

BILL ANALYSIS

C.S.H.B. 168
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that there are approximately 1,300 active water districts in Texas. These districts include, among other types of districts, municipal utility districts, fresh water supply districts, and water control and improvement districts. The interested parties note that water districts, depending on the individual district and on the type of such district, may have various powers, such as 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 build roads. Water districts are also political subdivisions of the state, and, 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. 168 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 34 of this bill.

ANALYSIS

C.S.H.B. 168 amends the Health and Safety Code to exempt from statutory provisions regarding energy efficiency programs in institutions of higher education and certain governmental entities the electricity consumption of a groundwater conservation district or certain water districts that relates to the operation and maintenance of facilities or improvements for wastewater collection and treatment, water supply and distribution, or storm water diversion, detention, or pumping, except that certain groundwater conservation districts and certain water districts, for such district facilities at least once every five years, are required to evaluate electricity consumption, establish goals to reduce electricity consumption, and identify and implement cost-effective energy efficiency measures to reduce electricity consumption.

C.S.H.B. 168 amends the Local Government Code to make the prohibition against the board of directors of a municipal management district imposing an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication on certain residential property inapplicable to a tax authorized or approved by the voters of the district or a required payment for a service provided by the district, including water and sewer services.

C.S.H.B. 168 expands the projects for which a municipality is authorized to enter into a contract with certain water districts or with a corporation organized to be operated without profit under which the district or corporation will acquire for the benefit of and convey to the municipality, either separately or together, to include recreational facilities, roads and improvements in aid of roads, or facilities to provide firefighting services. The bill authorizes a contract to provide that any payments due are payable from and are secured by a pledge of a specified part of the revenues of the municipality, including revenues from municipal sales and use taxes, rather than revenues of the municipal water system, sewer system, or drainage system. The bill specifies that provisions relating to municipal contracts with certain water districts or nonprofit corporations

do not authorize such a water district or corporation to participate in a project that the water district or corporation is not authorized to participate in under other law.

C.S.H.B. 168 amends the Water Code to authorize certain water districts to employ or contract with any person to serve as its tax assessor and collector who is an individual certified as a registered Texas assessor-collector, or who is a firm, organization, association, partnership, corporation, or other legal entity if an individual certified as a registered Texas assessor-collector owns an interest in or is employed by the firm, organization, association, partnership, corporation, or other legal entity. The bill specifies that the employed or contracted tax assessor and collector is not required to be a natural person. The bill requires a firm, organization, association, partnership, corporation, or other legal entity serving as district tax assessor and collector to give a bond as required for a natural person.

C.S.H.B. 168 establishes that the validity of an action taken at a board meeting of certain water districts is not affected by failure of a county clerk to timely or properly post or maintain public access to a notice of the meeting if notice is furnished to the county clerk in sufficient time for posting required under state open meetings law.

C.S.H.B. 168 requires the confirmation election of certain water districts and, if applicable, the election of district directors to be held on a uniform election date and clarifies procedures for write-in candidates for district director. The bill, in a provision requiring the directors to decide the initial terms of office by lot, specifies such directors as the elected directors. The bill specifies that directors serve staggered terms and that district director elections be held after confirmation of the district.

C.S.H.B. 168 authorizes certain water districts that have 10 or fewer registered voters and hold an election jointly with a county in which the district is wholly or partly located to provide for an inquiry into and certification of the voting results of the election if the election results indicate that the number of votes cast in the election was greater than the number of registered voters in the district, the district board determines that the election results are likely to be disputed in court, and the board can determine from the official list of registered voters prepared by the county voter registrar or county elections administrator for the district election which voters were qualified to vote in the district election and can determine from the signature roster from the joint election who voted in the joint election. The bill provides for certification of the district votes and establishes that certified votes are the official election results and that certification does not preclude filing an election contest.

C.S.H.B. 168 authorizes, rather than requires, a board vacancy or vacancies to be filled by the appropriate appointing authority, if the number of directors of certain water districts is reduced to fewer than a majority or if a vacancy continues beyond the 90th day after the date the vacancy occurs, regardless of whether a petition requesting the district board to fill a vacancy by appointment has been presented to the board. The bill, in the event of a failure to elect one or more district board members resulting from the absence of, or failure to vote by, the qualified voters in an election held by the district, clarifies that the current members of the temporary district board holding the positions not filled at such election are deemed to have been elected and to serve the initial term of office.

C.S.H.B. 168 sets out contract election provisions on the form of the contract and its inspection by the public. The bill authorizes a single contract to contain multiple purposes or provisions for multiple facilities authorized by one or more constitutional provisions, authorizes the contract to generally describe the facilities to be acquired or financed by the district without reference to specific constitutional provisions, and authorizes these contracts to be submitted for approval in a single proposition at an election. The bill establishes that a contract between districts to provide facilities or services is not required to specify the maximum amount of bonds or expenditures authorized under the contract under certain conditions.

C.S.H.B. 168 authorizes the board of certain water districts to appoint a person, including a district officer, employee, or consultant, to serve as the district's election agent. The bill makes notice requirements for the appointment of a presiding election judge inapplicable to an election held by a district and requires a person to be a registered voter of the county in which a district is wholly or partly located in order to serve as an election judge in a district election. The bill specifies the circumstances in which certain water districts are exempt from the acquisition, lease, or use of electronic voting systems for elections. The bill sets out requirements regarding notice of such an exemption, which, among other things, must provide that any district voter may request the use of a voting station that meets the accessibility requirements for voting by a person with a disability, and requires the district to comply with a request for an accessible voting station if the request is received not later than the 45th day before the election date. The bill authorizes a district board, before the first day of early voting by personal appearance, by order or resolution to cancel an election called at the discretion of the district, or remove from the ballot a measure included at the discretion of the district, and sets out a related posting requirement. The bill sets out notice requirements relating to filing for a place on the ballot of a district directors' election.

C.S.H.B. 168 authorizes the board of certain water districts to allow disbursements of district money to be transferred by electronic means.

C.S.H.B. 168 establishes that bond anticipation notes or tax anticipation notes of certain water districts are negotiable instruments within the meaning and purposes of the Business & Commerce Code notwithstanding any provision to the contrary in that code. The bill removes certain authorization for bond anticipation notes to be issued for any purpose for which bonds of the district may have previously been voted.

C.S.H.B. 168 makes the prohibition against certain water districts issuing bonds to finance a project unless the Texas Commission on Environmental Quality (TCEQ) determines that the project is feasible and issues an order approving the issuance of the bonds applicable only to a project for which TCEQ has adopted rules requiring review and approval.

C.S.H.B. 168 requires a special water authority to submit a copy of its audit report to the executive director of TCEQ for filing not later than the 160th day after the date the authority's fiscal year ends.

C.S.H.B. 168, in a provision specifying charges and fees of certain water districts that are not impact fees under statutory provisions regarding financing capital improvements required by new development in municipalities, counties, and certain other local governments, includes as such charges and fees a charge or fee for capacity in storm water detention or retention facilities and related storm water conveyances; a charge or fee for wholesale facilities that serve such facilities; a charge or fee that does not exceed three times the actual costs, rather than the actual and reasonable costs, to the district for a certain tap or connection; and a charge or fee made by a district for retail or wholesale service on land that at the time of platting was not being provided with drainage or storm water detention or retention service by the district. The bill authorizes actual costs used as criteria in whether a charge or fee is an impact fee or not, as determined by a district board in its reasonable discretion, to include nonconstruction expenses attributable to the design, permitting, financing, and construction of applicable facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities.

C.S.H.B. 168 removes the cap on the credit card processing fee certain water districts are authorized to collect set at five percent of the amount of the fee or charge being paid.

C.S.H.B. 168 makes the requirement that a peace officer of certain water districts take an oath and execute a \$1,000 bond conditioned on faithful performance of the officer's duties applicable only to a peace officer who is directly employed by the district. The bill establishes that a peace

officer contracted for by a district, individually or through a county, sheriff, constable, or municipality, is an independent contractor, and the district is responsible for the acts or omissions of the peace officer only to the extent provided by law for other independent contractors.

C.S.H.B. 168 increases from \$50,000 to \$75,000 the threshold amount of a construction, equipment, materials, or machinery contract over which a board of certain water districts is required to advertise the letting of the contract. The bill removes a provision authorizing publication of a required notice in a single newspaper under certain conditions. The bill requires the first publication of the notice to be not later than the 14th day, rather than the 21st day, before the date of the opening of the sealed bids.

C.S.H.B. 168 updates and amends provisions relating to the establishment of a fire department by certain water districts to authorize a district providing potable water or sewer service to household users, separately or jointly with another district, municipality, or other political subdivision, to establish, operate, and maintain, finance with property taxes, mandatory fees, or voluntary contributions, and issue bonds for a fire department to perform all fire-fighting services within the district and to provide for the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply. The bill requires a district, if a customer makes a partial payment of a district bill for water or sewer service and includes with the payment a voluntary contribution for fire-fighting services, to apply the voluntary contribution first to the bill for water or sewer service, including any interest or penalties imposed, and to use any amount remaining for fire-fighting services.

C.S.H.B. 168 specifies that the term "recreational facilities" as it relates to the financing, development, and maintenance by certain water districts of such does not include a minor improvement or beautification project to land acquired or to be acquired as part of a district's water, sewer, or drainage facilities.

C.S.H.B. 168 authorizes certain water districts to develop and maintain recreational facilities on a site acquired for the purpose of developing water, sewer, or drainage facilities. The bill establishes that a district is not required to prorate the costs of such a site between the primary water, sewer, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the intended water, sewer, or drainage purpose. The bill authorizes the engineer to consider certain factors in determining the reasonableness of the size of a water, sewer, or drainage site. The bill requires TCEQ, not later than December 1, 2014, to adopt any rules or amendments to existing rules necessary to implement these provisions.

C.S.H.B. 168 removes language prohibiting the outstanding principal amount of obligations issued to finance parks and recreational facilities in certain water districts in specified counties payable from any source from exceeding an amount equal to one percent of the value of the taxable property in the district at the time of the issuance of the obligations or an amount greater than the estimated cost provided in the applicable park plan, whichever is smaller. The bill instead prohibits the outstanding principal amount of obligations supported by property taxes from exceeding an amount equal to one percent of the value of the taxable property in the district or, if supported by contract taxes, from exceeding an amount equal to one percent of the value of the taxable property in the contracting districts at the time of the issuance of the obligations or an amount greater than the estimated cost provided in the applicable park plan, whichever is smaller. The bill authorizes a district, in order to establish the value of the taxable property in the district, to use an estimate of the value provided by the central appraisal district. The bill changes the deadline by which a district board is required to file a park plan for review by the public from not later than the 10th day before a bond election for the development and maintenance of recreational facilities to on or before the 10th day before the first day for early voting by personal appearance at such an election. The bill authorizes a park plan to be amended at any time after such an election and prohibits the estimated cost stated in the amended park plan from

exceeding the amount of bonds authorized at that election.

C.S.H.B. 168 requires a person, in order to be qualified for election as a director of a water control and improvement district, to be a qualified voter in the district, as an alternative to owning land subject to taxation in the district, in addition to other qualifications. The bill authorizes a district to finance, develop, and maintain certain recreational facilities even if similar facilities may be provided by a political subdivision or other governmental entity included wholly or partly in the district. The bill includes mention of a levy of a maintenance tax in the ballot language for a tax plan election. The bill authorizes a district board, after bonds issued for a defined area or designated property are fully paid or defeased, to declare the defined area dissolved or repeal the designation of the designated property. The bill requires the board, after that declaration or repeal, to cease imposing any special taxes authorized under the adopted tax plan on the property located in the defined area or on the designated property.

C.S.H.B. 168, in a provision authorizing a city to provide in its written consent for the inclusion of land in a municipal utility district that a contract between the district and the city be entered into prior to the first issue of obligations of the district, specifies that such a district be initially located wholly or partly outside the corporate limits of the city. The bill establishes a legislative finding that an agreement entered into before September 1, 2013, by a municipality and a district is an allocation agreement only under certain conditions.

C.S.H.B. 168 authorizes a municipal utility district to purchase, install, operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way or property owned by the district, rather than within public utility easements or public rights-of-way within the boundaries of the district. The bill exempts certain road and recreational facility projects from the prohibition against a district issuing bonds supported by property taxes to pay for the purchase, installation, and maintenance of street or security lighting.

C.S.H.B. 168 removes acquisition of facilities by a municipal utility district as a prerequisite to authorizing the exclusion from district boundaries certain land within its boundaries and the inclusion within district boundaries certain land not within its boundaries under certain conditions and clarifies that the bond prerequisite pertains to bonds payable wholly or partly from property taxes.

C.S.H.B. 168 specifies that, in consideration of applications proposing land to be included in or excluded from the district boundaries relating to impairment of the security for payment of district obligations, the taxable value of included land means the market value of the land if, before or contemporaneously with the inclusion of the land in the district, the owner of the land waives the right to special appraisal of the land as to the district. The bill makes these provisions relating to the inclusion and exclusion of land and the impairment of a security effective on passage, or, if the bill does not receive the necessary vote, September 1, 2013.

C.S.H.B. 168 repeals Section 49.103(g), Water Code.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 168 differs from the original only by amending the caption.