

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 625
By: Birdwell et al.
Water & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature created the Nueces River Authority (NRA) in 1935 to provide for the conservation and development of natural resources in the Nueces River basin in southwestern Texas. NRA receives no state appropriations and operated on a budget of about \$6.5 million in fiscal year 2017, 83 percent of which came from a combination of grants to fund the construction of its new wastewater treatment plant.

The Sunset Advisory Commission found NRA performs its duties thoughtfully and proactively, but could benefit from a formal strategic plan to guide its significant operational changes ahead. The commission's recommendations aim to ensure that NRA is strategically positioned to accomplish its long-term mission and goals moving forward. The commission also found opportunities for NRA to apply good government standards to its governing laws.

S.B. 625 updates the date of NRA's next Sunset review to 2031, the standard 12-year period.

S.B. 625 requires NRA to adopt a formal, written five-year strategic plan and engage in a regular strategic planning process.

- This recommendation would also require NRA to make this strategic plan public record online at the time of completion, and update it regularly.

S.B. 625 applies basic good government standards to NRA's governing laws to promote accountability, transparency, and best practices.

- These standards are applied to all entities under Sunset review as "across-the-board recommendations" (ATBs) unless a good reason exists not to apply the standard.

This bill provides for gubernatorial designation of the presiding officer, requires board member training, separates duties of staff from the board, requires public testimony to be included in each board meeting agenda, requires maintenance of complaint information, and promotes alternative dispute resolution. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 625 amends current law relating to the Nueces River Authority, following recommendations of the Sunset Advisory Commission.

Note: While statutory references in this legislation are to the Texas Natural Resource Conservation Commission (TNRCC), amendments made by this legislation affect the Texas Commission on Environmental Quality as successor agency to TNRCC.

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. Amends Sections 1.02(6), (7), (8), and (9), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

(6) Defines the "commission" as the Texas Commission on Environmental Quality (TCEQ), rather than the Texas Water Rights Commission.

(7) Deletes existing text defining "quality board" and redesignates Subdivision (8) as Subdivision (7).

(8) and (9) Redesignates existing Subdivision (9) as Subdivision (8).

SECTION 2. Amends Section 1.02A(a), Chapter 427, Acts of 44th Legislature, 1st Called Session, 1935, as follows:

(a) Provides that the Nueces River Authority (authority) is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is prohibited from being abolished under that chapter. Requires the review to be conducted under Section 325.025 (River Authorities Subject To Review), Government Code, as if the authority were a state agency scheduled to be abolished September 1, 2031, rather than September 1, 2019, and every 12th year after that year.

SECTION 3. Amends Section 2.02(c), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

(c) Requires the board of directors of the Nueces River Authority (board), if the directors find any land included in the field notes other than land in San Patricio, Nueces, and Jim Wells counties, which is not actually included in the watershed of the Nueces River, to exclude the land from the authority and file a certificate of exclusion with the county clerk of the county in which the land is located.

SECTION 4. Amends Section 2.03(i), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

(i) Requires the governor to designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor. Requires the board to elect a vice-president, a secretary, a treasurer, and such other officers, rather than elect a president and other certain persons, as the members of the board may determine in the bylaws or otherwise. Requires the vice-president, secretary, and treasurer to be members of the board, but provides that other officers need not be.

SECTION 5. Amends Subchapter 2, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, by adding Section 2.03A, as follows:

Sec. 2.03A. DIRECTOR TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a director from voting, deliberating, or being counted as a director in attendance at a board meeting until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with information regarding:

(1) the law governing authority operations;

(2) the programs, functions, rules, and budget of the authority;

(3) the results of the most recent formal audit of the authority;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest, and other laws applicable to members of the governing body of a river authority in performing their duties; and

(5) any applicable ethics policies adopted by the authority or the Texas Ethics Commission (TEC).

(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 executive director of TCEQ (executive director) to create a training manual that includes the information required by Subsection (b) of this section. Requires the executive director to distribute a copy of the training manual annually to each director. Requires each director to sign and submit to the executive director a statement acknowledging that the director has received and reviewed the training manual.

SECTION 6. Amends Section 2.05, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Entitles a director to receive an allowance in an amount not exceeding the amount under Section 49.060 (Fees of Office; Reimbursement), Water Code, rather than under general law of the State of Texas. Deletes existing text referring to an allowance for expenses incurred.

(c) Provides that, in all areas of conflict with this section, Section 49.060, Water Code, takes precedence.

SECTION 7. Amends Subchapter 2, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, by adding Sections 2.06A and 2.08A, as follows:

Sec. 2.06A. PUBLIC TESTIMONY. (a) Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the authority.

(b) Requires the board, at each regular meeting of the board, to include public testimony as a meeting agenda item and other matters under the jurisdiction of the authority. Prohibits the board from deliberating on or deciding a matter not included in the meeting agenda, except that the board is authorized to discuss including the matter on the agenda for a subsequent meeting.

Sec. 2.08A. SEPARATION OF POLICY AND MANAGEMENT RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the authority.

SECTION 8. Amends Sections 3.02, 3.05, and 3.08, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

Sec. 3.02. (a) Provides that, subject to the provisions of the constitution and statutes of the state and the continuing right of supervision of the state through the Texas Natural Resource Conservation Commission (TNRCC), the Nueces River authority has and may exercise power and authority over the storm water and floodwater of the Nueces River Basin, subject to the applicable provisions of Chapters 5 (Texas Commission on Environmental Quality), 11 (Water Rights), and 12 (Provisions Generally Applicable To Water Rights), Water Code, rather than Chapters 5 and 6 (Texas Water Development Board), Water Code, as amended.

(b) Authorizes the authority, subject to Chapters 5, 11, and 12, Water Code, rather than Chapters 5 and 6, Water Code, as amended, to exercise the powers of control and employment of the state's water in the manner and for the particular purpose as follows:

(1)–(8) makes no changes to these subdivisions;

(9) to provide as set forth by Chapters 5, 11, and 12, Water Code, rather than Chapters 5 and 6, Water Code, as amended, for the control, storing, and employment of flood, storm, unappropriated flow water in the development and distribution of hydroelectric power, where this use may be economically coordinated with other and superior uses, and subordinated to the uses declared by law to be superior; and

(10) to provide in the manner set forth in Chapters 5, 11, and 12, Water Code, rather than Chapters 5 and 6, Water Code, as amended, for each and every purpose and use for which flood, storm, and unappropriated flow water when controlled and conserved may be utilized in the performance of a useful service as contemplated and authorized by the provisions of the constitution and statutes.

(c) Authorizes the authority, subject to Chapters 5, 11, and 12, Water Code, rather than Chapters 5 and 6, Water Code, as amended, to control, store, and preserve the water of the Nueces River and its tributaries within the boundaries of the authority for any useful purpose, and to use, distribute, and sell the water for any beneficial purpose inside and outside the authority, and to acquire water and water rights inside and outside the authority.

Sec. 3.05. (a) Provides that the authority has and may exercise all of the powers vested in river authorities under Chapters 5, 7 (Enforcement), 17 (Public Funding), 20 (Texas Water Resources Finance Authority), and 30 (Regional Waste Disposal), Water Code, rather than Chapter 21 of the Water Code, as amended, and Chapter 366 (On-Site Sewage Disposal Systems), Health and Safety Code, rather than Chapter 25 of the Water Code, as amended.

(b) Provides that the authority is authorized to perform the licensing and other functions authorized to be delegated to local governments by TCEQ, rather than by the Texas Water Quality Board (quality board), in connection with the regulation of private sewage facilities under Chapter 366, Health and Safety Code, rather than Section 21.083, Water Code.

(c) Authorizes the authority to serve as the entity to provide regional or area-wide waste collection, treatment, and disposal services, as provided in Subchapter C (Regional and Area-Wide Systems), Chapter 26, Water Code, rather than Subchapter D, Chapter 21, Water Code.

Sec. 3.08. Authorizes the authority, in the manner provided by Chapters 5, 11, and 12, Water Code, rather than Chapters 5 and 6, Water Code, as amended, requiring the authority to apply for any permits, licenses, franchises, and other grants of authority it may require from TCEQ, to apply permits, licenses, franchises, and other grants of authority it may require from TCEQ, rather than the quality board, the Texas Water Development Board, or any other federal, state, or local governmental agencies in exercising its powers and accomplishing the purposes under this Act.

SECTION 9. Amends Section 3.15(i), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

(i) Provides that the provisions of this section do not prohibit the authority from purchasing or acquiring land or interests in land from any person, or from acquiring, constructing, or improving population control or waste collection and disposal facilities in accordance with Chapter 30, Water Code, rather than Chapter 25, Water Code, as amended, the Clean Air Financing Act (Chapter 4477-5a, Vernon's Texas Civil Statutes), or other applicable statutes, or purchasing or acquiring surplus property from any

governmental entity by negotiated contract and without necessity for advertising bids, rather than for advertising for bids.

SECTION 10. Amends Subchapter 3, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, by adding Section 3.18A, as follows:

Sec. 3.18A. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the board to develop a policy to encourage the use of appropriate alternative dispute resolution 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 the authority's jurisdiction.

(b) Requires the authority's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires the authority to coordinate the implementation of the policy adopted under Subsection (a) of this section, provide training as needed to implement the procedures for alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

SECTION 11. Amends Sections 3.22A and 3.23, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

Sec. 3.22A. CONSERVATION PROGRAM. Requires the board to adopt and implement a program of water conservation that incorporates the practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses and that the commission and development board determine, rather than the Texas Department of Water Resources determines, will meet reasonably and anticipated local needs and conditions.

Sec. 3.23. Provides that the authority has and may exercise all the powers vested in political subdivisions under Chapters 5, 16, and 17, Water Code, rather than Chapter 11, Water Code, as amended, including, rather than without limitation, the powers necessary to enable the authority to participate in:

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

(2) creates this subdivision from existing text.

SECTION 12. Amends Subchapter 3, Chapter 427, Acts of the 44th legislature, 1st Called Session, 1935, by adding Sections 3.27 and 3.28, as follows:

Sec. 3.27. COMPLAINTS. Requires the authority to maintain a system to promptly and efficiently act on complaints filed with the authority. Requires the authority to maintain information about the parties to and subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

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

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

Sec. 3.28. FIVE-YEAR STRATEGIC PLAN. (a) Requires the authority to adopt and promptly publish on the authority's Internet website a written, five-year strategic plan that sets the authority's goals for the following five years, establishes the authority's mission, and describes the anticipated activities that the authority will perform in the Nueces River Basin over the following five years.

(b) Requires the authority to update the five-year strategic plan regularly and publish the updated versions of the plan on the authority's Internet website.

SECTION 13. Amends Section 5.01(a), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as follows:

(a) Authorizes the authority, for the purpose of carrying out any power or authority conferred by this Act, including preparing, rather than the expense of preparing, the master plan and payment of engineering and related expenses, rather than other expenses in connection with this, to issue the bonds in three general classes:

(1)–(3) makes no changes to these subdivisions.

SECTION 14. Amends Section 2, Chapter 699, Acts of the 64th Legislature, Regular Session, 1975, as follows:

Sec. 2. Provides that the rights, privileges, authority, and functions herein granted to the authority and the authority itself are expressly subject to Chapters 5, 7, 17, and 26, Water Code, rather than Chapters 5, 6, and 21, Water Code, and Chapter 366, Health and Safety Code.

SECTION 15. Repealer: Section 5.03, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935.

SECTION 16. (a) Provides that the term of the president of the board of directors of the Nueces River Authority serving on the effective date of this Act expires September 1, 2019. Authorizes the director serving as the president on the effective date of this Act to continue to serve on the board of directors until the expiration of that director's date.

(b) Requires the governor, not later than September 2, 2019, to designate a director as president of the board of directors of the Nueces River Authority as required by Section 2.03(i), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as amended by this Act.

SECTION 17. (a) Authorizes a person serving on the board of directors of the Nueces River Authority, notwithstanding Section 2.03A, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, 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, 2019.

(b) Provides that this section expires January 1, 2020.

SECTION 18. Provides that all requirements of the constitution and 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 19. Effective date: September 1, 2019.