

BILL ANALYSIS

C.S.H.B. 725
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 and levy taxes in order to supply treated and untreated water, treat wastewater, 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, most water districts are governed by elected boards that have the authority to adopt and enforce a variety of rules and regulations.

C.S.H.B. 725 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 rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 37 of this bill.

ANALYSIS

SECTION 1. Amends §388.005, Health and Safety Code, to exempt the electricity consumption by a groundwater conservation district or a water district for the operation and maintenance of water, wastewater, or stormwater facilities from energy efficiency and consumption goals and reporting requirements placed on districts. The bill requires that a groundwater conservation district or a water district evaluate the electric consumption of, establish electric consumption reduction goals for, and identify and implement cost-effective energy efficiency measures to reduce the consumption of energy for their water, wastewater, or stormwater facilities at least once every five years.

SECTION 2. Amends §43.0751(a)(1), Local Government Code, to expand the classes of districts eligible to enter into a strategic partnership agreement to include conservation and reclamation districts operating under Chapter 49, Water Code. This change removes the previous limitation that only water control and improvement districts or municipal utility districts could enter into a strategic partnership agreement. The bill excludes special utility districts and groundwater conservation districts from the classes of districts eligible to enter into a strategic partnership agreement.

SECTION 3. Amends §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 4. Amends §375.161, Local Government Code, to exempt impact fees, assessments, taxes, or other requirements for the payment of water, sewer, drainage, reclamation, flood control, road, or park and recreational services or improvements by a municipal management district that provides or proposes to provide those services or improvements from the prohibition

against a municipal management district from imposing a fee, tax, assessment or other requirement on single-family property, duplexes, triplexes, or quadraplexes.

SECTION 5. Amends §552.014, Local Government Code, to expand the types of projects for which a municipality may contract with a water district or non-profit corporation to include recreational facilities, roads and road improvements, and firefighting facilities. The bill expands the types of revenue streams that a municipality may use to purchase, through contract, a project developed by a district or corporation to include all municipal revenues, including sales and use taxes. The bill clarifies that the authority of a water district or corporation to participate in a project as authorized by §552.014, Local Government Code does not allow the district or corporation to participate in a project that it is otherwise prohibited from undertaking by law.

SECTION 6. Amends §49.059, Water Code, to allow a water district to employ or contract with any person, including an individual certified as a registered assessor-collector or a firm or other entity if a certified individual works for or own an interest in that firm or entity, to serve as its tax assessor and collector. The bill clarifies that a district's tax assessor and collector does not have to be a natural person, and that a firm or other entity serving as a tax assessor and collector shall give bond in an amount determined by the district's board sufficient to safeguard the district. The bill clarifies that a natural person related to certain persons associated with a district cannot serve as tax assessor and collector.

SECTION 7. Amends §49.063, Water Code, to clarify that the validity of an action taken at a water district board meeting is not affected by failure to provide notice of the meeting if the meeting is a regular meeting, or failure of a county clerk to post or maintain public access to notice of a district board meeting if that notice is furnished to the clerk in sufficient time for posting as required by Texas open meetings law.

SECTION 8. Amends §49.102, Water Code, to require that a confirmation election for a water district be held on a uniform election date in May or November. The bill clarifies that notice of an election shall state the number of directors to be voted on if the election is for district directors. The bill requires that if a district receives an application for a write-in candidate for an election for temporary district directors, then the ballot shall include blank places where the voter may write the name of any candidate appearing on the list of write-in candidates certified by the district. The bill clarifies that elected directors of a newly created district shall decide the initial, staggered terms of office by lot.

SECTION 9. Amends §49.103, Water Code, to clarify that members of a district's board serve staggered terms. The bill specifies that a director election held after a district confirmation election shall be held on the uniform election date that is the second Saturday in May of each even numbered year.

SECTION 10. Adds §49.1045, Water Code, to allow a district with ten or fewer voters that holds a joint election with a county in which the district is located to provide for the inquiry into and certification of the voting results if the results indicate that more votes were cast in the election than the number of registered voters in the district. As a condition to this inquiry and certification, the bill requires that a district's board must determine that the results are likely to be disputed in court, and those qualified voters who voted in the election. The bill requires that a district's board adopt a procedure, by rule, to determine those persons who legally voted in the joint election and how they voted. The bill provides that the certified votes are the official election results, and that the certification of the results by the district do not preclude the filing of an election contest.

SECTION 11. Amends §49.105, Water Code, to authorize, rather than require, the Texas Commission on Environmental Quality to fill vacancies on a district's board of directors should the number of directors be reduced to less than a majority or if a vacancy lasts more than 90 days. The bill provides that a temporary board member shall be deemed to have been elected and may serve the initial term of office in the event of a failure to elect one or more members of a district board resulting from the absence of, or failure to vote by, the district's voters in an election held by the district.

SECTION 12. Amends Section 49.108, Water Code, to require that a district contract subject to voter approval be open to inspection by the public on or before the first day for early voting for

that contract election. The bill provides that a contract is not required as an attached exhibit to the order calling for the election. A single contract may contain multiple purposes or facilities authorized by one or more constitutional provisions, and 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 the districts in that service area or served by facilities or services provided for in the contract; the contract provides that bonds or expenditures payable from contract taxes are issued or made on an emergency basis or to develop services or facilities necessary to comply with changes in regulatory requirements; or the contract provides that the bonds or expenditures require prior approval by any district that is obligated to pay debt service on those bonds or to pay for those expenditures with contract taxes.

SECTION 13. Adds Sections 49.109, 49.110, 49.111, 49.112, and 49.113 Water Code, to allow a district's board to contract with a person to serve as the agent of the district's secretary for certain election matters. Exempts a district election from the requirement that election judges provide notice of their appointments. 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 establishes that, to the extent of any conflict with Election Code provisions regarding general eligibility requirements, the bill's election judge provisions control. 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 publish notice in a newspaper of general circulation or mail notice to each voter within the district regarding the district's intention to hold the election without using electronic voting machines. The required notice must be furnished no later than the 75th day before the election, or the date the district adopts the election order. 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. The bill adds a new section authorizing a district to cancel an election or remove a ballot measure at the district's discretion. The bill requires that a copy of the order or resolution cancelling the election be posted during the early voting period and on election day at each polling place for the district election. The bill adds a new section requiring that the notice for filing an application to be a candidate in an election be posted at the district's administrative office in the district or at a public place established by the district not later than the 30th day before the deadline for a candidate to file an application.

SECTION 14. Amends §49.151, Water Code, to authorize a district's board to allow the disbursement or transfer of funds by electronic means.

SECTION 15. Amends §49.154, Water Code, to clarify that a district's bond or tax anticipation notes are negotiable instruments within the meaning and purposes of the Business and Commerce Code. The bill clarifies that bond anticipation notes may be issued for any purpose for which bonds of the district may be issued.

SECTION 16. Amends §49.181, Water Code, to clarify that the requirement that a district issue bonds with the Texas Commission on Environmental Quality's approval applies to bonds to finance projects for which TCEQ has adopted rules requiring review and approval.

SECTION 17. Amends §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 18. Amends §49.212, Water Code, to expand the types of district charges or fees not classified as an impact fee to include those for facilities and services associated with storm water detention, retention, and conveyance. The bill provides that a district's board may, when reasonably determining the actual costs associated with an impact fee, include non-construction

expenses attributable to the development of the applicable facilities and reasonable interest on those costs at a rate not to exceed the net effective rate on any district bonds issued to finance those facilities.

SECTION 19. Amends §49.2121, Water Code, to remove the five percent limitation on the fee amount that a district may collect as a credit card processing charge.

SECTION 20. Amends §49.216, Water Code, to clarify that a peace officer who is directly employed by a district must 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 21. Amends §49.273, Water Code, to increase the amount threshold for which districts must advertise the letting of a contract from \$50,000 to \$75,000. The bill also increases the threshold for which districts shall solicit written competitive bids from at least three bidders from \$50,000 to \$75,000. The bill clarifies that a notice for a contract valued over \$75,000 must be published in one or more newspaper circulated in each county in which the district is located. The bill shortens the length of time that notice for a contract over \$75,000 must be published from 21 to 14 days before the opening of sealed bids.

SECTION 22. Amends §49.351, Water Code, to clarify that a water district may separately or jointly with another district, city, or other political subdivision provide fire fighting services within the district. The bill clarifies the types of revenue streams that a district may use to finance fire-fighting services, including ad valorem taxes, mandatory fees, and voluntary contributions. The bill specifies that bonds and ad valorem taxes for financing a fire service plan must be authorized by a district's voters. The bill requires that before a district issues bonds or levies taxes to finance fire services, the district shall develop a fire services plan that must be approved by the Texas Commission on Environmental Quality and the district's voters. The bill strikes ballot language for fire service plan elections. The bill clarifies that a district that funds fire-fighting services with revenue, including mandatory fees or voluntary contributions, is not required to develop a fire services plan that must be approved by the Texas Commission on Environmental Quality and the district's voters. The bill strikes language regarding ballot language for an election regarding fire services. The bill provides that if a district includes a voluntary payment for firefighting 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 23. Amends §49.462, Water Code, to exclude minor improvements or beautification projects to land acquired as a part of a district's water, sewer or drainage facilities from the definition of "recreational facilities."

SECTION 24. Adds §49.4641, Water Code, to authorize a water district to develop and maintain recreational facilities on a site acquired for developing water, sewer, or drainage facilities. A district is not required to prorate the costs of a site used for water, sewer or drainage purpose and any secondary recreational facility purpose if an engineer certifies that the site is reasonably sized for the intended water, sewer, or drainage purposes. The bill outlines the factors an engineer may consider when certifying that a site is reasonably sized for water, sewer, or drainage purposes.

SECTION 25. Amends §49.4645, Water Code, to change the qualification on the limitation on the amount of bonds that may be issued to finance parks and recreational facilities from those payable from any source to those supported by ad valorem taxes. The bill limits the amount of bonds that may be issued and supported by contract taxes to an amount not greater than one percent of the sum of the value of the taxable property in the districts making payments under the contract. The bill allows a district to use appraisal estimates provided by the central appraisal district for the purpose of establishing the value of taxable property in the district or districts. The bill moves the point in time when a district must file a park plan in the district office for public review from the 10th day before an election to the 10th day before the first day for early voting by personal appearance. The bill allows a district to amend its park plan after the election is held for the issuance of bonds for parks and recreational facilities. The bill prohibits the

estimated costs of an amended park plan from exceeding the amount of bonds authorized at the bond election.

SECTION 26. Amends §51.072, Water Code, to expand the classes of persons eligible to qualify for election as a director to a water control and improvement district to include qualified voters in the district.

SECTION 27. Amends §51.335, Water Code, to clarify that a water control and improvement district (WCID) may develop recreational facilities even if similar facilities may be provided by another governmental entity located within the district.

SECTION 28. Amends §51.523, Water Code, to amend the required language for a ballot establishing a defined area within a WCID to include reference to the levy of a maintenance tax.

SECTION 29. Amends §51.527, Water Code, to provide that once the bonds issued for a defined area within a WCID are paid off or defeased, the district's board may declare the area dissolved or repeal the defined area designation, and shall cease imposing special taxes therein.

SECTION 30. Amends §53.063, Water Code, to expand the classes of persons eligible to qualify for election as a director to a fresh water supply district to include qualified voters in the district.

SECTION 31. Amends §54.016, Water Code, to limit the application of an allocation agreement between a city and a municipal utility district (MUD) to a district initially located wholly or partly outside the city's corporate limits.

SECTION 32. Amends §54.236, Water Code, to clarify that a MUD may install and operate street or security lighting on property owned by the district. The bill strikes the requirement that the district install and operate lighting only within the district's boundaries. The bill creates an exception to the prohibition against a district using bond funds to install lighting to allow a MUD to use bond funds issued for road or recreational purposes for the installation and operation of street or security lights.

SECTION 33. Amends §54.739, Water Code, to change the point in time when a MUD may substitute land of equal value from the point after the district acquires facilities to the time after the district has obtained voter approval for, or sold, bonds payable from ad valorem taxes.

SECTION 34. Amends §54.744, Water Code, to clarify that if a MUD has any outstanding bonds or contract obligations payable by revenues from a district's facilities at the time the board considers an application for the inclusion of land within the district, that the land proposed for inclusion shall be deemed sufficient to avoid an impairment of the security for payment of the district's obligations. The bill specifies that, for the purposes of a district's consideration of an application to include land 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 35. Repeals §49.103(g), Water Code authorizing water districts to stagger the terms of directors following the passage of legislation in 1997 requiring that district directors serve staggered terms.

SECTION 36. Implementation language identifying a legislative finding that an agreement entered into between a city and municipal utility district before 1 September 2011 shall be regarded as an allocation agreement only if the district is initially located wholly or partly outside the city's limits, the agreement complies with the requirement of §54.016(f), Water Code as that section existed before the effective date of this Act, and that the agreement is specifically designated as an "allocation agreement" under §54.016(f), Water Code.

SECTION 37. Implementation language specifying that the Texas Commission on Environmental Quality shall adopt any rules or amendments to existing rules necessary to implement §49.4641, Water Code by 1 December 2011.

SECTION 38. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2011, except that Sections 54.739 and 54.744, Water Code, as amended by the Act, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; otherwise, those sections take effect September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute omits SECTION 1 of the introduced version that exempted a drainage easement owned or operated by a water district within an unincorporated area of a county from the county's authority to abate a nuisance. The substitute renumbers the subsequent sections accordingly.

SECTION 1 of the committee substitute (formerly SECTION 2 of the introduced version) adds the requirement that a groundwater conservation district or a water district evaluate the electric consumption of, establish electric consumption reduction goals for, and identify and implement cost-effective energy efficiency measures to reduce the consumption of energy for their water, wastewater, or stormwater facilities every five years.

SECTION 11 of the committee substitute (formerly SECTION 12 of the introduced version) clarifies that failure to elect one or more members of a board occurs within an election held by the district.

SECTION 13 of the committee substitute (formerly SECTION 14 of the introduced version) omits the provision providing that districts are not required to use county election precincts.

SECTION 23 of the committee substitute (formerly SECTION 24 of the introduced version) strikes the word "solely" from the provision in the introduced version that recreational facilities do not include minor improvement or beautification projects on land acquired solely as part of a district's water, sewer, or drainage facilities.

SECTION 25 of the committee substitute (formerly SECTION 26 of the introduced version) clarifies that a value estimate provided by an appraisal district may also be used to establish the value of multiple participating water districts; the introduced version provided that the appraisal district's value could only be used to establish value in a single water district.