

BILL ANALYSIS

C.S.H.B. 2815
By: Jetton
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are hundreds of active water districts in Texas. These districts include, among other types of districts, municipal utility districts, fresh water supply districts, municipal management districts, and water control and improvement districts. Water districts, depending on the individual district and on the type of district, 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, are governed by elected or appointed boards that have the authority to provide various services and improvements. Many laws governing water districts are out of date with modern technology and practices elsewhere in government. C.S.H.B. 2815 is an omnibus bill proposing several changes relating to the powers and authority of water districts in order to improve their efficiency and effectiveness for taxpayers and residents.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

Municipal Management Districts

C.S.H.B. 2815 amends the Local Government Code to require the Texas Commission on Environmental Quality (TCEQ), on receipt of a petition requesting the creation of a municipal management district that complies with applicable requirements, to issue a notice indicating that the petition is administratively complete. The bill repeals provisions that require a hearing on a petition and that provide for notice of the hearing, instead authorizes the TCEQ to conduct a hearing on a petition in a specified manner under provisions generally applicable to all water districts if the TCEQ determines that a hearing is necessary, and makes related changes regarding the granting of a petition by the TCEQ.

C.S.H.B. 2815 authorizes a petition to request that a succeeding board of directors be elected instead of being appointed under current law. For a district created from such a petition, the bill requires the TCEQ to appoint the initial directors, establishes that subsequent directors are elected in the manner provided by provisions generally applicable to all water districts, sets out provisions relating to such an elected board, and makes related changes.

C.S.H.B. 2815, with respect to the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds, replaces the requirement that there be the written consent of at least two-thirds of the directors to authorize such levy, imposition, or issuance with an authorization for a majority of a quorum at a board meeting to authorize such if at least two-thirds of the directors execute a written consent. The bill authorizes a director to execute a written consent outside of a board meeting.

C.S.H.B. 2815 exempts an assessment that is authorized or approved by district voters from a prohibition against a board imposing an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication on single-family detached residential property, duplexes, triplexes, and fourplexes.

C.S.H.B. 2815 removes provisions that require a district to obtain TCEQ approval as provided by statutory municipal utility district provisions if the district issues bonds to provide water, sewage, or drainage facilities and that establish that, except as expressly provided by specified provisions, a district is not subject to TCEQ jurisdiction. The bill instead prohibits a district from issuing bonds to provide funding for water, sewage, or drainage facilities unless the TCEQ determines that the project is feasible and issues an order approving the issuance of the bonds in a specified manner provided by provisions generally applicable to all water districts.

Provisions Generally Applicable to All Water Districts

C.S.H.B. 2815 amends the Water Code to remove the \$150 cap on the fees of office which a director is entitled to receive for each day the director actually spends performing the duties of a director. The bill requires the board by resolution to set the fees of office but prohibits the board from setting the fees of office at an amount greater than the amount of the per diem set by the Texas Ethics Commission for members of the legislature under specified constitutional provisions. The bill prohibits an authority created by special law, by resolution of the board, from setting the annual limit on the fees of office that are currently capped at \$7,200 at an amount greater than the amount a director would receive for 60 days of service a year at the applicable maximum daily rate.

C.S.H.B. 2815 makes a provision establishing that the records of each district are the property of the district and are subject to the open records law, otherwise known as state public information law, applicable to a personal email address of a director only if the district does not make available to the public an official email address for the director or the district. For this purpose, the bill defines "personal e-mail address" as an email address that is not paid for by district money and is not used primarily for the transaction of official business of the district.

C.S.H.B. 2815, with respect to the exemption of a district exercising the powers of a municipal management district or any district created by a special act of the legislature that does not require a confirmation election from provisions relating to a confirmation and initial permanent directors election, restricts the provisions from which a district is exempted to only those provisions requiring a confirmation election. The bill, if a board determines that it is in the district's best interest and the district's voters for the district to administer an election under provisions relating to a confirmation and initial permanent directors election, requires the district to establish precincts and designate polling locations inside district boundaries.

C.S.H.B. 2815 authorizes a board to submit new bond authorization and refunding bond authorization in a single proposition at a bond election.

C.S.H.B. 2815 requires the TCEQ, for the purposes of evaluating the financial feasibility of a project financed by a bond, to consider:

- a district located wholly or partly in Austin, Brazos, Chambers, Grimes, Liberty, Walker, or Wharton County as if the district were located in Harris County; and

- a district located wholly or partly in Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, or Milam County as if the district were located in Travis County.

C.S.H.B. 2815 repeals municipal utility district provisions that prohibit a municipal utility district from exercising the power of eminent domain outside the district boundaries to acquire the following:

- a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;
- a site for a park, swimming pool, or other recreational facility;
- an exclusive easement through a county regional park; or
- a site or easement for a road project.

The bill instead, in temporary provisions generally applicable to all water districts set to expire December 1, 2024, prohibits a district operating under municipal utility district provisions from exercising the power of eminent domain outside the district boundaries to acquire the following:

- a site for the construction of a water treatment plant or a wastewater treatment plant unless the engineer for the district makes a recommendation, based on the engineer's professional judgment, to acquire the site;
- a site for applicable recreational facilities;
- an exclusive easement through a county regional park; or
- a site, right-of-way, or easement for a road project.

The bill, effective December 1, 2024, prohibits a district operating under such provisions or provisions relating to water control and improvement districts or fresh water supply districts from exercising the power of eminent domain outside the district's boundaries for such acquisitions.

C.S.H.B. 2815 establishes that an election is not required if the combined debt service, contract, and operation and maintenance tax rate adopted by the board of certain developed districts is less than or equal to the voter-approval tax rate.

C.S.H.B. 2815 authorizes a board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district, to adopt an order dividing the district. The bill sets out provisions relating to such a division, including conditioning the division of a district on the district having never issued any bonds and the district not currently imposing property taxes.

Water Control and Improvement Districts

C.S.H.B. 2815 authorizes a water control and improvement district to substitute land in the manner provided by specified municipal utility district provisions.

Levee Improvement Districts

C.S.H.B. 2815 specifies that a director appointed to fill a vacancy on an elected board must be a person qualified to serve as a director.

C.S.H.B. 2815 removes provisions requiring a person, in order to be qualified for election as a director, to be a qualified property taxpaying elector of the precinct and county from which he is elected and be eligible under the constitution and laws of the state to hold the office to which he is elected. The bill replaces those provisions with provisions requiring a person to have the following qualifications for service as a director:

- the person is at least 18 years old;
- the person owns land subject to taxation in the district or is a qualified voter in the district; and
- if the director is elected, the person is a qualified voter of the precinct in the district established by the commissioners court from which the director is elected.

Municipal Utility Districts

C.S.H.B. 2815 repeals the following provisions regarding a process for a district to convert into a municipal utility district that conflict with other conversion provisions similarly established in statute:

- provisions requiring the governing body of a district which desires to convert into a municipal utility district to adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district would serve the district's best interest and would be a benefit to the land and property included in the district and requiring the resolution to also request that the TCEQ approve the conversion of the district;
- a provision requiring notice of the conversion to be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located; and
- requiring the TCEQ, if it finds that conversion of the district into a municipal utility district would serve the district's best interest and would be a benefit to the land and property included in the district, to enter an order making this finding, whereby the district then becomes a municipal utility district and with no confirmation election required.

C.S.H.B. 2815 also repeals a prohibition against a board appointing a person to fill a vacancy on the board if the person:

- resigned from the board:
 - in the two years preceding the vacancy date; or
 - on or after the vacancy date but before the vacancy is filled; or
- was defeated in a directors election held by the district in the two years preceding the vacancy date.

Repealed Provisions

C.S.H.B. 2815 repeals the following provisions:

- Sections 375.023 and 375.024, Local Government Code;
- Sections 375.025(a) and (b), Local Government Code;
- Section 54.030(b), Water Code, as amended by Chapter 539 (H.B. 2914), Acts of the 86th Legislature, Regular Session, 2019;
- Section 54.032(a), Water Code, as amended by Chapter 539 (H.B. 2914), Acts of the 86th Legislature, Regular Session, 2019;
- Section 54.033(a), Water Code, as amended by Chapter 539 (H.B. 2914), Acts of the 86th Legislature, Regular Session, 2019; and
- Sections 54.103 and 54.209, Water Code.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2815 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute differs from the introduced in minor or nonsubstantive ways by conforming to certain bill drafting conventions.

Provisions Generally Applicable to All Water Districts

Whereas the introduced prohibited an authority created by special law that implements a groundwater reduction plan and is a wholesale water supplier from setting the annual limit on director fees of office at an amount greater than the amount that would be produced by 60 days of service per year at the maximum daily rate, the substitute prohibits an authority created by special law, by resolution of the board, from setting the annual limit on the fees that are currently capped at \$7,200 at an amount greater than the amount a director would receive for 60 days of service a year at the applicable maximum daily rate.

The substitute does not include provisions present in the introduced that exempted a personal email address of a director from a provision establishing that the records of each district are the property of the district and are subject to the open records law, otherwise known as state public information law, and that defined "personal email address" as an email address not paid for by public funds and not primarily used in the transaction of official business as long as an official email address is made publicly available for the director or for the governmental body. The substitute includes provisions absent in the introduced that instead make that provision applicable to a personal email address of a director only if the district does not make available to the public an official email address for the director or the district and that define "personal e-mail address" as an email address that is not paid for by district money and is not used primarily for the transaction of official business of the district.

The substitute does not include a provision present in the introduced that required a district board to consider the conduct and administration of the confirmation election and the other district elections held on the same date.

With regard to provisions relating to the limitation on the use of eminent domain for certain districts:

- whereas the introduced provided for the provisions relating to municipal utility districts to take effect September 1, 2023, the substitute instead provides for the provisions to take effect with the bill, which is on passage, or, if the bill does not receive the necessary vote, September 1, 2023; and
- whereas the introduced provided for the provisions relating to water control and improvement districts and fresh water supply districts to take effect December 31, 2024, the substitute instead provides for the provisions to take effect December 1, 2024.

The substitute does not include provisions present in the introduced that required the TCEQ to evaluate the economic feasibility of bonds issued by water districts in whole or in part in:

- Chambers, Liberty, Walker, Grimes, Brazos, Austin, and Wharton counties the same as the bonds issued by water districts in Harris County;
- Grayson, Wise, Parker, Hood, Johnson, Ellis, Kaufman, Rockwall, and Hunt counties the same as the bonds issued by water districts in Dallas County; and
- Caldwell, Bastrop, Lee, Milam, Bell, Burnet, Blanco, and Kendall counties the same as the bonds issued by water districts in Travis County.

The substitute includes provisions absent in the introduced that require the TCEQ, for the purposes of evaluating the financial feasibility of a project financed by a bond, to consider:

- a district located wholly or partly in Austin, Brazos, Chambers, Grimes, Liberty, Walker, or Wharton County as if the district were located in Harris County; and
- a district located wholly or partly in Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, or Milam County as if the district were located in Travis County.

Municipal Utility Districts

The substitute does not include provisions present in the introduced that authorized one or more municipal utility districts and one or more municipal management districts to consolidate into

one district as provided by specified provisions, that required directors of the consolidated district to be elected and serve terms as provided by specified provisions, and that authorized the consolidation agreement to provide that the consolidated district continue operating with the powers, authorities, duties, and responsibilities of one of the original districts prior to consolidation.