

BILL ANALYSIS

C.S.H.B. 2363
By: Flynn
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, an urban area in Hunt County that will experience substantial and sustained residential and commercial growth in the near future is not currently supplied with adequate water, sanitary sewer, drainage facilities and services, and roads and road improvements. A portion of the area is contained within the corporate boundaries of the City of Royse City with the remainder in the city's extraterritorial jurisdiction. C.S.H.B. 2363 seeks to establish provisions relating to the creation of the Bearpen Creek Municipal Utility District of Hunt County, providing authority to impose a tax and issue bonds, and granting a limited power of eminent domain in order to provide for public services to serve the future occupants of the district territory.

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

C.S.H.B. 2363 amends the Special District Local Laws Code to create the Bearpen Creek Municipal Utility District of Hunt County. The bill sets out provisions relating to the nature of the district; an election to confirm the district and to elect a permanent board of directors; municipal consent to the creation of the district and to the inclusion of land in the district; the district's public purpose and benefit; and the initial district territory, including provisions for the effect of certain mistakes in the description of the boundaries. The bill sets out provisions relating to the number and terms of the members of the district board of directors, including provisions for temporary directors; the powers and duties of the district, including the authority to undertake certain road projects and the applicable road standards and requirements; and mandatory compliance with any municipal consent ordinance or resolution.

C.S.H.B. 2363 authorizes the district, using any available district money, including bond proceeds, to pay all expenses related to the acquisition of a certificate of public convenience and necessity from another retail public utility and any other permit rights necessary to provide a municipality in whose corporate limits or extraterritorial jurisdiction the district is located authority to provide retail water or sewer service in the district. The bill authorizes the acquisition, by purchase or otherwise, to be made by the district on behalf of and for transfer to the municipality or by the municipality directly. The bill authorizes the district, in relation to a retail public utility that provides water or sewer service to all or part of the area of the district under a certificate of public convenience and necessity, to exercise the powers given to a municipality provided by provisions relating to single certification in incorporated or annexed areas as if the district were a municipality that had annexed the area of the district. The bill requires the Texas Commission on Environmental Quality (TCEQ) to grant single certification as to the applicable municipality in the event that the district applies for the certification on the municipality's behalf in a certain manner. The bill authorizes the municipality to contract with the district to carry out the purposes of the bill's provisions relating to the acquisition of permit rights without further authorization.

C.S.H.B. 2363, if it receives a two-thirds vote of all the members elected to each house, prohibits the district from exercising the power of eminent domain outside the district to acquire a site or easement for an authorized road project or a recreational facility. The bill, if it does not receive such a vote, prohibits the district from exercising the power of eminent domain.

C.S.H.B. 2363 sets out provisions authorizing the district to issue, without an election, bonds and other obligations secured by revenue other than property taxes or by certain contract payments. The bill authorizes the district, subject to the approval of district voters, to impose a property tax and issue bonds payable from property taxes, but the district is prohibited from issuing bonds payable from property taxes to finance a road project unless the issuance is approved by a two-thirds majority of district voters. The bill authorizes the district to impose an operation and maintenance tax if it is authorized at an election and to impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a voter-approved contract. The bill authorizes the district to issue bonds or other obligations payable wholly or partly from property taxes, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources, but prohibits the district from issuing bonds until the governing body of a municipality in whose corporate limits or extraterritorial jurisdiction the district is located approves a bond issuance plan authorizing and setting forth the limitations on the issuance of the bonds. The bill requires the board, on bonds payable wholly or partly from property taxes, to provide for the annual imposition of a continuing direct property tax, without limit as to rate or amount, while all or part of the bonds are outstanding. The bill prohibits the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from property taxes from exceeding one-fourth of the assessed value of the real property in the district at the time of issuance.

C.S.H.B. 2363 authorizes a municipality in whose corporate limits or extraterritorial jurisdiction the district is located to dissolve the district by ordinance after provision is made for all debts incurred by the district if one or more of the following does not occur: on or before the 90th day after the bill's effective date the municipality receives one or more petitions requesting annexation of all territory in the district remaining in the extraterritorial jurisdiction of the municipality; on or before the last day of the ninth month after the bill's effective date the municipality adopts one or more ordinances annexing all territory in the district remaining in the municipality's extraterritorial jurisdiction; on or before the last day of the third year after the bill's effective date TCEQ issues an order approving the sale and transfer of a certificate of public convenience and necessity authorizing the municipality to provide retail water service to territory in the district; or by the end of the fifth year after the bill's effective date the district has completed construction of internal streets and water and sanitary sewer facilities sufficient to serve at least 100 residential lots in the district. The bill, if the municipality dissolves the district as such, requires any district assets that remain after the payment of debts to be transferred to the municipality and requires the organization of the district to be maintained until all the debts are paid or assumed and remaining assets are transferred. The bill establishes that its provisions relating to dissolution by municipal ordinance does not limit the authority of the municipality to dissolve the district under general law.

C.S.H.B. 2363 sets out in detail the initial boundaries of the district. The bill defines "board," "city," "commission," "director," and "district."

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2363 contains a provision not included in the original authorizing the Bearpen Creek

Municipal Utility District of Hunt County, using any available district money, including bond proceeds, to pay all expenses related to the acquisition of a certificate of public convenience and necessity from another retail public utility and any other permit rights necessary to provide a municipality in whose corporate limits or extraterritorial jurisdiction the district is located authority to provide retail water or sewer service in the district and authorizing the acquisition, by purchase or otherwise, to be made by the district on behalf of and for transfer to the municipality or by the municipality directly.

C.S.H.B. 2363 contains a provision not included in the original authorizing the district, in relation to a retail public utility that provides water or sewer service to all or part of the area of the district under a certificate of public convenience and necessity, to exercise the powers given to a municipality provided by provisions relating to single certification in incorporated or annexed areas as if the district were a municipality that had annexed the area of the district. The substitute contains a provision not included in the original requiring the Texas Commission on Environmental Quality (TCEQ) to grant single certification as to the applicable municipality in the event that the district applies for the certification on the municipality's behalf in a certain manner. The substitute contains a provision not included in the original authorizing the municipality to contract with the district to carry out the purposes of the bill's provisions relating to the acquisition of permit rights without further authorization.

C.S.H.B. 2363 differs from the original by authorizing a municipality in whose corporate limits or extraterritorial jurisdiction the district is located to dissolve the district by ordinance after provision is made for all debts incurred by the district if one or more of the following does not occur, whereas the original authorizes such dissolution if one of the following does occur: on or before the 90th day after the bill's effective date the municipality receives one or more petitions requesting annexation of all territory in the district remaining in the extraterritorial jurisdiction of the municipality; on or before the last day of the ninth month after the bill's effective date the municipality adopts one or more ordinances annexing all territory in the district remaining in the municipality's extraterritorial jurisdiction; or on or before the last day of the third year after the bill's effective date TCEQ issues an order approving the sale and transfer of a certificate of public convenience and necessity authorizing the municipality to provide retail water service to territory in the district.

C.S.H.B. 2363 differs from the original by using language reflective of certain bill drafting conventions.