

SOUTHMOST REGIONAL WATER AUTHORITY

CHAPTER 511 "

S. B. No. 1161

An Act relating to the creation of Southmost Regional Water Authority; providing for a confirmation election; setting forth the corporate limits thereof; making finding as to benefits; providing for a board of directors as the governing body; providing for officers of the authority; providing for other territory to be included within the authority; providing for removal of territory from the authority; setting forth the powers of the authority; authorizing the authority to apply for and receive grants, to issue revenue bonds, notes, bond anticipation notes and refunding bonds; providing for approval of the bonds and bond anticipation notes and contracts by the attorney general and registration of the bonds and bond anticipation notes by the comptroller of public accounts; providing for contracting powers of the authority and cities and districts contracting with the authority; providing for depositories, acquisition of water rights, qualification of such bonds and notes for investment and security purposes, tax exemption, regulations to be issued by the authority, finding compliance with constitutional requirements for notice; providing for severability; and declaring an emergency.

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

Section 1. By virtue of Article XVI, Section 59, of the Texas Constitution, as amended, a conservation and reclamation district is hereby created to be known as "Southmost Regional Water Authority" (hereinafter called "authority"), which shall be a governmental agency and a body politic and corporate. Before the authority is created it must be approved at a confirmation election which shall be held in the entire authority as defined by Section 2 of the Act; there shall be only one election which shall be held within two years of the effective date of this Act and in accordance with the provisions of Chapter 54 of the Water Code, as amended; if the election result is against confirmation, this Act shall be null and void and the district not created.

Sec. 2. The authority shall comprise all of the territory which was contained within the cities of Brownsville, Los Fresnos, and Indian Lake; Brownsville Navigation District of Cameron County, Texas; Cameron County Fresh Water Supply District No. 1; and Valley Municipal Utility District No. 2 of Cameron County, on March 1, 1981; provided, however, that no defect in the definition of the boundaries of any of said cities or districts or in any past or future proceedings for the annexation of territory to any of said cities or districts shall affect the validity of the authority hereby created or any of its powers or duties. It is hereby found that all of the land thus included in said authority will be benefited by the improvements to be acquired and constructed by the authority.

Sec. 3. (a) All powers of the authority shall be exercised by a board of directors. Such directors shall be appointed and removed by a majority vote of the governing body of each of the cities and districts comprising the authority; provided that with respect to any such city having its waterworks managed by a board of trustees appointed by its governing body, the director chosen to represent such city shall be chosen by the

majority vote of such board of trustees. A single director shall be appointed from each city and each district comprising the authority.

(b) Each city and district listed in Section 2 of this Act shall appoint one director to serve to and including May 31, 1983. In May of 1983 and in May of each second year thereafter, the governing body of each such city (or the board of trustees as aforementioned) and district shall appoint a director for a two-year term beginning June 1 of that year to fill the vacancies caused by expiring terms. The initial director for any city or district hereafter included in the authority may be appointed for a term ending on the first May 31st occurring in an odd-numbered year no more than two years from the date of appointment. The subsequent director or directors shall be appointed as above provided. All vacancies shall be filled by appointment as above provided.

(c) Each director shall serve for his term of office as herein provided and thereafter until his successor shall be appointed and qualified. No person shall be appointed a director unless he resides in and owns taxable property in the city or the district from which he is appointed. A director must be a member of a governing body of a city or a district; provided that with respect to any such city having its waterworks managed by a board of trustees appointed by its governing body, the director chosen to represent such city shall be a member of such board of trustees. No employee of a city or a district shall be appointed as director. Such directors shall subscribe the constitutional oath of office, and each shall give bond for the faithful performance of his duties in the amount of \$5,000, the cost of which shall be paid by the authority.

(d) The directors having a majority in interest shall constitute a quorum of the board. A vote of the directors having the majority in interest shall be necessary to pass on any question before the board. In determining a majority in interest each director will be accorded a percentage of interest in proportion to the amount of potable water the city or district he represents received during the preceding calendar year from the authority pursuant to contract bears to the total potable water received by all cities and districts comprising the authority from the authority pursuant to contract during such period. Any director or directors accorded an aggregate percentage in excess of 50 percent shall have a majority of interest. Until water is received from the authority pursuant to contract for a calendar year such percentages shall be accorded to the directors based on potable water consumption as reported to the Texas Department of Health during the preceding calendar year. The board may adopt bylaws to govern its affairs. The board shall adopt a seal for the authority. The board may provide in the bylaws that each director shall receive a fee of \$20 for attending each meeting of the board; provided that not more than \$40 shall be paid to any director for meetings held in any one calendar month. Such bylaws may provide that each director shall also be entitled to receive \$20 per day devoted to the business of the authority and to reimbursement for actual expenses incurred in attending to authority business provided that such service and expense are expressly approved by the board.

Sec. 4. (a) The board of directors shall elect from its members a president and a vice-president of the authority and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the authority and the presiding officer of the board and shall have the same right to vote as any other director. The vice-president shall perform all duties and exercise all powers conferred

by this Act upon the president when the president is absent or fails or declines to act. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine such offices. The treasurer shall give bond in such amount as may be required by the board of directors, but in no event less than \$100,000. The condition of such bond shall be that he will faithfully account for all money which shall come into his custody as treasurer of the authority. Until the authority shall have authorized the issuance of bonds the amount of the official bond of the treasurer may be fixed by the board of directors in any amount not less than \$5,000.

(b) The board shall have authority to employ a general manager and all consulting engineers, financial consultants, attorneys, and auditors.

Sec. 5. Other territory in Cameron County may be included in the authority in the following manner:

(a) A petition praying for inclusion of an incorporated city or duly created district organized pursuant to Article XVI, Section 59, of the Texas Constitution, as amended, shall be filed with the board of directors of the authority. The petition shall state that the territory to be included is that which is contained within such city or district. For a petition of a district located within or partially within the extraterritorial jurisdiction of a city, as such terms are defined in the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), to be considered by the board of directors of the authority, it must first be approved by a majority vote of the governing body of such city.

(b) If the board of directors finds that the petition complies with the foregoing subsection, that the inclusion would be in the interest of the territory and the authority, and that the authority will be able to supply water to the territory, it may adopt a resolution stating the conditions, if any, under which territory may be included in the authority. The proceedings for inclusion of territory shall be at the expense of the petitioners.

(c) The board shall adopt a resolution declaring its intention to hold a hearing in the territory for the purpose of determining whether the territory will be benefited by the improvements, works, and facilities then owned or operated or contemplated to be owned or operated by the authority.

(d) Notice of the adoption of such resolution stating the time and place of such hearing addressed to the citizens in such territory shall be published one time in a newspaper published within or having general circulation within such territory, designated by the board, at least 10 days prior to the date of such hearing. The notice shall describe the territory in the same manner as the petition.

(e) All persons interested may appear at such hearing and offer evidence for or against the intended inclusion. Such hearing may proceed in such order and under such rules as may be prescribed by the board, and the hearing may be recessed from time to time. If, at the conclusion of the hearing, the board finds that all of the lands in such territory will be benefited by the present or contemplated improvements, works, or facilities of the authority, the board shall enter an order including said territory in the authority, and such inclusion shall thereafter be incontestable. A certified copy of said order shall be recorded in the deed records of Cameron County.

Sec. 6. Any city or district included in the authority may remove itself from the authority by majority vote of the governing body of such

city or district. Such action shall be duly certified by the officials of any such city or district and delivered to the authority. Provided, however, that so long as a city or district is obligated by contract to make payments to the authority, such city or district shall not have the right to remove itself from the authority.

Sec. 7. The authority is authorized to purchase, construct, acquire, own, lease, operate, maintain, repair, improve, and extend inside and outside its boundaries, at any location whatsoever, in the sole discretion of the authority, land and interest in land, any and all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to provide for the control, storage, preservation, transmission, treatment, and distribution and use of sea water, storm water and floodwater, the water of rivers and streams, and underground water for municipal, domestic, industrial, and other beneficial uses. The authority shall have the authority to perform any act consistent with the powers herein granted to carry out any such power.

Sec. 8. For the purpose of carrying out any power or authority conferred by this Act, the authority shall have the right to acquire land and easements within and without the authority (including land above the probable high water line around any impounding or diversion reservoir) by condemnation in the manner provided by Title 52, Revised Civil Statutes of Texas, 1925, as amended, relating to eminent domain. The authority is hereby declared to be a municipal corporation within the meaning of Article 3268, Revised Civil Statutes of Texas, 1925, as amended. The amount of and character of interest in land and easements thus to be acquired shall be determined by the board of directors; provided, however, that as against persons, firms, and corporations, or receivers or trustees thereof, who have the power of eminent domain, the fee title may not be condemned, but the authority may condemn only an easement.

Sec. 9. In the event that the authority, in the exercise of the power of eminent domain or power of relocation or any other power granted hereunder, makes necessary the relocation, raising, rerouting, or changing the grade of or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone lines, pipeline, canal or drainage ditch, all such necessary relocation, raising, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the authority, unless otherwise agreed upon in writing by interested parties.

Sec. 10. Any construction contract requiring an expenditure of more than \$12,500 shall be made after publication of a notice to bidders once each week for a minimum of two weeks before awarding the contract. Such notice shall be sufficient if it states the time and place when and where the bids will be opened, the general nature of the work to be done, or the material, equipment, or supplies to be purchased and states where and the terms upon which copies of the plans and specifications may be obtained. The publication shall be in a newspaper published in the authority and designated by the board of directors. It shall not be necessary to advertise work to be performed in an emergency situation.

Sec. 11. The authority shall be empowered to apply for and receive grants from the federal government or the state government or any agencies thereof for the purposes of carrying out one or more of its powers.

Sec. 12. For the purpose of carrying out any power or authority herein granted to the authority, the board of directors of the authority may issue revenue bonds and notes from time to time in one or more is-

series or series to be payable from and secured by liens on and pledges of all or any part of any of the revenues, income, or receipts derived by the authority from its ownership, operation, lease, or sale of any property, buildings, structures, or facilities, including the proceeds or revenues from contracts with any city, district, public agency, or other political subdivision. Such bonds and notes may be issued to mature serially or otherwise within not to exceed 50 years from their date, and provision may be made for the subsequent issuance of additional parity bonds and notes, or subordinate lien bonds or notes, under any terms or conditions that may be set forth in the resolution authorizing the issuance of the bonds or notes. Such bonds and notes, and any interest coupons appertaining thereto, are and shall constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code, Section 1.01 et seq., Business & Commerce Code, provided that the bonds and notes may be issued registrable as to principal alone or as to both principal and interest and shall be executed, may be made redeemable prior to maturity, may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds and notes shall bear interest at such rates not exceeding 15 percent per annum, all as shall be determined and provided in the resolution authorizing the issuance of the bonds. If so provided in the bond or note resolution, the proceeds from the sale of the bonds or notes may be used for paying interest on the bonds or notes during the period of the acquisition or construction of any facilities to be provided through the issuance of the bonds or notes, for paying expenses of operation and maintenance of facilities, for creating a reserve fund for the payment of the principal of and interest on the bonds or notes, and for creating any other funds, and such proceeds may be placed on time deposit or invested, until needed, all to the extent and in the manner provided in the resolution. The authority may pledge all or any part of its revenues, income, or receipts from fees, rentals, rates, charges, and contract proceeds or payments to the payment of the bonds or notes, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, or payments shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds or notes, and, to the extent required by the resolution authorizing the issuance of the bonds or notes, to provide for the payment of expenses in connection with the bonds or notes and operation, maintenance, and other expenses in connection with the aforesaid facilities. Said bonds and notes may be additionally secured by mortgages or deeds of trust on any real property owned or to be acquired by the authority and by liens on any personal property appurtenant to such real property; and the board of directors of the authority may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence same. Also, the authority may pledge to the payment of the bonds and notes all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Sec. 13. The authority may issue bond anticipation notes from time to time for the purpose of carrying out any one or more of its powers. Such bond anticipation notes may or may not be secured by a pledge of all or part

of revenues of the authority. The authority may from time to time authorize the issuance of bonds for the purpose of providing proceeds to pay the principal of and interest on bond anticipation notes. Such bonds shall be secured by a pledge of all or part of the revenues of the authority and may be issued on a parity with or subordinate to outstanding bonds of the issuer. If the resolution or trust agreement authorizing the issuance of bond anticipation notes contains a covenant to the effect that such notes shall be payable from the proceeds of the subsequently issued bonds, it shall not be necessary to demonstrate for the purposes of receiving the approval of the attorney general or registration by the comptroller that the revenues that may be pledged to such notes will be sufficient to pay the principal of an interest on the notes.

Sec. 14. Any bonds or notes issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for such purpose, under such terms, conditions, and details as may be determined by resolution of the board of directors of the authority. All pertinent and appropriate provisions of this Act shall be applicable to such refunding bonds, and they shall be issued in the manner provided herein for other bonds authorized under this Act; provided that such refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded at maturity or on any redemption date. Also, such refunding bonds may be issued to be exchanged for the bonds being refunded thereby. In the latter case, the Comptroller of Public Accounts of the State of Texas shall register the refunding bonds and deliver the same to the holder or holders of the bonds being refunded thereby, in accordance with the provisions of the resolution authorizing the refunding bonds; and any such exchange may be made in one delivery or in several installment deliveries. Bonds and notes issued at any time by the authority also may be refunded in the manner provided by any other applicable law.

Sec. 15. All bonds and bond anticipation notes issued pursuant to this Act and the appropriate proceedings authorizing their issuance shall be submitted to the Attorney General of the State of Texas for examination. If the bonds and bond anticipation notes recite that they are secured by a pledge of revenues of any contract, a copy of such contract and the proceedings relating thereto may be submitted to the attorney general. If he finds that such bonds or bond anticipation notes, as the case may be, have been authorized in accordance with law, and, if submitted, such contract has been made in accordance with law, he shall approve the bonds or bond anticipation notes and, if submitted, any such contract, and thereupon the bonds and bond anticipation notes shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration, such bonds and bond anticipation notes and any such contract shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

Sec. 16. The authority is authorized to enter into contracts with the State of Texas, cities and districts organized pursuant to Article XVI, Section 59, of the Texas Constitution, as amended, and others for supplying water to them. The authority is also authorized to contract with any city, district, or other person for the rental or leasing of or for the operation of the water production, water supply, water filtration or purification, and water supply facilities of such city, such district, or other person upon such consideration as the authority and the city, the district, or

other person may agree. Any such contract may be upon such terms and for such time as the parties may agree, and it may provide that it shall continue in effect until bonds or notes specified therein and refunding bonds issued in lieu of such bonds are paid. All such cities and districts are authorized to enter into such contracts with the authority and to fix, charge, and collect fees, rates, charges, rentals, and other amounts for any service or facilities provided pursuant to or in connection with any contract with this authority, and to pledge such amounts sufficient to make all payments required under the contract.

Sec. 17. The board of directors shall designate one or more banks within the authority to serve as depository or depositories for the funds of the authority. All funds of the authority shall be deposited in such depository bank or banks, except that funds pledged to pay bonds or notes may be deposited with trustee banks named in the trust agreement or bond or note resolution, and except that funds shall be remitted to the bank of payment for the payment of principal of and interest on bonds and notes. To the extent that funds in the depository banks and a trustee bank are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of county funds; or the resolution or trust agreement, or both, securing the bonds or notes may require that any or all of such funds be secured by obligations of or unconditionally guaranteed by the United States government.

Sec. 18. The authority is authorized to acquire water appropriation permits, construction permits, and other permits directly from the Texas Water Commission or from owners of permits. The authority is also authorized to acquire water or a water supply from any person, firm, corporation, or public agency, the State of Texas, or from the United States government or any of its agencies. The authority may, within the discretion of its board of directors, contract with one or more large users of water to acquire such water supply on an agreed allocation of storage space as between authority and such user or may contract independently for the authority's water supply.

Sec. 19. All bonds and notes of the authority shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value when accompanied by all unmatured coupons appurtenant thereto.

Sec. 20. The accomplishment of the purposes stated in this Act being for the benefit of the people of this state and for the improvement of their properties and industries, the authority in carrying out the purposes of this Act will be performing an essential public function under the constitution and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including the profits made on the sale thereof, shall at all times be free from taxation within this state.

Sec. 21. The board of directors of the authority shall have the power to adopt and promulgate all reasonable regulations (a) to secure, maintain, and preserve the sanitary condition of all water in and to flow into any reservoir owned by the authority, or which by contract or otherwise it may control, to prevent waste of water or the unauthorized use thereof, to regulate residence, hunting, fishing, boating, and camping and all recreational and business privileges, along or around any such reservoir or any body of land, canal, ditch, or easement owned or controlled by the authority, and (b) to ensure the public health of the recipients of water from the authority's facilities.

Sec. 22. Proof of publication of the constitutional notice required in the enactment hereof under the provisions of Article XVI, Section 59(d), of the Texas Constitution has been made in the manner provided therein, and a copy of said notice and the bill as originally introduced have been delivered to the Governor of the State of Texas as required in such constitutional provision, and such notice and delivery are hereby found and declared to be proper and sufficient to satisfy such requirements.

Sec. 23. If any word, phrase, clause, sentence, paragraph, section, or other part of this Act or the application thereof to any person or circumstance shall ever be held to be invalid or unconstitutional by a court of competent jurisdiction in this state, the remainder of the Act and application of such word, phrase, clause, sentence, paragraph, section, or other part of this Act to other persons or circumstances shall not be affected thereby.

Sec. 24. The fact that the region to be served by the proposed facilities of the authority is in urgent need of such facilities creates 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 that this Act be effective from and after the date of its passage, and said rule is hereby suspended, and it is so enacted.

Passed the Senate on May 14, 1981: Yeas 30, Nays 0; Senate concurred in House amendments on June 1, 1981, by a viva-voce vote; passed the House, with amendments, on May 29, 1981: Yeas 144, Nays 2, two present not voting.

Approved June 12, 1981.

Effective Aug. 31, 1981, 90 days after date of adjournment.