

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 7, 2009**

**TO:** Honorable Allan Ritter, Chair, House Committee on Natural Resources

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1952** by Callegari (Relating to a municipal consent agreement regarding the inclusion of land in the extraterritorial jurisdiction of a municipality on the creation or expansion of certain municipal utility districts.), **Committee Report 1st House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
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The bill would repeal Sections 54.016(f) and (h) of the Water Code. Removal of subsection (f) would remove the provision that a city may provide in its written consent for the inclusion of land in a district that a contract ("allocation agreement") between a municipal utility district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. Repealing subsection (f) would also remove the requirements of what must be included in an allocation agreement. Subsection (f) would be repealed effective January 1, 2010.

Subsection (h) applies to a city with a population of 1.18 million or less. Repeal of subsection (h) would remove the provision that a city of that size may provide in its written consent for the inclusion of land in a district that after annexation the city may set rates for water and/or sewer services for property that was within the territorial boundary of such district at the time of annexation, which rates may vary from those for other properties within the city for the purpose of wholly or partially compensating the city for the assumption of obligation under the Water Code if certain actions/requirements occur. Another part of subsection (h) applies to a city with a population of 500,000 or more located in a certain county, also regarding written consent to the inclusion of land in a district.

The bill would stipulate that an agreement between a municipality and a municipal utility district is an allocation agreement only if it strictly complies with the requirements of Section 54.016(f) and is specifically designated by the parties as an allocation agreement.

Other than the effective date for the repeal of subsection (f) as shown above, the bill would take effect immediately if it were to receive the required two-thirds vote in each house; otherwise, it would take effect September 1, 2009.

**Local Government Impact**

The bill would remove a city's ability to set higher rates for recently annexed properties that were in a municipal utility district (MUD). The bill could have a significant potential fiscal impact to cities because of the financial obligations of a MUD that are absorbed at the time of annexation. Cities might, for example, be forced to raise utility rates for all customers or carry long-term debt. The City of Nacogdoches states that the bill could have a fiscal impact totaling "hundreds of thousands of dollars."

According to information provided by the Austin Water Utility, the proposed repeal of Sections 54.016(f) and (h) would have a significant negative fiscal impact. The City of Austin has petitioned the Texas Supreme Court requesting a review of a case related to subsection (f). According to the city, if because the subsection is repealed the supreme court would not review the case and therefore not overturn a court of appeals' decision, the city would incur costs of \$19.5 million or more for repaying

a Municipal Utility District's (MUD) debt for drainage, and water and wastewater infrastructure costs that were incurred for the MUD development. Austin Water Utility states that although the stipulation about what constitutes an allocation agreement attempts to mitigate the negative impact that could result from repealing subsection (f), the supreme court could still decide not to take the case because of the proposed change in law. The Legislative Budget Board assumes the effective date of the repeal of subsection (f) is also intended to avoid possible negative impact on Austin Water Utility's requested court review, but it is unknown whether the court would take either of these conditions into consideration; therefore, the fiscal impact is unknown.

Austin Water Utility also estimates a cost to the city of at least \$42.6 million if subsection (h) is repealed. The city reports that the loss of ability to levy annexation surcharges for a MUD in the city's extraterritorial jurisdiction would create a significant debt burden. Austin annexed the Southland Oaks MUD in December 1997. The remaining surcharge to be levied on this annexation area totals at least \$1 million. The city also cited \$41.6 million in project debt from MUDs the city has not yet annexed, but could be by 2012.

**Source Agencies:**

**LBB Staff:** JOB, SZ, JB, DB, SD