

By: Averitt

S.B. No. 1941

A BILL TO BE ENTITLED

AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Lake Alan Henry Water District.

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

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

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

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

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

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

25 SECTION 1.04. BOUNDARIES; ADJUSTMENTS. (a) The district
26 includes the territory contained within Sections 43-47 and Sections
27 56-60, Block 5, H&GN Railroad Co. Survey, Kent County, and that

1 portion of Garza County, as more fully described below, but always
2 excluding the City of Post, as the boundaries of the City of Post
3 may change from time to time. The specific boundaries of the
4 portion of Garza County included in the district excluding the City
5 of Post are as follows:

6 BEGINNING at a point at the Southeast corner of Garza County,
7 Texas;

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

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

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

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

18 THENCE South along the East County Line of Garza County to the
19 PLACE OF BEGINNING.

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

24 (1) the organization, existence, or validity of the
25 district;

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

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

3 (4) the legality or operation of the district or the
4 board.

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

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

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

14 SECTION 1.05. FINDING OF BENEFIT AND PUBLIC PURPOSE. (a)
15 The district is created to serve a public use and benefit.

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

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

25 (b) If any provision of general law is in conflict or
26 inconsistent with this article, this article prevails.

27 SECTION 1.07. GENERAL POWERS AND DUTIES. (a) The district

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

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

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

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

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

27 (f) The district may impose impact fees according to

1 benefits received by the property, including an impact fee on
2 residential property. An impact fee may be imposed on residential
3 property only to provide capital funding for:

- 4 (1) public water and wastewater facilities; or
- 5 (2) drainage and storm-water facilities.

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

- 9 (1) exercise police powers over:
 - 10 (A) the lake;
 - 11 (B) any city-owned land around the lake; and
 - 12 (C) easements on or above the lake owned or in
13 favor of the city; and
- 14 (2) assess reasonable fees for recreational use of the
15 lake.

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

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

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

- 25 (1) the amount of water sold under a water sales
26 contract will not be needed by the city for its municipal water
27 supply for at least 20 years after the date of the contract; and

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

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

6 (c) Consistent with Section 11.036, Water Code, and Section
7 791.026, Government Code, a water supply agreement entered into by
8 the city and the district under this section may:

9 (1) specify the term of the agreement;

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

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

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

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

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

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

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

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

25 (A) the debt service requirements of the city
26 associated with the lake plus a 50-percent coverage on the debt
27 service;

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

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

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

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

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

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

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

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

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

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

25 (j) Under a written agreement with the city, the district
26 may conduct agreed-upon activities related to the operation and
27 maintenance of the lake and may conduct other supplemental

1 activities related to public health, safety, recreation, water
2 quality, and water conservation not inconsistent with the city's
3 use of the lake as a municipal water supply.

4 (k) The district recognizes that:

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

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

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

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

20 (1) a resident of the district;

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

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

25 (4) an agent, employee, officer, or director of a
26 corporation or partnership that owns real property in the district;

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

1 (6) a member of the commissioners court of one of the
2 counties.

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

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

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

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

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

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

27 (i) Three directors constitute a quorum for the

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

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

9 (j) The initial appointed directors are:

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

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

23 SECTION 1.11. DISTRICT CONFIRMATION ELECTION. (a) The
24 initial board of directors shall hold an election on the same day in
25 both counties in the district to confirm the establishment of the
26 district in the manner provided by Subchapter D, Chapter 49, Water
27 Code.

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

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

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

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

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

24 SECTION 1.12. OPERATION AND MAINTENANCE TAX. (a) The
25 district may impose a tax for operation and maintenance purposes,
26 including funds for planning, constructing, acquiring,
27 maintaining, repairing, and operating all necessary land, plants,

1 works, facilities, improvements, appliances, and equipment of the
2 district and for paying costs of proper services, engineering and
3 legal fees, and organization and administrative expenses.

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

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

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

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

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

24 SECTION 1.13. TAX LEVY FOR BONDS AND OTHER OBLIGATIONS. At
25 the time bonds or other obligations payable in whole or in part from
26 ad valorem taxes are issued, the board shall levy an annual ad
27 valorem tax, without limit as to rate or amount, for each year in

1 which all or part of the bonds are outstanding, and the district
2 shall annually assess and collect the ad valorem tax, on all taxable
3 property within the district, in an amount sufficient to:

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

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

9 (3) pay the expenses of assessing and collecting the
10 tax.

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

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

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

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

24 SECTION 1.16. SERVICES FOR CERTAIN DEFINED AREAS AND
25 DESIGNATED PROPERTY. (a) As provided by Subchapter J, Chapter 54,
26 Water Code, the district may define areas or designate certain
27 property of the district to pay for improvements, facilities, or

1 services that primarily benefit that area or property and do not
2 generally and directly benefit the district as a whole.

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

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

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

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

19 SECTION 1.18. DISSOLUTION. Except as provided by Section
20 1.19 of this Act, the board by a unanimous vote of all five
21 directors:

22 (1) may dissolve the district at any time; and

23 (2) shall dissolve the district on written petition of
24 the owners of 75 percent of the acreage of real property in the
25 district.

26 SECTION 1.19. INDEBTEDNESS AND CONTRACTUAL OBLIGATIONS.

27 The board may not dissolve the district until the district's

1 outstanding indebtedness and contractual obligations have been
2 repaid or discharged.

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

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

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

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

25 SECTION 1.22. FINDINGS RELATED TO PROCEDURAL AND PUBLIC
26 INTEREST REQUIREMENTS. (a) The legal notice of the intention to
27 introduce this Act, setting forth the general substance of this

1 Act, has been published as provided by law, and the notice and a
2 copy of this Act have been furnished to all persons, agencies,
3 officials, or entities to which they are required to be furnished by
4 the constitution and laws of this state, including the governor,
5 who has submitted the notice and this Act to the commission.

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

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

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

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

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

23 SECTION 1.23. EXPIRATION OF THIS ARTICLE; EXCEPTION. (a)
24 Except as provided by Subsection (b) of this section, if the Lake
25 Alan Henry Water District is not confirmed under Section 1.11 of
26 this Act before September 1, 2005, the district is dissolved and
27 this article expires on that date.

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

5 ARTICLE 2. ZONING AROUND LAKE ALAN HENRY

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

8 (a) This subchapter applies to:

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

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

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

19 ARTICLE 3. EFFECTIVE DATE

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