

BILL ANALYSIS

Senate Research Center
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H.B. 2965
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Natural Resources
5/10/1999
Committee Report (Amended - REVISED)

DIGEST

Currently, the Texas Constitution provides for the creation of certain conservation and reclamation districts. H.B. 2965 would create the North Harris County Regional Water Authority, subject to a confirmation election.

PURPOSE

As proposed, H.B. 2965 sets forth the creation of the North Harris County Regional Water Authority.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the North Harris County Regional Water Authority in SECTIONS 4.02 and 4.05; and to the board of directors of North Harris County Regional Water Authority in SECTION 4.03 of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. CREATION. (a) Provides that a regional water authority, to be known as the North Harris County Regional Water Authority (authority), is created in Harris County, subject to a confirmation election held under SECTION 2.05 of this Act. Provides that the authority is a governmental agency and a body politic and corporate.

(b) Provides that the authority is created under and is essential to accomplish the purposes provided by Section 59, Article XVI, Texas Constitution.

SECTION 1.02. DEFINITIONS. Defines “authority,” “board,” “commission,” “director,” “local government,” “person,” “subsidence district,” “system,” “water,” “subsidence,” and “agricultural crop.”

SECTION 1.03. DESCRIPTION OF BOUNDARIES. Sets forth the legal description of the boundaries of the authority. Provides that the authority includes only certain territory. Provides that the authority does not include any area that, on the effective date of this Act, is inside the municipal limits of the City of Houston or inside the municipal limits of the City of Humble, notwithstanding Subsections (a) and (b) of this section. Provides that the authority includes only that part of the area described by this section that the temporary board determines is inside the authority’s boundaries as provided by Section 2.05(e) of this Act, after the confirmation election held under Section 2.05 of this Act. Provides that on a municipality’s annexation of any of the authority’s territory, the annexed territory is excluded from the authority’s territory. Requires the authority to continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the board and the governing body of the municipality provides otherwise.

SECTION 1.04. EXCLUSION OF CERTAIN TERRITORY. Authorizes a district organized under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that is located in the portion of the territory described by Section 1.03(a) of this Act that is South of Beltway 8 or East of U.S. Highway 59 to petition for exclusion of its territory from the authority’s territory. Sets forth requirements for the board of directors of the North Harris County Regional Water Authority (board), before the 61st day after the date the authority receives the petition. Provides that the order excluding the territory is effective immediately after the order and description are recorded.

SECTION 1.05. APPLICABILITY OF OTHER LAW. Provides that this Act prevails over any inconsistent provision of general law. Provides that this Act does not prevail over or preempt a provision of Chapter 151, Water Code, or Chapter 36, Water Code, that is being implemented by the subsidence district.

SECTION 1.06. FINDING OF BENEFIT. Provides that all the land and other property included within the boundaries of the authority will be benefited by the works and projects that are to be accomplished by the authority under powers conveyed by this Act. Provides that the authority is created to serve a public use and benefit.

ARTICLE 2. DIRECTORS

SECTION 2.01. BOARD OF DIRECTORS. Provides that the authority is governed by a board of nine directors. Requires the board of directors of the authority to appoint a person to fill a vacancy in the office of director until the next election for directors. Provides that the person elected to fill the position serves only for the remainder of the unexpired term, if the position is not scheduled to be filled at the election. Requires a person to be a qualified voter in the voting district from which the person is elected or appointed, to be eligible to serve as director.

SECTION 2.02. METHOD OF ELECTION OF DIRECTORS. Requires one board director to be elected from each of nine single-member voting districts by the qualified voters of the voting district. Requires a person to indicate on the person's application for a place on the ballot the voting district that the person seeks to represent. Requires the board to redraw the single-member voting districts as soon as practicable after each federal decennial census, and any change in the boundaries of the authority, in the manner described by Section 49.103(d). Sets forth directors elected to serve after the districts are redrawn. Provides that Chapter 146C, Election Code, applies to the consideration of votes for a write-in candidate for the initial permanent director or permanent director as if the authority were a municipality.

SECTION 2.03. SERVICE OF DIRECTORS. Provides that temporary directors serve until the initial permanent directors are elected under Section 2.05 of this Act. Provides that initial permanent directors serve until permanent directors are elected under Section 2.06 of this Act. Provides that permanent directors serve staggered four-year terms. Provides that a director serves until the director's successor has qualified.

SECTION 2.04. TEMPORARY DIRECTORS. Provides that the temporary board of directors is composed of three individuals appointed by the Texas Natural Resource Conservation Commission (TNRCC). Requires temporary directors who have qualified to appoint a person to fill the vacancy, if a temporary director fails to qualify for office. Requires TNRCC to appoint the necessary number of persons to fill all vacancies on the board, if at the time there are fewer than two qualified temporary directors, or if the temporary directors cannot agree on the appointment. Provides that a temporary director is not eligible to be elected under Section 2.05 of this Act.

SECTION 2.05. CONFIRMATION AND INITIAL PERMANENT DIRECTORS ELECTION. (a) Requires the temporary board to establish nine single-member voting districts in the manner described by Section 49.103(d), Water Code, and on the first uniform election date of the calendar year 2000 hold an election to confirm the establishment of the authority, and to elect nine initial permanent directors.

(b) Authorizes a person who desires to be a candidate for the office of initial permanent director to file an application with the temporary board to have the candidate's name printed on the ballot.

(c) Requires the temporary board to have placed on the ballot the name of each candidate filing for the office of director, and blank spaces to write in the names of other persons, at the confirmation and initial permanent directors election.

(d) Requires the temporary board to take certain actions, at the time the voter is canvassed, if the authority is created at the election.

(e) Sets forth the conditions for permanent directors to draw lots to determine their terms.

(f) Provides that Section 41.001(a), Election Code, does not apply to the confirmation and initial permanent directors election held under Section 2.06 of this Act.

(g) Requires the temporary board to draft language for the ballot proposition used for the confirmation election. Sets forth the requirements for the ballot proposition.

(h) Requires the ballot language to explain the nature of any fees or taxes the authority has the authority to impose.

SECTION 2.06. ELECTION OF DATES. Requires the appropriate number of directors to be elected to the board, on the first uniform election date of the calendar year in each subsequent even-numbered year.

SECTION 2.07. COST OF ELECTION. Requires the temporary board of the authority to fund the cost of the confirmation and initial permanent director election if the temporary board is able to find a reasonable means of funding the election. Authorizes the temporary board of the authority and the board of directors of the Harris-Galveston Coastal Subsidence District (HGCSD) to execute an agreement by which HGCSD shall pay the portion of the costs that could not be funded by the district, and the authority shall repay HGCSD for those costs within a reasonable period, if the temporary board is unable to fund the entire cost of the election.

ARTICLE 3. ADMINISTRATIVE PROVISIONS

SECTION 3.01. MEETINGS AND ACTIONS OF BOARD. Requires the board to meet at least four times each year and to meet at any other time the board considers appropriate.

SECTION 3.02. GENERAL MANAGER. Requires the board to employ a general manager as the chief administrative officer of the authority. Authorizes the board to delegate to the general manager full authority to manage and operate the affairs of the authority subject only to the orders of the board. Provides that the duties of the general manger include the administration of the orders of the board, coordination with state, federal, and local agencies, the oversight of development of authority plans and programs, and other duties assigned by the board. Requires the board to determine the terms of office and employment and the compensation to be paid the general manager. Authorizes the general manager to be discharged by majority vote of the board.

SECTION 3.03. EMPLOYEES; BOND. Requires the general manager of the authority to employ all persons necessary for the proper handling of the business and operations of the authority and to employ attorneys, bookkeepers, engineers, and other expert and specialized personnel the board considers necessary. Requires the general manager to determine compensation to be paid by the authority. Authorizes the general manager to discharge employees of the authority. Requires the general manager of the authority and each employee or contractor of the authority who is charged with the collection, custody, or payment of any money of the authority to execute a fidelity bond in an amount determined by the board and in a form and with a surety approved by the board. Requires the authority to pay for the bond.

ARTICLE 4. POWERS AND DUTIES

SECTION 4.01. GENERAL POWERS AND DUTIES. Provides that the authority has all of the rights, powers, privileges, authority, functions, and duties necessary and convenient to accomplish the purposes of this Act, including those provided by Chapter 49, Water Code. Authorizes the authority to take certain actions. Subjects the authority's rights, powers, privileges, authority, functions, and duties to the continuing right of state supervision, to be exercised by and through TNRCC. Requires the authority to exercise its rights, powers, privileges, and authority in a manner that will promote regionalization of water treatment and distribution.

SECTION 4.02. AUTHORITY RULES. Authorizes the authority to adopt and enforce rules reasonably required to implement this Act, including rules governing procedures before the board. Requires the board to compile its rules in a book and make them available for use and inspection at the authority's principal office.

SECTION 4.03. FEES AND CHARGES. Authorizes the authority to establish fees and charges as necessary to enable the authority to fulfill the authority's regulatory obligations provided by this Act. Authorizes the authority to charge against the owner of a well located in the authority's boundaries a fee on the amount of water pumped from the well. Requires the board to establish the rate of a fee under this

subsection only after a special meeting on the fee. Authorizes the board, by rule, to exempt classes of wells from the fee under this subsection. Prohibits the board from applying the fee to a well with a casing diameter of less than five inches that serves a single-family dwelling, regulated under Chapter 27, Water Code, used for irrigation of agricultural crops, that produces 10 million gallons or less annually, or used solely for electric generation. Requires the fees the board establishes to be sufficient to meet certain conditions. Authorizes the temporary board to set fees to pay for the initial operation of the authority and the election of the initial permanent board until the permanent board has been elected.

SECTION 4.04. CIVIL PENALTY; INJUNCTION. Provides that a person who violates a rule or order of the authority is subject to a civil penalty of no less than \$50 and no more than \$5,000 for each violation or each day of a continuing violation. Authorizes the authority to bring an action to recover the penalty in a district court in the county where the violations occurred. Requires the penalty to be paid to the authority. Authorizes the authority to bring an action for injunctive relief in a district court in a county where a violation of an authority rule or order occurs or is threatened to occur. Authorizes the court to grant to the authority, without bond or other undertaking, a prohibitory or mandatory injunction that the facts warrant. Authorizes the authority to bring an action for a civil penalty and injunctive relief in the same proceeding.

SECTION 4.05. WATER SUPPLY PLANS. Authorizes the authority, by rule, as needed but no less frequently than every five years, to develop, prepare, revise, and adopt comprehensive water supply and drought contingency plans for various areas of the authority. Requires the plan to be consistent with regional planning, and to include 10-year, 20-year, and 50-year projections of water needs within the authority.

SECTION 4.06. ACQUISITION, CONSTRUCTION, AND OPERATION OF SYSTEMS. Sets forth provisions regarding the authority. Requires the authority to give persons outside the authority's boundaries, including the City of Houston, the option to contract for available excess capacity of the authority's water treatment or supply system or, before construction of a water treatment or supply system begins, for additional capacity of the system. Requires the authority to offer a contract that would enable the person to pay for the excess capacity or additional capacity in accordance with the person's pro rata share of the capital investment and operational and maintenance costs for providing the excess capacity or additional capacity.

SECTION 4.07. SALE OR REUSE OF WATER OR BY-PRODUCT. Authorizes the authority to store, sell, or reuse water, or any by-product from the authority's operations.

SECTION 4.08. EMINENT DOMAIN. Authorizes the authority to exercise the power of eminent domain in the manner provided in Chapter 21, Property Code, to acquire property of any kind to further authorized purposes of the authority. Prohibits the authority from exercising the power of eminent domain outside of the boundaries of the authority.

SECTION 4.09. CONTRACTS. Authorizes the authority to enter into a contract with any person or legal entity regarding the performance of any purpose or function of the authority. Authorizes a contract to be of unlimited duration. Authorizes the authority to purchase an interest in a project used for a purpose or function of the authority. Authorizes the authority to contract for certain provisions. Authorizes the authority to purchase surplus property from this state, the United States, or another public entity through a negotiated contract without bids. Requires an officer, agent, or employee of the authority who is financially interested in the contract of the type described by Subsection (d) of this section to disclose the interest to the board before the board votes on the acceptance of the contract.

SECTION 4.10. COOPERATION WITH AND ASSISTANCE OF OTHER GOVERNMENTAL ENTITIES. Authorizes the board, to cooperate with and request the assistance of the Texas Water Development Board, TNRCC, the United States Geological Survey, HGCSO, other local governments, and other agencies of the United States and this state, in implementing this Act. Authorizes HGCSO to enter into an interlocal contract with the authority to carry out the authority's purposes and to carry out the governmental functions and services specified in the interlocal contract. Requires the board to coordinate with the City of Houston to develop an interregional plan for a system to distribute treated surface water in an economical and efficient manner.

SECTION 4.11. GIFTS AND GRANTS. Provides that the authority is authorized to accept a gift or grant from money collected by HGCSO under Chapter 151, Water Code, to fund a water treatment or supply

system. Provides that the authorization in this section is in addition to the authorization provided in Section 49.229, Water Code.

SECTION 4.12. EXPENDITURES. Authorizes the authority's money to be disbursed only by check, draft, order, or other instrument. Requires disbursements of the authority to be signed by at least two directors, except the board by resolution may allow the general manager, treasurer, bookkeeper, or other employee of the authority to sign disbursements. Authorizes the board by resolution to allow disbursements to be transferred by federal reserve wire system to accounts in the name of the authority.

SECTION 4.13. TAXATION. Prohibits the district from imposing an ad valorem tax.

ARTICLE 5. NOTES AND BONDS

SECTION 5.01. REVENUE NOTES. Authorizes the board, without an election, to borrow money on negotiable notes of the authority to be paid solely from the revenue derived from any legal source, including certain items. Authorizes the notes to be first or subordinate lien notes at the board's discretion. Prohibits an obligation from being a charge on the property of the authority. Authorizes an obligation to only be a charge on revenue pledged for the payment of the obligation.

SECTION 5.02. BONDS. (a) Authorizes the authority to issue bonds secured by all or part of the revenue derived from any source, including any source described by SECTION 5.01(a) of this Act, to carry out a power or authority conferred by this Act.

(b) Authorizes the authority to exercise any power of an issuer under Chapter 656, Article 717q, V.T.C.S., in issuing or securing a bond or note of the authority.

(c) Authorizes the authority to conduct a public, private, or negotiated sale of the bonds.

(d) Sets forth the requirements for authority bonds.

(e) Authorizes an authority bond to be secured by an indenture of trust with a corporate trustee.

(f) Authorizes the authority to issue bonds in more than one series as required for carrying out the purposes of this Act. Authorizes the authority to reserve the right to issue additional bonds secured by the authority's revenue that are on a parity with or are senior or subordinate to the bonds issued earlier, in issuing bonds secured by revenue of the district.

(g) Authorizes the resolution authorizing the bonds or the trust indenture securing the bonds to specify additional provisions that constitute a contract between the authority and its bondholders. Authorizes the board to provide for additional bond provisions, and for a corporate trustee or receiver to take possession of the authority's facilities if the authority defaults.

(h) Provides that Section 49.181, Water Code, does not apply to bonds or notes issued by the authority.

SECTION 5.03. REFUNDING BONDS. Provides that the provisions of this Act that apply to the authority's issuance of other bonds, their security, and the remedies of the holders apply to refunding bonds.

SECTION 5.04. APPROVAL AND REGISTRATION OF BONDS. Requires the authority to submit the bonds and the record relating to their issuance to the attorney general for approval, after the authority authorizes bonds. Requires the authority to submit to the attorney general a copy of the contract and the proceedings of the municipality or other governmental agency, authority, or district authorizing the contract, if the bonds are secured by a pledge of the proceeds of a contract between the authority and a municipality or other governmental agency, authority, or district. Requires the attorney general to approve the bonds and contracts, if the attorney general finds that the bonds have been authorized and each contract has been made in accordance with the constitution and laws of this state. Requires the bonds to be registered by the comptroller, on approval.

SECTION 5.05. FUNDING BY OTHER DISTRICTS. Requires the authority to develop a procedure for cooperatively funding a project of the authority with money from other districts inside of the authority's

boundaries if the authority project fulfills a governmental purpose of both the authority and other district. Requires the authority to provide written notice of the authority's intention to issue the bonds to each district inside of the authority's boundaries that may be benefitted or affected by the project, no later than the 90th day before the date the authority issues bonds, other than refunding bonds, to finance a project. Requires the notice to include certain information. Requires the schedule to be prepared by means of a formula certified by the authority's engineer. Authorizes a district to enter into a contract with the authority for the district to finance a portion of the proposed project with district resources instead of using proceeds from bonds of the authority for that purpose. Requires the contract to be executed before the authority issues the bonds. Sets forth contract requirements for the authority.

ARTICLE 6. MISCELLANEOUS PROVISIONS

SECTION 6.01. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. Provides that the proper and legal notice of the intention to introduce this Act, setting out 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 law of this state, including the governor, who has submitted the notice and the Act to TNRCC. Provides that TNRCC has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time. Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 6.02. Emergency clause.

Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.03.

Amends Subsection (b), to set forth the authority, rather than district, under Subsection (a), includes Districts 130, 135, and 150. Deletes proposed Subdivisions (1), (2), (5), and (6). Makes conforming changes.

Adds Subsection (d), to provide that the authority includes only that part of the area described by this section that the temporary board determines is inside the authority's boundaries as provided by Section 2.05(e) of this Act, after the confirmation election held under Section 2.05 of this Act. Makes conforming changes.

Adds Subsection (e), to provide that on a municipality's annexation of any of the authority's territory, the annexed territory is excluded from the authority's territory. Requires the authority to continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the board and the governing body of the municipality provides otherwise.

SECTION 1.04.

Adds SECTION 1.04, regarding the exclusion of certain territory. Redesignates proposed SECTION 1.04 as SECTION 1.05. Makes conforming changes.

SECTION 1.05.

Redesignates proposed SECTION 1.05 as SECTION 1.06.

SECTION 2.02.

Amends Subsection (a), to require one board director to be elected from each of nine single-member voting districts by the qualified voters of the voting district. Makes a conforming change.

SECTION 2.05.

Amends Subsection (a)(2), to change the election date from the first Saturday in May 2000 to the first uniform election date of the calendar year 2000.

SECTION 2.06.

Amends SECTION 2.06, to require the appropriate number of directors to be elected to the board, on the first uniform election date of the calendar year, rather than Saturday in May, in each subsequent even-numbered year.

SECTION 4.01.

Adds Subsection (c), to subject the authority's rights, powers, privileges, authority, functions, and duties to the continuing right of state supervision, to be exercised by and through TNRCC.

Adds Subsection (d), to require the authority to exercise its rights, powers, privileges, and authority in a manner that will promote regionalization of water treatment and distribution.

SECTION 4.03.

Amends Subsection (b)(2), to delete text regarding the word or.

Amends Subsection (b)(3), to prohibit the board from applying the fee to a well with a casing diameter of less than five inches that serves a single-family dwelling, regulated under Chapter 27, Water Code, used for irrigation of agricultural crops that produces 10 million gallons or less annually, or used solely for electric generation.

SECTION 4.06.

Add Subsection (a), to make a conforming change.

Adds Subsection (b), to require the authority to give persons outside the authority's boundaries, including the City of Houston, the option to contract for available excess capacity of the authority's water treatment or supply system or, before construction of a water treatment or supply system begins, for additional capacity of the system. Requires the authority to offer a contract that would enable the person to pay for the excess capacity or additional capacity in accordance with the person's pro rata share of the capital investment and operational and maintenance costs for providing the excess capacity or additional capacity.

SECTION 4.10.

Adds Subsection (c), to require the board to coordinate with the City of Houston to develop an interregional plan for a system to distribute treated surface water in an economical and efficient manner.