

BILL ANALYSIS

Senate Research Center
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H.B. 1832
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Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Lower Neches Valley Authority conservation and reclamation district (district) is located within the Neches River basin and the Neches-Trinity coastal basin. The district's enabling legislation was passed in the early 1930s. Currently, the district operates a complex canal system that is capable of delivering large quantities of water from the Neches and Trinity Rivers to industrial and agricultural business interests.

The district's local law was proposed for codification as part of the Texas Legislative Council's ongoing project to transfer local district statutes to the Special District Local Laws Code. However, reconciling the district's local law, as amended over time, with later laws and cumulative provisions in statute prior to codification is critical to the operation of the district. H.B. 1832 updates and amends the local law governing the authority.

H.B. 1832 amends current law relating to the law governing the Lower Neches Valley Authority, and provides authority to issue bonds.

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 Chapter 63, Acts of the 43rd Legislature, 1st Called Session, 1933, by amending Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13A, 14, 16, 17, 18, 19, 21, 24, 27, 27-a, 28, 29, 29-a, and 29-d and adding Section 13A-1 through 13A-6, as follows:

Sec. 1. Provides that the Lower Neches Valley Authority (district) shall have and be recognized to exercise all the rights and powers of an independent governmental agency, body politic and corporate, to construct, maintain and operate, in the Neches River basin and the adjoining Neches-Trinity coastal basin, rather than in the valleys of the Neches River and its tributaries, within or without the boundaries of such district, any and all works deemed essential to the operation of the district and for its administration in the control, storing, preservation and distribution to all useful purposes of the waters of the Neches River basin and the adjoining Neches-Trinity coastal basin, rather than the Neches River and its tributary streams, including the storm and flood waters thereof. Makes nonsubstantive changes.

Sec. 4. Deletes existing text requiring the directors of the district (directors) to organize by electing one of their members president, one vice-president, one treasurer, and one secretary. Deletes existing text requiring the concurrence of seven directors for the letting of construction contracts and the authorization of issuance of warrants paying therefore. Deletes existing text authorizing that warrants for the payment of money be drawn and signed by two officers or employees designated by standing order entered on the minutes of the directors when such accounts have been contracted and ordered paid by the Board of Directors. Makes nonsubstantive changes. Deletes existing Section 5 (relating to requiring certain officers and employees to furnish certain bonds). Deletes existing Section 6 (relating to duties of the officers of the board).

Sec. 7. (a) Entitles a director to receive a fee of office for each day of service approved by a vote of the board and necessary to discharge the director's duties.

(b) Requires the Board of Directors of the district (board) to set the fee described by Subsection (a) in an amount not greater than the amount allowed under general law. Deletes existing text requiring the directors to receive as fees of office the sum of not to exceed ten dollars per day for each day of service necessary to discharge of their duties, provided such service is authorized by vote of the board. Requires the directors to file with the secretary a verified statement showing the actual number of days of service each month on the last day of the month, or as soon thereafter as possible and before a warrant shall be issued therefore. Deletes existing Section 8 (relating to keeping a full account of all their meetings and proceedings). Deletes existing Section 9 (relating keeping a complete book of accounts). Deletes existing Section 10 (relating to employing a general manager for the district). Deletes existing Section 11 (relating to executing bonds by a surety company). Deletes existing Section 12 (relating to prohibiting directors, engineers, and employees from having an interest in the purchase or construction of any work by the district, creates an offense, and provides penalties).

Sec. 13A-1. Redesignates existing Sections 13(a) through (k) as Section 13A-1. Authorizes the district, in addition to all the hereinbefore mentioned powers, and for the conservation and beneficial use of the waters of the Neches River basin and the adjoining Neches-Trinity coastal basin, including storm water and floodwater, to control and use such waters in the manner and for the particular purposes described below:

(a) to provide through practical and legal means for the control and coordination of the regulation of such waters;

(b) to provide by adequate organization and administration for the preservation of the equitable rights of the people of the different sections of the watershed area in the beneficial use of such waters;

(c) for storing, controlling and conserving such waters inside or outside the district, and the prevention of the escape of any of such waters without the maximum of public service; for the prevention of devastation of lands from recurrent overflows, and the protection of life and property in the district from uncontrolled flood waters;

(d) for the conservation of such waters essential for the domestic and municipal uses of the people of the district;

(e) for the irrigation of all lands in the district or outside the district but within the Neches River basin and the adjoining Neches-Trinity coastal basin; and for the equitable distribution of such waters to the regional potential requirements for all uses. Requires that all plans and all works provided by the district, and as well, all works which may be provided under authority of the district, have primary regard to the necessary and potential needs for water, by or within the area in the district constituting the Neches River basin and the adjoining Neches-Trinity coastal basin;

(f) to provide for the drainage of lands in the Neches River basin and the adjoining Neches-Trinity coastal basin;

(g) to encourage the conservation of soil and to prevent destructive erosion;

(h) to control such waters and make such waters available for use in the development of commercial and industrial enterprises in the Neches River basin and the adjoining Neches-Trinity coastal basin or the district;

(i) to control, store, and use such waters in the development and distribution of hydroelectric power, if that use is economically coordinated with and subordinate to other uses declared by law to be superior; and

(j) for each and every purpose for which flood and storm waters when controlled and conserved may be utilized in the performance of a useful service as authorized by the provisions of the Constitution and the public policy therein declared.

(k) Provides that nothing in this section is a limitation on the powers of the district expressed elsewhere in this Act or under other law.

Sec. 13A-2. Creates this section from existing text. Authorizes the district to purchase or, rather than and/or, construct all works necessary or convenient for the exercise of the powers and to accomplish the purposes specified in this Act, and to purchase or otherwise acquire all lands or, rather than and/or, other property necessary or convenient for carrying out any such purposes.

Sec. 13A-3. Redesignates existing Section 13(l) as Section 13A-3. Makes no further changes to this section.

Sec. 13A-4. Redesignates existing Section 13(m) as Section 13A-4. (a) Creates this subsection from existing text. Requires the board to prescribe fees and charges to be collected for the use of water, water connections or other services, rather than service, which fees and charges shall be reasonable and equitable and fully sufficient to produce revenues adequate to pay, and requires the board to cause to be paid therefrom:

(1) all expenses necessary to the operation and maintenance of the improvements and facilities of the district. Such operating and maintenance expenses shall include the cost of the acquisition of properties and materials necessary to maintain the improvements and facilities in good condition and to operate them efficiently, necessary wages and salaries of the district, and such other expenses as may be reasonably necessary to the efficient operation of the improvements and facilities;

(2) the interest, rather than the annual or semi-annual interest, upon any obligations issued hereunder payable out of the revenues of said improvements and facilities; and

(3) the amount required to be paid, rather than to be paid annually into the sinking fund, for the payment of any obligations issued hereunder payable out of the revenues of said improvements and facilities.

Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Authorizes the board out of revenues which may be received in excess of those required for the purposes listed in the above Subsections (a)(1), (2), and (3), to pay the cost of improvements and replacements not covered by Subsection (a)(1), and to establish a reasonable depreciation and emergency fund. Deletes existing text providing that no other charge shall be made upon the revenues derived from said improvements and facilities so long as any obligations issued hereunder shall remain outstanding and unpaid as to principal or interest, provided, however that out of revenues which may be received in excess of those required for the purposes listed in the above sub-paragraphs (1), (2), and (3), the board is authorized to pay the cost of improvements and replacements not covered by said sub-paragraph (1), and to establish a reasonable depreciation and emergency fund.

(c) Creates this subsection from existing text. Makes nonsubstantive changes.

Sec. 13A-5. Redesignates existing Section 13(o) as Section 13A-5. Provides that the district, in addition to the powers hereinabove set out, shall have general power and authority to make and to enter into all contracts, leases, and agreements necessary or convenient to carry out any of the powers granted in this Act, which contracts, leases, and agreements may be entered into with any person, real or artificial, any corporation, municipal, public or private, or, rather than and/or, any government or governmental agency, including the United States Government and the State of Texas, and may convey or cause to be conveyed any of its properties, rights, lands, tenements, easements, improvements, reservoirs, dams, canals, plants, laterals, works and facilities to the United States Government or any agency thereof, and may enter into a lease with the United States Government, or any agency thereof, relative thereto, and obligate itself to pay rental therefor out of the income and revenues thereof, with or without the privilege of purchase; provided, however, that nothing herein contained shall authorize the assumption by the district of any obligation requiring payment out of taxes. Makes nonsubstantive changes. Deletes existing Section 13(n) (relating to granting the right to the board to employ managers, engineers, attorneys, and all necessary employees).

Sec. 13A-6. Redesignates existing Section 13A as Section 13A-6. Authorizes the district to acquire land for recreational facilities and to construct, operate, and maintain recreational facilities as provided by general law, provided that no funds derived from taxation shall be expended in purchasing that land or constructing and maintaining those facilities. Deletes existing text providing that from and after the effective date of this Act, the district shall have the right and power to acquire and own lands within said district by purchase for the purpose of operating and maintaining same as public parks for public recreation, and said district shall have the power to construct improvements and facilities and to operate same on such lands to accomplish such purpose. Makes nonsubstantive changes. Deletes existing Section 13(p) (relating to the right to sue and be sued). Deletes existing Section 13(q) (relating to requiring approval by certain agencies before establishing certain works).

Sec. 14. Requires that the powers and duties herein devolved upon the district, and the adequacy of any plan for flood control or conservation improvement purposes devised by the state, be subject to such continuing rights of state supervision and state approvals as are required under General Law. Deletes existing text requiring that the powers and duties herein devolved upon the said district be subject to the continuing rights of supervision by the State which shall be exercised through the State Board of Water Engineers, and in appropriate instances, by the State Reclamation Engineer, each of which agencies shall be charged with the authority and duty to approve, or to refuse to approve, the adequacy of any plan or plans for flood control or conservation improvement purposes devised by the district for the achievement of the plans and purposes intended in the creation of the district, and which plans contemplate improvements supervised by the respective state authorities under the Provisions of the General Law.

Sec. 16. Authorizes the district to borrow money for any corporate purpose from any source, rather than from the Federal Emergency Administration of Public Works of the United States, or from any other department or agency of the United States, and in evidence thereof may issue the notes, warrants, bonds, certificates of indebtedness, or other forms of obligations of the district, payable solely out of the revenues to be derived from district improvements and facilities and the operations and services thereof. Deletes existing Section 17 (relating to issuing certain obligations and certain provisions). Deletes existing Section 18 (relating to issuing certain obligations derived from the operation of the improvements and facilities of the district). Deletes existing Section 19 (relating to issuing certain obligations to provide for the creation of a sinking fund). Deletes existing Section 21 (relating to provisions for paying certain issued obligations). Deletes existing Section 24 (relating to depositing proceeds of the sale of certain obligations). Deletes existing Section 27 (relating to refunding certain obligations). Deletes existing Section 27-a (relating to requiring each district to submit to the attorney general a certified copy obligations before being issued). Deletes existing Section 28 (relating to granting

authority to issue obligations). Deletes existing Section 29 (relating to existing rights or priorities in the rights to water from the source of supply). Deletes existing Section 29-a (relating to giving preference in employment to persons who are on relief rolls or otherwise unemployed). Deletes existing Section 29-d (relating to appropriating funds from the general fund to be paid to the district).

SECTION 2. (a) Provides that all governmental acts and proceedings taken by the board before the effective date of this Act in reliance on the local law of that district as it existed before that date are validated as of the date they occurred.

(b) Provides that this Act does not validate an act or proceeding that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the act or proceeding being held invalid by a final court judgment; or

(2) has been held invalid by a final court judgment.

SECTION 3. Provides that this Act does not:

(1) limit the powers granted to the district by any other law;

(2) impliedly repeal any laws granting powers to the district; or

(3) affect the entitlement of a person serving as a member or officer of the board immediately before the effective date of this Act to continue to carry out the board's functions for the remainder of the person's term of office.

SECTION 4. Provides that the change in law made by this Act to Section 12, Chapter 63, Acts of the 43rd Legislature, 1st Called Session, 1933, does not apply to an offense committed under that section. Provides that an offense committed before the effective date of this Act is governed by the law as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. (a) Provides that the 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 under Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, and Chapter 313 (Notice for Local and Special Laws), Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality (TCEQ).

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) 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 6. Effective date: upon passage or September 1, 2011.