

HOUSE  
STUDY

GROUP bill analysis

5/24/85

SB 249  
Sharp (C. Evans)  
(CSSB 249 by C. Evans)

SUBJECT: Continuation and reorganization of the Texas Water Development Board and the Texas Water Commission

COMMITTEE: Government Organization: committee substitute recommended

VOTE: 8 ayes--Wilson, Arnold, Granoff, C. Harris, A. Hill, P. Hill, Messer, T. Smith

0 nays

1 present, not voting--C. Evans

WITNESSES: For--None

Against--None

On--Evelyn Bonavita, League of Women Voters

BACKGROUND: In 1977 the Legislature merged three predecessor agencies into the Texas Department of Water Resources (TDWR).

The first of these agencies was the Texas Water Development Board (TWDB), created in 1957 to administer the Water Development Fund, a financing mechanism that uses state-bond proceeds to buy local political subdivisions' water bonds. In 1965 the board assumed planning and water-development duties; currently, it is a six-member appointed board that meets at least monthly and serves as the policymaking body of TDWR. The board's policy is administered by a full-time executive director under its exclusive control.

The second agency was created in 1913 to regulate surface-water rights; now known as the Texas Water Commission (TWC), it is a three-member, full-time appointed commission that rules on permits, adjudicates water rights, issues enforcement orders, and in other ways acts as the judicial arm of TDWR with the aid of an office of hearings examiners under its exclusive control.

The third agency was created in 1961 to regulate sewage-treatment plants; later it was renamed the Texas Water Quality Board and given expanded powers to regulate septic tanks and administer water-quality planning grants and loans. Currently, state

BACKGROUND:  
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water-pollution policy is set by the Water Development Board and administered by the executive director.

TDWR's 1984-1985 biennial budget was \$62.7 million. In fiscal year 1983, its \$33 million budget was funded 55 percent from general revenue, 40 percent from federal funds, and 5 percent from special-purpose funds and interagency contracts. The agency employs 923 persons in an Austin office and 16 district offices around the state. Its major programs concern pollution control, management of water use, and water development and planning.

Water-Quality Programs

The department issues permits to industries and cities that generate solid waste, hazardous waste, and sewage; monitors water quality; and inspects permittees' facilities. It issues permits for underground disposal of wastes via injection wells. TDWR also administers federal and state grant and loan programs intended to help local governments meet water-quality standards.

Water-Use Management

Surface water in Texas' rivers and streams is state property. TDWR allocates its use through a permit system that applies to virtually everyone who impounds, diverts, or otherwise uses surface water.

Water Development and Planning

TDWR by law must maintain a long-range plan to forecast statewide water supply and demand. The agency lends bond proceeds and directly appropriated funds to river authorities and other political subdivisions to build reservoirs, water-treatment facilities, pipelines, and other projects.

Relation to Other Agencies

The Public Utility Commission currently regulates retail water and sewer rates in Texas. TDWR currently rules on rates only when a wholesale contract buyer or seller of water or sewer services (such as a city or a river authority) petitions the agency for a rate hike.

Currently, approval of the design of a sewage-treatment plant is consolidated in TDWR's construction-grants division if the plant is funded by the federal

BACKGROUND:  
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Environmental Protection Agency through its construction-grants program. Other plants' designs go through a two-part approval process. The applicant first submits "conceptual designs" to TDWR's permits division in a public hearing. After TDWR grants a permit, the design goes to the Health Department's water and wastewater division, which either grants or withholds "final design approval" without a hearing.

Tex. Water Code sec. 27.0511 requires the Railroad Commission, when considering new permit applications for oil wells that propose to inject fresh water into the oil-producing formation, to consider whether other substances, such as saltwater, brackish water, or carbon dioxide, could substitute feasibly and economically for fresh water.

TDWR and the Texas Department of Health regulate hazardous waste under several federal and state statutes. TDWR regulates industrial hazardous waste (about 90 percent of the total); TDH regulates waste from all other sources, including municipal hazardous waste. Regulated facilities include dumps, surface impoundments, treatment plants, waste piles, and storage facilities.

Unless continued by the Legislature, TDWR will be abolished on Sept. 1, 1985.

DIGEST:

CSSB 249 would continue the agency in a new form until Sept. 1, 1997. The bill would change the department's organization, transfer other state agencies' jurisdictions into the Texas Water Commission, and alter current methods of enforcement, financing, and administration. The bill would also set up a committee to study river authorities and other water districts.

Reorganization

The bill would dissolve TDWR and divide its functions between the Water Development Board and the Water Commission. The commission would assume primary responsibility for administration of state water law, regulatory policy, and enforcement; the board would retain jurisdiction over the financing and planning of water projects.

TWC would be responsible for all aspects of water rights; pollution control; state oversight of river

DIGEST:  
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authorities, municipal utility districts, and other water districts; injection-well programs currently under TDWR; cloud seeding; coastal and other spill-response programs; water wells and ground-water programs; feasibility studies on certain federal projects; regional solid-waste planning; solid-waste and hazardous-waste programs assigned to the commission under the Solid Waste Disposal Act (VACS art. 4477-7); the national flood-insurance program; retail and wholesale water rates; the state program to clean up abandoned hazardous-waste dumps; and all other functions previously assigned to TDWR except those that the bill would assign to the board.

The commission would hire an executive director, a general counsel, and a chief clerk. The executive director could hire other staff to perform duties transferred to the commission from TDWR.

The Water Development Board would retain control of the statewide water plan and various bond and other financial-assistance programs. The board would be the state's liaison agency with the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation. Authority over forms of application and designation of local sponsors for federal projects would be transferred from TWC to the board. Day-to-day handling of applications and petitions would be carried out by an executive administrator hired by the board, and by a development-fund manager, planning director, and general counsel hired by the executive administrator and approved by the board. It would continue to appoint the board members of the San Jacinto and Lower Neches Valley river authorities.

#### Transfers of Jurisdiction and Interagency Relations

CSSB 249 would transfer jurisdiction over retail water and sewer rates from the Public Utility Commission to the TWC and exempt private water-supply or sewer-service corporations from regulation by excluding them from the definition of "water and sewer utility." The PUC would have to transfer all its files on water and sewer utilities to TWC on March 1, 1986.

The bill would specify that sewer plants reviewed by TWC need not be reviewed by the Health Department. It would also give TWC 30 days to submit written comments on the feasibility of substituting other substances for fresh water in secondary oil-recovery operations.

DIGEST:  
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The bill would transfer to TWC the Health Department's regulatory authority over hazardous waste.

#### Enforcement

CSSB 249 would require enforcement hearings for any permitted facility that was in substantial noncompliance for four months' time (less if an emergency existed). The commission would have the power to compel the principals or other persons in charge of such a facility to attend the hearing, and the commission would have to approve any resulting compliance agreements.

The bill would increase from \$1,000 to \$10,000 the maximum civil and criminal penalty for water-pollution violations. Violations of the statute on state-certified irrigators (VACS art. 8751) would be subject to civil penalties up to \$1,000.

It would also authorize the commission to assess administrative penalties up to \$10,000 a day for water-pollution violations and violations of the Solid Waste Disposal Act.

#### Financial Provisions

CSSB 249 would require the state to pay both the maintenance and operations expenses associated with releases of water for bays and estuaries from a reservoir in which the state owned an interest on Sept. 1, 1985. The state would also have to pay that part of the reservoir's capital cost commensurate with any resulting decrease in the reservoir's "firm yield" (i.e., the amount of water it can reliably store under record drought conditions).

#### Administration

Under the bill, the commission and the board would enter into memoranda of understanding to clarify jurisdiction over matters that the law does not assign to either body. MOUs between TWC and the board or other state agencies would have to be adopted by rule. Requests for information back and forth between TWDB and TWC would have to be honored within 90 days.

The commission would assume control of its own budget and hire its own executive director, general counsel,

DIGEST: chief clerk, and public-interest advocate, whose duties  
(continued) would be similar to those performed currently under the  
TDWR board.

The bill would change some of the commission's procedures from those currently used by TDWR. Notice of permit applications would be sent to interested parties when the application was ruled "administratively complete," i.e., when the commission had confirmed receipt of all required data from the applicant, but before a hearing date had been set. The bill would also require the commission to consider the effects on water quality of issuing water-rights permits, eliminate hearings in uncontested water-rights cases after fulfillment of certain notice requirements, and raise from \$1,000 to \$100,000 the threshold above which TWC would have to approve levee-improvement districts' proposed approved reclamation plans.

The bill would also require each sewer plant under TWC jurisdiction to employ one person who held a certificate of competence issued by the commission.

Some administrative procedures of the board would also be changed under CSSB 249. The development-fund manager would assume some duties of the current executive director. Among these would be to decide whether projects included flood control as a purpose and to authorize alterations in approved plans (other than sewer plants or other facilities that require commission approval). The executive administrator would assume financial and planning duties currently performed by the executive director, including research. The board could not deliver funds for a sewer plant until the applicant's specifications had been approved and a permit had been issued by the commission. The board would also have to submit all flood-control plans to the commission.

For both commission and board, the bill would also include standard Sunset Commission recommendations on equal-opportunity employment, grounds for removal from office, conflict of interest, clarification of the duties of commissioners and staff, standards of conduct, public participation, biennial audits, reports to the Governor and both legislative houses, merit pay, and career ladders.

River Authority Study Committee

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The bill would set up a study committee to investigate the powers and duties of 19 river authorities, the Colorado River and North Texas municipal water districts, the Tarrant County WCID No. 1, and the Gulf Coast Waste Disposal Authority, and to assess whether they should be more accountable to the state. The committee would be made up of three river-authority representatives appointed by the Governor, two senators appointed by the Lieutenant Governor, two House members appointed by the Speaker, and three environmentalists, one each appointed by the Governor, Lieutenant Governor, and Speaker. The committee chair would be appointed by the Governor. The committee would have to report by Dec. 1, 1986.

The bill would also require the state auditor to audit each river authority or district regularly at the river authority's or district's expense.

SUPPORTERS  
SAY:

This bill will remedy a nagging conflict-of-interest problem in the Water Resources Department. It will put the related planning, financing, and water-development functions in a separate agency under TWDB and let TWC run everything else. This avoids the organizational conflicts that stem from TWC's being simultaneously an independent, statutorily created agency and dependent on information from divisions of the department that are under the development board's control. In the past, TWC had to depend on the executive director's staff to provide draft permits, permittees' compliance records, and administrative support. A recent problem traceable to such conflicts of interest arose last year, when TWC ordered water released from Lake Texana (formerly Palmetto Bend) reservoir, but the executive director, who currently is responsible for enforcing TWC permits, refused to implement the order because the board owned a share of the water.

Under the bill, all permitting and enforcement functions will be under the commission where they belong, not under an official responsible solely to the development board. Wherever gray areas remain, they will be taken care of by MOUs that become agency rules under the Administrative Procedure Act, with full public participation in the process.

The bill expedites uncontested hearings, requires the commission to consider water quality when issuing use permits, and toughens enforcement with mandatory

SUPPORTERS  
SAY:  
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hearings for chronically noncomplying permit holders and stiffer penalties. The \$10,000 maximum penalty in no way endangers Texas' chances of obtaining federal delegation of authority under the National Pollutant Discharge Elimination System (NPDES); Texas's record under NPDES was investigated last year by the federal General Accounting Office; the investigation showed that the state's municipal and industrial facilities had the best compliance record of any of the 12 states studied. If Texas can't get NPDES delegation, nobody can.

The bill makes solid progress in other areas, too. It will help the state find out once and for all whether river authorities and other large water districts need more legislative oversight. It strengthens the water agency's ability to encourage conservation of fresh water in secondary oil recovery. It consolidates hazardous-waste authority in TDWR where it belongs. And it lightens regulations where they do little or no good: in the case of water-supply and sewage-service corporations, for example, and in getting rid of duplicate water and health agency reviews for sewer plants.

As for rate-setting jurisdiction, TWC, not the Public Utility Commission, should be in charge. The PUC has inadequate resources and insufficient qualifications in water matters to retain its present regulatory authority over private water and sewer utilities. Consolidation of all water and sewer regulation in TWC would coordinate and equalize water regulation. Perhaps more important, it would eliminate unnecessary duplication and red tape. Under the current system, private utilities have to go through the state Health Department for approvals of sewer-plant designs, TDWR for discharge permits, and the PUC for approval of rates.

OPPONENTS  
SAY:

This bill has many good features, but the Senate version is a better bill. Its maximum \$25,000 administrative penalty complies with federal requirements for delegation to Texas of the NPDES program of the Clean Water Act. By lowering the maximum to \$10,000, this bill endangers delegation. No delegation would mean no one-step federal and state permitting process, and that would mean continued unnecessary expense and red tape for every regulated business in Texas, all for the sake of being soft on a few polluters.



OPPONENTS  
SAY:  
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The original Senate bill is better on several other counts, too. It would allow TWC to impose environmental-mitigation requirements on permittees. It expanded the Administrative Procedures Act's strictures against one-sided (ex parte) contacts between officials and applicants and would give the public early notice of the issuance of temporary discharge permits. It would create an independent public-interest advocate appointed by the Governor, not a commission employee who will have to put the agency bosses' ahead of the public interest. The Senate bill lets the Public Utility Counsel participate in TWC rate hearings; this bill cuts the Public Utility Counsel out, to increase the utilities' chances of scoring increases. The House bill inexplicably exempts private water-supply or sewer-service corporations from regulation by anybody, as if their customers needed no help from government.

Still, both the Senate bill and this bill have serious flaws. The worst is the provision that could leave the state liable to pay up to \$120 million--the total capital cost--of the Lake Texana reservoir. The state would owe that much if all the water in that reservoir was required to maintain the coastal estuaries, because the permit allows the release of 100 percent of the firm yield for the estuaries if necessary. Realistically, the state could expect to pay \$50 to \$55 million for the amount of water the estuaries require. This is water that never should have been impounded in the first place. Under this bill, Texas taxpayers would be asked to pick up the tab for TDWR's abysmal planning and the unrealistic development schemes of a few local people.

OTHER  
OPPONENTS  
SAY:

It would be an unprecedented mistake to let TWC regulate water and sewer rates. No other state gives both rate-making powers and water-quality enforcement responsibilities to the same agency, because these are conflicting mandates. It would be absurd to expect TWC to be a hard-nosed pollution enforcer one day, and the next day listen to the same utility plead for higher rates to help pay off its administrative fine or civil penalty. The PUC's qualifications and track record on water and sewer rates are excellent--though not, of course, from the special interests' point of view--and the TWC would need to add 25 to 30 employees to do the job.