By:  Birdwell, et al. S.B. No. 627

(In the Senate - Filed March 11, 2019; March 18, 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. 627 By:  Johnson

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Section 1A(a), Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, 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 2.  Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended by adding Sections 4a and 4b to read as follows:

Sec. 4a.  (a) It is a ground for removal from the Board that a director:

(1)  does not have at the time of taking office the qualifications required by Section 4 of this Act;

(2)  does not maintain during service on the Board the qualifications required by Section 4 of this Act;

(3)  is ineligible for directorship under Chapter 171, Local Government Code;

(4)  cannot, because of illness or disability, discharge the director's duties for a substantial part of the director's term; or

(5)  is absent from more than half of the regularly scheduled Board meetings that the director is eligible to attend during a calendar year without an excuse approved by a majority vote of the Board.

(b)  The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a director exists.

(c)  If the general manager has knowledge that a potential ground for removal exists, the general manager shall notify the president of the Board of the potential ground. The president shall then notify the Governor and the Attorney General that a potential ground for removal exists. If the potential ground for removal involves the president, the general manager shall notify the next highest ranking director, who shall then notify the Governor and the Attorney General that a potential ground for removal exists.

Sec. 4b.  (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 general manager shall create a training manual that includes the information required by Subsection (b) of this section. The general manager shall distribute a copy of the training manual annually to each director. Each director shall sign and submit to the general manager a statement acknowledging that the director has received and reviewed the training manual.

SECTION 3.  Sections 5, 7, 9, 10, and 11, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, are amended to read as follows:

Sec. 5.  The directors of the Authority shall organize by electing one director [~~of their members president, one~~] vice-president, one secretary, and one treasurer. Five (5) directors shall constitute a quorum at any meeting and a concurrence of a majority of those present shall be sufficient in all matters pertaining to the business of the district, except the letting of construction contracts and the authorization of issuance of warrants paying therefor, which shall require the concurrence of seven (7) directors. Warrants for the payment of money may be drawn and signed by two (2) officers or employees designated by standing order entered in the minutes of the Authority when such accounts have been contracted and ordered paid by the Board of Directors.

Sec. 7.  The Governor shall designate a director of the Board as the president of the Board to serve in that capacity at the pleasure of the Governor. The president shall preside at all meetings of the Board and shall be the chief executive officer of the Authority. The vice-president shall act as president in case of the absence or disability of the president. The secretary shall act as secretary of the Board and shall be charged with the duty of keeping a record of all proceedings and all orders of the Board. The treasurer shall receive and receipt for all moneys received and expended. In case of the absence or inability of the secretary to act, a secretary pro tem shall be selected by the directors.

Sec. 9.  A complete book of accounts shall be kept. The account books and records of the Authority and of the depository of the Authority shall be audited by a Certified Public Accountant annually as soon as practicable after the end of the district's fiscal year, such audit to cover a fiscal year ending September 30 of each year, and a report thereon shall be submitted to the first regular meeting of the Board of Directors thereafter. A copy of the [~~Said~~] report shall be [~~in quadruplicate, one copy being~~] filed [~~in the office of the Authority, one with the depository of the Authority, one~~] in the office of the auditor. The copy [~~and one with the Texas Department of Water Resources, all of which~~] shall be open to public inspection.

Sec. 10.  (a) Unless the Board by resolution increases the fee to an amount authorized by Section 49.060, Water Code, the [~~The~~] directors shall receive as fees of office the sum of not to exceed Twenty-Five ($25.00) Dollars per day for each day of service necessary to the discharge of their duties, in addition to all traveling expenses, provided the same is authorized by vote of the Board of Directors, they shall file with the secretary on the last day of each month, or as soon thereafter as practicable, a verified statement showing the actual amount due and warrants shall be issued therefor.

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

Sec. 11.  The directors may employ a general manager for the Authority and may give him full authority in the management and operation of the Authority's affairs (subject only to the orders of the Board of Directors). The term of office and compensation to be paid such manager and all employees shall be fixed by the Board of Directors and all employees may be removed by the Board. A director may not be employed as general manager [~~and at such compensation as may be fixed by a majority of the other directors, and when so employed he shall continue to perform the duties of a director, but shall receive no compensation as such director~~].

SECTION 4.  Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended by adding Section 11a to read as follows:

Sec. 11a.  The Board shall develop and implement policies that clearly separate the policymaking responsibilities of the Board and the management responsibilities of the general manager and staff of the Authority.

SECTION 5.  Section 14a, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended to read as follows:

Sec. 14a.  (1) In addition to other purposes heretofore authorized by law, the Authority shall have and is vested with all the powers of the state of Texas under Section 59, Article XVI, Constitution of the State of Texas, and shall likewise, have and is vested with all powers, rights, privileges, and functions conferred upon navigation districts by General Law. The Authority is governed by and subject to Chapters 49, 60, and 62, Water Code, but in all areas of conflict, Chapter 62 takes precedence. The [~~Without limitation of the generality of the foregoing, the~~] Authority shall have and is hereby authorized to exercise the following powers, rights and privileges, and functions;

(2)  to promote, construct, maintain and operate or aid and encourage, the construction, maintenance and operation of navigable canals or waterways and all navigational systems or facilities auxiliary thereto using the natural bed and banks of the Red River, where practicable and thence traversing such route as may be found by the Authority to be more feasible and practicable to connect Red River in Texas with any new navigation canals to be constructed in the lower reaches of Red River or to connect Red River with the intercoastal canal. The Authority is empowered to construct or cause to be constructed a system of artificial waterways and canals, together with all locks and other works, structures and artificial facilities as may be necessary and convenient for the construction, maintenance and operation of navigation canals or waterways and all navigational systems and facilities auxiliary thereto;

(3)  the right, power, and authority to acquire, purchase, improve, extend, take over, construct, maintain, repair, operate, develop and regulate ports, levees, wharves, docks, locks, warehouses, grain elevators, dumping facilities, belt railways, lands, and all other facilities or aids to navigation or aids necessary to the operation or development of ports, or waterways within the Red River Basin in Texas, provided, the powers conferred on the Authority under the provisions of this subdivision extend to a facility or aid authorized under this subdivision only if the facility or aid is situated in a county or counties included as part of said Authority;

(4)  to acquire by gift or purchase any and all properties of any kind, including lighters, tugs, barges and other floating equipment of any nature, real, personal or mixed, or any interest therein within or outside of the boundaries of the Authority necessary to the exercise of the powers, rights, privileges and functions conferred upon it by this Act and by condemnation in the manner provided in Section 18 of the Act creating the Authority, provided that the Authority shall not be required to give bond for appeal or bond for costs in any judicial proceedings;

(5)  to control, develop, store and use the natural flow and floodwaters of the Red River and its tributaries for the purpose of operating and maintaining said navigable canals or waterways and all navigational systems or facilities auxiliary thereto, provided, however, that such navigational use shall be subordinate to consumptive use of water, and navigation shall be incidental thereto;

(6)  to effectuate the construction, maintenance and operation of bank stabilization facilities and[~~,~~] channel rectification or alignment in order[~~,~~] to prevent and aid in preventing devastation of lands from recurrent over-flows and the protection of life and property in the watershed of the Red River in Texas or any tributaries thereof within the Authority from uncontrolled flood waters; to store and conserve to the greatest beneficial use the storm, flood and unappropriated waters of the Red River in Texas or any tributaries thereof within the Authority, so as to prevent the escape of any water without maximum beneficial use either within or without the boundaries of the Authority;

(7)  if [~~in the event~~] the construction or maintenance and operation of navigable canals or waterways and all navigational systems or facilities auxiliary thereto on the Red River in Texas is taken over or performed by the Federal Government or any agency of the Federal Government, then [~~and in such event~~] the Authority may:

(A)  [~~shall be fully authorized to make and~~] enter into [~~any such~~] contracts that [~~as~~] may be [~~lawfully~~] required by the Federal Government, including [~~such~~] assignments and transfers of property, [~~and rights of~~] property rights, [~~and~~] easements, and privileges; and

(B)  take any [~~and all~~] other action [~~lawful things and acts may be necessary and~~] required by [~~in order to meet the requirements of~~] the Federal Government or any agency of the Federal Government [~~in taking over the construction or maintenance and operation of said navigable canals or waterways and all navigational systems or facilities auxiliary thereto~~];

(8)  the Authority shall have the power to acquire additional land adjacent to any permanent improvement heretofore or hereafter constructed within the Authority for the purpose of developing public parks and recreational facilities; the power to acquire necessary right-of-way for public ingress and egress to such areas. The Authority may provide recreational facilities and services, and may enter into contracts and agreements with the Federal Government or any agency thereof; the Parks and Wildlife Department of the State of Texas, any county, municipality, municipal corporation, person, firm or nonprofit organization for the construction, operation and maintenance of such park or recreational facility. It is legislative intent that the Authority will coordinate the development of any public parks and recreational facilities with the Parks and Wildlife Department for conformity with the land and water resources conservation and recreation plan. [~~'State Comprehensive Outdoor Recreation Plan.'~~] The Authority may perform all functions necessary to qualify for state or federal recreational grants and loans;

(9)  in addition to other purposes heretofore authorized by law and as a necessary aid to the conservation, control, preservation, and distribution of such water for beneficial use, the Authority is authorized to purchase, construct, improve, repair, operate and maintain works and facilities necessary for the collection, transportation, treatment and disposal of sewage and industrial waste and effluent and to issue negotiable bonds for such purposes, and the Authority may make contracts with cities and others under which the Authority will collect, transport, treat and dispose of sewage from such cities or other entities. The Authority may also make contracts with any city for the use of any collection, transportation, treatment or disposal facilities owned by such city or by the Authority;

(10)  the bonds which may be issued under this Section, shall be payable from revenues under any contract or contracts described herein or from other income of the Authority. Such bonds shall be in the form and shall be issued in the manner prescribed by law for other revenue bonds and as provided in Sections 26, 27, 28 and 29, Article 8280-228.

SECTION 6.  Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended by adding Section 14e to read as follows:

Sec. 14e.  (a) In this section, "system" means a system for the:

(1)  provision of water to the public for human consumption; or

(2)  collection and treatment of wastewater.

(b)  The Authority shall adopt an asset management plan by:

(1)  preparing an asset inventory that identifies the assets of each system and the condition of the assets;

(2)  developing criteria to prioritize assets for repair or replacement, including:

(A)  the date by which the asset will need to be repaired or replaced;

(B)  the importance of the asset in providing safe drinking water and complying with regulatory standards;

(C)  the importance of the asset to the effective operation of the system; and

(D)  other criteria as determined by the Authority;

(3)  estimating asset repair and replacement costs;

(4)  identifying and evaluating potential financing options; and

(5)  prioritizing systems that are not in compliance with federal or state regulatory standards, including water quality standards.

(c)  The Authority shall review and revise the plan as necessary to account for regulatory changes and other developments.

(d)  The Board shall approve the plan annually as part of its budgeting process.

SECTION 7.  Sections 17 and 20, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, are amended to read as follows:

Sec. 17.  (a) The Authority may seek and accept contributions to its funds from any source for [~~For~~] the purpose of funding:

(1)  [~~providing funds requisite to secure the~~] necessary studies;

(2)  [~~,~~] engineering and other services; and

(3)  [~~which may be necessary,~~] the collection and computation of data respecting regional and general conditions that influence [~~influencing~~] the character and extent of the improvements necessary to effect the purposes of the [~~creation of this~~] Authority to the greatest public advantage[~~, it is hereby provided that the Authority may solicit, seek and accept contributions to its funds from any other district, authority or municipality, the Federal Government or the State of Texas, or from any other source~~].

(b)  Any and all grants and gratuities shall be strictly accounted for and shall be subject to the same rules, regulations and orders as are other funds handled or disbursed by the Authority.

Sec. 20.  The Authority shall establish and collect rates and other charges for the sale or use of water or for its services sold, furnished or supplied which fees and charges shall be reasonable and nondiscriminatory but sufficient to produce revenues adequate to pay the expenses of the Authority in carrying out its functions for which it is created and to fulfill the terms of any agreements made with the holders of any of its obligations. Provided, however, that the rates and charges for the sale or use of water shall be subject to review by the Public Utility Commission of Texas [~~State Board of Water Engineers~~], as provided by general law.

SECTION 8.  Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended by adding Sections 20a and 20b to read as follows:

Sec. 20a.  (a) In this section and Section 20b, "affected person" has the meaning assigned by Section 13.002, Water Code.

(b)  The Board shall establish a process to ensure that, before the Authority makes a significant change to a rate or charge for the sale and use of water, affected persons are provided:

(1)  notice of proposed change; and

(2)  an opportunity to provide to the Board comments regarding the proposed change.

(c)  The process established under Subsection (b) must include:

(1)  the provision of notice of a proposed change:

(A)  on the Authority's website; and

(B)  in an affected person's utility bills; and

(2)  appropriate informational meetings or rate hearings that provide affected persons the opportunity to provide public comments about the proposed change to be held:

(A)  before sending a statement of intent required under Chapter 13, Water Code;

(B)  in locations as necessary to enable affected persons to attend; and

(C)  after the provision of notice under Subdivision (1) of this subsection.

(d)  The Board by rule shall establish a percentage change in a rate or charge such that a change greater than or equal to that percentage is considered significant for purposes of Subsection (b) of this section.

Sec. 20b.  (a) The Authority shall notify affected persons of their right to appeal changes to rates:

(1)  in any notices related to changes to rates;

(2)  in utility bills sent before the deadline for initiating an appeal under Chapter 13, Water Code; and

(3)  on the Authority's website.

(b)  The notice required by Subsection (a) of this section must include descriptions of:

(1)  the appeals process;

(2)  the requirements for an appeal, including the number of signatures needed on a petition; and

(3)  the methods available for obtaining additional information related to rates.

SECTION 9.  Section 22, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended to read as follows:

Sec. 22.  The Authority may:

(1)  [~~shall~~] make bylaws for the management and regulation of its affairs;

(2)  [~~to adopt and~~] use a corporate seal;

(3)  [~~to~~] appoint officers, attorneys, agents, and employees, [~~and to~~] prescribe their duties, and fix their compensation;

(4)  [~~to~~] make [~~such~~] other contracts and execute instruments necessary or convenient to the exercise of the [~~its~~] powers, rights, privileges and functions conferred on the Authority [~~upon it~~] by this Act and the general laws of the state pertaining to water control and improvement districts;

(5)  [~~to~~] borrow money for its corporate purposes [~~and without limitation of the generality of the foregoing~~]; and

(6)  [~~to~~] borrow money and accept grants from the United States of America, [~~or~~] the State of Texas, or any other source, and in connection with any such loan or grant,[~~; to~~] enter into [~~such~~] agreements and assume [~~such~~] obligations as may be required.

SECTION 10.  Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is amended by adding Sections 33, 34, 35, and 36 to read as follows:

Sec. 33.  (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.

Sec. 34.  (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. 35.  (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. 36.  (a) The state auditor shall conduct an audit of the Authority to evaluate whether the Authority has addressed the operational challenges identified in the report on the Authority by the Sunset Advisory Commission presented to the 86th Legislature.

(b)  The state auditor may not begin the audit required by Subsection (a) of this section before December 1, 2021, and shall prepare and submit a report of the findings of the audit to the chairman and executive director of the Sunset Advisory Commission not later than December 1, 2022.

(c)  The state auditor shall include the auditor's duties under this section in each audit plan under Section 321.013, Government Code, that governs the auditor's duties for the period specified by Subsection (b) of this section.

(d)  This section expires January 1, 2023.

SECTION 11.  Section 13, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, is repealed.

SECTION 12.  (a) The term of the president of the board of directors of the Red 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 Red River Authority as required by Section 7, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, as amended by this Act.

SECTION 13.  (a) Notwithstanding Section 4b(a), Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, as added by this Act, a person serving on the board of directors of the Red 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 14.  (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 15.  This Act takes effect September 1, 2019.

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