

SUBJECT: Validating water district acts and proceedings

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 5 ayes — Counts, T. King, Cook, R. Lewis, Walker

0 nays

4 absent — Corte, Hamric, Puente, Shields

WITNESSES: For — Richard Bowers, North Plains Ground Water Conservation District No. 2; John Carlton, Central Texas Association of Utility Districts; Wayne Halbert, Texas Irrigation Council; Ron Neighbors, Harris-Galveston Coastal Subsidence District; Jim Oliver, Tarrant Regional Water District; Dean Robbins, Texas Water Conservation Association

Against — None

BACKGROUND: Since 1934, the Legislature periodically has enacted legislation retroactively validating certain municipal actions, such as annexations or incorporations, that may have violated procedural requirements. The Legislature also periodically enacts bills to validate acts or creations of water districts.

Districts and authorities created by authority of the Texas Constitution, Art. 3, sec. 52(b)(1) or (2) and Art. 16, sec. 59, under general or special law include municipal utility districts, irrigation districts, water control and improvement districts, and river authorities.

Water Code, chapter 49.001 defines a special water authority as a river authority or a district created by special act of the Legislature that provides water or wastewater service to two or more cities. Special authorities are governed by boards of directors appointed or designated in whole or in part by the governor, the Texas Water Development Board, or cities within the authority's service area.

DIGEST: HB 1847 would amend Water Code, chapter 36 to validate governmental acts or proceedings of groundwater conservation districts one year after their effective date. The bill would not apply to governmental acts or proceedings

in cases where a lawsuit to annul or invalidate them had been filed within that first year.

The bill would not validate:

- ! an act or proceeding that was void at the time it occurred;
- ! an act or proceeding that was a misdemeanor or felony under state or federal law at the time it occurred; or
- ! a rule that, at the time it was passed, was preempted by a state or federal statute, including Alcoholic Beverage Code, secs. 1.06 and 109.57.

The bill would not apply to any matter that, as of the bill's effective date, was involved in litigation ultimately resulting in the matter being held invalid by a final court judgment, or that already had been held invalid.

The bill would also amend Water Code, chapter 49 to validate governmental acts or proceedings of districts or authorities created by authority of the Texas Constitution under general or special law and acts or proceedings of special water authorities.

The bill would amend chapter 49 with language identical to that used to validate the governmental acts or proceedings of chapter 36 groundwater districts, with one exception. Under the section amending chapter 49, the bill would add three additional types of acts or proceedings that would *not* be validated retroactively:

- ! an act or proceeding of a navigation district or port authority created under general or special law;
- ! an act or proceeding of a groundwater conservation district created under general or special law; and
- ! an act or proceeding of a conservation or reclamation district created under Water Code, chapter 62.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS
SAY:

Water districts, like cities, need protection against legal challenges based on nonsubstantive, technical, or procedural grounds. The Legislature routinely enacts legislation to validate past municipal actions, and it is only fair that water districts receive this protection as well.

The Water Code lays out many detailed procedural requirements for actions concerning the creation of districts, annexation of territory, the exercise of the right of eminent domain, and the issuance of bonds. These acts occasionally provide pitfalls for districts. Small districts without legal departments are particularly vulnerable to legal challenges on nonsubstantive grounds. Blanket validation would free these districts from future exposure to harassing lawsuits based on procedural technicalities.

Some districts in the past were created by residents without legal counsel. Now, when they seek state or federal grants and loans, they need the Attorney General's Office to approve them. The Attorney General's Office is hesitant to approve actions that later could be challenged on procedural grounds. HB 1947 would allow these districts to focus on the business of providing water to their customers and protecting the state's precious water resources rather than spending money to fight lawsuits based on nonsubstantive grounds.

Providing that district acts would be validated one year after they were enacted would create a statute of limitations understood both by districts and by those who want to challenge their acts. All parties would know that an act could be challenged for only one year after enactment and that afterwards it would be protected from legal challenges on procedural grounds. This period would give those with sincere complaints the time to react but would cut off those who try to use procedural irregularities to avoid obeying the law.

OPPONENTS
SAY:

To give those with sincere complaints time to react, the bill should not give a blanket validation to district acts or proceedings until at least three years after they occurred.

NOTES:

A related bill, HB 1755 by R. Lewis, which would validate any government act or proceeding relating to the adoption of such a special water district, was reported favorably as amended by the House Land and Resource Management Committee on April 6.

Another related bill, SB 1770 by Shapiro, which would validate certain actions of the Dallas County Utility and Reclamation District, including elections, bond issuance, and tax-rate reduction agreements, passed the Senate on May 3 and was reported favorably by the House Natural Resources Committee on May 5.

SB 1794 by Ratliff, which would validate the creation, establishment, and organization of the Red River Redevelopment Authority, passed the Senate on April 19 and was reported favorably by the House County Affairs Committee on May 5.

HB 485 by Hill, which would validate municipal government acts and proceedings taken before March 1, 1999, was amended on the House floor to validate municipal acts and proceedings three years after their effective date. HB 485 passed the House on May 3 and is scheduled for a public hearing in the Senate Intergovernmental Relations Committee on May 12.