

CHAPTER 629

H.B. No. 1942

AN ACT

relating to the powers, duties, and compensation of the directors of the Edwards Underground Water District and to the authority of the district to exclude counties from the district.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 3, 5, 6, 7, 9, 11, and 12, Chapter 99, Acts of the 56th Legislature, Regular Session, 1959, are amended to read as follows:

Sec. 3. POWERS OF THE DISTRICT. (a) The District shall have and is hereby authorized to exercise the following powers, right and privileges and functions:

(1) to conserve, preserve, protect and increase the recharge of and prevent the waste and pollution of the underground water;

(2) to acquire lands and easements by purchase or by exercise of the power of eminent domain for the erection of dams and for the purpose of drilling and equipping in-put wells, and to drill, equip and operate in-put wells, construct dams, and to install pumps and other equipment necessary to recharge the underground water-bearing formations; to acquire by contract or purchase, waters and water rights deemed necessary or appropriate by the Directors of the District for conserving and recharging underground water-bearing formations; and to appropriate water for such recharge under the provisions of Art. 7470, Revised Civil Statutes, as amended; provided, however, the power of eminent domain as herein provided for, shall be limited to the Counties of Bexar, Comal, Hays, Medina, Uvalde;

(3) to cause surveys to be made of the underground water reservoirs or subdivisions thereof and of underground water-bearing formations; to cause investigations to be made to determine the movement of underground water and the quantity thereof available for production and use and the improvements and developments needed in recharging underground water reservoirs or Subdivisions thereof and underground water-bearing strata;

(4) to develop comprehensive plans for the most efficient use of underground water and for the prevention of waste and pollution of underground water; to collect and preserve information regarding the prevention of waste and pollution of underground water and to publish such plans and information, and otherwise bring them to the notice and attention of the users of underground water within the District;

(5) to institute and defend suits and proceedings before any court or any administrative body or agency, State or Federal, in carrying out the purposes, powers and functions of the District;

(6) to enter into contracts with and to participate in joint efforts and projects with water districts, conservation districts, cities and towns, counties and municipal and governmental agencies of every kind, both State and Federal, and with individuals and private corporations, for the purpose of conserving, protecting, recharging, or benefiting underground water-bearing formations within the District and waters therein, and the Board of Directors of the District shall be empowered to use, dedicate and pledge taxes and revenues of the District and to use the proceeds from District bonds for said purposes whether the District or some other municipal or governmental agency or department is in charge of such work or development;

(7) to require that copies of water well drillers' logs required to be kept and furnished to the Texas Department of Water Resources or its successor by The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), be furnished to the District. The well log required herein shall at the request in writing to the district, by certified mail, by the owner or the person having such well drilled, be held as confidential matter and not made of public record;

(8) to report to the Texas Department of Water Resources violations of The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), and rules and regulations of the department pertaining to the Act;

(9) to require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of withstanding weight or pressure of at least 400 pounds per square inch, except when the well is in actual use. As used in this subsection, "open or uncovered well" means an artificial excavation at least 10 feet deep that is dug or drilled for the purpose of producing water from the underground water reservoir and is not capped or covered as required by this subsection. If the owner or lessee fails or refuses to close or cap the well in compliance with this subsection within 30 days after being directed to do so in writing by certified mail by an officer, agent, or employee of the District, any person, firm, or corporation employed by the District may go on the land and close, plug, or cap the well. Expenses incurred by the District in closing, plugging, or capping a well, not to exceed \$100, shall constitute a lien on the land on which the well is located. The lien is perfected by filing in the County Court of the county where the well is located a sworn petition executed by the Chairman of the Board of Directors of the District, stating the following:

- (A) the existence of the well;
- (B) the legal description of the property on which the well is located;
- (C) the approximate location of the well on the property;
- (D) the failure or refusal of the owner or lessee, after notification, to close, plug, or cap the well as required by this section within 30 days after notification;
- (E) the closing, plugging, or capping of the well by the District or its authorized agent, representative, or employee; ~~and~~
- (F) the expense incurred by the District in closing, plugging, or capping the well.

If after notice and hearing the County Court finds the facts required by this section, he shall enter a judgment which shall constitute a lien on the land when recorded in the deed records. The judgment of the County Court is appealable as are other civil cases in which the County Court has original jurisdiction.[.]

(10) *to develop, implement, and enforce one or more drought management plans in order to minimize, as far as practicable, the drawdown of the water table or the reduction of artesian pressure and spring flow; to prevent waste; and to protect the groundwater resource from serious harm. The District shall develop one or more drought management plans in consultation with representatives of cities, counties, river authorities, water purveyors, and other interested parties within the District, and the District shall implement and enforce a drought management plan pursuant*

to rules of the Board of Directors adopted in accordance with Subsection (b) of this section. A drought management plan must be:

(A) consistent with water policies adopted and approved by the Board of Directors and must provide for those matters determined to be necessary and appropriate by the Board of Directors, including:

(i) objective standards for determining that drought conditions exist, continue, and cease and for determining stages of drought;

(ii) description of specific drought management activities for the stages of drought; and

(iii) requirements for reducing water use in accordance with established priorities, which must include uses for essential human needs, agricultural, industrial, power, recreational, commercial, and other categories of use;

(B) developed and approved by September 1, 1988, by a two-thirds vote of the Directors present at a meeting at which a quorum is present;

(C) provided to the Texas Water Commission and made available for additional public review. The Board may not initiate enforcement of the drought management plan until June 1, 1989, or the effective date of rules adopted by the Board of Directors as provided by Subsection (b) of this section, whichever date is later;

(D) developed and enforced by the Texas Water Commission if a drought management plan is not approved in accordance with Paragraph (B) of this subdivision, and the enforcement provisions of Subsection (b) of this section do not take effect;

(11) in a drought management plan, to set priorities of water use, to prorate the available water supply among the uses and users, to require compliance among all users, and to include other measures as are necessary and advisable to conserve, preserve, protect, recharge, and prevent waste and pollution of the underground water;

(12) to plan through a drought management plan for the uses of water throughout the District during periods in which there is a drought or a shortage of precipitation of seasonal or longer duration relative to the expectation of the users;

(13) to adopt a rule declaring that a drought exists within the District when insufficient water is available to meet the needs of the users or when conditions require temporary reduction in total use within the area to protect water resources from serious harm;

(14) to impose restrictions on users of the water resources as may be necessary to protect the water resources of the area from serious harm and to assure equitable distribution of available water resources among all water users;

(15) to rescind a declaration of drought and to rescind any restrictions adopted pursuant to that declaration;

(16) to require the registration of water wells within the District in accordance with rules of the Board of Directors and to require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of underground water.

(b) The Board of Directors may adopt and enforce reasonable rules for the purposes of carrying out the powers described in Subdivisions (10) through (16) of Subsection (a) of this section relating to the development, implementation, and enforcement of one or more drought management plans and the registration of water wells within the District. If the District adopts rules under this subsection, the District shall conduct a public hearing within each county in the District to permit members of the public to comment on the rules as they may be proposed from time to time. Notice of each hearing, along with a brief resume of the proposed rules, shall be published once each week for two consecutive weeks in one or more newspapers with general circulation in the District and the county. The first notice shall be published not later than the 14th day before the date the hearing is to be held. The hearing shall be conducted by one or more officers of the Board of Directors. A rule takes effect not earlier than the 14th day after the date of its adoption. The District may enforce this

section and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction as authorized by Section 3(a)(5) of this Act.

(c) A person may appeal the reasonableness and validity of a rule adopted by the District under this section as provided by Subsection (d) of this section after first appealing to the Texas Water Commission under rules adopted by the commission. If the commission determines a rule is unreasonable or otherwise invalid, it shall, at its discretion, either declare that the rule is null and void and direct the Board of Directors of the District to adopt a substitute rule or reform the rule so that it is reasonable and valid.

(d) A person affected by and dissatisfied with any rule made by the District under this section may file suit against the District or its Directors to challenge the validity of the rule. The suit shall be filed in a court of competent jurisdiction in Bexar County.

(e) A person affected by and dissatisfied with any act of the Texas Water Commission pursuant to this section is entitled to file suit against the Texas Water Commission to challenge the validity of the act of the commission. The suit shall be filed in a court of competent jurisdiction in Travis County. The term "person" as used in this section shall have the meaning as stated in Section 3A(a) of this Act.

(f) The Texas Water Commission shall begin registration of wells located within the Edwards Underground Water District pursuant to rules adopted by the Texas Water Commission in accordance with Sections 11.201 through 11.207 and Section 28.011, Water Code. The registrations shall be completed in a timely manner and the information shall be provided to the Edwards Underground Water District by March 1, 1988. On the adoption of rules for registration of wells by the Board of Directors in accordance with Subsection (b) of this section, the District shall assume the responsibility for well registration in the District.

Sec. 5. BOARD OF DIRECTORS OF DISTRICT. The government and control of the District shall be vested in a Board of Directors consisting of *eighteen (18)* [~~fifteen (15)~~] Directors. *Six (6) of the Directors shall be elected by the qualified voters residing in the area of Bexar County included within the boundaries of the District and* [~~],~~] *three (3) of the* [~~which~~] *Directors shall be elected by* [~~the majority vote of~~] *the qualified voters residing in the area of each of the* *four (4)* [~~five (5)~~] *counties of Hays, Comal, Medina, and Uvalde included within the boundaries of the District. The area of the District lying in each of the five (5) Counties of Bexar, Comal, Hays, Medina, and Uvalde is hereinafter referred to as a "county area."* [~~The three (3) Directors elected to serve as the first Directors from each county area included within the District shall at the first meeting of the Board of Directors determine by lot which shall serve for a term of two (2) years and which shall serve for a term of four (4) and six (6) years respectively, and the terms so determined shall be and constitute the first term of office of each of said Directors. Thereafter there shall be elected at large in each county area one director each two (2) years to serve for a term of six (6) years. All~~] *Directors shall hold office for staggered six-year terms and until their successors have been elected and have qualified by taking the oath of office. Before entering upon the duties of his office each member of the Board of Directors shall take the Constitutional oath of office and the same shall be filed in written form with the Secretary of the Board. Vacancies occurring in the Board of Directors from any county area shall be filled by the remaining member or members of the Board from such county area and the person so appointed shall serve for the unexpired term of the person in whose place he is appointed. All members of the Board of Directors shall be qualified* [~~property tax-paying~~] *voters* [~~over the age of twenty-one (21) years,~~] *residing within the District and within the county area or county commissioner precinct for Bexar County from which he is elected or appointed.*

Sec. 6. ELECTION OF DIRECTORS. (a) *All elections within the District shall be conducted in accordance with procedures provided by resolutions adopted by the Board of Directors or as set forth in the bylaws and the Election Code, and the results of all elections shall be canvassed by the Board of Directors of the District at the regular or special meeting following each election. All elections shall be held on the*

third Saturday in January of each odd-numbered year and at the polling places designated by the Board of Directors of the District. The terms of office of Directors elected at each election shall begin on March 1 following their election.

(b) Persons seeking to have their names placed on the ballot shall make application to the Board of Directors or its authorized representative in accordance with procedures prescribed by the Board of Directors and as provided in the order calling the election.

(c) The authorized representative of the Board of Directors shall prepare the ballot for each county from the names of candidates who have filed applications, and the placing of the names of the candidates on the ballots shall be determined by lot. The drawing of lots for the placing of the names of the candidates on the ballots shall be by an officer of the Board of Directors, and all candidates, or their designated representative, may be present at the drawing.

(d) The Directors from the Bexar County area shall be elected from four (4) single member districts and two (2) at large. The four (4) single member districts shall be coterminous with and bear the same numbers as the Bexar County commissioner precincts within the Bexar County area of the District. Candidates for the single member district positions must live within the district they seek to represent.

(e) The candidates receiving a plurality shall be declared elected. If there is a tie in the votes received, the winner of the election shall be determined by the majority of the Board of Directors. The at-large Directors of Bexar County shall be elected simultaneously by plurality, with the two (2) candidates receiving the greatest number of votes being declared elected.

(f) Any Director of the District may serve the full term to which he is elected or appointed regardless of redistricting or reapportionment.

(g) ~~The Directors from Hays, Comal, Medina, and Uvalde County areas shall be elected at large from each county area. [Within sixty (60) days after this Act becomes effective the County Judge of each of the five (5) Counties embracing areas included in the District shall call an election to be held at such polling place or places within the county area in said County as he may deem proper for the election of three (3) Directors from such area. The election so called shall be held on the first Tuesday following thirty (30) days after publication of notice of said election, and notice of said election in each county area shall be given by publication in a newspaper of general circulation in the County, said notice to be published at least once not less than thirty (30) days prior to the date set for the election. The order of the County Judge providing for said election and for the notice thereof shall name the officers of the election and direct that the same be held in accordance with the General Election laws of the State. All matters relating to such election shall be filed with the County Judge of the County in which each election is held, and the results of the election in each county area shall be canvassed and certified by the County Judge of each County. The order calling the election and all actions pertaining to the election shall be entered in the minutes of the Commissioners Court. In the first election conducted by the County Judge of each County, candidates' names shall be placed upon the ballot upon application made not less than twenty-five (25) days before the election accompanied by an endorsement in writing signed by not less than twenty (20) qualified voters of the county area in which they are candidates. In elections after the first election the placing of names of candidates upon the ballots shall be governed by rules adopted by resolution of the Board of Directors or set forth in the By-Laws of the District. After the election of said first Board of Directors all elections within the District shall be carried out in accordance with appropriate resolutions and actions of the Board of Directors of the District and the result of all elections shall be canvassed by the Board of Directors of the District at a meeting following each biennial election. All elections after the first election shall be held on a date in the month of November and at the polling places designated by the Board of Directors of the District. The term of office of Directors elected at each election after the first election shall commence on the first day of January following their election. In all elections, including the first election, the person or persons receiving the greatest number of votes, that is a plurality, shall be declared elected. Should there be a tie in the votes received the winner of the election~~

shall be determined by lot in a manner approved by the majority of the Board of Directors of the District.]

Sec. 7. COMPENSATION OF DIRECTORS. Directors of the District shall be entitled to *One Hundred [Fifty] Dollars (\$100) [(\$50)]* per day for each day of official service, whether sitting as a Board or serving on a committee of the Board, and in addition thereto shall be entitled to reimbursement for all actual expenses necessarily incurred by reason of [such] service *to the district*. ~~[No Director shall receive a total amount of more than Nine Hundred Dollars (\$900) in any twelve (12) month period for service as a Director and as a member of a committee; provided, however, no Director shall be disqualified to render service to the District as an employee or representative and to receive reasonable compensation therefor, provided such Director shall be disqualified from voting on any resolution providing for such employment or fixing the compensation therefor. All fees for services as a Director or as a member of a committee of Directors and all necessary expenses in connection with such service shall be paid out of funds raised in the county area from which the Director is elected or appointed.]~~

Sec. 9. COUNTY CHAIRMAN—EXECUTIVE COMMITTEE. The ~~[three (3)]~~ Directors elected or appointed from each county area within the District shall appoint one of their number County Chairman and the five (5) County Chairmen so appointed shall constitute the Executive Committee of the District, which Executive Committee, acting by a majority vote at any meeting at which a quorum is present, shall be authorized to take all action relating to routine affairs of the District which they may consider necessary between regular meetings of the Board of Directors, and the Board of Directors may confer upon the Executive Committee all such powers and authority with regard to affairs of and the exercise of the powers of the District as the Board of Directors may from time to time deem proper.

Sec. 11. VOTING OF ADDITIONAL TAX. Upon the approval of the majority of the ~~[three (3)]~~ Directors from any county area, and upon the vote of the majority of the Board of Directors of the District, an election may be held within such county area for the purpose of voting upon and authorizing the levy of taxes in addition to the two cents (2¢) per One Hundred Dollars (\$100) as hereinabove provided, but not to exceed an additional annual tax of twenty-three cents (23¢) on the One Hundred Dollars (\$100) of the County valuations of property subject to District taxation within a county area included in the District. Said additional taxes may be voted and thereafter collected in one or more county areas, whether or not other county areas in the District vote additional taxes. Said election shall be held in accordance with the State election laws applicable to the voting of taxes for the support of County bonds and such laws applicable to the voting of taxes for the support of County bonds and such additional taxes shall be levied only if authorized by a majority vote of the resident, qualified property tax-paying voters of the District who own taxable property therein which has been duly rendered for taxation voting at said election. In the event of the voting of such tax the same shall go into effect and be collected for the year commencing on the January 1st following the election and shall be levied, assessed and collected in the manner specified in Section 10 hereof.

Sec. 12. DEPOSITORIES—HANDLING OF FUNDS. All funds collected through the levy of a tax on property located in each county area of the District shall be kept in a separate fund in a depository within such County and such funds shall be subject to disbursement only in a manner and for purposes approved by a majority of the Directors elected from such county area and by the majority vote of the Board of Directors of the District as a whole; to the end that the disbursement and use of all funds collected by taxation within each county area shall be subject to the control of the ~~[three (3)]~~ Directors from such County. Each Director who is authorized to withdraw funds, either on his sole signature or with the joinder of others, shall give an official bond in the amount of Five Thousand Dollars (\$5,000) in the form required to be given by Directors of Water Control and Improvement Districts. Any funds of the District not arising from the collection of taxes on property within a county area shall be deposited in an appropriate central fund of the District in a depository selected by a majority vote of the Board of Directors of the District and shall be used and disbursed for purposes and in the manner directed by a majority vote of the Board of Directors of the District. With the approval by a majority vote of the ~~[three (3)]~~ Directors from any county area, funds raised by taxation within

such county area may be transferred to an appropriate central fund of the District and used and disbursed by action of the Board of Directors as a whole as above provided.

SECTION 2. Chapter 99, Acts of the 56th Legislature, Regular Session, 1959, is amended by adding Section 17A to read as follows:

Sec. 17A. EXCLUSION OF A COUNTY AREA. The residents of any county area of the District may, on petition of ten (10) percent of the registered voters within the county area of the District, request that the Board of Directors hold a referendum, in conjunction with the next regularly scheduled Directors election, to determine whether or not that county area will remain within the District. The petition must be submitted to the Board of Directors not later than November 1 before the date of the election. On approval by unanimous vote of all Directors from the county area from which the petition is received, the referendum shall be called and added to the ballot of the January Directors election in the county area. Approval of the withdrawal must be by the affirmative vote of a majority of the voters voting on the proposition: "The _____ county area of the Edwards Underground Water District shall be withdrawn from the Edwards Underground Water District." The withdrawal of any county area voting to withdraw from the District is effective on March 1 following the referendum. On and after that date, the boundaries of the District shall be redefined to exclude the county area; the levy and collection of the District's taxes within the county area shall cease; the offices held by the Directors elected or appointed from the county area shall terminate; and the other matters provided by law or by agreement with any person affecting the authority and operations of the District shall be automatically redesignated and redefined to be consistent with the withdrawal of the county area.

SECTION 3. (a) This Act does not affect the terms of the directors representing Bexar County on the effective date of this Act.

(b) The residency requirements of Section 6(d), Chapter 99, Acts of the 56th Legislature, Regular Session, 1959, as amended by this Act, do not apply to persons serving as directors on the effective date of this Act or to candidates for districts 1, 2, and 4 at the 1989 election or to candidates for districts 3 and 4 at the 1991 election. Candidates for director at those elections must reside within the Bexar County area of the district.

(c) In 1989, the directors for Bexar County shall be elected as follows:

- (1) one director-at-large for a four-year term;
- (2) director for district 4 for a two-year term; and
- (3) directors for districts 1 and 2 for six-year terms.

(d) On the expiration of the term of office in 1991 of the director currently representing Bexar County, a director for district 3 shall be elected for a six-year term. A successor director for district 4 shall also be elected at the 1991 election for a six-year term.

(e) On the expiration of the term of office in 1993 of the director currently representing Bexar County, a director-at-large shall be elected for a six-year term. A successor director for the other at-large position shall also be elected at the 1993 election for a six-year term.

(f) After the expiration of terms prescribed by Subsections (c), (d), and (e) of this section, all terms are six-year terms.

SECTION 4. (a) Except as provided by this section, this Act takes effect immediately.

(b) Section 5, Chapter 99, Acts of the 56th Legislature, Regular Session, 1959, as amended by this Act, takes effect January 1, 1989.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Ch. 629, § 5

70th LEGISLATURE—REGULAR SESSION

Passed by the House on May 8, 1987, by the following vote: Yeas 134, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1942 on May 26, 1987, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and, pursuant to the provisions of Article XVI, Section 59(d) of the Constitution of Texas, a copy of H.B. No. 1942 was transmitted to the Governor on May 27, 1987, and the recommendation of the Texas Water Commission was filed with the Speaker of the House on June 1, 1987. Passed by the Senate, with amendments, on May 21, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective June 18, 1987.