

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 846  
By: Lewis, Ron (Brown)  
Natural Resources  
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Committee Report (Substituted)

### **DIGEST**

Currently, Chapter 661, Government Code, requires all state agencies, including river authorities, to establish sick leave pools. Sick leave pools allow agency employees to voluntarily contribute sick leave to a pool for use by employees who have exhausted their sick leave. No explicit authority is provided to water districts, other than river authorities, to establish these pools. This bill would provide permissive authority for sick leave pools for all water districts and authorities operating under Chapter 36 or Chapter 49 of the Water Code. Chapter 36 of the Water Code was enacted in 1995 as a “stand alone” chapter for groundwater conservation districts. Section 36.052 provides that other laws governing the administration or operation of districts do not apply to Chapter 36 districts. Chapter 49 of the Water Code was enacted concurrently to provide administrative provisions for most water districts other than groundwater districts. This bill would add a provision to Chapter 49, Water Code, providing further clarification that it does not apply to districts governed under Chapter 36. Section 49.072, Water Code, disqualifies a director of a water district who becomes a candidate for another office. This provision is problematic as it relates to constitutional provisions for the removal and holdover of district directors. This bill sets forth the administration, management, operation, and authority of water districts and authorities.

### **PURPOSE**

As proposed, C.S.H.B. 846 sets forth the administration, management, operation, and authority of water districts and authorities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to water districts in SECTION 22 (Section 49.233(a), Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.001(8), Water Code, to redefine “waste.”

SECTION 2. Amends Section 36.060, Water Code, to provide that this section prevails over other conflicting or inconsistent law, notwithstanding Section 36.052(a). Prohibits a water district’s fees of office from increasing unless the district’s board by resolution authorizes payment of the higher fees, if the application of this section results in an increase in the fees of office for any district.

SECTION 3. Amends Section 36.068, Water Code, by adding Subsection (d), to authorize the board of directors of water districts and certain authorities to establish a sick leave pool for district employees in the same manner as created for state employees in Chapter 661A, Government Code.

SECTION 4. Amends Section 36.113(a), Water Code, to require a district to require permits for well pumps that will be or are used to obtain water from an aquifer within the boundaries of the district.

SECTION 5. Amends Section 36.1131, Water Code, by adding Subsection (c), to define “beneficial use” for the purposes of Subsection (b)(5).

SECTION 6. Amends Chapter 36D, Water Code, by adding Section 36.123, as follows:

Sec. 36.123. RIGHT TO ENTER LAND. Authorizes certain individuals to go on any land to inspect, make surveys, or perform tests to determine certain information about the property. Requires the cost of restoration to be borne by the district or the water supply corporation.

Provides that district employees and agents are entitled to enter any property within the district's boundaries or adjacent to any reservoir or property owned by the district at any reasonable time for certain purposes. Requires district employees and agents acting under this authority to observe the establishment's rules and regulations and requires the employees and agents to notify any occupant or management and exhibit their credentials.

SECTION 7. Amends Section 49.001(1), Water Code, to redefine "district" to exempt any conservation and reclamation district (district) governed by Chapter 36 from application of this chapter unless a special law creating the district or amending the law creating the district states that this chapter applies to that district. Makes a conforming change.

SECTION 8. Amends Section 49.002, Water Code, by adding Subsection (b), to provide an exception to the application of this chapter to a district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that this chapter applies to that district. Makes a conforming change.

SECTION 9. Amends Section 49.054, Water Code, by adding Subsection (d), to provide that if the board appoints a director to serve as treasurer, that director is not subject to the investment officer training requirements of Section 2256.007, Government Code, unless the director is also appointed as the district's investment officer under Chapter 2256, Government Code. Makes conforming changes.

SECTION 10. Amends Section 49.057(a), Water Code, to authorize an employee of a firm, partnership, corporation, or other entity with which the district has contracted to serve as the investment officer of the district under Section 2256.007, Government Code.

SECTION 11. Amends Section 49.066(a), Water Code, to authorize a district to sue and be sued on written contracts of the district.

SECTION 12. Amends Section 49.069, Water Code, by adding Subsection (d), to authorize the board of directors of the district to establish a sick leave pool for district employees in the same manner as authorized for state employees under Chapter 661A, Government Code.

SECTION 13. Amends Section 49.102, Water Code, by adding Subsection (i), to authorize a district, at an election required under Subsection (a), to submit to the qualified voters of the district the proposition of whether a plan as authorized by Section 49.351 should be implemented or entered into by the district. Makes a conforming change.

SECTION 14. Amends Section 49.105, Water Code, to require a vacancy on the board to be filled for the unexpired term by appointment by a certain date. Authorizes a petition signed by a certain number of registered voters to be presented to the board, if the board has not filled a vacancy by a certain date. Makes conforming changes.

SECTION 15. Amends Section 49.152, Water Code, to authorize the district to issue bonds, notes, or other obligations to borrow money for certain purposes. Makes conforming and nonsubstantive changes.

SECTION 16. Amends Section 49.155, Water Code, as follows:

Sec. 49.155. New heading: PAYMENT OF EXPENSES. Authorizes the district to pay out of bond proceeds all authorized district expenses. Makes conforming changes.

SECTION 17. Amends Chapter 49E, Water Code, by adding Section 49.159, as follows:

Sec. 49.159. MUNICIPALITY'S OBLIGATION ON ANNEXATION OF DISTRICT TO PAY DISTRICT-RELATED COSTS AND EXPENSES OF LANDOWNER OR DEVELOPER. Requires the municipality to pay in cash to the landowner or developer of certain districts, an amount equal to the sum of all actual costs and expenses payable to the landowner or developer in connection with the district that the district, in writing, has agreed to pay and that would otherwise have been eligible for reimbursement from bonds proceeds. Requires, for an annexation occurring before September 1, 1999, the amount owed by a municipality under Subsection (a) to be paid by a certain date. Provides that an amount due but unpaid by the deadline established by this subsection incurs a penalty of six percent beginning on a certain date,

plus one percent for each additional month or part of a month that the debt remains unpaid. Provides that for an annexation occurring on or after September 1, 1999, an unpaid debt begins incurring a penalty on the first day after the date the municipality enacts the annexation ordinance.

SECTION 18. Amends Section 49.211, Water Code, by adding Subsection (e), to authorize a district that is authorized by law to engage in drainage or flood control activities to include certain areas and projects associated with drainage or flood control projects of the district among the district's land, works, improvements, facilities, plants, equipment, and appliances.

SECTION 19. Amends Section 49.212, Water Code, by amending Subsections (a) and (d) and adding Subsections (e)-(g), as follows:

(a) Authorizes a district to adopt and enforce all necessary changes, mandatory fees, or rentals for providing or making available any district facility or service, including fire-fighting activities provided under Section 49.351.

(d) Makes nonsubstantive changes.

(e) Authorizes a political subdivision that pays a fee charged by a district under Subsection (d) to impose and collect the same charge or fee from users of the political subdivision's water, sanitary sewer, or drainage system in order to pay the charge or fee, and the charge or fee by the political subdivision is not an impact fee under Chapter 395, Local Government Code.

(f) Provides that Chapter 2007, Government Code, does not apply to a tax levied, a standby fee imposed, or a charge, fee, or rental adopted or enforced by a district under this code, or Chapter 395, Local Government Code.

(g) Requires a district to base a wastewater charge for a residential customer on the average winter water use by the residential customer during certain months unless certain conditions exist.

SECTION 20. Amends Section 49.215, Water Code, as follows:

Sec. 49.215. New heading: SERVICE TO AREAS OUTSIDE A DISTRICT OR WATER SUPPLY CORPORATION. Authorizes a water supply corporation (corporation), on approval of a service area amendment by Texas Natural Resource Commission (TNRCC) to serve the area, to use the water sold by the political subdivision under a contract to provide service to the service area provided the service does not affect a contract term. Provides that certain contract terms are not effective to the extent the water is used by the corporation within a certain area. Makes conforming changes.

SECTION 21. Amends Section 49.218, Water Code, by adding Subsection (e), to authorize a district or a corporation to issue bonds, notes, or other obligations to acquire property as authorized by this section.

SECTION 22. Amends Section 49.226, Water Code, as follows:

Sec. 49.226. New heading: SALE OR EXCHANGE OF REAL OR PERSONAL PROPERTY. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Chapter 49H, Water Code, by adding Section 49.233, as follows:

Sec. 49.233. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES. Authorizes a district that operates a wastewater collection system to serve land within its boundaries, by rule, to prohibit the installation of private on-site wastewater holding or treatment facilities on land within the district that is not served by such facilities. Requires such a district to agree to pay the owner of a particular tract the costs of connecting the tract to the district's wastewater collection if a certain distance is more than 1,000 feet, subject to TNRCC rules.

SECTION 24. Amends Section 49.271(c), Water Code, to provide that the payment, performance, and bid bonding requirements do not apply to certain contracts. Makes conforming changes.

SECTION 25. Amends Sections 49.273(i) and (j), Water Code, to authorize the board to approve change

orders making certain changes. Prohibits the original contract price from being increased by more than 10 percent of the aggregate of those change orders. Provides that the board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot readily be ascertained or if the nature of the repair work does not readily lend itself to competitive bidding., rather than if the cost for the repair is less than or equal to the advertising requirements of this section. Makes conforming changes.

SECTION 26. Amends Chapter 49I, Water Code, by adding Section 49.279, as follows:

Sec. 49.279. PREVAILING WAGE RATES. Sets forth the procedures for certain districts to establish their prevailing wage rates, in addition to the alternative procedures provided by Section 2258.022, Government Code.

SECTION 27. Amends Section 49.304(a), Water Code, to make conforming changes.

SECTION 28 Amends Chapter 49J, Water Code, by adding Section 49.315, as follows:

Sec. 49.315. ADDING AND EXCLUDING LAND BEFORE CONFIRMATION. Authorizes a district to add or exclude land under certain conditions. Requires that if land is added or excluded as provided by this section, the election to confirm the district required by Section 49.102, is to confirm the district as modified.

SECTION 29. Amends Section 49.327, Water Code, to provide that Title 6, Property Code, does not apply to any personal property held by a district that has not been dissolved by order of TNRCC.

SECTION 30. Amends Section 49.351(a)-(c) and (g)-(j), to authorize a plan required by this subsection to be included in a plan or report otherwise required by this title for the creation of a district or submitted to TNRCC for approval any time after the creation of the district. Provides that a plan approved by TNRCC as part of the creation of the district does not require further approval unless the district materially alters the plan. Makes conforming and nonsubstantive changes.

SECTION 31. Amends Section 51.748, Water Code, to make conforming and nonsubstantive changes.

SECTION 32. Amends Section 53.063, Water Code, to require a person to be a registered voter to be qualified for election as a supervisor. Makes conforming changes.

SECTION 33. Amends Section 54.236, Water Code, to authorize a district to purchase and install street lighting and security lighting in certain areas. Deletes text regarding requirements for the street lighting. Makes conforming changes.

SECTION 34. Amends Chapter 54H, Water Code, by adding Section 54.748, as follows:

Sec. 54.748. EXCLUSION OF LAND WITH OUTSTANDING BOND DEBT. Provides that this section only applies to certain districts. Authorizes certain owners of land in a district to petition the district to exclude the owner's land or other property. Sets forth certain requirements for the petition. Sets forth the grounds for exclusion of land or other property. Requires the board to consider all engineering data and other evidence presented and determine if the facts support an affirmative finding on the alleged grounds for exclusion. Requires the board to enter an order excluding the land and redefining the boundaries to reflect the exclusion, if the board finds in the affirmative. Requires the board to perform certain actions by a certain date concerning the exclusion order. Provides that the exclusion of land does not impair the rights of the holders of any outstanding bonds, warrants, or other certificates of indebtedness of the district. Provides that excluded land pledged as security for any outstanding debt of the district remains pledged for its pro rata share of that debt until final payment is made. Requires the district to continue to levy and collect taxes on the excluded property at the same rate until a certain condition exists. Requires the taxes collected on the excluded property to be applied only to the payment of the excluded property's pro rata share of that debt. Requires the excluded land or other property's pro rata share of the debt to be a share of all outstanding principal and interest determined by a certain formula. Authorizes the owner of any part of the excluded land or other property at any time to pay in full the owner's share of the pro rata share of the district's debt outstanding at the time the property is excluded. Authorizes the district to issue any unissued additional debt approved by the

district's voters before exclusion without holding a new election, after any land is excluded. Provides that additional debt issued after property is excluded from the district may not be payable from and does not create a lien against the taxable value of the excluded property.

SECTION 35. Amends Section 54.772(1), Water Code, to redefine “recreational facilities.”

SECTION 36. Amends Section 54.774(a), Water Code, to prohibit a district from issuing bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities or street lighting.

SECTION 37. Amends Section 57.092(a), Water Code, to make conforming and nonsubstantive changes.

SECTION 38. Amends Chapter 51D, Water Code, by adding Section 51.131, as follows:

Sec. 51.131. PENALTY FOR VIOLATION OF REGULATION. Provides that a person who violates a regulation adopted by a district under this chapter or other law commits a Class C misdemeanor.

SECTION 39. Amends Section 661.001(4), Government Code, to redefine “state agency.” Makes conforming changes.

SECTION 40. Amends Article 1112, V.T.C.S., by adding Section 3, to authorize a municipality to sell to a district operating under the authority of Section 59, Article XVI, Texas Constitution, a water or sewer system owned by the municipality without a required election.

SECTION 41. Repealers: Sections 49.072 (Director's Candidacy for Other Office: Ineligibility), 54.103 (Election of Directors; Terms of Office), and 60.350 (Bonds), Water Code.

SECTION 42. (a) Provides that the repeal of Section 60.350, Water Code, does not affect the applicability of Section 49.181, Water Code, to bonds with regard to which an application and report were submitted to TNRCC under Section 49.181(b), Water Code, before the effective date of this Act. Provides that Section 60.350, Water Code, continues in effect as to those bonds for that purpose.

(b) Provides that the repeal of Section 60.350, Water Code, does not affect the applicability of Section 49.183 to bonds issued before the effective date of this Act. Provides that Section 60.350, Water code continues in effect as to those bonds for that purpose.

(c) Provides that the change in law made by this Act to Section 51.748, Water Code, applies only to divisions of districts as provided by Section 51.748, Water Code, for which the appropriate board orders an election on or after the effective date of this Act. Provides that the division of the district for which the board ordered an election before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in existence for that purpose.

SECTION 43. Effective date: September 1, 1999.

SECTION 44. Emergency clause.