

## **BILL ANALYSIS**

S.B. 2463  
By: Wentworth  
Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

A water district is a local governmental entity that provides limited services, such as water storage, supply, and conservation, to its customers and residents. Comal County Water Improvement District No. 2 (district) will encompass an area of land outside the corporate limits of any city and partially within the extraterritorial jurisdiction of the City of New Braunfels, Texas.

S.B. 2463 amends current law relating to the creation of the district, provides authority to impose a tax and issue bonds, and grants a limited power of eminent domain.

### **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 Subtitle I, Title 6, Special District Local Laws Code, by adding Chapter 9039, as follows:

#### CHAPTER 9039. COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 2

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9039.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 9039.002. NATURE OF DISTRICT. Provides that the district is a water control and improvement district created under Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 9039.003. CONFIRMATION AND DIRECTORS' ELECTION REQUIRED. Requires the temporary directors to hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102 (Confirmation and Director Election), Water Code.

Sec. 9039.004. CONSENT OF MUNICIPALITY REQUIRED. (a) Prohibits the temporary directors from holding an election under Section 9039.003 until each municipality in whose corporate limits or extra territorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

(b) Provides that a confirmation election held in violation of this section is void.

Sec. 9039.005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) Creates the district to serve a public purpose and benefit.

(b) Creates the district to accomplish the purposes of a water control and improvement district as provided by general law and Section 59, Article XVI,

Texas Constitution, and Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III (Legislative Department), Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 9039.006. INITIAL DISTRICT TERRITORY. (a) Provides that the district is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) Provides that the boundaries and field notes contained in Section 2 of this Act creating this chapter form a closure and a mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's organization, existence, or validity; right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond; right to impose a tax; or legality or operation.

[Reserves Sections 9039.007-9039.050 for expansion.]

**SUBCHAPTER B. BOARD OF DIRECTORS**

Sec. 9039.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of five elected directors (board).

(b) Provides that directors serve staggered four-year terms, except as provided by Section 9039.052.

Sec. 9039.052. TEMPORARY DIRECTORS. (a) Authorizes the owner or owners of a majority of the assessed value of the real property in the district, on or after the effective date of the Act creating this chapter, to submit a petition to the Texas Commission on Environmental Quality (TCEQ) requesting that TCEQ appoint as temporary directors the five persons named in the petition. Requires TCEQ to appoint as temporary directors the five persons named in the petition.

(b) Provides that temporary directors serve until the earlier of the date permanent directors are elected under Section 9039.003 or the fourth anniversary of the effective date of the Act creating this chapter.

(c) Requires successor temporary directors, if permanent directors have not been elected under Section 9039.003 and the terms of the temporary directors have expired, to be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of the date permanent directors are elected under Section 9039.003 or the fourth anniversary of the date of the appointment or reappointment.

(d) Authorizes the owner or owners of a majority of the assessed value of the real property in the district, if Subsection (c) applies, to submit a petition to TCEQ requesting that TCEQ appoint as successor temporary directors the five persons named in the petition. Requires TCEQ to appoint as successor temporary directors the five persons named in the petition.

[Reserves Sections 9039.053-9039.100 for expansion.]

**SUBCHAPTER C. POWERS AND DUTIES**

Sec. 9039.101. GENERAL POWERS AND DUTIES. Provides that the district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 9039.102. WATER CONTROL AND IMPROVEMENT DISTRICT POWERS AND DUTIES. Provides that the district has the powers and duties provided by the general law of this state, including Chapters 49 (Provisions Applicable to All Districts) and 51 (Water Control and Improvement Districts), Water Code, applicable to water

control and improvement districts created under Section 59, Article XVI, Texas Constitution, and including powers relating to sanitary sewer systems.

Sec. 9039.103. **AUTHORITY FOR ROAD PROJECTS.** Authorizes the district, under Section 52, Article III, Texas Constitution, to design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 9039.104. **ROAD STANDARDS AND REQUIREMENTS.** (a) Requires that a road project meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) Requires that a road project, if the road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) Requires the Texas Transportation Commission, if the state will maintain and operate the road, to approve the plans and specifications of the road project.

Sec. 9039.105. **CHANGE IN SURFACE LAND USE.** Prohibits the district from developing the surface of any land in the district for purposes other than mining, quarrying, or water resource development, retention, and distribution unless the municipality in whose corporate limits or extraterritorial jurisdiction the land is located and the owner or owners of land enter into a development agreement under Section 212.172 (Development Agreement), Government Code, and the change in use of the land complies with the development agreement described by Subdivision (1).

Sec. 9039.106. **COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION.** Requires the district to comply with all applicable requirements of any ordinance or resolution that is adopted under Section 42.042 (Creation of Political Subdivision to Supply Water or Sewer Services, Roadways, or Drainage Facilities in Extraterritorial Jurisdiction), Local Government Code, and that consents to the creation of the district or to the inclusion of land in the district.

Sec. 9039.107. **LIMITATION ON USE OF EMINENT DOMAIN.** Prohibits the district from exercising the power of eminent domain outside the district to acquire a site or easement for a road project authorized by Section 9039.103 or a recreational facility as defined by Section 49.462 (Definitions), Water Code.

Sec. 9039.108. **DIVISION OF DISTRICT.** (a) Authorizes the district to be divided into two or more new districts only if the district has no outstanding bonded debt and is not imposing ad valorem taxes.

(b) Provides that this chapter applies to any new district created by the division of the district, and a new district has all the powers and duties of the district.

(c) Prohibits any new district created by the division of the district, at the time the new district is created, from containing any land outside the area described by Section 2 of the Act creating this chapter.

(d) Authorizes the board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district, to adopt an order dividing the district.

(e) Authorizes the board to adopt an order dividing the district before or after the date the board holds an election under Section 9039.003 to confirm the district's creation.

(f) Requires that an order dividing the district name each new district, include the metes and bounds description of the territory of each new district, appoint temporary directors for each new district, and provide for the division of assets and liabilities between or among the new districts.

(g) Requires the district, on or before the 30th day after the date of adoption of an order dividing the district, to file the order with TCEQ and record the order in the real property records of each county in which the district is located.

(h) Requires any new district created by the division of the district to hold a confirmation and directors' election as required by Section 9039.003. Provides that if the voters of a new district do not confirm the creation of the new district, the assets, obligations, territory, and governance of the new district revert to the original district.

(i) Provides that municipal consent to the creation of the district and to the inclusion of land in the district granted under Section 9039.004 acts as municipal consent to the creation of any new district created by the division of the district and to the inclusion of land in the new district.

(j) Requires any new district created by the division of the district to hold an election as required by this chapter to obtain voter approval before the district is authorized to impose a maintenance tax or issue bonds payable wholly or partly from ad valorem taxes.

Sec. 9039.109. LIMITATION ON ANNEXATION OF LAND BY DISTRICT. (a) Prohibits the district or any new district, except as provided by Subsection (b), from annexing land outside the area described by Section 2 of the Act creating this chapter without the consent of each municipality in whose corporate limits or extraterritorial jurisdiction any of the land in the area described by Section 2 of the Act creating this chapter is located.

(b) Authorizes the district or any new district created by the division of the district to annex land adjacent to the area described by Section 2 of the Act creating this chapter for mining, quarrying, or water resource development, retention, and distribution purposes without the consent of a municipality in whose corporate limits or extraterritorial jurisdiction any of the land in the area described by Section 2 of the Act creating this chapter is located.

Sec. 9039.110. MUNICIPAL ANNEXATION ADJACENT TO DISTRICT. Provides that for the purposes of Section 43.021(2) (relating to authorization of a home-rule municipality to extend its boundaries and annex adjacent area), Local Government Code, or other law, including a municipal charter or ordinance relating to annexation, an area adjacent to the district or any new district created by the division of the district is considered adjacent to a municipality in whose corporate limits or extraterritorial jurisdiction any of the land in the area described by Section 2 of the Act creating this chapter is located.

[Reserves Sections 9039.111-9039.150 for expansion.]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9039.151. ELECTIONS REGARDING TAXES OR BONDS. (a) Authorizes the district to issue, without an election, bonds and other obligations secured by revenue other than ad valorem taxes or contract payments described by Section 9039.153.

(b) Requires the district to hold an election in the manner provided by Chapters 49 and 51, Water Code, to obtain voter approval before the district is authorized to impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(c) Prohibits the district from issuing bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(d) Prohibits the district from holding an election to authorize the issuance of bonds payable from ad valorem taxes to finance water and wastewater facilities to provide water and wastewater service for uses other than mining, quarrying, or water resource development, retention, and distribution unless each municipality in whose corporate limits or extraterritorial jurisdiction the district is located and the owners of the land in the district enter into a development agreement under Section 212.172, Local Government Code.

Sec. 9039.152. OPERATION AND MAINTENANCE TAX. (a) Authorizes the district, if authorized at an election held under Section 9039.151, to impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107 (Operation and Maintenance Tax), Water Code.

(b) Requires the board to determine the tax rate which is prohibited from exceeding the rate approved at the election.

Sec. 9039.153. CONTRACT TAXES. (a) Authorizes the district, in accordance with Section 49.108 (Contract Elections), Water Code, to impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) Authorizes a contract approved by the district voters to contain a provision stating that the contract may be modified or amended by the board without further approval.

[Reserves Sections 9039.154-9039.200 for expansion.]

#### SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 9039.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. Authorizes the district to issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

Sec. 9039.202. TAXES FOR BONDS. Requires the board, at the time the district issues bonds payable wholly or partly from ad valorem taxes, to provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Section 51.433 (Tax Levy), Water Code.

Sec. 9039.203. BONDS FOR ROAD PROJECTS. Prohibits the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes, at the time of issuance, from exceeding one-fourth of the assessed value of the real property in the district.

SECTION 2. Sets forth the initial boundaries of the district.

SECTION 3. Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. Provides the effective date of this Act.

### **EFFECTIVE DATE**

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.