

SUBJECT: Continuing the State Soil and Water Conservation Board

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 8 ayes — Hardcastle, C. Anderson, C. Howard, Hughes, Isaac, Kleinschmidt, Landtroop, Lozano

0 nays

1 absent — Miles

WITNESSES: For — (*Registered, but did not testify:* Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Seth Terry, Texas Farm Bureau)

Against — None

On — Rex Isom, Texas State Soil and Water Conservation Board; (*Registered, but did not testify:* Sarah Kinkle, Sunset Advisory Commission)

BACKGROUND: The Texas State Soil and Water Conservation Board (State Board) works directly with owners and operators of agricultural land to develop and implement conservation plans involving land treatment measures for erosion control, water quantity, and water quality purposes. The State Board provides technical and financial assistance to assist the operation of 216 local soil and water conservation districts and serves as the lead state agency for the prevention, management, and abatement of nonpoint source pollution from agricultural and forestry-related activities.

The State Board also administers grant programs for the maintenance and repair of flood control dams, for water supply enhancement through selective brush control, for development of water quality management plans, and for management and abatement of agricultural nonpoint source pollution. With the exception of the non-point source grants, which are largely federally funded, the State Board operates these grant programs on a cost-share basis, using state funding and requiring grantees to pay a portion of the total costs or provide in-kind services.

The agency performs no enforcement functions. All the of the State Board's programs and services are voluntary in nature.

The State Board includes seven members, with five elected from each of the state's five soil and water conservation statewide districts and two appointed by the governor. Those appointed by the governor must be actively engaged and have a land interest in a business related to agriculture and cannot be members of the board of directors of a conservation district.

The State Board employs a staff of 68. More than half of the State Board's employees work in 10 regional or program offices away from the headquarters in Temple. In fiscal 2010, the State Board was appropriated \$28.6 million, nearly double its fiscal 2009 appropriation.

The State Board last underwent Sunset review in 2001 and was continued by the 77th Legislature. The agency is subject to the Texas Sunset Act and is scheduled to expire September 1, 2011, unless continued by the Legislature.

DIGEST:

CSHB 1808 would continue the State Soil and Water Conservation Board until September 1, 2023. It would require the State Board to establish program goals and evaluation criteria and to monitor the extent to which grantees complied with grant terms and achieved their goals. CSHB 1808 also would require the State Board to prioritize water supply enhancement projects for each funding cycle, assist applicants in locating those who would conduct a feasibility study, prioritize cost-share applications, and perform follow-up inspections for water supply enhancement cost-share contracts. The bill would allow the State Board to accept funds for the Texas Invasive Species Coordinating Committee. CSHB 1808 would provide a special purpose review to be conducted along with other Sunset reviews in 2015.

The bill would add and modify standard sunset provisions governing governor appointments to the board, grounds for removal and training of all board members, maintenance of information on complaints, and rulemaking and dispute resolution.

Setting goals and monitoring performance of grant programs. CSHB 1808 would require the State Board to develop goals for the water quality management, water supply enhancement, and flood control grant

programs, including desired program results and descriptions of program beneficiaries.

The bill also would require the State Board to:

- establish statewide evaluation criteria to document grantee compliance with grant conditions;
- monitor compliance with the evaluation criteria;
- analyze the extent to which grant programs achieved goals; and
- publish the analysis on the State Board's website or in any annual publication the state board is required by statute to publish.

Water Supply Enhancement Program

Purpose and focus of the program. CSHB 1808 would change the statutory name of the Texas brush control program to the water supply enhancement program.

The purpose of the water supply enhancement program would be to increase available surface and groundwater through the control, removal, and reduction of brush species detrimental to water conservation and the revegetation of the land.

CSHB 1808 would not limit the State Board's authority to perform brush control under any other program that it administers.

Rank and prioritization of water supply enhancement projects. CSHB 1808 would remove the requirement that the plan rank areas of the state in need of a brush control program. Instead, the State Board would be required to adopt rules establishing criteria for accepting project proposals and a system to prioritize projects for each funding cycle, giving priority to projects that balanced the most critical water conservation need and the highest projected water yield.

The State Board would rank project proposals based on the following criteria:

- water conservation need, based on the State Water Plan;
- the project's projected water yield, based on soils, slope, land use, vegetative and brush type and distribution, and proximity of the brush to a stream or channel;
- methods of brush removal;
- landowner cost-share rates;
- location and size of the project;
- budget and grant funding request;
- implementing schedule;
- the administrative capacities of those managing the project; and
- any other criteria deemed relevant, including scientific research.

The plan would have to list the goals for the water supply enhancement program, including:

- the intended use of the water conserved by the program, such as agricultural use or drinking water purposes; and
- the populations that the program will target.

Each proposed project would have to state the projected water yield of the project as modeled by a person with appropriate credentials, such as a hydrologist.

The State Board would be required to work with stakeholders to develop standard methods for reporting projected water yield.

Cost-sharing. A person, including a political subdivision, would apply for cost-sharing contract with the district where the contract was to be performed.

Feasibility studies. The State Board would be required to establish a process to help those submitting project proposals to locate a person with relevant expertise to conduct a feasibility study using a water yield model. The State Board could dedicate a portion of its appropriation to fund part or all of a feasibility study and establish procedures to distribute the money. For the state to fund a portion of a feasibility study, applicants would have to include the project's anticipated impact on water resources.

Follow-up on brush-control activities. The State Board would have to create a 10-year plan with each applicant awarded a cost-sharing contract that included provisions for :

- brush control or other water supply enhancement activities;
- follow-up brush control;
- a requirement to limit the average brush coverage on the land to 5 percent throughout the 10-year plan; and
- periodic status inspections.

Any follow-up brush control treatment would be done at no additional cost to the state.

The State Board would need to include in an annual report to the governor, the lieutenant governor, and the speaker of the House a comprehensive analysis of the water supply enhancement program's effectiveness and a report on participant compliance with the plans created.

Texas Invasive Species Coordinating Committee. CSHB 1808 would allow the State Board to accept and administer funds from the state or federal government or other sources to carry out its functions as a member of the Texas Invasive Species Coordinating Committee.

Special purpose review in 2015. CSHB 1808 would require the Sunset Advisory Commission to conduct a special purpose review of the State Board in 2015. The review would be limited to the agency's implementation of recommendations made by the Sunset Commission to the 82nd Legislature regarding the water quality management plan, flood control, and the brush control/water supply enhancement programs.

Repealers. CSHB 1808 would repeal certain sections of the Agriculture Code relating to the governor's appointees, the Brush Control Fund, and directives for prioritizing projects when demand for funds under the cost-sharing program was greater than funds available.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the members of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1808 would require the State Soil and Water Conservation Board's grant processes to have clear goals providing purpose, direction, and meaning to ensure expenditures achieved a desired outcome. The State Board lacks measurable outcomes for assessing the performance of its largest grant programs. Establishing specific, concrete goals would

provide benchmarks for measuring agency efforts in achieving intended outcomes.

The State Board should use a stakeholder process to develop goals and performance measures and routinely use grant results to improve existing programs. The bill would require the agency to consistently monitor grantee activities following the awarding of grants. This would ensure grant terms were met for the life of the grant contract. Current agency processes do not guarantee that grantees meet their obligations over the life of the grant. CSHB 1808 would require the State Board to evaluate results against the goals and measures established at the beginning of the process, which would ensure greater accountability for the use of funds.

Water supply enhancement program. Under certain conditions, removal of water-depleting brush species, such as juniper, mesquite, or salt cedar, leads to increases in available surface and groundwater. This program at the State Board helps to enhance water supplies by offering financial assistance to landowners to remove water-depleting brush species in qualifying watersheds.

Purpose and focus. CSHB 1808 would clarify the program's focus on water supply enhancement. The state's approach currently lacks clarity of purpose. The Legislature intended water supply enhancement to be the focus of the State Board's brush control program. Despite this statutory intent, inclusion of specific projects in appropriations riders over the years has undermined the statutory guidance to prioritize efforts by critical water conservation needs and water yield.

The State Board has successfully implemented these legislatively directed projects and changed the name of its brush control program to reflect this water supply enhancement focus. However, the statute continues to refer to the program by its brush control name, causing confusion by landowners who rarely see immediate water supply impacts to their own land and typically are motivated to participate in the program to achieve the broader benefits of brush control, such as improved pastures and grazing land.

Because of its desire to balance water supply objectives with the personal motivations of potential participants, the State Board has not clearly articulated water supply enhancement as the focus of the program.

Rank and prioritization of water supply enhancement projects. CSHB 1808 would require the State Board to develop a system to rank and prioritize water supply enhancement projects, rather than by areas of the state, based on water conservation need and water yield. Ranking individual projects rather than areas of the state would be a more efficient use of agency time and would establish a logical and straightforward approach to administering the program.

Feasibility studies. CSHB 1808 would require the State Board to establish a process to contract for feasibility studies on new water supply enhancement projects. Feasibility studies map the hydrologic and geologic features of a watershed to provide modeling-based estimates of the amount of water likely to be produced by brush removal in each sub-basin of the watershed, allowing soil and water conservation districts and the State Board to decide which sub-basins to treat to produce the most water. Feasibility studies would provide valuable information to the agency in determining where to establish project areas that would maximize the limited funding for the program by targeting its efforts in geographic areas that were most likely to result in measurable water yield.

OPPONENTS
SAY:

Water Supply Enhancement Program

Purpose and focus. Further defining the water enhancement program's focus would result only in increasing redundancy. Changing the name of the program would narrow its intended scope and unnecessarily and adversely affect participation in this voluntary program.

The State Board intentionally has begun commonly to refer to the program as the water supply enhancement program to emphasize that appropriations recently made to the program were specifically for increasing public surface water supplies through a new goal in the agency's appropriations bill pattern in fiscal 2006-07. However, the narrowed scope of certain appropriations does not necessarily call for narrowing the scope of the overall program. The State Board changed the program's name in an effort to better market the express intentions of the Legislature, but this name change has resulted only in creating additional confusion.

The statutory goal of water conservation may be needed for a variety of uses, including agricultural, recreational, and environmental flows or drinking water from either surface or groundwater. The scope of the

program should remain as currently stated in statute to accommodate future water conservation needs for various uses. The reason this program is situated within the State Board is because it is a brush control program, not because it is a water supply enhancement program. The agency is not currently authorized to conduct water supply enhancement through any means other than brush control.

Feasibility studies. Although feasibility studies would provide valuable information to the agency, they would require either additional appropriations or legislative direction to determine the percentage of program funding that should be removed from cost-share allocations and transferred to feasibility studies. Based on a 25 percent cost-share rate, program funding available for brush removal would be reduced by about \$60,000 to \$80,000 per year.

NOTES:

The companion bill, SB 645 by Nichols, has been scheduled for public hearing in the Senate Committee on Government Organization on April 11.

Comparison of original to substitute. The committee substitute differs from the original bill by:

- removing a requirement to prioritize cost-share contracts and stagger rates;
- removing a requirement to prioritize areas within projects;
- requiring the State Board to consider the highest water yielding areas within a project when prioritizing and establishing a project;
- requiring the State Board to re-evaluate its prioritization of projects for each new funding cycle; and
- removing a provision stating the State Board is the lead agency for the control of terrestrial invasive plant species and allowing the State Board to accept funds relating to the Texas Invasive Species Coordinating Committee.