

SUBJECT: Excluding land from certain water districts that do not provide service

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio,
Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: **(On original bill:)**

For — Paul Davis, City of Pasadena; Steve Skarke, Kaneka North America; Dennis Terry; (*Registered, but did not testify*: Holly Deshields, Mike Jackson, Mitsuru Kuwahata, Luis Saenz, and Neil Thomas, Kaneka North America; Steve Hazlewood, The Dow Chemical Company; Mike Meroney, Huntsman Corp.; Hector Rivero, Texas Chemical Council)

Against — John Branch, John Greytok, and Bill Schweinle, Clear Lake City Water Authority; CJ Farley; Nancy Johnson; Lilian Norman Keeney; Douglas Peterson; (*Registered, but did not testify*: Elias Garcia and Jennifer Morrow, Clear Lake City Water Authority; Nina Johnston)

On — Justin Taack, Texas Commission on Environmental Quality

(On committee substitute:)

Against — Lilian Norman Keeney

BACKGROUND: Water Code, sec. 49.3076 governs procedures for excluding land from certain water districts that fail to provide service to the land.

The board of a district that has a total area of more than 5,000 acres is required to call a hearing on the exclusion of land from the district if a landowner whose land had been taxable property within the district for more than 28 years and whose taxes had contributed to the payment of outstanding bonds issued by the district files a petition, with the consent of the owners of a majority of the acreage proposed for exclusion, claiming that the district has not provided the land with retail utility services.

At the conclusion of the hearing, the land must be excluded from the district unless the district presents evidence that the requirements and grounds for exclusion have not been met. Excluded land is not liable for bond debt issued by the district after the land's exclusion.

A petition triggering an exclusion hearing must have been filed before August 31, 2007.

DIGEST:

CSHB 1324 would amend the Water Code to specify procedures for excluding land from certain water districts that failed to provide service to the land.

Hearing. The bill would increase the total acreage of a district subject to the bill from 5,000 to 10,000, and would not apply to a district that supplied raw water wholesale and had fewer than 500 retail customers.

CSHB 1324 would require the land in question to have been included in and taxable by the district for 20 years, instead of 28 years, and the petition would have to have been filed by a landowner who owned land more than half the acreage of which had been included and taxable by the district. The district would be required to hold the hearing triggered by the petition within 60 days of receiving it, and the petition would no longer have to have been filed before August 31, 2007.

Tax liability. The bill would specify that excluded land would still be liable for taxes on outstanding bonds until the excluded land's share of district debt was paid. The excluded land would remain in the district for the limited purpose of assessment and collection of such taxes until the excluded land payment was satisfied. A person could pay the district the excluded land payment, in whole or in part, by delivering payment to the district tax assessor-collector.

The bill would repeal Water Code, sec. 49.3076 (a-1), which currently specifies a land exclusion petition and hearing process in districts with a total area ranging from 1,000 acres to 5,000 acres.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS

CSHB 1324 would create a process to address a local dispute in the Clear

SAY: Lake/Houston area involving a water authority taxing an industrial company in their boundaries without providing utility service.

Kaneka North America is being taxed by the Clear Lake City Water Authority (CLCWA) despite never having received services from the authority. The company purchases potable water, sewage and drainage services, and industrial water from other entities because CLCWA does not have the infrastructure in place to handle their needs. For more than 30 years, Kaneka has been paying taxes to CLCWA, including more than \$589,000 in 2011, without receiving any benefit. The bill would give Kaneka an opportunity to petition for exclusion and to demonstrate at a hearing that CLCWA had failed to provide service. The hearing also would give CLCWA the chance to present evidence to the contrary.

CSHB 1324 still would require companies to pay their portion of the principal amount of outstanding bonds currently paid by the authority. For Kaneka, the anticipated cost associated with this ranges from \$3 million to \$4 million. The company would like to pay this debt up front, which the bill would allow.

OPPONENTS
SAY:

CSHB 1324 would enact a state law in an attempt to deal with a local issue. Kaneka has approached the Legislature for help to de-annex from CLCWA, rather than pursuing a service request it initiated with the Clear Lake Water Authority, citing the authority's alleged failure to provide service. CWA has offered to provide service on several occasions since Kaneka built its Bayport plant in 1982.

While the process involving Kaneka's request for service has stalled due to a dispute about the provision of engineering specifications, the solution proposed by CSHB 1324 is unreasonable and would open the door for any corporation to ask the Legislature for a process to exclude it from other taxing jurisdictions, including school districts, cities, and other special districts. A better approach would be to allow time for Kaneka and CLCWA to resolve the pending utility service request to the mutual benefit of both parties, without enacting a state law that could have consequences reaching beyond this local dispute.

CLCWA is required by law to tax everyone in its boundaries according to the value of their land. Excluding Kaneka would impact all the other residents and businesses in CLCWA because it would remove up to 12 percent of the tax revenue from the authority, which would have to be

made up by other property owners.

OTHER
OPPONENTS
SAY:

While the bill is intended to address a dispute between CLCWA and Kaneka North America, the language intended to apply only to the Clear Lake City Water Authority could impact other districts that also meet the description of the bracket.