

BILL ANALYSIS

C.S.S.B. 1304
By: Madla
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, potential property buyers have limited resources to determine whether land is included in a special district. Notice of the existence of a district is not required to be given until the confirmation election of the district. Also, a special district that is permitted to convert into another type of district is able to do so solely upon the order of this district's governing body, unless the district is trying to convert into a municipal utility district. In addition, certain districts are allowed to divide upon approval by the qualified voters in the district. As proposed, C.S.S.B. 1304 requires a certified copy of order creating a water district to be recorded in the county deed records, requires certain districts to obtain approval from the entity that would normally approve the creation of these districts before converting, and requires not only a vote by qualified voters before dividing, but also consent from the creating entity.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Sections 49.452(b), (c), and (d), Water Code, as follows:

(b) Requires the prescribed notice for districts located in whole or in part in the extraterritorial jurisdiction of one or more home-rule municipalities and not located within the corporate boundaries of a municipality to be executed by the seller and to read in a certain manner. Adds contact information to the information placed in the appropriate space. Makes a nonsubstantive change.

(c)-(d) Make conforming changes.

SECTION 2. Amends Section 49.455 (j), Water Code, to provide that the executive director shall make available on a publicly accessible Internet website the form of Notice to Purchasers described by Subsection (b) (9) that the director has most recently received from each district.

SECTION 3. Amends Section 51.021, Water Code, by adding Subsection (d) to require the commissioners court or the Texas Commission on Environmental Quality (TCEQ), as appropriate, within 15 days after the date of the order, to file with the county clerk, for filing in the county deed records of each county in which a part of the district is located, the order creating the water control or improvement district (district), if the commissioners court or TCEQ grants the petition requesting the creation of a district.

SECTION 4. Amends Section 51.032(b), Water Code, to require a certified copy of TCEQ's order granting a petition and naming the directors to be filed within 15 days after the date of the order in the office of the county clerk for filing in the county deed records of each county in which a portion of the district is located. Requires the filing to explain that the order creating the district is required to be confirmed and ratified by an election.

SECTION 5. Amends Section 51.040, Water Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the resolution to contain a list of powers the district desires to retain after conversion and to request certain actions from the commissioners court.

(c) Requires the district to file a copy of the resolution with the commissioners court or TCEQ, as applicable.

SECTION 6. Amends Chapter 51B, Water Code, by adding Section 51.0402, as follows:

Sec. 51.0402. SETTING OF DATE, TIME, AND PLACE OF CONVERSION HEARING. Requires certain persons, as applicable, to set a date, time, and place for a hearing on the conversion, promptly after the resolution requesting conversion is filed.

SECTION 7. Amends Section 51.041(a), Water Code, to require notice of the conversion hearing, rather than adoption of a resolution under Section 51.040 of this code, to be given by publishing notice, rather than the resolution, in a newspaper with general circulation in the county or counties in which the district is located.

SECTION 8. Amends Section 51.042, Water Code, as follows:

(a) Requires the commissioners court or TCEQ, rather than the governing body of the district, as applicable, if on a hearing it finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, to enter an order making this finding and to include in the order a list of the powers to be retained by the district after conversion that the commissioners court or TCEQ, as applicable, approves.

(b) Makes a conforming change.

(c) Provides that finding of the commissioners court or TCEQ, as applicable, entered under this section are subject to appeal or review not later than the 30th day after the date the order approving or denying the conversion is entered into under this section. Deletes existing text related to the finding of the governing body of a district being final and not subject to appeal.

(d) Provides that a district that converts or has converted into a district operating under this chapter has all the powers granted by Sections 51.043 and 51.331 as if the district had been created with those powers.

SECTION 9. Amends Sections 51.044(a) and (b), Water Code, to make conforming changes.

SECTION 10. Amends the heading to Section 51.749, Water Code, to read as follows:

Sec. 51.749. APPROVAL OF DIVISION.

SECTION 11. Amends Section 51.749, Water Code, by amending Subsection (a), (a-1) and adding Subsection (d), as follows:

(a) Requires the board of directors of the district (board) to submit a proposal for division to the entity that issued the order creating the district for approval. Requires the board, if the district was created by an act of the legislature, to submit a proposal for division to TCEQ.

(a-1) Created from existing text. Requires the board, if the entity that issued the order creating the district or TCEQ approves the division of the district, to order an election to be held in the district to determine whether the original district should be divided as proposed.

(d) Requires the board of the original district, within 15 days after the date of the election, to file with the county clerk, for filing in the county deed records of each county in which a part of the district is located, an order declaring the results of the election and dividing the original district, if the division of the original district is approved by a majority of the qualified voters of the district voting in the election.

SECTION 12. Amends Section 53.016, Water Code, to delete existing text "immediately" referring to requiring certain persons to set a time and place for a hearing on the petition by the commissioners court.

SECTION 13. Amends Section 53.019(a), Water Code, to authorizes any person whose land is included in or would be affected by the creation of the district to appear and contest the creation of the district and offer testimony to show that the district is not necessary, would or would not be a public utility or benefit to land in the district, and would or would not be feasible or practicable, at the hearing on the petition. Deletes existing language related to sufficiency of the petition and all relative testimony.

SECTION 14. Amends Chapter 53B, Water Code, by adding Sections 53.0194-53.0199, as follows:

Sec. 53.0194. GRANTING OR REFUSING PETITION. (a) Requires the commissioners court to grant the petition requesting the creation of a district if it appears at the hearing that organization of the district as requested is feasible and practicable, the land to be included and the residents of the proposed district will be benefitted by the creation of the district, there is a public necessity or need for the district, and the creation of the district would further the public welfare.

(b) Requires the commissioners court, if the commissioners court fails to make the findings required by Subsection (a), to refuse to grant the petition.

(c) Authorizes the commissioners court to exclude those lands not to be benefitted and requires the commissioners court to redefine the boundaries of the proposed district to include only the land that will receive benefits from the district, if the commissioners court finds that any of the land sought to be included in the proposed district will not be benefitted by inclusion in the district.

Sec. 53.0195. FILING OF ORDER. Requires the commissioners court, if the commissioners court grants a petition requesting the creation of a district, within 15 days after the date of the order, to file with the county clerk, for filing in the county deed records of each county in which a part of the district is located, the order creating the district. Requires the filing to explain that the order creating the district is required to be confirmed and ratified by an election.

Sec. 53.0196. APPEAL FROM ORDER OF COMMISSIONERS COURT. Provides for appeal from the refusal to grants petition under certain circumstances and if certain requirements are met.

Sec. 53.0197. RECORD ON APPEAL; NOTICE OF APPEAL. Provides for notice of the appeal to certain parties.

Sec. 53.0198. HEARING IN DISTRICT COURT; PROCEDURE. Provides for scheduling of the appeal in district court and procedures to be followed.

Sec. 53.0199. JUDGEMENT OF DISTRICT COURT; APPEAL. Provides for final appeal and judgement procedures.

SECTION 15. Amends Section 53.029(b), Water Code, to authorize a district covered by this section to be divided into two new districts if certain conditions apply. Makes conforming and nonsubstantive changes. Creates new Subsection (b-1) from existing text.

SECTION 16. Amends Section 53.040, Water Code, to require the newly elected supervisors in each new district to immediately file with the county clerk, for filing in the county deed records of each county in which a part of the district is located, an order declaring the results of the election and dividing the original district.

SECTION 17. Amends Section 53.043, Water Code, to provide that a district created by the division of an existing district has all the powers and duties of the district before the division.

SECTION 18. Amends Chapter 53, Water Code, by adding Subchapter G, as follows:

SUBCHAPTER G. CONVERSION OF DISTRICTS

Sec. 53.231. CONVERSION OF CERTAIN DISTRICTS INTO DISTRICTS OPERATING UNDER THIS CHAPTER. (a) Authorizes any water control and improvement district created under Section 52, Article III (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), or Section 59, Article XVI (Conservation and Development of Natural Resources; Conservation and Reclamation of Districts), Texas Constitution, to be converted to a district operating under this chapter.

(b) Requires the governing body of a district that desires to convert into a district operating under this chapter to adopt and enter in the minutes of the governing body a resolution declaring that, in its judgment, conversion into a fresh water supply district operating under this chapter and under Section 59, Article XVI, Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. Requires the resolution to also request the commissioners court to hold a hearing on the conversion of the district if the district is located entirely within one county or TCEQ to hold a hearing on the conversion of the district if the district includes land in more than one county.

(c) Requires the district to file a copy of the resolution with the commissioners court or TCEQ, as applicable.

Sec. 53.232. SETTING OF DATE, TIME, AND PLACE OF CONVERSION HEARING. Requires certain persons, as applicable, to set a date, time, and place for a hearing on the conversion, promptly after the resolution requesting conversion is filed.

Sec. 53.233. CONVERSION OF DISTRICT; NOTICE. (a) Requires notice of the conversion hearing to be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) Requires the notice to be published once a week for two consecutive weeks with the first publication not less than 14 full days before the time set for a hearing.

(c) Requires the notice to state the time and place of the hearing, set out the resolution in full, and notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

Sec. 53.234. CONVERSION OF DISTRICT; FINDINGS. (a) Requires the commissioners court or TCEQ, if the commissioners court or TCEQ, as applicable, on a hearing, finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, to enter an order making this finding.

(b) Requires the commissioners court or TCEQ, if the commissioners court or TCEQ, as applicable, finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, to enter an order against conversion of the district into one operating under this chapter.

(c) Provides that the findings of the commissioners court or TCEQ, as applicable, entered under this section are subject to appeal or review not later than the 30th day after the date the order approving or denying the conversion is entered under this section.

Sec. 53.235. EFFECT OF CONVERSION. Requires a district that converts into a district operating under this chapter to be constituted a fresh water supply district operating under and governed by this chapter, be a conservation and reclamation district under Section 59, Article XVI, Texas Constitution, and have and exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

SECTION 19. Amends Section 54.021, Water Code, by adding Subsection (f) to require TCEQ, if TCEQ grants the petition requesting the creation of a district, within 15 days after the date of the order, to file with the county clerk, for filing in the county deed records of each county in which a part of the district is located, the order creating the district. Requires the filing to explain that the order creating the district to be confirmed and ratified by an election.

SECTION 20. Repealer: Section 51.045, Water Code (Conservation of a District Operating Under this Chapter to a Fresh Water Supply District).

SECTION 21. (a) Makes application of Sections 49.452(b), (c), and (d), Water Code, as amended by this Act, prospective.

(b) Requires TCEQ, a commissioners court, or a governing body, as appropriate, not later than January 16, 2004, to comply with the filing requirements of Sections 51.021(d), 53.0195, and 54.021(f), Water Code, as added by this Act, and Section 51.032(b), Water Code, as amended by this Act, if before January 1, 2004, TCEQ, a county commissioners court, or the governing body of a district by order has granted a petition for or authorized the creation or division of a water control and improvement district, fresh water supply district, or municipal utility district, as applicable, subject to a confirmation election, and the election has not been held before that date.

(c) Makes application of Sections 51.040(b), 51.041(a), 51.042, and 51.044(a) and (b), Water Code, as amended by this Act, and Sections 51.040(c), and 51.0402, and Chapter 53G, Water Code, as added by this Act, prospective.

(d) Makes application of Sections 51.749(a) and 53.029(b), Water Code, as amended by this Act, prospective.

(e) Makes application of Sections 53.016 and 53.019(a), Water Code, as amended by this Act, and Section 53.0194, Water Code, as added by this Act, apply only to a hearing for which notice is given before the effective date of this Act.

(f) Makes application of Sections 53.0196-53.0199, Water Code, as added by this Act, apply only to the appeal of an order of the commissioners court entered on or after the effective date of this Act is governed by the law applicable to the order immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 22. (a) Effective date.

EFFECTIVE DATE

January 1, 2004

COMPARISON OF ORIGINAL TO SUBSTITUTE

The effective date was changed so that it would be a uniform date. The filed version, had several different effective dates, and for simplification, it was changed to January 1, 2004.

The substitute amends Section 49.455 (j), Water Code, to provide that the executive director shall make available on a publicly accessible Internet website the form of Notice to Purchasers described by Subsection (b) (9) that the director has most recently received from each district.

The substitute also makes the following changes:

Sec. 49.455 (j), Water Code, was amended to state that if the commissioners court or TCEQ grants the petition requesting creation of a district, the commissioners court or TCEQ shall file the order creating the district within 15 days. The filing must explain the the district must be ratified by an election.

Sec. 51.042 (a) (1) was amended to specify that when a district converts into a Water Control and Improvement District (WCID), the commissioners court or the commission shall include in the order a list of the powers to be obtained or acquired by the district as a result of the conversion.

Sec. 51.042 (c) was added to allow for an appeal process after a district is converted. The action would be subject to appeal within 30 days of the conversion.

Sec. 51.042 (d) was added to clarify what powers a district converting to a WCID will have.

Sec. 53.0196 was added to Section 13, to establish an appeal process for the creation of a Fresh Water Supply District (FWSD). This provides landowners within the proposed area to petition to the court to appeal their decision, whether it be to grant or refuse the original petition to create the district. The change in Chapter 53 was based on Chapter 51 and this appeal process is included and was mistakenly left out of the bill as filed.

Section 17 was added to clarify that when a FWSD divides, the new districts, as a result of the division, will have all powers of the original district.

Section 8 of the original was removed. Because the conversion has to be approved by the creating entity, an election is an unnecessary burden.