

## **BILL ANALYSIS**

Senate Research Center

S.B. 623  
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Natural Resources  
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### **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.

As proposed, 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 previously granted to water districts and water supply corporations is modified in SECTION 8 (Section 49.235, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 49.002, Water Code, by adding Subsection (c) to provide that a water district (district) is not a municipality, local jurisdiction, or political subdivision for purposes of Chapter 388 (Texas Building Energy Performance Standards), Health and Safety Code.

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

Sec. 49.068. New heading: **CONTRACTS WITH GOVERNMENTAL ENTITIES.** (a)  
Created from existing text.

(b) Authorizes a municipality to contract with a district and provides that the term of the contract 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, acting on behalf of the board, if authorized in the proceedings calling a director election, to, on receipt of the certification required by Section 2.052, Election Code, post a notice on or before the commencement of early voting at each polling place that would have been used in the election that the election is not to be held. Provides that if such notice is timely posted, no notice of election need be posted or published, ballots and election materials need not be prepared or printed, early and regular voting are not held, and the board shall meet at the earliest practicable time and declare each unopposed candidate elected to office.

SECTION 4. Amends Section 49.106(a), Water Code, to require the mandated engineer's report to not be considered to be part of the proposition or propositions to be voted on. Requires the engineer's

report to not give rise to nor be considered a part of 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 this section does not apply to refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project, or bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, or the Texas Water Development Board.

SECTION 7. 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 expended only as provided by the applicable rules of the commission relating to surplus bond proceeds.

SECTION 8. Amends Section 49.234, Water Code, as added by Section 15, Chapter 1423, Acts of the 77th Legislature, Regular Session, 2001, by renumbering it as Section 49.235, Water Code, and amending it as follows:

Sec. 49.235. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES. (a) Prohibits a district or corporation that has not received funding under Subchapter K, Chapter 17, from requiring a property owner who installed an on-site wastewater holding or treatment facility before the adoption of such rule to connect to the district's or corporation's wastewater collection system.

(b) Authorizes a district or water supply corporation 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 not served by the district's or corporation's water system. Prohibits a district or corporation that has not received funding under Subchapter K, Chapter 17, from requiring a property owner who installed an on-site water well before the adoption of such rule to connect to the district's or corporation's water system.

(c) Redesignated from existing Subsection (b). Makes conforming changes.

SECTION 9. Amends Section 49.271, Water Code, by adding Subsection (e) to authorize district contracts for construction work to provide for economic incentives for early completion of the work or economic disincentives for late completion of the work.

SECTION 10. 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 advertising or seeking competitive bids would compromise the safety and security of district facilities or residents.

SECTION 11. Amends Section 49.303, Water Code, as follows:

Sec. 49.303. EXCLUDING LAND FROM DISTRICT. (a) Prohibits a district from excluding land or other property from the district as provided by this subchapter if the district has issued bonds payable in whole or in part from taxes and such bonds are outstanding. Authorizes a district to exclude land or other property from the district as provided by this subchapter if no district bonds payable in whole or in part from taxes are outstanding.

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

(c) Authorizes the board, if no district bonds payable in whole or in part from taxes are outstanding, to hold, in its discretion, a hearing on the exclusion of land or other property from the district as provided by this subchapter 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.

SECTION 12. 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 13. 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 14. Amends Section 51.121(b), Water Code, to authorize a water control and improvement district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, to provide for certain activities including the reuse and recycling of water.

SECTION 15. Amends Section 51.125, Water Code, as follows:

Sec. 51.125. CONSTRUCTION OF IMPROVEMENTS. Authorizes a district to construct all works and improvements necessary for certain tasks, including the reuse and recycling of water, for municipal uses, domestic uses, power and commercial purposes, and all other beneficial uses or controls.

SECTION 16. Amends Section 54.012, Water Code, as follows:

Sec. 54.012. **PURPOSES OF A DISTRICT.** Requires a district to be created for a variety of purposes, including the reuse and recycling of water.

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 as authorized by the constitution, this code, or any other law, including water conservation.

SECTION 18. Amends Chapter 54D, Water Code, by adding Section 54.2052, to read as follows:

Sec. 54.2052. **PLUMBING CODE.** Authorizes a district, notwithstanding any law to the contrary, although it is not required to, to adopt and enforce one or more plumbing codes meeting the standards and requirements of the rules and laws of this state and to amend any provisions of such codes, if adopted, to conform to local concerns that do not substantially vary from rules or laws of this state.

SECTION 19. 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 the commission 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 commission, as soon as practicable after a petition has been filed with the commission, to issue an order either approving or denying the petition.

SECTION 20. 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.

SECTION 21. 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 22. 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 such bonds or invalidation of any prior bond election, as provided by this section and Sections 54.740 through 54.747.

SECTION 23. 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 either the estimated costs of providing district facilities and services to such 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 such 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 at such time, 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 24. 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 25. 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 all land within the district.

SECTION 26. 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 27. Amends Section 57.108, Water Code, as follows:

Sec. 57.108. CONDITIONS OF CONTRACT. Deletes existing Subsection (a). Deletes the designation of Subsection (b) as a subsection and amends the text by deleting the requirement that as funds become available, the district comply with Section 57.104 (Duty to Construct Approved Improvements).

SECTION 28. Amends Section 57.116, Water Code, as follows:

Sec. 57.116. New heading: ENGINEER'S CONSTRUCTION REPORT. (a) Requires 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.

(b) Makes a nonsubstantive change.

SECTION 29. 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 30. Amends Section 57.118, Water Code, to make conforming changes.

SECTION 31. Amends the heading of Chapter 57E, Water Code, to read as follows:

#### SUBCHAPTER E. ENGINEER'S REPORT

SECTION 32. Amends Section 57.154, Water Code, to delete the requirement that a duplicate of the engineer's report shall be filed with and approved by the commission.

SECTION 33. Amends Sections 57.177(a) and (c), Water Code, to make conforming changes.

SECTION 34. 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 35. Amends Section 57.216, Water Code, to make conforming changes.

SECTION 36. Amends Section 57.260(a), Water Code, to make a conforming change.

SECTION 37. Amends Section 57.261, Water Code, to make a nonsubstantive change.

SECTION 38. Amends Sections 57.265(c) and (d), Water Code, to make conforming changes.

SECTION 39. Amends Section 57.266(a), Water Code, to make a conforming change.

SECTION 40. 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.

(d) Makes conforming changes.

SECTION 41. Amends Sections 57.269(a) and (b), Water Code, to make conforming changes.

SECTION 42. Amends Sections 57.270(e), (j), and (k), Water Code, to make conforming changes.

SECTION 43. 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 modifications, rather than additions, to the engineer's report are desired, to file a petition with the commissioners court describing the changes, modifications, repairs, or additions.

SECTION 44. Amends Section 57.274(b), Water Code, to make conforming changes.

SECTION 45. Amends Section 57.275(d), Water Code, to make conforming changes.

SECTION 46. Amends Section 67.010(d), Water Code, to require the corporation, if a corporation issues bonds secured by a contract entered into under this section, to be considered to be acting for or on behalf of the political subdivision for the purposes of Section 1201.002(1)(B), 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 47. Repealer: Sections 49.218(d), (e), (f), and (g), Water Code, as added by Section 1, Chapter 71, Acts of the 77th Legislature, Regular Session, 2001; Sections 54.508, 57.094, and 57.156, Water Code; and Chapter 441C, Transportation Code.

SECTION 48. Effective date: upon passage or September 1, 2003.