

BILL ANALYSIS

Senate Research Center
83R667 SGA-F

S.B. 508
By: Watson
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 508 converts the West Travis County Public Utility Agency (agency) from a public utility agency to a conservation and reclamation district, the Hill Country Regional Water Authority (authority). The conversion is needed to facilitate transparency and efficiency in operations, and to allow for a more direct financing vehicle by allowing the authority to own all system assets and to directly issue system revenue bonds, rather than issuing the bonds through contractual arrangements with the agency member entities as the public utility agency structure requires.

The agency was created as a vehicle for public entities to purchase the West Travis County Water and Wastewater System from the Lower Colorado River Authority (LCRA). Its service area includes both Northern Hays and Western Travis Counties. The Board of the agency consists of appointees from Hays County, the City of Bee Cave, and West Travis County Municipal Utility District No. 5—the entities that created the agency. The agency assumed operational control of the West Travis County Water and Wastewater System from the LCRA on March 19, 2012. The agency sold bonds in June, 2012 and made its first payment on its installment purchase from the LCRA on July 2, 2012. The agency will complete its purchase of the system from the LCRA in 2019.

S.B. 508 is different from other water district creation bills because the water and wastewater systems operated by the agency are already in existence; the agency is already operating the system and providing service to customers. Furthermore, although this is a conservation and reclamation district, the authority will not have the authority to assess taxes.

Conversion of the agency to a conservation and reclamation district will support the goal of continuing public ownership of crucial public infrastructure. The change in legal structure will facilitate more straightforward and less burdensome operations and financing for the retail public utility, leading to lower costs and ultimately better service.

As proposed, S.B. 508 amends current law relating to the conversion of the West Travis County Public Utility Agency to the Hill Country Regional Water Authority and to the creation of the Hill Country Regional Water Authority, provides authority to issue revenue bonds or notes, grants the power of eminent domain, provides an administrative penalty, and provides authority to impose fees.

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. (a) Provides that the West Travis County Public Utility Agency is converted to a conservation and reclamation district to be known as the Hill Country Regional Water Authority located in Hays and Travis Counties.

(b) Provides that the Hill Country Regional Water Authority is not required to hold an election to confirm the creation of the authority.

SECTION 2. Provides that it is the intent and finding of the legislature that the residents and customers served by the West Travis County Public Utility Agency before the effective date of this Act will be provided by the creation of the Hill Country Regional Water Authority under this Act with the means to obtain services authorized by Sections 8601.101 and 8601.102, Special District Local Laws Code, as added by this Act, in the most effective and efficient manner without the impairment of any existing contracts or obligations of the West Travis County Public Utility Agency.

SECTION 3. Amends the heading to Subtitle G, Title 6, Special District Local Laws Code, to read as follows:

SUBTITLE G. RIVER AUTHORITIES AND OTHER SPECIAL WATER AUTHORITIES

SECTION 4. Amends Subtitle G, Title 6, Special District Local Laws Code, by adding Chapter 8601, as follows:

CHAPTER 8601. HILL COUNTRY REGIONAL WATER AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8601.001. DEFINITIONS. Defines "authority," "board," "director," and "member entity."

Sec. 8601.002. NATURE OF AUTHORITY. Provides that the Hill Country Regional Water Authority (authority) is a conservation and reclamation district in Hays and Travis Counties 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, Texas Constitution.

Sec. 8601.003. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) Provides that the authority is created to serve a public use and benefit.

(b) Provides that all land and other property included in the territory of the authority will benefit from the works and projects to be accomplished by the authority under powers conferred by Section 59, Article XVI, Texas Constitution, and powers granted under this chapter.

(c) Provides that the authority is created to accomplish the control, storage, conservation, preservation, distribution, and use of water for domestic, industrial, municipal, and all other useful purposes, including the protection, preservation, and restoration of the purity and sanitary condition of water within this state, as provided by Section 59, Article XVI, Texas Constitution.

Sec. 8601.004. AUTHORITY BOUNDARIES. Provides that the authority's boundaries are coextensive with the boundaries of the territory described by Certificate of Public Convenience and Necessity No. 13207, as those boundaries exist on the effective date of the Act enacting this chapter and as they may be amended in accordance with applicable law.

Sec. 8601.005. APPLICABILITY OF OTHER LAW. (a) Provides that Chapter 49 (Provisions Applicable To All Districts), Water Code, applies to the authority, except as otherwise provided by this chapter. Provides that the authority is a special water authority, for the purposes of Chapter 49, Water Code.

(b) Provides that Subchapters J (Annexation or Exclusion of Land), L (Fire Departments), M (Notices, Reports, and Bankruptcy), and N (Recreational Facilities), Chapter 49, Water Code, do not apply to the authority.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8601.051. DIRECTORS; TERMS. (a) Provides that the authority is governed by a board of five appointed directors.

(b) Provides that the directors serve staggered four-year terms that expire September 30 of even-numbered years, except for a director serving on the initial board.

(c) Authorizes a director to serve consecutive terms of office.

Sec. 8601.0515. INITIAL BOARD. (a) Provides that the initial board consists of: Position 1-Larry Fox; Position 2-Ray Whisenant; Position 3-Michael Murphy; Position 4-Scott Roberts; and Position 5-Bill Goodwin.

(b) Provides that directors Fox, Whisenant, and Murphy serve initial terms expiring September 30, 2016. Provides that directors Roberts and Goodwin serve initial terms expiring September 30, 2014.

(c) Requires that a vacancy in a position on the initial board to be filled in the manner provided by Section 8601.053 for making an appointment to the same position, except that an appointment to fill a vacancy in position 4 or 5 does not require that both positions be seated simultaneously.

(d) Provides that this section expires September 30, 2016.

Sec. 8601.052. ELIGIBILITY TO SERVE AS A DIRECTOR. (a) Requires an individual to be at least 18 years of age to be eligible to serve as a director.

(b) Requires an individual to reside in Hays or Travis County to be eligible to serve as a director in position 1, 2, or 3. Requires an individual to reside in Hays County to be eligible to serve as a director in position 4. Requires an individual to reside in Travis County to be eligible to serve as a director in position 5.

Sec. 8601.053. METHOD OF APPOINTING DIRECTORS. (a) Provides that directors are appointed or recommended for appointment to the five numbered positions on the board by the governing body of each member entity as follows:

(1) requires West Travis County Municipal Utility District No. 5 to appoint the director who serves in position 1;

(2) requires Hays County to appoint the director who serves in position 2;

(3) requires the City of Bee Cave to appoint the director who serves in position 3;

(4) requires Hays County to appoint the director who serves in position 4, subject to approval by the member entities as provided by Subsection (b); and

(5) requires the City of Bee Cave to appoint the director who serves in position 5, subject to approval by the member entities as provided by Subsection (b).

(b) Requires the governing bodies of all member entities to approve the appointments of directors for positions 4 and 5 before the persons begin to serve as directors. Requires directors appointed to serve in those positions to be seated simultaneously, upon approval.

(c) Requires the appointment of a director to be made during September of the year in which that position's term begins, except to fill a vacancy.

Sec. 8601.054. VACANCY. (a) Requires a vacancy in a position on the board to be filled in the same manner as an appointment to the board for that position, except that a vacancy in position 4 or 5 does not require that positions 4 and 5 be seated simultaneously.

(b) Provides that a person appointed to fill a vacancy serves for the remainder of the vacated term.

(c) Provides that Section 49.105 (Vacancies), Water Code, does not apply to the authority.

Sec. 8601.055. SERVICE ON BOARD BY EMPLOYEE OR OFFICER OF OTHER PUBLIC ENTITY. (a) Provides that the common law doctrine of incompatibility does not disqualify an employee or official of a public entity from serving as a director.

(b) Authorizes an employee, officer, or member of the governing body of a public entity to serve as a director but is prohibited from having a personal interest in a contract executed by the authority other than as an employee, officer, or member of the governing body of the public entity. Requires the director to abstain from any participation in the matter if the director has a personal interest in a contract executed by the authority. Provides that a director is not required to abstain from further participation in the matter if a majority of the members of the board of directors have similar interests in the same official action.

Sec. 8601.056. COMPENSATION; EXPENSES. (a) Provides that a director serves without compensation, but is authorized, subject to board approval, to be reimbursed for travel or other expenses incurred on behalf of the authority if the director presents the board with a verified statement of the expenses.

(b) Provides that Section 49.060 (Fees of Office; Reimbursement), Water Code, does not apply to the authority.

Sec. 8601.057. QUORUM. Provides that a majority of the membership of the board constitutes a quorum for any meeting. Provides that a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the authority.

Sec. 8601.058. OFFICERS. (a) Requires the board to meet and elect a president, a vice president, a secretary, and any other officers or assistant officers the board considers necessary, every two years on the appointment or reappointment of directors.

(b) Provides that the president is the chief executive officer of the authority, presides at all meetings of the board, and is required to execute all documents on behalf of the authority unless the board authorizes the general manager or other representative of the authority to execute a document or documents on behalf of the authority.

(c) Requires the vice president to act as president in case of the absence or disability of the president.

(d) Provides that the secretary is responsible for seeing that all records and books of the authority are properly kept and is authorized to attest the president's signature on documents.

(e) Authorizes the board to appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary. Entitles any such person to certify as to the authenticity of any record of the authority, including all proceedings relating to bonds, contracts, or indebtedness of the authority.

Sec. 8601.059. REMOVAL FROM OFFICE. Authorizes the member entity that appointed the director to remove a director from office at any time, with or without cause.

Sec. 8601.060. EX OFFICIO BOARD MEMBERS. (a) Provides that this section applies only to a person who is not an appointed director.

(b) Entitles the Hays County judge; the City of Bee Cave city administrator; or the president of the West Travis County Municipal Utility District No. 5 Board of Directors; or any of those persons' designees, to serve as an ex officio, nonvoting member of the board:

(c) Entitles a person designated as an ex officio member of the board to receive notice of and to attend the authority's board meetings.

(d) Prohibits a person designated as an ex officio member of the board from being counted for purposes of determining a quorum under Section 8601.057.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8601.101. GENERAL POWERS AND DUTIES. (a) Provides that the authority has all the rights, powers, privileges, functions, and duties necessary and convenient to accomplish the purposes of this chapter.

(b) Provides that the authority has the powers and duties provided by the general law of this state applicable to a special water authority under Chapter 49, Water Code, except as provided by this chapter.

(c) Provides that the authority retains all the rights, powers, privileges, functions, obligations, and duties of the West Travis County Public Utility Agency as in effect before the effective date of the Act enacting this chapter.

Sec. 8601.102. WATER AND WASTE POWERS. (a) Authorizes the authority to supply water for municipal uses, domestic uses, power, and commercial purposes, and all other beneficial uses or controls.

(b) Prohibits the authority from using groundwater from the Barton Springs Segment of the Edwards Aquifer as a source of the authority's water supply. Prohibits this section from being interpreted to prohibit an aquifer storage and recovery project or a recharge improvement project that enhances water supply in the Barton Springs Segment of the Edwards Aquifer.

(c) Authorizes the authority to collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state.

Sec. 8601.103. AUTHORITY POLICIES, RULES, AND BYLAWS. Authorizes the authority to adopt and enforce policies, rules, and bylaws reasonably required to implement this chapter, including rules governing procedures before the board and rules regarding implementation, enforcement, and any other matters related to the exercise of the rights, powers, privileges, and functions conferred on the authority by this chapter for the provision of water and wastewater service.

Sec. 8601.104. EXPANSION OF SERVICES. (a) Defines "West Travis County Water and Wastewater Systems" to mean those water and wastewater systems that were owned and operated before the effective date of the Act enacting this chapter by the West Travis County Public Utility Agency pursuant to agreement with the member entities.

(b) Authorizes the authority to extend service to new customers located inside or outside the authority's boundaries, except as provided by Subsection (c).

(c) Prohibits the authority from extending wastewater service to new customers in Hays County that are located inside the extraterritorial jurisdiction or municipal

limits of a municipality unless the authority sends the municipality written notice of its intent to provide the service and the municipality does not object in writing to the extension of service on or before the 60th day after the date of receiving notice.

(d) Requires authority policies, rules, and bylaws to include reasonable provisions for funding authority expenses for expansion of the West Travis County Water and Wastewater Systems to serve new development.

Sec. 8601.105. ACQUISITION, CONSTRUCTION, MAINTENANCE, AND OPERATION OF SYSTEMS. (a) Authorizes the authority to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside or outside its boundaries any works, improvements, facilities, plants, equipment, or appliances necessary to accomplish authority purposes under this chapter, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to provide services inside or outside the authority's boundaries.

(b) Requires any new construction or extension of authority facilities in the jurisdiction of a municipality to comply with the municipality's ordinances governing subdivision platting and site development and design criteria for fire flow.

Sec. 8601.106. WATER CONSERVATION OR DROUGHT CONTINGENCY PLANS. Authorizes the authority by rule to develop, prepare, revise, adopt, implement, enforce, and manage comprehensive water conservation or drought contingency plans for the authority or any portion of the authority.

Sec. 8601.107. CONTRACTS AND INSTRUMENTS. Authorizes the authority to, as necessary or convenient to the exercise of the rights, powers, privileges, and functions conferred on the authority by this chapter, enter into a contract, including an interlocal contract under Chapter 791 (Interlocal Cooperation Contracts), Government Code; or execute an instrument.

Sec. 8601.108. MEMBER ENTITY CONVEYANCES AND ACQUISITIONS. (a) Defines "utility system" in this section.

(b) Authorizes a member entity to convey a utility system facility or asset or its interest in a utility system facility or asset to the authority without holding an election to approve the conveyance.

(c) Exempts a member entity from the provisions of Chapter 1502 (Public Securities for Municipal Utilities, Parks, or Pools), Government Code, regarding the conveyance, sale, or acquisition of a utility system, or any related works, improvements, facilities, plants, equipment, or appliances.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8601.151. FEES, RATES, AND OTHER CHARGES. Requires the board to establish, charge, and collect tolls, fees, user fees, rates, and other charges for the sale or use of water, water connections, wastewater service, wastewater connections, or other services sold, furnished, or supplied by the authority. Requires that the tolls, fees, user fees, rates, and other charges be reasonable and nondiscriminatory and sufficient to produce revenue adequate to:

(1) pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) pay the interest on and principal of all bonds, notes, or other obligations assumed, issued, or incurred by the authority;

- (3) pay the principal of and interest on and any other amounts owed under any legal debt created or assumed by the authority;
- (4) pay all sinking fund and reserve fund payments agreed to be made with respect to bonds, notes, or other obligations and payable out of those revenues, as the payments become due and payable; and
- (5) fulfill the terms of any agreements made with the bondholders, other counterparties or creditors, or with any person on their behalf.

Sec. 8601.152. **IMPACT FEES.** Authorizes the authority to assess impact fees under Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments), Local Government Code.

Sec. 8601.153. **LATE OR PARTIAL PAYMENTS: INTEREST AND PENALTIES.** (a) Authorizes the board to require the payment of interest on any late or unpaid tolls, fees, user fees, impact fees, rates, or other charges due the authority. Prohibits the interest rate from exceeding the interest rate permitted by Section 2251.025 (Interest On Overdue Payment), Government Code.

(b) Authorizes the board to impose penalties for the failure to make a complete or timely payment to the authority.

Sec. 8601.154. **ADMINISTRATIVE PENALTY.** Provides that a person who violates a rule or order of the authority is subject to an administrative penalty of not more than \$5,000, as determined by the board, for each violation or each day of a continuing violation. Requires the person to pay the penalty to the authority.

Sec. 8601.155. **DISBURSEMENTS.** (a) Authorizes the authority to disburse authority money by check, draft, order, federal reserve wire system, or other instrument or authorization.

(b) Requires disbursements of the authority to be signed by at least a majority of the directors, except as provided by Subsection (c).

(c) Authorizes the board, by resolution, to allow the general manager, treasurer, bookkeeper, or other employee or representative of the authority to sign disbursements.

Sec. 8601.156. **NO AD VALOREM TAXATION OR SPECIAL ASSESSMENTS.** Prohibits the authority from imposing an ad valorem tax or a special assessment.

Sec. 8601.157. **FISCAL YEAR.** Provides that the authority's fiscal year begins on October 1 and ends on September 30.

Sec. 8601.158. **FRANCHISE FEES.** Prohibits the authority from assessing or collecting a franchise fee for the use of its real property. Authorizes the authority to pay a franchise fee to another governmental entity.

SUBCHAPTER E. BONDS AND NOTES

Sec. 8601.201. **REVENUE BONDS AND NOTES.** (a) Authorizes the authority to issue bonds or notes payable solely from and secured by all or part of any funds or any revenue from any source or sources, to accomplish the purposes of the authority, including:

- (1) tolls, fees, user fees, impact fees, rates, and other charges the authority imposes or collects;

(2) the sale of water, water services, water rights or capacity, water transmission rights or services, water pumping, sewer services, or any other service or product of the authority provided inside or outside the boundaries of the authority;

(3) grants or gifts;

(4) the ownership or operation of all or a designated part of the authority's works, improvements, facilities, plants, or equipment; and

(5) contracts between the authority and a member entity, customer, or any other person.

(b) Authorizes bonds or notes issued by the authority to be first or subordinate lien obligations at the board's discretion.

(c) Authorizes the authority to exercise any power of an issuer under Chapter 1371 (Obligations For Certain Public Improvements), Government Code, in connection with any bonds or notes of the authority.

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

(e) Authorizes the authority to enter into one or more indentures of trust to further secure its bonds or notes.

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

(g) Authorizes a resolution of the board or a trust indenture securing the bonds or notes to specify additional provisions that constitute a contract between the authority and its bondholders or noteholders.

(h) Authorizes bonds and notes to be additionally secured by deed of trust or mortgage on any or all of the authority's facilities.

(i) Provides that bonds and notes issued by the authority are not subject to approval by the Texas Commission on Environmental Quality (TCEQ), and TCEQ rules regarding bonds or notes do not apply to bonds or notes issued by the authority.

Sec. 8601.202. ELECTION NOT REQUIRED. Provides that the authority is not required to hold an election to approve the issuance of revenue bonds or notes or other obligations under this subchapter.

Sec. 8601.203. USE OF REVENUE AND GROWTH PROJECTIONS. Authorizes the authority to demonstrate its ability to satisfy the debt service and those obligations using accumulated funds of the authority and revenue and growth projections prepared by a professional utility rate consultant at the direction of the authority, for the purposes of attorney general review and approval and in lieu of any other manner of demonstrating the ability to pay debt service and satisfy any other pecuniary obligations relating to bonds, notes, or other obligations. Authorizes the revenue projections prepared by a professional utility rate consultant to include forecast rate increases and accumulated and available fund balances as determined by the authority, if the resolution authorizing the issuance of the bonds, notes, or other obligations provides that the authority intends to increase rates to the extent necessary to pay debt service and satisfy any other pecuniary obligations arising under the bonds, notes, or other obligations.

SECTION 5. Requires the authority to assume all assets, liabilities, and obligations of the West Travis County Public Utility Agency on the effective date of this Act. Provides that all contracts and written agreements of the West Travis County Public Utility Agency are assigned to and assumed by the Hill Country Regional Water Authority on the effective date of this Act. Provides that the Utilities Installment Purchase Agreement entered January 17, 2012, between the Lower Colorado River Authority and the West Travis County Public Utility Agency, as amended, is assigned to and assumed by the Hill Country Regional Water Authority created by Section 4 of this Act and is valid and enforceable by its terms on the effective date of this Act. Provides that governmental immunity from liability or suit is waived for the parties to enforce that Utilities Installment Purchase Agreement to the extent provided by Subchapter I, Chapter 271, Local Government Code, on the effective date of this Act.

SECTION 6. Provides that all requirements of the constitution and the laws of this state and rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 7. (a) Provides that any eminent domain powers granted by general law that apply to the authority, as created by this Act, take effect only if this Act receives a two-thirds vote of all the members of elected to each house.

(b) Provides that if this Act does not receive a two-thirds vote of all the members elected to each house, Subchapter C, Chapter 8601, Special District Local Laws Code, as added by this Act, is amended by adding Section 8601.109, as follows:

Sec. 8601.109. NO EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain.

(c) Provides that this section is not intended to be an expression of a legislative interpretation of the requirements of Section 17(c) (relating to the granting of the power of eminent domain to a special district by the legislature by a two-thirds vote), Article I, Texas Constitution.

SECTION 8. Effective date: upon passage or September 1, 2013.