

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2540
By: Wentworth
Natural Resources
5/7/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 Control and Improvement District No. 5 (district) will encompass an area of land in the extraterritorial jurisdiction of the City of Bulverde, Comal County. It is necessary to create the district under Chapters 49 (Provisions Applicable to All Districts) and 51 (Water Control and 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. It is also necessary to empower the district with authority to impose a tax and issue bonds, granting the power of eminent domain. This bill provides regulations regarding the creation, administration, powers, duties, operation, and financing of the district.

C.S.S.B. 2540 relates to the creation of the Comal County Water Control and Improvement District No. 5, provides authority to impose a tax and issue bonds, and grants a limited power of eminent domain.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 6, Special District Local Laws Code, by adding Chapter 9036, as follows:

CHAPTER 9036. COMAL COUNTY WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 5
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9036.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 9036.002. NATURE OF DISTRICT. Provides that the Comal County Water Control and Improvement District No. 5 (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. 9036.003. 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. 9036.004. CONSENT REQUIRED. (a) Prohibits the temporary directors from holding an election under Section 9036.003 until:

(1) 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;

(2) each municipality in whose extraterritorial jurisdiction the district is located has approved and entered into a strategic partnership agreement with the district under Section 43.0751 (Strategic Partnerships for Continuation of Certain Districts), Local Government Code, and approved and entered into a development agreement with the owners of land in the district under Section 212.172 (Development Agreement), Local Government Code;

(3) an agreement that addresses the provision of water and wastewater treatment to the land in the district has been approved and entered into by each municipality in whose extraterritorial jurisdiction the district is located, the commissioners court of each county in which the district is located, a retail or wholesale provider of water and wastewater treatment, and the owners of land in the district;

(4) the commissioners court of each county in which the district is located has issued an order making the findings under Sections 51.021(a)(1) (relating to the petition requesting the creation of a district if it appears at the hearing that organization of the district as requested is feasible and practicable), (2) (relating to the petition requesting the creation of a district if it appears at the hearing that the land to be included and the residents of the proposed district will be benefited by the creation of the district), (3) (relating to the petition requesting the creation of a district if it appears at the hearing that there is a public necessity or need for the district), and (4) (relating to the petition requesting the creation of a district if it appears at the hearing that the creation of the district would further the public welfare), Water Code; and

(5) the commissioners court of each county in which the district is located has approved and entered into an agreement with the district that is required to include, but is not limited to, provisions relating to the use of county right-of-way, the district's exercise of the power of eminent domain outside the boundaries of the district, drainage serving the land in the district, platting of land in the district, and the provision of water and wastewater treatment to the land in the district.

(b) Authorizes a municipality that contains district territory in its corporate limits or extraterritorial jurisdiction to include in its consent to the creation of the district any restriction on or condition to the consent, including a limitation on the powers of the district otherwise granted by this chapter.

(c) Provides that Sections 51.022 through 51.025 (relating to court procedures for single county districts), Water Code, do not apply to the district or the order of the county under Subsection (a)(4).

Sec. 9036.005. EXTRATERRITORIAL STATUS. Provides that all of the land included in the district, as approved by the City of Bulverde for inclusion in the district, is included in the extraterritorial jurisdiction in the City of Bulverde on adoption of the resolution or ordinance consenting to the creation of the district by the governing body of the City of Bulverde.

Sec. 9036.006. 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 (Conservation and Development of Natural Resources and Parks and Recreational

Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, as limited by this chapter, including the disposal of waste and control of storm water; and Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III (Legislative Department), Texas Constitution, as limited by this chapter, 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. 9036.007. 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 the Act creating this chapter form a closure. Provides that 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 9036.008-9036.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9036.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of five elected directors (board).

(b) Provides that the directors serve staggered four-year terms, except as provided by Section 9036.052.

Sec. 9036.052. TEMPORARY DIRECTORS. (a) Provides that the temporary board of the district consists of certain named individuals.

(b) Provides that the temporary directors serve until the earlier of the date permanent directors are elected under Section 9036.003; 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 9036.003 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 9036.003, 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 9036.053-9036.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 9036.101. GENERAL POWERS AND DUTIES. Provides that the district has the powers and duties, as limited by this chapter, necessary to accomplish the purposes for which the district is created.

Sec. 9036.102. WATER CONTROL AND IMPROVEMENT DISTRICT POWERS AND DUTIES. Provides that the district has the powers and duties, as limited by this chapter, 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, including the powers and duties that relate to the disposal of waste and control of storm water under Section 51.331 (Authority to Dispose of Waste and Control Storm Water), Water Code, as limited by this chapter.

Sec. 9036.103. **AUTHORITY FOR ROAD PROJECTS.** Authorizes the district, under Section 52, Article III, Texas Constitution, as limited by this chapter, 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. 9036.104. **APPROVAL OF ROAD PROJECT.** (a) Prohibits the district from undertaking a road project authorized by Section 9036.103, unless the proposed road project complies with applicable municipal or county subdivision ordinances or regulations; or the Texas Transportation Commission (TTC) has approved the plans and specifications of the road project, if the state will operate and maintain the road.

(b) Provides that except as provided by Subsection (a), the district is not required to obtain approval from TTC to design, acquire, construct, finance, issue bonds for, improve, or convey a road project.

Sec. 9036.105. **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) or 42.0425 (Addition of Land in Extraterritorial Jurisdiction of Municipality to Certain Political Subdivisions), Local Government Code, and that consents to the creation of the district or to the inclusion of land in the district.

Sec. 9036.106. **LIMITATION ON USE OF EMINENT DOMAIN.** (a) 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 9036.103; or a recreational facility as defined by Section 49.462 (Definitions), Water Code.

(b) Prohibits the district from exercising the power of eminent domain outside the boundaries of the district for any purpose unless the proposed exercise is approved by a written resolution of the commissioners court of each county in which the district is located.

Sec. 9036.107. **WATER AND WASTEWATER INFRASTRUCTURE.** Prohibits the district from constructing any water or wastewater improvement unless the plans and specifications for the improvement have been approved by Comal County, the City of Bulverde, and any wholesale provider of water or wastewater treatment to the district.

[Reserves Sections 9036.108-9036.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9036.151. **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 9036.153.

(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. 9036.152. OPERATION AND MAINTENANCE TAX. (a) Authorizes the district, if authorized at an election held under Section 9036.151, 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. Prohibits the rate from exceeding the rate approved at the election.

Sec. 9036.153. 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 voter approval.

[Reserves Sections 9036.154-9036.200 for expansion.]

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 9036.201. 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. 9036.202. 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. 9036.203. 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 boundaries of the district.

SECTION 3. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313 (Notice for Local and Special Laws), Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to TCEQ.

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) 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. Effective date: upon passage or September 1, 2009.