

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1733
By: Brown
Natural Resources
4/12/1999
Committee Report (Substituted)

DIGEST

The procedural and administrative sections governing water districts are consolidated in Chapter 49 of the Water Code. While legislation from the 75th Legislature made technical corrections and other conforming changes regarding the administration of and operation of water districts, further technical corrections are necessary in order to facilitate more efficient operation of these districts. This bill would revise the general powers and authority of water districts in the Water Code and would provide a penalty.

PURPOSE

As proposed, C.S.S.B. 1733 revises the general powers and authority of water districts and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to water districts in SECTION 7 (Section 49.233(a), Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 49.102, Water Code, by adding a new Subsection (i) and redesignating existing Subsection (i) as Subsection (j), to authorize a water district (district), at an election required under Subsection (a), to submit to qualified voters of the district the proposition of whether a fire-fighting plan as authorized by Section 49.351 should be implemented or entered into by the district. Makes a conforming change.

SECTION 2. Amends Section 49.105, Water Code, to require a vacancy, rather than all vacancies, of the governing body of the water district (board) and in all other offices to be filled for the unexpired term by appointment of the board by a certain date. Authorizes a petition, signed by more than 10 percent of the registered voters of the district, requesting the board to fill the vacancy by appointment to be presented to the board if the board has not filled a vacancy by a certain date. Provides that if the number of directors is reduced to fewer than a majority or if a vacancy continues beyond a certain date, the vacancy or vacancies shall be filled by appointment by the Texas Natural Resource Conservation Commission (TNRCC) if the district is required by Section 49.181 to obtain TNRCC approval of its bonds, or by the county commissioners court if the district was created by the county commissioners court, regardless of whether a petition has been presented to the board under Subsection (b). Makes conforming changes.

SECTION 3. Amends Section 49.155, Water Code, as follows:

Sec. 49.155. New heading: PAYMENT OF EXPENSES. Authorizes the district to pay out of bond proceeds or other available funds of the district all expenses reasonable and necessary to effect the insurance, sale, and delivery of bonds as determined by the board. Sets forth the expenses. Deletes text authorizing the district to pay all costs necessarily incurred in the organization and operation of a district during creation and construction periods. Deletes text setting forth insurance premiums, rating letter fees, market study costs, and credit enhancement costs as reasonable and necessary fees to effect the insurance, sale, and delivery of bonds.

SECTION 4. Amends Section 49.211, Water Code, by adding Subsection (e), to provide that a district that is authorized by law to engage in drainage or flood control activities may include among the district's land, works, improvements, facilities, plants, equipment, and appliances certain areas and projects associated with drainage or flood control projects of the district.

SECTION 5. Amends Section 49.212, Water Code, by amending Subsection (a) and adding Subsection (e), to authorize a district to adopt and enforce all necessary charges, fees, or rentals, in addition to taxes, for providing or making available any district facility or service, including fire-fighting activities provided under Section 49.351. Provides that Chapter 2007, Government Code, does not apply to a tax levied, a standby fee imposed, or a charge, fee, or rental adopted or enforced by a district under this chapter, any other chapter of this code, or Chapter 395, Local Government Code.

SECTION 6. Amends Section 49.226, Water Code, as follows:

Sec. 49.226. New heading: SALE OR EXCHANGE OF REAL OR PERSONAL PROPERTY. Provides that Chapter 272, Local Government Code, shall not apply to this section, rather than this subsection. Deletes text limiting when the district is required to give notice of intent to sell, before either a public or private sale of real property not required by the district. Deletes text requiring the proceeds of the sale of property to be applied to retire outstanding bonds of the district when required by the district's applicable bond resolutions. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Chapter 49H, Water Code, by adding Section 49.233, as follows:

Sec. 49.233. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES. Authorizes a district that operates a wastewater collection system to serve land within its boundaries by rule to prohibit the installation of private on-site wastewater holding or treatment facilities on land within the district. Requires a district that prohibits installation as described by Subsection (a) to agree to reimburse a particular tract the costs of connecting the tract to the district's wastewater collection system if the distance along public rights-of-way or utility easements from the nearest point of the district's wastewater collection system to the boundary line of the particular tract requiring wastewater collection services is 1,000 feet or more, subject to TNRCC rules regarding reimbursement of those costs.

SECTION 8. Amends Section 49.271(c), Water Code, to require the water district, for construction costs over \$25,000, to require a person who bids to submit a certified or cashier's check on a responsible bank in the state in a certain amount or a bid bond of a certain amount as a good faith deposit to ensure execution of the contract. Provides that if the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the payment and performance bonds required by law, the bidder forfeits the deposit. Provides that the payment, performance, and bid bonding requirements of this subsection do not apply to contracts for the purchases of equipment, materials, and machinery not otherwise incorporated into a construction project.

SECTION 9. Amends Sections 49.273(i) and (j), Water Code, to authorize the board to approve change orders making changes, if changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished. Prohibits the original contract price from being increased by more than 10 percent of the aggregate of all change orders, excluding change orders as a result of unanticipated conditions encountered or changes in regulatory criteria or to facilitate project coordination with other political entities. Authorizes additional change orders to be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities. Provides that the board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding. Deletes text providing when the district is not required to advertise or seek competitive bids.

SECTION 10. Amends Chapter 49I, Water Code, by adding Section 49.279, as follows:

Sec. 49.279. PREVAILING WAGE RATES. Authorizes a district located wholly or partially within one or more municipalities or within the extraterritorial jurisdiction of one or more municipalities to establish its prevailing wage rate for public works by adopting the prevailing wage rate of one of the municipalities or the county in which the district is located; authorizes a district not located wholly or partially within the extraterritorial jurisdiction of any municipality to establish the district's prevailing wage rate by adopting the wage rate of the county in which the district is located, in addition to the alternative procedures provided by Section 2258.022, Government

Code.

SECTION 11. Amends Section 49.304(a), Water Code, to make conforming changes.

SECTION 12. Amends Chapter 49J, Water Code, by adding Section 49.315, as follows:

Sec. 49.315. ADDING AND EXCLUDING LAND BEFORE CONFIRMATION. Authorizes a district to add or exclude land in accordance with this subchapter under certain conditions. Requires the election to confirm the district required by Section 49.102 to be to confirm the district as modified, if land is added or excluded as provided by this section.

SECTION 13. Amends Section 49.327, Water Code, to provide that Title 6, Property Code, does not apply to any personal property held by a district that has not been dissolved by order of TNRCC. Makes a conforming change.

SECTION 14. Amends Sections 49.351(a)-(c) and (g)-(j), Water Code, to authorize a district providing potable water or sewer service to household users to establish, operate, and maintain a fire department and 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. Requires the district or districts to provide an adequate system and water supply for fire-fighting purposes, authorizes the district to purchase necessary land, and employ or contract with a fire department to employ all necessary personnel to operate the fire department, after approval of the district electors of a plan to operate, jointly operate, or jointly fund the operation of a fire department. Provides that bonds issued for establishment of the fire department or financing a contract entered into under Subsection (d) or (e) shall be authorized and bonds may be issued. Authorizes a plan required by this subsection to be included in a plan or report otherwise required by this title for the creation of a district or may be submitted to TNRCC for approval any time after the creation of the district. Requires the plan and financial presentation, together with any contract and a written report in a prescribed form to be submitted to the executive director for consideration by TNRCC under rules adopted by TNRCC, if no plan was approved by TNRCC at the time of the district's creation. Provides that a plan approved by TNRCC as part of the creation of the district does not require further TNRCC approval unless the district materially alters the plan. Deletes text requiring the district to develop a plan that describes the facilities and equipment to be devoted to service to the district and all proposals for providing the service. Deletes text requiring the board to hold a hearing before adoption of a plan and any contract by the district, and notice of the hearing requirements. Deletes text requiring TNRCC to hold a hearing before approving or disapproving a plan, and the notice of the hearing requirements. Deletes text providing that no funds of the district may be used to establish a fire department, enter into joint operation of a fire department, or contract for fire fighting services without the approval of a plan by the electors as provided in this section. Deletes text authorizing the district to use available funds for preparation of a plan and any contract. Makes conforming changes.

SECTION 15. Amends Section 49.452, Water Code, to provide that the provisions of this section shall not be applicable to transfers of title to a governmental entity. Sets forth the prescribed notice for districts located in whole or in part in the extraterritorial jurisdiction of one or more home-rule municipalities, but not within the corporate limits of a municipality, rather than all districts. Sets forth the prescribed notice for districts located in whole or in part within the corporate limits of a municipality. Sets forth the prescribed notice for districts not located in whole or in part within the corporate limits of a municipality, or in whole or in part in the extraterritorial jurisdiction of one or more home-rule municipalities. Requires the district to revise the content of the notice to accurately reflect the current law, if the law regarding annexation or district dissolution is changed, causing inaccuracies in the content of the notices as provided by this section. Makes conforming changes.

SECTION 16. Amends Section 54.236, Water Code, to authorize a district to purchase, install, operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way within the boundaries of the district. Prohibits a district from issuing bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting. Deletes text requiring the street or security lighting facilities to have been constructed by an owner or developer of property within the district and must have been required by a city as a condition to the city granting its consent to the creation of the district.

SECTION 17. Amends Section 54.772(1), Water Code, to redefine "recreational facilities."

SECTION 18. Amends Section 54.774(a), Water Code, to make conforming changes.

SECTION 19. Amends Section 57.092(a), Water Code, to delete text restricting the district to enter into contracts for all works and improvements within the district necessary or proper to fully accomplish a reclamation plan.

SECTION 20. Amends Chapter 51D, Water Code, by adding Section 51.131, as follows:

Sec. 51.131. PENALTY FOR VIOLATION OF REGULATION. Provides that a person who violates a regulation adopted by a district under this chapter or other law commits a Class C misdemeanor.

SECTION 21. Repealer: Section 60.350, Water Code (Bonds).

SECTION 22. Makes application of this Act prospective.

SECTION 23. Effective date: September 1, 1999.

SECTION 24. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Relating clause.

Amends the relating clause to provide that the legislation relates also to providing a penalty.

SECTION 2.

Amends Section 49.105(c), Water Code, to provide that if the number of directors is reduced to fewer than a majority or if a vacancy continues beyond a certain date, the vacancy or vacancies shall be filled by appointment by TNRCC if the district is required by Section 49.181 to obtain TNRCC approval of its bonds.

SECTION 3.

Amends Section 49.155, Water Code, to delete text setting forth insurance premiums, rating letter fees, market study costs, and credit enhancement costs as reasonable and necessary fees to effect the insurance, sale, and delivery of bonds. Makes conforming and nonsubstantive changes.

SECTION 4.

Amends Section 49.211(e), Water Code, to provide that a district that is authorized by law to engage in drainage or flood control activities may include among the district's land, works, improvements, facilities, plants, equipment, and appliances certain areas and projects associated with drainage or flood control projects of the district, including floodplain lands and projects, and any temporary, permanent, constant, or variable level impoundments of water.

SECTION 5.

Amends Section 49.212, Water Code, to provide that Chapter 2007, Government Code, does not apply to a tax levied, a standby fee imposed, or a charge, fee, or rental adopted or enforced by a district under this chapter, any other chapter of this code, or Chapter 395, Local Government Code.

SECTION 6.

Amends Section 49.226, Water Code, to set forth a new heading and delete text limiting when the district is required to give notice of intent to sell, before either a public or private sale of real property not required by the district. Deletes text requiring the proceeds of the sale of property to be applied to retire outstanding bonds of the district when required by the district's applicable bond resolutions. Makes conforming and nonsubstantive changes.

SECTION 9.

Amends Sections 49.273(i) and (j), Water Code, to prohibit the original contract price from being increased by more than 10 percent, rather than 25 percent, of the aggregate of all change orders, excluding change orders as a result of unanticipated conditions encountered or changes in regulatory criteria or to facilitate project coordination with other political entities. Authorizes additional change orders to be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities. Provides that the board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding. Deletes text excluding change orders as a result of unanticipated conditions encountered or changes in regulatory criteria or to facilitate project coordination with other political entities from the prohibition of increasing the original contract price by more than 10 percent of the aggregate of all change orders. Deletes text providing when the district is not required to advertise or seek competitive bids.

SECTION 10.

Deletes proposed SECTION 10. Renumbers proposed SECTIONS 11-20 as SECTIONS 10-19.

SECTION 14.

Amends Section 49.351(a), Water Code, to make conforming and nonsubstantive changes.

SECTION 17.

Amends Section 54.772(1), Water Code, to redefine “recreational facilities.”

SECTION 20.

Amends Chapter 51D, Water Code, by adding Section 51.131, creating a penalty for a violation of these regulations.