By:  Birdwell, et al. S.B. No. 625

(In the Senate - Filed March 6, 2019; March 7, 2019, read first time and referred to Committee on Water & Rural Affairs; March 27, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; March 27, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Creighton       X

Alvarado        X

Johnson         X

Kolkhorst                 X

Rodríguez       X

Taylor          X

COMMITTEE SUBSTITUTE FOR S.B. No. 625 By:  Johnson

A BILL TO BE ENTITLED

AN ACT

relating to the Nueces River Authority, following recommendations of the Sunset Advisory Commission.

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

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

(6)  "Commission" means the Texas Commission on Environmental Quality [~~Water Rights Commission~~].

(7)  [~~"Quality board" means the Texas Water Quality Board.~~

[~~(8)~~]  "Development board" means the Texas Water Development Board.

(8) [~~(9)~~]  "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, solid waste, or any other waste.

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

(a)  The authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), but may not be abolished under that chapter. The review shall be conducted under Section 325.025, Government Code, as if the authority were a state agency scheduled to be abolished September 1, 2031 [~~2019~~], and every 12th year after that year.

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

(c)  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, the board shall 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. The certificate of exclusion shall describe the boundaries of the land excluded so that the land remaining in the authority may be adequately identified.

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

(i)  The governor shall designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor. The board shall elect [~~a president,~~] one or more vice-presidents, a secretary, a treasurer, and such other officers as the members of the board may determine in the bylaws or otherwise. The [~~president,~~] vice-presidents, secretary, and treasurer shall be members of the board, but other officers need not be members of the board. The offices of secretary and treasurer may be combined, as may the offices of assistant secretary and assistant treasurer.

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

Sec. 2.03A.  DIRECTOR TRAINING. (a)  A person who is appointed to and qualifies for office as a director may not vote, deliberate, or be counted as a director in attendance at a board meeting until the person completes a training program that complies with this section.

(b)  The training program must 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:

(A)  laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B)  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.

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

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

(a)  A director is entitled to receive an allowance in an amount not exceeding that provided under Section 49.060, Water Code [~~general law of the State of Texas and reimbursement for actual and necessary expenses incurred:~~

[~~(1)  for each day he spends attending meetings of the board; and~~

[~~(2)  for each day he spends attending to the business of the authority which is authorized by the board~~].

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

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

Sec. 2.06A.  PUBLIC TESTIMONY. (a)  The board shall 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)  At each regular meeting of the board, the board shall include public testimony as a meeting agenda item and allow members of the public to comment on other agenda items and other matters under the jurisdiction of the authority. The board may not deliberate on or decide a matter not included in the meeting agenda, except that the board may discuss including the matter on the agenda for a subsequent meeting.

Sec. 2.08A.  SEPARATION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The board shall 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.  Sections 3.02, 3.05, and 3.08, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, are amended to read as follows:

Sec. 3.02.  CONTROL AND EMPLOYMENT OF WATERS. (a)  Subject to the provisions of the constitution and statutes of the state and the continuing right of supervision of the state through the commission, the Nueces River Authority has and may exercise authority and power over the storm water and floodwater of the Nueces River Basin, subject to the applicable provisions of Chapters 5, 11, and 12 [~~6~~], Water Code[~~, as amended~~].

(b)  Subject to Chapters 5, 11, and 12 [~~6~~], Water Code, [~~as amended,~~] the authority may exercise the powers of control and employment of the state's water in the manner and for the particular purposes as follows:

(1)  to provide for the control and coordination of water use in the Nueces River Basin as a unit;

(2)  to provide by adequate organization and administration for the preservation of the rights of the people of the different sections of the river basin in the beneficial use of water;

(3)  to provide for conserving storm, flood, and unappropriated flow water of the Nueces River Basin, including the storing, controlling, transporting, treating, and distributing of such water, and the prevention of the escape of any such water without the maximum of public service and for the prevention of devastation of land from recurrent overflows, and the protection of life and property in the river basin from uncontrolled floodwater;

(4)  to provide for the conservation of water essential for domestic and other water uses of the people of the Nueces River Basin, including all necessary water supplies for cities, towns, and industrial districts;

(5)  to provide for the irrigation of land in the Nueces River Basin where irrigation is required for agricultural purposes or may be deemed helpful to more profitable agricultural production and for the equitable distribution of storm, flood, and unappropriated flow water to the regional potential requirements for all uses; all plans and all works provided by the authority and all works which may be provided under authorization of the authority should have primary regard to the necessary and potential needs for water, by or within the respective areas constituting the watershed of the Nueces River and its tributary streams;

(6)  to provide for the encouragement and development of drainage systems and provisions for drainage of land in the valleys of the Nueces River and its tributary streams needing drainage for profitable agricultural and livestock production and industrial activities and drainage of other land in the watershed area of the authority requiring drainage for the most advantageous use;

(7)  to provide for the conservation of all soils against destructive erosion, thereby preventing the increased flood menace incident thereto;

(8)  to control and make available for employment, flood, storm, and unappropriated flow water as may be authorized by the commission, in the development of commercial and industrial enterprises in all sections of the watershed area of the authority;

(9)  to provide as set forth by Chapters 5, 11, and 12 [~~6~~], Water Code, [~~as amended,~~] for the control, storing, and employment of flood, storm, and 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 [~~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)  Subject to Chapters 5, 11, and 12 [~~6~~], Water Code, [~~as amended,~~] the authority may control, store, and preserve the water of the Nueces River and its tributaries within the boundaries of the authority for any useful purpose, and may use, distribute, and sell the water for any beneficial purpose inside and outside the authority, and may acquire water and water rights inside and outside the authority.

Sec. 3.05.  WATER QUALITY CONTROL. (a)  The authority has and may exercise all of the powers vested in river authorities under Chapters 5, 7, 17, 26, and 30, [~~Chapter 21 of the~~] Water Code, [~~as amended,~~] and Chapter 366, Health and Safety Code [~~25 of the Water Code, as amended~~].

(b)  The authority is authorized to perform the licensing and other functions authorized to be delegated to local governments by the commission [~~quality board~~] in connection with the regulation of private sewage facilities under Chapter 366, Health and Safety [~~Section 21.083, Water~~] Code.

(c)  The authority may serve as the entity to provide regional or area-wide waste collection, treatment, and disposal services, as provided in Subchapter C [~~D~~], Chapter 26 [~~21~~], Water Code.

Sec. 3.08.  PERMITS AND LICENSES. In the manner provided by Chapters 5, 11, and 12 [~~6~~], Water Code, the [~~as amended, the authority shall apply for any permits, licenses, franchises, and other grants of authority it may require from the commission. The~~] authority may apply for any permits, licenses, franchises, and other grants of authority it may require from the commission [~~quality board~~], the development board, or any other federal, state, or local governmental agencies in exercising its powers and accomplishing the purposes under this Act.

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

(i)  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 pollution control or waste collection and disposal facilities in accordance with Chapter 30 [~~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 for bids.

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

Sec. 3.18A.  ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a)  The board shall develop a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the authority's jurisdiction.

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

(c)  The authority shall:

(1)  coordinate the implementation of the policy adopted under Subsection (a) of this section;

(2)  provide training as needed to implement the procedures for alternative dispute resolution; and

(3)  collect data concerning the effectiveness of those procedures.

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

Section 3.22A.  CONSERVATION PROGRAM. The board shall 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 [~~Texas Department of Water Resources determines~~] will meet reasonably anticipated local needs and conditions.

Sec. 3.23.  WORK WITH DEVELOPMENT BOARD. The authority has and may exercise all the powers vested in political subdivisions under Chapters 5, 16, and 17 [~~Chapter 11~~], Water Code, [~~as amended,~~] including [~~without limitation~~] the powers necessary to enable the authority to participate in:

(1)  [~~the~~] programs administered by the development board for:

(A)  the acquisition and development of facilities;[~~,~~]

(B)  the sale or lease of facilities; and [~~,~~]

(C)  financial assistance to political subdivisions;[~~,~~] and

(2)  other programs as are now or may hereafter be authorized.

SECTION 12.  Subchapter 3, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, is amended by adding Sections 3.27 and 3.28 to read as follows:

Sec. 3.27.  COMPLAINTS. (a)  The authority shall maintain a system to promptly and efficiently act on complaints filed with the authority. The authority shall 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)  The authority shall make information available describing its procedures for complaint investigation and resolution.

(c)  The authority shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 3.28.  FIVE-YEAR STRATEGIC PLAN. (a)  The authority shall adopt and promptly publish on the authority's Internet website a written, five-year strategic plan that:

(1)  sets the authority's goals for the following five years;

(2)  establishes the authority's mission; and

(3)  describes the anticipated activities that the authority will perform in the Nueces River Basin over the following five years.

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

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

(a)  For the purpose of carrying out any power or authority conferred by this Act, including [~~the expense of~~] preparing the master plan and [~~the~~] payment of engineering and related [~~other~~] expenses [~~in connection with this~~], the authority may issue its bonds in three general classes:

(1)  bonds secured by ad valorem taxes;

(2)  bonds secured by a pledge of all or part of the revenues accruing to the authority, including without limitation those received from sale of water or other products, rendition of service, tolls, charges, and from all other sources other than ad valorem taxes;

(3)  bonds secured by a combination pledge of all or part of the revenues described in Subdivision (2) of this subsection, and taxes.

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

Sec. 2.  The rights, privileges, authority, and functions herein granted to the authority and the authority itself are expressly subject to Chapters 5, 7, 17 [~~6~~], and 26 [~~21~~], Water Code, and Chapter 366, Health and Safety Code.

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

SECTION 16.  (a)  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. The director serving as president on the effective date of this Act may continue to serve on the board of directors until the expiration of that director's term.

(b)  Not later than September 2, 2019, the governor shall 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)  Notwithstanding Section 2.03A, Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as added by this Act, a person serving on the board of directors of the Nueces River Authority may vote, deliberate, and be counted as a director in attendance at a meeting of the board until December 1, 2019.

(b)  This section expires January 1, 2020.

SECTION 18.  (a)  The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

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

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

(d)  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.  This Act takes effect September 1, 2019.

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