

BILL ANALYSIS

C.S.H.B. 3556
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 3556 creates the Las Lomas Municipal Utility District Number 4 of Kaufman County, and enumerates its powers, duties and obligations.

In 1925, the Legislature enacted its first law to authorize the creation of water control and improvement districts. Article 16, Section 59, of the Texas Constitution authorized such entities to have unlimited 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 or successor agencies, and by the Legislature.

C.S.H.B. 3556 proposes the legislative creation of a municipal utility district ("MUD") to be located entirely in Kaufman County.

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

This Act adds Chapter 8138 to the Special District Local Laws Code, which shall be titled the Las Lomas Municipal Utility District Number 4 of Kaufman County.

SUBCHAPTER A defines the GENERAL PROVISIONS that will apply to the new district. Definitions are provided. The nature of the district, being authorized by certain constitutional provisions, is set forth.

A requirement that a confirmation election is provided. If the district does not hold a confirmation election before September 1, 2007, under certain circumstances, the district may be dissolved.

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.

Subchapter A1 sets forth temporary provisions that will authorize and regulate the activities of the district until the district is confirmed by the voters. In this subchapter, the temporary directors are named, and the qualifications for their service are provided. 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.

Subchapter A1 expires September 1, 2010.

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SUBCHAPTER B 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.

SUBCHAPTER C sets forth the district's POWERS AND DUTIES that are bestowed in addition to the powers and duties the district shall acquire by virtue of creation as a municipal utility district.

The district may construct, acquire, improve, maintain, or operate roads or turnpikes, or improvements in aid of such, inside 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 not undertake a road project unless each municipality in whose corporate limits or extraterritorial jurisdiction the district is located consents by ordinance or resolution. If the district is located outside the extraterritorial jurisdiction of a municipality, the district may not undertake a road project unless each county in which the district is located consents by ordinance or resolution.

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 O&M taxes, the contract is subject to Section 49.108, Water Code.

The district may exercise the power of eminent domain outside the district only to acquire an easement necessary for a pipeline that serves the district.

SUBCHAPTER D provides for GENERAL FINANCIAL PROVISIONS.

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 8138.102. The district may impose a tax to pay debt service on bonds it issues under 8138.201.

A provision in Section 8138.153 prohibits the district from imposing impact fees or assessments on certain utilities within the district.

SUBCHAPTER E sets forth provisions related to BONDS.

The district is authorized to issue bonds or other obligations under Chapters 49 and 54, Water Code, and to finance road projects under Sections 8138.102 and 8138.1043 or the district's contractual obligations set forth in Section 8138.104.

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 8138.102 (road projects) unless the issuance is approved by a vote of a two-thirds majority of the voters in the district. Bonds for such purposes may not exceed one fourth of the assessed value of the property in the district due to a constitutional prohibition in Article 3, Section 52.

Sections 49.181 and 49.182, Water Code, do not apply to projects under Section 8138.102, or to bonds issued by the districts for such road projects.

SUBCHAPTER F provides for DIVISION INTO MULTIPLE DISTRICTS.

The district is proposed to encompass over 3000 acres, which is generally considered to be too large for one district to practically serve. Before the district issues debt secured by taxes or net revenues, the district may be divided into two or more new districts. Such new district must be at least 100 acres.

The division must be based on a petition from a landowner in the district or a motion of the board. If a decision to divide is made, the board shall set the terms of the division, including names for the new district or districts and a plan for the payment or performance of any outstanding district obligation and prepare a metes and bounds description for each new district.

After the board decides to divide, the board shall hold an election in the district to determine whether the district should be divided as proposed. The board shall give notice at least 35 days before the date of the election. If a majority of the votes are in favor of division, the district shall be divided and not later than the 30th day after the date of the election the district shall provide notice of the division to the TCEQ, the attorney general, the commissioners court of each county in which a new district is located and any municipality that has extraterritorial jurisdiction of any new district. Not later than the 90th day after the date of the division election, the board shall appoint itself as the board of one of the new districts to serve the same terms as they originally served before the division, and appoint five directors for each new district who shall serve until the uniform election date in May of the first even numbered year after the year in which the directors are appointed. They shall draw lots to establish staggered terms.

Each new district may incur and pay debts and has all the powers of the original district created by this chapter. If the district is divided, any bond authorizations remain in place. Debts shall be paid by revenues or by taxes or assessments imposed on real property in the district as if the district has not been divided or by contributions from each new district as stated in the terms set by the board. Any other obligation shall be divided pro rata among the new districts on an acreage basis or on other terms that are satisfactory to the new districts. The new districts may contract with each other for water and wastewater services, or any other matters the boards consider appropriate.

SECTION 2. SETS FORTH THE METES AND BOUNDS OF THE LAND INITIALLY TO BE WITHIN THE DISTRICT, ENCOMPASSING A 3,969.826 ACRE TRACT.

SECTION 3. PROVISIONS RELATING TO NOTICE REQUIRED BY CONSTITUTION FOR LOCAL LAW, AND CONFIRMING ALL SUCH ACTS FULFILLED.

SECTION 4. EFFECTIVE DATE.

Upon passage if the required vote is obtained in both houses or September 1, 2005, if not.

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COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute is different from the bill as filed in four provisions, all of which are in SECTION 1 of the bill.

1. In Section 8138.002, a reference to Article III, Section 52 of the Constitution has been deleted, and is written instead into Section 8138.102 of the substitute. The sentence in that section providing that the district is created to serve a public use and benefit was deleted in the substitute.

2. Section 8138.102 has been rewritten to include a reference to Section 52, Article III, Texas Constitution, providing that the legislative grant of powers are to the extent authorized in that constitutional provision. The section in the substitute also limits the grant of road powers to the district to be used only within the boundaries of the district.

The substitute allows the project authorized by this section to meet “or exceed” the standards of the North Central Texas Council of Governments.

The substitute adds the requirement that the district may not undertake a road project unless each municipality in whose extraterritorial jurisdiction the district lies grants its consent by ordinance or resolution. If the district lies within the unincorporated territory of a county, consent of the county by ordinance or resolution must be granted for each road project.

3. The language in the bill as filed found in Section 8138.103 was deleted.
4. The substitute contains new language in Sec. 8138.105 that limits the use of eminent domain outside the boundaries of the district for pipelines that serve the district.