

BILL ANALYSIS

Senate Research Center

S.B. 2521
By: Creighton
Local Government
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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

[As proposed, S.B. 2521 amends current law relating to the powers, authorities, duties, and responsibilities of water 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 57.059, Water Code, as follows:

Sec. 57.059. New heading: QUALIFICATIONS FOR DIRECTORS. Requires a person, to be qualified as a director, to be at least 18 years old, either own land subject to taxation in the district or be a qualified voter within the district, and, in the case of an elected director, be a qualified voter within the precinct within the district established by the commissioners court in accordance with 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 voter within the district, property taxpaying elector of the precinct and county from which the person is elected and, in the case of an elected director, be a qualified voter within the precinct within the district established by the commissioners court in accordance with Section 57.058 eligible under the constitution and laws of this state to hold the office to which the person is elected.

SECTION 2. 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 3. Amends Subchapter J, Chapter 49, Water Code, by adding Section 49.316, Water Code, as follows:

Sec. 49.316. DIVISION OF DISTRICT. (a) Authorizes the board of a district (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 the Texas Natural Resource Conservation Commission (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.

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

(k) Requires any 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.

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

(m) 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.

SECTION 4. Amends Section 49.011(a), Water Code, as follows:

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

SECTION 5. Amends Section 49.060, Water Code, by amending Subsections (a) and (a-1) and adding Subsections (a-2) and (a-3), 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 that the daily fee of office be set by resolution of the board and prohibits the fee from being more than the legislative per diem as set by the Texas Ethics Commission.

(a-2) Prohibits an authority created by special law that implements a groundwater reduction plan and is a wholesale water supplier, 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), from setting the annual limit at an amount greater than

the amount that would be produced by 60 days of service per year at the maximum daily rate.

SECTION 6. 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) does not apply to a personal email address of a director. Defines "personal email address."

SECTION 7. Amends Section 49.102, Water Code, by amending Subsection (j) and adding Subsection (k), as follows:

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

(k) Requires the board to consider the conduct and administration of the confirmation election and the other district elections held on the same date. Requires the district, if the board determines that it is in the best interest of the district and voters of the district for the district to administer the elections, to establish precincts and designate polling locations inside the district's boundaries, notwithstanding any other law.

SECTION 8. Amends Section 49.106, Water Code, by adding Subsection (f), to authorize the board to submit new money bond authorization and refunding bond authorization in a single proposition at an election.

SECTION 9. Amends Subchapter H, Chapter 49, Water Code, by adding Section 49.2225, as follows:

Sec. 49.2225. LIMITATION ON USE OF EMINENT DOMAIN. Prohibits a district operating under Chapters 51 (Water Control and Improvement Districts), 53 (Fresh Water Supply Districts), and 54 (Municipal Utility Districts) from exercising the power of eminent domain outside the district boundaries to acquire:

- (1) a site for 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;
- (2) a site for a park or recreational facility, as defined by Section 49.462 (Definitions);
- (3) an exclusive easement through a county regional park; or
- (4) a site, right of way, or easement for a road project.

SECTION 10. Amends Section 49.23602, Water Code, by adding Subsection (c-1), as follows:

(c-1) Provides that an election under Subsection (c) (relating to requiring that an election be held to determine whether to approve a combined debt service, contract, and operation and maintenance tax rate that exceeds the district's mandatory tax election rate) is not required if the adopted tax rate is less than or equal to the voter-approval tax rate.

SECTION 11. Amends Subchapter O, Chapter 51, Water Code, by adding Section 51.7131, as follows:

Sec. 51.7131. ALTERNATIVE SUBSTITUTION PROCEDURES. Authorizes a district, in the alternative to the provisions of Subchapter O (Adding and Excluding Territory and Consolidating Districts) for the substitution of land within the district, 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 12. Amends Section 51.714, Water Code, as follows:

Sec. 51.714. ADDING LAND BY PETITION OF LANDOWNER. Makes a nonsubstantive change to this section.

SECTION 13. Section 54.728, Water Code, is amended to read as follows:

Sec. 54.728. CONSOLIDATION OF DISTRICTS. (a) Creates this subsection from existing text.

(b) Authorizes one or more districts governed by the provisions of this chapter and one or more districts governed by the provisions of Chapter 375, Local Government Code, to consolidate into one district as provided by this subsection and Sections 54.729 (Election to Approve Consolidation) – 54.733 (Voted But Unissued Bonds) of this code. Requires directors of the consolidated district to be elected and serve terms as provided by Section 49.103 (Terms of Office of Directors). Authorizes 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.

SECTION 14. Amends Section 375.022, Local Government Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes a petition to request that succeeding boards be elected under Section 375.0645 rather than be appointed under Section 375.064 (Recommendations for Succeeding Board).

(e) Requires the Texas Commission on Environmental Quality (TCEQ) to give notice of an application as required by Section 49.011 (Notice Applicable to Creation of a District by the Commission), Water Code, and authorizes TCEQ to conduct a hearing on the application if TCEQ determines that a hearing is necessary under Section 49.011, Water Code.

SECTION 15. 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) 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 16. Amends Subchapter D, Chapter 375, Local Government Code, by adding Section 375.0645, as follows:

Sec. 375.0645. ELECTED DIRECTORS. (a) Provides that this section applies to a district created by order of TCEQ providing for an elected board of directors as requested in the petition of the landowner under Section 375.022 (Petition).

(b) Requires TCEQ appoint the initial directors.

(c) Requires subsequent directors to be elected in the manner provided by Subchapter D (Election Provisions), Chapter 49, Water Code.

(d) Provides that a 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. 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 the board.

(e) Provides that Subsection 49.052(f) (relating to requiring that Section 49.052 (Disqualification of Directors) not apply to special water authorities), Water

Code, does not exempt a director from disqualification under Section 49.052, Water Code.

(f) Provides that Sections 375.064 (Recommendations for Succeeding Board), 375.161 (Certain Residential Property Exempt), and 375.243 (Petition Required for Bond Election) do not apply to the district.

SECTION 17. 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 18. 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. Provides that the written consent of at least two-thirds of the directors is required to authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds, which may be authorized by a simple majority of a quorum at a board meeting. Authorizes a director who was not present at a board meeting to execute a written consent outside of a board meeting.

SECTION 19. Amends Subsection 375.161(b), Local Government Code, to provide that this section does not apply to a tax or assessment, if a tax is 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.

SECTION 20. Amends Section 375.208, Local Government Code, as follows:

Sec. 375.208. COMMISSION APPROVAL. Requires a district to obtain approval of TCEQ to issue bonds as provided by Section 49.181 (Authority of Commission Over Issuance of District Bonds), Water Code, if the bonds are to provide water, sewage, or drainage facilities. Deletes existing text requiring a district to obtain approval of TCEQ as provided by Chapter 54, Water Code, if it issues bonds 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 21. Repealers: Sections 375.023 (Commission Hearing; Contents of Notice) and 375.024 (Publication of Notice), Local Government Code.

Repealers: Subsections 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: Subsection 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 Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 2.

Repealer: Subsection 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 Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 3.

Repealer: Subsection 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 Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 4.

Repealers: Sections 54.103 (Limitation on Filling Vacancies) and 54.209 (Limitation on Use of Eminent Domain), Water Code.

SECTION 22. Requires TCEQ to evaluate the economic feasibility of bonds issued by water districts in whole or in part in (i) Chambers, Liberty, Walker, Grimes, Brazos, Austin, and Wharton counties the same as the bonds issued by water districts in Harris County; (ii) Grayson, Wise, Parker, Hood, Johnson, Ellis, and Hunt counties the same as the bonds issued by water districts in Dallas County; (iii) Caldwell, Bastrop, Lee, Milam, Bell, Burnet, Blanco, Gillespie, and Kendall counties the same as the bonds issued by water districts in Travis County.

SECTION 23. (a) Provides that Section 9 of this Act adding Section 49.2225, Water Code, as it applies to districts governed by Chapters 51 and 53, Water Code, takes effect December 31, 2024, and as it applies to districts governed by Chapter 54, Water Code, takes effect September 1, 2023.

(b) Effective date, except as otherwise provided by this Act: upon passage or September 1, 2023.