

**SUBJECT:** Sunset review and functions of the Texas Water Development Board

**COMMITTEE:** Natural Resources — committee substitute recommended

**VOTE:** 9 ayes — Counts, T. King, Cook, Corte, Hilderbran, Hope, R. Lewis, Puente, Walker  
0 nays

**SENATE VOTE:** On final passage, April 30 — voice vote

**WITNESSES:** None

**BACKGROUND:** The Texas Water Development Board (TWDB) was created in 1957 as the state’s water planning and financing agency. Its two main goals are to plan and guide development and management of Texas’ water resources and to provide financing for water supply and quality projects. Its main activities include planning for development of water resources, administering low-cost financing programs, and collecting and disseminating water-related data.

In fiscal 2000, the agency spent about \$45 million, 70 percent from general revenue, to administer its programs. It also receives program revenues from loans or grants to political subdivisions to finance water-related infrastructure projects. In fiscal 2000, program revenues totaled \$267 million, with loan repayments accounting for 35 percent; federal funds, 31 percent; interest on deposits and investments, 15 percent; and other sources, 19 percent.

SB 1 by Brown, enacted by the 75th Legislature, designated TWDB as the lead state agency for a new regional water planning process. The agency is to develop a statewide water plan based on regional water plans submitted by regional planning groups. The agency also is charged with expanding water data collection and dissemination and providing greater financial assistance to disadvantaged communities, privately owned public water systems, and agricultural programs.

A six-member, part-time board, composed of members of the general public

from different areas of the state, governs TWDB. Most of the agency's 294 employees are located in Austin, while 22 additional employees are spread among five regional offices and a materials laboratory in Austin. TWDB is subject to review, though not abolishment, under the Texas Sunset Act.

**DIGEST:**

CSSB 312 would require the next sunset review of TWDB in 2013 and would revise the agency's functions, including by requiring TWDB to work with the Texas Department of Housing and Community Affairs (TDHCA) to track progress in assisting colonia residents; requiring TWDB to develop a capital spending plan; and requiring it to develop a pilot program for rural water assistance.

**Colonias.** CSSB 312 would create the Colonia Water and Wastewater Infrastructure Advisory Committee, charged with reviewing the progress of water and wastewater projects for colonias. The committee annually would have to provide an update and make recommendations on:

- ! efforts to connect colonia residents to infrastructure funded by state agencies;
- ! the financial, managerial, and technical capabilities of project operators;
- ! the agencies' management of their colonia programs and projects; and
- ! any other issues related to the effect of state-managed infrastructure programs on colonia residents.

TWDB would have to meet annually with TDHCA concerning progress in meeting the needs of colonia residents.

**Capital spending plan.** The TWDB executive administrator would have to submit biennially a capital spending plan for state-funded programs. The plan would have to identify funding needs, set forth a basis to allocate funding, and provide additional information on why funding was not allocated according to methodologies identified in previous plans and any adjustments to the plan in response to changing water priorities. The administrator would have to consider any commission compliance issues, information from various needs assessments, regional planning group plans, and other appropriate information. The board would have to submit the plan to the Legislature and the Legislative by January 1 of each odd-numbered year and could include the plan in its legislative appropriations request.

**Pilot program for water and wastewater loans for rural communities.**

CSSB 312 would create the rural community water and wastewater loan fund as an account in the water assistance fund. The new fund would contain money transferred from the water assistance fund, proceeds from the sale of political subdivision bonds to the Texas Water Resources Finance Authority, and loan repayments.

The fund could be used to provide financial assistance to rural communities for water and wastewater projects. A loan could not exceed \$250,000 for each project, and its term could not exceed 20 years. With voter approval, a rural city or county could pledge sales and use tax revenue to repay a loan from the fund.

The attorney general would have to review and approve a loan agreement from the fund. Upon the attorney general's approval, the loan agreement would be binding and incontestable in court.

An application for assistance from the fund would have to include:

- ! the name of the rural community and its officers;
- ! the law under which the community operated;
- ! a description of the project for which the assistance would be used;
- ! the total cost of the project;
- ! the amount of state financial assistance requested;
- ! the plan for repaying the project cost; and
- ! any other information that TWDB required.

TWDB could not release funds for a wastewater project until the community had received a permit for construction and operation of the project and other approval that would satisfy requirements of the Texas Natural Resource Conservation Commission.

Before approving an application, TWDB would have to consider:

- ! the needs of the area to be served and the benefits of the project;
- ! the availability of revenue to the community from other sources;
- ! the relationship of the project to overall state needs; and
- ! any other factors the board considered relevant.

The board could approve an application if it found that the public interest required state participation in the project and that the revenue or taxes pledged by the community would be sufficient to repay all the obligations assumed by the community for the next 20 years.

The governing body of a community receiving assistance from the fund would have to require in construction contracts for the project that:

- ! each bidder furnish a bid guarantee equal to 5 percent of the bid price;
- ! each contractor awarded a construction contract furnish performance and payment bonds equal to 100 percent of the contract price;
- ! payments be made in relation to the progress of the work;
- ! no partial payment exceed 95 percent of the amount due unless the project was substantially complete;
- ! payment of the final balance be made only after approval by the community's engineer and governing body and the TWDB executive administrator;
- ! no approval be granted until the work had been completed in a satisfactory manner according to plans and specifications; and
- ! local labor be used whenever possible.

The community would have to file with TWDB a copy of each contract it entered into for construction of the project. TWDB could inspect the project at any time.

A community could not alter plans approved by the executive administrator without the administrator's consent. The administrator could refuse approval of a project for failing to build according to approved plans or in accordance with sound engineering principles or to comply with contract terms.

By January 1, 2005, TWDB would have to submit a report on the program, including number of applications received, number of loans funded, types of projects funded, total funds allocated, available performance measures, and the expected feasibility of and demand for an expanded program.

**Geographic information systems (GIS).** The executive administrator could enter into partnerships with private entities to provide additional funding for access to data from the Texas Natural Resources Information System.

By September 1 of each even-numbered year, the Texas Geographic Information Council would have to submit an inventory of known state agency GIS projects and make recommendations for improving the state's GIS programs.

**Water conservation study.** TWDB would have to conduct a joint study with the State Soil and Water Conservation Board on expanding water conservation efforts and would have to submit the report to the Legislature. The report also would have to be issued as a supplement to the state water plan. The report would have to include:

- ! an assessment of agricultural and municipal water conservation issues;
- ! information on existing efforts;
- ! a discussion of future conservation needs;
- ! an analysis of possible programs and funding for additional conservation efforts;
- ! an assessment of whether statutory changes would be needed to promote water conservation projects better; and
- ! an assessment of TWDB's agricultural water conservation program.

**Findings regarding permits.** TWDB could not release funds from the water loan assistance fund, the rural community water and wastewater loan fund, or for assistance to political subdivisions or economically distressed areas for water supply or wastewater projects for the construction phase of a project until the executive administrator found that a community proposing surface water development had the necessary water rights or that a community proposing groundwater development had the right to use the water that the project would provide.

However, TWDB could release funds for planning and design activities if the executive administrator found that there was a reasonable expectation that such a finding would be made before the release of funds for construction. This allowance would not apply to funds from the rural community water and wastewater loan fund.

**Miscellaneous provisions.** The water loan assistance fund could be used for projects for which federal funds had been deposited into the loan fund or by specific legislative appropriation for a project.

TWDB could establish a separate account in the revolving fund to be used for financial assistance for nonpoint-source pollution control and abatement projects. The account would be composed of funds appropriated by the Legislature, federal funds, interest earnings, and loan repayments.

On the request of a political subdivision, state or federal agency, or an agency from another state, TWDB could perform a hydrographic survey inside or outside of Texas if the information would benefit Texas.

The bill would remove the 50 percent cap on TWDB's investment in a facility for a political subdivision.

TWDB could use money in the agricultural water conservation fund to:

- ! make loans to political subdivisions other than lender districts for agricultural water conservation projects;
- ! make grants to political subdivisions for agricultural water conservation projects; or
- ! make grants to a state agency for funding of any agricultural water conservation project.

A local government could not annex a district in an economically distressed area that was repaying loans for water supply or wastewater projects until the district had repaid the financial assistance.

**Standard sunset provisions.** CSSB 312 would add standard sunset provisions for appointment to the governing board, grounds for removing a board member, conflict of interest, required training for board members, standards of conduct, separation of policy-making and management responsibilities, maintaining complaint information, development of an equal employment opportunity policy, and training on the State Employee Incentive Program.

The bill would take effect September 1, 2001. TWDB would have to adopt rules by March 1, 2002, to administer the pilot program for water and wastewater loans for rural communities and would have to begin providing loans by September 1, 2002.

SUPPORTERS  
SAY:

CSSB 312 would implement sunset recommendations for TWDB. The agency serves a valuable purpose in helping to develop and manage the state's water resources. Although TWDB is not subject to abolishment under the Texas Sunset Act, the bill would require the agency to undergo sunset review again in 2013.

CSSB 312 would help to improve state programs assisting colonia residents by requiring TWDB to work with TDHCA to review each agency's colonia assistance programs. The proposed advisory committee would report to the agencies on the progress of colonia water and wastewater projects. Sunset review indicated that, despite significant spending on water and wastewater projects, many colonia residents were not being served because of project delays. This bill would ensure careful joint oversight of projects to provide water and wastewater service for colonia residents.

Requiring TWDB to develop a capital spending plan for state-funded programs would help to maximize the use of state resources for assistance programs. Federally supported programs, such as the Clean Water and Drinking Water State Revolving Fund, require the agency to develop a spending plan based on TWDB-specified priorities. CSSB 312 would require TWDB to develop a similar plan, but on a more comprehensive scale and for all state-funded programs. A capital spending plan would ensure a more systematic approach to and provide greater accountability for selection of state-funded projects.

Implementing a rural water assistance pilot program would help to ensure that rural areas also benefitted from state spending on water projects. A sunset review comparison of TWDB funding from 1995 to 2000 found that rural areas received about \$393 million during that period, while urban areas received \$2.2 billion. Although projects serving urban areas serve a greater number of people, rural areas often need help to develop or improve failing or inadequate infrastructure. The sunset review found that current TWDB programs do not address the needs of many rural communities. The pilot program proposed by CSSB 312 would determine if loan agreements to rural communities would help to provide the assistance these areas need.

The bill also would allow TWDB to form partnerships with private-sector companies to provide access to the agency's GIS database. The private

sector can make this information available for public customers more quickly and efficiently than TWDB can. The bill also would expand efforts to develop a state water conservation plan. Such a plan would help to improve Texas' efficient use of its groundwater and surface water resources.

OPPONENTS  
SAY:

CSSB 312 would not do enough to help colonia residents. These areas historically have been underserved by state-funded programs, and an annual progress review would not be sufficient to remedy the lack of progress. Additional state funding is needed to help these residents obtain the same basic level of water and wastewater service enjoyed by other Texans.

Other programs proposed by the bill would cost too much. The fiscal note estimates a need for about \$3 million per year in fiscal 2003 and beyond for debt service on grants for brush-control programs administered by other state agencies. Despite the potential water conservation benefits, the state should not be spending money on clearing brush while colonia residents lack basic water and sewer service.

NOTES:

The bill's fiscal note estimates that it would cost the state \$1 million in general revenue in fiscal 2002 for grants from the water assistance fund. Debt service on bonds issued to provide grants to state agencies for brush control would total an estimated \$3 million annually over seven years, beginning in fiscal 2003.

Major changes made by the committee substitute to the Senate engrossed version include eliminating the colonia self-help program and account, creating the Colonia Water and Wastewater Infrastructure Advisory Committee, and authorizing TWDB to make grants to state agencies for agricultural water conservation projects.

The House companion bill, HB 3017 by Chisum, et al., was placed on the House Local, Consent, and Resolutions Calendar for May 5 but then withdrawn and returned to the House Calendars Committee.