

## **BILL ANALYSIS**

Senate Research Center  
77R4646 SGA-F

H.B. 702  
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Natural Resources  
4/23/2001  
Engrossed

### **DIGEST AND PURPOSE**

Drainage districts were originally created under the Texas Constitution during the early part of the 20th century. The drainage district laws were subsequently adopted by the legislature in 1907 and later codified into the Water Code. Until the last few years, the laws had remained virtually unchanged since their enactment. Recent attempts to modify these provisions did not include the issuance of bonds or other financing statutes. H.B. 702 modernizes provisions that have become outdated and modifies provisions relating to the issuance of bonds and other instruments of indebtedness of drainage districts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 56.015(a), Water Code, to require any person filing a petition to deposit with the clerk of the commissioners court cash, in an amount to be determined by the county election officer (rather than \$200), which is required to be held by the clerk until the result of the election to create the district and issue bonds is officially announced.

SECTION 2. Amends Section 56.032(b), Water Code, to require the governing body of the drainage district (board), to operate under Article XVI, Section 59 (Conservation and Development of Natural Resources; Conservation and Reclamation Districts), of the Texas Constitution, to adopt a resolution proposing the change and schedule a hearing on the resolution. Requires the hearing to be held not earlier than the 30th day but not later than the 60th day after the date the resolution is adopted. Requires the board to give notice of the time and place of the hearing on the resolution by posting a copy of the resolution for at least the 20 days preceding the date of the hearing in five public places in the county. Requires one of the copies to be posted on the courthouse door and the other copies to be posted within the boundaries of the district. Authorizes the board, following the hearing, to adopt a resolution authorizing the district to operate under the provisions of Article XVI, Section 59, of the Texas Constitution. Deletes language regarding the district presenting a petition and making a deposit required by Sections 56.014 and 56.015 of this code. Deletes language regarding the commissioners court giving notice and holding a hearing.

SECTION 3. Amends Chapter 56C, Water Code, by adding Section 56.062, as follows:

Sec. 56.062. ELIGIBILITY REQUIREMENTS FOR DIRECTORS. Requires a person, to be eligible to serve as a director, to satisfy the requirements of Section 141.001(a) (regarding eligibility requirements for public office), Election Code.

SECTION 4. Amends Section 56.069(a), Water Code, to prohibit the transfer, in any district in which the board is elected, from being made unless the transfer is approved by a majority of the voters voting on that issue at an election held in the district.

SECTION 5. Amends Section 56.128, Water Code, as follows:

Sec. 56.128. Provides that any person who wilfully fills up, cuts, injures, destroys, or impairs the usefulness of any canal, drain, ditch, watercourse, or other work constructed, repaired, or improved by a district to drain and protect from overflow of water, upon conviction is punishable by confinement in the county jail for not more than two months or by a fine of not more than \$1,000 (rather than \$100).

SECTION 6. Amends Sections 56.182(b) and (c), Water Code, as follows:

(b) Provides that the interest and sinking fund consists of that portion of tax collections necessary for paying principal and interest on bonded indebtedness, and authorizes this fund to be invested for the benefit of the district as provided by law (rather than in bonds and securities approved by the attorney general).

(c) Requires each fund to be held for the purpose for which it was created, and authorizes the board (rather than the commissioners court), if money is improperly paid from either fund, to transfer money in the two funds to restore the fund which was improperly used. Deletes text regarding the county treasurer.

SECTION 7. Amends Sections 56.202 and 56.203, Water Code, as follows:

Sec. 56.202. Makes a conforming change.

Sec. 56.203. Requires the board, before any bonds are issued, to provide a well-bound book in which the board (rather than the county clerk) is required to keep a record of certain items. Makes conforming changes. Deletes text providing that the county clerk is entitled to receive certain fees.

SECTION 8. Amends Sections 56.204(a), (b), and (c), Water Code, as follows:

(a) Requires bonds to be issued in the name of the district, signed by the board president (rather than the county judge), and attested by the board secretary (rather than the county clerk), and requires each bond to have the seal of the district (rather than the commissioners court) affixed to it.

(b) Requires the bonds to be issued in denominations and requires them to bear interest as authorized by the board. Deletes text requiring the bonds to be issued in denominations of not less than \$100 nor more than \$1,000. Deletes text requiring the bonds to bear interest which is payable annually or semiannually.

(c) Makes a conforming change.

SECTION 9. Amends Section 56.205(a), Water Code, to require the district, after the bonds are sold (rather than before any bonds are offered for sale), to submit certain items to the attorney general.

SECTION 10. Amends Sections 56.207, 56.209, and 56.210, Water Code, as follows:

Sec. 56.207. Requires the board, rather than the county judge, to advertise and sell the bonds on the best terms and for the best price possible. Deletes text regarding bonds being registered and the county judge acting under the direction of the commissioners court. Makes conforming changes. Requires the board to deposit (rather than pay to the county treasurer) all money from the sale of the bonds as it is received into the construction and maintenance fund of the district. Deletes text requiring the county treasurer to place the money in the fund to the credit of the district. Deletes text entitling the county judge to a percentage of the amount received

from the sale of bonds.

Sec. 56.209. Makes a conforming change.

Sec. 56.210. (a) Authorizes a district to refund outstanding bonds by issuing new bonds as provided by Chapter 1207, Government Code. Deletes text regarding the consent of the bondholders and issuing new coupon bonds in the place of outstanding bonds.

(b) Deletes existing Subsection (b). Redesignates existing Subsection (d) as Subsection (b) and amends text to require the district to issue the bonds in denominations to be determined by the board (rather than of \$100 or a multiple of \$100).

Deletes existing Subsections (c), (e), (f), and (g).

SECTION 11. Amends Sections 56.211(b) and (c), Water Code, to make conforming changes.

SECTION 12. Amends Sections 56.212(a), (b), and (c), Water Code, to make conforming changes. Requires the bonds together with the record relating to them to be submitted to the attorney general for approval, as required by Section 49.184.

SECTION 13. Amends Section 56.241, Water Code, to make a conforming change.

SECTION 14. Amends Section 56.242, Water Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Makes a conforming change. Deletes text regarding taxes levied to pay bonded indebtedness.

(c) Sets forth guidelines regarding the board issuing negotiable notes payable from the maintenance tax authorized by Subsection (a) to meet the financial obligations of the district, as described by Subsection (a).

(d) Authorizes the board to issue negotiable notes for certain purposes. Authorizes the notes to be payable from and secured by a lien on and pledge of any available funds of the district, including the proceeds of a maintenance tax. Requires notes issued under this subsection to be payable over a period not to exceed 20 years from the date of issuance and if issued for a term longer than one year to be treated as "debt" as defined by Section 26.012 (Definitions), Tax Code. Prohibits the maximum debt service on all notes issued under this subsection from exceeding a certain amount in any district fiscal year.

SECTION 15. Amends Sections 56.249, 56.251, 56.292, and 56.293, Water Code, as follows:

Sec. 56.249. Deletes text referencing Article XVI, Section 59, of the Texas Constitution. Makes conforming changes. Deletes text requiring the commissioners court to order the clerk to perform certain functions. Deletes text requiring the district to pay the clerk \$1 for each notice he posts and five cents a mile for each mile traveled in posting the notices. Requires an election to approve the levy of taxes on the benefit basis to be held on the earliest legal date that occurs on or after the 30th day after the date the board orders the election. Deletes text requiring such an election to be held during the period beginning on the 30th day and ending with the 60th day after the date of the election order.

Sec. 56.251. Requires the board, in districts levying taxes on the benefit basis, to appoint three freehold taxpaying voters in the district as a committee (rather than a board) to determine the

number of acres of land owned by each landowner in the district. Makes conforming changes.

Sec. 56.292. Authorizes any resident freehold taxpayer of the district (rather than any person), at a regular meeting of the board, to present a petition signed by at least five percent of the qualified voters (rather than 50 of the resident freehold taxpayers) of the district, or if there are fewer (rather than less) than 100 resident freehold taxpayers in the district, then by one-third of the resident freehold taxpayers requesting the dissolution of the district, and on verification of the petition signatures, requires the board to order an election to be held in the district at the earliest legal time to determine whether or not the district should be dissolved.

Sec. 56.293. Requires any person filing a petition to deposit with the board an amount sufficient to pay the cost of conducting an election within the district (rather than depositing with the county clerk \$200 in cash). Makes conforming changes. Requires the board, if the result of the election favors dissolving the district, to return the deposit to the petitioners or their agent or attorney, and requires the cost and expenses of holding the election to be paid by (rather than charged to) the district. Makes conforming changes. Deletes text regarding the collection of debts and vouchers signed by the county judge.

SECTION 16. Amends Section 56.295(b), Water Code, to make conforming changes.

SECTION 17. Amends Section 56.311, Water Code, by adding Subsection (d), to require the commissioners court, before entering an order discharging the trustee and the surety on the trustee's bond and closing the trust estate, to order all transactions of the trustee audited by an independent certified public accountant. Requires a copy of the audit to be filed with the commissioners court and the Texas Natural Resource Conservation Commission, and requires a copy to be provided to the trustee.

SECTION 18. Repealers from the Water Code:

Section 56.137 (Purchases of and Contracts for More Than \$50 But Less Than \$500 by Districts in Certain Counties);

Section 56.206 (Bonds: Registration); and

Section 56.208 (Bond of County Judge).

SECTION 19. Makes application of Section 56.128, Water Code, as amended by this Act, prospective regarding offenses committed. Provides that, for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 20. Makes application of this Act prospective regarding bonds issued.

SECTION 21. Effective date: September 1, 2001.