

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 15, 1999: Yeas 30, Nays 0; the Senate concurred in House amendment on May 28, 1999, by a viva-voce vote; passed the House, with amendment, on May 25, 1999, by a non-record vote.

Approved June 19, 1999.

Effective September 1, 1999.

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## CHAPTER 1543

### S.B. No. 1165

#### AN ACT

relating to the designation of water quality protection zones.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 26.179, Water Code, is amended by amending Subsections (c), (d), and (e), adding a new Subsection (g), amending and redesignating existing Subsection (g) as Subsection (h), redesignating existing Subsections (h) through (p) as Subsections (i) through (q), and amending existing Subsection (p) to read as follows:

(c) This section applies only to those areas within the extraterritorial jurisdiction, outside the corporate limits of a municipality with a population greater than 10,000 [5,000], and in which the municipality either:

(1) has enacted or attempted to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area within the five years preceding the effective date of this Act, whether or not such ordinances or amendments were legally effective upon the area; or

(2) enacts or attempts to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area in any five-year period, whether or not such ordinances or amendments are legally effective upon the area.

(d) The owner or owners of a contiguous tract of land in excess of 1,000 acres that is located within an area subject to this section may designate the tract as a "water quality protection zone." Upon prior approval of the Commission, the owner of a contiguous tract of land containing less than 1,000 acres, but not less than 500 acres, that is located within an area subject to this section may also designate the tract as a "water quality protection zone." The tract shall be deemed contiguous if all of its parts are physically adjacent, without regard to easements, rights-of-way, roads, streambeds, and public or quasi-public land, or it is part of an integrated development under common ownership or control. The purpose of a water quality protection zone is to provide for the consistent protection of water quality in the zone without imposing undue regulatory uncertainty on owners of land in [the flexibility necessary to facilitate the development of the land within the zone, but which also is intended to result in the protection of the quality of water within] the zone.

(e) A water quality protection zone designated under this section shall be described by metes and bounds or other adequate legal description. The designation shall include a general description of the proposed land uses within the zone, a water quality plan for the zone, and a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone.

(g) A water quality protection zone designation may be amended and a designation may specify the party or parties authorized to execute amendments to the zone designation and the zone's water quality plan. Land may be added to or excluded from a zone by amending the zone designation. An amendment to a zone designation adding land to or excluding land from a zone must describe the boundaries of the zone as enlarged or reduced by metes and bounds or other adequate legal description. An amendment to a zone designation is

effective on its filing in the deed records of the county in which the land is located. On application by all owners of land in a zone, or by each party authorized by the zone designation or an amendment to the zone designation to amend the zone designation, the commission may terminate a zone on reasonable terms and conditions specified by the commission.

(h) The water quality plan for a zone, including the determination of background levels of water quality, shall be signed and sealed by a registered professional engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this section. On recordation in the deed records, the water quality plan shall be submitted to and accepted by the commission for approval, and the commission shall accept and approve the plan unless the commission finds that implementation of the plan will not reasonably attain the water quality protection as defined in this section. A water quality plan may be amended from time to time on filing with the commission, and all such amendments shall be accepted by the commission unless there is a finding that the amendment will impair the attainment of water quality protection as defined in this section. The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section. The commission's review and approval of a water quality plan shall be performed by the commission staff that is responsible for reviewing pollution abatement plans in the county where the zone is located. The review and approval of the plan or any amendment to the plan shall be completed within 120 days of the date it is filed with the commission. A public hearing on the plan shall not be required, and acceptance, review, and approval of the water quality plan or water quality protection zone shall not be delayed pending the adoption of rules. The commission shall have the burden of proof for the denial of a plan or amendments to a plan, and any such denial shall be appealable to a court of competent jurisdiction. The water quality plan, or any amendment thereto, shall be effective upon recordation of the plan or the amendment in the deed records and shall apply during the period of review and approval by the commission or appeal of the denial of the plan or any amendment. *New development under a plan may not proceed until the plan or amendment to the plan, as appropriate, has been approved by the commission.*

(i) ~~(h)~~ The water quality plan for a zone shall be a covenant running with the land.

(j) ~~(i)~~ A municipality may not enforce in a zone any of its ordinances, land use ordinances, rules, or requirements including, but not limited to, the abatement of nuisances, pollution control and abatement programs or regulations, water quality ordinances, subdivision requirements, other than technical review and inspections for utilities connecting to a municipally owned water or wastewater system, or any environmental regulations which are inconsistent with the land use plan and the water quality plan or which in any way limit, modify, or impair the ability to implement and operate the water quality plan and the land use plan within the zone as filed; nor shall a municipality collect fees or assessments or exercise powers of eminent domain within a zone until the zone has been annexed for the municipality. A water quality protection zone may be annexed by a municipality only after the installation and completion of 90 percent of all facilities and infrastructure described in the water quality plan for the entire zone as being necessary to carry out such plan or the expiration of 20 years from the date of designation of the zone, whichever occurs first.

(k) ~~(j)~~ Subdivision plats within a water quality protection zone shall be approved by the municipality in whose extraterritorial jurisdiction the zone is located and the commissioners court of the county in which the zone is located if:

(1) the plat complies with the subdivision design regulations of the county; and

(2) the plat is acknowledged by a registered professional engineer stating that the plat is in compliance with the water quality plan within the water quality protection zone.

(l) ~~(k)~~ A water quality protection zone implementing a water quality plan which meets the requirements of this section shall be presumed to satisfy all other state and local requirements for the protection of water quality; provided, however, that:

(1) development in the zone shall comply with all state laws and commission rules regulating water quality which are in effect on the date the zoning is designated; and

(2) nothing in this section shall supersede or interfere with the applicability of water quality measures or regulations adopted by a conservation and reclamation district com-

prising more than two counties and which apply to the watershed area of a surface lake or surface reservoir that impounds at least 4,000 acre-feet of water.

(m) ~~[(L)]~~(1) One or more of the provisions of this section may be waived by the owner or owners of property that is or becomes subject to an agreement entered into after the effective date of this Act between the owner or owners of land within the zone and the municipality. The agreement shall be in writing, and the parties may agree:

(A) to guarantee continuation of the extraterritorial status of the zone and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(B) to authorize certain land uses and development within the zone;

(C) to authorize enforcement by the municipality of certain municipal land use and development regulations within the zone, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(D) to vary any watershed protection regulations;

(E) to authorize or restrict the creation of political subdivisions within the zone; and

(F) to such other terms and considerations the parties consider appropriate, including, but not limited to, the continuation of land uses and zoning after annexation of the zone, the provision of water and wastewater service to the property within the zone, and the waiver or conditional waiver of provisions of this section.

(2) An agreement under this section shall meet the requirements of and have the same force and effect as an agreement entered into pursuant to Section 42.046, Local Government Code.

(n) ~~[(m)]~~ In addition to the requirements of Subsections (a)(1) and (a)(2), the commission may require and enforce additional water quality protection measures to comply with mandatory federal water quality requirements, standards, permit provisions, or regulations.

(o) ~~[(n)]~~ This section does not apply to an area within the extraterritorial jurisdiction of a municipality with a population greater than 100,000 that has extended to the extraterritorial jurisdiction of the municipality an ordinance whose purpose is to prevent the pollution of an aquifer which is the sole or principal drinking water source for the municipality.

(p) ~~[(o)]~~ If a municipality's action results in part of a zone being located outside the municipality's extraterritorial jurisdiction, the entire zone is removed from the municipality's extraterritorial jurisdiction. A zone removed from a municipality's extraterritorial jurisdiction may not be brought into the municipality's extraterritorial jurisdiction before the 20th anniversary of the date on which the zone was designated.

(q) ~~[(p)]~~ In addition to the fees authorized under Subsection (h) ~~[(g)]~~, the commission shall adopt and assess reasonable and necessary fees adequate to recover the commission's costs in monitoring water quality associated with water quality protection zones.

SECTION 2. The changes in law made by this Act apply only to a water quality plan or an amendment to a water quality plan that is submitted to the Texas Natural Resource Conservation Commission for review and approval on or after the effective date of this Act.

SECTION 3. All actions taken by the Texas Natural Resource Conservation Commission or another state agency before the effective date of this Act relating to the approval under Section 26.179, Water Code, of the designation of a tract as a water quality protection zone, of a water quality plan for a zone, or of an amendment to a designation or plan are ratified, validated, approved, and confirmed.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 8, 1999, by a viva-voce vote; the Senate concurred in House amendments on May 28, 1999: Yeas 30, Nays 0; passed the House, with amendments, on May 22, 1999: Yeas 143, Nays 0, one present not voting.

Approved June 19, 1999.

Effective June 19, 1999.

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CHAPTER 1544

S.B. No. 1171

AN ACT

relating to the power and authority of the Upper Guadalupe River Authority to borrow money for corporate purposes.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsections (c) and (d), Section 10(c), Chapter 5, page 1062, Special Laws, Acts of the 46th Legislature, Regular Session, 1939 (Article 8280-124, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) A note issued under this section may not exceed \$55 [~~\$1~~] million *in the aggregate*.

(d) The notes may mature over a term of not more than 40 [20] years and bear interest at a rate of not more than 10 percent.

SECTION 2. (a) It is the intent of the legislature to provide a mechanism for the Upper Guadalupe River Authority to use revenues from the provision of wholesale water and wastewater services instead of ad valorem taxation in Kerr County to finance the construction and simultaneous operation of regional wholesale water and wastewater services in Kerr County. The mechanism allows the anticipated growth in Kerr County to pay for itself and ensures the continued prudent fiscal management of the Upper Guadalupe River Authority.

(b) The legislature anticipates that this Act will:

(1) produce a revenue stream for the Upper Guadalupe River Authority sufficient to finance other operations of the authority, including water quality monitoring programs, maintenance of the county's on-site sewage facility, flood programs, and programs of the Headwaters Underground Water Conservation District that are administratively supported by the authority; and

(2) allow the Upper Guadalupe River Authority to terminate the assessment and collection of ad valorem taxes in Kerr County on and after December 31, 2009, without sacrificing any of the authority's essential water quality programs or services in Kerr County.

SECTION 3. (a) The proper and 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 by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) 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.

Passed the Senate on April 26, 1999: Yeas 30, Nays 0; the Senate concurred in House amendment on May 28, 1999, by a viva-voce vote; passed the House, with amendment, on May 26, 1999, by a non-record vote.

Approved June 19, 1999.

Effective August 30, 1999, 90 days after date of adjournment.