

Legislation Overview for 2002

by Kaye C. Corprew

Over 1500 bills were enacted by the 77th Texas Legislature in 2001. Of those 1500 Acts, Senate Bill 1444 will have the most impact on water districts. Other bills which have become or will become effective as a result of the 77th Session and that affect political subdivisions in general, amend the Public Funds Investment Act, the Tax Code, the Election Code, and the Open Meetings Act. A few of the more interesting revisions are discussed in this article, all of which became effective September 1, 2001, unless otherwise noted.

Revisions to Water Laws

Directors Fees

The maximum fees of office for a day of service that a director of a municipal utility district or other general law district now earn have increased from \$100 to \$150.

The annual cap of \$6,000 has not changed.

Truth in Taxation

Taxation procedures have been amended to provide that certain sections of the Tax Code do not apply to maintenance, debt service, or contract taxes levied and collected by water districts. The affected sections of the Tax Code that are no longer applicable to water districts require certain political subdivisions to:

- (i) Calculate the effective tax rates and rollback tax rates;
- (ii) Use direct mailing or newspaper publication of notices regarding effective and rollback tax rates;
- (iii) Hold public hearings (and newspaper notice thereof) if a district adopts a tax rate that exceeds the lower of the rollback tax rate or 103 percent of the effective tax rate;
- (iv) Adopt the tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit.

Granting of Easements

Granting of easements may now be required by a district or water supply corporation as a condition for service. An application for service may be required to grant a permanent recorded easement to allow the district to serve the application as well as the district's purposes in providing system-wide services. Additionally, as a condition of service to a new subdivision, a district or water supply corporation may require a developer to provide permanent recorded easements to and throughout the subdivision adequate for service for the subdivision's anticipated service demands when the subdivision is fully occupied.

Septic Services

A district may now prohibit the installation of new private on-site wastewater holding or treatment facilities. A district that prohibits such installation shall agree to pay the owner of the tract the costs of connection if the distance along a public right-of-way

or utility easement from the nearest point of the district's system to the boundary line of the tract is 300 feet or more.

Change Orders and Competitive bids

Contracts for the procurement of services are not required to be competitively bid as are construction contracts. Furthermore, the competitive bid requirements do not apply to contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition.

Change orders in construction contracts may be authorized by a board of directors as long as all change orders to the contract do not increase the price of the contract by more than 10 percent of the original contract price. Additional change orders may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

Repairs to district facilities are not required to be advertised or competitively bid if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not lend itself to competitive bidding.

Recreational Facilities & Street Lighting

Recreational facilities and street lighting powers are granted to all districts governed by Chapter 49 of the Water Code. The recreational facility powers were previously granted only to municipal utility districts. Levee improvement districts, water control and improvement districts and others now have the ability to provide recreational facilities. Districts, however, may not issue bonds supported by ad valorem taxes to finance recreational facilities. Districts are also authorized to purchase, install, operate and maintain street and security lighting. Previous law granted this power only to municipal utility districts that were required by a city to provide lighting. The definition of "recreational facilities" is expanded to include "landscaping, parkways, greenbelts, sidewalks, trails, and public right-of-way beautification projects."

Senate Bill 2

Senate Bill 2, relating to water matters, is a sequel to Senate Bill 1 which was adopted in the 1997 legislative session. Among other things, the bill:

- creates the Texas Water Advisory Council, a 13-member group charged with making recommendations to the Legislature on state water issues;
- ratifies the creation or creates 15 groundwater conservation districts and makes numerous changes to the laws governing groundwater districts;
- creates the Water Infrastructure Fund, as a fund in the state treasury, to be administered by the Texas Water Development Board ("TWDB"), to provide

funding for the implementation of water projects recommended through the state and regional water planning process;

- creates the Rural Water Assistance Fund, which is intended to provide financial assistance to smaller, rural water suppliers and is to be administered by the TWDB; and creates the Joint Committee of Water Resources which shall conduct an interim study and make recommendations to the Legislature regarding
 - (i) increasing the efficient use of existing water resources,
 - (ii) developing sufficient long-term financing strategies,
 - (iii) improving existing water conveyances systems,
 - (iv) water marketing,
 - (v) determining the appropriate role of environmental and wildlife concerns in water permitting and water development, and
 - (vi) protection of the natural condition of beds and banks of the state-owned watercourses.

TNRCC Renewed

The TNRCC Sunset Review (House Bill 2912) proved to be generally favorable to the operation and function of the Texas Natural Resource Conservation Commission (TNRCC), which is perpetuated for another 12 years. The TNRCC is renamed the Texas Commission on Environmental Quality (effective January 1, 2004); however, the functions of the TNRCC are largely unchanged. The TNRCC is provided with greater flexibility in the utilization of water and wastewater fee revenue. The Bill mandates a permitting program for class B sludge. The TNRCC is required to implement “performance based permitting,” which involves examining a permittee’s compliance history when granting or renewing permits. (Staggered effective dates; generally September 1, 2001)

Investment Officer Training Reduced

The Public Funds Investment Act is amended to reduce the required number of hours of investment training by the investment officer of a water district to six hours within the first year of assuming such duties and to four hours within each two-year period thereafter. The Board may appoint any officer of the Board or contract with a person to serve as the investment officer for the district. Any organization that provides training under the Public Funds Investment Act shall submit a report to the comptroller. (Effective May 14, 2001.)

New Legislation Affecting All Political Subdivisions

Delinquent tax collection procedures have been amended to provide that the penalty for delinquent taxes may not exceed the amount of the compensation specified in

the contract with the taxing unit's delinquent tax attorney. The previous limit was 15 percent.

Election Dates - Fewer Exceptions

Texas law provides four uniform election dates which certain exceptions permitting political subdivisions to hold elections on other days. Senate Bill 79 changes the designated uniform election dates and eliminates several of the exceptions. The first Saturday in February rather than the third Saturday in January and the second Saturday in September rather than the second Saturday in August are now uniform election dates. The first Saturday in May and the first Tuesday after the first Monday in November remain uniform election dates. Under prior law, there was an exception to the uniform date requirement for elections to approve bonds or maintenance taxes. Senate Bill 79 narrows this exception so that it is no longer available to water districts. Thus all water district elections must be held on uniform dates.

Pay for Election Judges and Clerks

Prior law provided that pay for election judges and clerks could not exceed \$6.00 per hour. The Election Code has been amended to remove this cap on compensation and provides that the authority holding the election may fix the compensation. The hourly rate must be at least the federal minimum hourly wage.

Open Meetings Act

The Open Meetings Act regarding consultations with attorneys has been amended to state that a governmental body may use a telephone conference call, video conference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the governmental body or a private consultation with its attorney in a closed meeting of the governmental body. The bill does not exempt such consultations from the requirements of the Texas Open Meetings Act. Each part of a public consultation must be audible to the public at the location of the meeting. These provisions do not authorize the members by telephone conference call, video conference call, or communications over the Internet. (Effective May 7, 2001.)

The Public Funds Investment Act is amended to provide that letters of credit of the United States or its agencies and instrumentalities are now authorized investments to the same extent as obligations of the United States or its agencies or instrumentalities.