

Legislation Affects Water Districts in Number of Ways

Several bills passed this legislative session have a direct impact on water districts and their boards of directors.

Per Diem Option

In an apparent attempt to provide relief to state employees and other persons receiving all or part of their income from state funds – such as teachers and other employees of school districts – Sen. Gonzalo Barrientos (D-Austin) secured passage of SB 1316.

The Texas Constitution prohibits persons who receive all or part of their income from state funds from also receiving compensation for service as a director of a water district. Under SB 1316, water district directors will be able to choose an alternative to receipt of their fee of office and reimbursement expenses. In an effort to work around the Constitutional prohibition, SB 1316 provides that directors may choose to receive a simple per diem of \$100. The total per diems a director may receive under this provision, however, may not exceed \$6,000 per year.

Should a director choose to receive the per diem option, he or she is required to file with the district a general description of duties performed for such per diem.

This bill probably does not solve the problem of compensation to state employees, including teachers, that it was designed to solve. If there is doubt, perhaps an attorney general's opinion on the issue could be requested.

Signing of Contracts

Other legislation provides water districts greater flexibility in the execution of contracts and other official documents. Specifically, Section 49.054 of the Texas Water Code currently provides that the president of the board of directors is the chief executive officer of the district and shall execute all documents on behalf of the district.

However, HB 2688 as passed by the Texas Legislature and sent to the Governor for signature, will allow the board of directors of a water district to, by resolution, authorize its general manager or other employees to execute a document or documents on behalf of the district.

Certain types of water districts also have been provided authority to repair or maintain streets within the district. Specifically, SB 1878, as passed, permits a municipal utility district operating under Chapter 54 of the Texas Water Code – that has been in existence for at least 10 years – to repair or maintain a street within the district in certain circumstances.

Repairs may be made where it is necessary to “prevent” the condition of a street from adversely affecting the control, storage, preservation and distribution of the state's storm and flood waters, adversely affecting the control, abatement or change of any

shortage or harmful excess of water or otherwise impeding a district's ability to accomplish its purposes.”

In addition, such a district may issue bonds for the purpose of repairing or maintaining streets within the district, if the bonds have been authorized by a majority vote of the residents of such district.

Under other passed legislation, SB 1175, a director of a municipal utility district operating under Chapter 54 of the Texas Water Code may now be subject to a recall election. Under this new provision, 10 percent of the qualified voters of a municipal utility district may initiate a recall election of a district board member by filing a petition with the general manager or attorney for the district, demanding the removal of a director. If the petition is determined to be valid and in compliance with the requirements of the new law, then – if the director whose removal is sought does not resign within five days after the presentation of the petition to the district's board of directors – the board is required to order and hold a recall election not less than 30 or more than 60 days after the petition has been presented to it.

If the majority of votes cast at the recall election favor the removal of the director, the board must immediately declare the director's office vacant and call an election to replace the recalled director. A director removed by recall may not be a candidate in the election to fill the newly created vacancy, nor may the board appoint such director to fill an unexpired term.

On the plus side, a recall petition may not be filed against a director within six months after the director takes office, and a director may not be subject to more than one recall election during any one term of office.

Candidacy

In other election-related legislation, a new section 49.072 has been added to the Texas Water Code relating to a water district director's eligibility to continue serving as a board member if he or she files to become a candidate for any other office.

Under current law, a water district director may continue serving in such capacity even if he or she has filed to become a candidate for another elected office, unless the elected office is in the Texas Legislature. In fact, the director could be elected to and hold two offices, provided that such offices do not violate the constitutional and common law prohibitions against holding two offices of emolument or holding two incompatible offices.

However, effective Sept. 1, 1997, HB 331 provides that a person serving as a director of a district who becomes a candidate for another office is no longer qualified to serve as director.

As most water district directors will remember, during 1995, the Legislature adopted a new Chapter 49 to the Texas Water Code, significantly revising all of the general administrative provisions relating to water districts.

‘Clean-up’, Clarification

As with any major revision to a code, certain “clean up” and clarification will always be necessary in subsequent legislative sessions. Accordingly, the Legislature this session passed SB 1865 to make several clarifications and modifications to Chapter 49.

While many amendments are contained in SB 1865, a few of the more significant modifications include (1) a revision to make it clear that repair and renovation projects, as well as construction projects, must be competitively bid; (2) the addition of a definition to the section of Chapter 49 authorizing firefighting activities by water districts (that definition now defines firefighting activities to include emergency medical services); (3) the elimination of the local government code requirement that water districts publish annual financial requirements; and (4) a revision of the truth in taxation requirements as it applies to water districts.

Failed to Pass

Many other bills regarding water districts did not make it through the legislative process. Rep. Fred Bosse’s (D-Houston) bill requiring directors to complete six hours of training prior to their one-year service date was left to die a slow death in the House Natural Resources Committee.

Sen. Jon Linday’s (R-Houston) attempt to create the North Harris County Regional Water Authority with SB 1909 also died in the House. Many of the central issues of that bill were embroiled in the annexation debate.

UNDER OTHER PASSED LEGISLATION, SB 1175, A DIRECTOR OF A MUNICIPAL UTILITY DISTRICT OPERATING UNDER CHAPTER 54 OF THE TEXAS WATER CODE MAY NOW BE SUBJECT TO A RECALL ELECTION.