connecting the tract to the district's water system if the distance along a public right-of-way or utility easement from the nearest point of the district's water system to the boundary line of the tract requiring water service is 300 feet or more, subject to TCEQ rules regarding reimbursement of those costs.

SECTION 19. Amends Chapter 54D, Water Code, by adding Section 54.2052, as follows:

Sec. 54.2052. PLUMBING CODE. Provides that a district, notwithstanding any other law, is not required to adopt a plumbing codes meeting the standards and requirements of

the rules and laws of this state and may amend any code adopted to conform to local concerns if the amendment does not substantially vary from rules or laws of this state.

SECTION 20. Amends Section 54.234, Water Code, as follows:

Sec. 54.234. **ACQUIRING ROAD UTILITY DISTRICT POWERS.** Authorizes any district which has the power to levy taxes to petition TCEQ to acquire the powers granted to road utility districts operating pursuant to Chapter 441, Transportation Code, under the authority of Article III, Section 52, Texas Constitution. Requires the TCEQ, as soon as practicable after a petition has been filed with it, to issue an order either approving or denying such petition.

SECTION 21. Amends Section 54.503, Water Code, as follows:

Sec. 54.503. **MANNER OF REPAYMENT OF BONDS.** Authorizes the board to provide for the payment of principal of and interest and redemption price on the bonds by pledging all or part of any funds or revenues available to the district or a combination of certain specified sources.

SECTION 22. Amends Section 54.505, Water Code, as follows:

Sec. 54.505. **ELECTION ON TAX BONDS.** Authorizes bonds payable solely from revenues to be issued by resolution or order of the board without an election. Provides that an election is not required to pledge revenues to the payment of bonds.

SECTION 23. Amends Section 54.739, Water Code, as follows:

Sec. 54.739. New heading: **SUBSTITUTING LAND OF EQUAL VALUE.** Authorizes land within the district boundaries subject to taxation that does not need or utilize the services of the district, after the district is organized and acquires facilities with which to function for the purposes for which it was organized and votes, issues, and sells bonds for such purposes, to be excluded and other land not within the boundaries of the district to be included within the boundaries of the district, without impairment of the security for payment of the bonds or invalidation of any prior bond election, as provided by this section and Sections 54.740 through 54.747.

SECTION 24. Amends Section 54.744, Water Code, as follows:

Sec. 54.744. **IMPAIRMENT OF SECURITY.** Requires the lands proposed for inclusion, for purposes of the board's consideration of the applications, to be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if according to the most recent tax rolls of the district or the most recently certified estimates of taxable value from the chief appraiser of the appropriate appraisal district, the taxable value of such included lands equals or exceeds the taxable value of the excluded lands; either the estimated costs of providing district facilities and services to the included lands is equal to or less than the estimated costs of providing district facilities and services to the excluded lands, or any increased estimated costs of providing district facilities and services to the included land, as determined by the district's engineer, can be amortized at prevailing bond interest rates and maturity schedules and the prevailing debt service tax rate of the district, as determined by the district's professional financial advisor, when applied to the increase in taxable value of the included land over the taxable value of the excluded land.

SECTION 25. Amends Section 57.015(b), Water Code, to require the notice to be posted at the courthouse door and at a place, rather than four different places, inside the proposed district. Makes a conforming change.

SECTION 26. Amends Section 57.092(a), Water Code, to authorize the district to enter into all necessary and proper contracts and employ all persons and means necessary to fully accomplish

the purposes of the district, including the reclamation of land within the district.

SECTION 27. Amends Section 57.104, Water Code, as follows:

Sec. 57.104. New heading: CONSTRUCTION OF IMPROVEMENTS. Authorizes, rather than requires, the district to construct all improvements necessary or convenient to accomplish the purposes of the district.

SECTION 28. Amends Section 57.108(b), Water Code, to delete the requirement that as funds become available, the district comply with Section 57.104 (Duty to Construct Approved Improvements).

SECTION 29. Amends the heading to Section 57.116, Water Code, to read as follows:

Sec. 57.116. ENGINEER'S CONSTRUCTION REPORT.

SECTION 30. Amends Section 57.116(a), Water Code, to require the engineer, as work progresses on the district's improvements, to make a report to the board showing in detail whether or not the contract is being fulfilled.

SECTION 31. Amends Section 57.117(b), Water Code, to require the executive director, if the director finds that the work has not been done in strict accordance with the contract, to officially certify this fact, and in the certificate state where the contractor has failed to comply with the contract, rather than the approved plan of reclamation.

SECTION 32. Amends Section 57.118, Water Code, to make conforming changes.

SECTION 33. Amends the heading of Chapter 57E, Water Code, to read as follows:

SUBCHAPTER E. ENGINEER'S REPORT

SECTION 34. Amends Sections 57.177(a) and (c), Water Code, to make conforming changes.

SECTION 35. Amends Section 57.208(b), Water Code, to require the bonds to be known as "Levee Improvement Bonds," but deletes the requirement that the bonds state on their face the purpose for which they are issued.

SECTION 36. Amends Section 57.216, Water Code, to make conforming changes.

SECTION 37. Amends Section 57.260(a), Water Code, to make a conforming change.

SECTION 38. Amends Section 57.261, Water Code, to make a nonsubstantive change.

SECTION 39. Amends Sections 57.265(c) and (d), Water Code, to make conforming changes.

SECTION 40. Amends Section 57.266(a), Water Code, to make a conforming change.

SECTION 41. Amends Sections 57.267(b), (c), and (d), Water Code, as follows:

(b) Makes a conforming change.

(c) Requires the engineer's report to be filed in the district's office, rather than with the county clerk. Makes conforming changes.

(d) Makes conforming changes.

SECTION 42. Amends Sections 57.269(a) and (b), Water Code, to make conforming changes.

SECTION 43. Amends Sections 57.270(e), (j), and (k), Water Code, to make conforming

changes.

SECTION 44. Amends Section 57.273(b), Water Code, to require the board, if the engineer's report is changed or modified, or if extensive repairs or additions to the engineer's report are desired, to file a petition with the commissioners court describing the changes, modifications, repairs, or additions.

SECTION 45. Amends Section 57.274(b), Water Code, to make conforming changes.

SECTION 46. Amends Section 57.275(d), Water Code, to make conforming changes.

SECTION 47. Amends Section 67.010(d), Water Code, to provide that if a corporation issues bonds secured by a contract entered into under Section 402.014, Local Government Code, the corporation is considered to be acting for or on behalf of that political subdivision for the purposes of Section 1201.002(1), Government Code. Provides that a political subdivision is authorized to approve by ordinance, resolution, or order the articles of incorporation and the bylaws of a corporation that is created for the purpose of constructing facilities under a contract under Section 402.014, Local Government Code.

SECTION 48. (a) Repealers: Sections 54.0163(e), Section 54.508, Section 57.094, Section 57.108(a), 57.154(b), and Section 57.156, Water Code.

(b) Repealer: Chapter 441C, Transportation Code.

SECTION 49. Effective date: upon passage or September 1, 2003.