

BILL ANALYSIS

Senate Research Center

H.B. 3335

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Natural Resources

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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are approximately 1,300 active water districts within the State of Texas. These districts include municipal utility districts, fresh water supply districts, and, among others, water control and improvement districts. In general these districts have the authority to issue bonds, levy taxes, exercise the power of eminent domain, supply treated and untreated water, implement drainage and flood control projects, develop and maintain parks and recreational facilities, and, in certain cases, build roads. As such, they are governed by elected boards that have the authority to adopt and enforce a variety of rules and regulations.

This bill is an omnibus bill proposing several changes relating to the powers and authority of water districts.

H.B. 3335 amends current law relating to the powers of certain water districts.

[Note: While the statutory reference in this bill is to Texas Natural Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

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 49.101, Water Code, as follows:

Sec. 49.101. GENERAL. (a) and (b) Creates these subsections from existing text.

(c) Authorizes the board of a district to contract with a person to serve as the district's agent in the same manner as another officer or employee of the district under Section 31.123 (Appointment of Agent During Election Period), Election Code.

(d) Provides that Sections 32.009 (Notice of Appointment) and 42.002 (Required Use of County Precincts), Election Code, do not apply to an election held by a district.

(e) Requires a person, notwithstanding the requirements of Section 32.051 (General Eligibility Requirements), Election Code, to serve as an election judge in an election held by a district, to be a registered voter of the county in which the district is located.

(f) Provides that notwithstanding Sections 61.012 (Access by Persons with Disabilities) and 61.013 (Access by Persons with Disabilities: Elections of Certain Political Subdivisions), Election Code, a district is exempt from the acquisition, lease, or use of an electronic voting system for an election if the election is a conformation election or an election held jointly with a confirmation election on the same date and in conjunction with the confirmation election, except for an election in which a federal office appears on the ballot; the most recently

scheduled district directors election was not held, as provided by Section 2.053(b) (relating to requirements or an election), Election Code; or fewer than 250 voters voted at the most recently held district directors election.

(g) Requires a district eligible for the exemption under Subsection (f) to publish notice in a periodical of general circulation in an area that includes the district and mail notice to each voter in the district regarding the district's intention to hold an election without providing a voting station that meets the requirements for accessibility under 42 U.S.C. (The Public Health and Welfare) Section 15481(a)(3) (Accessibility for Individuals with Disabilities) on election day and during the period for early voting by personal appearance. Requires that the notice provide that any voter in the district may request the use of a voting station that meets those requirements to accommodate voting by a person with a disability and provide information on how to submit such a request. Requires the district, on receiving such a request, to comply with the request.

SECTION 2. Amends Subchapter D, Chapter 49, Water Code, by adding Section 49.1045, as follows:

Sec. 49.1045. JOINT ELECTIONS WITH COUNTIES. (a) Provides that this section applies only to a district with 10 or fewer registered voters.

(b) Authorizes a district that holds an election jointly with a county in which the district is wholly or partly located to provide for a certification of the voting results if the election results indicate that there were more votes cast in the general election than the number of registered voters in the district. Authorizes the district, to certify the district votes, to have each person whose signature is on the sign-in sheet for the joint election certify the manner in which the person voted in the election and that the person was a qualified voter on the date of the election, and the certified votes are required to be used as the official election results.

SECTION 3. Amends Section 49.107, Water Code, by adding Subsection (i), to provide that Section 375.161 (Certain Residential Property Exempt), Local Government Code, does not apply to an impact fee, tax, or other requirement for payment for water, sewer, drainage, reclamation, flood control, road, or park and recreational services or improvements of a district that provides, or proposes to provide, those services or improvements.

SECTION 4. Amends Section 49.108, Water Code, by adding Subsections (g), (h), (i), and (j), as follows:

(g) Requires that a substantially final form of the contract, not later than the 10th day before the date an election is held to authorize the contract, be filed in the office of the district and be open to inspection by the public. Provides that the contract is not required to be attached as an exhibit to the order calling the election to authorize the contract.

(h) Authorizes a single contract to contain multiple purposes or facilities authorized by one or more constitutional provisions. Authorizes a contract described by this subsection to be submitted for approval in a single proposition at an election.

(i) Provides that a contract between districts for the provision of facilities or services is not required to specify the maximum amount of bonds or expenditures authorized under the contract if the contract provides that the service area cannot be enlarged without the consent of at least two-thirds of the districts that are included in the service area or served by the facilities or services provided for in the contract.

(j) Authorizes a contract to generally describe the facilities to be acquired or financed by the district without reference to specific constitutional provisions.

SECTION 5. Amends Section 49.151(c), Water Code, to authorize the board to allow disbursements of district money to be transferred by federal reserve wire system or by electronic

means. Authorizes the board by resolution to allow the wire or electronic transfers to accounts in the name of the district or accounts not in the name of the district.

SECTION 6. Amends Section 49.194, Water Code, by amending Subsections (a) and (b) and adding Subsection (h), as follows:

- (a) Creates an exception under Subsection (h).
- (b) Creates an exception under Subsection (h).
- (h) Requires a special water authority to submit a copy of the report to the executive director for filing within 160 days after the close of the special water authority's fiscal year.

SECTION 7. Amends Section 49.213, Water Code, by adding Subsection (d) to provide that a written contract between a district and any person, including any public or private entity, for the provision of goods or services to the district is a contract subject to Subchapter I (Adjudication of Claims Arising Under Written Contracts with Local Governmental Entities), Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments), Local Government Code. Provides that the district and any person, including any public or private entity, waive sovereign immunity to suit for the purpose of adjudicating a claim for a breach of the contract, subject to the terms and conditions of Subchapter I, Chapter 271, Local Government Code.

SECTION 8. Amends Section 49.216, Water Code, by amending Subsection (e) and adding Subsection (f), as follows:

- (e) Requires any peace officer who is directly employed by a district, before beginning to perform any duties and at the time of appointment, to take an oath and execute a bond conditioned on faithful performance of such officer's duties in the amount of \$1,000 payable to the district.
- (f) Provides that a peace officer contracted for by the district, individually or through a county, sheriff, constable, or municipality, is an independent contractor, and the district is responsible for the acts or omissions of the peace officer only to the extent provided by law for other independent contractors.

SECTION 9. Amends Section 49.273(d), Water Code, to require that the notice be published once a week for two consecutive weeks before the date that the bids are opened, and that the first publication be not later than the 14th, rather than the 21st, day before the date of the opening of the sealed bids. Makes conforming changes.

SECTION 10. Amends Section 49.351, Water Code, by amending Subsections (a), (b), (c), (f), (i), and (l), and adding Subsection (m), as follows:

- (a) Authorizes a district providing potable water or sewer service to household users to establish, operate, and maintain, finance with ad valorem taxes, mandatory fees, or voluntary contributions, and issue bonds for a fire department to perform all fire-fighting services within the district as provided in this subchapter and is authorized to provide for the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply, rather than issue bonds or impose a mandatory fee, with voter approval, for financing a plan approved in accordance with this section, including, the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

- (b) Requires the district or districts, after complying with the requirements of this section, to provide an adequate system and water supply for fire-fighting purposes, authorizes the district to purchase necessary land, to construct and purchase necessary buildings, facilities, and equipment, and to employ or contract with a fire department to employ all necessary personnel including supervisory personnel to operate the fire department. Deletes existing text requiring the district or districts, after approval of the

district electors of a plan to operate, jointly operate, or jointly fund the operation of a fire department, and after complying with Subsections (g) (relating to a prohibition on the board from subdividing work to avoid certain advertising requirements), (h) (relating to a prohibition against accepting bids that include substituted items unless certain conditions are met), and (i) (relating to authorization for the board to approve certain changes in plans or specifications), to provide certain supplies and authorizing the district to conduct certain actions.

(c) Provides that bonds are required to be authorized and may be issued and ad valorem taxes are required to be authorized and may be imposed for financing a plan approved in accordance with this section as provided by law for authorization and issuance of other bonds and authorization and imposition of other ad valorem taxes of the district. Deletes existing text requiring that bonds for financing a plan approved in accordance with this section be authorized and may be issued, and requiring a district to be authorized to levy a tax to pay the principal of and interest on such bonds, as provided by law for authorization and issuance of other bonds of the district.

(f) Requires a district, before the district imposes an ad valorem tax or issues bonds payable wholly or partly from ad valorem taxes to finance the establishment of a fire department, a contract to operate a joint fire department, or a contract with another person to perform fire-fighting services within the district, to comply with the provisions of Subsections (g), (h), and (i). Provides that a district that funds fire-fighting services with revenue, including mandatory fees or voluntary contributions, is not required to comply with the provisions of Subsection (g), (h), or (i). Makes nonsubsantive changes.

(i) Requires the district, after approval of a plan by the Texas Natural Resource Conservation Commission (TNRCC), to submit to the electors of the district at the election to approve bonds payable wholly or partly from ad valorem taxes or to impose ad valorem taxes, rather than to impose a mandatory fee, for financing the plan which may be held in conjunction with an election required by Section 49.102 (Confirmation and Director Election), the proposition of whether or not the plan should be implemented or entered into by the district, rather than for financing the plan, or if no bonds or fees are to be approved, at an election called for approval of the plan, which may be held in conjunction with an election required by Section 49.102, the proposition of whether or not the plan should be implemented or entered into by the district. Deletes existing text requiring that the ballots at the election be printed with certain language, as applicable, to provide for voting for or against the proposition.

(l) Authorizes a district providing potable water or sewer service to household users as part of its billing process to collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting services to the district, rather than authorizes a district providing potable water or sewer service to household users as part of its billing process, notwithstanding the requirements of Subsections (a)-(j) (relating to fire departments), to collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting services to the district.

(m) Requires the district, notwithstanding Subsection (l), if a customer makes a partial payment of a district bill for water or sewer service and includes with the payment a voluntary contribution for fire-fighting services, to apply the voluntary contribution first to the bill for water or sewer service, including any interest or penalties imposed. Requires that any amount remaining be used for fire-fighting services.

SECTION 11. Amends Section 49.4645(a), Water Code, to prohibit the outstanding principal amount of bonds, notes, and other obligations issued to finance parks and recreational facilities supported by ad valorem taxes, rather than payable from any source, from exceeding an amount equal to one percent of the value of the taxable property in the district as shown by the tax rolls of the central appraisal district at the time of the issuance of the bonds, notes, and other obligations or an amount greater than the estimated cost provided in the park plan under Subsection (b) (relating to a requirement that the board file certain information relating to the public park plan), whichever is smaller.

SECTION 12. Amends Section 51.523, Water Code, to require that the ballot for an election under this subchapter be printed to provide for or against defining the area to be taxed or designating the property to be served, affected, and taxed and, if applicable, issuing bonds and imposing a tax to retire the bonds or imposing a maintenance tax not to exceed the rate, which is required to be specified in the ballot proposition, provided by the proposed plan of taxation, rather than printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, and levy of a tax to retire the bonds."

SECTION 13. Amends Section 51.527, Water Code, by adding Subsection (c), to authorize the board, unless a maintenance tax is imposed in the defined area or on the designated property, once bonds issued for the defined area or designated property are paid off or defeased, to declare the defined area dissolved or to repeal the designation of the designated property, at which time the board is required to cease imposing taxes on the property located in the defined area or on the designated property.

SECTION 14. Amends Section 54.236, Water Code, to authorize a district, subject to the provisions of this section, to purchase, install, operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way or property owned by the district, rather than within the boundaries of the district. Prohibits a district, other than a district exercising powers under Section 54.234 (Acquiring Road Powers) or Subchapter N (Recreational Facilities), Chapter 49 (Provisions Applicable to all Districts), from issuing bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting.

SECTION 15. Amends Section 54.739, Water Code, as follows:

Sec. 54.739. New heading: SUBSTITUTING PROPERTY OF EQUAL VALUE. Provides that after the district is organized and has obtained voter approval for the issuance of, or has sold, bonds payable wholly or partly from ad valorem taxes, property within the district boundaries subject to taxation that does not need or utilize the services of the district may be excluded and other property, rather than land, not within the boundaries of the district may be included within the boundaries of the district without impairment of the security for payment of bonds, rather than the bonds, or invalidation of any prior bond election, as provided by this section and Sections 54.740 through 54.747 (relating to Municipal Utility Districts). Deletes existing text providing that after the district is organized and acquires facilities with which to function for the purposes for which it was organized, and votes, issues and sells bonds for such purposes, land within the district boundaries subject to taxation and does not need or utilize the services of the district is authorized to be treated in certain ways.

SECTION 16. Amends Section 54.744, Water Code, as follows:

Sec. 54.744. IMPAIRMENT OF SECURITY. (a) Creates this subsection from existing text. Requires that the land proposed for inclusion, for purposes of the board's consideration of the applications, be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district under certain circumstances, including with respect only to a district with outstanding bonds or contract obligations, rather than the district's outstanding bonds or contract obligations are, payable in whole or in part by a pledge of net revenues from the ownership or operation of the district's facilities, the projected net revenues to be derived from the property, rather than lands, to be included in the succeeding 12-month period, as determined by the district's engineer, equals or exceeds the projected net revenues that would otherwise have been derived from the property, rather than lands, to be excluded during the same period. Makes a nonsubstantive change.

(b) Provides that for purposes of this section, the taxable value of included property means the market value of the property if, before or contemporaneously with the inclusion of the property in the district, the owner of the property waives the right to special appraisal of the property as to the district as authorized by Section 23.20 (Waiver of Special Appraisal), Tax Code.

SECTION 17. Reenacts Section 388.005, Health and Safety Code, by adding Chapters 262 (S.B. 12) and 939 (H.B. 3693), Acts of the 80th Legislature, Regular Session, 2007, and amends it as follows:

Sec. 388.005. New heading: ENERGY EFFICIENCY PROGRAMS IN INSTITUTIONS OF HIGHER EDUCATION AND CERTAIN GOVERNMENTAL ENTITIES. (a) Makes no changes to this subsection.

(b)-(f) Makes no changes to these subsections.

(g) Provides that this section does not apply to the electricity consumption of a district as defined by Section 36.001 (Definitions) or 49.001 (Definitions), Water Code, that relates to the operation and maintenance of wastewater collection and treatment, water supply and distribution, or stormwater diversion, detention, or pumping facilities or improvement.

SECTION 18. Amends Section 43.0751(a)(1), Local Government Code, to redefine "district."

SECTION 19. Amends Section 43.0751, Local Government Code, by adding Subsection (r), to require that an area, to be annexed for limited purposes under this section, be in the municipality's extraterritorial jurisdiction; and contiguous to the corporate or limited purpose boundaries of the municipality, unless the district consents to noncontiguous annexation pursuant to a strategic partnership agreement with the municipality.

SECTION 20. Effective date: September 1, 2009.