

BILL ANALYSIS

Senate Research Center
85R31182 SLB-D

C.S.H.B. 1920
By: Flynn (Nichols)
Agriculture, Water & Rural Affairs
5/18/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of H.B. 1920 is to enact the recommendations of the Sunset Advisory Commission (Sunset) regarding the Palo Duro River Authority of Texas (PDRA). The legislature created PDRA in 1973 to develop supplemental water supplies for Hansford and Moore counties and the City of Stinnett, by constructing a reservoir, Lake Palo Duro, completed in 1991. PDRA receives no state appropriation and operated on a budget of about \$413,000 in fiscal year 2015, funded by property taxes assessed on residents of its members—two counties and a city. PDRA paid off the bond debt for construction of the reservoir in 2013, and now collects only a maintenance and operation tax to maintain its dam and park.

Sunset found that while PDRS is generally well-managed, the river authority lacks a river and essentially runs a park. Lake Palo Duro is only three percent full, making it impractical to build a pipeline and fulfill PDRA's mission to pump water to local cities. Sunset recommends a process by which members of PDRA could withdraw from or dissolve PDRA, allowing PDRA flexibility to locally decide its future structure and role in the region, while ensuring PDRA's only ongoing obligation—maintaining its dam—is met.

PDRA is governed by Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

The legislation addresses issues differently from current law by:

- Reclassifying PDRA as a local water district and removing PDRA from Sunset review.
- Authorizing one or more members to withdraw from or dissolve PDRA, but only if all members agree and ongoing obligations are met.
- Applying basic good government standards to PDRA's governing laws to promote accountability, transparency, and best practices.
- Repealing PDRA's unused authority to imprison people for violating its regulations.
- Updating PDRA's governing laws to allow the Texas Legislative Council to prepare these laws for codification in the 86th Legislative Session (2019). (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 1920 amends current law relating to the Palo Duro River Authority, following recommendations of the Sunset Advisory Commission.

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 Sections 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, and 12, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

Sec. 1. Changes reference to the Palo Duro River Authority of Texas (authority) to the Palo Duro Water District (district).

Sec. 2. Requires the district to comprise all of the territory contained within the counties of Hansford and Moore and the City of Stinnett, rather than the counties of Hansford and Ochiltree. Makes conforming changes.

Sec. 3. Provides that the district, inside or outside its boundaries, rather than the authority within its limits, is hereby empowered to develop, construct or purchase dams and reservoirs. Provides that the district is empowered to impound, store, control and conserve the storm and flood waters and the unappropriated flow waters, rather than within the limits of the authority, including but not limited to the storm and flood waters and unappropriated flow waters of Palo Duro Creek and Horse Creek, rather than the Palo Duro River and the tributaries thereof within and without its watershed, by complying with the provisions of Chapter 1, Title 128, Revised Civil Statutes of Texas, as amended. Makes conforming changes.

Sec. 5. (a) Prohibits the district from constructing a dam or other facility for impounding water until the plans therefor are approved by the Texas Commission on Environmental Quality (TCEQ), rather than requiring that no dam or facilities for impounding water be constructed until the plans therefor are approved by the Texas Water Rights Commission (TWRC). Makes conforming and nonsubstantive changes.

(b) Creates this subsection from existing text. Authorizes the district to sell, trade, or otherwise dispose of any real or personal property deemed by the district, rather than TWRC, not to be needed for district purposes, subject to the terms of any deed of trust or other indenture, rather than any indenture issued by TWRC. Makes conforming and nonsubstantive changes.

Sec. 6. Provides that the district is also authorized to contract with any city for the rental or leasing of, or for the operation of the water product, water supply, and water filtration or purification, rather than purification and water supply, facilities of such city. Makes conforming changes.

Sec. 7. Makes conforming and nonsubstantive changes.

Sec. 8. Changes a reference to the board of directors to the board. Deletes existing text requiring that no dam or other facilities for impounding water be constructed until the plans therefor are approved by the Texas Department of Water Resources. Makes conforming and nonsubstantive changes.

Sec. 9. Makes conforming and nonsubstantive changes.

Sec. 10. (a) and (b) Makes conforming changes.

Sec. 11. Makes conforming and nonsubstantive changes.

Sec. 12. Makes conforming changes.

SECTION 2. Amends Sections 13(a), (b), (c), and (d), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

(a) Changes references to the board of directors of the authority to the board and references to the authority to the district. Makes nonsubstantive changes.

(b) Authorizes the district to prescribe reasonable penalties for the breach of any regulation of the district, which penalties are prohibited from exceeding fines of more than \$200, rather than more than \$200 or imprisonment for not more than 30 days or providing both such fine and such imprisonment. Makes conforming changes.

(c) and (d) Makes conforming changes.

SECTION 3. Amends Sections 14, 15, 16, 17, 18, and 19, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

Sec. 14. Changes references to the authority to the district.

Sec. 15. Makes conforming changes.

Sec. 16. Changes a reference to the board of directors to the board. Makes a conforming change.

Sec. 17. (a) Requires each director of the board to serve staggered, two-year terms that expire on December 31 of each year. Deletes existing text requiring all powers of the authority to be exercised by a board of directors, each of whom is required to serve for a term of two years except for the directors appointed by this Act. Deletes existing text setting forth a list of directors who were appointed. Makes a conforming change.

(b) Requires the commissioners court of each county contained in the district, except for Hutchinson County, and the city council of the City of Stinnett, in December of each year, rather than in December of 1937 and in December of each year hereafter, to appoint a director or directors whose term or terms are about to expire. Requires any vacancy to be filled for the unexpired term by the governing body of the appropriate county or city. Requires four directors, rather than members of the board of directors, to be appointed by the commissioners court of each county contained in the district, except for Hutchinson County, and requires one director to be appointed by the city council of the City of Stinnett. Requires each director to reside in the county from which the director is appointed. Makes conforming and nonsubstantive changes.

(c) Requires each director to serve for the director's term of office as herein provided, and thereafter until the director's successor is required to be appointed and qualified. Requires that no person be appointed a director unless the person resides in and owns taxable property in the county or city from which the person is appointed. Requires no member of a governing body of a county or the City of Stinnett, and no employee of a county or the City of Stinnett to be appointed as director. Requires the commissioners court of such county or the city council of the City of Stinnett, as appropriate, if any director moves from the county or city from which the director is appointed or otherwise ceases to be a director, to appoint a director to succeed in the position for the unexpired term. Makes conforming and nonsubstantive changes.

(d) Requires each director, unless the board by resolution increases the fee to an amount authorized by Section 49.060 (Fees of Office; Reimbursement), Water Code, to receive a fee of not to exceed \$25. Makes conforming changes.

Sec. 18. Makes conforming and nonsubstantive changes.

Sec. 19. Makes conforming changes.

SECTION 4. Amends Sections 20(a), (b), (d), (e), (f), (g), (h), and (i), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

(a) Changes references to the board of directors of the authority to the board and references to the authority to the district.

(b) Requires certain bonds to mature serially or otherwise in not to exceed 40 years and are authorized to be sold at a price and under terms determined by the board to be the most advantageous reasonably obtainable. Deletes existing text providing that the interest cost to the authority, including the discount, if any, is required to bear interest at any rate

per annum permitted by the constitution and laws of the State as required to be determined by the board of directors. Makes conforming changes.

(d) through (g) Makes conforming changes.

(h) Authorizes the resolution authorizing the issuance of the 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 any litigation affecting the district's property or income. Makes conforming changes.

(i) Changes a reference to TWRC to TCEQ and makes a conforming change.

SECTION 5. Amends Sections 21 and 22, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

Sec. 21. Changes references to the authority to the district.

Sec. 22. Changes references to the board of directors to the board and makes conforming changes.

SECTION 6. Amends Sections 23(a), (b), and (c), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

(a) Deletes existing text prohibiting any territory from being detached from the authority after the issuance of bonds which are payable from revenues or taxes or both.

(b) Changes a reference to the board of directors to the board and a reference to the authority to the district.

(c) Makes a conforming change.

SECTION 7. Amends Sections 24, 25, 26, and 27, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

Sec. 24. Changes references to the authority to the district and makes a nonsubstantive change.

Sec. 25. Makes a conforming change.

Sec. 26. Makes conforming changes.

Sec. 27. Changes references to the board of directors to the board and makes conforming changes. Deletes existing text requiring all taxes levied by the authority for any purpose to constitute a lien on the property against which levied and is prohibited from barring the enforcement or collection thereof.

SECTION 8. Amends Sections 28(a), (b), (d), (e), (f), and (h), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, as follows:

(a) Changes references to the authority to the district.

(b) Makes a nonsubstantive and conforming changes.

(d) through (f) Makes conforming changes.

(h) Requires the board, if the district issues and delivers bonds payable wholly or partially from ad valorem taxes, to levy and cause to be assessed and collected ad valorem taxes sufficient to pay the interest on and principal of said bonds, without limit as to the rate or the amount, rather than without limit as to the rate or the amount, after

giving consideration to any revenue that may be pledged to the payment of bonds. Makes a nonsubstantive and conforming changes.

SECTION 9. Amends Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, by amending Section 29 and adding Sections 1B, 3A, 13A, 19A, 19B, 19C, 19D, 19E, 19F, and 19G, as follows:

Sec. 29. (a) Changes a reference to the board of directors to the board and references to the authority to the district.

(b) through (d) Makes conforming changes.

Sec. 1B. Defines "board," "commission," "director," "district," and "member entity."

Sec. 3A. Authorizes the district to lease the hunting rights on property owned by the district, to develop, manage, or lease property owned by the district for any recreational purpose, and to lease property owned by the district to a person seeking to develop renewable energy resources.

Sec. 13A. (a) Authorizes a county or municipality to withdraw from the district or authorizes the district to dissolve according to this section.

(b) Requires the governing body of a member entity, in order to withdraw from the district or to dissolve the district, to issue an order or pass a resolution declaring the intent to withdraw from or dissolve the district. Requires the order or resolution to state the intention to either withdraw from the district or call for the dissolution of the district and the reasons supporting the withdrawal or dissolution.

(c) Requires the district, not later than the 30th day after the date the district receives an order or resolution under Subsection (b), to hold a public hearing on the matter described by the order or resolution.

(d) Requires the member entities, in the event of a proposed withdrawal or dissolution under this section, to reach a financial agreement that, for a withdrawal of a county or municipality from the district, provides for sufficient revenue for maintaining the Palo Duro Reservoir and the dam that impounds the water in the reservoir or, for a dissolution of the district, provides for the transfer of the ownership rights of the dam to an entity that assumes responsibility for the maintenance of the dam and liability for actions related to the dam, all assets and liabilities of the district to other entities, and the responsibility for the continued provision of services, if the district provides services.

(e) Requires the board to provide an opportunity for the public to comment on the financial agreement described by Subsection (d) before the board votes as described by Subsection (f). Requires that the period for public comment last not less than 10 days.

(f) Requires the board, after consideration of the public comments submitted under Subsection (e), to vote on the issue described by the order or resolution under Subsection (b). Authorizes the board to proceed with the withdrawal or dissolution only if two-thirds of all of the members of the board vote in favor of withdrawal or dissolution.

(g) Requires the governing body of each member entity, if the board votes in favor of withdrawal or dissolution as provided by Subsection (f), to vote on the matter of withdrawal or dissolution

(h) Provides that a withdrawal or dissolution authorized under this section does not take effect until:

(1) the governing body of each county and municipality has voted in favor of withdrawal or dissolution;

(2) all conditions specified in the financial agreement described by Subsection (d) have been met; and

(3) all actions described in the financial agreement described by Subsection (d) have been completed.

Sec. 19A. 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 agenda item at board meetings.

Sec. 19B. Requires a director who has a financial interest in a contract under consideration by the district for the purchase, sale, lease, rental, or supply of property, including supplies, materials, and equipment, or the construction of facilities, to disclose that fact to the other members of the board and prohibits the director voting on or participating in discussions during board meetings on the acceptance of the contract. Provides that a financial interest of a director does not affect the validity of a contract if disclosure is made and the director with the financial interest does not vote on the question of entering into the contract.

Sec. 19C. Authorizes the board, not earlier than the 10th day after the date a director receives written notice of a charge against the director, and after an opportunity to be heard in person or through the appearance of counsel at a public hearing on the matter of the charge described by the notice, to remove a director for inefficiency, neglect of duty, or misconduct in office.

Sec. 19D. (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 meeting of the board until the person completes a training program that complies with this section.

(b) Requires that the training program provide the person with information regarding:

(1) the law governing district operations;

(2) the programs, functions, rules, and budget of the district;

(3) the scope of and limitations on the rulemaking authority of the district;

(4) the results of the most recent formal audit of the district;

(5) the requirements of laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest and other laws applicable to members of the governing body of a water district in performing their duties; and

(6) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) Provides that a person appointed to the board is entitled 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 board to create a training manual that includes the information required by Subsection (b). Requires the board to distribute a copy of the training

manual annually to each director. Requires each director, on receipt of the training manual, to sign a statement acknowledging receipt of the training manual.

Sec. 19E. Requires 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 district.

Sec. 19F. (a) Requires the district to maintain a system to promptly and efficiently act on complaints filed with the district. Requires the district to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Requires the district to make information available describing its procedures for complaint investigation and resolution.

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

Sec. 19G. (a) Requires the district to develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of district rules; and

(2) appropriate alternative dispute resolution (ADR) 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 district's jurisdiction.

(b) Requires that the district's procedures relating to ADR conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of ADR by state agencies.

(c) Requires the district to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated rulemaking or ADR, and collect data concerning the effectiveness of those procedures.

SECTION 10. Amends Section 325.025(b), Government Code, as follows:

(b) Deletes existing Subdivision (10) providing that this section (River Authorities Subject to Review) applies to the authority. Redesignates existing Subdivisions (11) through (18) as Subdivisions (10) through (17).

SECTION 11. (a) Repealer: Section 1A, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

Repealer: Section 2A, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

Repealer: Section 2B, Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

Repealer: Section 4 (relating to the authority's power to acquire land and easements through condemnation), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

Repealer: Section 13(e), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

Repealer: Section 28(i), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

Repealer: Section 30 (relating to declaring the authority essential), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973.

(b) Repealer: Section 9 (relating to proof of publication of a certain constitutional notice), Chapter 115, Acts of the 64th Legislature, Regular Session, 1975.

Repealer: Section 6 (relating to proof of publication of a certain constitutional notice), Chapter 17, Acts of the 68th Legislature, Regular Session, 1983.

Repealer: Section 4 (relating to proof of publication of a certain constitutional notice), Chapter 651, Acts of the 70th Legislature, Regular Session, 1987.

SECTION 12. (a) Authorizes a person serving on the board of directors of the district, as renamed by this Act, notwithstanding Section 19D(a), Chapter 438, Acts of the 63rd Legislature, Regular Session, 1973, 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, 2017.

(b) Provides that this section expires January 1, 2018.

SECTION 13. Provides that all requirements of the constitution and the laws of this state and the rules and procedures of the legislature with respect the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 14. Effective date: September 1, 2017.