

BILL ANALYSIS

Senate Research Center
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S.B. 312
By: Zaffirini
Natural Resources
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DIGEST AND PURPOSE

Currently, the Texas Water Development Board (board) plans for the development of the state's water resources, administers low-cost infrastructure financing programs, and collects and disseminates water-related data. The board is subject to review, but not abolishment, under the Sunset Act. As proposed, S.B. 312 implements the Sunset Advisory Commission's recommendations regarding state-supported funding programs, assistance to rural communities, nonpoint source pollution abatement, water conservation efforts, coordination between the board and the Texas Department of Housing and Community Affairs, and coordination of the state's geographic information systems.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTIONS 13 (Section 15.603, Water Code), 14 (Section 15.909, Water Code), and 15 (Section 16.021, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 6.013, Water Code, to require the Texas Water Development Board (board) to be reviewed during the period in which state agencies abolished in 2013 and every 12th year after 2013 are reviewed, rather than in which state agencies abolished in 2001 and every 12th year after 2001 are reviewed.

SECTION 2. Amends Section 6.052(c), Water Code, to change the word "handicap" to "disability."

SECTION 3. Amends Sections 6.054, 6.057, and 6.058, Water Code, as follows:

Sec. 6.054. REMOVAL OF BOARD MEMBERS. (a) Changes reference from "appointment" to "taking office." Adds language to provide that it is a grounds for removal if a member is ineligible for membership under Section 6.053, 6.057, and 6.058; if the member cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(c) Requires the executive administrator, rather than a board member, to notify the chairman of the board of a potential ground for removal (potential ground), if the executive administrator has knowledge that the potential ground exists. Requires the chairman of the board to then notify the governor and the attorney general that a potential ground exists. Requires that if the potential ground includes the chairman of the board, the executive administrator notify the next highest ranking officer of the board, who is required to then notify the governor and the attorney general that a potential ground exists.

Sec. 6.057. CONFLICT OF INTEREST. (a) Defines "Texas trade association."

(b) Prohibits a person from being a member of the board and from being a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, under certain conditions. Deletes language prohibiting an officer, employee, or paid consultant of a trade association in an industry regulated by the board from being a member or employee of the board under certain conditions.

Sec. 6.058. LOBBYIST PROHIBITION. Prohibits a person from being a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305(Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Amends Section 6.060, Water Code, by adding Subsection (d), as follows:

(d) Requires the board to meet annually with the board of the Texas Department of Housing and Community Affairs to address the agencies' progress in meeting the needs of colonia residents and to receive an update and recommendations from the Colonia Water and Wastewater Infrastructure Advisory Committee, as provided by Section 2306.5851, Government Code. Provides that, for purposes of this subsection, "colonia" has the meaning assigned by Section 2306.581 (Definition), Government Code.

SECTION 5. Amends Chapter 6C, Water Code, by adding Section 6.062, as follows:

Sec. 6.062. REQUIRED TRAINING FOR BOARD MEMBERS. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Entitles a person appointed to the board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Amends Section 6.106, Water Code, to require the executive administrator or the executive administrator's designee, rather than the board, to provide to members of the board and to agency employees, as often as is necessary, information regarding the requirements for office or employment under this code, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 7. Amends Chapter 6D, Water Code, by adding Sections 6.110 and 6.111, as follows:

Sec. 6.110. CAPITAL SPENDING PLAN. (a) Requires the executive administrator of the board, each biennium, to develop and submit to the board for its approval a capital spending plan setting water project priorities to be supported by state-funded programs, including the Texas water development fund, the agricultural water conservation fund, and the water assistance fund.

(b) Requires the plan to perform certain functions.

(c) Requires the executive administrator, in developing the plan, to consider certain

information.

(d) Requires the board to consider the plan at a regularly scheduled meeting and, on approval, submit it to the legislature and the Legislative Budget Board before January 1 of each odd-numbered year. Authorizes the board to include the plan as part of its legislative appropriations request.

Sec. 6.111. SEPARATION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive administrator and the staff of the board.

SECTION 8. Amends Sections 6.154, 6.155, and 6.188, Water Code, as follows:

Sec. 6.154. COMPLAINT FILE. (a) Requires the board to maintain a file on each written complaint filed with the board and requires the file to contain certain information.

(b) Requires the board to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution. Deletes language relating to the board keeping an information file about each complaint filed with the board relating to an entity regulated by the board.

Sec. 6.155. NOTICE OF COMPLAINT. Changes reference from "parties to" to "person filing the complaint and each person who is a subject of," and changes reference from "complaint" to "investigation."

Sec. 6.188. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Makes a conforming change.

(b) Requires the policy statement to include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21 (Employment Discrimination), Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) Requires the policy statement to meet certain requirements. Deletes language relating to certain other criteria to be included in the policy statement. Deletes language requiring the policy statement to be filed with the governor's office before a certain date and requiring the governor's office to develop a biennial report to the legislature based on the information submitted.

SECTION 9. Amends Chapter 6F, Water Code, by adding Section 6.196, as follows:

Sec. 6.196. TRAINING ON STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive administrator or the executive administrator's designee to provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B (State Employee Incentive Program), Government Code.

SECTION 10. Amends Section 15.011(b), Water Code, to add language authorizing the board to

transfer money from the water assistance fund to the rural community water and wastewater loan fund created under Subchapter O of this chapter.

SECTION 11. Amends Section 15.012(c), Water Code, to make a conforming change.

SECTION 12. Amends Section 15.601(a) add language to require the state water pollution control revolving fund to be used to provide financial assistance to private entities for nonpoint source pollution control and abatement projects under Section 15.603(h).

SECTION 13. Amends Section 15.603, Water Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Makes a conforming change.

(h) Authorizes the board to establish a separate account in the revolving fund, to be used solely for providing financial assistance to private entities for nonpoint source pollution control and abatement projects. Requires the account to be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States, interest earnings on amounts credited to the account, and repayments of loans made from the account. Requires the board to adopt rules establishing the criteria for eligibility and the terms of assistance for private entities that receive financial assistance from the account.

SECTION 14. Amends Chapter 15, Water Code, by adding Subchapter O, as follows:

SUBCHAPTER O. PILOT PROGRAM FOR WATER AND WASTEWATER
LOANS FOR RURAL COMMUNITIES

Sec. 15.901. DEFINITIONS. Defines “fund,” “political subdivision,” and “rural community.”

Sec. 15.902. RURAL COMMUNITY WATER AND WASTEWATER LOAN FUND. (a) Provides that the rural community water and wastewater loan fund (fund) is an account in the water assistance fund.

(b) Sets forth the contents of the fund.

Sec. 15.903. FINANCIAL ASSISTANCE. (a) Authorizes the fund to be used by the board to provide loans of financial assistance to rural communities for the construction, acquisition, or improvement of water and wastewater projects that serve a public purpose, as required by federal income tax law.

(b) Authorizes the board to make financial assistance available to a rural community by entering into a loan agreement with the rural community, as provided by this subchapter. Authorizes a rural community to apply for and accept the financial assistance.

(c) Requires the loan agreement to provide for the payment of principal and interest on the debt incurred for the project at a rate to be determined by the board.

(d) Prohibits a loan provided under this subchapter from exceeding \$250,000 for each project, and the term of a loan from exceeding 20 years.

Sec. 15.904. USE OF SALES TAX AS LOAN SECURITY. (a) Authorizes a rural community that is a city or county to pledge a percentage of the sales and use tax revenue received under Chapter 321(Municipal Sales and Use Tax Act) or 323 (County Sales and Use

Tax Act), Tax Code, as applicable, to the payment of debt incurred under a loan agreement entered into with the board under this subchapter if a majority of the voters voting at an election called and held for that purpose authorize the city or county to pledge a portion of that revenue for that purpose.

(b) Provides that Sections 321.506 (Use of Tax Revenue by Municipality), 321.507 (Use of Additional Municipal Sales and Use Tax), and 323.505 (Use of Tax Revenue), Tax Code, do not apply to taxes pledged under this subchapter.

Sec. 15.905. REVIEW AND APPROVAL OF LOAN AGREEMENT BY ATTORNEY GENERAL. (a) Requires that, before a loan agreement may be executed, a record of the proceedings of the board and the rural community authorizing the execution of the loan agreement, the loan agreement, and any contract providing revenue or security to pay the obligation evidenced by the loan agreement be submitted to the attorney general for review.

(b) Requires the attorney general, if the attorney general finds that the loan agreement, contract, and other authorizing proceedings conform to the requirements of the Texas Constitution and this subchapter, to approve them and deliver to the comptroller, the board, and the rural community a copy of the attorney general's legal opinion stating that approval.

(c) Authorizes the board and the rural community to execute the loan agreement after receipt of the attorney general's opinion.

Sec. 15.906. REGISTRATION. Requires the comptroller, on receipt of the documents required by Section 15.905(b), to register the record of the proceedings relating to the execution of a loan agreement.

Sec. 15.907. VALIDITY AND INCONTESTABILITY. Provides that, on approval by the attorney general, registration by the comptroller, and execution of the loan agreement, the loan agreement, a contract providing revenue or security, and any obligation evidenced by the loan agreement are incontestable in a court and are valid, binding, and enforceable according to their terms.

Sec. 15.908. ENFORCEMENT BY MANDAMUS. Authorizes payment of obligations incurred under a loan agreement and other requirements of this subchapter to be enforced in a court by mandamus or other appropriate proceedings.

Sec. 15.909. RULES. Requires the board to adopt necessary rules to administer this subchapter, including rules establishing procedures for application for and award of loans, distribution of loans, and administration of loans and the program established under this subchapter.

Sec. 15.910. APPLICATION FOR ASSISTANCE. (a) Requires the applicant to include certain information in an application to the board for financial assistance from the fund.

(b) Prohibits the board from accepting an application for a loan of financial assistance from the fund unless it is submitted in affidavit form by the officials of the rural community. Requires the board to prescribe the affidavit form in its rules.

(c) Prohibits the rules from restricting or prohibiting the board from requiring additional factual material from an applicant.

(d) Requires the applicant, if an applicant has a program of water conservation, to state in the application that the applicant has such a program and to describe that program in

the manner required by board rules.

Sec. 15.911. FINDINGS REGARDING PERMITS. (a) Prohibits the board from delivering funds under an application for financial assistance from the fund until the executive administrator makes a written finding that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water that the project will provide or that an applicant proposing underground water development has the right to use water that the project will provide.

(b) Prohibits the board, if an applicant includes a proposal for a wastewater treatment plant, from delivering funds for the plant until the applicant has received a permit for the construction and operation of the plant and approval of the plans and specifications for the plant from the Texas Natural Resource Conservation Commission (commission). Prohibits the board from delivering funds for the plant until the board reviews the plans and specifications in coordination with the commission and finds certain information, if the applicant proposes a wastewater treatment plant that is located outside the jurisdiction of this state and that is not subject to the permitting authority of the commission.

Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION. (a) Requires the board, in acting on an application from a rural community for financial assistance for a water project, to consider certain criteria.

(b) Requires the board, in passing on an application from a rural community for financial assistance for a wastewater project, to consider certain criteria.

Sec. 15.913. APPROVAL OF APPLICATION. Authorizes the board by resolution to approve an application for a loan if, after considering the factors listed in Section 15.912 and any other relevant factors, the board finds that the public interest requires state participation in the project and the revenue or taxes pledged by the rural community will be sufficient to meet all the obligations assumed by the rural community during the succeeding period of not more than 20 years.

Sec. 15.914. LIMITATION ON USE OF FUNDS. Requires the board, if there is insufficient money available to fund all applications under this subchapter, to give preference to applications from rural communities that the board finds cannot reasonably finance the project without assistance from the state.

Sec. 15.915. CONSTRUCTION CONTRACT REQUIREMENTS. Requires the governing body of each rural community receiving financial assistance from the board under this subchapter to require in all contracts for the construction of a project that certain requirements are met.

Sec. 15.916. FILING CONSTRUCTION CONTRACT. Requires the rural community to file with the board a certified copy of each construction contract it enters into for the construction of all or part of a project. Requires each contract to contain or have attached to it the specifications, plans, and details of all work included in the contract.

Sec. 15.917. INSPECTION OF PROJECTS. (a) Authorizes the board to inspect the construction of a project at any time to assure that the contractor is substantially complying with the approved engineering plans of the project and the contractor is constructing the project in accordance with sound engineering principles.

(b) Provides that inspection of a project by the board does not subject the state to any civil liability.

Sec. 15.918. ALTERATION OF PLANS. Prohibits a rural community, after the executive administrator approves of engineering plans, from making any substantial or material alteration in the plans unless the executive administrator authorizes the alteration. Requires the commission to give its approval before a substantial or material alteration is made in those plans, for a wastewater treatment plant or other facility required to have commission approval of plans and specifications.

Sec. 15.919. CERTIFICATE OF APPROVAL. Authorizes the executive administrator to consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to the approved plans;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any term of the contract.

Sec. 15.920. REPORT TO LEGISLATURE. (a) Requires the board, not later than January 1, 2005, to report to the legislature on the program established under this subchapter.

- (b) Requires the report to include certain information.

SECTION 15. Amends Chapter 16B, Water Code, by amending Section 16.021 and adding Section 16.022, as follows:

Sec. 16.021. TEXAS NATURAL RESOURCES INFORMATION SYSTEM.

(b) Authorizes the executive administrator, on behalf of the Texas Natural Resources Information System (TNRIS), to enter into partnerships with private entities to provide additional funding for improved access to TNRIS information. Requires the board to adopt administrative rules to describe the process of establishing partnerships, define the types of partnerships that may be formed, establish the fee collection process, and define the nondiscriminatory methods used to determine which private entities may enter into partnerships. Requires any process developed by the board to comply with all applicable laws regarding ethics, purchasing, and contracts.

(d) Requires member entities of the Texas Geographic Information Council (TGIC) that are state agencies to, and authorizes member entities that are not state agencies to, provide information to the TGIC about their investments in geographic information and plans for its use. Requires the TGIC, not later than September 1 of each even-numbered year, to prepare and provide to the board, the Department of Information Resources, the governor, and the legislature a plan that inventories known state agency geographic information systems projects and recommends initiatives to improve the state's geographic information systems programs.

(e) Makes a conforming change.

(f) Makes a conforming change.

Sec. 16.022. WATER CONSERVATION STUDY. (a) Requires the board and the State Soil and Water Conservation Board to jointly conduct a study of the ways to improve or expand water conservation efforts and report to the legislature.

(b) Requires the report to include certain information.

(c) Requires the report to be issued as part of, or as a supplement to, the state water plan.

SECTION 16. Amends Section 17.0871(e), Water Code, to authorize proceeds from the sale excluding accrued interest to be used by the board together with other available money to provide loans of financial assistance to political subdivisions under Chapter 150.

SECTION 17. Amends the heading to Chapter 2306Z, Government Code, as follows:

SUBCHAPTER Z. COLONIAS.

SECTION 18. Amends Sections 2306.584 and 2306.585, Government Code, as follows:

Sec. 2306.584. New heading: COLONIA SELF-HELP CENTER ADVISORY COMMITTEE. Changes reference from “an advisory committee” to “the Colonia Self-Help Center Advisory Committee.”

Sec. 2306.585. New heading: DUTIES OF COLONIA SELF-HELP CENTER ADVISORY COMMITTEE. Makes a conforming change.

SECTION 19. Amends Chapter 2306Z, Government Code, by adding Section 2306.5851, as follows:

Sec. 2306.5851. COLONIA WATER AND WASTEWATER INFRASTRUCTURE ADVISORY COMMITTEE. (a) Sets forth the compositions of the Colonia Water and Wastewater Infrastructure Advisory Committee (committee).

(b) Requires each committee member, except the public member, to reside within 100 miles of the Texas-Mexico border.

(c) Provides that the secretary of state is an ex officio member of the committee.

(d) Requires the committee to review the progress of water and wastewater infrastructure projects affecting colonias.

(e) Requires the committee to present an update and make recommendations to the board and the Texas Water Development Board annually at the joint meeting required by Section 6.060(d), Water Code, regarding certain criteria.

SECTION 20. (a) Requires the Texas Water Development Board to adopt, not later than March 1, 2002, necessary rules to administer the pilot program for water and wastewater loans for rural communities created by Chapter 150, Water Code, as added by this Act.

(b) Requires the Texas Water Development Board to begin, not later than September 1, 2002, to provide loans under Chapter 150, Water Code, as added by this Act.

SECTION 21. Effective date: September 1, 2001.