

BILL ANALYSIS

C.S.H.B. 3335
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are approximately 1,300 active water districts within the State of Texas. These districts include municipal utility districts (MUDs), fresh water supply districts (FWSDs), and, among others, water control and improvement districts (WCID). In general, these districts have the authority to issue bonds, levy taxes, exercise the power of eminent domain, supply treated and untreated water, implement drainage and flood control projects, develop and maintain parks and recreational facilities, and, in certain cases, build roads. Water districts are also political subdivisions of the State of Texas. As such, they are governed by elected boards that have the authority to adopt and enforce a variety of rules and regulations.

C.S.H.B. 3335 is an omnibus bill proposing several changes relating to the powers and authority of water districts.

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 Section 49.101, Water Code, to allow a district's board to contract with a person to serve as the district's elections secretary. Exempts a district election from the requirement that election judges provide notice of their appointments and that county precincts serve as election precincts for the purpose of the district's election. Exempts district election judges from the requirement that they be a qualified voter of the precinct for which they are a judge; requires that a person be a registered voter of the county in which the district is located in order to serve as a district election judge. The bill exempts a district from the requirement that it use electronic voting machines for district elections if the election is a confirmation election or an election other than one in which a federal office appears on the ballot that is held jointly with a confirmation election on the same date. The bill also exempts districts from the electronic voting machine requirement if the most recent district directors election was not held, or fewer than 250 voters voted at the most recently held election. The bill requires that a district eligible for the exemption to the requirement that they use electronic voting machines post notice in a newspaper of general circulation and mail notice to each voter within the district regarding the district's intention to hold the election without using electronic voting machines. The notice must include information on how any voter within the district may request the use of electronic voting machines to accommodate a person with a disability, and how such a request may be made. A district is required to comply with a request to use electronic voting machines.

SECTION 2. Adds Section 49.1045, Water Code, to allow a district with ten or fewer registered voters that holds an election jointly with a county to provide for the certification of the voting results if the election results indicate that there were more votes cast in the election than the number of registered voters in the district. The bill allows a district to certify election results by having each person whose signature is on the sign-in sheet for the joint election certify the manner in which they voted and that they were a qualified voter on the day of the election, and that the certified votes shall be used as the election results

SECTION 3. Amends Section 49.107, Water Code, to except a municipal management district that provides water, sewer, drainage, reclamation, flood control, road, or park and recreational

services from the prohibition on the taxation of single-family residential property by such a district.

SECTION 4. Amends Section 49.108, Water Code, to require that a contract be open to inspection by the public at least ten days before an authorization election for that contract, and to provide that a contract is not required as an attached exhibit to the order calling for the election. The bill provides that a single contract may contain multiple purposes or facilities authorized by one or more constitutional provisions, and that such a contract may be submitted for voter approval in a single proposition. The bill provides that a contract between districts for the provision of facilities or services is not required to specify the maximum amount of bonds or expenditures authorized under the contract if the contract provides that the service area cannot be enlarged without the consent of at least two-thirds of districts that are in the service area or served by facilities or services provided for in the contract. The bill provides that a contract may generally describe the facilities to be acquired or financed by the district without reference to specific constitutional provisions.

SECTION 5. Amends Section 49.151(c), Water Code, to authorize a district's board to allow disbursement or transfer of funds by electronic means.

SECTION 6. Amends Section 49.194, Water Code, to allow special water authorities to file their accounts and records audit with the executive director of the Texas Commission on Environmental Quality within 160 days after the close of their fiscal year.

SECTION 7. Amends Section 49.213, Water Code, to provide that a written contract between an district and any person for the provision of goods and services to the district is a contract subject to Subchapter I, Chapter 271, Local Government Code. The bill provides that a district and any person waives sovereign immunity to suit for adjudicating a claim for a breach of contract, subject to the terms and conditions of Subchapter I, Chapter 271, Local Government Code.

SECTION 8. Amends Section 49.216, Water Code, to require a peace officer who is directly employed by a district to take an oath and execute a bond. The bill provides that a peace officer contracted for by a district is an independent contractor and that the district is responsible for the officer's actions only to the extent provided by law for other independent contractors.

SECTION 9. Amends Section 49.273(d), Water Code, to change the deadline for the notice requirement for contracts over \$50,000 from 21 days before the opening of bids, to 14 days.

SECTION 10. Amends Section 49.351, Water Code, to provide that a district that funds fire-fighting services with revenue, including mandatory fees or voluntary contributions, is not required to submit a plan for financing fire-fighting services to the Texas Commission on Environmental Quality, or hold an election at which voters may vote to approve or reject the plan. The bill makes conforming changes. The bill provides that if a district includes a voluntary payment for fire fighting services on its water bill, and a customer makes a partial payment of their bill that includes a contribution for fire-fighting services, the district shall apply any payments received first to water and sewer services, and the remainder for fire-fighting services.

SECTION 11. Amends Section 49.4645(a), Water Code, to clarify that the one percent limitation on bonds issued by districts for parks and recreational purposes only applies to bonds supported by ad valorem taxes.

SECTION 12. Amends Section 51.523, Water Code, to expand the provisions required for a ballot establishing a defined area within a water control and improvement district.

SECTION 13. Amends Section 51.527, Water Code, to provide that unless a maintenance tax is imposed within a defined area within a WCID, once the bonds issued for the defined area are paid off or defeased, the district's board may declare the area dissolved or repeal the defined area designation, and cease imposing taxes therein.

SECTION 14. Amends Section 54.236, Water Code, to allow municipal utility districts that have acquired powers to develop roads or parks and recreational facilities to issue bonds for

street lights. The bill requires that street lighting or security lighting be installed on property owned by the district.

SECTION 15. Amends Section 54.739, Water Code, to allow for the substitution of land within a municipal utility district for land outside of the district of equal value once the district has obtained voter approval for the issuance of, or sold, bonds payable from ad valorem taxes.

SECTION 16. Amends Section 54.744, Water Code, to provide that, for the purposes of a district's consideration of applications for lands inclusion within the district, the taxable value of included property means the market value of the property if, before or contemporaneously with the inclusion of the property in the district, the owner waives the right to a special appraisal of the property.

SECTION 17. Amends Section 59.006(d), Water Code, to make a conforming changes to the repeal of Section 54.016(f).

SECTION 18. Amends Section 388.005, Health and Safety Code, to exempt the electricity consumption of a water district or a groundwater district involving water or wastewater processing functions from certain energy efficiency goals and reporting requirements. The bill also strikes reference to state agencies in the section title.

SECTION 19. Amends Section 43.0751(a)(1), Local Government Code, to define a district for the purposes of strategic partnership agreement under a limited purpose annexation as a conservation or reclamation district operating under Chapter 49, Water Code.

SECTION 20. Amends Section 43.0751, Local Government Code, to provide that in order for an area to be annexed into a city under a limited purpose annexation within a strategic partnership agreement between a district and a city, the area must be within the city's extraterritorial jurisdiction and contiguous to the corporate or limited purpose boundaries of the city unless the district consents to the noncontiguous annexation pursuant to a strategic partnership agreement with the city.

SECTION 21. Repeals §54.016(f), Water Code, allowing a city to provide in its written consent to the formation of a MUD the requirement that that the city and the MUD enter into an allocation agreement providing for how the MUD will exist after it is annexed by the city, the allocation of taxes or revenues between the MUD and the city in an amount not to exceed the city's property taxes, the allocation of governmental services between the MUD and the city, and other terms deemed appropriate by the city.

SECTION 22. Transition language providing that the changes in law made by the repeal of Section 54.016(f) do not affect a lawsuit concerning an agreement if the lawsuit was filed before 1 January 2010. The bill provide the legislative finding that an agreement between a city and a MUD may not be construed as an "allocation agreement" unless the agreement specifically uses the term "allocation agreement" or reference Section 54.016(f), Water Code, as being applicable to the agreement.

SECTION 23. Provides the effective date of this Act.

EFFECTIVE DATE

Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009. Subsection (b) provides that Section 21 of this Act takes effect January 1, 2010.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original version of the bill includes the caption, "relating to the powers and authority of water districts"; the committee substitute's caption reads, "relating to the powers of certain water districts." The original version of the bill exempted water districts from the requirement that they use electronic voting machines if the district has 10 or fewer voters, or the cost to the district for using such machines would exceed \$100 per registered voter; the committee substitute provides that a district is exempt from the electronic voting machine requirement if the

election is a confirmation election, the most recently held district directors election was not held, or fewer than 250 voters voted at the most recent election. The committee substitute adds a new provision requiring that a district seeking to hold an election without an electronic voting machine provide notice regarding its intention, and allow a person to request the use of electronic voting machines. The original version authorized a water district to file suit against any person in order to enforce the payment of fees or charges the person owes the district under district rules; the committee substitute contains no similar provision. With regard to the provisions affecting joint elections with counties, found in SECTION 6 of the original version, and SECTION 2 of the committee substitute, the committee substitute adds a new provision requiring persons whose signature is on the sign-in sheet certify that they were a qualified voter on the day of the election. The original version provided that a district that enters into a contract is subject to Section 271.152, Local Government code; the committee substitute provides that a written contract between a district and any person for the provision of goods and services is subject to Subchapter I, Chapter 271, Local Government Code. The substitute includes the additional provision that a district and any person waive sovereign immunity to suit for the purpose of adjudicating a claim for a breach of contract. The original version prohibited a city from exercising its power of eminent domain within a municipal utility district's boundaries; the substitute does not include this provision. The original version authorized a municipal utility district to contract or receive water or sewer service as a wholesale customer if the cost to the district for services under the wholesale contract does not exceed the cost to provide the services; the substitute does not include this provision. In addition, the original version of HB 3335 repeals Section 54.016(h); the committee substitute does not repeal this section.

The committee substitute adds several new provisions not included in the original version of HB 3335. These new provisions may be found in SECTION 1, SECTION 3, SECTION 4, SECTION 5, SECTION 6, SECTION 8, SECTION 9, SECTION 11, SECTION 12, SECTION 13, SECTION 14, SECTION 15, SECTION 16, and SECTION 18.

The committee substitute includes new transition language providing that the changes in law made by the repeal of Section 54.016(f) do not affect a lawsuit concerning an agreement if the lawsuit was filed before 1 January 2010. The substitute also includes the legislative finding that an agreement between a city and a MUD may not be construed as an "allocation agreement" unless the agreement specifically uses the term "allocation agreement" or reference Section 54.016(f), Water Code, as being applicable to the agreement. Lastly, the original version of the bill included a 1 September 2009 effective date; the committee substitute includes a 1 September 2009 effective date with the provision that SECTION 21 of the bill takes effect on 1 January 2010.