

SUBJECT: Creating the North Harris County Regional Water Authority

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 7 ayes — Counts, Cook, Corte, Hamric, R. Lewis, Shields, Walker

0 nays

2 absent — T. King, Puente

WITNESSES: For — David Albrecht, Harris County Water Control and Improvement District 91; Jim Burke, Texas Association of Water Board Directors; Andrew Johnson and Floyd Mechler, North Harris County Water Users Association; W.R. Bill Papp, Harris County Water Control and Improvement District 132; Alan Rendl, Spirit of North Harris County Coalition; Jack Searcy, Harris County Water Control and Improvement District 114 and Spirit of North Harris County Coalition; William Cooper; the Six Suburban Chambers of Commerce in North Harris and Southern Montgomery Counties; Ray Zobel, Cypress Creek United Civic Association

Against — Frederick Perrenot, City of Houston

BACKGROUND: Water districts are local political subdivisions of the state governed by boards of directors and created either by special or general law. Special districts can be created by an act of the Legislature under the Texas Constitution, art. 16, sec. 59, and their powers are determined by their enabling legislation. The Texas Natural Resource Conservation Commission (TNRCC) has oversight authority over water districts in the state.

The Harris-Galveston Coastal Subsidence District, created in 1975 to regulate groundwater withdrawals and prevent land subsidence, has the authority to restrict pumping and groundwater use in Harris and Galveston counties.

DIGEST: CSHB 2965 would create the North Harris County Regional Water Authority, subject to a confirmation election. The district would include land in north Harris County, bordered on the north by Waller and Montgomery counties, and adjacent to the city of Houston.

The bill would not preempt or prevail over any provision of law being implemented by the Harris-Galveston Coastal Subsidence District.

Board of directors. The water authority would be governed by a nine-member board of directors elected from single-member districts, four of whom would serve two-year terms and five of whom would serve four-year terms. Elections would be held in May of even-numbered years.

TNRCC would appoint three temporary directors to serve until the first nine permanent directors were elected in May 2000. The temporary directors would establish the nine single-member districts and would not be eligible to run as initial permanent directors. If the temporary board found no reasonable way of funding the initial election, they could make an agreement with the Harris-Galveston Coastal Subsidence District to pay costs that could not be funded by the district. The water authority would have to repay the subsidence district within a reasonable period.

The board would redraw the single-member districts as soon as practicable after each federal census and after any change in boundaries of the authority. After the voting district boundaries were redrawn, nine new directors would be elected and the directors would draw lots to determine their terms.

Powers and duties. The water authority would have all the powers and duties spelled out generally for water districts under Chapter 49 of the Water Code. The water authority could acquire, lease, build, and operate surface water treatment or supply systems inside or outside of its boundaries. It also could store, sell, or reuse water or any byproduct from its operations and could exercise the power of eminent domain.

The water authority could contract with others for any purpose, including joint financing of a facility and the purchase or sale of water or water rights. It could engage in water conservation, protection, and recharge and could act to prevent groundwater from being wasted. It also could reduce groundwater withdrawals in a manner consistent with the constitution. The authority could take actions to reduce groundwater withdrawals and subsidence, including developing surface and underground water supplies both inside and outside the boundaries of the authority.

The Harris-Galveston Coastal Subsidence District would be authorized to enter into an interlocal contract with the authority.

The water authority would have to develop a comprehensive water supply and drought management plan at least every five years that would be consistent with regional planning and that would include 10-, 20-, and 50-year projections of water needs.

Anyone violating authority rules or orders could be subject to a civil penalty of not less than \$50 nor more than \$5,000 for each violation or for each day of continuing violation.

Fees, bonds, and taxes. The authority could establish fees and charges sufficient to achieve water conservation, prevent waste of water, discourage groundwater pumping, and make alternative water supplies available. The fees also would enable the authority to meet operating expenses and pay any debts. The temporary board could set fees to pay for the initial operation of the authority and election of the initial board until the permanent board was elected. The fee would not apply to:

- ! wells with casings less than 5 inches across for single-family dwellings;
- ! injection wells regulated under Water Code, chapter 26;
- ! agricultural crop irrigation wells; and
- ! other wells as provided in authority rules.

The board of the water authority could, without an election, borrow money that could be paid back with fees or other revenues other than property taxes. The authority also could issue bonds secured by a pledge of property taxes or by all or part of the revenue derived from any source other than property taxes.

The bill would provide for the issuance, notice, approval, and refunding of bonds. The water authority could not issue bonds secured by taxes unless they were authorized in an election by a majority vote of the qualified voters of the district. TNRCC would not have oversight over bonds and notes issued by the authority.

The water authority would have to develop a procedure for cooperatively funding a project with money from other districts inside the authority's

boundaries in certain circumstances.

Excluding territory from the authority. If an incorporated city within the region wished to withdraw from the water authority and petitioned to do so, the authority would have to order the exclusion within 60 days. An exclusion could be ordered only if the Harris-Galveston Coastal Subsidence District certified that all water systems serving the city were in compliance with the subsidence district's rules and if the petition was submitted to the authority 120 days before the director's election in 2004.

An area applying for exclusion of territory from the water authority still would have to pay any outstanding debts owed to the authority. The authority could continue to impose taxes and charge fees in an excluded area to pay outstanding debts. Taxes and fees collected by the authority in the excluded area would be used only to pay the excluded area's pro-rata share of debt at the time the area was excluded. Owners of all or part of the excluded territory could pay off their part of the pro-rata share of the debt and receive a corresponding credit from the authority.

CSHB 2965 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 2965 would allow residents of north Harris County to form a water authority so they could comply with upcoming subsidence-district deadlines and have some control over the way surface water will be provided to them.

Water districts in Harris County must convert from groundwater to surface water supplies to comply with the Harris-Galveston Coastal Subsidence District's 1999 regulatory plan. If districts cannot meet subsidence-district deadlines, they will have to start paying disincentive fees on any permitted withdrawals that exceed district requirements. By certain dates to be set by the subsidence district, a certain percentage of the residents' water must come from surface rather than groundwater supplies. Ultimately, the water users as a group will have to use surface water for 80 percent of their requirements.

To comply with the subsidence district's rules, more than 200 different municipal utility districts (MUDs) would have to make contractual arrangements with the city of Houston to buy water supplies. Creation of the North Harris County Regional Water Authority would allow all these districts

to negotiate as a block with the city and to build their own transmission lines and other infrastructure needed to take care of surface water needs. Election of the nine-member board from single-member districts would ensure that MUDs, residents, and businesses would have a measure of control over their own destiny with regard to surface water.

Because the City of Houston is the only entity in the region that can supply the water, the city would hold all the cards at the negotiating table. A regional authority could negotiate much more effectively with Houston and its battalions of lawyers, resulting in fairer contractual arrangements. Because Houston will be looking to recoup its infrastructure investments, water could become very expensive for district residents.

Failure to enact CSHB 2965 could mean the districts could not comply with the subsidence district's milestones, as there is no guarantee that Houston can move fast enough to contract with each of the hundreds of separate districts.

Houston would like to control all facets of surface water conversion, treatment, and transmission by awarding a private corporation such as ENRON the right to design, build, operate, and sell water to the districts. This also would allow the city to avoid Water Code, sec. 13.086, which provides that a city making a wholesale sale of water to a special district must determine the rates for the sale on the same basis as for other similarly situated wholesale purchasers of the city's water. A private company, which would not fall under this provision, could dictate what each water user would pay for their investment. The water authority, on the other hand, would be a nonprofit entity working solely for the good of the county.

By creating the North Harris County Regional Water Authority, CSHB 2965 would ensure that Houston would have a ready buyer for its water, that districts would be encouraged to seek regional solutions to water problems, and that residents of north Harris County would have a way to solve their problems on a regional basis.

**OPPONENTS
SAY:**

CSHB 2965 would create an additional, unneeded bureaucracy in Harris County that would end up being more expensive for county residents. The authority could charge fees and levy taxes and would have to build its own water supply infrastructure at a cost of more than \$1 billion. In some cases, this would result in unnecessary duplication of effort and facilities by both the

City of Houston and the authority. There is no reason for the districts not to take advantage of Houston's existing system.

Although Houston also would have infrastructure costs to supply surface water to the region, decades of experience, a superior bond rating, and the ability to leverage off the existing system would make construction much cheaper for the city, and it could pass the savings along to district customers.

Houston supplies water to at least 14 different cities, many MUDs, and industrial users on the Houston Ship Channel, and it has not had a rate case in decades. The city has treated its water customers with consummate fairness, and there is no reason to believe that the city would not continue to do so.

Houston also must comply with subsidence-district deadlines or face disincentive fees. The city is willing to negotiate in good faith with the districts. Indeed, Houston is willing to consider many different ways the problem could be tackled, from privatization of construction efforts to 100 percent public-sector projects. Houston would not delay supplying districts with surface water. It is in the city's best interests to encourage conversion to surface water and to prevent subsidence and the resultant flooding that threatens all residents of the region and limits economic development opportunities.

OTHER
OPPONENTS
SAY:

The water authority should not be authorized to impose taxes. Since the water district already can impose fees, there is no reason to authorize the water authority to impose taxes as well.

NOTES:

The committee substitute differed substantially from the original version. Changes from the original bill included prohibiting the preemption of any action taken by the Harris-Galveston Coastal Subsidence District, subjecting the district to a confirmation election, changing provisions concerning exclusion of territory from the authority, deleting a section on judicial review, and requiring temporary directors to fund an initial election if they could find a reasonable method of funding. The substitute also changed sections concerning the imposition of fees, election dates, acceptance of gifts, provision of wholesale water services, civil penalties, and the district's boundaries.

The companion bill, SB 700 by Lindsay, is pending in the Senate Natural Resources Committee.

A related bill, HB 3802 by Hilbert, which would require Harris County water districts to hold elections before entering into long-term water supply contracts, also is set on the House calendar today.