

By: Thompson of Harris

H.B. No. 3289

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

1 that year.

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

5 (c) If the directors find any land included in the field  
6 notes other than land in San Patricio, Nueces, and Jim Wells  
7 counties, which is not actually included in the watershed of the  
8 Nueces River, the board shall exclude the land from the authority  
9 and file a certificate of exclusion with the county clerk of the  
10 county in which the land is located. The certificate of exclusion  
11 shall describe the boundaries of the land excluded so that the land  
12 remaining in the authority may be adequately identified.

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

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

26 SECTION 5. Subchapter 2, Chapter 427, Acts of the 44th  
27 Legislature, 1st Called Session, 1935, is amended by adding Section

1 2.03A to read as follows:

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

7 (b) The training program must provide the person with  
8 information regarding:

9 (1) the law governing authority operations;

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

12 (3) the scope of and limitations on the rulemaking  
13 authority of the authority;

14 (4) the results of the most recent formal audit of the  
15 authority;

16 (5) the requirements of:

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

20 (B) other laws applicable to members of the  
21 governing body of a river authority in performing their duties; and

22 (6) any applicable ethics policies adopted by the  
23 authority or the Texas Ethics Commission.

24 (c) A person appointed to the board is entitled to  
25 reimbursement for the travel expenses incurred in attending the  
26 training program regardless of whether the attendance at the  
27 program occurs before or after the person qualifies for office.

1       (d) The executive director shall create a training manual  
2 that includes the information required by Subsection (b) of this  
3 section. The executive director shall distribute a copy of the  
4 training manual annually to each director. Each director shall  
5 sign and submit to the executive director a statement acknowledging  
6 that the director has received the training manual.

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

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

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

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

18       (c) In all areas of conflict with this section, Section  
19 49.060, Water Code, takes precedence.

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

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

27       (b) At each regular meeting of the board, the board shall

1 include public testimony as a meeting agenda item and allow members  
2 of the public to comment on other agenda items and other matters  
3 under the jurisdiction of the authority. The board may not  
4 deliberate on or decide a matter not included in the meeting agenda,  
5 except that the board may discuss including the matter on the agenda  
6 for a subsequent meeting.

7 Sec. 2.08A. SEPARATION OF POLICY AND MANAGEMENT  
8 RESPONSIBILITIES. The board shall develop and implement policies  
9 that clearly separate the policymaking responsibilities of the  
10 board and the management responsibilities of the executive director  
11 and the staff of the authority.

12 SECTION 8. Sections 3.02, 3.05, and 3.08, Chapter 427, Acts  
13 of the 44th Legislature, 1st Called Session, 1935, are amended to  
14 read as follows:

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

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

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

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

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

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

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

26           (6) to provide for the encouragement and development  
27 of drainage systems and provisions for drainage of land in the

1 valleys of the Nueces River and its tributary streams needing  
2 drainage for profitable agricultural and livestock production and  
3 industrial activities and drainage of other land in the watershed  
4 area of the authority requiring drainage for the most advantageous  
5 use;

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

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

13 (9) to provide as set forth by Chapters 5, 11, and 12  
14 [6], Water Code, [~~as amended~~] for the control, storing, and  
15 employment of flood, storm, and unappropriated flow water in the  
16 development and distribution of hydroelectric power, where this use  
17 may be economically coordinated with other and superior uses, and  
18 subordinated to the uses declared by law to be superior; and

19 (10) to provide in the manner set forth in Chapters 5,  
20 11, and 12 [6], Water Code, [~~as amended~~] for each and every purpose  
21 and use for which flood, storm, and unappropriated flow water when  
22 controlled and conserved may be utilized in the performance of a  
23 useful service as contemplated and authorized by the provisions of  
24 the constitution and statutes.

25 (c) Subject to Chapters 5, 11, and 12 [6], Water Code, [~~as~~  
26 ~~amended~~] the authority may control, store, and preserve the water  
27 of the Nueces River and its tributaries within the boundaries of the

1 authority for any useful purpose, and may use, distribute, and sell  
2 the water for any beneficial purpose inside and outside the  
3 authority, and may acquire water and water rights inside and  
4 outside the authority.

5 Sec. 3.05. (a) The authority has and may exercise all of  
6 the powers vested in river authorities under Chapters 5, 7, 17, 26,  
7 and 30, [~~Chapter 21 of the~~] Water Code, [~~as amended,~~] and Chapter  
8 366, Health and Safety Code [~~25 of the Water Code, as amended~~].

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

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

18 Sec. 3.08. In the manner provided by Chapters 5, 11, and 12  
19 [6], Water Code, the [~~as amended, the authority shall apply for any~~  
20 ~~permits, licenses, franchises, and other grants of authority it may~~  
21 ~~require from the commission. The~~] authority may apply for any  
22 permits, licenses, franchises, and other grants of authority it may  
23 require from the commission [~~quality board~~], the development board,  
24 or any other federal, state, or local governmental agencies in  
25 exercising its powers and accomplishing the purposes under this  
26 Act.

27 SECTION 9. Section 3.15(i), Chapter 427, Acts of the 44th

1 Legislature, 1st Called Session, 1935, is amended to read as  
2 follows:

3 (i) The provisions of this section do not prohibit the  
4 authority from purchasing or acquiring land or interests in land  
5 from any person, or from acquiring, constructing, or improving  
6 pollution control or waste collection and disposal facilities in  
7 accordance with Chapter [30](#) [~~25~~], Water Code, [~~as amended,~~] the  
8 Clean Air Financing Act (Chapter 4477-5a, Vernon's Texas Civil  
9 Statutes), or other applicable statutes, or purchasing or acquiring  
10 surplus property from any governmental entity by negotiated  
11 contract and without necessity for advertising for bids.

12 SECTION 10. Subchapter 3, Chapter 427, Acts of the 44th  
13 Legislature, 1st Called Session, 1935, is amended by adding Section  
14 3.18A to read as follows:

15 Sec. 3.18A. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION  
16 PROCEDURES. (a) The board shall develop a policy to encourage the  
17 use of:

18 (1) negotiated rulemaking procedures under Chapter  
19 [2008](#), Government Code, for the adoption of authority rules; and

20 (2) appropriate alternative dispute resolution  
21 procedures under Chapter [2009](#), Government Code, to assist in the  
22 resolution of internal and external disputes under the authority's  
23 jurisdiction.

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

1 agencies.

2 (c) The authority shall:

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

5 (2) provide training as needed to implement the  
6 procedures for negotiated rulemaking or alternative dispute  
7 resolution; and

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

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

13 Section 3.22A. CONSERVATION PROGRAM. The board shall adopt  
14 and implement a program of water conservation that incorporates the  
15 practices, techniques, and technologies that will reduce the  
16 consumption of water, reduce the loss or waste of water, improve the  
17 efficiency in the use of water, or increase the recycling and reuse  
18 of water so that a water supply is made available for future or  
19 alternative uses and that the commission and development board  
20 determine [~~Texas Department of Water Resources determines~~] will  
21 meet reasonably anticipated local needs and conditions.

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

27 (1) [~~the~~] programs administered by the development

1 board for:

2 (A) the acquisition and development of  
3 facilities; [ ]

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

5 (C) financial assistance to political  
6 subdivisions; [ ] and

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

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

12 Sec. 3.27. COMPLAINTS. (a) The authority shall maintain a  
13 system to promptly and efficiently act on complaints filed with the  
14 authority. The authority shall maintain information about the  
15 parties to and subject matter of the complaint, a summary of the  
16 results of the review or investigation of the complaint, and the  
17 disposition of the complaint.

18 (b) The authority shall make information available  
19 describing its procedures for complaint investigation and  
20 resolution.

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

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

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

1           (2) establishes the authority's mission; and

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

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

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

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

16           (1) bonds secured by ad valorem taxes;

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

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

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

27           Sec. 2. The rights, privileges, authority, and functions

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

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

6 SECTION 16. (a) The term of the president of the board of  
7 directors of the Nueces River Authority serving on the effective  
8 date of this Act expires September 1, 2019. The director serving as  
9 president on the effective date of this Act may continue to serve on  
10 the board of directors until the expiration of that director's  
11 term.

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

17 SECTION 17. (a) Notwithstanding Section 2.03A, Chapter  
18 427, Acts of the 44th Legislature, 1st Called Session, 1935, as  
19 added by this Act, a person serving on the board of directors of the  
20 Nueces River Authority may vote, deliberate, and be counted as a  
21 director in attendance at a meeting of the board until December 1,  
22 2019.

23 (b) This section expires January 1, 2020.

24 SECTION 18. (a) The legal notice of the intention to  
25 introduce this Act, setting forth the general substance of this  
26 Act, has been published as provided by law, and the notice and a  
27 copy of this Act have been furnished to all persons, agencies,

1 officials, or entities to which they are required to be furnished  
2 under Section 59, Article XVI, Texas Constitution, and Chapter 313,  
3 Government Code.

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

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

11 (d) All requirements of the constitution and laws of this  
12 state and the rules and procedures of the legislature with respect  
13 to the notice, introduction, and passage of this Act are fulfilled  
14 and accomplished.

15 SECTION 19. This Act takes effect September 1, 2019.