

## **BILL ANALYSIS**

Senate Research Center

H.B. 2180  
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Agriculture, Water & Rural Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of H.B. 2180 is to enact the recommendations of the Sunset Advisory Commission (Sunset) regarding the Sulphur River Basin Authority (SRBA). The legislature created SRBA in 1985 to provide for the conservation and development of natural resources in the Sulphur River basin in northeast Texas. SRBA receives no state appropriation and operated on a budget of about \$1 million in fiscal year 2015, 84 percent of which comes from cities or water districts in the Dallas-Fort Worth metropolplex, and is dedicated to studying the feasibility of developing water resources in the basin.

SRBA is at the center of one of the biggest water fights in the state. Controversy over potential water development projects, such as Marvin Nichols Reservoir, has thrown an organizationally immature SRBA into the big leagues of water development. The Sunset recommendations aim to hit the reset button on SRBA and its operations to allow SRBA and its stakeholders to reestablish the working relationships and trust needed to best meet the needs of the Sulphur River basin.

The Sulphur River Basin Authority is governed by Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985.

This legislation addresses issues differently from current law by:

- Instituting new leadership at SRBA by requiring the terms of all seven SRBA board members to expire on September 1, 2017.
- Applying basic good government standards to SRBA's governing laws to promote accountability, transparency, and best practices.
- Repealing SRBA's unused authority to provide hydroelectric power, parks and recreation facilities, solid waste service, and forestation services.
- Requiring SRBA, before voting on a project for which it will seek a permit, to obtain advice from the county judge of each county in which the project is proposed to be located.
- Changing SRBA's next Sunset review date to 2029, the standard 12-year period.
- Updating SRBA's governing laws to allow the Texas Legislative Council to prepare these laws for codification.

H.B. 2180 amends current law relating to the Sulphur River Basin Authority, following recommendations of the Sunset Advisory Commission.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Reenacts Section 1A(a), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as repealed by Chapter 938 (H.B. 3123), Acts of the 84th Legislature, Regular Session, 2015, and amended by Chapter 1148 (S.B. 523), Acts of the 84th Legislature, Regular Session, 2015, and amends it, to require that a certain review be conducted under Section 325.025 (River Authorities Subject to Review), Government Code, as if the Sulphur River Basin Authority (SRBA) were a state agency scheduled to be abolished September 1, 2029, rather than September 1, 2017, and every 12th year after that year.

SECTION 2. Amends Section 2(11), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, to redefine “waste.”

SECTION 3. Amends Section 3(a), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, to provide that SRBA is composed of the territory in each county in Texas, other than Fannin County, that is located in whole or in part within the watershed of the Sulphur River and its tributaries with confluences with the Sulphur River upstream from the eastern boundary of Texas, as those watersheds and tributaries are defined by maps now on file with the Texas Water Development Board (TWDB), rather than with the Texas Department of Water Resources (TDWR).

SECTION 4. Amends Section 4, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as follows:

Sec. 4. **AUTHORITY PURPOSES.** Provides that the purpose of this Act is to authorize SRBA to provide for the conservation and development of the state's natural resources within the basin of Sulphur River, including:

- (1) the control, storage, preservation, and distribution of the state’s water for certain uses, rather than the control, storage, preservation, and distribution of the state’s water for certain uses, including recreation and pleasure;
- (2) through (4) makes no changes to these subdivisions;
- (5) the conservation and development of the water, rather than the conservation and development of the forests, water, and hydroelectric power;
- (6) makes no changes to this subdivision;
- (7) the provision of systems, facilities, and certain procedures, including procedures for disposal of waste, rather than the provision of systems, facilities, and certain procedures, including procedures for the disposal of waste of all types.

SECTION 5. Amends Section 6, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, by amending Subsections (a), (b), (c), and (i) and adding Subsection (j), as follows:

- (a) Requires SRBA to be governed by a board of directors (board) composed of seven, rather than six, members and requires that one member of the board be appointed to represent SRBA at large.
- (b) Requires that a member of the board appointed to represent a region under Subsection (a) be a resident of a county in the region for which the member is appointed, rather than requires that each member of the board be a qualified elector and a resident of a county in the region for which he is appointed.
- (c) Requires that each member of the board serve for a term of six years and until the member’s successor has qualified, rather than requires that each member of the board, except for the initial members of the board, serve for a term of six years and until his successor has qualified. Deletes existing text requiring the governor to designate certain of the six initial members appointed by the governor to serve terms that expire on certain dates.

(i) Requires the governor to designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(j) Redesignates text of existing Subsection (i) as Subsection (j). Requires the board to elect certain officers as members of the board consider necessary, rather than to elect certain officers, including a president, as members of the board consider necessary. Requires the presiding officer and vice-president, rather than the president and vice-president, to be members of the board, but provides that other officers are not required to be members of the board.

SECTION 6. Amends Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, by adding Sections 6A and 6B, as follows:

Sec. 6A. BOARD MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) Requires that the training program provide the person with certain information.

(c) Provides that a person appointed to the board is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) Requires the board to create a training manual that includes the information required by Subsection (b) and to distribute a copy of the training manual annually to each member of the board. Requires that each member of the board, on receipt of the training manual, sign a statement acknowledging receipt of the training manual.

Sec. 6B. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) Requires the board to develop a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of authority rules and appropriate alternative dispute resolution (ADR) procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under SRBA's jurisdiction.

(b) Requires that SRBA's procedures relating to ADR conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of ADR by state agencies.

(c) Requires SRBA to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated rulemaking or ADR, and collect data concerning the effectiveness of those procedures.

SECTION 7. Amends Section 8, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, by adding Subsection (c), to authorize a director's compensation to be increased as authorized by Section 49.060 (Fees of Office; Reimbursement), Water Code, by resolution adopted by the board in accordance with Subsection (e) (relating to requiring that the provisions of this section take precedence over all prior statutory enactments in all areas of conflict) of that section on or after September 1, 1995.

SECTION 8. Amends Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, by adding Sections 10A and 13A, as follows:

Sec. 10A. SEPARATION OF POLICYMAKING AND MANAGEMENT FUNCTIONS. Requires the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of SRBA's executive director and staff.

Sec. 13A. COMPLAINTS. (a) Requires SRBA to maintain a system to promptly and efficiently act on complaints filed with SRBA. Requires SRBA to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Requires SRBA to make information available describing its procedures for complaint investigation and resolution.

(c) Requires SRBA to periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 9. Amends Sections 17(b), and (d), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as follows:

(b) Deletes existing Subdivision (9) authorizing SRBA to exercise the powers of control and use of the state's water in the manner and for the purpose of providing for the control, storage, and use of storm water, floodwater, and unappropriated flow water in the development and distribution of hydroelectric power, where this use is authorized to be economically coordinated with other and superior uses, and subordinated to the uses declared by law to be superior. Redesignates existing Subdivisions (10) through (13) as Subdivisions (9) through (12) and makes no further changes to these subdivisions.

(d) Requires SRBA to adopt and implement a program of water conservation consistent with rules and criteria duly adopted and enforceable by the Texas Water Commission (commission) and TWDB for similarly situated authorities, rather than duly adopted and enforceable by TDWR for similarly situated authorities.

SECTION 10. Amends Sections 20 and 23, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as follows:

Sec. 20. WATER QUALITY CONTROL. Provides that SRBA is a river authority for the purposes and definitions of Chapter 30 (Regional Waste Disposal), Water Code, and the Clean Air Financing Act (Article 4477-5a, Vernon's Texas Civil Statutes (V.T.C.S.)) as they apply to SRBA, rather than for the purposes and definitions of Chapter 30, Water Code, the Clean Air Financing Act (Article 4477-5a, V.T.C.S.), and the Solid Waste Resource Recovery Financing Act (Article 4477-7a, V.T.C.S.) as they apply to SRBA. Provides that, if a provision of the Clean Air Financing Act conflicts with this Act, rather than if one of those Acts conflicts with this Act, this Act prevails.

Sec. 23. PERMITS AND LICENSES. (a) Requires SRBA to apply for any permits, licenses, and other grants of authority required from the commission, rather than to apply for any permits, licenses, franchises, and other grants of authority required from the commission.

(b) Authorizes SRBA to apply for any permits, licenses, and financial assistance it may need from any federal, state, or local governmental agency, rather than to apply for any permits, licenses, franchises, and financial assistance it may need from TDWR or any federal, state, or local governmental agency.

(c) Requires the board, before voting on a proposed project for which the board will seek a permit, to obtain advice on the proposed project from the county judge of each county in which the proposed project is proposed to be located.

SECTION 11. Amends Section 24(a), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as follows:

(a) Authorizes SRBA to enter into service contracts and to adopt resolutions and orders establishing rates and providing for the collection of fees and charges for the sale or use of water, the services of water transmission, treatment, and storage facilities, liquid waste collection, treatment and disposal facilities and services, the sale of power and electric energy, and any other services or facilities sold, furnished or supplied by SRBA, rather than adopt resolutions and orders establishing rates and providing for the collection of fees and charges for the sale or use of water, the services of water transmission, treatment, and storage facilities, solid and liquid waste collection, treatment and disposal facilities and services, the use of park and recreational facilities, the sale of power and electric energy, and any other services or facilities sold, furnished or supplied by SRBA.

SECTION 12. Amends Sections 29(b) and (c), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as follows:

(b) Authorizes SRBA, notwithstanding any other law, to:

(1) undertake and carry out any activities that are related to or necessary in carrying out or performing any power or function of SRBA. Creates this subdivision from existing text;

(2) creates this subdivision from existing text and makes nonsubstantive changes;

(3) acquire, purchase, construct, own, operate, maintain, repair, improve, or extend, and loan, lease, sell, or otherwise dispose of, including by such methods as loan payments, rentals, sales, and installment sales, as the parties may agree, certain items and property or any interest in property. Creates this subdivision from existing text and makes nonsubstantive changes; and

(4) use any or all money or proceeds of bonds and other obligations. Creates this subdivision from existing text. Deletes existing text authorizing this to be accomplished by such methods as loan payments, rentals, sales, and installment sales.

(c) Provides that all persons are authorized to contract with SRBA in any manner authorized by this Act, Chapter 30, Water Code, and the Clean Air Financing Act (Article 4477-5a, V.T.C.S.), rather than authorized by this Act, Chapter 30, Water Code, the Clean Air Financing Act (Article 4477-5a, V.T.C.S.), and the Solid Waste Resource Recovery Financing Act (Article 4477-7a, V.T.C.S.), with respect to water, waste, pollution control, or any other facilities and any services provided by SRBA.

SECTION 13. Amends Section 37, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as follows:

Sec. 37. WORK WITH DEVELOPMENT BOARD. (a) Creates this subsection from existing text and makes a nonsubstantive change.

(b) Creates this subsection from existing text. Provides that SRBA has and is authorized to exercise the powers necessary to enable SRBA to participate in the programs administered by TWDB for certain purposes, including other programs administered by TWDB, rather than the powers necessary to enable SRBA to participate in the programs administered by TDWR for certain purposes.

SECTION 14. Repealers: Sections 2(5) (relating to defining “department”), 18 (Forestation and Reforestation), 21 (Solid Waste), and 22 (Parks and Recreational Facilities), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985.

SECTION 15. (a) Provides that the terms of board members serving on the effective date of this Act expire on September 1, 2017.

(b) Requires the governor, not later than September 2, 2017, to make the appointments required by Section 6, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as amended by this Act.

(c) Requires the governor, notwithstanding Section 6(c), Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as amended by this Act, of the seven initial members appointed by the governor under that section, to designate two members to serve for terms that expire on February 1, 2019, two members to serve for terms that expire on February 1, 2021, and three members to serve for terms that expire on February 1, 2023.

(d) Authorizes the governor to appoint to the board under Subsection (b) a member whose term expires under Subsection (a).

SECTION 16. (a) Authorizes a person serving on the board, notwithstanding Section 6A, Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985, as added by this Act, to vote, deliberate, and be counted as a director in attendance at a meeting of the board until December 1, 2017.

(b) Provides that this section expires January 1, 2018.

SECTION 17. Provides that all requirements of the constitution and the laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 18. Effective date: September 1, 2017.