

BILL ANALYSIS

S.B. 2464
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. 1 (district) will encompass an area of land outside the corporate limits of any city and within the extraterritorial jurisdiction of the City of New Braunfels, Comal County, Texas. Water, sewer, drainage, and road services need to be secured in order to support the development of both single-family residential and commercial properties.

S.B. 2464 creates the district. The district will have all powers granted to water improvement districts operating pursuant to Chapters 49 (Provisions Applicable to All Districts) and 51 (Water Control Improvement Districts), Water Code, and Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, in order to purchase, acquire, or construct facilities for such services to serve the future occupants of the land utilizing tax exempt bonds. This bill authorizes the district to impose a tax and issue bonds and grants a limitation on the use of eminent domain. This bill also provides regulations regarding the creation, administration, powers, duties, operation, and financing of the district.

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, is amended by adding Chapter 9038, as follows:

CHAPTER 9038. COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 1

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9038.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 9038.002. 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. 9038.003. 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. 9038.004. CONSENT OF MUNICIPALITY AND DEVELOPMENT AGREEMENT REQUIRED. (a) Prohibits the temporary directors from holding an election under Section 9038.003 until each municipality in whose corporate limits or extraterritorial 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 and entered into a

development agreement under Section 212.172 (Development Agreement), Local Government Code, with the retail public utility owned by the municipality that addresses water and wastewater issues and with the owners of land in the district that addresses certain relevant issues.

(b) Prohibits the development agreement from containing a provision prohibited by Section 212.174 (Municipal Utilities), Local Government Code, in relation to the provision of utility service.

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

Sec. 9038.005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) Provides that the district is created to serve a public purpose and benefit.

(b) Provides that the district is created 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. 9038.006. 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 9038.007-9038.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9038.051. 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 9038.052.

Sec. 9038.052. TEMPORARY DIRECTORS. (a) Provides that the temporary board consists of Donnie Shaw, Bob Shemwell, Joe Dawson, Dick Nevitt, and Robert Whitley.

(b) Provides that temporary directors serve until the earlier of the date permanent directors are elected under Section 9038.003 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 9038.003 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 9038.003 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 the Texas Commission on Environmental Quality (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 9038.053-9038.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 9038.101. 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. 9038.102. 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.

Sec. 9038.103. 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. 9038.104. 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. 9038.105. WATER AND WASTEWATER INFRASTRUCTURE. (a) Prohibits the district from constructing a water or wastewater facility unless any municipality in whose corporate limits or extraterritorial jurisdiction the facility is located at the time of construction has approved the plans and specifications of the facility.

(b) Requires the district, on completion of a water or wastewater facility described in a development agreement between the district and a municipality, to convey the facility to the municipality or to the retail public utility owned by the municipality, free of all liens, claims, or encumbrances, in the form and manner acceptable to the municipality or retail public utility.

Sec. 9038.106. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION AND DEVELOPMENT AGREEMENT. (a) 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.

(b) Authorizes a municipality, notwithstanding other law, to place a condition or restriction on the creation of the district or inclusion of land in the district that is expressly permitted by Sections 54.016(e) (relating to the city's consent to inclusion of land in a district) and (i) (relating to a city with a population of 500,000 or more), Water Code, or contained in the development agreement entered into under Section 212.172, Local Government Code, and this chapter.

Sec. 9038.107. **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 9038.103 or a recreational facility as defined by Section 49.462 (Definitions), Water Code.

Sec. 9038.108. **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 that 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 9038.003 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 9038.003.

(i) Provides that municipal consent to the creation of the district and to the inclusion of land in the district granted under Section 9038.004 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. 9038.109. **LIMITATION ON ANNEXATION OF LAND BY DISTRICT.** Prohibits the district or any new district created by the division of the district 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.

Sec. 9038.110. **MUNICIPAL ANNEXATION ADJACENT TO DISTRICT.** Provides that for the purposes of Section 43.021(2) (relating to extending the boundaries of and annexing areas adjacent to the boundaries), 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 9038.111-9038.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9038.151. 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 9038.153.

(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.

Sec. 9038.152. OPERATION AND MAINTENANCE TAX. (a) Authorizes the district, if authorized at an election held under Section 9038.151, 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. 9038.153. 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 9038.154-9038.200 for expansion.]

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 9038.201. 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. 9038.202. 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. 9038.203. 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.