

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2815
By: Jetton (Creighton)
Local Government
5/20/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2815 makes various changes to the powers, authorities, duties, and responsibilities of water districts. The changes include requiring levee improvement district directors to be landowners, codifying district division in the municipal utility district template, Texas Commission on Environmental Quality (TCEQ) oversight of management districts, director per diems, eminent domain limitations for water control and improvement districts (WCID), WCID annexations, district consolidation, and other minor fixes that clarify conflicting provisions of previous passed bills and direct TCEQ to modernize its formulas for evaluating the feasibility of bonds issued by water districts in high growth areas.

Each of these improvements is necessary to ensure that water districts are performing their duties efficiently and transparently.

(Original Author's/Sponsor's Statement of Intent)

[Note: While the statutory reference in this bill is to the Texas Natural Resources Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

C.S.H.B. 2815 amends current law relating to the powers, authorities, duties, and responsibilities of certain conservation and reclamation districts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 375.022, Local Government Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes a petition to request that a succeeding board of directors of a district (board) be elected under Section 375.0645 instead of being appointed under Section 375.064 (Recommendations for Succeeding Board).

(e) Requires the Texas Commission on Environmental Quality (TCEQ), on receipt by TCEQ of a petition that complies with Section 375.022 (Petition) to issue a notice indicating that the petition is administratively complete and authorizes TCEQ to conduct a hearing on the petition in the manner provided by Section 49.011 (Notice Applicable to Creation of a District by the Commission), Water Code, if TCEQ determines that a hearing is necessary.

SECTION 2. Amends Subsection 375.025(c), Local Government Code, as follows:

(c) Requires TCEQ by order, if TCEQ finds, rather than if after the hearing TCEQ finds, that the petition is sufficient and conforms to the requirements of Section 375.022(c) (relating to requiring that the petition meet certain criteria) and that the district is feasible,

rather than feasible and necessary, and would benefit the public, to make that finding and grant the petition. Makes a conforming change.

SECTION 3. Amends Subchapter D, Chapter 375, Local Government Code, by adding Section 375.0645, as follows:

Sec. 375.0645. ELECTION OF DIRECTORS. (a) Provides that this section applies only to a district created by order of TCEQ providing for an elected board of directors as requested in the petition requesting creation of the district as provided by Section 375.022(d).

(b) Requires TCEQ to appoint the initial directors under Section 375.026 (Order; Initial Directors) and provides that subsequent directors are elected in the manner provided by Subchapter D (Election Provisions), Chapter 49, Water Code.

(c) Provides that an elected director is entitled to receive fees of office and reimbursement for actual expenses as provided by Section 49.060 (Fees of Office; Reimbursement), Water Code.

(d) Provides that Sections 375.069 (Board Position Not Civil Office of Emolument) and 375.070 (Compensation of Directors; Reimbursement of Expenses) do not apply to an elected director.

(e) Provides that Subsection 49.052(f) (relating to requiring that Section 49.052 (Disqualification of Directors) not apply to certain water authorities), Water Code, does not exempt an elected director from disqualification under that section.

(f) Provides that Sections 375.064, 375.161 (Certain Residential Property Exempt), and 375.243 (Petition Required for Bond Election) do not apply to a district with an elected board.

SECTION 4. Amends Section 375.065, Local Government Code, as follows:

Sec. 375.065. REMOVAL OF DIRECTOR. Authorizes the governing body of the municipality after notice and hearing to remove a director appointed by that municipality for misconduct or failure to carry out the director's duties on petition by a majority of the remaining directors.

SECTION 5. Amends Section 375.067(a), Local Government Code, as follows:

(a) Requires a director, as soon as practicable after the director is appointed or elected as provided by Subchapter D (Administrative Provisions; Board of Directors), to execute a \$10,000 bond payable to the district and conditioned on the faithful performance of the director's duties.

SECTION 6. Amends Section 375.068, Local Government Code, as follows:

Sec. 375.068. OFFICERS. Requires the directors, after they are appointed or elected as provided by this subchapter and have qualified by executing a bond and taking the oath, to organize by electing a president, a vice-president, a secretary, and any other officers the board considers necessary.

SECTION 7. Amends Section 375.071, Local Government Code, as follows:

Sec. 375.071. QUORUM. (a) Creates this subsection from existing text.

(b) Creates this subsection from existing text. Authorizes a majority of a quorum at a board meeting, if at least two-thirds of the directors execute a written consent at any time, to authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds. Authorizes a director to execute a written

consent outside of a board meeting. Deletes existing text requiring that the written consent of at least two-thirds of the directors authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds.

SECTION 8. Amends Section 375.161(b), Local Government Code, to provide that this section does not apply to a tax or assessment that is authorized or approved by the voters of the district or to a required payment for a service provided by the district, including water and sewer services.

SECTION 9. Amends Section 375.208, Local Government Code, as follows:

Sec. 375.208. COMMISSION APPROVAL. Requires a district to obtain approval of TCEQ as provided by Section 49.181 (Authority of Commission Over Issuance of District Bonds), Water Code, only if the bonds are, rather than if the bonds are, to provide water, sewage, or drainage facilities. Deletes existing text providing that a district, except as expressly provided by this section and Sections 375.062 (Terms of Initial Directors) and 375.064, is not subject to the jurisdiction of TCEQ.

SECTION 10. Amends Section 49.011(a), Water Code, as follows:

(a) Requires the Texas Natural Resources Conservation Commission (TNRCC), on receipt by TNRCC of all required documentation associated with an application for creation of a district by TNRCC under certain chapters of this code or Chapter 375 (Municipal Management Districts in General), Local Government Code, to issue a notice indicating that the application is administratively complete.

SECTION 11. Amends Section 49.060, Water Code, by amending Subsection (a) and adding Subsection (a-2), as follows:

(a) Provides that a director is entitled to receive fees of office for each day, rather than fees of office of not more than \$150 a day for each day, the director actually spends performing the duties of a director. Requires the board by resolution to set the fees of office. Prohibits the board from setting the fees of office at an amount greater than the amount per diem as set by the Texas Ethics Commission for members of the legislature under Section 24a (Texas Ethics Commission; Legislative Salaries and Per Diem), Article III (Legislative Department), Texas Constitution.

(a-2) Prohibits an authority created by special law, notwithstanding Subsection (a-1) (relating to requiring a district to set a limit on the fees of office that a director is authorized to receive in a year), by resolution of the board, from setting the annual limit on the fees of office described by that subsection at an amount greater than the amount that a director would receive for 60 days of service a year at the maximum daily rate authorized by Subsection (a).

SECTION 12. Amends Section 49.065, Water Code, by adding Subsection (d), as follows:

(d) Provides that Subsection (b) (relating to providing that the records of each district are the property of the district and are subject to the open records law) applies to a personal e-mail address of a director only if the district does not make available to the public an official e-mail address for the director or the district. Defines "personal e-mail address."

SECTION 13. Amends Section 49.102, Water Code, by amending Subsection (j) and adding Subsections (k) and (l), as follows:

(j) Provides that the provisions of Section 49.102 (Confirmation and Director Election) requiring a confirmation election do not apply, rather than prohibits the provisions of this section from being applicable, to any district exercising the powers of Chapter 375, Local Government Code, or a district created by a special Act of the legislature that does not require a confirmation election.

(k) Requires the district, notwithstanding any other law, if the board determines that it is in the best interest of the district and voters of the district for the district to administer an election under this section, to establish precincts and designate polling locations inside the boundaries of the district.

(l) Provides that Section 43.075 (Abolition of, or Division of Functions of, Water-Related Special District That Becomes Part of Not More Than One Municipality), Local Government Code, does not apply to a district until the board declares the district is created under Subsection (e) (relating to requiring the temporary board to take certain actions depending on the outcome of the election to determine the creation of the district) of this section.

SECTION 14. Amends Section 49.106, Water Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Deletes existing text providing that a district's authorization to issue bonds resulting from an election held under Section 49.106 (Bond Elections), or any other law that allows for the qualified voters of a district to authorize the issuance of bonds by a district, remains in effect after the election unless the district is annexed by another district.

(f) Authorizes the board to submit new bond authorization and refunding bond authorization in a single proposition at an election.

SECTION 15. Amends Section 49.181, Water Code, by adding Subsection (f-1), as follows:

(f-1) Requires TNRCC, for the purposes of evaluating the financial feasibility of a project financed by a bond, to consider:

(1) 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

(2) 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.

SECTION 16. Amends Section 49.23602(c), Water Code, to provide that an election is not required if the adopted tax rate is less than or equal to the voter-approval tax rate.

SECTION 17. Amends Section 49.271, Water Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Authorizes a contract, rather than a district contract, for construction work to include economic incentives for early completion of the work or economic disincentives for late completion of the work.

(f) Provides that the provisions of Section 49.271 (Contracts for Construction Work) apply to a contract for construction work entered into by a third party on behalf of a district.

SECTION 18. Amends Subchapter J, Chapter 49, Water Code, by adding Section 49.316, as follows:

Sec. 49.316. DIVISION OF DISTRICT. (a) Authorizes the 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.

(b) Authorizes an order dividing a district to create one or more new districts and to provide for the continuation of the district.

(c) Requires that an order dividing the district name any new district, include the metes and bounds description of the territory of each of the districts, appoint temporary directors for any new district, and provide for the division of assets and liabilities between the districts.

(d) Authorizes the board to adopt an order dividing the district before or after the date the board holds an election to confirm the district's creation.

(e) Authorizes the district to be divided only if the district has never issued any bonds and is not imposing ad valorem taxes.

(f) Prohibits a new district created by the division of the district from, at the time the new district is created, containing any land outside the area of the district at the time of creation.

(g) Requires the district, on or before the 30th day after the date of adoption of an order dividing the district, to file the order with TNRCC and record the order in the real property records of each county in which the district is located.

(h) Requires a new district created by the division of the district to hold a confirmation and directors' election.

(i) Requires the new district, if the creation of a new district is confirmed, to provide the election date and results to TNRCC.

(j) Requires a new district created by the division of the district to hold an election as required by Chapter 49 (Provisions Applicable to All Districts) to obtain voter approval before the district is authorized to impose a maintenance tax or issue bonds payable wholly or partly from ad valorem taxes.

(k) Provides that municipal consent to the creation of the district and to the inclusion of land in the district acts as municipal consent to the creation of any new district created by the division of the district and to the inclusion of land in the new district.

(l) Authorizes the district to continue to rely on confirmation, directors', bond, and tax elections held prior to the division.

SECTION 19. Amends Subchapter O, Chapter 51, Water Code, by adding Section 51.7131, as follows:

Sec. 51.7131. ALTERNATIVE SUBSTITUTION PROCEDURES. Authorizes a district, notwithstanding Subchapter O (Adding and Excluding Territory and Consolidating Districts), to substitute land in the manner provided by Sections 54.739 (Substituting Land of Equal Value) through 54.747 (Service to Included Land), Water Code.

SECTION 20. Amends Section 53.029(e), Water Code, as follows:

(e) Authorizes a district that has adopted the rights, authority, privileges, and functions of a road district in the manner provided by Subsection (c) (relating to authorizing the board of a district to order an election to be held in the district to determine whether the district should assume the rights, authority, privileges, and functions of a road district), following approval of a construction contract by the district's governing body, to reimburse expenditures as provided by certain sections, including Section 257.003(d) (relating to authorizing a road district to acquire, pay for the construction of, or agree to reimburse the costs of construction or acquisition of a road, including engineering, legal, financing, and other expenses incident to the construction or acquisition), Transportation Code, without any additional approval or determination under Section 257.003 (Acquisition of Roads), Transportation Code.

SECTION 21. Amends Section 54.016, Water Code, by adding Subsection (f-1), as follows:

(f-1) Provides that an agreement between a municipality and a municipal utility district is an allocation agreement only if:

(1) the agreement strictly complies with the requirements of Subsection (f) (relating to authorizing a city to provide in its written consent for the inclusion of land in a district that is initially located wholly or partly outside the corporate limits of the city that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district); and

(2) the agreement is specifically designated by the parties to the agreement as an "allocation agreement" under Subsection (f).

SECTION 22. Amends Sections 54.234(d) and (e), Water Code, as follows:

(d) Authorizes the district, if TNRCC issues an order approving the petition, to undertake a road project if:

(1) the municipality or county with platting jurisdiction, rather than the municipality or county that will operate and maintain the road, has approved the plans and specifications of the road project; or

(2) makes no changes to this subdivision.

(e) Provides that a district, notwithstanding any other law and except as provided by Subsection (d), is not required to obtain approval from the Texas Transportation Commission to acquire, construct, convey, or finance the road project.

SECTION 23. Amends Section 57.053, Water Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Deletes existing text requiring a director appointed to fill a vacancy to be a person qualified for election as a director under Section 57.059.

(d) Requires a director appointed to fill a vacancy to be a person qualified as a director under Section 57.059.

SECTION 24. Amends Section 57.059, Water Code, as follows:

Sec. 57.059. New heading: QUALIFICATIONS FOR DIRECTORS. Requires a person, to be qualified to serve as a director, to

(1) be at least 18 years old;

(2) own land subject to taxation in the district or be a qualified voter within the district; and

(3) if the director is elected, be a qualified voter of the precinct in the district established by the commissioners court under Section 57.058 (Number of Elected Directors; Terms).

Deletes existing text requiring a person, 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 this state to hold the office to which he is elected.

SECTION 25. Repealers: Sections 375.023 (Commission Hearing; Contents of Notice) and 375.024 (Publication of Notice), Local Government Code.

Repealers: Sections 375.025(a) (relating to requiring TCEQ to examine a petition to determine its sufficiency at a hearing) and (b) (relating to providing that TCEQ has jurisdiction to determine each issue relating to the sufficiency of a petition and to the creation of a district and is authorized to issue necessary incidental orders in relation to the issues before TCEQ), Local Government Code.

Repealer: Section 54.030(b) (relating to requiring the governing body of a district which desires to convert into a district operating under this chapter to adopt and enter in the minutes of the governing body a certain resolution), Water Code, as amended by Chapter 539 (H.B. 2914), Acts of the 86th Legislature, Regular Session, 2019.

Repealer: Section 54.032(a) (relating to requiring that notice of the conversion of a district be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located), Water Code, as amended by Chapter 539 (H.B. 2914), Acts of the 86th Legislature, Regular Session, 2019.

Repealer: Section 54.033(a) (relating to requiring TNRCC, if it makes a certain finding, to enter an order making this finding and requiring the district to become a district operating under this chapter), Water Code, as amended by Chapter 539 (H.B. 2914), Acts of the 86th Legislature, Regular Session, 2019.

Repealer: Section 54.103 (Limitation on Filling Vacancies), Water Code.

SECTION 26. Effective date: upon passage or September 1, 2023.