

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
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Laws Code
Chapter 9078
10/23/18

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2 CHAPTER 9078. FANNIN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT

3 NO. 1

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Revised Law

6 Sec. 9078.0001. DEFINITIONS. In this chapter:

7 (1) "Board" means the district's board of directors.

8 (2) "District" means the Fannin County Water Control
9 and Improvement District No. 1. (Acts 57th Leg., R.S., Ch. 65, Sec.
10 1 (part); New.)

11 Source Law

12 Sec. 1. . . . Fannin County Water Control and
13 Improvement District No. 1,

14 Revisor's Note

15 The definitions of "board" and "district" are
16 added to the revised law for drafting convenience and
17 to eliminate frequent, unnecessary repetition of the
18 substance of the definitions.

19 Revised Law

20 Sec. 9078.0002. NATURE OF DISTRICT. The district is a
21 conservation and reclamation district in Fannin County established
22 under Section 59, Article XVI, Texas Constitution. (Acts 57th Leg.,
23 R.S., Ch. 65, Sec. 1 (part); Acts 58th Leg., R.S., Ch. 275, Secs. 1
24 (part), 7 (part).)

25 Source Law

26 [Acts 57th Leg., R.S., Ch. 65]
27 Sec. 1. The creation and establishment and
28 . . . [of Fannin County Water Control and Improvement
29 District No. 1,] composed of lands and territories,
30 situated within Fannin County, Texas,

31 [Acts 58th Leg., R.S., Ch. 275]
32 Sec. 1. . . . Said District shall continue to
33 exist as a conservation and reclamation district
34 pursuant to Article XVI, Section 59 of the Texas
35 Constitution and

36 Sec. 7. . . . said District is established
37 under the provisions of Section 59 of Article XVI of
38 the Texas Constitution;

1 Revised Law

2 Sec. 9078.0003. FINDINGS OF PUBLIC PURPOSE AND BENEFIT.

3 (a) The district is essential to the accomplishment of the
4 preservation and conservation of the natural resources of the
5 state.

6 (b) All land and property in the district will benefit from
7 the improvements to be constructed, acquired, and operated by the
8 district and from the preservation and conservation of the natural
9 resources of the state.

10 (c) This chapter addresses a subject in which the state is
11 interested. (Acts 58th Leg., R.S., Ch. 275, Secs. 3 (part), 7
12 (part).)

13 Source Law

14 Sec. 3. It is hereby found and declared that all
15 property now located within the boundaries of said
16 District are being and will continue to be benefited by
17 the improvements to be constructed and acquired and
18 operated by the District and

19 Sec. 7. [The Legislature hereby declares that
20 said District is established under the provisions of
21 Section 59 of Article XVI of the Texas Constitution;
22 that the enactment hereof is in fulfillment of a duty
23 imposed by said Constitutional provision to pass such
24 laws as may be appropriate in the preservation and
25 conservation of the natural resources of the State;]
26 that said District is essential to the accomplishment
27 of these purposes; that this Act operates upon a
28 subject in which the State at large is interested; that
29 all lands and property located within the limits of the
30 District is and will be benefited by the purposes for
31 which the District is created. . . .

32 Revisor's Note

33 Section 7, Chapter 275, Acts of the 58th
34 Legislature, Regular Session, 1963, contains a
35 legislative declaration of a constitutional "duty" to
36 enact Chapter 275 as law. The revised law omits the
37 declaration by the legislature as executed and because
38 it has no substantive effect. The omitted law reads:

39 Sec. 7. The Legislature hereby
40 declares that [said District is established
41 under the provisions of Section 59 of
42 Article XVI of the Texas Constitution;]
43 that the enactment hereof is in fulfillment
44 of a duty imposed by said Constitutional
45 provision to pass such laws as may be

1 appropriate in the preservation and
2 conservation of the natural resources of
3 the State;

4 Revised Law

5 Sec. 9078.0004. DISTRICT TERRITORY. The district is
6 composed of the territory described by metes and bounds in the
7 resolution and order of the commissioners court of Fannin County
8 creating the district, recorded in Volume 1, page 3, of the Water
9 Control Improvement District minutes of Fannin County, as that
10 territory may have been modified under:

- 11 (1) Subchapter J, Chapter 49, Water Code;
- 12 (2) Subchapter O, Chapter 51, Water Code; or
- 13 (3) other law. (Acts 57th Leg., R.S., Ch. 65, Sec. 1
14 (part); New.)

15 Source Law

16 Sec. 1. The . . . boundaries of [Fannin County
17 Water Control and Improvement District No. 1, composed
18 of lands and territories, situated within Fannin
19 County, Texas,] the boundaries of said District
20 described by metes and bounds in the resolution and
21 order of the Commissioners Court of Fannin County,
22 Texas, creating the District, recorded in Volume 1,
23 page 3 of the Water Control Improvement District
24 minutes of said county, to which reference is here made
25 for a more complete description, and which is
26 incorporated herein by reference the same as if copied
27 herein in full,

28 Revisor's Note

29 For the reader's convenience, the revised law
30 includes references to the statutory description of
31 the district's territory and to statutory authority to
32 change the district's territory under Subchapter J,
33 Chapter 49, Water Code, applicable to the district
34 under Sections 49.001 and 49.002 of that chapter, and
35 under Subchapter O, Chapter 51, Water Code, applicable
36 to water control and improvement districts. The
37 revised law also includes a reference to the general
38 authority of the legislature to enact a law to change
39 the district's territory.

40 Revised Law

41 Sec. 9078.0005. LIBERAL CONSTRUCTION OF CHAPTER. This

1 chapter shall be liberally construed to effect its purposes. (Acts
2 58th Leg., R.S., Ch. 275, Sec. 7 (part).)

3 Source Law

4 Sec. 7. . . . All terms and provisions of this
5 Act are to be liberally construed to effectuate the
6 purpose and objectives herein set forth.

7 Revisor's Note

8 Section 7, Chapter 275, Acts of the 58th
9 Legislature, Regular Session, 1963, refers to the
10 "purpose and objectives" set forth in that act. The
11 revised law omits "objectives" as included in the
12 meaning of "purpose."

13 SUBCHAPTER B. POWERS AND DUTIES

14 Revised Law

15 Sec. 9078.0051. GENERAL POWERS AND DUTIES. The district
16 may exercise the powers essential to the accomplishment of the
17 purposes of Section 59, Article XVI, Texas Constitution, and may
18 exercise the rights, powers, privileges, prerogatives, and
19 functions enumerated in or implied by that section, including those
20 listed in this subchapter. (Acts 57th Leg., R.S., Ch. 65, Sec. 2
21 (part); Acts 58th Leg., R.S., Ch. 275, Sec. 1 (part); New.)

22 Source Law

23 [Acts 57th Leg., R.S., Ch. 65]
24 Sec. 2. The District is hereby granted all of
25 the powers, privileges, and prerogatives enumerated in
26 Article XVI, Section 59, of the Constitution of the
27 State of Texas, including but not limited to the
28 following:
29 . . .

30 [Acts 58th Leg., R.S., Ch. 275]
31 Sec. 1. . . . [Said District shall continue to
32 exist as a conservation and reclamation district
33 pursuant to Article XVI, Section 59 of the Texas
34 Constitution and] shall be recognized to exercise all
35 the powers and be a governmental agency and body
36 politic and corporate essential to the accomplishment
37 of the purposes of said Constitutional provisions and
38 created to exercise such rights, powers, privileges
39 and functions as may be contemplated or implied by the
40 aforesaid Constitutional provision, and . . .

41 Revisor's Note

42 (1) Section 1, Chapter 275, Acts of the 58th
43 Legislature, Regular Session, 1963, provides that the

1 district is a "governmental agency and body politic
2 and corporate." The revised law omits that provision
3 because it duplicates a portion of Section 59(b),
4 Article XVI, Texas Constitution, which provides that a
5 conservation and reclamation district is a
6 governmental agency and a body politic and corporate.

7 (2) Section 1, Chapter 275, Acts of the 58th
8 Legislature, Regular Session, 1963, refers to rights,
9 powers, privileges, and functions that are
10 "contemplated or implied" by Section 59, Article XVI,
11 Texas Constitution. The revised law omits
12 "contemplated" because the meaning of the term is
13 included in the meaning of "implied."

14 Revised Law

15 Sec. 9078.0052. WATER CONTROL AND IMPROVEMENT DISTRICT
16 POWERS. The district has the rights, powers, privileges, and
17 functions provided by general law applicable to a water control and
18 improvement district including Chapters 49 and 51, Water Code,
19 including the power to:

20 (1) construct, acquire, improve, maintain, and repair
21 a dam or other structure; and

22 (2) acquire land, easements, properties, or equipment
23 needed to use, control, and distribute water that may be impounded,
24 diverted, or controlled by the district. (Acts 57th Leg., R.S., Ch.
25 65, Sec. 2 (part); Acts 58th Leg., R.S., Ch. 275, Sec. 1 (part);
26 New.)

27 Source Law

28 [Acts 57th Leg., R.S., Ch. 65]

29 Sec. 2. . . .

30 Subsec. B. In exercising the power for which the
31 District is created, it shall have all of the authority
32 conferred by General Law upon water control and
33 improvement districts, including, but not limited to,
34 the power to construct, acquire, improve, maintain and
35 repair dams or other structures and the acquisition of
36 land, easements, properties, or equipment which may be
37 needed to utilize, control, and distribute any waters
38 that may be impounded, diverted, or controlled by the
39 District.

40 . . .

1 [Acts 58th Leg., R.S., Ch. 275]

2 Sec. 1. . . . [Said District shall continue to
3 exist as a conservation and reclamation district
4 pursuant to Article XVI, Section 59 of the Texas
5 Constitution and shall be recognized to exercise all
6 the powers and be a governmental agency and body
7 politic and corporate essential to the accomplishment
8 of the purposes of said Constitutional provisions and
9 created to exercise such rights, powers, privileges
10 and functions as may be contemplated or implied by the
11 aforesaid Constitutional provision, and] those now or
12 hereafter conferred by the General Laws of the State
13 relating to water control and improvement districts
14 where not in conflict with this Act.

15 Revisor's Note

16 (1) Subsection B, Section 2, Chapter 65, Acts of
17 the 57th Legislature, Regular Session, 1961, refers to
18 the authority "conferred by General Law upon water
19 control and improvement districts." For the reader's
20 convenience, the revised law adds references to
21 Chapter 49, Water Code, applicable to the district
22 under Sections 49.001 and 49.002 of that chapter, and
23 to Chapter 51, Water Code, applicable to water control
24 and improvement districts.

25 (2) Subsection B, Section 2, Chapter 65, Acts of
26 the 57th Legislature, Regular Session, 1961, refers to
27 "authority" conferred on the district. Section 1,
28 Chapter 275, Acts of the 58th Legislature, Regular
29 Session, 1963, refers to the exercise of "rights,
30 powers, privileges and functions" by the district. The
31 revised law omits "authority" because, in context,
32 "authority" is included in the meaning of "rights,
33 powers, [and] privileges."

34 (3) Subsection B, Section 2, Chapter 65, Acts of
35 the 57th Legislature, Regular Session, 1961, refers to
36 authority "including, but not limited to" certain
37 powers. The revised law omits "but not limited to"
38 because Section 311.005(13), Government Code (Code
39 Construction Act), provides that "includes" and
40 "including" are terms of enlargement and not of

1 limitation and do not create a presumption that
2 components not expressed are excluded.

3 (4) Section 1, Chapter 275, Acts of the 58th
4 Legislature, Regular Session, 1963, provides that the
5 district has the rights, powers, privileges, and
6 functions provided by general law to water control and
7 improvement districts "where not in conflict with this
8 Act." The revised law omits the quoted language
9 because that language duplicates, in substance,
10 Section 311.026(b), Government Code (Code
11 Construction Act), which provides that if there is a
12 conflict between a general provision of law and a
13 special or local provision, the special or local
14 provision prevails unless the general provision is the
15 later enactment and the manifest intent is that the
16 general provision prevail.

17 Revised Law

18 Sec. 9078.0053. CONTROL OF WATER AND FLOODWATER;
19 RECLAMATION. The district may:

20 (1) control, store, preserve, and distribute the water
21 and floodwater in the district for the irrigation of arid land,
22 conservation, preservation, reclamation, and drainage of land in
23 the district;

24 (2) carry out flood prevention measures to prevent
25 damage to land and property in the district; and

26 (3) reclaim lands damaged before April 10, 1961,
27 because of the prior failure to provide the facilities authorized
28 to be constructed under this chapter. (Acts 57th Leg., R.S., Ch. 65,
29 Sec. 2 (part).)

30 Source Law

31 Sec. 2. . . .

32 Subsec. A. The District shall have and exercise
33 and is hereby vested with the power to control, store,
34 preserve and distribute the water and floodwaters
35 within the area of the District for the irrigation of
36 arid land, conservation, preservation, reclamation,
37 and drainage of the lands within the District, and is

1 empowered to carry out flood prevention measures to
2 prevent damage to the land and property within the
3 District, and to reclaim lands heretofore damaged by
4 reason of the prior failure to provide the facilities
5 authorized to be constructed under the provisions of
6 this Act.
7 . . .

8 Revisor's Note

9 (1) Subsection A, Section 2, Chapter 65, Acts of
10 the 57th Legislature, Regular Session, 1961, provides
11 that the district "shall have and exercise and is
12 hereby vested with the power to" perform certain acts.
13 The revised law substitutes "may" for the quoted
14 language because, in context, the terms are synonymous
15 and "may" is more commonly used.

16 (2) Subsection A, Section 2, Chapter 65, Acts of
17 the 57th Legislature, Regular Session, 1961, provides
18 that the district may reclaim certain lands
19 "heretofore" damaged, meaning lands damaged before the
20 effective date of Chapter 65. The revised law
21 substitutes "before April 10, 1961," for "heretofore"
22 because that was the effective date of Chapter 65.

23 Revised Law

24 Sec. 9078.0054. COST OF RELOCATING OR ALTERING PROPERTY.
25 If the district's exercise of the power of eminent domain, the power
26 of relocation, or any other power granted under this chapter makes
27 necessary relocating, raising, rerouting, changing the grade of, or
28 altering the construction of, a highway, railroad, electric
29 transmission line, telephone or telegraph property or facility, or
30 pipeline, the necessary action shall be accomplished at the
31 district's sole expense. (Acts 57th Leg., R.S., Ch. 65, Sec. 2
32 (part).)

33 Source Law

34 Sec. 2. . . .
35 Subsec. C. In the event that the District, in
36 the exercise of the power of eminent domain or power of
37 relocation, or any other power granted hereunder,
38 makes necessary the relocation, raising, rerouting or
39 changing the grade of, or altering the construction of
40 any highway, railroad, electric transmission line,
41 telephone or telegraph properties and facilities, or

1 pipeline, all such necessary relocation, raising,
2 rerouting, changing of grade or alteration of
3 construction shall be accomplished at the sole expense
4 of the District.

5 Revisor's Note
6 (End of Subchapter)

7 Section 3, Chapter 65, Acts of the 57th
8 Legislature, Regular Session, 1961, refers to the
9 district's power to cooperate with federal entities.
10 The revised law omits that provision because it
11 duplicates, in substance, provisions of Section
12 49.227, Water Code, which provide the district with
13 the power to act jointly with any other person or
14 entity. The omitted law reads:

15 Sec. 3. For the accomplishment of any
16 one or more of the purposes for which the
17 District is created, the District shall
18 have the power and is hereby empowered to
19 cooperate with any agency, representative,
20 instrumentality, or department of the
21 Federal Government and

22 SUBCHAPTER C. TAXES

23 Revised Law

24 Sec. 9078.0101. IMPOSITION OF MAINTENANCE TAX; ELECTION
25 PROCEDURE. (a) If approved by a majority of the voters of the
26 district voting at an election called for that purpose, the
27 district may impose a maintenance tax for the purposes of:

- 28 (1) maintaining structures;
29 (2) securing and purchasing land rights;
30 (3) purchasing rights-of-way, including moving
31 utilities;
32 (4) administering contracts; and
33 (5) paying other general operating expenses.

34 (b) A maintenance tax election shall be called and notice
35 given in the same manner as for a bond election and may be held
36 simultaneously with a bond election.

37 (c) This chapter does not prevent the calling of a
38 subsequent maintenance tax election to establish or increase the
39 amount of tax if the board determines that a maintenance tax

1 election is required. (Acts 57th Leg., R.S., Ch. 65, Sec. 3
2 (part).)

3 Source Law

4 Sec. 3. . . . For the purpose of maintaining the
5 structures, authority for the securing and purchase of
6 land rights, purchase of right-of-ways, including
7 moving of utilities, for the purpose of the
8 administering of the contracts and other general
9 operating expense, the District shall have the right
10 to levy and assess a maintenance tax; provided,
11 however, that no such maintenance tax shall be levied
12 until approved and authorized by a majority of the
13 resident qualified property taxpaying voters
14 participating at an election called for that purpose.
15 . . .

16 The election shall be called and notice given in
17 the same manner as authorized for a bond election, and
18 may be held simultaneously with such bond election,
19 but nothing herein shall prevent the calling of
20 subsequent maintenance tax elections to establish or
21 increase the amount of the tax should the directors
22 find such election is required.

23 Revisor's Note

24 (1) Section 3, Chapter 65, Acts of the 57th
25 Legislature, Regular Session, 1961, provides that the
26 district "shall have the right to levy and assess" a
27 maintenance tax. The revised law substitutes "may"
28 for "shall have the right to" because "may" is more
29 concise and is the substantive equivalent of the
30 quoted language. The revised law also substitutes
31 "impose" for "levy and assess" because "impose" is the
32 term generally used in Title 1, Tax Code, and includes
33 the levying and assessment of a tax.

34 (2) Section 3, Chapter 65, Acts of the 57th
35 Legislature, Regular Session, 1961, refers to a
36 majority vote of the "resident qualified property
37 taxpaying" voters. The revised law omits the
38 reference to "resident qualified . . . voters" as
39 unnecessary in this context because Chapter 11,
40 Election Code, governs eligibility to vote in an
41 election in this state and allows only "qualified"
42 voters who are residents of the territory covered by
43 the election to vote in an election. The revised law

1 also omits the reference to voting by persons who own
2 taxable property because in Hill v. Stone, 421 U.S. 289
3 (1975), the United States Supreme Court held that
4 property ownership as a qualification for voting is an
5 unconstitutional denial of equal protection.

6 Revised Law

7 Sec. 9078.0102. MAINTENANCE TAX RATE. In calling a
8 maintenance tax election, the board must specify the maximum
9 proposed tax rate. To impose a maintenance tax at a rate that
10 exceeds the maximum rate approved by the voters, the board must
11 submit the question of a tax rate increase to the voters. (Acts
12 57th Leg., R.S., Ch. 65, Sec. 3 (part).)

13 Source Law

14 Sec. 3. . . . In calling the election, the
15 directors shall specify the maximum rate of tax which
16 is sought to be levied, and no tax in excess of that
17 amount may be levied without submitting the question
18 of the increased rate of taxation to the electors
19 hereinabove described.
20 . . .

21 Revisor's Note

22 (1) Section 3, Chapter 65, Acts of the 57th
23 Legislature, Regular Session, 1961, limits the tax
24 that may be "levied." The revised law substitutes
25 "impose" for "levied" for the reason stated in
26 Revisor's Note (1) to Section 9078.0101.

27 (2) Section 3, Chapter 65, Acts of the 57th
28 Legislature, Regular Session, 1961, refers to
29 "electors." The revised law substitutes "voters" for
30 "electors" because "voters" is the term used in the
31 Election Code.

32 Revised Law

33 Sec. 9078.0103. TAX METHOD. (a) The district shall use the
34 ad valorem plan of taxation.

35 (b) The district is not required to conduct a hearing on the
36 adoption of a plan of taxation. (Acts 58th Leg., R.S., Ch. 275,
37 Sec. 4.)

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Source Law

Sec. 4. It shall not be necessary for the District to conduct or hold any hearings on the adoption of a plan of taxation, but the ad valorem plan of taxation shall be used by the District.

SUBCHAPTER D. BONDS

Revised Law

Sec. 9078.0151. DEFINITION OF NET REVENUES. In this subchapter, "net revenues" or "net operating revenues" means all income or increment from the ownership and operation of improvements and facilities operated by the district, minus the amount reasonably required to provide for the administration, efficient operation, and adequate maintenance of the improvements and facilities. The terms do not include money derived from taxation. (Acts 58th Leg., R.S., Ch. 275, Sec. 5 (part).)

Source Law

Sec. 5. . . . The term "net operating revenues" or "net revenues" as used herein shall be understood to exclude any money derived from taxation but to include all income and increment which may grow out of the ownership and operation of the improvements or facilities of the District less such part of the District's revenue income as reasonably may be required to provide for the administration, efficient operation and adequate maintenance of such improvements and facilities.

. . .

Revised Law

Sec. 9078.0152. AUTHORITY TO ISSUE BONDS. (a) The district may issue bonds to:

(1) furnish land, easements, or permanent improvements to land or easements;

(2) provide dams, structures, projects, and works of improvement for flood prevention, including structural and land treatment measures, and for agricultural phases of the conservation, development, use, and disposal of water, and for necessary facilities and equipment in connection therewith and for the improvement, maintenance, and repair of the same; and

(3) exercise any other district power.

(b) Except as otherwise provided by this chapter, district

1 bonds must be authorized by a board resolution.

2 (c) District bonds may be secured by and payable wholly
3 from:

4 (1) ad valorem taxes;

5 (2) net operating revenues of the district, the net
6 revenue of any contract made, or other revenues as specified in the
7 resolution authorizing the issuance of the bonds; or

8 (3) any combination of ad valorem taxes and net
9 revenues as determined by the board.

10 (d) In a resolution authorizing the issuance of bonds
11 secured wholly or partly by district revenue, the board may reserve
12 the right under conditions specified in the resolution to issue
13 additional bonds on a parity with or subordinate to the bonds being
14 issued. (Acts 57th Leg., R.S., Ch. 65, Sec. 3 (part); Acts 58th
15 Leg., R.S., Ch. 275, Sec. 5 (part); New.)

16 Source Law

17 [Acts 57th Leg., R.S., Ch. 65]

18 Sec. 3. [For the accomplishment of any one or
19 more of the purposes for which the District is created,
20 the District] . . . may issue bonds, in the manner
21 hereinafter provided, for the purpose of acquiring the
22 funds necessary to furnish land, easements or
23 permanent improvement thereon. . . .

24 [Acts 58th Leg., R.S., Ch. 275]

25 Sec. 5. For the purpose of providing dams,
26 structures, projects and works of improvement for
27 flood prevention (including structural and land
28 treatment measures) and for agricultural phases of
29 conservation, development and utilization and
30 disposal of water and for the necessary facilities and
31 equipment in connection therewith and for the
32 improvement, maintenance and repair of the same, or
33 for the purpose of carrying out any other power or
34 authority conferred upon the District by this Act or by
35 the General Laws incorporated herein, or for any
36 combination of such purposes, the District is
37 specifically authorized to issue its negotiable bonds.
38 Such bonds may be secured by and payable wholly from ad
39 valorem taxes to be levied upon all taxable property in
40 the District or wholly from not operating revenues of
41 the District or by the net revenues of any one or more
42 contracts hereafter made or other revenues as
43 specified in the resolution authorizing their
44 issuance. For the purposes herein stated the District
45 is also empowered to issue bonds secured by and payable
46 from any combination of taxes and net revenues as the
47 Board of Directors may determine. . . . In the
48 resolution authorizing the issuance of bonds supported
49 in whole or in part by revenues of the District the
50 Board of Directors may reserve the right under the

1 conditions therein specified, to issue additional
2 bonds on a parity with or subordinate to the bonds
3 being issued. . . .

4 Except as herein otherwise prescribed the bonds
5 of the District shall be authorized by resolution of
6 the Board of Directors and

7 Revisor's Note

8 (1) Section 3, Chapter 65, Acts of the 57th
9 Legislature, Regular Session, 1961, states that the
10 district may issue bonds for certain purposes "in the
11 manner hereinafter provided." The revised law omits
12 the quoted language because the subsequent portion of
13 Chapter 65 does not include any provisions on the
14 manner in which the district may issue bonds.

15 (2) Section 5, Chapter 275, Acts of the 58th
16 Legislature, Regular Session, 1963, refers to actions
17 taken in exercising the district's "power or
18 authority" under the act. The revised law omits
19 "authority" because, in this context, "authority" is
20 included in the meaning of "power."

21 (3) Section 5, Chapter 275, Acts of the 58th
22 Legislature, Regular Session, 1963, authorizes the
23 district to issue "negotiable" bonds. The revised law
24 omits the reference to "negotiable" bonds because
25 Section 1201.041, Government Code, provides that a
26 public security is a negotiable instrument. Section
27 1201.041 applies to district bonds under Sections
28 1201.002 and 1201.003, Government Code.

29 (4) Section 5, Chapter 275, Acts of the 58th
30 Legislature, Regular Session, 1963, provides that
31 district bonds may be payable wholly from "not
32 operating revenues" of the district. The revised law
33 substitutes a reference to "net operating revenues"
34 because it is clear from the context that "not
35 operating revenues" is a typographical error.

36 (5) Section 5, Chapter 275, Acts of the 58th
37 Legislature, Regular Session, 1963, authorizes the

1 district to sell bonds, except as provided otherwise
2 by Chapter 275, according to the requirements of the
3 general laws applicable to water control and
4 improvement districts. The revised law omits the
5 authority to sell bonds under those general laws
6 because those general laws, including bond provisions
7 in Chapters 49 and 51, Water Code, apply to the
8 district on their own terms. In addition, the revised
9 law omits the reference to exceptions in Chapter 275
10 because such an exception would also apply on its own
11 terms. The omitted law reads:

12 Sec. 5. . . .
13 [Except as herein otherwise prescribed
14 the bonds of the District] . . . may be sold
15 under the terms and provisions of the
16 General Laws of this State now in effect or
17 hereafter enacted applicable to bonds
18 issued by water control and improvement
19 districts. . . .

20 Revised Law

21 Sec. 9078.0153. SECURITY FOR REVENUE BONDS. For bonds
22 authorized to be issued that are secured by and payable wholly or
23 partly from net revenues, the board may mortgage and encumber:

24 (1) any part or all of the district's property and
25 facilities acquired or to be acquired;

26 (2) a franchise of or revenue from the operation of the
27 district's property and facilities acquired or to be acquired; and

28 (3) anything pertaining to the district's property and
29 facilities acquired or to be acquired or the operation of the
30 district's property or facilities. (Acts 58th Leg., R.S., Ch. 275,
31 Sec. 5 (part).)

32 Source Law

33 Sec. 5. . . . In the case of bonds authorized to
34 be issued and which are secured by and payable wholly
35 or partially from net revenues the Board of Directors
36 is authorized to mortgage and encumber any part of or
37 all of its properties and facilities and the franchise
38 and revenues and income from the operation thereof and
39 everything pertaining thereto acquired or to be
40 acquired. . . .

1 Revisor's Note

2 Section 5, Chapter 275, Acts of the 58th
3 Legislature, Regular Session, 1963, refers to
4 "revenues and income." The revised law omits the
5 reference to "income" as included within the meaning
6 of "revenue."

7 Revised Law

8 Sec. 9078.0154. BOND ELECTION REQUIRED. (a) Bonds, other
9 than refunding bonds, may not be issued unless approved by the
10 voters of the district as provided by general law.

11 (b) If a proposition submitted at an election is defeated,
12 another election may be held in the district to vote on the same or a
13 similar proposition at a time determined by the board.

14 (c) The board may call an election under this section
15 without a petition. The resolution calling the election must
16 specify:

17 (1) the time and place at which the election will be
18 held;

19 (2) the purpose for which the bonds will be issued;

20 (3) the maximum maturity date and maximum interest
21 rate of the bonds;

22 (4) the form of the ballot; and

23 (5) the presiding judge for each voting place.

24 (d) Notice of the election must be given by publishing a
25 substantial copy of the resolution calling the election in a
26 newspaper of general circulation in the district. The notice must
27 be published once each week for two consecutive weeks. The first
28 publication must be not later than the 14th day before the date of
29 the election. (Acts 58th Leg., R.S., Ch. 275, Sec. 5 (part).)

30 Source Law

31 Sec. 5. . . .

32 It is expressly provided, however, that no bonds
33 except refunding bonds shall be issued by the District
34 until their issuance has been approved by the resident
35 qualified property taxpaying voters, whose property
36 has been duly rendered for taxation, as provided by
37 General Law; and should any proposition so submitted

1 at an election be defeated another election or
2 elections may be called and held within said District
3 to vote upon the same or similar proposition at such
4 time as the Board of Directors may determine. Bond
5 elections may be called by the Board of Directors
6 without a petition. The resolution calling the
7 election shall specify the time and places of holding
8 the same, the purpose for which the bonds are to be
9 issued, the maximum maturity thereof, the maximum
10 interest rate, the form of the ballot and the presiding
11 judge for each voting place. . . . Notice of the
12 election shall be given by publishing a substantial
13 copy of the resolution calling the election in a
14 newspaper or newspapers of general circulation in the
15 District once each week for two (2) consecutive weeks.
16 The first publication shall be at least fourteen (14)
17 days prior to the election. . . .

18 Revisor's Note

19 (1) Section 5, Chapter 275, Acts of the 58th
20 Legislature, Regular Session, 1963, refers to a
21 majority vote of the "resident qualified property
22 taxpaying voters, whose property has been duly
23 rendered for taxation." The revised law omits the
24 quoted language for the reason stated in Revisor's Note
25 (2) to Section 9078.0101.

26 (2) Section 5, Chapter 275, Acts of the 58th
27 Legislature, Regular Session, 1963, provides that
28 after a bond proposition fails at an election, a
29 subsequent bond election may be "called and held" by
30 the board. The revised law omits "called" because, in
31 this context, "called" is included in the meaning of
32 holding an election. Under Chapter 3, Election Code,
33 all elections must be ordered (called) before they may
34 be held.

35 (3) Section 5, Chapter 275, Acts of the 58th
36 Legislature, Regular Session, 1963, provides that the
37 presiding judge serving at each voting place shall
38 appoint the necessary assistant judges and clerks for
39 holding the election. The revised law omits the
40 provision as superseded by the 1985 enactment of the
41 Election Code, applicable to the district under
42 Section 1.002 of that code. Chapter 32, Election Code,

1 governs the selection of election judges and clerks.

2 The omitted law reads:

3 Sec. 5. . . . The presiding judge
4 serving at each voting place shall appoint
5 the necessary assistant judges and clerks
6 for holding such election. . . .

7 (4) Section 5, Chapter 275, Acts of the 58th
8 Legislature, Regular Session, 1963, provides that the
9 board shall receive and canvass election returns. The
10 revised law omits that provision as superseded by the
11 1985 enactment of the Election Code, applicable to the
12 district under Section 1.002 of that code. Chapter 67,
13 Election Code, provides for the canvass of elections.

14 The omitted law reads:

15 Sec. 5. . . . The returns of the
16 election shall be made to and canvassed by
17 the Board of Directors of the
18 District. . . .

19 (5) Section 5, Chapter 275, Acts of the 58th
20 Legislature, Regular Session, 1963, provides that the
21 general laws relating to elections apply to an
22 election held under that section except as otherwise
23 provided by that act. The revised law omits that
24 provision as superseded by the 1985 enactment of
25 Section 1.002, Election Code, which provides that the
26 Election Code applies to all elections held in this
27 state and that the Election Code supersedes a
28 conflicting statute unless the statute expressly
29 provides otherwise. The omitted law reads:

30 Sec. 5. . . . The General Laws
31 relating to elections shall be applicable
32 to elections held under this Section of this
33 Act, except as otherwise provided in this
34 Act.
35 . . .

36 Revised Law

37 Sec. 9078.0155. REFUNDING BONDS. (a) The district may
38 issue refunding bonds to refund outstanding district bonds and
39 interest on those bonds.

1 (b) Bonds issued to refund revenue-supported bonds may:

2 (1) be issued to refund bonds of more than one series;

3 (2) combine the pledges for the outstanding bonds for
4 the security of the refunding bonds; and

5 (3) be secured by other or additional revenue.

6 (c) The comptroller shall register the refunding bonds on
7 surrender and cancellation of the bonds to be refunded.

8 (d) Instead of issuing refunding bonds to be registered on
9 the surrender and cancellation of the bonds to be refunded as
10 provided by Subsection (c), the district, in the resolution
11 authorizing the issuance of the refunding bonds, may provide for
12 the sale of the refunding bonds and the deposit of the proceeds in a
13 bank at which the bonds to be refunded are payable. In that case,
14 the refunding bonds may be issued in an amount sufficient to pay the
15 principal of and interest on the bonds to be refunded to their
16 option date or maturity date, and the comptroller shall register
17 the refunding bonds without the surrender and cancellation of the
18 bonds to be refunded. (Acts 58th Leg., R.S., Ch. 275, Sec. 5
19 (part).)

20 Source Law

21 Sec. 5. . . .

22 The District is authorized to issue refunding
23 bonds for the purpose of refunding any outstanding
24 bonds authorized by this Act and interest thereon and
25 in the case of revenue-supported bonds such refunding
26 bonds may be issued to refund more than one (1) series
27 of outstanding bonds and combine the pledges provided
28 for the outstanding bonds for the security of the
29 refunding bonds, and may be secured by other or
30 additional revenues. Refunding bonds shall be
31 registered by the Comptroller upon surrender and
32 cancellation of the bonds to be refunded, or in lieu
33 thereof the resolution authorizing their issuance may
34 provide that they may be sold and the proceeds thereof
35 deposited in a bank where the original bonds are
36 payable, in which case the refunding bonds may be
37 issued in an amount sufficient to pay the principal of
38 and interest on the original bonds to their option date
39 or maturity date, and the Comptroller shall register
40 them without concurrent surrender and cancellation of
41 the original bonds.

42 . . .

43 Revisor's Note

44 Section 5, Chapter 275, Acts of the 58th

1 Legislature, Regular Session, 1963, requires the
2 district to submit bonds it issues to the attorney
3 general for examination and approval. Section 5 also
4 requires the attorney general to approve district
5 bonds if the bonds were authorized under law. In
6 addition, Section 5 provides that after approval the
7 bonds must be registered with the comptroller and that
8 after approval and registration the bonds are
9 incontestable. The revised law omits those provisions
10 as superseded by Chapter 1202, Government Code
11 (enacted as Article 3, Chapter 53, Acts of the 70th
12 Legislature, 2nd Called Session, 1987). Section
13 1202.003, Government Code, provides for approval of
14 the bonds by the attorney general and requires the
15 attorney general to submit the approved bonds to the
16 comptroller for registration. Section 1202.005,
17 Government Code, requires registration of the bonds by
18 the comptroller. Section 1202.006, Government Code,
19 provides that after approval and registration the
20 bonds are incontestable and binding obligations. The
21 omitted law reads:

22 Sec. 5. . . .
23 All bonds of the District, including
24 refunding bonds, and the proceedings
25 pertaining to their authorization shall be
26 submitted to the Attorney General of Texas,
27 and if such bonds have been authorized in
28 accordance with the provisions hereof, he
29 shall approve the bonds which shall then be
30 registered by the Comptroller of Public
31 Accounts. Thereafter such bonds shall be
32 valid and binding and shall be
33 incontestable for any cause.

34 Revisor's Note
35 (End of Subchapter)

36 Section 5, Chapter 275, Acts of the 58th
37 Legislature, Regular Session, 1963, provides that
38 district bonds may be called, or redeemed, before
39 maturity at the time and price specified in the
40 resolution authorizing the bonds. The revised law

1 omits that provision because it duplicates in
2 substance Sections 1201.021 and 1201.022, Government
3 Code, which provide that a public security may be
4 redeemed before maturity and be payable in specified
5 amounts and at specified times. The omitted law reads:

6 Sec. 5. . . . Within the discretion
7 of the Board the bonds may be callable prior
8 to maturity at such times and prices as may
9 be prescribed in the resolution authorizing
10 their issuance.

11 . . .

12 Revisor's Note
13 (End of Chapter)

14 (1) Section 1, Chapter 65, Acts of the 57th
15 Legislature, Regular Session, 1961, and Section 1,
16 Chapter 275, Acts of the 58th Legislature, Regular
17 Session, 1963, validate the creation, establishment,
18 boundaries, organization, and operation of the
19 district. The revised law omits the validating
20 provisions because they served their purpose on the
21 date they took effect and are executed law. Section
22 311.031(a)(2), Government Code (Code Construction
23 Act), provides that the repeal of a statute does not
24 affect any validation previously made under the
25 statute. Therefore, the omission of each executed
26 validation provision does not affect the validation.
27 The omitted law reads:

28 [Acts 57th Leg., R.S., Ch. 65]

29 Sec. 1. [The creation and
30 establishment and boundaries of Fannin
31 County Water Control and Improvement
32 District No. 1,] . . . are hereby ratified,
33 confirmed and validated. The organization
34 of said District, the confirmation election
35 and the election of directors for the
36 District, and all proceedings relating
37 thereto, are hereby in all things and in all
38 respects ratified, confirmed, approved and
39 validated.

40 [Acts 58th Leg., R.S., Ch. 275]

41 Sec. 1. All proceedings heretofore
42 had and taken in the creation, organization
43 and operation of Fannin County Water
44 Control and Improvement District Number One
45 of Fannin County, Texas, created or sought

1 to be created under the provisions of
2 Article XVI, Section 59 of the Texas
3 Constitution and the General Laws of the
4 State enacted pursuant thereto, are hereby
5 in all things and in all respects ratified,
6 confirmed, approved and validated as of the
7 respective dates of such proceedings and
8 actions. . . .

9 (2) Section 2, Chapter 275, Acts of the 58th
10 Legislature, Regular Session, 1963, validates certain
11 district actions. The revised law omits the
12 validation because it served its purpose on the date it
13 took effect and is executed law. Section
14 311.031(a)(2), Government Code (Code Construction
15 Act), provides that the repeal of a statute does not
16 affect any validation previously made under the
17 statute. Therefore, the omission of the executed
18 validation provision does not affect the validation.
19 The omitted law reads:

20 Sec. 2. Without in anywise limiting
21 the generality of the foregoing the
22 following matters are hereby in all
23 respects ratified, confirmed, approved and
24 validated:

25 (a) All actions, orders and
26 proceedings in the calling, conducting and
27 declaring the results of the election held
28 in said District on the 20th day of June,
29 1961, whereat a majority of the resident
30 qualified property taxpaying voters of such
31 District voted in favor of the proposition
32 submitted to authorize the levy and
33 collection of taxes for the purpose of
34 operating and maintaining the District and
35 its improvements and to render proper
36 services for the purpose of its
37 organization.

38 (b) All taxes heretofore levied for
39 the purpose of operating and maintaining
40 the District and its improvements and to
41 render proper service for the purpose of its
42 organization as authorized at the election
43 referred to in (a) above.

44 (3) Section 3, Chapter 275, Acts of the 58th
45 Legislature, Regular Session, 1963, provides that the
46 district is not required to hold a hearing on the
47 exclusion of land. The revised law omits the provision
48 as executed. In the context of the general laws
49 applicable to water control and improvement districts

1 in effect in 1963, the provision is an exception to a
2 law that only would have applied to the district at the
3 time of its creation.

4 The general laws applicable to water control and
5 improvement districts in effect in 1963 required a
6 water control and improvement district to hold
7 hearings at the time of the district's creation on the
8 exclusion of certain land from the district. In
9 context, the statement in Section 3, Chapter 275, that
10 exclusion hearings are not required appears to address
11 those general law provisions. Even though the district
12 had already been created when Chapter 275 was enacted,
13 Chapter 275 essentially re-created the district by
14 validating the creation of the district by a
15 commissioners court (as described in Section 1,
16 Chapter 65, Acts of the 57th Legislature, Regular
17 Session, 1961) and stating that the district would
18 continue to exist as a conservation and reclamation
19 district.

20 The power or duty to hold a hearing to exclude
21 land subsequent to the creation of the district is
22 governed by Subchapter J, Chapter 49, Water Code,
23 which applies to the district under Sections 49.001
24 and 49.002 of that code, and Subchapter O, Chapter 51,
25 Water Code, applicable to water control and
26 improvement districts. The omitted law reads:

27 Sec. 3. [It is hereby found and
28 declared that all property now located
29 within the boundaries of said District are
30 being and will continue to be benefited by
31 the improvements to be constructed and
32 acquired and operated by the District and]
33 it shall not be necessary for the District
34 to hold any hearings for the exclusion of
35 lands or other properties therein.

36 (4) Section 6, Chapter 275, Acts of the 58th
37 Legislature, Regular Session, 1963, lists the entities
38 for which district bonds are legal investments and

1 provides that district bonds may secure deposits of
2 public funds of the state or political subdivisions.
3 The revised law omits the provision relating to the
4 eligibility of district bonds to be considered as
5 investments for various entities because it duplicates
6 Section 49.186, Water Code. While Section 6 lists
7 "guardians" and Section 49.186, Water Code, does not,
8 Section 49.186 includes "fiduciaries," and a guardian
9 is a fiduciary. The revised law omits the provision
10 relating to deposits of state funds as impliedly
11 repealed by Section 404.0221, Government Code, which
12 lists eligible collateral for deposits of state funds
13 by the comptroller. As to deposits of other funds, the
14 provision is impliedly repealed by Chapter 2257,
15 Government Code (enacted as Chapter 627, Acts of the
16 71st Legislature, Regular Session, 1989), which
17 governs eligible collateral for deposits of funds of
18 other public agencies, including political
19 subdivisions, and permits those deposits to be secured
20 by obligations issued by conservation and reclamation
21 districts. The omitted law reads:

22 Sec. 6. All bonds of the District
23 shall be and are hereby declared to be legal
24 and authorized investments for banks,
25 savings banks, trust companies, building
26 and loan associations, insurance companies,
27 fiduciaries, trustees, guardians and for
28 the sinking funds of cities, towns,
29 villages, counties, school districts or
30 other political corporations or
31 subdivisions of the State of Texas. Such
32 bonds shall be eligible to secure the
33 deposit of any and all public funds of the
34 State of Texas and any and all public funds
35 of cities, towns, villages, counties,
36 school districts or other political
37 corporations or subdivisions of the State
38 of Texas; and such bonds shall be lawful and
39 sufficient security for said deposits to
40 the extent of their par value when
41 accompanied by all unmatured interest
42 coupons.

43 (5) Section 8, Chapter 275, Acts of the 58th
44 Legislature, Regular Session, 1963, provides that

1 Chapter 275 is cumulative of prior acts. The revised
2 law omits the provision because an accepted general
3 principle of statutory construction requires a statute
4 to be given cumulative effect with other statutes
5 unless it provides otherwise or unless the statutes
6 are inconsistent. In addition, under general rules of
7 statutory construction, a statute automatically has
8 the effect of repealing prior conflicting enactments.
9 The general principles apply to this provision. The
10 omitted law reads:

11 Sec. 8. The provisions of this Act
12 shall be cumulative of all prior acts on the
13 same subject, but the provisions hereof
14 shall prevail to the extent that same may be
15 deemed in conflict with those of prior acts.