

SUBJECT: Appraisal of open-space land devoted to water stewardship purposes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Murphy, Ritter, Villarreal, Woolley

0 nays

1 absent — Martinez Fischer

SENATE VOTE: On final passage, April 12 — 31-0

WITNESSES: *(On House companion bill, HB 1733:)*
For — Laura Huffman, The Nature Conservancy of Texas; Jim Robinson, Texas Association of Appraisal Districts; *(Registered, but did not testify: Paige Fish, ConocoPhillips; Ken Kramer, Lone Star Chapter, Sierra Club; James LeBas, Texas Chemical Council, Texas Oil & Gas Association; Brent South, Hunt County Appraisal District)*

Against — None

BACKGROUND: Under Tax Code, sec. 23.51, certain land that is devoted principally to agricultural use, including certain wildlife management, or to timber or forest product production qualifies for appraisal as open-space land.

DIGEST: SB 449 would amend Tax Code, sec. 23.51 to include water stewardship as an activity under the definition of “agricultural use.”

Water stewardship would mean actively using qualified open-space land or timber land in at least three of the following ways to promote and sustain water quality and conservation of water resources:

- erosion control;
- habitat stewardship benefiting water quality or conservation;
- restoration of native aquatic and riparian animal and plant species;
- implementation of practices resulting in reduced water usage from a well that was exempt from certain permitting;

- riparian and wetland habitat and buffer restoration and protection;
- allowance of groundwater and surface water monitoring for data collection purposes in accordance with state water or groundwater management area planning;
- invasive aquatic plant and animal control;
- maintaining a water right on deposit in the Texas Water Trust under certain circumstances; and
- holding a water right that authorized the use of water for instream flows dedicated to environmental needs or bay and estuary inflows under certain circumstances.

The appraised value of qualified open-space land would be based on the category of the land. The category of the land that qualified under the water stewardship valuation would be the category of the land before the water stewardship valuation use began.

The Parks and Wildlife Department, with the assistance of the comptroller, would have to develop standards for determining whether land qualified for a water stewardship valuation. The comptroller would have to designate one chief appraiser from a rural area and one from an urban area to assist in developing the standards. The comptroller would have to adopt the standards by rule and distribute them to each appraisal district. The standards adopted would have to require that:

- a tract of land met specified minimum and maximum size requirements;
- a tract of land had specific water-related attributes based on the intensity of its use and other requirements related to its productivity;
- the landowner held a water right that authorized the use of a specific minimum amount of water for instream flows dedicated to environmental needs or bay and estuary inflows for the land to qualify for appraisal under the bill; and
- the degree to which the land could be developed without becoming ineligible for the water stewardship valuation was specified.

The standards would have to address the water stewardship activities, the region containing the land, and any other factor that the Parks and Wildlife Department or the comptroller deemed relevant.

The standards would have to limit eligibility of a tract of land to the portion of the land that currently was devoted principally to water stewardship purposes.

The standards could include specifications for a written management plan to be developed by a landowner who received a request for a plan from a chief appraiser.

Land would not be eligible for appraisal based on water stewardship use if the land was appraised as qualified open-space or timber land when the water stewardship use began and the land was developed to a degree that precluded it from eligibility for appraisal based on a factor other than water stewardship use.

The standards required under the bill would have to be developed as soon as practicable after the effective date of the bill.

The bill would apply to the appraisal of land for a tax year that began after the tax year when the comptroller adopted and distributed the rules to each appraisal district.

SB 449 would take effect January 1, 2012, but only if SJR 16 by Estes, the constitutional amendment authorizing appraisal of open-space land for water stewardship, was approved by Legislature and the voters. If SJR 16 was not approved, SB 449 would have no effect.

**SUPPORTERS
SAY:**

SB 449 would create an incentive for landowners to partner with the state to protect water quality and increase conservation efforts without negatively impacting the state budget. Over 90 percent of Texas water flows through or under land owned by private individuals, and SB 449 would encourage those landowners to be good stewards of the water.

SB 449 would improve water quality and encourage conservation. Only a landowner already receiving the agricultural valuation would be eligible for the water stewardship valuation. The bill would not broaden eligibility for an agricultural valuation and simply would encourage landowners who already qualified for the valuation to manage their land to benefit Texas' water resources.

One of the suggested water management strategies of the State Water Plan is voluntary land stewardship. The plan recommends controlling nuisance

vegetation and erosion and conserving wetlands to improve the health of the state's watersheds. The plan also warns that Texas will soon face water shortages and advocates active conservation. SB 449 would assist Texas in achieving this important goal and would help to ensure a safe and adequate water supply.

Despite some overlap between the wildlife valuation and the water stewardship valuation, mainly in the areas of erosion control and habitat stewardship, this overlap would have positive effects. The practices that could qualify under both the wildlife valuation and the water stewardship valuation could benefit both wildlife and water, expanding options for landowners to protect valuable resources. Several activities described under SB 449 would be exclusive to the water stewardship valuation, specifically those benefiting aquatic ecosystems and species. The wildlife valuation focuses on land-based wildlife.

The rulemaking process to attain the valuation would be administered by the Texas Parks and Wildlife Department with assistance from appraisal districts. This oversight would ensure a rigorous process to determine if land qualified for the valuation and would prevent potential abuses. The bill would ensure that land receiving the water stewardship valuation could not be developed to change its agricultural nature. If land receiving the water stewardship valuation was developed in a way that violated its open-space designation, it would lose its water stewardship valuation.

A water stewardship valuation under SB 449 would differ from conservation easements in which a landowner enters into an agreement with a qualified trust or government entity, permanently restricting the use of the property. SB 449 would create an annually reviewed tool that would be attractive to landowners uninterested in entering into a permanent agreement with another entity but still desiring the option to take advantage of good water stewardship practices. The bill would not preclude a landowner from entering into a conservation easement, but in order to receive the water stewardship valuation, the landowner would have to engage in at least three of the activities provided under the bill.

While some Texas farmers and ranchers may be engaged in water conservation practices already, they may not be practicing the activities that would be required under the bill. SB 449 would provide an incentive for landowners to voluntarily increase the quantity and quality of their water stewardship practices.

OPPONENTS
SAY:

SB 449 is unnecessary because it would duplicate options that already are in place under the wildlife management valuation. Additionally, conservation easements are being used today to accomplish the same goals that SB 449 would.

The bill also is not needed because farmers and ranchers who qualify for an agricultural valuation are practicing water conservation in order to keep their stocks and crops productive. A separate water stewardship designation is not needed when landowners already practice water conservation. Landowners in Texas already enjoy several tax breaks, and this bill would provide an excessive and unnecessary addition.

Under SB 449, the water conservation valuation could be exploited for tax purposes. A person could get the agricultural valuation and then attain the water stewardship valuation, but then fail to maintain the agricultural use of the land.

NOTES:

The authorizing constitutional amendment, SJR 16 by Estes, is on today's Constitutional Amendments Calendar.

The companion bill, HB 1733 by Ritter, was considered in a public hearing by the House Ways and Means Committee on April 18 and left pending.