

SUBJECT: Creating the Southwest Travis County Water District

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Saunders, Mowery, Combs, Hamric, Hilderbran, Howard, Krusee, B. Turner

0 nays

1 absent — Alexander

WITNESSES: For — James O'Reilly, Organization of Unified Circle C Homeowners; William Terry Bray, Gary Bradley; Kevin Cromack, Jeffrey Groux

Against — Luther Polnau and Roger Duncan, City of Austin

On — Bill Couch, Barton Springs/Edwards Aquifer Conservation District

DIGEST: CSHB 3193 would create the Southwest Travis County Water District, a new Chapter 59 conservation and reclamation district under the Texas Constitution, Art. 16, sec. 59. The district would encompass the Circle C development, which includes four Circle C municipal utility districts. The district could also annex land in Hays and Travis counties, if requested to do so by all the landowners in the area to be annexed. All areas within the district would be excluded from the extraterritorial jurisdiction (ETJ) of any political subdivision in the state.

District board. The district would be governed by a nine-member board, consisting of three members appointed by the governor, three members appointed by the lieutenant governor and three additional members appointed by the lieutenant governor from a list submitted by the House Speaker. At least five of the members must reside in the district.

The members of the board would serve staggered six-year terms. Board members could be compensated \$50 a day and reimbursed for actual and necessary expenses. The district could sue and be sued in its corporate name and would be granted rulemaking authority.

Annexation. Territory in the district could not be annexed by a local government or subdivision (like Austin) unless annexation was approved by all owners of land that would be annexed. However, the district could annex additional territory in Hays or Travis County that is located in the Bear Creek, Slaughter Creek, or Williamson Creek watersheds and is not located within the corporate limits of a city.

Proceedings for annexation could be initiated by a petition signed by the owners of the land proposed to be annexed. The board would consider the petition and could annex territory if the board determined the land should be annexed. The district would not be required to have the consent of Austin or other entities to annex territory. Limitations on the amount of land a district could annex would be delineated, including a maximum size limitation of 8000 acres for the district territory.

District powers. The district would have exclusive authority (superseding the authority of any local government) to regulate septic tanks, land subdivision, zoning, resource extraction activities and public park land. The district would also have exclusive authority to adopt rules protecting a watershed, provide for the protection and management of an endangered species located within the district and prohibit pollution of certain sources of water supply. Creation of a political subdivision within the district would require the consent of the district board.

The district would have the exclusive power and jurisdiction (superseding the power and jurisdiction of any local government) to approve plats or replats. District land subdivision regulations would supersede county regulations.

District water regulation. The district would control and abate water pollution in the district and coordinate the provision of water, wastewater, solid waste disposal and drainage services.

Subject only to TNRCC's authority, the district would have exclusive authority to supersede the authority of local governments to coordinate the provision of water, wastewater, solid waste disposal or drainage services within, to, or from the district and to control or abate water pollution within, or caused within, the district.

TNRCC approval of district water programs. The board would be required to prescribe a water pollution control and abatement program that would apply evenly throughout the district, and submit it to TNRCC for approval. TNRCC could, by rule, provide criteria for the review and approval of the program, based on state water quality standards adopted by TNRCC and in effect on January 1, 1995.

If TNRCC found that the proposed program did not achieve state water quality standards, it would be required to notify the district in writing within 30 days of receiving the proposed program. If TNRCC did not notify the district that it objected to the program within 30 days, the program would go into effect on the 31st day.

The district would develop comprehensive water, wastewater or drainage control plans for various areas of the district. The plans would have to be consistent with state water quality standards adopted by the commission and in effect on January 1, 1995. The district could apply to the commission for a permit to appropriate water.

Municipal utility district creation. The creation of a Municipal Utility District (MUD) in the district could be regulated only by the TNRCC — no other entity's consent would be required. The district would have exclusive authority (superseding the authority of any local government) to amend or terminate certain agreements that would apply to a MUD located within the district and any local government or other political subdivision. These would include agreements concerning land use and site plans and the control and abatement of water pollution.

The rules of the district in effect at the time a petition for creation of a MUD was filed would remain applicable to all land within the MUD until all MUD bonds had been paid.

District financing and enforcement. The district could issue revenue bonds and grants and could not establish property taxes except by approval of the voters in the district. The district would have the power of eminent domain and would be permitted to enter public and private property for inspections.

The district could enforce a civil penalty of not less than \$50 or more than \$1000 against a person who violated a rule of the district. A person adversely affected by a rule of the district could sue the district in district court to set aside the rule. If they did not prevail, the court would be required to order them to pay reasonable attorney's fees and other costs incurred by the opposing parties.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

The Southwest Travis County Water District is similar to many water districts created across the state, with analogous powers and functions. The district would come under all TNRCC water quality rules, standards and regulations, as well as other applicable state regulations and laws.

The overwhelming majority of Circle C Ranch residents have organized to ask the Legislature for their help in creating a water district that would release Circle C from the arbitrary and unfair control of the City of Austin and return local control to the residents. The creation of the Southwest Travis County Water District would accomplish these goals.

For the past seven years the property owners of Circle C have had to fight ceaselessly with Austin over development that was approved by the city over a decade ago as part of the city's master plan.

The original MUD agreements with the city approved commercial development within Circle C. The financial projections of the district relied on that approved commercial development to offset future taxes. However Austin has consistently refused to allow such development, leaving Circle C residents with high taxes and an uncertain future.

Austin has repeatedly adopted and enforced new ordinances, rules and regulations within its ETJ (of which Circle C is a part) that have prevented progress and development in Circle C. Some of these ordinances are illegal. In fact, the city's Save Our Springs (SOS) ordinance, which was forced on area residents even though they did not have the right to vote on it, was overturned by a court that found it unreasonable, arbitrary and

inefficient. Austin adopted another burdensome ordinance within days of that verdict.

Many Circle C residents feel their rights have been interfered with by unreasonable city policies. CSHB 3193 would establish a water district to control only Circle C Ranch that would not affect anyone in other districts and would allow Circle C residents to have a say in issues that affect the property values and quality of their neighborhood. Circle C has done an excellent job maintaining high water quality in the district, and Circle C residents pay for all water and wastewater services through their MUDs.

CSHB 3193 would provide a mechanism by which good water quality standards would be assured through a district that would be a proficient and professional organization. The district would still comply with all TNRCC water quality standards and remain under TNRCC supervision.

The bill would finally release Circle C from the uncertainty posed by rapidly changing rules which make it impossible to plan for the future. In the past, Austin has often changed rules and requirements after substantial investments and commitments were already made by developers and residents of the area. The bill would not alter any of the financial commitments or obligations of the Circle C MUDS vis-a-vis the city of Austin. The bill would allow the district to enforce consent agreements concerning land-use plans, but it would not alter the financial arrangements or utility service arrangements with the city.

The city pays less to maintain Slaughter Creek Metropolitan Park than any other developed park owned by the city, and Austin residents can and do use the recreation tracks at Slaughter Creek.

**OPPONENTS
SAY:**

The power that would be granted to the Southwest Travis County Water District by CSHB 3193 would be unprecedented. The district would allow one developer to circumvent local water, wastewater and drainage regulations in an area that could reach a size of 8,000 acres in Travis and possibly Hays counties. The district, which would carve out a piece of three different watersheds and be free of regulation from just about every unit of local government, would have minimal oversight by TNRCC.

The district would have almost every authority that a city has, including zoning and subdivision control, which are unusual powers for a water district. In many cases, its powers would supersede all county, city and other local government powers.

This special legislation would benefit only the Circle C Ranch land development. The district would escape Austin's regulations but would still benefit from city services. The city of Austin would lose its right to regulate subdivisions within the district.

The Hays County Commissioners Court has unanimously voted to oppose the bill, stating their opposition to "allowing a loophole to allow an individual developer (or developers) to circumvent the water, wastewater and drainage regulations of local government."

Standards for the district's water pollution control and abatement program would be limited to state water quality standards adopted by the commission and in effect on January 1, 1995. Water quality standards are revised every three years pursuant to the federal Clean Water Act, and this district should not be pegged to a different standard from everyone else. All water users should have to comply with the same standards.

TNRCC would be extremely limited in its ability to review the district's proposed water pollution control and abatement program because, within 30 days after the program is submitted to TNRCC, the agency would be required to make a decision about whether or not to approve the program. If the agency fails to notify the district that it objects to the program within 30 days, the district's program would go into effect.

This bill would subvert the ability of the Barton Springs/Edwards Aquifer (BS/EA) Conservation District to protect the quality of groundwater in the area. Management of groundwater is best done when an aquifer is managed as a whole. Currently, BS/EA Conservation District rules are applied equally to Austin and Circle C alike. These rules are necessary to protect the Barton Springs portion of the Edwards aquifer, a designated sole source drinking water supply.

The bill would allow municipal utility districts within the district to abrogate the "consent agreements" they entered into with the city many years ago without giving anything back to the city in return.

A district with such unprecedented authority and power should be run by an elected, rather than an appointed board, so that the residents of the district could have some say in district decisions. All board members, not just five of them, should reside in the district. CSHB 3193 would create an autonomous bureaucracy with broad and ill-defined powers, which would not be accountable to district residents.

Some property owners who live near the boundaries of the district proposed by CSHB 3193 are alarmed by the proposed district. Since no city or county ordinance or regulation would apply to the district, those on its perimeter are nervous about drainage and other issues that could affect them. The district could annex large tracts of land in Travis and Hays counties at the request of one landowner and build whatever they wanted to on the land.

Austin's Slaughter Creek District Park would be within the boundaries of the new district, and despite the fact that state and city monies were used to build a recreational track within that park, only the district could regulate the use and development of the park.

Generally, when a district is created for water and wastewater purposes, it is required to seek TNRCC approval of bonds. CSHB 3193 would provide no regulatory overview to make sure the mechanism used to finance the district was appropriate. Allowing an appointed board to issue revenue bonds without voter approval is a form of taxation without representation.

NOTES:

The committee substitute included changes that would expand the district's powers over septic tanks, solid waste, zoning and watershed protection.

The substitute would require a person who did not prevail against the district in court to pay the opposing party's court costs and attorney's fees, would require the district to achieve water quality standards in effect on January 1, 1995, would allow the district to approve plats and replats of tracts of land and would include new provisions concerning MUDs.

The Senate companion, SB 1700 by Wentworth, is scheduled for public hearing in the Senate Natural Resources Committee on May 11.