

## **BILL ANALYSIS**

Senate Research Center  
83R2612 SLB-F

S.B. 611  
By: Lucio  
Natural Resources  
3/25/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Due to urbanization and changing circumstances, districts that previously substantially delivered only irrigation water are now delivering larger amounts of raw untreated water to municipal suppliers for municipal and/or industrial use instead of substantially irrigation use.

S.B. 611 changes the manner in which districts engaged in the delivery of irrigation water; how they determine the amount of flat rate assessment against irrigable land in water control and improvement, water improvement, and irrigation districts; and which projects require a district engineer to study and which allow use of their own personnel.

As proposed, S.B. 611 amends current law relating to the irrigation powers and functions of certain water districts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 51.301(a), Water Code, as follows:

(a) Requires each person who desires to receive irrigation water at any time during the year, if required by the board of directors of a water control and improvement district (board), to furnish the secretary of the board a written statement of the acreage the person intends to irrigate and the different crops the person intends to plant with the acreage of each crop. Makes nonsubstantive changes.

SECTION 2. Amends Section 51.302, Water Code, as follows:

Sec. 51.302. New heading: **CONTRACTS WITH PERSON USING IRRIGATION WATER.** (a) Authorizes the board to require each person who desires to use irrigation water during the year to enter into a contract with the water control and improvement district (district) which states the acreage to be irrigated, rather than watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) Requires a person, if the person irrigates more acreage, rather than land, than the person's contract specifies, to pay for the additional service. Makes nonsubstantive changes.

(c) Authorizes the members of the board (directors) also to require a person using irrigation water to execute a negotiable note or notes for all or part of the amount owed under the contract. Makes nonsubstantive changes.

(d) Provides that the contract is not a waiver of the lien given to the district under Section 51.309 against the crops of a person using irrigation water for the service furnished to the person. Makes nonsubstantive changes.

SECTION 3. Amends Section 51.303, Water Code, as follows:

Sec. 51.303. **AUTHORITY TO DETERMINE RULES AND REGULATIONS.** Authorizes the board to adopt, alter, and rescind rules, regulations, and standing and temporary orders which do not conflict with the provisions of this subchapter (Water Charges and Assessments) and which govern:

- (1)-(2) Makes no change to these subdivisions;
- (3) assessment, charges, fees, rentals, or deposits for maintenance and operation;
- (4) payment and the enforcement of payment of the assessment, charges, fees, rentals, or deposits;
- (5) furnishing irrigation water to persons who did not apply for it before the date of assessment if required; and
- (6) furnishing water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications if required.

SECTION 4. Amends Section 51.304, Water Code, as follows:

Sec. 51.304. **BOARD'S ESTIMATE OF MAINTENANCE AND OPERATING EXPENSES.** Requires the board, on or as soon as practicable after a date fixed by standing order of the board, to estimate the expenses of maintaining and operating the district's water delivery system, rather than the irrigation system, for the next 12 months. Makes conforming changes.

SECTION 5. Amends Section 51.305, Water Code, as follows:

Sec. 51.305. **DISTRIBUTION OF ASSESSMENT.** (a) Requires the board by rule to allocate a portion of, rather than requires that not less than one-third nor more than two-thirds of, the estimated maintenance and operating expenses that are required to be paid by assessment against all land in the district to which the district can furnish irrigation water through its water delivery system or through an extension of its water delivery system, rather than through its irrigation system or through an extension of its irrigation system. Requires that this assessment be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated.

(b) Requires the board to determine from year to year the proportionate amount of the expenses which will be borne by all water users receiving water delivery from the district. Deletes existing text requiring that the assessments be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated.

(c) Requires that the remainder of the estimated expenses be paid by assessments, charges, fees, rentals, or deposits required of, rather than against, persons in the district who use or who make application to use water and other charges approved by the board. Requires the board to prorate the remainder, rather than prorate the remainder as equitably as possible, among the applicants for irrigation water and is authorized to consider:

- (1) the acreage each applicant will plan, the crop the applicant will grow, and the amount of water per acre used for irrigation purposes; and
- (2) other factors deemed appropriate by the board with respect to water used for other nonirrigation uses.

Makes nonsubstantive changes.

SECTION 6. Amends Section 51.306, Water Code, as follows:

Sec. 51.306. NOTICE OF ASSESSMENTS. (a) Requires that public notice of all assessments imposed under Section 51.305(a) be given by posting printed notice, rather than notices, of the assessment in at least one public place, rather than at least three public places, in the district.

(b) Requires that the notice, not later than the fifth day before the date on which the assessment is due, be mailed to each landowner at the address which the landowner is required to furnish to the board.

(c) Requires that notice of special assessments be given within 10 days after the assessment is levied. Deletes existing text requiring that the notice be posted in a public place and mailed to each landowner five days before the assessment is due.

SECTION 7. Amends Section 51.307(a), Water Code, to require that all assessments imposed under Section 51.305(a) be paid in installments at the times fixed by the board.

SECTION 8. Amends Section 51.308(a), (b), and (c), Water Code, as follows:

(a) Requires the assessor and collector, or other person designated by the board, under the direction of the board, to collect all assessments imposed under Section 51.305(a) for maintenance and operating expenses.

(b) Requires the assessor and collector to execute a bond in an amount determined by the board, conditioned on the faithful performance of the duties of the assessor and collector and accounting for all money collected. Makes nonsubstantive changes.

(c) Requires the assessor and collector to file with the secretary of the board a statement of all money collected once each month, rather than once each week. Makes nonsubstantive changes.

SECTION 9. Amends Section 51.309, Water Code, as follows:

Sec. 51.309. Requires the district to have a first lien, superior to all other liens, against all crops grown on a tract of land, rather than each tract of land, in the district to secure the payment of an assessment imposed against the tract under Section 51.305(a), interest, and collection or attorney's fees. Makes nonsubstantive changes.

SECTION 10. Amends Section 51.310, Water Code, as follows:

Sec. 51.310. LIST OF DELINQUENT ASSESSMENTS. Requires that assessments imposed under Section 51.305(a) not paid when due become delinquent on the first day of the month following the date payment is due, and requires the board to keep posted in a public place in the district a correct list of all persons who are delinquent in paying assessments, rather than requiring the board to post in a public place in the district a list of all persons who are delinquent in paying their assessments and to keep posted in a public place in the district a correct list of all persons who are delinquent in paying assessments. Authorizes, rather than requires, a person, if the person who owes an assessment has executed a note and contract as provided in Section 51.302, rather than 51.302 of this code, to not be placed on the delinquent list until after the maturity of the note and contract.

SECTION 11. Amends Section 51.311, Water Code, as follows:

Sec. 51.311. WATER SERVICE DISCONTINUED. Requires that a landowner's or person's water supply, if a landowner fails or refuses to pay a water assessment or a person fails to pay a charge, fee, rental, or deposit imposed under this subchapter or Chapter 49 (Provisions Applicable to all Districts) when due, be cut off, and no water is

authorized to be furnished to the land until all back assessments or other amounts owed to the district are fully paid. Makes conforming changes.

SECTION 12. Amends Section 51.312, Water Code, as follows:

Sec. 51.312. SUITS FOR DELINQUENT ASSESSMENTS. Authorizes suits for delinquent water assessments or other amounts owed to the district under this subchapter, rather than suits for delinquent water assessment, to be brought either in the county in which the district is located or in the county in which the defendant resides. Provides that all landowners are personally liable for assessments imposed under Section 51.305(a), rather than assessments provided in this subchapter.

SECTION 13. Amends Section 51.313(a), Water Code, as follows:

(a) Requires that all assessments imposed under Section 51.305(a) bear interest from the date payment is due at the rate of 15 percent a year. Requires that assessments not paid by the first day of the month following the date payment is due are, rather than is required to become, delinquent, and a penalty of up to 15 percent of the amount of the past-due assessment is required to be added to the amount due.

SECTION 14. Amends Section 55.351, Water Code, as follows:

Sec. 55.351. STATEMENT ESTIMATING WATER REQUIREMENTS AND PAYMENT OF CHARGE. (a) Creates this subsection from existing text. Requires each person desiring to receive irrigation water at any time during the year, if required by the board of directors of a water improvement district created under this chapter (Water Improvement Districts) (board) (water improvement district), to furnish the secretary of the board a written statement of the acreage the person intends to irrigate and the different crops the person intends to plant with the acreage of each crop. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Makes no further change to this subsection.

(c) Creates this subsection from existing text. Makes a nonsubstantive change.

SECTION 15. Amends Section 55.352, Water Code, as follows:

Sec. 55.352. BOARD'S ESTIMATE OF MAINTENANCE AND OPERATING EXPENSES. Requires the board, on or as soon as practicable after a date fixed by standing order of the board, to estimate the expenses of maintaining and operating the water improvement district's water delivery system, rather than irrigation system, for the next 12 months. Makes conforming changes.

SECTION 16. Amends Section 55.354, Water Code, as follows:

Section 55.354. DISTRIBUTION OF ASSESSMENT. (a) Requires the board by rule to allocate a portion, rather than requires that not less than one-third nor more than two-thirds, of the estimated maintenance and operating expenses that are required to be paid by assessment against all land in the district to which the district can furnish irrigation water through its water delivery system or through an extension of its water delivery system, rather than through its irrigation system or through an extension of its irrigation system. Requires that this assessment be levied against all irrigable land in the water improvement district on a per acre basis, whether or not the land is actually irrigated.

(b) Creates this subsection from existing text. Requires the board to determine from year to year the proportionate amount of the expenses which will be borne by all water users receiving water delivery from the water improvement district, rather than by water users under this subsection.

(c) Creates this subsection from existing Subsection (b). Requires that the remainder of the estimated expenses be paid by assessment, charges, fees, rentals, and deposits required of, rather than against, persons in the water improvement district who use or who make application to use water and other charges approved by the board. Requires the board to prorate the remainder, rather than prorate the remainder as equitably as possible, to among the applicants for irrigation water and is authorized to consider:

(1) the acreage each applicant will plant, the crop the applicant will grow, and the amount of water per acre used for irrigation purposes; and

(2) other factors deemed appropriate by the board with respect to water used for other nonirrigation uses.

Makes conforming and nonsubstantive changes.

(d) Creates this subsection from existing text. Makes conforming changes.

SECTION 17. Amends Section 55.355, Water Code, as follows:

Sec. 55.355. NOTICE OF ASSESSMENTS. (a) Requires that public notice of all assessments imposed under Section 55.354(a) be given by posting printed notice of the assessment in at least one public place, rather than posting printed notices of the assessment in at least three public places, in the water improvement district.

(b) Requires that notice, not later than the fifth day before the date on which the assessment is due, be mailed to each landowner at the address which the land owner is required to furnish to the board.

(c) Requires that notice of special assessments be given within 10 days after the assessment is levied. Deletes existing text requiring that the notice be posted in a public place and mailed to the landowner five days before the assessment is due.

SECTION 18. Amends Section 55.356, Water Code, as follows:

Sec. 55.356. PAYMENT OF ASSESSMENTS. (a) Creates this subsection from existing text. Requires that all assessments imposed under Section 55.354(a) be paid in installments at the times fixed by the board.

(b) Creates this subsection from existing text and makes no further change.

SECTION 19. Amends Section 55.357, Water Code, as follows:

Sec. 55.357. COLLECTION OF ASSESSMENTS BY TAX ASSESSOR AND COLLECTOR. (a) Requires the assessor and collector of taxes, or other person designated by the board, under the direction of the board, to collect all assessments imposed under Section 55.354(a) for maintenance and operating expenses made under the provisions of this subchapter (Water Assessments).

(b) Requires the assessor and collector of taxes to give bond in an amount determined by the board, conditioned upon the faithful performance of the duties of the assessor and collector and accounting for all money collected. Makes a nonsubstantive change.

(c) Requires the assessor and collector to file with the secretary of the board a statement of all money collected once each month, rather than week.

(d) Requires the assessor and collector to use duplicate receipt books, give a receipt for each collection made, and retain in the book a copy of each receipt, which is required to be kept as a record of the water improvement district.

SECTION 20. Amends Section 55.358, Water Code, as follows:

Sec. 55.358. New heading: **CONTRACTS WITH PERSON USING IRRIGATION WATER.** (a) Authorizes the board to require each person who desires to use irrigation water during the year to enter into a contract with the water improvement district which states the acreage to be irrigated, rather than watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) Provides that the contract is not a waiver of the lien given to the water improvement district under Section 55.359, rather than of this code, against the crops of a person using irrigation water for the service furnished to the person. Makes nonsubstantive changes.

(c) Makes conforming and nonsubstantive changes.

(d) Makes conforming changes.

SECTION 21. Amends Section 55.359(a), Water Code, to require the water improvement district to have a first lien, superior to all other liens, against all crops grown on a, rather than each, tract of land in the district to secure the payment of an assessment imposed against the tract under Section 55.354(a) interest, and collection or attorney's fees.

SECTION 22. Amends Section 55.360, Water Code, as follows:

Sec. 55.360. **LIST OF DELINQUENT ASSESSMENTS.** Requires that assessments imposed under Section 55.354(a) not paid when due become delinquent on the first day of the month following the date payment is due, and the board is required to keep posted in a public place in the water improvement district a correct list of all delinquent assessments. Prohibits the person, if a person who owes an assessment has executed a note and contract as provided in Section 55.358, from being placed on the delinquent list until after the maturity of the note and contract. Deletes existing text prohibiting a person, if persons who owe assessments have executed notes and contracts as provided in Section 55.358 of this code, from not being placed on the delinquent list until after the maturity of the notes and contracts. Makes conforming changes.

SECTION 23. Amends Section 55.361, Water Code, as follows:

Sec. 55.361. **WATER SERVICE DISCONTINUED.** Requires that the landowner's or person's water supply be cut off, and no water be furnished to the land until all back assessments or other amounts owed to the water improvement district are fully paid if a landowner fails or refuses to pay any water assessment or a person fails to pay a charge, fee, rental, or deposit imposed under this subchapter or Chapter 49 when due. Provides that the discontinuance of water service is binding on all persons who own or acquire any interest in land for which assessments or other amounts owed to the water improvement district are due. Deletes existing text requiring that a landowner's water supply be cut off, and no water be furnished to the land until all back assessments are fully paid if a landowner shall fail or refuse to pay any water assessment when due. Makes a nonsubstantive change.

SECTION 24. Amends Section 55.362, Water Code to authorize suits for delinquent water assignments or other amounts owed to the water improvement district under this subchapter to be brought either in the county in which the irrigation district is located or in the county in which the defendant resides. Provides that all landowners are personally liable for all assignments imposed under Section 55.354(a), rather than provided in this subchapter.

SECTION 25. Amends Section 55.363(a), Water Code, as follows:

(a) Requires that all assessments imposed under Section 55.354(a) bear interest from the date payment is due at the rate of 15 percent a year. Provides that assessments not paid

by the first day of the month following the date payment is due are, rather than shall become, delinquent, and requires that a penalty of up to 15 percent of the amount of the past-due assessment be added to the amount due.

SECTION 26. Amends Section 58.301(a), Water Code, as follows:

(a) Requires each person who desires to receive irrigation water at any time during the year, if required by the board of directors of an irrigation district (board), to furnish the secretary of the board a written statement of the acreage the person intends to irrigate and the different crops the person intends to plant with the acreage of each crop. Makes nonsubstantive changes.

SECTION 27. Amends Section 58.302, Water Code, as follows:

Sec. 58.302. New heading: **CONTRACTS WITH PERSON USING IRRIGATION WATER.** (a) Authorizes the board to require each person who desires to use irrigation water during the year to enter into a contract with the water control and improvement district which states the acreage to be irrigated, rather than watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) Requires a person, if the person irrigates more acreage, rather than land, than the person's contract specifies, to pay for the additional service. Makes nonsubstantive changes.

(c) Authorizes the board to also require a person using irrigation water to execute a negotiable note or notes for all or part of the amount owed under the contract. Makes nonsubstantive changes.

(d) Provides that the contract is not a waiver of the lien given to the irrigation district under Section 58.309, rather than of this code, against the crops of a person using irrigation water for the service furnished to the person. Makes nonsubstantive changes.

SECTION 28. Amends Section 58.303, Water Code, as follows:

Sec. 58.303. **AUTHORITY TO DETERMINE RULES AND REGULATIONS.** Authorizes the board to adopt, alter, and rescind rules, and standing and temporary orders which do not conflict with the provisions of this subchapter (Water Charges and Assessments) and which govern:

(1)-(2) Makes no changes to these subdivisions;

(3) assessments, charges, fees, rentals, or deposits for maintenance and operation;

(4) payment and the enforcement of payment of the assessments, charges, fees, rentals, or deposits;

(5) furnishing irrigation water to persons who did not apply for it before the date of assessment if required; and

(6) furnishing water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications if required.

SECTION 29. Amends Section 58.304, Water Code, as follows:

Sec. 58.304. **BOARD'S ESTIMATE OF MAINTENANCE AND OPERATING EXPENSES.** Requires the board, on or as soon as practicable after a date fixed by standing order of the board, to estimate the expenses of maintaining and operating the

water control and improvement district's water delivery system, rather than the irrigation system, for the next 12 months. Makes conforming changes.

SECTION 30. Amends Section 58.305, Water Code, as follows:

Sec. 58.305. DISTRIBUTION OF ASSESSMENT. (a) Requires the board by rule to allocate a portion, rather than requires that not less than one-third nor more than two-thirds, of the estimated maintenance and operating expenses that are required to be paid by assessment against all land in the district to which the water control and improvement district can furnish irrigation water through its water delivery system or through an extension of its water delivery system, rather than through its irrigation system or through an extension of its irrigation system. Requires that this assessment be levied against all irrigable land in the water control and improvement district on a per acre basis, whether or not the land is actually irrigated.

(b) Requires the board to determine from year to year the proportionate amount of the expenses which will be borne by all water users receiving water delivery from the district. Deletes existing text requiring that the assessments be levied against all irrigable land in the water control and improvement district on a per acre basis, whether or not the land is actually irrigated.

(c) Requires that the remainder of the estimated expenses be paid by charges, fees, rentals, or deposits required of, rather than assessments against, persons in the water control and improvement district who use or who make application to use water and other charges approved by the board. Requires the board to prorate the remainder, rather than prorate the remainder as equitably as possible, among the applicants for irrigation water and is authorized to consider:

(1) the acreage each applicant will plant, the crop the applicant will grow, and the amount of water per acre used for irrigation purposes; and

(2) other factors deemed appropriate by the board with respect to water used for other nonirrigation uses. Makes conforming and nonsubstantive changes.

SECTION 31. Amends Section 58.306, Water Code, as follows:

Sec. 58.306. NOTICE OF ASSESSMENTS. (a) Requires that public notice of all assessments imposed under Section 58.305(a) be given by posting printed notice of the assessment in at least one public place in the district, rather than notices of the assessment in at least public places in the district.

(b) Requires that the notice, not later than the fifth day before the date on which the assessment is due, be mailed to each landowner at the address which the landowner is required to furnish to the board.

(c) Requires that notice of special assessments be given within 10 days after the assessment is levied. Deletes existing text requiring that the notice be posted in a public place and mailed to each landowner five days before the assessment is due.

SECTION 32. Amends Section 58.307(a), Water Code, to require that all assessments imposed under Section 58.305(a) be paid in installments at the times fixed by the board.

SECTION 33. Amends Sections 58.308(a), (b), and (c), Water Code, as follows:

(a) Requires the assessor and collector, or other person designated by the board, under the direction of the board, the assessor and collector, to collect all assessments imposed under Section 58.305(a) for maintenance and operating expenses.

(b) Requires the assessor and collector to execute a bond in an amount determined by the board, conditioned on the faithful performance of the duties of the assessor and collector and accounting for all money collected. Makes nonsubstantive changes.

(c) Requires the assessor and collector to file with the secretary of the board a statement of all money collected once each month, rather than once each week. Makes nonsubstantive changes.

SECTION 34. Amends Section 58.309, Water Code, as follows:

Sec. 58.309. LIEN AGAINST CROPS. Requires the water control and improvement district to have a first lien, superior to all other liens, against all crops grown on a tract of land in the water control and improvement district to secure the payment of an assessment imposed against the tract under Section 58.305(a), interest, and collection or attorney's fees. Makes conforming and nonsubstantive changes.

SECTION 35. Amends Section 58.310, Water Code, as follows:

Sec. 58.310. LIST OF DELINQUENT ASSESSMENTS. Requires that assessments imposed under Section 51.305(a) not paid when due become delinquent on the first day of the month following the date payment is due, and the board is required to keep posted in a public place in the water control and improvement district a correct list of all persons who are delinquent in paying assessments, rather than the board is required to post in a public place in the district a list of all persons who are delinquent in paying their assessments and to keep posted in a public place in the district a correct list of all persons who are delinquent in paying assessments. Authorizes, rather than requires, a person, if the person who owes an assessment has executed a note and contract as provided in Section 51.302, rather than 51.302 of this code, to not be placed on the delinquent list until after the maturity of the note and contract.

SECTION 36. Amends Section 58.311, Water Code, as follows:

Sec. 51.311. WATER SERVICE DISCONTINUED. Requires that a landowner's or person's water supply, if a landowner fails or refuses to pay a water assessment or a person fails to pay a charge, fee, rental, or deposit imposed under this subchapter or Chapter 49 (Provisions Applicable to all Districts) when due, be cut off, and no water is authorized to be furnished to the land until all back assessments or other amounts owed to the water control and improvement district are fully paid. Makes conforming changes.

SECTION 37. Amends Section 58.312, Water Code, as follows:

Sec. 58.312. SUITS FOR DELINQUENT ASSESSMENTS. Authorizes suits for delinquent water assessments or other amounts owed to the district under this subchapter to be brought either in the county in which the water control and improvement district is located or in the county in which the defendant resides. Provides that all landowners are personally liable for assessments imposed under Section 51.305(a), rather than assessments provided in this subchapter. Makes a nonsubstantive change.

SECTION 38. Amends Section 58.313(a), Water Code, as follows:

(a) Requires that all assessments imposed under Section 58.305(a) bear interest from the date payment is due at the rate of 15 percent a year. Requires that assessments not paid by the first day of the month following the date payment is due are delinquent, rather than are required to become delinquent, and a penalty of up to 15 percent of the amount of the past-due assessment is required to be added to the amount due.

SECTION 39. Repealer: Section 58.137 (Investigation and Report of Engineer), Water Code.

SECTION 40. Effective date: September 1, 2013.