

BILL ANALYSIS

S.B. 715
By: Shapiro
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The North Texas Municipal Water District ("NTMWD") is a conservation and reclamation district created by the 52nd Legislature, Regular Session, 1951. Currently, NTMWD provides water, wastewater services, and solid waste services to wholesale and retail customers in Collin, Dallas, Denton, Hunt, Kaufman, and Rockwall Counties.

As proposed, S.B. 715 updates the per diem and annual reimbursement limits on fees to be paid to members of the board of directors of NTMWD, in accordance with per diem limits applicable to members of other water districts as authorized in Chapter 49 (Provisions Applicable to All Districts), Water Code. S.B. 715 also updates NTMWD governance, administrative and bonding provisions, and deletes the requirement that the issuance of bonds be submitted to the Attorney General of Texas for approval pursuant to Chapter 1202 (Examination and Registration of Public Securities), Government Code. Finally, S.B. 715 requires certain actions to be taken to ensure the continued operations of NTMWD in the event of a catastrophe or disaster.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resources Conservation Commission ("TNRCC"), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

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 1a, Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, by adding Subdivision (13), to define "bonds."

SECTION 2. Amends Section 3(b), Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, as follows:

(b) Requires each director of the board of directors (board) of the North Texas Municipal Water District (NTMWD) to receive a fee of \$150 for each day the director spends performing the duties of a director, including participating in board and committee meetings, other activities involving substantive deliberation of NTMWD business, and pertinent educational programs, but requires that not more than \$7,200 be paid to any director in one calendar year. Deletes existing text requiring each director to receive a fee of \$50 for attending each meeting of the board and \$20 per day devoted to the business of NTMWD other than attending board meetings, but requires that not more than \$1,200 be paid to any director in one calendar year therefor.

SECTION 3. Amends Section 4, Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, to require the president of the board of NTMWD to be the presiding officer of the board, rather than the chief executive officer of NTMWD and the presiding officer of the board, and to require the board to appoint an executive director who is required to employ or contract with all necessary engineers, attorneys and other employees.

SECTION 4. Amends Section 27, Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, by amending Subsections (a), (d), (e), (f), (h), (j), and (k) and adding Subsection (h-1), as follows:

(a) Provides that NTMWD has the functions, powers, authority, rights, and duties necessary to accomplish the purposes for which NTMWD was created and the purposes authorized by Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution, this Act, or any other law. Authorizes NTMWD, in addition to all other powers, to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries, at any location whatsoever, in the sole discretion of NTMWD, any and all property, works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to provide for certain uses and purposes, rather than to provide, pursuant to the provisions of Chapters 5 (Texas Natural Resource Conservation Commission) and 6 (Texas Water Development Board), Water Code, as amended, for certain uses and purposes.

(d) Provides that NTMWD is a "district" under the Regional Waste Disposal Act, as amended (Chapter 30 (Regional Waste Disposal Act), rather than Chapter 25, Water Code), and all provisions of said Act are applicable to NTMWD except to the extent of any conflict with this Act, in which case the provisions of this Act are required to prevail.

(e) Authorizes all cities, public agencies, and other political subdivisions to contract with NTMWD in any manner authorized by the Regional Waste Disposal Act, as amended (Chapter 30, Water Code), provided that any city is authorized to contract with NTMWD in the manner authorized by Section 30.030(c) (relating to source of contract payments), Water Code, rather than 25.030(c) of the Regional Waste Disposal Act. Makes conforming changes.

(f) Requires NTMWD and all cities, public agencies, and other political subdivisions to have all of such rights, powers, and authority with respect to certain water usage as granted, permitted, and authorized by the Regional Waste Disposal Act, as amended (Chapter 30, Water Code). Makes conforming and nonsubstantive changes.

(h) Authorizes NTMWD to issue bonds to borrow money for any corporate purpose, including the purposes authorized by this section. Authorizes the board of NTMWD to issue bonds from time to time and in one or more issues or series, to be payable from certain sources and authorizes the bonds to be issued in certificated form or uncertificated book-entry form to mature serially or otherwise within not to exceed 50 years from their date. Provides that the bonds, and any interest coupons appertaining thereto, to the extent issued in negotiable form, are and are required to constitute negotiable instruments within the meaning and for all purposes of the Texas Business & Commerce Code, rather than the Texas Uniform Commercial Code, provided that the bonds are authorized to be issued registrable as to principle alone or as to both principal and interest, and are required to be executed, and are authorized to be made redeemable prior to maturity, and are authorized to be issued in such form, denominations, and manner, and under such terms, conditions, and details, and are authorized to be sold in such manner, including through a public or private sale, at such price, and under such terms, and said bonds are required to bear interest at such rates, including fixed, variable, floating, adjustable, or another method of computation, all as required to be determined and provided in the resolution authorizing the issuance of the bonds. Authorizes NTMWD, in the bond resolution, to authorize one or more designated officers or employees of NTMWD to act on behalf of NTMWD, with the same force and effect as if the action had been taken by NTMWD, in selling and delivering the bonds and setting the dates, prices, interest rates, interest payment periods, and other procedures relating to the bonds, as specified in the bond resolution. Deletes existing text authorizing the board of directors of NTMWD, for the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and equip any property, buildings, structures, or other facilities for any purpose or power authorized by this section, to issue revenue bonds to be payable from certain sources. Makes conforming and nonsubstantive changes.

(h-1) Authorizes the board, if funds are not available to meet any need of NTMWD and the board declares an emergency, to issue bond anticipation notes or revenue anticipation notes, or both, to borrow the money needed by NTMWD. Authorizes bond anticipation notes to be issued for any purpose for which bonds of NTMWD are authorized to be issued. Authorizes NTMWD to enter into an agreement with a purchaser of bond anticipation notes to use the proceeds from the sale of any bond to pay principal, interest, or redemption price on the bond anticipation notes. Authorizes revenue anticipation notes to be issued for any purpose for which NTMWD is authorized to expend revenue of NTMWD. Authorizes NTMWD to enter into an agreement with a purchaser of revenue anticipation notes to adopt, enforce, and collect charges, fees, rentals, and other amounts for NTMWD's facilities and services that are sufficient to pay the principal of, any redemption premium on, and interest on the revenue anticipation notes.

(j) Provides that Chapter 1202 (Examination and Registration of Public Securities), Government Code, applies to the issuance of bonds by NTMWD. Deletes existing text requiring that all bonds issued pursuant to this section and the appropriate proceedings authorizing their issuance be submitted to the Attorney General of the State of Texas for examination, requiring the attorney general to be furnished a resolution from the Texas Water Rights Commission certifying that NTMWD is possessed of the necessary water right authoring it to impound and appropriate the water to be utilized by the project before giving his approval, when the bonds are to be issued to finance in whole or in part water-using facilities, except treatment or distribution facilities; requiring that, if the bonds recite that they are secured by a pledge of revenue of any contract, a copy of such contract and the proceedings relating thereto to be submitted to the attorney general, requiring the attorney general to approve the bonds and any such contract, if he finds that such bonds have been authorized and any such contract has been made in accordance with law, and thereupon the bonds are required to be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration, such bonds and any such contract are required to be incontestable in any court or other forum for any reason, and are required to be valid and binding obligations in accordance with their terms for all purposes.

(k) Provides that all bonds issued pursuant to this section are legal and authorized investments in the same manner as provided by Section 49.186(a) (regarding bonds as authorized investments), Water Code. Requires that the bonds also be eligible and lawful security for deposits of public funds in the same manner as provided by Section 49.186(b) (regarding bonds as security for funds), Water Code. Deletes existing text providing that all bonds issued pursuant to this section are legal and authorized investments for certain entities and certain funds and that said bonds are also required to be eligible and lawful security for all deposits of public funds of the State of Texas, including all agencies and subdivisions, and instrumentalities thereof, including certain entities, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

SECTION 5. Amends Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, by adding Section 28, as follows:

Sec. 28. Requires any directors who are available, or the highest ranking staff member of NTMWD if no director is available, if a quorum of the board cannot be assembled due to multiple deaths or injuries resulting from a catastrophe or disaster, to within 24 hours after the catastrophe or disaster has ended, or as soon as practicable under the circumstances, take any action necessary to ensure the basic health, safety, and welfare of the customers of NTMWD and call for the appointment of new directors by the member cities of NTMWD to fill the vacancies on the board resulting from the catastrophe or disaster. Authorizes any available directors, or the highest ranking staff member of NTMWD if no director is available, until a quorum of the board can be assembled, to only take actions as necessary to protect the basic health, safety, and welfare of NTMWD's customers. Authorizes the board to subsequently ratify any action taken in accordance with this section.

SECTION 6. Repeals Section 27(c) (relating to facilities acquired or constructed pursuant to this section), Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951. [Note: Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, does not contain a Section 27(c). Section 27 was added by Chapter 90, Acts of the 64th Legislature, Regular Session, 1975.]

SECTION 7. Sets forth legislative findings regarding the fulfillment of procedural requirements with respect to the notice, introduction, and passage of this Act.

SECTION 8. Provides the effective date of this Act .

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.