

BILL ANALYSIS

Senate Research Center

S.B. 1223
By: Eltife
Natural Resources
9/21/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill will create a regional water conservation and supply district in Northeast Texas, consisting of the cities of Annona, Avery, DeKalb, Hooks, Maud, New Boston, Texarkana, and Wake Village, along with the Red River Redevelopment Authority. Each municipality has adopted resolutions supporting the creation of the Riverbend Water Resources District.

S.B. 1223 creates the Riverbend Water Resources District with the authority to issue bonds and the power of eminent domain.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Special District Local Laws Code, by adding Subtitle L, as follows:

SUBTITLE L. MUNICIPAL WATER DISTRICTS

CHAPTER 9601. RIVERBEND WATER RESOURCES DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9601.001. DEFINITIONS. Defines "board," "bond," "director," "district," and "member."

Sec. 9601.002. NATURE OF DISTRICT. Provides that the Riverbend Water Resources District (district) is a conservation and reclamation district created under and essential to accomplish the purposes of Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 9601.003. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the district is created to serve a public use and benefit.

(b) Provides that all land and other property included in the boundaries of the district will benefit from the works and projects accomplished by the district under the powers conferred by Section 59, Article XVI, Texas Constitution.

(c) Provides that the accomplishment of the purposes stated in this chapter is for the benefit of the people of this state and the improvement of their property and industries and will foster and encourage economic development in this state.

(d) Provides that the district, in carrying out the purposes of this chapter, will be performing an essential public function under the constitution.

Sec. 9601.004. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed to effect the purposes, powers, rights, and functions stated in this chapter.

Sec. 9601.005. DISTRICT MEMBERS. (a) Sets forth the composition of the members of the district.

(b) Authorizes the board of directors of the district (board), after receipt of a petition from the governing body of a municipality, county, or other political subdivision that desires to join the district, to add a member to the district on terms determined by the board to be in the best interests of the district.

(c) Provides that a member's withdrawal from the district or the cessation of existence of a member does not affect the validity of the district or any of the district's powers or duties.

Sec. 9601.006. DISTRICT TERRITORY. (a) Sets forth the composition of the territory of the district.

(b) Provides that the territory of the district also includes all of the territory of any municipality, county, or other political subdivision that joins the district as a member and added to the territory of a member by annexation or other means.

(c) Provides that a defect in the description of the boundaries of a member or in any past or future proceedings for the annexation of territory by a member does not affect the validity, powers, or duties of the district.

Sec. 9601.007. CONFIRMATION ELECTION NOT REQUIRED. (a) Provides that the board is not required to hold an election to confirm the district's creation.

(b) Provides that Sections 49.101 (General), 49.102 (Confirmation and Director Election), 49.103 (Terms of Office of Directors), 49.104 (Alternative Election), and 49.105 (Vacancies), Water Code, do not apply to the district.

[Reserves Sections 9601.008-9601.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9601.051. COMPOSITION OF BOARD; TERMS. (a) Provides that the district is governed by its board.

(b) Requires the governing body of each member to appoint a director to represent the member on the board and to promptly fill a vacancy in that board position in accordance with the member's policies, resolutions, and procedures.

(c) Provides that except as provided by Subsection (d), directors serve staggered terms of four years.

(d) Provides that a director who is also an elected official of a political subdivision serves a term coinciding with the term of the elected office.

(e) Requires the board to determine the method of staggering the terms of directors.

(f) Authorizes a director to serve consecutive terms.

Sec. 9601.052. QUALIFICATIONS FOR OFFICE. Requires a person, to be eligible to be appointed or to serve as a director, to be a resident, qualified voter of the district.

Sec. 9601.053. BOARD RESOLUTIONS; VOTING REQUIREMENTS. (a) Requires the district to act through orders or resolutions adopted by the board.

(b) Entitles all directors to vote.

Sec. 9601.054. OFFICERS AND ASSISTANTS. (a) Requires the board to elect a president, vice president, secretary, and treasurer.

(b) Requires the board to elect the president and vice president from among the directors.

(c) Provides that the president and vice president serve for a one-year term.

(d) Provides that the offices of secretary and treasurer are authorized to be held by one person and are not required to be held by a director.

(e) Authorizes the board to appoint one or more assistant officers who are not required to be directors.

(f) Prohibits a person from concurrently holding the offices of board president and secretary.

Sec. 9601.055. MEETINGS. Requires the board to have regular meetings at times specified by board resolution or bylaws and to have special meetings when called by the board president or by a number of directors that is equal to or greater than the number of directors that is one less than a majority of the board.

Sec. 9601.056. TELEPHONE CONFERENCE CALL MEETINGS. (a) Authorizes the board to hold an open or closed meeting by telephone conference call only if the meeting is a special called meeting, immediate action is required, and convening a quorum of the board at one location is difficult or impossible.

(b) Provides that a telephone conference call meeting is subject to the notice requirements applicable to other meetings of the board.

(c) Requires that each part of a telephone conference call meeting that is required to be open to the public be made audible to the public at the location specified in the notice of the meeting as the location of the meeting.

(d) Requires that the location designated in the notice as the location of the meeting provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference is required to be clearly stated prior to speaking.

(e) Provides that Section 551.125 (Other Governmental Body), Government Code, does not apply to a meeting held under this section.

Sec. 9601.057. RECALL. Authorizes a director to be recalled at any time by the governing body of the member that appointed the director.

Sec. 9601.058. COMPENSATION; REIMBURSEMENT. Provides that a director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in the performance of official duties.

Sec. 9601.059. BOARD POSITION NOT A CIVIL OFFICE OF EMOLUMENT. (a) Prohibits a position on the board from being construed to be a civil office of emolument for any purpose, including a purpose described in Section 40 (Holding More Than One Office; Exceptions; Right to Vote), Article XVI, Texas Constitution.

(b) Authorizes an elected official of any county, municipality, or other political subdivision in the territory of the district to be appointed to and serve on the board as a director without penalty or forfeiture of office.

[Reserves Sections 9601.060-9601.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 9601.101. **GENERAL POWERS.** Authorizes the district to exercise the powers applicable to a district under Chapter 49 (Provisions Applicable to All Districts), Water Code, except as provided by this chapter.

Sec. 9601.102. **SPECIFIC POWERS.** Authorizes the district to exercise any power necessary or appropriate to achieve the purposes of this chapter, including certain powers.

Sec. 9601.103. **GENERAL POWERS REGARDING WATER.** Provides that the district has all rights, powers, and privileges necessary or useful to enable it to acquire, provide, supply, deliver, and sell water, whether processed or unprocessed, raw or potable, inside or outside its boundaries to any person for any beneficial purpose.

Sec. 9601.104. **AUTHORITY OF PUBLIC AGENCIES AND POLITICAL SUBDIVISIONS TO CONTRACT WITH DISTRICT.** (a) Authorizes a public agency or a county, municipality, or other political subdivision of this state or another state to enter into a contract or agreement with the district on terms agreed to by the parties for the purchase or sale of water; waste collection, transportation, processing, or disposal; or any purpose relating to the district's powers or functions.

(b) Requires that a contract or agreement under this section comply with Chapter 791 (Interlocal Cooperation Contracts), Government Code.

(c) Authorizes a provision of district services or facilities to a member or an exercise of district power regarding a member's retail services to only be made through a contract between the district and the member under this section.

Sec. 9601.105. **CONVEYANCE OF PROPERTY TO DISTRICT.** Authorizes a public agency or a county, municipality, or other political subdivision of this state to lease, sell, or otherwise convey to the district, for any consideration that the parties agree is adequate, any of its land, improvements, property, plants, lines, or other facilities related to the supply, delivery, or sale of water; waste collection, transportation, processing, or disposal; or garbage collection or disposal.

Sec. 9601.106. **ACQUISITION OF EXISTING FACILITIES.** Authorizes the district, if the district acquires existing works, improvements, facilities, plants, equipment, or appliances that are completed, partially created, or under construction, to assume the contracts and obligations of the previous owner and perform the obligations of the previous owner in the same manner and to the same extent that any other purchaser or assignee would be bound.

[Reserves Sections 9601.107-9601.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9601.151. **PROHIBITION ON ASSESSMENTS OR TAXES.** (a) Prohibits the district, under this chapter or any other law, from imposing an assessment on real property or an ad valorem tax or creating a debt payable from an assessment on real property or an ad valorem tax.

(b) Provides that Sections 49.106 (Bond Elections), 49.107 (Operation and Maintenance Tax), and 49.108 (Contract Elections), Water Code, do not apply to the district.

Sec. 9601.152. **DEPOSITORY.** Requires that district money be deposited in the depository or depositories designated by the board, except that bond proceeds and money pledged to pay bonds, to the extent provided in the proceedings authorizing the issuance of bonds, or the trust indenture securing the bonds, are authorized to be deposited with

another depository or trustee named in the proceedings or trust indenture and money is required to be remitted to each paying agent for the payment of principal of and interest on the bonds.

Sec. 9601.153. INVESTMENT OF DISTRICT MONEY. (a) Provides that Chapter 2256 (Public Funds Investment), Government Code, applies to the district and the investment of district funds and funds under district control.

(b) Authorizes the board to invest bond proceeds in a manner determined by the board or in the manner permitted or required in the proceedings authorizing the issuance of bonds or in the trust indenture securing the bonds.

Sec. 9601.154. DISTRICT FACILITIES EXEMPT FROM TAXATION AND ASSESSMENT. Provides that the district is not required to pay a tax or assessment on its facilities or any part of its facilities.

[Reserves Sections 9601.155-9601.200 for expansion.]

SUBCHAPTER E. BONDS

Sec. 9601.201. AUTHORITY TO ISSUE BONDS. (a) Authorizes the district by resolution to authorize the issuance of bonds payable from and secured by revenue or any other available source of district money to carry out a power conferred by this chapter. Provides that bonds issued by the district are not a direct obligation of any member.

(b) Requires that the bonds be issued in the manner and under the terms of the proceedings authorizing the issuance of bonds.

(c) Authorizes bonds to be issued by the district without an election.

(d) Provides that Sections 49.181 (Authority of Commission over Issuance of District Bonds), 49.182 (Commission Supervision of Projects and Improvements), 49.183 (Bond Sales), 49.184 (Approval of Bonds by Attorney General; Registration of Bonds), 49.185 (Exemptions), and 49.186 (Authorized Investments; Security for Funds), Water Code, do not apply to the district.

Sec. 9601.202. FORM OF BONDS. Requires that district bonds be issued in the district's name and signed by the officers of the district in accordance with the proceedings authorizing the issuance of the bonds.

Sec. 9601.203. MATURITY. Requires that district bonds mature not later than 50 years after the date of their issuance.

Sec. 9601.204. BONDS SECURED BY REVENUE; ADDITIONAL BONDS. (a) Authorizes bonds to be secured by a pledge of all or part of the district's revenue, or by all or part of the payments or rentals under one or more contracts or leases specified by the proceedings authorizing the issuance of bonds.

(b) Authorizes the proceedings authorizing the issuance of bonds secured by a pledge of revenue of all or part of the district's facilities to provide that the district is required to first pay the expenses of operating and maintaining all or part of the facilities as the board considers appropriate before paying the principal of and interest on the bonds.

(c) Authorizes the district, in the proceedings authorizing the issuance of bonds secured by revenue, contract payments, or lease rentals, to reserve the right, under conditions specified by the proceedings, to issue additional bonds that will be on a parity with, superior to, or subordinate to the bonds then being issued.

Sec. 9601.205. ADDITIONAL SECURITY. (a) Authorizes bonds, at the discretion of the board, to be additionally secured by a deed of trust or mortgage lien on all or part of

the district's physical property, facilities, easements, water rights and appropriation permits, leases, contracts, and all rights appurtenant to the property, vesting in the trustee power to sell the property for the payment of the bonds; operate the property; and take other action to further secure the bonds.

(b) Provides that a purchaser under a sale under the deed of trust lien, if one is given, is the absolute owner of the property, facilities, and rights purchased, and entitled to maintain and operate the property, facilities, and rights.

Sec. 9601.206. DELEGATION OF AUTHORITY. (a) Authorizes the board, in connection with the issuance of bonds, to perform certain actions.

(b) Authorizes the officer or employee, in exercising the authority delegated by the board to an officer or employee, to establish certain terms and details related to the issuance and sale of bonds.

(c) Provides that a finding or determination made by an officer or employee acting under the authority delegated to the officer or employee has the same force and effect as a finding or determination made by the board.

Sec. 9601.207. TRUST INDENTURE. Authorizes district bonds authorized by this chapter, including refunding bonds, to be additionally secured by a trust indenture. Authorizes the trustee to be a bank with trust powers that is located inside or outside the state.

Sec. 9601.208. CREDIT AGREEMENT. Authorizes the board, in connection with the issuance of bonds under this chapter, to exercise the authority granted to the governing body of an issuer with regard to the execution and delivery of a credit agreement under Chapter 1371 (Obligations for Certain Public Improvements), Government Code.

Sec. 9601.209. CHARGES FOR DISTRICT SERVICES. Requires the board, if bonds payable wholly from revenue are issued, to set and revise the rates, fees, and charges assessed for water sold, waste collection and treatment services provided, and garbage collection services provided by the district. Requires that the rates, fees, and charges be sufficient to pay the expense of operating and maintaining the district facilities that generate the revenue from which the bonds may or will be paid; pay the principal of and interest on the bonds when due; and maintain the reserve fund and other funds as provided in the proceedings authorizing the issuance of bonds or the trust indenture securing the bonds.

Sec. 9601.210. STATE PLEDGE REGARDING RIGHTS AND REMEDIES OF BONDHOLDERS. Provides that without depriving this state of its power to regulate and control the rates, fees, and charges assessed for water sold and waste collection and treatment services provided by the district, the state pledges to and agrees with the holders of district bonds that the state will not exercise its power to regulate and control the rates, fees, and charges in any way that would impair the rights or remedies of the holders of the bonds.

Sec. 9601.211. USE OF BONDS PROCEEDS. Authorizes the district, in addition to the permitted use of bond proceeds provided by general law, to use proceeds from the sale of bonds for certain fiscal uses.

Sec. 9601.212. ADDITIONAL AUTHORITY TO PROVIDE DEBT SERVICE RESERVE. (a) Authorizes the board to provide that in lieu of or in addition to providing for the funding of a debt service reserve fund with cash, a line or letter of credit or an insurance policy is to be used for the debt service reserve fund.

(b) Requires that any agreement under which a line or letter of credit or insurance policy is provided be submitted to the attorney general for examination and approval. Provides that after approval, the agreement is incontestable in any court

or other forum for any reason and is a valid and binding obligation of the district in accordance with its terms for all purposes.

Sec. 9601.213. REFUNDING BONDS. (a) Authorizes the district to issue refunding bonds to refund all or part of its outstanding bonds issued under this chapter, including matured but unpaid interest and obligations incurred under a credit agreement.

(b) Authorizes refunding bonds to be issued in the manner provided by Chapter 1207 (Refunding Bonds), Government Code.

Sec. 9601.214. REMEDIES AND COVENANTS. Authorizes the proceedings authorizing the issuance of any bonds authorized under this chapter, including refunding bonds, the execution of a trust indenture securing the bonds, and the execution of a credit agreement, to provide other remedies and covenants the board considers necessary to issue the bonds on terms the board determines to be most favorable to the district.

Sec. 9601.215. LIMITATION ON RIGHTS OF BONDHOLDERS. Authorizes the proceedings authorizing the issuance of bonds or the trust indenture securing the bonds to limit or qualify the rights of the holders of less than all of the outstanding bonds payable from the same source to institute or prosecute litigation affecting the district's property or income.

Sec. 9601.216. BONDS EXEMPT FROM TAXATION. Exempts payments made by the district in connection with the issuance of bonds, the transfer of any bond, and the income from any bond, including profits made on the sale of any bond, from taxation in this state.

Sec. 9601.217. APPOINTMENT OF RECEIVER. (a) Authorizes a court, on default or threatened default in the payment of the principal of or interest on obligations incurred by the district in connection with the issuance of bonds that are payable wholly or partly from revenue, on petition of the holders of at least 25 percent of the district's outstanding revenue bonds, or the party to a credit agreement, to appoint a receiver for the district.

(b) Authorizes the receiver to collect and receive all district revenue, employ and discharge district agents and employees, take charge of money on hand, and manage the district's proprietary affairs without the consent of or hindrance by the board.

(c) Authorizes the receiver to be authorized to sell or contract for the sale of water, the collection or treatment of waste, or the provision of garbage collection or disposal services, or to renew contracts with the approval of the court that appointed the receiver.

(d) Authorizes the court to vest the receiver with any other power or duty the court finds necessary to protect the holders of the bonds or the party to a credit agreement.

SECTION 2. 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 3. Effective date: upon passage or September 1, 2009.