

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 23, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: HB725 by Callegari (Relating to the operation, powers, and duties of certain water districts.),
As Passed 2nd House

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code to exempt certain water districts from electricity consumption for the operation and maintenance of facilities or improvements for certain services provided an evaluation is performed every five years.

The bill would amend the Local Government Code to authorize a municipal management district to impose an impact fee, assessment, tax or other requirement for payment for certain services including recreational services or improvements on single-family detached property. The bill would clarify the definition of a district and a project. A municipality would be authorized to enter into a contract with a water district for recreational facilities, roads and improvements in the aid of roads, and facilities to provide for firefighting services. A municipality would be required to pay for projects from municipal revenues, including sales and use taxes.

The bill would amend sections of the Water Code to provide that a landowner owns the groundwater below the surface of the landowner's land as real property. A landowner would be entitled to drill for and produce the groundwater below the surface of the landowner's real property, subject to Subsection (d), without causing waste or malicious drainage of other properties or subsidence, but would not be entitled to a right to capture a specific amount. The rights and interests of the landowner could also be limited by a groundwater and conservation district's rules under Subsection (d), including that a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner. A groundwater conservation district would be required to consider the groundwater ownership and rights; the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of water; and the goals developed by districts as part of their management plans.

The bill would modify certain procedures for a groundwater conservation district's management (GCD) plan. A GCD would be required to implement certain aspects of the management plan to limit well production if deemed necessary, but would not be allowed to limit well production unless a management plan is approved. Not later than the 60th day after the date of the administrative approval of a GCD's management plan, the executive administrator of the Texas Water Development Board (TWDB) would be required to ensure that it is consistent with the desired future conditions that are applicable to all or part of the GCD. The bill would authorize a GCD to use production fees for any purpose consistent with the GCD's approved management plan, but would limit the use of permit fees. The Texas Commission on Environmental Quality (TCEQ) would provide additional oversight authority of a GCD, including the ability to oversee well permitting practices and certain aspects of the management plan of a groundwater conservation district. A district would be entitled to recover the district's attorney's fees, court costs, and reasonable expenses incurred in closing or capping the well from the owner of the land.

The bill would modify sections related to a water district's tax assessor and collector, meeting notices,

and election requirements and processes. A tax assessor or collector employed or contracted by a water district would be required to be a registered Texas assessor-collector. A water district would be exempt from providing an electronic voting system under certain conditions, but would require an accessible voting station if it was requested. The bill would specify fees under certain activities related to storm water detention and retention facilities that would be exempt from restrictions associated with impact fees.

The bill would authorize the board of a water district to include non-construction expenses related to the design, permitting, financing, and construction of facilities. A district that provides potable water or sewer service to household users would be authorized to either separately or jointly with another district, municipality, or other political subdivision, finance a fire department with ad valorem taxes, mandatory fees, or voluntary contributions.

The bill would authorize a district to appeal the rate charged by a utility for potable water service by filing a petition with TCEQ. TCEQ would be required to hear an appeal de novo and the utility would have the burden of proof regarding that the rate is just and reasonable. TCEQ would be required to fix the rates and the utility could not increase the rates without the approval of TCEQ.

A water district would be allowed to develop and maintain recreational facilities on a site acquired for relevant purposes, but would not be required to prorate the costs of the facilities if certain requirements were met. The bill would limit the ability of water districts in certain counties to finance parks and recreational facilities through ad valorem taxes. In order to establish property value in the district, a water district would be authorized to use an estimate of the value provided by the central appraisal district. A water district could dissolve a defined area after bonds issued for the area were fully paid or defeased.

The bill would include conforming and clarifying changes to the Edwards Aquifer Authority's (EAA) enabling legislation and the Water Code. The bill would include procedures for EAA contested case hearings, request for rehearing, and board findings and conclusions. The bill would remove administrative fee caps and would require administrative fees set by EAA. The bill would require the EAA to develop a groundwater management plan. It would require TCEQ and the TWDB to provide technical assistance to the EAA in developing the plan. The EAA would be required to make certain information available to the TCEQ and the TWDB concerning plans and activities in conserving and protecting the aquifer. The TWDB would be required to certify the plan within 60 days after receipt. The bill would authorize the EAA to assess fees to recover administrative costs such as filing and processing applications and registrations.

The bill would require TCEQ to adopt any rules or amendments necessary to implement Section 49.4641 of the Water Code by December 1, 2011.

The bill would repeal Section 1.41(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993; and Sections 36.101(1), 36.1011(e), 36.419, and 49.103(g) of the Water Code.

According to TCEQ and TWDB, implementing the provisions of the bill would not result in a significant fiscal impact. Passage of the bill is not expected to have a significant impact on the workload of any state agencies.

Local Government Impact

There could be a fiscal impact to an applicable entity, but the amounts would vary depending on current procedures and processes.

Several provisions of the bill would establish that groundwater rights are equal to oil and gas rights, but would not ensure that the landowner owns any groundwater rights to the groundwater underneath their property. A GCD may have to verify that a potential well owner is actually the owner and entitled to the groundwater beneath the property prior to approving a well by requesting a property deed from the potential well owner or at the County Clerk's office. The costs involved could be minimal or could have a significant impact on a district's budget depending on the rules established in regard to the provisions required in the bill. It is assumed that a GCD would adopt rules and procedures that would not result in a significant fiscal impact to the district.

Several groundwater conservation districts reported there could be estimated costs of \$15,000 to each district due to additional public notices and hearings, and additional expenses for the groundwater management area. The amounts would result in 16 percent to 60 percent of the total budget for these districts.

Source Agencies:

LBB Staff: JOB, SZ, TP