

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1311

By: Easley

AS INTRODUCED

An Act relating to Grand River Dam Authority; amending 82 O.S. 2001, Sections 862 and 863A, which relate to the powers, rights and privileges of the district and the board of directors; updating obsolete statutory language; requiring rules be promulgated according to the Administrative Procedures Act; providing for regulation of certain boating vessels; removing reference to certain obsolete program; modifying requirement for directors to reside in district for certain time period prior to appointment; removing voting privilege for certain ex officio board members; modifying number of board members necessary for quorum; and requiring certain number of affirmative votes for certain issues; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 2001, Section 862, is amended to read as follows:

Section 862. The district shall have and is hereby authorized to exercise the following powers, rights and privileges:

(a) To control, store and preserve, within the boundaries of the district, the waters of Grand River and its tributaries, for any useful purpose, and to use, distribute and sell the same within the boundaries of the district; provided, however, that any municipal corporation within the area included within the jurisdiction of the said Grand River Dam Authority shall be entitled to take water from the Grand River and any of its tributaries in any quantities that may be needed by such municipal corporation;

(b) To develop and generate water power, electric power and electric energy, from whatever source, within the boundaries of the

district; to acquire coal or other minerals to be used for the purposes of providing energy sources for electrical generating plants; to acquire or lease any and all railroad connections, equipment, rolling stock, trackage and otherwise, necessary to the transporting of coal and other minerals to generating plant sites within the district; and to buy, sell, resell, interchange and distribute electric power and energy in order to carry forward the business and functions of the district now or hereafter authorized by law and may enter into contracts for such purposes, such contracts to run for a period of not to exceed fifty (50) years except those contracts provided for in paragraphs (f) and (g) of this section. All contracts may contain such reasonable provisions, limitations, qualifications, protective clauses and rights and obligations of purchase and sale, and such provisions for the dedication of the use of facilities and the construction of additional facilities to serve the load requirements of all the parties as may be deemed advisable by the district to safeguard the business and properties of all the parties to such contracts, all within the limits of sound business judgment and practice, good conscience, and not contrary to the public policy of the state;

(c) To prevent or aid in the prevention of damage to person or property from the waters of the Grand River and its tributaries;

(d) To forest and reforest and to aid in the foresting and reforesting of the watershed area of the Grand River and its tributaries and to prevent and to aid in the prevention of soil erosion and floods within said watershed area;

(e) To acquire by purchase, lease, gift, or in any other manner, and to maintain, use and operate or to contract for the maintenance, use and operation of any and all property of any kind, real, personal, or mixed, or any interest therein, and to own, construct, operate and maintain any project or works in conjunction or jointly with, as tenants in common, any public or private

corporation duly authorized and qualified to do business within this state including, but not limited to, rural electric cooperatives of the State of Oklahoma or the United States of America, or any department, subdivision or agency of the State of Oklahoma or the United States of America, or with any "public agency" as defined under the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, within or without the boundaries of the district, necessary, incidental or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act;

(f) In addition to any other powers conferred, the district shall have power and authority to participate and enter into agreements with any public or private corporation duly authorized and qualified to do business within the State of Oklahoma including, but not limited to, rural electric cooperatives, the state or the United States of America or any department, subdivision or agency of the state or the United States of America, or with any "public agency" as defined under the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, for the purpose of planning, acquiring, financing, owning, operating and maintaining an undivided ownership of any steam, oil, gas, coal-fired, thermal, geothermal, solar, waste or refuse reclamation powered electric generating plant or plants or any facilities of every kind necessary, incidental or convenient for the production, generation and transmission of electric power and energy including, but not limited to, any and all related transmission facilities, which shall be used as common facilities. The agreements shall provide that the district and any participants therein shall have the incidents of tenant in common to any plant or facility. It shall also be provided in the agreements that the district and any participant in the project shall own a percentage of any common facility equal to the percentage of the money furnished or the value

of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

Each participant shall defray its own interest payments and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall further provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

In carrying out the powers granted in this section, the district and each participant shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by the district or any participant for the planning, financing, acquiring, constructing, operating or maintaining of any common plant or facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of the district or any participant therein be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon the district except as expressly authorized and provided for in the participation agreement;

(g) In addition to the powers conferred in paragraph (f) of this section, the district shall have power and authority to participate and enter into agreements with any public or private corporation duly authorized and qualified to do business within this state including, but not limited to, rural electric cooperatives, the State of Oklahoma or the United States of America or any department, subdivision or agency of the State of Oklahoma or the

United States of America, or with any "public agency" as defined under the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, for the purpose of planning, acquiring, financing, owning, operating and maintaining undivided ownership interests in any steam, oil, gas, coal-fired, thermal, geothermal, solar, waste or refuse reclamation powered electric generating plant or plants or any other facilities of every kind necessary, incidental or convenient for the production, generation and transmission of electric power and energy including, but not limited to, any and all related transmission or other facilities which are to be used as common facilities and to cooperate with other state agencies and public trusts to promote economic development in the state and to assist in attracting industry to the state. Such undivided ownership interests may be created by an agreement entered into with respect to property to be acquired by the district. Any such agreement may be a sale agreement, with the purchase price payable at one time or in installments at such time and over such period as shall be agreed to by the parties thereto, a lease agreement, with a nominal purchase option, or any other type of agreement. In addition to the purchase price, the district shall be fully indemnified as to operation, maintenance, administrative and other expenses incurred with respect to such undivided interest. Any payment received in respect to any such agreement shall be deemed revenues of the Authority. The district is hereby authorized to enter into any such agreement in order to sell, lease or otherwise convey undivided ownership interests in any such property. Any such agreement shall specify the undivided interest to be owned or acquired by each of the participants, provide for a waiver of partition, prescribe the time of vesting of such interest and the amount of electrical output to be owned and controlled by any participant.

Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

In carrying out the powers granted in this section, the district and each participant shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by the district or any participant for the planning, financing, acquiring, constructing, operating or maintaining of any common plant or facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of the district or any participant therein be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon the district except as expressly authorized and provided for in the participation agreement;

(h) To acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest therein, within or without the boundaries of the district, necessary, incidental or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act, in the manner provided by general law with respect to condemnation; provided that nothing in this act shall ever be construed to authorize the district to acquire by condemnation any privately, municipally or publicly owned electric public utility system or any part thereof outside of the high-water mark of a reservoir area or outside a properly located

damsite, except the districts may require the relocation of transmission lines and substations so owned where such relocation is necessary for the construction and maintenance of dams, reservoirs, levees, spillways and floodways, and in such event just compensation shall be paid. Provided that the Grand River Dam Authority shall have the right to cross transmission lines of other electric utility companies under proper engineering standards of construction as approved by the Corporation Commission;

(i) Subject to the provisions of this act, from time to time sell, which shall include, but not be limited to, an installment sale agreement, lease with nominal purchase options, or otherwise dispose of any property of any kind, real, personal or mixed, or any interest therein, which shall not be necessary to the carrying on of the business of the district;

(j) To overflow and inundate any public lands and public property and to require the relocation of roads and highways in the manner and to the extent necessary to carry out the purposes of this act; provided, that said district shall be liable in damages to the State of Oklahoma or any subdivision thereof for any injury occasioned or expense incurred by reason thereof;

(k) To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate any and all facilities of any kind necessary, incidental or convenient to the exercise of such powers, rights, privileges and functions;

(l) To sue and be sued in its corporate name in contracts, reverse condemnation, tort, equity, mandamus and similar actions and in its own name plead and be impleaded, provided, however, that any and all actions of law or in an equity against the district shall be brought in the county in which the principal office of the district shall be located or in the county where the cause of action arose;

(m) To adopt, use and alter a corporate seal;

(n) To make bylaws and promulgate rules in accordance with the provisions of the Administrative Procedures Act for the management and regulation of its affairs;

(o) To appoint officers, agents and employees, to prescribe their duties and to fix their compensation; and enter into contracts with labor unions, ~~provided, that contracts with labor unions shall not abrogate the rights of the district to cooperate and carry out Veterans on the Job Training;~~

(p) To make contracts and to execute instruments necessary, incidental or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act;

(q) To borrow money for its corporate purposes and, without limitation of the generality of the foregoing, to borrow money and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and, in connection with any such loan or grant, to enter into such agreements as the United States of America or such corporation or agency may require; and to make and issue its negotiable bonds for money borrowed, in the manner provided in this act. Nothing in this act shall authorize the issuance of any bonds, notes or other evidences of indebtedness of the district, except as specifically provided in this act;

(r) To ~~prescribe~~ promulgate and enforce rules for the use for recreational and commercial purposes of the lakes created by the district by impounding the waters of said lakes, and the shorelands of the district bordering thereon, including the use of firearms, the inspection of all boats of every character proposing to operate or operating on said lakes, the issuance of permits for the operation of boats, surfboards, aquaplanes, para-sails, sea-skis or similar devices on said lakes for hire; the charging and collection of fees for the inspection or operation of such boats, surfboards, aquaplanes, para-sails, sea-skis or other similar devices on said

lakes for hire; preventing the launching or operation of any commercial or for-hire boat, surfboard, aquaplane, para-sails, sea-ski or similar device for hire, on the waters of said lakes, without a certificate of inspection and a permit for such use; prescribing the type, style, location and equipment of all wharves, docks and anchorages along the shores and upon the water of said lakes; the issuance of permits for wharfage, dock or anchorage privileges and charging fees for such commercial or private permits; and the establishment and maintenance of public wharves, docks or anchorages and the charging and collection of fees for the use thereof by the public; to appoint or employ such persons as the district may deem proper and suitable for the purpose of enforcing such rules and regulations as may be issued hereunder, or as may be issued pursuant to the provisions of Sections 4200 et seq. of Title 63 of the Oklahoma Statutes, and for the enforcing of the provisions of this act, and all violations of criminal laws occurring within the boundaries of the counties where real property owned or leased by the Grand River Dam Authority is located, which employees shall have the power of peace officers during the performance of those duties, except in the serving or execution of civil process; and

(s) To do any and all other acts or things necessary, incidental or convenient to the exercise of the powers, rights, privileges or functions conferred upon it by this act or any other act or law. Provided said district shall be liable for damage caused by said district, its agents, servants and employees in creating, constructing, maintaining or operating said district to any corporation, partnership, person or individual whose property, either real or personal, within or without said district, has been damaged and said damages may be determined by appropriate action as provided by law. Nothing in this act shall be construed as rendering the district liable for damage where it is not liable on general principles of law or statute or Constitutional provision.

Provided, however, that in the course of exercising its powers as herein enumerated, the said district shall at all times consider the rights and needs of the people living within and upon the land lying within the watershed of the rivers or streams developed by the district; provided, however, that nothing herein shall prevent the district from selling for irrigation purposes within the boundaries of the district any water impounded by it under authority of law, provided that nothing herein contained shall authorize the state to engage in agriculture except for educational and scientific purposes and for the support of its penal, charitable, and educational institutions.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 863A, is amended to read as follows:

Section 863A. A. The powers, rights, privileges and functions of the Grand River Dam Authority, hereinafter referred to as the district, shall be exercised by a board of nine (9) directors, which includes two ex officio ~~voting~~ members as set out below, herein called the Board, to be appointed by the Governor, by and with the advice and consent of the Senate, all of whom, except as herein specifically provided, shall be residents of the district.

No more than two ~~(2)~~ directors shall be residents of the same county; provided, that no person shall be eligible for such appointment if the person, during the three (3) years prior to the appointment, has been employed by an investor-owned utility company of any kind or character whatsoever, or has held a federal, state or county office, elective or appointive. Each director, except as herein specifically provided, shall have lived in ~~said~~ the district ~~five~~ ~~(5)~~ three (3) years prior to appointment of that director.

B. On and after January 1, 1999, as vacancies occur on the Board of Directors of the district, appointments shall be made by the Governor as follows:

1. For the vacancy occurring in January 1999, the rural electric cooperative customers of the district, including any rural electric cooperative receiving its electricity from any wholesale cooperative customer of the district, shall meet and select three ~~(3)~~ nominees, which shall be officials of a rural electric cooperative served by the district, to forward to the Governor within thirty (30) days of the vacancy occurring in January 1999 and thereafter. The Governor shall appoint one person from the list of nominees submitted by the cooperative customers;

2. For the vacancy occurring in January 2000, the municipal customers of the district shall meet and select three ~~(3)~~ nominees, which shall be elected or appointed municipal officials or chief executive officers of a municipality served by the district, to forward to the Governor within thirty (30) days of the vacancy occurring in January 2000 and thereafter. The Governor shall appoint one person from the list of nominees submitted by the municipal customers;

3. For the vacancy occurring in January 2001 and, thereafter, the Governor shall appoint an at-large director;

4. For the vacancy occurring in January 2002, the industrial customers of the district shall meet and select three ~~(3)~~ nominees to forward to the Governor within thirty (30) days of the vacancy occurring in January 2002 and thereafter. The Governor shall appoint one person from the list of nominees submitted by the industrial customers;

5. For the vacancy occurring in January 2003, the Grand River Dam Authority Lakes Advisory Commission shall meet and select three nominees to forward to the Governor within thirty (30) days of the vacancy occurring in January 2003 and thereafter. The Governor shall appoint one person from the list of nominees submitted by the Lakes Advisory Commission;

6. For the vacancy occurring in January 2004, the President Pro Tempore of the Senate shall submit three ~~(3)~~ nominees to the Governor within thirty (30) days of the vacancy for the appointment to the district of the vacancy occurring in January 2004 and thereafter. In the event the Governor rejects the nominees first submitted by the President Pro Tempore, the Governor may make a one-time request to the President Pro Tempore to submit a list of three different nominees. The Governor shall appoint one person from the nominees submitted by the President Pro Tempore;

7. For the vacancy occurring in January 2005, the Speaker of the House of Representatives shall submit three ~~(3)~~ nominees to the Governor within thirty (30) days of the vacancy for the appointment to the district of the vacancy occurring in January 2005 and thereafter. In the event the Governor rejects the nominees first submitted by the Speaker of the House of Representatives, the Governor may make a one-time request to the Speaker of the House of Representatives to submit a list of three different nominees. The Governor shall appoint one person from the nominees submitted by the Speaker of the House of Representatives;

8. On and after January 1, 1999, the State Bond Advisor or his or her designee, whether a resident of the district or not, shall serve as an ex officio, ~~voting~~ director of the district;

9. On and after January 1, 1999, the Oklahoma State Treasurer or the Treasurer's designee, whether a resident of the district or not, shall serve as an ex officio, ~~voting~~ director of the district.

C. 1. The terms of office of the directors first taking office after January 1, 1999 shall be for a term of seven (7) years and shall expire as provided in this section; one on the second Tuesday of January, 2008; one on the second Tuesday of January, 2009; one on the second Tuesday of January, 2010; one on the second Tuesday of January, 2011; one on the second Tuesday of January, 2012; one on

the second Tuesday of January, 2013; and one on the second Tuesday of January, 2014.

2. A successor to a director of the Board shall be appointed in the same manner as the original directors and shall have a term of seven (7) years from the date of the expiration of the term for which the predecessor was appointed.

3. Any director appointed to fill a vacancy on the Board occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term.

4. No director shall be appointed to more than one full seven-year term; provided, however, that a director may fill the unexpired portion of a term in addition to one full seven-year term.

D. Each director shall qualify by taking the official oath of office prescribed by general statute. Any director may be removed from office for just cause by the Governor.

E. Each director shall have a demonstrated capacity in business, finance or professional fields.

F. Each director shall be allowed actual and necessary expenses incurred by the director in attending the meetings of the Board and in attending to the authorized business of the district pursuant to the State Travel Reimbursement Act. No director shall, at the same time such director is serving on the Board, hold any other position with the Grand Driver Dam Authority.

G. The time and place of the regular meetings and the manner in which special meetings may be called shall be set forth in the bylaws of the said Authority. ~~Four~~ Five voting directors shall constitute a quorum at any meeting, and, except as otherwise provided in this act or in the bylaws, all action may be taken by the affirmative vote of the majority of the Board present at any such meeting, except that no contracts which involve an amount greater than Five Thousand Dollars (\$5,000.00), or which are to run

for a longer period than one (1) year, and no bonds, notes or other evidence of indebtedness, and no amendment of the bylaws, shall be valid unless authorized or ratified by the affirmative vote of at least ~~four~~ five voting directors.

SECTION 3. This act shall become effective July 1, 2002.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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