

By: Averitt

S.B. No. 1941

A BILL TO BE ENTITLED

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AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Lake Alan Henry Water District; granting the power of eminent domain; authorizing the issuance of bonds and the imposition of taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CREATION OF LAKE ALAN HENRY WATER DISTRICT

SECTION 1.01. DEFINITIONS. In this article:

- (1) "Board" means the board of directors of the district.
- (2) "City" means the City of Lubbock, Texas. The term includes all relationships and agreements between the city and the Brazos River Authority to own and operate the lake.
- (3) "Commission" means the Texas Commission on Environmental Quality or any successor agency.
- (4) "Counties" means Garza and Kent counties, Texas.
- (5) "District" means the Lake Alan Henry Water District.
- (6) "Lake" means Lake Alan Henry.

SECTION 1.02. LEGISLATIVE FINDINGS. The legislature finds that it is in the interest of this state to:

- (1) promote the orderly development, use, and protection of Lake Alan Henry; and
- (2) support cooperation between the city and the

1 residents of Garza and Kent counties to use Lake Alan Henry as a
2 municipal source of water.

3 SECTION 1.03. CREATION OF DISTRICT. (a) A conservation
4 and reclamation district, to be known as the Lake Alan Henry Water
5 District, is created in Kent County and a portion of Garza County.

6 (b) The district is a unit of government for the purposes of
7 Chapter 101, Civil Practice and Remedies Code, and the operations
8 of the district are considered to be essential governmental
9 functions and not proprietary functions for all purposes, including
10 the application of that chapter.

11 (c) The creation of the district is essential to the
12 accomplishment of the purposes of Sections 52 and 52-a, Article
13 III, and Section 59, Article XVI, Texas Constitution, and to the
14 accomplishment of the public purposes stated in those sections and
15 in this article.

16 (d) The district is necessary to promote, develop,
17 encourage, and maintain employment, commerce, economic
18 development, and the public welfare in the area included in the
19 district.

20 (e) The district is created to supplement and not to replace
21 the services and regulatory powers and authority of the counties
22 and city within their respective boundaries and, in the event of a
23 conflict between a regulation of the district and an order,
24 ordinance, or other lawful regulation of the counties or city, the
25 order, ordinance, or other regulation of the counties or city shall
26 prevail.

27 SECTION 1.04. BOUNDARIES; ADJUSTMENTS. (a) The district

1 includes the territory contained within Sections 43-47 and Sections
2 56-60, Block 5, H&GN Railroad Co. Survey, Kent County, and that
3 portion of Garza County, as more fully described below, but always
4 excluding the City of Post, as the boundaries of the City of Post
5 may change from time to time. The specific boundaries of the
6 portion of Garza County included in the district excluding the City
7 of Post are as follows:

8 BEGINNING at a point at the Southeast corner of Garza County,
9 Texas;

10 THENCE West along the South County Line of Garza County to a
11 point in the center of Ranch Roach No. 669;

12 THENCE North along the centerline of Ranch Road No. 669 to a
13 point in the South City Limits boundary line of the City of Post,
14 Texas;

15 THENCE East along the City Limits boundary line of the City of
16 Post, as such line curves to the North, to a point in the center of
17 State Highway No. 380;

18 THENCE East along the centerline of the said State Highway
19 No. 380 to a point in the East County Line of Garza County;

20 THENCE South along the East County Line of Garza County to the
21 PLACE OF BEGINNING.

22 (b) The legislature finds that the boundaries and field
23 notes of the district form a closure. If a mistake is made in the
24 field notes or in copying the field notes in the legislative
25 process, the mistake does not affect in any way:

26 (1) the organization, existence, or validity of the
27 district;

1 (2) the right of the district to enter into any type of
2 contract for any purpose for which the district is created;

3 (3) the right of the district to impose, assess, or
4 collect taxes, fees, or charges; or

5 (4) the legality or operation of the district or the
6 board.

7 (c) The board may annex or exclude territory in the manner
8 provided by Subchapter J, Chapter 49, Water Code, as limited by
9 Section 54.016, Water Code, except that:

10 (1) for purposes of this subsection, a reference to a
11 tax in Subchapter J, Chapter 49, Water Code, or Section 54.016,
12 Water Code, means an ad valorem tax; and

13 (2) land may not be excluded from the district if bonds
14 or other obligations of the district, payable wholly or partly from
15 ad valorem taxes, are outstanding.

16 SECTION 1.05. FINDING OF BENEFIT AND PUBLIC PURPOSE.

17 (a) The district is created to serve a public use and benefit.

18 (b) All of the land and other property included within the
19 boundaries of the district will be benefited by the works,
20 projects, and services that are to be accomplished or provided by
21 the district under powers conferred by Sections 52 and 52-a,
22 Article III, and Section 59, Article XVI, Texas Constitution, and
23 the other powers granted under this article.

24 SECTION 1.06. CONSTRUCTION OF ARTICLE; APPLICABILITY OF
25 OTHER LAW. (a) This article shall be liberally construed in
26 conformity with the findings and purposes stated in this article.

27 (b) If any provision of general law is in conflict or

1 inconsistent with this article, this article prevails.

2 SECTION 1.07. GENERAL POWERS AND DUTIES. (a) The district
3 has all of the powers and duties provided by the general laws of
4 this state relating to conservation and reclamation districts
5 created under Sections 52 and 52-a, Article III, and Section 59,
6 Article XVI, Texas Constitution, including Chapter 49, Water Code,
7 Chapter 51, Water Code, applicable to water control and improvement
8 districts, and Chapter 54, Water Code, applicable to municipal
9 utility districts.

10 (b) Notwithstanding Subsection (a) of this section, the
11 district's bonds and other obligations and the projects to be
12 financed by those obligations are not subject to the jurisdiction
13 or supervision of the commission under Chapter 49, Water Code, or
14 other law.

15 (c) Any general law referenced by this article that
16 supplements the power and the authority of the district, to the
17 extent that the law is not in conflict or inconsistent with this
18 article, is adopted and incorporated by reference.

19 (d) The board may employ and establish the terms of
20 employment and compensation of an executive director or general
21 manager and any other employees of the district the board considers
22 necessary.

23 (e) As authorized under Chapter 49, Water Code, the district
24 may exercise the power of eminent domain, within and without the
25 boundaries of the district, for the purpose of acquiring land and
26 property in order to develop its improvements projects. However,
27 the district may not exercise the power of eminent domain to acquire

1 city-owned land, property, mineral rights, or water rights.

2 (f) The district may impose impact fees according to
3 benefits received by the property, including an impact fee on
4 residential property. An impact fee may be imposed on residential
5 property only to provide capital funding for:

6 (1) public water and wastewater facilities; or

7 (2) drainage and storm-water facilities.

8 (g) To the extent that the powers under this subsection do
9 not impair contractual rights or agreements existing before the
10 effective date of this Act, the city may:

11 (1) exercise police powers over:

12 (A) the lake;

13 (B) any city-owned land around the lake; and

14 (C) easements on or above the lake owned or in
15 favor of the city; and

16 (2) assess reasonable fees for recreational use of the
17 lake.

18 (h) A power conferred by this section on the district may
19 not in any way interfere with the authority of the city under
20 Subsection (g) of this section.

21 (i) The board by resolution may change the district's name.
22 If the board changes the district's name, the district shall give
23 written notice to the commission.

24 SECTION 1.08. LAKE AS WATER SUPPLY. (a) The city may sell
25 water from the lake to the district or any other governmental entity
26 if the city council of the city finds that:

27 (1) the amount of water sold under a water sales

1 contract will not be needed by the city for its municipal water
2 supply for at least 20 years after the date of the contract; and

3 (2) execution of a contract with the district or any
4 other governmental entity will assist in fulfilling the city's
5 financial obligations.

6 (b) The district may develop a local water supply under a
7 water supply agreement with the city or from other sources.

8 (c) Consistent with Section 11.036, Water Code, and Section
9 791.026, Government Code, a water supply agreement entered into by
10 the city and the district under this section may:

11 (1) specify the term of the agreement;

12 (2) limit the maximum amount of water to be supplied to
13 the district by the city; and

14 (3) provide for the payment of rates and charges to the
15 city for the water supplied by the city.

16 (d) Under a water supply agreement, without the city's
17 consent:

18 (1) the maximum amount of water to be supplied to the
19 district by the city may not be increased; and

20 (2) the term of the agreement may not be extended.

21 (e) The city may establish and maintain rates and charges
22 for water supplied to the district or to any other purchaser of
23 water from the lake under a water supply agreement. The rates and
24 charges to be assessed under a water supply agreement must:

25 (1) be fair, reasonable, and nondiscriminatory; and

26 (2) be sufficient to recover a proportionate share of:

27 (A) the debt service requirements of the city

1 associated with the lake plus a 50 percent coverage on the debt
2 service;

3 (B) the capital costs and management fee payments
4 by the city under the city's contract with the Brazos River
5 Authority plus a 75 percent coverage on the capital costs and
6 management fee payments; and

7 (C) the lake's operation and maintenance costs,
8 including any capital expenditures associated with the lake that
9 are not debt financed.

10 (f) The operations and maintenance costs under Subsection
11 (e)(2)(C) of this section include:

- 12 (1) payments in lieu of taxes;
- 13 (2) general fund transfers of 15 percent of gross
14 revenues from water sales under this section;
- 15 (3) costs associated with the city's watershed
16 protection program for the lake;
- 17 (4) costs of operating and maintaining the lake as a
18 water supply or as a recreational area;
- 19 (5) engineering, accounting, and legal services
20 costs;
- 21 (6) utility costs;
- 22 (7) costs associated with law enforcement related to
23 the lake;
- 24 (8) permit administration costs;
- 25 (9) dam maintenance, inspection, and construction
26 costs;
- 27 (10) costs associated with constructing, operating,

1 and maintaining lake recreational facilities and lands, roads,
2 ramps, and parking areas;

3 (11) costs associated with regulating and monitoring
4 the surface of the lake, municipal easements, and city-owned lands
5 around the lake;

6 (12) costs associated with environmental studies,
7 sampling, and testing of the lake and its watershed; and

8 (13) any other costs, fees, expenses, or other
9 financial liabilities arising from or related to the sale of water
10 to others as contemplated under this section.

11 (g) "Proportionate share" as used in Subsection (e) of this
12 section means a fraction the numerator of which is the annual
13 diversion rights under a water supply contract with the city and the
14 denominator of which is the yield of the lake, where yield is
15 determined annually by the city considering all permitted uses.

16 (h) The district may not limit or interfere with the use or
17 enjoyment by the city of water resources from the lake for municipal
18 water supply purposes or recreational purposes. Except as
19 authorized by the city, the district may not regulate the
20 operation, use, or water level of the lake.

21 (i) The city may not interfere with the district's use or
22 enjoyment of any water taken by the district out of the lake under
23 and in accordance with a water supply agreement or other applicable
24 agreement between the parties, except that the city may exercise
25 the right of approving service by the district outside the
26 boundaries of the district.

27 (j) Under a written agreement with the city, the district

1 may conduct agreed-upon activities related to the operation and
2 maintenance of the lake and may conduct other supplemental
3 activities related to public health, safety, recreation, water
4 quality, and water conservation not inconsistent with the city's
5 use of the lake as a municipal water supply.

6 (k) The district recognizes that:

7 (1) the city and the Brazos River Authority have
8 entered into an agreement to design, build, operate, and maintain
9 the lake; and

10 (2) the district may not exercise its powers in a
11 manner that would infringe on the rights of the Brazos River
12 Authority under the river authority's agreement with the city
13 regarding the lake.

14 SECTION 1.09. BOARD OF DIRECTORS. (a) The district is
15 governed by a board of five directors. Directors for positions one,
16 three, and five shall be appointed by the Commissioners Court of
17 Garza County, and directors for positions two and four shall be
18 appointed by the Commissioners Court of Kent County. Directors
19 serve staggered terms of four years.

20 (b) To be eligible to serve as a director, a person must be
21 at least 18 years of age and be:

22 (1) a resident of the district;

23 (2) an owner of real property in the district;

24 (3) an owner of at least 10 percent of the outstanding
25 interest of a corporation or general or limited partnership that
26 owns real property in the district;

27 (4) an agent, employee, officer, or director of a

1 corporation or partnership that owns real property in the district;

2 (5) a person who served as an initial director; or

3 (6) a member of the commissioners court of one of the
4 counties.

5 (c) If a vacancy in the office of director occurs, the
6 commissioners court that made the original appointment shall
7 appoint a qualified individual to serve the remainder of the term.

8 (d) The board may remove a director for misconduct, for
9 failure to comply with the attendance policy adopted by the board,
10 or by unanimous vote of all of the remaining directors for failure
11 to carry out the duties of directors.

12 (e) As soon as practicable after a director is appointed,
13 the director shall execute a bond for \$10,000 payable to the
14 district and conditioned on the faithful performance of the
15 director's duties. Directors' bonds must be approved by the board.
16 Each director shall take the oath of office prescribed by the
17 constitution for public office. The bond and oath shall be filed
18 with the district, and the district shall retain the bond and oath
19 in its records. The district shall pay the cost of the bonds.

20 (f) The directors shall elect a chair, a vice chair, a
21 secretary, and any other officers the board considers necessary.

22 (g) A position on the board is not a civil office of
23 emolument for any purpose, including those purposes described by
24 Section 40, Article XVI, Texas Constitution.

25 (h) A director is not entitled to compensation for service
26 on the board but is entitled to be reimbursed for necessary and
27 reasonable expenses incurred in carrying out the duties and

1 responsibilities of a director.

2 (i) Three directors constitute a quorum for the
3 consideration of matters pertaining to the district, and a
4 concurrence of a majority of a quorum of directors is required for
5 any official action of the district, except that a concurrence of at
6 least three directors is required when the vote concerns:

- 7 (1) levying and assessing taxes;
- 8 (2) issuing bonds or other obligations; or
- 9 (3) making capital expenditures or entering into
10 contracts related to those expenditures.

11 (j) The initial appointed directors are:

- 12 (1) from Garza County:
 - 13 (A) Joe D. Hardin;
 - 14 (B) Mark Kirkpatrick; and
 - 15 (C) Odie Hood; and
- 16 (2) from Kent County:
 - 17 (A) Jim White; and
 - 18 (B) Jody Ashley.

19 SECTION 1.10. ORGANIZATIONAL MEETING. As soon as
20 practicable after all initial directors have qualified for office,
21 the initial directors shall hold an organizational meeting at a
22 location within the district agreeable to a majority of the
23 directors. If the directors cannot agree on a location, the
24 organizational meeting shall be held at the Kent County Courthouse.

25 SECTION 1.11. DISTRICT CONFIRMATION ELECTION. (a) The
26 initial board of directors shall hold an election on the same day in
27 both counties in the district to confirm the establishment of the

1 district in the manner provided by Subchapter D, Chapter 49, Water
2 Code.

3 (b) If a majority of the votes cast in a county at a
4 confirmation election is against the creation of the district, the
5 board may not call another confirmation election in that county
6 before the six-month anniversary of the former confirmation
7 election.

8 (c) Before a successful confirmation election, the district
9 may carry on any business as the board may determine except that the
10 board may not borrow money or impose or assess a tax of any kind or
11 an assessment for any purpose.

12 (d) The ballots shall be printed to provide for voting for
13 or against the proposition: "The creation of the Lake Alan Henry
14 Water District."

15 (e) Except as provided by this section, a confirmation
16 election shall be conducted in accordance with Sections 49.102 and
17 49.104, Water Code, and Section 41.001, Election Code.

18 (f) If the majority of qualified voters in a county who vote
19 in the election vote to confirm the creation of the district, that
20 county is included in the district. If the majority of qualified
21 voters in a county who vote in the election vote against confirming
22 the creation of the district, that county is excluded from the
23 district; however, the exclusion of that county does not affect the
24 validity of the district in the county that has voted to confirm
25 creation of the district.

26 SECTION 1.12. OPERATION AND MAINTENANCE TAX. (a) The
27 district may impose a tax for operation and maintenance purposes,

1 including funds for planning, constructing, acquiring,
2 maintaining, repairing, and operating all necessary land, plants,
3 works, facilities, improvements, appliances, and equipment of the
4 district and for paying costs of proper services, engineering and
5 legal fees, and organization and administrative expenses.

6 (b) An operation and maintenance tax may not be imposed by
7 the district until it is approved by a majority of the voters voting
8 at an election held in the district for that purpose in accordance
9 with Chapter 49, Water Code. After the tax has been authorized by
10 the district's voters, the board may levy the tax and have it
11 assessed and collected as other district taxes.

12 (c) An operation and maintenance tax election may be held at
13 the same time and in conjunction with any other district election,
14 including the confirmation election. The election may be called by
15 a separate election order or as part of any other election order.

16 (d) The proposition in an operation and maintenance tax
17 election may be for a specific maximum rate or for an unlimited
18 rate.

19 (e) If the district has any surplus operation and
20 maintenance tax funds that are not needed for the purposes for which
21 they were collected, the funds may be used for any lawful purpose.

22 (f) Sections 26.04, 26.05, and 26.07, Tax Code, do not apply
23 to a tax imposed under this section or an ad valorem tax imposed for
24 the payment of the interest on and principal of bonds issued by a
25 district.

26 SECTION 1.13. TAX LEVY FOR BONDS AND OTHER OBLIGATIONS. At
27 the time bonds or other obligations payable in whole or in part from

1 ad valorem taxes are issued, the board shall levy an annual ad
2 valorem tax, without limit as to rate or amount, for each year in
3 which all or part of the bonds are outstanding, and the district
4 shall annually assess and collect the ad valorem tax, on all taxable
5 property within the district, in an amount sufficient to:

6 (1) pay the interest on the bonds or other obligations
7 as it becomes due;

8 (2) create a sinking fund for the payment of the
9 principal of the bonds or other obligations when due or the
10 redemption price at any earlier required redemption date; and

11 (3) pay the expenses of assessing and collecting the
12 tax.

13 SECTION 1.14. CITY PROPERTY EXEMPT FROM DISTRICT TAXES.
14 City property is exempt from taxation by the district.

15 SECTION 1.15. ELECTION TO APPROVE ISSUANCE OF BONDS AND
16 OTHER OBLIGATIONS. (a) Bonds and other obligations that are
17 secured by and payable from ad valorem taxes may not be issued
18 unless the bonds and the levy of the taxes are first approved by a
19 majority of the qualified voters voting at an election held in the
20 district for that purpose.

21 (b) Bonds and other obligations that are not secured by and
22 payable from ad valorem taxes are not subject to the requirement of
23 an election and may be issued without an election.

24 (c) An election required by this section shall be conducted
25 in accordance with Subchapter F, Chapter 54, Water Code.

26 SECTION 1.16. SERVICES FOR CERTAIN DEFINED AREAS AND
27 DESIGNATED PROPERTY. (a) As provided by Subchapter J, Chapter 54,

1 Water Code, the district may define areas or designate certain
2 property of the district to pay for improvements, facilities, or
3 services that primarily benefit that area or property and do not
4 generally and directly benefit the district as a whole.

5 (b) An area defined under Subsection (a) of this section
6 constitutes a separate election precinct in which a separate
7 election must be held to determine if the improvements will be
8 provided and a separate tax levied.

9 (c) At an election in a defined area, a registered voter of
10 the district who owns property in the defined area may vote in the
11 area and not in the precinct of the voter's residence.

12 SECTION 1.17. PRIOR APPROVAL BY COUNTIES OR MUNICIPALITY OF
13 BONDS AND OTHER OBLIGATIONS. (a) A bond issuance or other
14 obligation of the district must be approved, before the issuance,
15 by an adopted order or resolution of each of the commissioners
16 courts of the counties.

17 (b) Any bonds or other obligations that are issued for the
18 purpose of providing retail water and sewer collection services
19 within all or any portion of the corporate limits of a municipality
20 must first be approved by the governing body of the municipality.

21 SECTION 1.18. DISSOLUTION. Except as provided by Section
22 1.19 of this Act, the board by a unanimous vote of all five
23 directors:

- 24 (1) may dissolve the district at any time; and
25 (2) shall dissolve the district on written petition of
26 the owners of 75 percent of the acreage of real property in the
27 district.

1 SECTION 1.19. INDEBTEDNESS AND CONTRACTUAL OBLIGATIONS.

2 The board may not dissolve the district until the district's
3 outstanding indebtedness and contractual obligations have been
4 repaid or discharged.

5 SECTION 1.20. TRANSFER OF PROPERTY AND ASSETS. After the
6 board votes to dissolve the district, the board shall transfer
7 ownership of all property and assets of the district to the
8 counties.

9 SECTION 1.21. CONTRIBUTION; START-UP FUNDING; INITIAL
10 DIRECTORS. (a) Pending receipt of other revenues from the sources
11 authorized by this article, the board may adopt a fee schedule to
12 provide for the overhead and operations of the district. Each
13 county shall pay a fee not to exceed \$10,000 a year for each
14 director appointed, unless the commissioners courts of the counties
15 approve a higher fee. The fee may be assessed each year for the
16 first three years of the district's operation.

17 (b) As soon as practicable on or after the effective date of
18 this Act, the commissioners courts of the counties shall designate
19 for each of the initial members of the board of directors the
20 position the director fills under Section 1.09(a) of this Act.

21 (c) The initial directors appointed to serve in positions
22 one and two shall serve until the first Saturday in May 2004, the
23 initial directors appointed to serve in positions three and four
24 shall serve until the first Saturday in May 2005, and the initial
25 director appointed to serve in position five shall serve until the
26 first Saturday in May 2006.

27 SECTION 1.22. FINDINGS RELATED TO PROCEDURAL AND PUBLIC

1 INTEREST REQUIREMENTS. (a) The legal notice of the intention to
2 introduce this Act, setting forth the general substance of this
3 Act, has been published as provided by law, and the notice and a
4 copy of this Act have been furnished to all persons, agencies,
5 officials, or entities to which they are required to be furnished by
6 the constitution and laws of this state, including the governor,
7 who has submitted the notice and this Act to the commission.

8 (b) The commission has filed its recommendations relating
9 to this Act with the governor, lieutenant governor, and speaker of
10 the house of representatives within the required time.

11 (c) The general law relating to consent by political
12 subdivisions to the creation of districts with conservation,
13 reclamation, and road powers and the inclusion of land in those
14 districts has been complied with.

15 (d) All requirements of the constitution and the laws of
16 this state and the rules and procedures of the legislature with
17 respect to the notice, introduction, and passage of this Act have
18 been fulfilled and accomplished.

19 (e) The public interest requires that the district adhere to
20 the terms of, and pay the rates and charges provided in, a water
21 supply agreement between the district and the city.

22 (f) Rates and charges set in accordance with Section 1.08(e)
23 of this Act will result in rates that are fair, reasonable, and
24 nondiscriminatory.

25 SECTION 1.23. EXPIRATION OF THIS ARTICLE; EXCEPTION.

26 (a) Except as provided by Subsection (b) of this section, if the
27 Lake Alan Henry Water District is not confirmed under Section 1.11

1 of this Act before September 1, 2005, the district is dissolved and
2 this article expires on that date.

3 (b) If the Lake Alan Henry Water District is not confirmed
4 under Section 1.11 of this Act or is dissolved after creation,
5 Section 1.07(g) of this Act nevertheless survives and remains in
6 effect.

7 ARTICLE 2. ZONING AROUND LAKE ALAN HENRY

8 SECTION 2.01. AMENDMENT. Subsection (a), Section 231.132,
9 Local Government Code, is amended to read as follows:

10 (a) This subchapter applies to:

11 (1) those parts of Garza County located within three
12 miles [~~one mile~~] of the high water marks established for Lake Alan
13 Henry and Post Lake except land located in Garza County and owned by
14 the White River Municipal Water District;

15 (2) those parts of Kent County located within three
16 miles [~~one mile~~] of the high water marks established for Lake Alan
17 Henry; and

18 (3) the area within 10,000 feet of where the shoreline
19 of Lake Cooper would be if the lake were filled to its storage
20 capacity.

21 ARTICLE 3. EFFECTIVE DATE

22 SECTION 3.01. EFFECTIVE DATE. This Act takes effect
23 immediately if it receives a vote of two-thirds of all the members
24 elected to each house, as provided by Section 39, Article III, Texas
25 Constitution. If this Act does not receive the vote necessary for
26 immediate effect, this Act takes effect September 1, 2003.