

BILL ANALYSIS

C.S.H.B. 3490
By: Denny
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The purpose of the bill is to create the Lakes Fresh Water Supply District of Denton County, and to enumerate its powers, duties and obligations.

In 1925, the Legislature enacted its first law to authorize the creation of special districts as a tool to build water supply infrastructure. Article 16, Section 59, of the Texas Constitution authorized such entities to have taxing authority and to issue debt backed by such taxes in order to construct public infrastructure to control and use water beneficially. The Water Code now authorizes approximately 13 different types of water districts to deal with surface water usage.

Water districts can be created by three methods: by the county commissioners court, by the TCEQ, and by the Legislature. Each methodology has advantages and disadvantages.

CSHB 3490 proposes the legislative creation of a fresh water supply district to be located entirely in Denton County. Denton County is a rapidly growing county adjacent to urban cities in need of lower cost suburban housing. Legislative creation is proposed because it offers the most flexibility, is the quickest method, and allows “custom” authorizations of powers and duties. The proposed legislation includes already existing authorized powers from several Texas laws, combining them into this water district that will be suited to the development needs of the times and locale.

CSHB 3490 proposes to combine the traditional powers and duties of a fresh water supply district governed by Chapter 49 and 53, Water Code, with the powers of road districts found in Chapter 257, Transportation Code, and the powers of municipal utility districts found in Chapter 54, Water Code.

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

CSHB 3490 authorizes creation of the Lakes Fresh Water Supply District of Denton County subject to approval by voters at a confirmation election. The land to be included in the district is described in the bill itself, the field notes shall be deemed to form a closure, and a mistake in the field notes shall not affect the validity of the district.

The bill sets forth temporary provisions that will authorize and regulate the activities of the district until the district is confirmed by the voters, including naming temporary directors and providing qualifications for their service. If at any time there are fewer than three qualified temporary directors, the TCEQ shall appoint members to fill those vacancies. The organizational meeting of the board of directors is authorized and the location of the meeting place is provided for. A mechanism to determine which directors shall serve two year terms to create the staggering effect required for the four-year terms water district directors are to serve is provided. These temporary provisions expire on September 1, 2010.

CSHB 3490 sets forth provisions relating to the board of directors. There shall be five directors who serve four-year terms and who shall stand for election on the May uniform election date of

each even-numbered year. Directors must meet the qualifications in Chapters 49 and 54, rather than those in Chapter 53.

The district has the powers and duties provided by Chapters 49, 53, and 54, Water Code applicable to municipal utility districts and fresh water supply districts. However, Sections 53.029 (b), 53.030-53.034 and 53.040-53.043 do not apply to this district.

The district may construct, acquire, improve, maintain, or operate paved or unpaved roads or turnpikes, or improvements in aid of such, inside or outside the district. Only the construction standards of the North Central Texas Council of Governments shall be applied to such projects of the district.

The district may construct, acquire, improve, enlarge, and repair dams, levees, walls, embankments, reservoirs, lakes and other improvements as necessary to control, store or preserve water for any useful purpose. The district may flood public lands and other public property in the district. However, such a project must comply with all applicable permitting and regulatory requirements.

The district may pay all expenses related to obtaining a new certificate of convenience and necessity ("CCN") or the rights to a CCN of another utility out of any available district revenues. The district may enter into a contract to allow a political subdivision to provide water or sewer service to the district. The contract may provide that the district will construct or acquire and convey to the political subdivision a water supply, treatment and distribution system, a sewer collection or treatment system, as necessary.

The district may use bond proceeds or other available district revenues to pay its obligations under such contract. If the contract referred to above requires the district to make payments from taxes other than operation and maintenance taxes, the contract is subject to Section 49.108, Water Code. The district may impose a tax for any district operation and maintenance purpose as provided in Section 49.107, Water Code. Section 49.107(f) does not apply to reimbursements for projects described in Section 8125.101. The district may impose a tax to pay debt service on bonds it issues. However, the district may not impose an impact fee or assessment on property owned by a utility.

The district is authorized to issue bonds or other obligations under Chapters 49 and 54, Water Code, and to finance road projects under Sections 8125.102 and 8125.104 or the district's contractual obligations set forth in Section 8125.106.

The district may not issue bonds or other obligations secured in whole or in part by ad valorem taxes to finance projects authorized by Section 8125.102 (road projects) unless the issuance is approved by a vote of a two-thirds majority in a district election. Bonds for such purposes may not exceed one fourth of the assessed value of the property in the district. Sections 49.181 and 49.182, Water Code, do not apply to projects under Section 8125.102, or to bonds issued by the districts for such road projects.

EFFECTIVE DATE

CSHB 3490 takes effect immediately if it receives a 2/3rds vote in both chambers, otherwise it takes effect Sept. 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amended the original version of the bill by eliminating provisions that:

- prohibited a county or municipality from impairing district activities;
- provided that Chapter 257, Transportation Code applied to the district;
- specified that road improvements included incidental landscaping, lights, sidewalks, or trails;
- provided for joint road projects with a state agency, political subdivision, or transportation corporations created under Chapter 431, Transportation Code; and
- explicitly granted the power of eminent domain.