

BILL ANALYSIS

Senate Research Center
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H.B. 2817
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Natural Resources
5/1/2001
Engrossed

DIGEST AND PURPOSE

The Texas Constitution provides for the establishment of water districts, while the Water Code governs such districts. The governance of such districts may be more efficient if fire plans for districts are addressed, drainage or flood control projects and services are defined, the sale or exchange of property by districts is addressed, septic systems are prohibited, prevailing wage rates are established, and districts are authorized to add and exclude land. H.B. 2817 provides for more efficient governance of water districts by implementing these changes and provides for penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to a district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, and a water supply corporation that operated a wastewater collection system to serve land within its boundaries in SECTION 10 (Section 49.234, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 49.068, Water Code, to authorize a municipality to sell all or a portion of a water or sewer system owned by the municipality to a district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution (district without the approval required by Section 1502.055(a)(Relating to prohibiting a municipality from selling a utility system, park, or pool)), Government Code, or by Section 402.016(Sale or Lease of Water System by Type A General-Law Municipality), Local Government Code, if the district purchasing the system is operating under the authority of Section 59, Article XVI, Texas Constitution.

SECTION 2. Amends Section 49.102, Water Code, by relettering Subsection (i) as Subsection (j) and by adding a new Subsection (i), to authorize a district, at an election required under Subsection (a), to submit to the voters of the district the proposition of whether the district should implement a plan authorized by Section 49.351 for a fire department.

SECTION 3. Amends Section 49.108(e), Water Code, to provide that this subsection does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the Texas Natural Resource Conservation Commission (commission) or bonds that have been issued by a municipality.

SECTION 4. Amends Section 49.211, Water Code, by adding Subsection (e), to authorize a district that is authorized by law to engage in drainage or flood control activities to 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(d), Water Code, to provide that a charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve

such water, sanitary sewer, or drainage facilities that (i) does not exceed three times the actual and reasonable costs to the district for such tap or connection, (ii) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district, or (iii) if made by a district for retail or wholesale service on land that, at the time of platting, was not being provided with water or wastewater service by the district, to not be deemed to be an impact fee under Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain other Local Governments), Local Government Code. Authorizes a district to pledge revenue of its utility system to pay the principal of or interest on bonds issued to construct the capital improvements for which the fee was imposed under this subsection, and provides that the revenue from the fees is considered to be revenue of the district's utility system for purposes of the district's bond covenants.

SECTION 6. Amends Section 49.215, Water Code, by adding Subsection (g), to authorize the municipality, if a district contracts with a municipality to provide all or part of the water or wastewater services to the municipality, to issue bonds payable from the revenue of its water and wastewater system to provide money to make payments owed by the municipality to the district under the contract.

SECTION 7. Amends Section 49.218, Water Code, by adding Subsection (e), to authorize a district or water supply corporation to issue bonds, notes, or other obligations to acquire property as authorized by this section.

SECTION 8. Amends the heading to Section 49.226, Water Code, to read as follows:

Sec. 49.226. SALE OR EXCHANGE OF REAL OR PERSONAL PROPERTY.

SECTION 9. Amends Sections 49.226(b)-(e), Water Code, as follows:

(b) Provides that Chapter 272 (Sale or Lease of Property by Municipalities, Counties, and Certain other Local Governments), Local Government Code, does not apply to this section, rather than subsection.

(c) Deletes text regarding property not required by the district.

(d) Deletes text regarding bonds required by the district's applicable bond resolutions.

(e) Authorizes the proceeds derived from the sale of real or personal property, if the district does not have any outstanding bonds, to be used for any lawful purpose. Deletes text regarding land not required by the district. Makes a nonsubstantive change.

SECTION 10. Amends Chapter 49H, Water Code, by adding Section 49.234, as follows:

Sec. 49.234. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES. (a) Authorizes a district or water supply corporation 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 that is not served by the district's or corporation's wastewater collection system. Prohibits a district or corporation that has not received funding from Chapter 17K, Water Code, from requiring a property owner who has already installed an on-site wastewater holding or treatment facility to connect to the district's or corporation's wastewater collection system.

(b) Requires a district or water supply corporation 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 or corporation's wastewater collection system if the distance along a public right-of-way or utility easement from the nearest point of the

district's or corporation's wastewater collection system to the boundary line of the tract requiring wastewater collection services is 300 feet or more, subject to commission rules regarding reimbursement of those costs.

SECTION 11. Amends Section 49.271(c), Water Code, to provide that the payment, performance, and bid bonding requirements of this subsection do not apply to contracts for the purchase of equipment, materials, and machinery not otherwise incorporated into a construction project.

SECTION 12. Amends Sections 49.273(i) and (j), Water Code, as follows:

(i) Authorizes the governing body of a district (board), 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, to approve change orders making the changes. Prohibits the original contract price from being increased by more than 10 percent of the aggregate of those change orders. Authorizes additional change orders, rather than contracts, 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.

(j) 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 regarding the district's operator.

SECTION 13. Amends Chapter 49I, Water Code, by adding Sections 49.279 and 49.280, as follows:

Sec. 49.279. **PREVAILING WAGE RATES.** Provides that in addition to the alternative procedures provided by Section 2258.022 (Determination of Prevailing Wage Rates), Government Code, a district located wholly or partially within one or more municipalities or within the extraterritorial jurisdiction of one or more municipalities is authorized 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.

Sec. 49.280. **COMPLIANCE WITH MUNICIPAL REQUIREMENTS.** Requires a district construction project to comply with any applicable municipal platting or zoning requirements within the municipality's corporate limits and extraterritorial jurisdiction and with applicable requirements of a consent agreement or other agreement between the district and the municipality. Provides that district construction project is not otherwise subject to any requirements of a municipality if the project is located outside the municipality's corporate limits.

SECTION 14. Amends Section 49.304(a), Water Code, to require the board, if the board determines that an exclusion hearing should be held as provided in Section 49.303(a) or (c) or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided in Section 49.303(b), rather than 409.303, to give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

SECTION 15. Amends Chapter 49J, Water Code, by adding Section 49.315, as follows:

Sec. 49.315. **ADDING AND EXCLUDING LAND BEFORE CONFIRMATION.** (a)
Authorizes a district to add or exclude land in accordance with this subchapter within a certain

period.

(b) Requires the election to confirm the district required by Section 49.102, if land is added or excluded as provided by this section, to be to confirm the district as modified.

SECTION 16. Amends Chapter 51D, Water Code, by adding Section 51.131, as follows:

Sec. 51.131. PENALTY FOR VIOLATION OF REGULATION. Provides that a person commits an offense if the person violates a regulation adopted by a district under this chapter or other law. Provides that an offense under this section is a Class C misdemeanor.

SECTION 17. Amends Section 51.149, Water Code, by adding Subsection (g), to provide that a district has the right to conduct contract elections in the manner set forth in Sections 49.108(a) through (d), without the approval required by Section 49.108(e).

SECTION 18. Amends Section 54.772(1), Water Code, to redefine “recreational facilities.”

SECTION 19. Effective date: September 1, 2001.