

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 627
By: Birdwell et al.
Water & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature created the Red River Authority of Texas (RRA) in 1959 to conserve, develop, and control pollution of the water of the Red River and its tributaries. RRA receives no state appropriations and operated on a budget of about \$5.4 million in fiscal year 2017, 83 percent of which came from water and wastewater sales to rural retail customers.

The Sunset Advisory Commission (Sunset) found that while RRA encounters many of the struggles that face rural utility services, these obstacles do not excuse the authority from meeting minimum safety and transparency standards. Sunset's recommendations focus not only on improving processes to come into compliance but also on increasing accountability to stave off recurrence of the authority's current problems. Sunset also found opportunities for RRA to apply good government standards to their governing laws.

S.B. 627 updates the date of RRA's next Sunset review to 2031, the standard 12-year period.

S.B. 627 requires RRA to develop and maintain a comprehensive asset management plan.

- This recommendation would require RRA to engage in a more comprehensive asset management planning process that incorporates a detailed asset inventory, criteria for prioritizing assets, an estimate of the costs for asset repair and replacement, and all potential financing options.

S.B. 627 requires the RRA board to adopt a policy to ensure meaningful public input on significant rate changes.

- This recommendation would require the board to develop a multi-pronged approach to obtaining stakeholder input due to the spread out nature of RRA's utility operations.

S.B. 627 requires RRA to inform customers of their right to appeal rate changes.

- The notice would be required to include a description of the process by which customers may appeal RRA's decision affecting their water or sewer rates to the Public Utility Commission of Texas.

S.B. 627 requires the Texas State Auditor's Office to conduct an audit of RRA no later than December 1, 2022.

- The purpose of this audit would be to evaluate whether RRA has addressed operational challenges identified by Sunset.

S.B. 627 applies basic good government standards to RRA's governing laws to promote accountability, transparency, and best practices.

- These standards are applied to all entities under Sunset review as "across-the-board recommendations" unless a good reason exists not to apply the standard.

The bill provides for gubernatorial designation of the presiding officer, provides grounds for board member removal, requires board member training, separates duties of staff from the board,

requires public testimony be included in each board meeting agenda, requires maintenance of complaint information, and promotes alternative dispute resolution. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 627 amends current law relating to the Red River Authority, following recommendations of the Sunset Advisory Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of directors of the Red River Authority in SECTION 8 (Section 20a, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1A(a), Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, to require the review to be conducted under Section 325.025 (River Authorities Subject to Review), Government Code, as if the Red River Authority (Authority) were a state agency scheduled to be abolished September 1, 2031, rather than September 1, 2019, and every 12th year after that year.

SECTION 2. Amends Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, by adding Sections 4a and 4b, as follows:

Sec. 4a. (a) Provides that it is a ground for removal from the board of directors of the Red River Authority (Board) that a director does not have at the time of taking office the qualifications required by Section 4 (relating to the establishment and operation of the Board) of this Act, does not maintain during service on the Board the qualifications required by Section 4 of this Act, is ineligible for directorship under Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, cannot, because of illness or disability, discharge the director's duties for a substantial part of the director's term, or 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) Provides that 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) Requires the general manager employed by the Authority, if the general manager has knowledge that a potential ground for removal exists, to notify the president of the Board of the potential ground. Requires the president to then notify the governor and the Texas attorney general (attorney general) that a potential ground for removal exists. Provides that if the potential ground for removal involves the president, the general manager is required to notify the next highest ranking director, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 4b. (a) Prohibits a person who is appointed to and qualifies for office as a director from voting, deliberating, or being counted as a director in attendance at a Board meeting until the person completes a training program that complies with this section.

(b) Requires the training program to 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 laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest and 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) Entitles a person appointed to the Board 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) Requires the general manager to create a training manual that includes the information required by Subsection (b) of this section. Requires the general manager to distribute a copy of the training manual annually to each director. Requires each director to sign and submit to the general manager a statement acknowledging that the director has received and reviewed the training manual.

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

Sec. 5. Requires the directors of the Authority to organize by electing one director vice-president, one secretary, and one treasurer, rather than requires the directors of the Authority to organize by electing one of their members president, one vice-president, one secretary, and one treasurer.

Sec. 7. Requires the governor to designate a director of the Board as the president of the Board to serve in that capacity at the pleasure of the governor.

Sec. 9. Requires a copy of the report on the required annual audit of the Authority to be filed in the office of the auditor, rather than requires said report to 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, and one with the Texas Department of Water Resources, all of which are required to be open to public inspection. Requires the copy to be open to public inspection.

Sec. 10. (a) Requires the directors, unless the Board by resolution increases the fee to an amount authorized by Section 49.060 (Fees of Office; Reimbursement), Water Code, to receive as fees of office the sum of not to exceed 25 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, requires the directors to 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 requires warrants to be issued therefor.

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

Sec. 11. Prohibits a director from being employed as a general manager, rather than authorizing such employment, and deletes existing text relating to such employment.

SECTION 4. Amends Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, by adding Section 11a to require the Board to 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. Amends Section 14a, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, as follows:

Sec. 14a. (1) Provides that the Authority is governed by and subject to Chapters 49 (Provisions Applicable to All Districts), 60 (Navigation Districts--General Provisions), and 62 (Article XVI, Section 59, Navigation Districts), Water Code, but that in all areas of conflict, Chapter 62 takes precedence. Makes nonsubstantive changes and requires the Authority to have, rather than to have without limitation of the generality of the foregoing, and is hereby authorized to exercise the following powers, rights and privileges, and functions;

(2)–(5) make no changes to these subdivisions;

(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 for certain purposes;

(7) if 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, the Authority is authorized to:

(A) enter into contracts that may be required by the federal government, including assignments and transfers of property, property rights, easements, and privileges; and

(B) take any other action required by the federal government or any agency of the federal government, rather than any and all other lawful things and acts may be necessary and required 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) Provides that it is legislative intent that the Authority will coordinate the development of any public parks and recreational facilities with the Texas Parks and Wildlife Department for conformity with the land and water resources conservation and recreation plan, rather than the 'State Comprehensive Outdoor Recreation Plan';

(9)–(10) makes no changes to these subdivisions.

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

Sec. 14e. (a) Defines "system" for the purposes of this section.

(b) Requires the Authority to 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) Requires the Authority to review and revise the plan as necessary to account for regulatory changes and other developments.

(d) Requires the Board to approve the plan annually as part of its budgeting process.

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

Sec. 17. (a) Creates Subdivisions (1)–(3) from existing text and makes nonsubstantive changes. Authorizes the Authority to seek and accept contributions to its funds from any source for the purpose of funding:

(1) necessary studies;

(2) engineering and other services; and

(3) the collection and computation of data respecting regional and general conditions that influence the character and extent of the improvements necessary to effect the purposes of the Authority to the greatest public advantage.

(b) Creates this subsection from existing text and makes no further changes.

Sec. 20. Requires the rates and charges for the sale or use of water to be subject to review by the Public Utility Commission of Texas, rather than the State Board of Water Engineers, as provided by general law.

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

Sec. 20a. (a) Defines "affected person" for purposes of this section.

(b) Requires the Board to 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 notice of proposed change and an opportunity to provide to the Board comments regarding the proposed change.

(c) Requires the process established under Subsection (b) to include the provision of notice of a proposed change on the Authority's website and in an affected person's utility bills and appropriate informational meetings or rate hearings that provide affected persons the opportunity to provide public comments about the proposed change to be held before sending a statement of intent required under Chapter 13 (Water Rates and Services), Water Code, in locations as necessary to

enable affected persons to attend, and after the provision of notice under Subdivision (1) of this subsection.

(d) Requires the Board by rule to 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) Requires the Authority to notify affected persons of their right to appeal changes to rates in any notices related to changes to rates, in utility bills sent before the deadline for initiating an appeal under Chapter 13, Water Code, and on the Authority's website.

(b) Requires the notice required by Subsection (a) of this section to include descriptions of the appeals process, the requirements for an appeal, including the number of signatures needed on a petition, and the methods available for obtaining additional information related to rates.

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

Sec. 22. Creates Subdivisions (1)–(6) from existing text and makes nonsubstantive changes. Authorizes the Authority to:

(1) make bylaws for the management and regulation of its affairs;

(2) use a corporate seal, rather than adopt and use a corporate seal;

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

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

(5) borrow money for its corporate purposes; and

(6) borrow money and accept grants from the United States of America, the State of Texas, or any other source, and in connection with any such loan or grant, enter into agreements and assume obligations as may be required. Deletes existing text requiring such actions and text requiring certain money and grants to be borrowed and accepted without limitation of a certain generality.

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

Sec. 33. (a) Requires the Board to develop a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the Authority's jurisdiction.

(b) Requires the Authority's procedures relating to alternative dispute resolution to 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) Requires the Authority to coordinate the implementation of the policy adopted under Subsection (a) of this section, provide training as needed to implement the

procedures for alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

Sec. 34. (a) Requires the Board to 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) Requires the Board, at each regular meeting of the Board, to 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. Prohibits the Board from deliberating on or deciding a matter not included in the meeting agenda, except that the Board is authorized to discuss including the matter on the agenda for a subsequent meeting.

Sec. 35. (a) Requires the Authority to maintain a system to promptly and efficiently act on complaints filed with the Authority. Requires the Authority to 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) Requires the Authority to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the Authority to periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 36. (a) Requires the state auditor to 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 (Sunset) presented to the 86th Legislature.

(b) Prohibits the state auditor from beginning the audit required by Subsection (a) of this section before December 1, 2021, and requires the state auditor to prepare and submit a report of the findings of the audit to the chairman and executive director of Sunset not later than December 1, 2022.

(c) Requires the state auditor to include the auditor's duties under this section in each audit plan under Section 321.013 (Powers and Duties of State Auditor), Government Code, that governs the auditor's duties for the period specified by Subsection (b) of this section.

(d) Provides that this section expires January 1, 2023.

SECTION 11. Repealer: Section 13 (relating to prohibiting certain conflicts of interest of certain entities of the Authority), Chapter 279, Acts of the 56th Legislature, Regular Session, 1959.

SECTION 12. (a) Provides that the term of the president of the Board serving on the effective date of this Act expires September 1, 2019. Authorizes the director serving as president on the effective date of this Act to continue to serve on the Board until the expiration of that director's term.

(b) Requires the governor, not later than September 2, 2019, to designate a director as president of the Board as required by Section 7, Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, as amended by this Act.

SECTION 13. (a) Authorizes a person serving on the Board, notwithstanding Section 4b(a), Chapter 279, Acts of the 56th Legislature, Regular Session, 1959, as added by this Act, to vote, deliberate, and be counted as a director in attendance at a meeting of the board until December 1, 2019.

(b) Provides that this section expires January 1, 2020.

SECTION 14. Provides that 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. Effective date: September 1, 2019.