

By: Zaffirini, Campbell

S.B. No. 1198

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the conversion of the Hays Caldwell Public Utility
3 Agency to the Alliance Regional Water Authority; providing
4 authority to issue bonds; granting the power of eminent domain;
5 providing authority to impose fees.

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

7 SECTION 1. (a) The Hays Caldwell Public Utility Agency is
8 converted to a conservation and reclamation district to be known as
9 the Alliance Regional Water Authority located in Bexar, Caldwell,
10 Comal, Guadalupe, and Hays Counties.

11 (b) The Alliance Regional Water Authority is not required to
12 hold an election to confirm the creation of the authority.

13 SECTION 2. Subtitle X, Title 6, Special District Local Laws
14 Code, is amended by adding Chapter 11010 to read as follows:

15 CHAPTER 11010. ALLIANCE REGIONAL WATER AUTHORITY

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 11010.001. DEFINITIONS. In this chapter:

18 (1) "Authority" means the Alliance Regional Water
19 Authority.

20 (2) "Board" means the board of directors of the
21 authority.

22 (3) "Director" means a member of the board.

23 (4) "District" means any district or authority created
24 under Section 52, Article III, or Section 59, Article XVI, Texas

1 Constitution, regardless of the manner of creation.

2 (5) "Local government" means:

3 (A) a municipality, county, district, or other
4 political subdivision of this state;

5 (B) a local government corporation;

6 (C) a nonprofit corporation created to act on
7 behalf of a local government; or

8 (D) a combination of two or more of the entities
9 described by this subdivision.

10 (6) "Private entity" includes an individual,
11 corporation, organization, business trust, estate, trust,
12 partnership, and association and any other legal entity that is not
13 a governmental body or agency.

14 (7) "Sponsor" means:

15 (A) the City of Kyle;

16 (B) the City of San Marcos;

17 (C) the City of Buda;

18 (D) the Canyon Regional Water Authority; and

19 (E) any other local government or private entity
20 added to the authority as a sponsor under Section 11010.005.

21 (8) "Water" includes:

22 (A) groundwater, percolating or otherwise,
23 notwithstanding the quality of the groundwater;

24 (B) any surface water, naturally or artificially
25 impounded or in a navigable or nonnavigable watercourse; and

26 (C) municipal wastewater or industrial
27 wastewater, including municipal wastewater or industrial

1 wastewater that has been treated to a quality suitable for reuse for
2 a beneficial use.

3 Sec. 11010.002. NATURE OF AUTHORITY. The authority is a
4 regional water authority in Bexar, Caldwell, Comal, Guadalupe, and
5 Hays Counties created under and essential to accomplish the
6 purposes of Section 59, Article XVI, Texas Constitution.

7 Sec. 11010.003. FINDINGS OF PUBLIC PURPOSE AND BENEFIT.

8 (a) The authority is created to serve a public use and benefit.

9 (b) All land and other property included in the territory of
10 the authority will benefit from the works and projects to be
11 accomplished by the authority under powers conferred by Section 59,
12 Article XVI, Texas Constitution, and powers granted under this
13 chapter.

14 Sec. 11010.004. AUTHORITY TERRITORY. (a) The authority is
15 composed of the territory:

16 (1) of the sponsors, including territory within the
17 municipal boundaries of a sponsor that is a municipality;

18 (2) located in the service areas of the sponsors as
19 provided by the sponsors' respective certificates of convenience
20 and necessity; and

21 (3) added to and not excluded from the authority in
22 accordance with applicable law.

23 (b) Territory added to the authority may be in a county
24 other than a county listed in Section 11010.002.

25 Sec. 11010.005. METHOD OF ADDING SPONSORS. (a) The
26 governing body of a local government or a private entity, including
27 a water supply corporation, may petition the board to add that local

1 government or private entity as a sponsor.

2 (b) A petition under Subsection (a) must be submitted in the
3 manner and form required by board rule.

4 (c) On receipt of a petition under Subsection (a), the board
5 shall set a hearing on the petition and provide notice of the date,
6 time, place, and purpose of the hearing to:

7 (1) the sponsors of the authority; and

8 (2) the petitioning local government or private
9 entity.

10 (d) At the hearing, the board shall make a determination on
11 whether:

12 (1) the local government or private entity will
13 benefit from being added to the authority as a sponsor; and

14 (2) it is in the best interest of the authority to add
15 the local government or private entity to the authority as a
16 sponsor.

17 (e) If, after a hearing on the petition, the board decides
18 that the local government or private entity should be added to the
19 authority as a sponsor, the board shall issue an order:

20 (1) adding the local government or private entity to
21 the authority;

22 (2) adding the local government's or private entity's
23 territory or service area to the territory of the authority; and

24 (3) making the local government's or private entity's
25 territory or service area subject to the privileges, duties,
26 assets, and financial obligations of the authority to the same
27 degree as other sponsors already included in the authority.

1 (f) After the addition of a sponsor to the authority, the
2 board shall adopt rules that reapportion the directors of the
3 authority among the sponsors in accordance with the rules adopted
4 under Section 11010.051(c)(2) and may increase or decrease the
5 number of directors on the board within the range provided by
6 Section 11010.051(a).

7 Sec. 11010.006. LIBERAL CONSTRUCTION OF CHAPTER. This
8 chapter shall be liberally construed to effect its purposes.

9 SUBCHAPTER B. BOARD OF DIRECTORS

10 Sec. 11010.051. DIRECTORS. (a) The authority is governed
11 by a board of directors consisting of at least 7 and not more than 17
12 members.

13 (b) The board is responsible for the management, operation,
14 and control of the authority.

15 (c) The board shall adopt rules that:

16 (1) establish the number of directors of the
17 authority; and

18 (2) determine the apportionment of directors for each
19 sponsor based on the amount of water contracted to be supplied to
20 the sponsor under the terms of the authority's water supply
21 contract with the sponsor.

22 Sec. 11010.052. ELIGIBILITY TO SERVE AS DIRECTOR. (a) To
23 be eligible to serve as a director, a person must be:

24 (1) at least 18 years of age; and

25 (2) a resident of the territory located in the
26 authority or an employee of a sponsor.

27 (b) A director who also serves on the governing body of a

1 sponsor is not a dual officeholder and is not prohibited by the
2 common law doctrine of incompatibility from serving on both the
3 board and the governing body.

4 (c) Service on the board by a public officeholder is an
5 additional duty of that person's office.

6 Sec. 11010.053. APPOINTMENT OF DIRECTORS. (a) Each
7 sponsor is entitled to appoint at least one director.

8 (b) Each director must be appointed by the governing body of
9 a sponsor in accordance with the rules adopted under Section
10 11010.051 that govern the apportionment of directors among the
11 sponsors.

12 (c) Directors must be appointed not earlier than April 1 and
13 not later than April 30 of each year.

14 Sec. 11010.054. TERMS OF OFFICE. (a) Directors serve
15 staggered three-year terms, with one-third or as near as possible
16 to one-third of the members' terms expiring April 30 of each year.

17 (b) A director's term begins on May 1 of the year the
18 director is appointed.

19 (c) A director may not serve more than five consecutive
20 terms as a director.

21 Sec. 11010.055. REMOVAL OF DIRECTOR. A sponsor that
22 appoints a director may remove the director from office at any time,
23 with or without cause.

24 Sec. 11010.056. BOARD VACANCY. If there is a vacancy on the
25 board, the governing body of the sponsor that appointed the
26 director who vacated the office shall appoint a director to serve
27 the remainder of the term.

1 Sec. 11010.057. VOTING AUTHORITY. Each director is
2 entitled to one vote on any issue before the board.

3 Sec. 11010.058. OFFICERS. At the first meeting of the board
4 after May 1 of each year, the board shall elect officers for the
5 authority, including a chair, vice chair, secretary, and treasurer.

6 Sec. 11010.059. MEETINGS AND ACTIONS OF BOARD; QUORUM. (a)
7 The board may meet as many times each year as the board considers
8 appropriate.

9 (b) A majority of the membership of the board constitutes a
10 quorum at a meeting of the board.

11 (c) A concurrence of a majority of the directors present and
12 voting is sufficient for transacting any business of the authority
13 unless other applicable law, or the authority by rule, requires a
14 concurrence of a greater number of directors for a specific type of
15 decision.

16 (d) Directors of the authority are public officials and are
17 entitled to governmental immunity for their actions in their
18 capacity as directors and officers of the authority.

19 SUBCHAPTER C. POWERS AND DUTIES

20 Sec. 11010.101. GENERAL POWERS AND DUTIES. (a) The
21 authority may:

22 (1) acquire, purchase, own, hold, lease, construct,
23 improve, and maintain a reservoir, groundwater well, or other
24 source of water supply, including:

25 (A) groundwater, surface water, and wastewater
26 reused directly or indirectly; and

27 (B) aquifer storage and recovery facilities;

1 (2) acquire, own, construct, operate, repair,
2 improve, maintain, or extend, inside or outside the authority's
3 boundaries, water and wastewater works, improvements, facilities,
4 plants, pipelines, equipment, and appliances for:

5 (A) the treatment and transportation of water and
6 wastewater;

7 (B) the direct or indirect reuse of wastewater;

8 (C) aquifer storage and recovery projects; and

9 (D) the provision of wholesale water and
10 wastewater services to authority customers, municipalities,
11 districts, water supply corporations, and other persons in this
12 state;

13 (3) acquire, purchase, own, hold, lease, and maintain
14 interests, including capacity rights and other contractual rights,
15 in sources of water supply, reservoirs, groundwater wells, water
16 and wastewater systems, treatment works, improvements, facilities,
17 plants, equipment, appliances, aquifer storage and recovery
18 projects, and the direct or indirect reuse of wastewater;

19 (4) finance any purchase or acquisition through a
20 bond, note, or other obligation under Subchapter E, or through a
21 lease-purchase agreement; and

22 (5) sell, lease, convey, or otherwise dispose of any
23 right, interest, or property the authority considers to be
24 unnecessary for the efficient operation or maintenance of the
25 authority's facilities.

26 (b) In addition to the powers specifically provided by this
27 chapter, the authority may exercise the powers provided by Section

1 [65.201](#), Water Code.

2 Sec. 11010.102. AUTHORITY POLICIES, RULES, AND BYLAWS. The
3 authority may adopt and enforce policies, rules, and bylaws
4 reasonably required to implement this chapter, including rules
5 governing procedures before the board and rules regarding
6 implementation, enforcement, and any other matters related to the
7 exercise of the rights, powers, privileges, and functions conferred
8 on the authority by this chapter for the provision of water and
9 wastewater service.

10 Sec. 11010.103. EMINENT DOMAIN. (a) The authority may
11 exercise the power of eminent domain to acquire a fee simple or
12 other interest in property if the interest is necessary for the
13 authority to exercise the rights or authority conferred by this
14 chapter.

15 (b) The authority shall exercise the right of eminent domain
16 in the manner provided by Chapter 21, Property Code. The authority
17 is not required to give bond for appeal or bond for costs in a
18 condemnation suit or other suit to which it is a party.

19 (c) The authority may not use the power of eminent domain
20 for the condemnation of land for the purpose of acquiring rights to
21 groundwater or for the purpose of acquiring water or water rights.

22 Sec. 11010.104. WATER CONSERVATION OR DROUGHT CONTINGENCY
23 PLANS. The authority by rule may develop, prepare, revise, adopt,
24 implement, enforce, and manage water conservation or drought
25 contingency plans for the authority or any portion of the
26 authority.

27 Sec. 11010.105. SERVICE OUTSIDE AUTHORITY. The authority

1 may contract to provide the authority's services outside the
2 boundaries of the authority.

3 Sec. 11010.106. SPONSOR CONVEYANCES AND ACQUISITIONS. (a)
4 In this section, "utility system" has the meaning assigned by
5 Section 1502.001, Government Code.

6 (b) A sponsor may convey a utility system facility or asset
7 or the sponsor's interest in a utility system facility or asset to
8 the authority without holding an election to approve the
9 conveyance.

10 (c) A sponsor is exempt from the provisions of Chapter 1502,
11 Government Code, regarding the conveyance, sale, or acquisition of
12 a utility system, or any related works, improvements, facilities,
13 plants, equipment, or appliances.

14 Sec. 11010.107. CONTRACTS. (a) The authority may contract
15 with any person to carry out a power authorized by this chapter.

16 (b) A person who enters into a contract with the authority
17 may pledge to the payment of the contract any source of revenue that
18 may be available to the person, including ad valorem taxes, if the
19 person has the authority to impose those taxes.

20 (c) Payments made under a contract with the authority
21 constitute an operating expense of the person served under the
22 contract, unless otherwise prohibited by a previously outstanding
23 obligation of the person. To the extent a person pledges funds to
24 the payment of the contract that are to be derived from the person's
25 own water system, the payments constitute an operating expense of
26 that system.

27 Sec. 11010.108. COOPERATIVE CONTRACTS. The authority may

1 enter into an interlocal contract with a local government under
2 Chapter 791, Government Code, to carry out a power of the authority.

3 Sec. 11010.109. RATES AND FEES. (a) The authority shall
4 establish rates and fees to be assessed against sponsors and
5 customers of the authority. The rates and fees may be established
6 by classes of customers, by project, or by area of service.

7 (b) A sponsor, local government, water supply corporation,
8 private entity, or other person that contracts with the authority
9 shall establish, charge, and collect fees, rates, charges, rentals,
10 and other amounts for any service or facility provided under or in
11 connection with a contract with the authority and shall pledge
12 sufficient amounts to make all payments required under the
13 contract.

14 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

15 Sec. 11010.151. AD VALOREM TAXES PROHIBITED. The authority
16 may not impose an ad valorem tax.

17 Sec. 11010.152. GIFTS, GRANTS, LOANS, AND OTHER FUNDS. The
18 authority may apply for, accept, receive, and administer gifts,
19 grants, loans, and other funds available from any source.

20 SUBCHAPTER E. BONDS, NOTES, AND OTHER OBLIGATIONS

21 Sec. 11010.201. REVENUE BONDS, NOTES, AND OTHER
22 OBLIGATIONS. (a) In addition to bonds, notes, and other
23 obligations that the authority is authorized to issue under other
24 law, to accomplish the purposes of the authority, the authority may
25 issue bonds, notes, or other obligations payable solely from and
26 secured by all or part of any funds or any revenue from any source or
27 sources, including:

1 (1) fees, rates, and other charges the authority
2 imposes or collects;

3 (2) the sale of:

4 (A) water;

5 (B) water or wastewater services;

6 (C) water rights or capacity;

7 (D) water transmission rights, capacity, or
8 services;

9 (E) water pumping;

10 (F) wastewater reused directly or indirectly;

11 (G) aquifer storage and recovery services;

12 (H) sewer services; or

13 (I) any other service or product of the authority
14 provided inside or outside the boundaries of the authority;

15 (3) grants or gifts;

16 (4) the ownership or operation of all or a designated
17 part of the authority's works, improvements, facilities, plants, or
18 equipment; and

19 (5) the proceeds of contracts.

20 (b) Bonds, notes, or other obligations issued by the
21 authority may be first or subordinate lien obligations at the
22 board's discretion.

23 (c) In connection with any bonds, notes, or other
24 obligations of the authority, the authority may exercise any power
25 of an issuer under Chapter 1371, Government Code.

26 (d) The authority may conduct a public, private, or
27 negotiated sale of the bonds, notes, or other obligations.

1 (e) The authority may enter into one or more indentures of
2 trust to further secure its bonds, notes, or other obligations.

3 (f) The authority may issue bonds, notes, or other
4 obligations in more than one series as necessary to carry out the
5 purposes of this chapter. In issuing bonds, notes, or other
6 obligations secured by revenue of the authority, the authority may
7 reserve the right to issue additional bonds, notes, or other
8 obligations secured by the authority's revenue that are on parity
9 with or are senior or subordinate to the bonds, notes, or other
10 obligations issued earlier.

11 (g) A resolution of the board or a trust indenture securing
12 the bonds, notes, or other obligations may specify additional
13 provisions that constitute a contract between the authority and the
14 authority's bondholders, noteholders, or other obligation holders.

15 (h) Bonds, notes, or other obligations may be additionally
16 secured by deed of trust or mortgage on any or all of the
17 authority's facilities.

18 (i) Bonds, notes, or other obligations issued by the
19 authority are not subject to approval by the Texas Commission on
20 Environmental Quality, and commission rules regarding bonds,
21 notes, or other obligations do not apply to bonds, notes, or other
22 obligations issued by the authority.

23 (j) The authority provided by this chapter for the
24 authorization and issuance of bonds, notes, and other obligations
25 is in addition to, and not in lieu of, the authority otherwise
26 established under general law and may not be construed as a
27 limitation on, or a modification of, general law providing for

1 authorization and issuance of bonds, notes, and other forms of
2 obligations. Nothing in this chapter may be construed as affecting
3 any existing contract, bond, note, or other obligation of the
4 authority or any indenture, covenant, mortgage, or other agreement
5 relating to them.

6 Sec. 11010.202. ELECTION NOT REQUIRED. The authority is
7 not required to hold an election to approve the issuance of revenue
8 bonds or notes or of other obligations under this subchapter.

9 Sec. 11010.203. USE OF REVENUE AND GROWTH PROJECTIONS. For
10 the purposes of attorney general review and approval and in lieu of
11 any other manner of demonstrating the ability to pay debt service
12 and satisfy any other pecuniary obligations relating to bonds,
13 notes, or other obligations, the authority may demonstrate the
14 authority's ability to satisfy the debt service and those
15 obligations using accumulated funds of the authority and revenue
16 and growth projections prepared by a professional utility rate
17 consultant at the direction of the authority. If the resolution
18 authorizing the issuance of the bonds, notes, or other obligations
19 provides that the authority intends to increase rates to the extent
20 necessary to pay debt service and satisfy any other pecuniary
21 obligations arising under the bonds, notes, or other obligations,
22 the revenue projections prepared by a professional utility rate
23 consultant may include forecast rate increases and accumulated and
24 available fund balances as determined by the authority.

25 Sec. 11010.204. REFUNDING BONDS. The authority may issue
26 refunding bonds, notes, and other obligations to refund any of its
27 bonds, notes, or other obligations in any manner provided by law,

1 including Chapter 1207, Government Code.

2 Sec. 11010.205. BONDS, NOTES, AND OTHER OBLIGATIONS EXEMPT
3 FROM TAXATION. A bond, note, or other obligation issued under this
4 chapter, a transaction related to the bond, note, or other
5 obligation, the interest on the bond, note, or other obligation,
6 and the profit from the sale of the bond, note, or other obligation
7 are exempt from taxation by this state or a political subdivision of
8 this state.

9 SECTION 3. On the effective date of this Act:

10 (1) the Alliance Regional Water Authority shall assume
11 all assets, liabilities, bonds, notes, and other obligations of the
12 Hays Caldwell Public Utility Agency;

13 (2) all contracts and written agreements of the Hays
14 Caldwell Public Utility Agency are assigned to and assumed by the
15 Alliance Regional Water Authority; and

16 (3) the Alliance Regional Water Authority may refund
17 all or a portion of the bonds, notes, or other obligations issued by
18 the Hays Caldwell Public Utility Agency in any manner provided by
19 law, including Chapter 1207, Government Code.

20 SECTION 4. (a) The sponsors of the Alliance Regional Water
21 Authority shall appoint the initial directors under Section
22 11010.053, Special District Local Laws Code, as added by this Act,
23 not earlier than April 1, 2018, and not later than April 30, 2018.
24 Directors of the Hays Caldwell Public Utility Agency serving on the
25 effective date of this Act shall serve as the temporary directors of
26 the Alliance Regional Water Authority until the initial directors
27 take office on May 1, 2018.

1 (b) As soon as practicable after the initial directors have
2 been appointed under Section 11010.053, Special District Local Laws
3 Code, as added by this Act, the initial directors shall draw lots to
4 determine which directors serve a one-year term expiring April 30,
5 2019, which directors serve a two-year term expiring April 30,
6 2020, and which directors serve a three-year term expiring April
7 30, 2021. The lots must be split into thirds or as near to thirds as
8 possible.

9 (c) This section expires January 1, 2022.

10 SECTION 5. (a) The legal notice of the intention to
11 introduce this Act, setting forth the general substance of this
12 Act, has been published as provided by law, and the notice and a
13 copy of this Act have been furnished to all persons, agencies,
14 officials, or entities to which they are required to be furnished
15 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
16 Government Code.

17 (b) The governor, one of the required recipients, has
18 submitted the notice and Act to the Texas Commission on
19 Environmental Quality.

20 (c) The Texas Commission on Environmental Quality has filed
21 its recommendations relating to this Act with the governor, the
22 lieutenant governor, and the speaker of the house of
23 representatives within the required time.

24 (d) All requirements of the constitution and laws of this
25 state and the rules and procedures of the legislature with respect
26 to the notice, introduction, and passage of this Act are fulfilled
27 and accomplished.

1 SECTION 6. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2017.