

BILL ANALYSIS

C.S.S.B. 1902
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, there is no requirement that developments bordering the Rio Grande River and the Laguna Madre and/or the Gulf of Mexico, which are especially susceptible to flooding from tropical storms, ensure adequate water drainage. The needs of the residents of those areas, which include colonias and economically distressed areas, include safety from floods and flooding.

Historically, irrigation districts have been charged with the responsibility of providing irrigation water to farmers and also providing drainage services to related agricultural services. Likewise, drainage districts are charged with the responsibility of providing drainage of areas falling outside municipalities, resulting in concurrent jurisdiction over many drainage areas.

By and large, incorporated cities are responsible for providing underground storm sewers and providing for drainage ditches within the boundaries of a city. The counties in which the municipalities are located are responsible for providing drainage of all areas outside the boundaries of the cities. Drainage districts usually are responsible for providing the major drainage arteries into which the municipalities and smaller ditches can empty. Irrigation districts are usually responsible only for providing drainage for the excess irrigation and agricultural water they handle.

Unlike elsewhere in Texas where water is a flow resource, surface water in the Rio Grande below Amistad is a stock resource meaning that water accumulates in Amistad and Falcon reservoirs and is released on demand. Amistad and Falcon reservoirs are considered one system with water frequently released from the upstream dam (Amistad) to replenish Falcon reservoir and meet the demands in the Lower Rio Grande Valley. The watermaster is the authorized agent allowed to request releases of United States water held in storage at Amistad/Falcon.

C.S.S.B. 1902 would establish provisions regarding the regulation of the subdivision or development of land in those areas. C.S.S.B. 1902 creates the Rio Grande Regional Water Authority (RGRWA) as a conservation and reclamation district within Cameron, Hidalgo, Starr, Willacy, Webb and Zapata counties.

C.S.S.B. 1902 gives a person, who has a permit issued by the commission, the authorization to use the Rio Grande banks and bed for the transport of privately owned water from the owner to a purchaser of the water. The watermaster for the Rio Grande is given authorization to store privately owned water in transit for future release, and the contract to purchase the water must specify that the contract is for the purchase and delivery of a specified amount of water, less the carriage losses incurred in transit.

In addition to existing authority of watermasters, the bill makes clear that the Rio Grande watermaster has certain roles in cases of imminent threat to public health and safety or the environment. The bill requires the Texas Commission on Environmental Quality (TCEQ) to make rules in this area to define the scope of those duties.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 6.01 (Sec. 11.3271 , Water Code) of this bill.

ANALYSIS

C.S.S.B. 1902 creates the Rio Grande Regional Water Authority (RGRWA) to accomplish the purposes of Section 59, Article XVI, Texas Constitution. The RGRWA would be governed by a 15-member board of directors, with nine members appointed by the Governor (geographically balanced and representative of various local interests) and six members appointed one each by the constituent county commissioners courts. The bill provides that the appointed directors must take the constitutional oath of office and pay a bond sufficient to the secretary of state. Furthermore, the directors are not entitled to any compensation for service on the board.

The RGRWA would have no taxing authority. All revenue transactions would be through mutual agreement of participating parties. This Act authorizes the authority to issue bonds in order to accomplish the purposes of this Act; the bonds are exempt from taxation from the state, county, municipal corporation, or other political subdivision.

C.S.S.B. 1902 provides that the Rio Grande watermaster divide the water of the streams or other sources of supply of the division in accordance with adjudicated water rights and regulate the controlling works of reservoirs and diversion works in time of water shortage, or to prevent waste. The substitute requires the TCEQ to adopt rules specifying the watermaster's duties in the event of an imminent threat to public health and safety or the environment. Provides that rules adopted under this subsection must address terrorist response. The substitute would also authorize a person, who obtains a permit in accordance with rules prescribed by the TCEQ, to use the banks and bed of the Rio Grande to convey privately owned water pumped from an underground reservoir to the place of use or the point of diversion by a person who has contracted with the owner of the water to purchase the water. Likewise, the substitute authorizes the Rio Grande watermaster to store water that is to be released at a later time, in a reservoir en route to the place of use or point of diversion by the purchaser. The substitute provides that a contract for the purchase of privately owned water to be conveyed to the purchaser, must specify that the contract is for the purchase and delivery of a specified amount of water. The substitute also requires that carriage loss incurred in transit be measured and described as required by TCEQ rule and states that the TCEQ may not issue a permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande.

The substitute also provides that the watermaster is the official recorder of all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens that are filed in connection with water rights relating to water in the lower, middle, or upper basin of the Rio Grande that are subject to a permit. The watermaster may charge a fee in connection with recordation and shall prescribe rules necessary for the implementation of a recordation system.

The substitute provides that the watermaster provisions of the bill do not apply to the Rio Grande above the Fort Quitman Dam.

Finally, the substitute provides that as soon as practicable after September 1, 2003 the TCEQ shall adopt rules necessary for the implementation of the watermaster provisions of the bill and shall expedite any application for a permit for the delivery of water down the banks and bed of the Rio Grande under Sec. 11.042, Water Code.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 1902 would take the area within the corporate limits of the City of Laredo out of the Rio Grande

Water Authority. The area of Webb county will still be included in the bill with the exception of the City of Laredo.

C.S.S.B. 1902 adds Section 11.3271 to Subchapter G, Chapter 11, Water Code to do the following:

C.S.S.B. 1902 amends the Water Code to add a section which applies only to the watermaster with jurisdiction over the Rio Grande and the water division for which that watermaster is appointed. The bill requires the watermaster to divide the water of the streams or other sources of supply in accordance with the adjudicated water rights; requires the watermaster to regulate the controlling works of reservoirs and diversion works in time of water shortage, as is necessary due to rights existing in the streams, to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled; and authorizes the water master to regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

C.S.S.B. 1902 also prohibits the duties of the watermaster in any activities relating to other programs of the commission, except as provided in this section. The bill stipulates that the duties of the watermaster include activities of imminent threat to public health and safety or the environment. Further, the bill requires the commission to adopt rules to define situations of imminent threat, and the rules must address terrorism response.

C.S.S.B. 1902 also authorizes the watermaster to store water in transit for release at a later time. The bill defines “water in transit” as water, not including state water, that a person has pumped from an underground reservoir from the point of discharge into the river to the place of use or the point of diversion by a person who has contracted with the owner of the water in transit to purchase, provided that the contract specify that the contract is for the purchase and delivery of a specified amount of water less the carriage losses incurred in transit, as described and measured by commission rules.

C.S.S.B. 1902 stipulates that the watermaster may only allow storage of the water when the storage will not hinder any other Rio Grande surface water right’s ability to store its maximum authorized capacity. The bill also provides that prior to issuing a permit to convey water, the TCEQ shall adopt rules providing for the method to account for all water conveyed via this Act. Further, the bill stipulates that a permit holder may not share in any beneficial state water inflows into the Rio Grande, and the permit holder is entitled to convey only the amount of water specified in the permit, less the carriage losses, as described and measured by commission rules. Also, the bill provides that any rules adopted must be consistent with certain treaties and minute orders. The bill also stipulates that a permit may not be issued if the water to be conveyed would degrade the water quality of the Rio Grande.

C.S.S.B. 1902 names the Rio Grande Watermaster as the official recorder for all financial instruments that deal with the purchase of water rights. All financial records, including liens, would be required to be filed with the Rio Grande Watermaster.

C.S.S.B. 1902 also adds a provision which stipulates that this section does not apply to the Rio Grande above the Fort Quitman Dam.