SUBJECT: Standardizing Water Code water district administrative provisions

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Counts, Yost, Corte, R. Lewis, Puente, Walker

0 nays

3 absent — Combs, King, Stiles

WITNESSES: For — Gregory Ellis, Harris-Galveston Coastal Subsidence District; Joe B. Allen, Association of Water Board Directors; C.E. Williams, Panhandle Ground Water Conservation District; Allan J. Lange, Lipan-Kickapoo Water Conservation District; Lee Arrington, South Plains Underground Water Conservation District; Scott Holland, Irion County Water Conservation District; David Harper, Central Texas Association of Utility Districts; Wayne Halbert, Texas Irrigation Council; Wayne Owen, Tarrant County Water Control and Improvement District

Against — Michael L. Erdmann, City of Austin Water and Wastewater Department

BACKGROUND: Water districts are local political subdivisions of the state governed by a board of directors. All water districts in Texas derive their authority from the Texas Constitution, Art. 3, Sec. 52, or Art. 16, sec. 59. Water districts are created by either special or general law.

The Texas Natural Resource Conservation Commission (TNRCC) supervises the actions of all water districts. Water districts are also subject to state and federal agencies, which issue and monitor permits for the various activities of the district. General law districts can be created by the TNRCC, a county commissioners court, or to a limited extent, the governing board of a city. Special law districts are created by an act of the Legislature. The powers of general law districts are determined by the type of district while the powers of special law districts are determined by their enabling legislation.

Chapter 50 of the Water Code governs the administrative and financial procedures for all water districts. Succeeding chapters apply specifically to different kinds of districts and usually override the provisions of Chapter 50 if a conflict exists between chapters.

DIGEST:

CSHB 1104 would reorganize and amend the Water Code chapters relating to water districts. The bill would repeal Chapter 50 of the Water Code and replace it with a new Chapter 49. Procedural and administrative provisions relating to water districts would be consolidated into the new Chapter 49.

A new Chapter 59 would be created, almost identical to Subchapter M of the current Chapter 50, which governs regional districts. (Regional districts are groups of municipal utility districts that provide regional water or wastewater services.)

CSHB 1104 would also repeal sections of chapters 51-58, 65 and 66 to ensure their conformity to the new Chapter 49.

Among the substantive changes that CSHB 1104 would make to the current provisions governing water districts:

• Sec. 49.004 would allow district boards to set civil penalties up to $5,000 for district rules. Districts would be required to file suit to collect penalties and could also collect attorneys fees.

• Sec. 49.052(g) would allow boards, by unanimous vote, to remove a member who had missed one-half or more of all regular meetings during the prior 12 months. Members who were removed could appeal to the TNRCC within 30 days and could be reinstated if it were found that the removal was unwarranted under the member's particular circumstances.

• Sec. 49.060 would allow board members to receive fees of not more than $100 per day, not to exceed $6,000 per year, and would allow for reimbursement of expenses.

• Sec. 49.103 would allow district board members to serve four-year terms, and would require board elections to be set on uniform election dates in either January or May of even-numbered years. Sec. 49.104 would allow

certain districts (sometimes several districts work together under a master district) to hold early voting and elections in a common location.

• Sec. 49.069 would allow districts to pay for employee benefits and retirement programs administered under Government Code, Chapter 810, the Public Employee Retirement Act. Sec. 49.157 would allow districts to invest district funds in accordance with the Public Funds Investment Act.

• Sec. 49.214 would provide that if a conflict of interest arose in regards to a district contract, (districts may contract with other entities for construction, financing, facilities, etc.) the contract conflict would be governed by Government Code, Chapter 171, the Interlocal Cooperation Act.

• Sec. 49.222 would standardize district eminent domain powers for all districts. All property acquired through condemnation would be in accordance with eminent domain provisions in the Property Code, Chapter 21.

• Sec. 49.273 would delete competitive bidding requirements for the purchase of certain materials and machinery.

• Sec. 49.191 would require all districts to audit their financial records.

• Sec. 49.195 would permit (rather than require as current law stipulates) TNRCC to review audit reports. It would also release the TNRCC from a requirement to approve all bonds issued to and approved by the Farmers Home Administration and the Texas Water Development Board.

• Sec. 49.198 would increase the financial activity a district could have before an audit was required from $20,000 in gross receipts and $50,000 in cash to $100,000 for each category.

• Sec. 49.156 would require districts to designate one or more depositories (banks or saving associations) to serve as the depository for district funds. The board would not be required to advertise or solicit bids in selecting its depositories.

• Sec. 49.215 would exempt districts from having to hold a certificate of convenience as a precondition for providing retail water and sewer service to areas outside the boundaries of the district.

• Sec. 49.303 would allow all districts to call a hearing on whether or not to exclude land from the district, if the district had not yet held an election on whether tax-financed bonds should be issued. The hearing could be held if a property owner petitioned the district, showing that a majority of the property owners in the area wished to be excluded. (Currently, only some districts have the power to exclude land from their districts).

• Sec. 54.739 would add provisions to allow for municipal utility districts to simultaneously annex and de-annex lands of equal value, subject to TNRCC approval.

• Secs. 49.309 - 49.314 would provide a definition of "non-irrigated property" and "district" in the sections of the bill that would allow exclusion of land from irrigation districts even after bonds have been authorized or issued. This would allow water rights to be converted from irrigation to municipal uses.

Sec. 49.212 would exempt districts from having to obtain TNRCC approval of impact fees charged for new services, as long as the fee would not exceed three times the actual and reasonable costs to the district. (Impact fees are charges imposed by a political subdivision against a development to recoup the costs of capitol improvements or facility expansions).

Sec. 49.231 would allow all districts to levy standby fees if approved by the TNRCC, and allow drainage facility costs to be included in calculating standby fees. (Currently only municipal utility districts and water control and improvement districts can levy standby fees, which are fees charged against undeveloped property for the currently available services that are not being utilized).

SUPPORTERS SAY:

CSHB 1104 would create a single Water Code chapter that would apply to all water districts in the state, except for regional districts, which would be moved to a new Chapter 59. The bill would bring consistency to the law

regarding water districts by replacing separate administrative provisions with a single uniform chapter governing all water districts.

Water districts were created by special laws until the Legislature passed what is now Chapter 50 of the Water Code. Since that time additional chapters governing different types of water districts have been added.

Currently, each water district is not only governed by general provisions in the Water Code but also by a specific chapter that describes the powers and duties of that type of district. Changes to district laws have been made piecemeal, resulting in a variety of conflicting laws and a lack of procedural uniformity between the different types of districts. Not only are there inconsistencies between the numerous special law districts, but even the general law district chapters are inconsistent.

CSHB 1104 would create one uniform standard for the financial and administrative procedures of all water districts, and clear up confusion regarding water district powers among citizens, district board members and state agency personnel. Research of district powers would be greatly simplified.

The bill would eliminate the confusion that is created between the general and individual water district chapters. Because provisions concerning districts can be contained in both or either section, there is often confusion as to what the district's powers actually are.

Allowing districts to set civil penalties up to $5,000 and collect attorneys fees would finally allow districts to take enforcement actions against some of the violators of district rules. Higher civil penalties are necessary because the current $1,000 cap that most districts set on civil penalties is simply not enough of a deterrent for some who choose to violate rules and pay the fines as a cost of doing business.

The bill would allow all districts to enjoy the same benefits, including the authority to reimburse board members. Currently, a number of districts find it hard to retain qualified board members because they cannot reimburse them. CSHB 1104 would give districts the ability to recruit and

retain qualified board members and eliminate board members who consistently miss meetings.

District election procedures would be streamlined and simplified by CSHB 1104. Citizens are often confused about election procedures, resulting in low turn-out for or voter apathy. Uniform election dates would make it easier for the public to actively participate in the operations of their water district. Providing for board members to serve four-year terms would save money for some districts that must now hold must hold annual elections.

It would be wise to standardize district eminent domain powers for all districts in accordance with eminent domain provisions in the Property Code, Chapter 21. Some districts have their own specific statutory provisions regarding eminent domain proceedings. It would be better if they followed the requirements related to eminent domain in the Property Code, which the Legislature has fine-tuned over the years.

Current requirements regarding district investments are unnecessarily restrictive. CSHB 1104 would provide that such investments could be made under the Public Funds Investment Act, which provides prudent investment guidelines. Some districts currently have overly strict investment limitations. The bill would also give districts more flexibility regarding the implementation of employee retirement programs

Requiring the district to audit financial records is a prudent measure to make sure that district money is well spent. Some special districts are currently not required to perform financial audits.

Providing that districts would not have to advertise and solicit bids in selecting depositories (banks or savings associations that serve as the depository for district funds) would be a welcome and time-saving change for some districts.

Sometimes it is hard for districts to find banks that will make a competitive bid since, due to the Public Funds Collateral Act, all district funds must be collateralized, making them less attractive to banks.

Not all water districts have the power to exclude land from their districts. CSHB 1104 would give that right to all districts, if the district had not yet held an election on whether tax-financed bonds should be issued, and if property owners had petitioned the district to be excluded.

Sometimes a district cannot afford to supply a portion of a district — there may be a natural barrier, for example, or a city has annexed part of a district and already provides services to it. Since the district does not intend to provide services to those portions of the district, that portion should not be taxed for services they will not receive. If the district lacks statutory authority to exclude land from the district, the land must be taxed.

Allowing municipal utility districts to simultaneously annex and de-annex land of equal value would help districts who need to de-annex portions of their jurisdiction. Currently, de-annexing a portion of a district can cause the district problems with its bond financing because it removes taxable wealth from the district. Allowing a district to simultaneously annex a portion of equal value would solve this problem.

CSHB 1104 would allow districts flexibility in excluding non-irrigated lands from districts and allowing irrigation water rights to be converted for municipal uses. If a developer, for example, acquired agricultural land in order to develop a subdivision, that developer would still have to pay district taxes, but would not benefit from the irrigation rights attached to that land, since the land would no longer be irrigable. CSHB 1104 would allow the water rights from non-irrigable land to be transferred to municipal users.

OPPONENTS SAY:

The proposed Water Code sec. 49.216 would expand the powers of districts by allowing peace officers employed by the district the power to make arrests to prevent any offense against the laws of the state. Most current statutory provisions in the Water Code relating to water district peace officers limit those officers to making arrests to prevent an offense against the laws of the state only when the offense occurs on land, water or easement owned or controlled by the district.

The more that MUDs and other districts attain powers similar to that of cities, the more difficult it will be for cities to annex them. Cities need to annex districts to maintain their economic viability.

Exempting districts from having to hold a certificate of convenience as a precondition for providing retail water and sewer service to certain areas outside the boundaries of the district would expand a district's power unnecessarily. Certificates of convenience and necessity are issued by the TNRCC and allow the holder to provide service in a defined area.

NOTES:

The original version of the bill contained a provision that would have required Austin to notify a certain district — which fit the description of the Anderson Mill Municipal Utility District (MUD) — of Austin's intention to annex it. The city would have to give notice between 48-60 months prior to annexation. After notification, the district could not issue additional bonds or extend its boundaries without written approval of the city, which could not be unreasonably withheld.

The committee substitute changed "river authority" to "special water authority," added a provision allowing districts to contract for laboratory services, added a definition of potable water and exempted special law districts and authorities from requirements concerning the terms of office of members of a district board. The committee substitute also made conforming and technical changes to the bill.

The companion bill, SB 626 by Armbrister, which is identical to CSHB 1104 except for an amendment which was added on the Senate floor, passed the Senate by 28-0 on April 28. The Senate floor amendment to SB 626 would provide that a city would be required to give a district 24 months advance notice of its intention to annex. After notice was given, the district could not issue any additional bonded indebtedness, extend its services to additional areas outside its boundaries or institute any new type of service without prior approval of the city. The city's approval could not be unreasonably withheld or delayed.

A related bill, HB 2294 by Yost, which would consolidate Water Code provisions related to groundwater districts into two new chapters, was set on daily House calendar for April 27.