

BILL ANALYSIS

C.S.H.B. 3438
By: Flores
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2003, the 78th Legislature created the Rio Grande Regional Water Authority (RGRWA) as a conservation and reclamation district within Cameron, Hidalgo, Starr, Willacy, Webb, and Zapata Counties. Until the creation of the RGRWA, the Rio Grande was the last major river basin in Texas without a regional water authority. After four years, the RGRWA has requested changes to the membership, powers, and duties to better regionally plan, manage, and conserve water in the Lower Rio Grande Valley. During the last four years, it became apparent that the make-up of the board created problems for appointing all the members. At no point in the last four years has the board had all fifteen members seated to fill all positions on the board.

Current law requires the RGRWA Board to include fifteen members consisting of six county appointed members from each member county and nine gubernatorial appointments (six irrigators, one public, one municipal) and that no country can have more than three board members at a time. Unfortunately, since most irrigators are located in the lower half of the Rio Grande, it made it difficult for the Governor to fill all the appointed seats without violating the three per county requirement. C.S.H.B. 3438 creates an eighteen member board. Twelve members are appointed by the Governor (nine irrigators, one public, one municipal, one water supply corporation) and removes the three per county limit.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1: Amends Section 1.01, Chapter 385, Acts of the 78th Legislature, Regular Session, 2003 is amended by adding Subdivisions (4-a) and (6) through (8) as follows:

(4-a) Provide that "Conference" means the conference under Section 1A.01 of the Act.

(6) Provides that a "Municipal class entity" means one of the following, a municipality; a municipal utility district operating under Chapter 54 of the Water Code; a special utility district under Chapter 65 of the Water Code.

(7) Provides that a "Water supply corporation" means a nonprofit water supply corporation operating under Chapter 67 of the Water Code.

(8) Provides that a "Watermaster" means a watermaster appointed by the commission under Subchapter G, Chapter 11, Water Code for the segment of the Rio Grande basin inside the boundaries of the authority.

SECTION 2: Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Article IA as follows:

Section 1A.01. CONFERENCE MEMBERSHIP. (a) Provides that subject to subsection (b), each county, municipal class entity, water supply corporation, and irrigation district or other water district in the authority is a member of the conference. (b) Provides that the board may determine whether a perspective member is qualified to become a member of the conference.

Section 1A.02. ADVISORY COMMITTEE. Provides that the board may appoint an advisory committee composed of representatives of the conference members to advise the board in administering the Act.

Sec. 1A.03. IRRIGATION DISTRICTS COMMITTEE. (a) Provides that the irrigation districts that are members of the conference are required to convene as a committee to prepare a list of nominee for director positions under Section 2.01(b)(1) of this Act at least 60 days before directors' terms are scheduled to expire or whenever a vacancy occurs in those positions. The committee is required to provide the list to the governor not later than 21st day after the date on which committee convenes. (b) The irrigation district conference members may select a presiding officer to conduct committee meetings and represent the entire committee.

SECTION 3: Amends Section 2.01, Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (a), (b), (c), and (f) and adding Subsections (c-1), (h), and (i) as follows:

(a) Provides that the number of directors be increased from 15 to 18 directors.

(b) Provides that twelve rather than nine directors be appointed by the governor, with the advise and consent of the senate as follows:

- (1) nine directors, rather than six will be selected from a list of nominees submitted by the conference, and who also represent irrigation districts that are members of the conference;
- (2) one director must represent the public;
- (3) one director will represent the municipal class entities that are members of the conference rather than water utilities; and
- (4) one director will represent water supply corporations that are members of the conference instead of representing municipalities.

(c) Provides that one director be appointed from each of the six counties in the authority by majority vote of the commissioners court of that county. In January of a year in which a director's term expires, the commissioners court of the appropriate county is required to appoint a director for a four-year, instead of a two year term, which would begin February 1st of that year. In addition to meeting the requirements of (c-1), the director appointed must also be:

- (1) a registered voter;
- (2) reside in the county from which the director is appointed; and
- (3) work in a water-related field or have special knowledge of water issues. Deletes language providing a director be certified to the board by the county judge of the county from which the director is appointed.

(c-1) Provides a director appointed under Subsection (c) must reside in the most populous municipality in the county from which the director is appointed if the county:

- (1) does not hold water rights;
- (2) does not have a certificate of convenience and necessity to provide water service; and
- (3) is not a water service provider.

(f) Provides the directors appointed under Subsection (b) or (c) serve staggered four-year terms. Deletes language regarding permanent directors.

(h) In making an appointment under Subsection (b) (1) of this section, the governor is authorized to reject one or more of the nominees on a list submitted by the committee of irrigation districts and request a new list of different nominees. Provides that the second list of nominees be submitted to the governor not later than the 14th day after the date of the governor's request for a new list. If the governor rejects one or more of the nominees on the second list, the governor may request a third, final list of nominees, that must be submitted to the governor not later than the 14th day after the date of the governor's request for the third list. If the governor rejects one or more of the nominees on the third list, the governor may select any person who represents an irrigation district that is a member of the conference to serve as a director.

(i) Provides that the watermaster serve as a nonvoting advisor to the board.

SECTION 4: Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 2.035 as follows:

Sec. 2.035. REMOVAL FROM OFFICE. Provides that a director who is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during the calendar year without an excuse approved by a majority vote of the board is grounds for removal from the board.

SECTION 5: Amends Section 2.06(b), Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, by providing that the president may not vote at a board meeting except to break a tie vote.

SECTION 6: Amends Section 3.07, Chapter 385, Acts of the 78th Legislature, Regular Session, 2003 by providing that the authority may serve as a court-appointed receiver in a matter determined by a court concerning the disposition of assets of any political subdivision, municipally owned utility, or water supply corporation.

SECTION 7: Amends Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3.08 as follows:

Sec. 3.08. DETERMINATION OF WATER RIGHTS.

(a) Provides that no later than September 1st of each year, the watermaster is required to provide to the board a list of all water rights held inside the boundaries of the authority and the authorized use for each right.

(b) Requires that the board timely review and certify each list.

(c) Provides that no later than December 1 of each even-numbered year, the board is required to provide in writing to the governor, and the legislator of that district, the most current list certified by the board and a summary of the authorized uses for the water rights on the most current list, including irrigation, municipal, and industrial uses.

SECTION 8: Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 4.04 as follows:

Sec. 4.04. FEES AND ASSESSMENTS; AUTHORIZED CONTRIBUTIONS.

(a) Provides the authority to impose a fee or assessment on a member of the conference or another water user to pay authorized expenses of the authority.

(b) Provides that each fiscal year, the board is required to determine the amount of the fee or assessment based on water rights held by the affected entity.

(c) Provides that to determine the number of water rights, the board is required to, for domestic, municipal, or industrial water rights, multiply by two the number of water rights certified by board under Section 3.08 of the Act or is required, for any other water right, use the number of water rights certified by the board under Section 3.08 of the Act.

(d) Provides that the initial fee or assessment imposed under this section may not exceed five cents or each water right held by the affected entity.

(e) Provides that the board is authorized to adopt standardized forms and procedures to implement this section.

(f) Authorizes the affected entity to charge a fee or assessment paid to the authority to the operation and maintenance fund of the entity or raise and pay the fee or assessment in any other authorized manner.

(g) Authorizes any county in the authority, as authorized by the commissioners court of the county, to contribute county money to support the operations, projects, or other authorized expenses of the authority. A county's contribution must be made part of a contract with the authority, and the contract must make clear how the contribution serves as a public purpose of the county.

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SECTION 9: Provides that the watermaster, appointed by the Texas Commission on Environmental Quality, is required to determine the number of water rights held by each member of the conference of the Rio Grande Regional Water Authority.

SECTION 10: a) Provides that the terms of the directors of the Rio Grande Regional Water Authority serving on the effective date of this Act expire on the date a majority of the members required to be appointed under Subsection (c) of this section qualify to serve.

(b) Not later than September 21, 2007, the committee of irrigation districts is required to convene as provided by Section 1A.03, Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, as added by this Act, and submit to the governor an initial list of nominees for the director positions under Section 2.01(b) (1) of that chapter, as amended by this Act.

(c) Except as provided by Subsection (d) of this section, not later than September 30, 2007:

(1) Requires the governor to appoint 12 members of the board of directors of the Rio Grande Regional Water Authority as provided by Section 2.01 (b), Chapter 385, Acts of the 78th Legislature, Regular Session, as amended by this Act.

(2) Requires the Commissioners Courts of Cameron, Hidalgo, Starr, Webb, Willacy, and Zapata counties to each appoint a member of the board of directors of the Rio Grande Regional Water Authority as provided by Section 2.01(c), Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, as amended by this Act.

(d) Provides that appointments to the board of directors of the Rio Grande Regional Water Authority under Subsection (c)(1) of this section required to be made on or before September 30, 2007, are not required to be made from a list of nominees submitted by the conference of the authority, or subject to Senate confirmation.

(e) Requires the directors to draw lots to determine their terms so that nine directors serve terms expiring February 1, 2009, and nine directors serve terms expiring February 1, 2011, at the first meeting of the board of directors of the Rio Grande Regional Water Authority after the directors are appointed under Subsection (c) of this section.

SECTION 11: Provides that Sections 1.07 (Authority Prohibited From Conducting Water Rights), 2.01(d) (Relating to the appointment of directors for certain assurance), and 3.03 (Noncontractual Fees Prohibited), Chapter 385, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 12: This Act takes effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3438 makes the following changes from the original:

SECTION 2 contains an additional provision, Sec. 1A.03 creates an Irrigation districts committee composed of members of the conference. This committee will convene to prepare a list of nominees for director positions under Section 2.01(b)(1) at least 60 days before directors' terms are scheduled to expire or whenever a vacancy occurs in those positions. The committee shall provide a list to the governor no later than the 21st day after the date on which the committee convenes. The irrigation district members may select a presiding officer to conduct a committee meetings and represent the entire committee.

SECTION 3 adds an additional provision which allows the governor to reject one of more of the nominees on a list submitted by the committee of irrigation districts and allow the governor to request a new list of different nominees. The second list of nominees must be submitted to the

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governor not later than the 14th day after the date of the governor's request for a new list. If the governor rejects one or more of the nominees on the second list, the governor may request for the third list. If the governor rejects one or more of the nominees on the third list, the governor may select any person who represents an irrigation district that is a member of the conference to serve as a director.

SECTION 10 adds subsection (b) which requires that no later than September 21, 2007, the committee of irrigation districts shall convene as provided by Section 1A.03, and subcommittee to the governor an initial list of nominees for the director positions under Section 2.01(b)(1).

Subsection (d)(1) adds language that appointments to the Board of Directors of the Rio Grande Water Authority must be made from the list of nominees submitted by the committee of irrigation districts convened under Section 1A.03.