

BILL ANALYSIS

S.B. 1053
By: Duncan
Natural Resources
Committee Report (Amended)

BACKGROUND AND PURPOSE

S.B. 1053 consolidates three existing financial assistance programs related to agricultural water conservation into one program and establishes a linked-deposit program for agricultural and non-point source pollution loans.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 4 (Section 15.611, Water Code), SECTION 4 (Section 15.616, Water Code), SECTION 5 (Section 17.871, Water Code), SECTION 13 (Section 17.897, Water Code), SECTION 14 (Section 17.898, Water Code), SECTION 19 (Section 17.9021, Water Code), SECTION 21 (Section 17.905, Water Code), SECTION 21 (Section 17.909, Water Code), and SECTION 21 (17.912, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Water Development Board is modified in SECTION 6 (Section 17.879, Water Code) and SECTION 20 (Section 17.903, Water Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 15.602, Water Code, by adding Subdivision (5-a), to define "eligible lending institution."

SECTION 2. Amends Section 15.603, Water Code, by adding Subsection (i), to provide that in addition to authorized purposes under Subsection (a), the revolving fund is held by the Texas Water Development Board (board) to provide linked deposits to eligible financial institutions for loans to persons for nonpoint source pollution control projects.

SECTION 3. Amends Section 15.604(a), Water Code, to authorize the board to use the revolving fund for financial assistance only, including to provide linked deposits to eligible lending institutions for loans to persons for nonpoint source pollution control projects.

SECTION 4. Amends Chapter 15J, Water Code, by adding Sections 15.610, 15.611, 15.612, 15.613, 15.614, 15.615, 15.616, 15.617, and 15.618, as follows:

Sec. 15.610. LINKED DEPOSIT. Provides that a linked deposit is a deposit governed by a written deposit agreement between the board and an eligible lending institution that provides certain directives.

Sec. 15.611. LINKED DEPOSIT PROGRAM. (a) Authorizes the board by rule to establish a nonpoint source pollution control linked deposit program in accordance with this subchapter.

(b) Authorizes an eligible lending institution to participate in the program established under this section as provided by this subchapter.

Sec. 15.612. APPLICATION BY ELIGIBLE LENDING INSTITUTIONS TO PARTICIPATE IN LINKED DEPOSIT PROGRAM. Requires an eligible lending institution, to participate in the nonpoint

source pollution control linked deposit program, to follow certain guidelines.

Sec. 15.613. CERTIFICATION OF PROJECT. (a) Requires an eligible lending institution to obtain from a director of a soil and water conservation district certification of an agricultural or silvicultural nonpoint source pollution control project proposed for the district. Requires the certification to state certain information, including that the applicant of the proposed project has a water quality management plan certified by the State Soil and Water Conservation Board.

(b) Requires an eligible lending institution to obtain from the executive director certification of a proposed nonpoint source pollution control project that is not an agricultural or silvicultural nonpoint source pollution control project. Requires the certification to state that the applicant's proposed project implements the state's nonpoint source pollution management plan.

Sec. 15.614. APPROVAL OR REJECTION OF APPLICATION. Authorizes the board to approve or reject an application of an eligible lending institution to participate in the program. Authorizes the board to delegate its authority to approve or reject an application to the executive director.

Sec. 15.615. DEPOSIT AGREEMENT. Requires the board and the eligible lending institution, if the board approves an application of an eligible lending institution, to enter into a written deposit agreement. Requires the agreement to contain the conditions on which the linked deposit is made. Requires the board, on execution of the agreement, to place a linked deposit from the revolving fund with the eligible lending institution in accordance with the agreement. Provides that a delay in payment or a default on a loan by an applicant does not affect the validity of the deposit agreement.

Sec. 15.616. COMPLIANCE. (a) Requires an eligible lending institution, on accepting a linked deposit, to lend money to an approved applicant in accordance with the deposit agreement and this subchapter. Requires the eligible lending institution to forward a compliance report to the board in accordance with board rules. Requires the board to adopt rules regarding the compliance report.

(b) Requires the board to monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Sec. 15.617. STATE LIABILITY PROHIBITED. Provides that the state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant.

Provides that a linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 15.618. LIMITATIONS ON PROGRAM. (a) Provides that the maximum amount of a loan under the linked deposit program is \$250,000.

(b) Authorizes the board to withdraw linked deposits from an eligible lending institution if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state.

SECTION 5. Amends Sections 17.871(3), (4), (5), and (6), Water Code, to define "eligible lending institution," "fund," "person," and "political subdivision."

SECTION 6. Amends Sections 17.879(c) and (d), Water Code, as follows:

(c) Authorizes the board, by rule or in the resolution or order authorizing issuance of bonds or other resolution or order of the board, to establish an interest and sinking fund and to establish accounts in the funds, including an interest and sinking account, and to transfer money among the funds and accounts.

(d) Authorizes the board to invest and reinvest money in the fund, the interest and sinking fund, and any

account therein in any obligations or securities as provided by bond resolutions, orders of the board, and Section 404.024, Government Code.

SECTION 7. Amends Section 17.880(a), Water Code, to provide that loans, bonds of political subdivisions, and other obligations owned by the state and deposited in the fund or in the interest and sinking fund are considered to be securities under this subchapter.

SECTION 8. Amends Section 17.881(b), Water Code, to make conforming changes.

SECTION 9. Amends Section 17.883, Water Code, as follows:

Sec. 17.883. BOND REVIEW BOARD. Requires the board, prior to issuance of bonds, to estimate demand for conservation programs or projects, rather than loans, based on a survey of eligible participants in the program.

SECTION 10. Amends Section 17.894, Water Code, as follows:

Sec. 17.894. BOND ENHANCEMENT AGREEMENTS; PAYMENT OF EXPENSES. (a) Authorizes the board at any time and from time to time to enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Provides that a bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves.

(b) Authorizes the fees and expenses of the board in connection with the issuance of the bonds and the providing of financial assistance to political subdivisions to be paid from money in the fund, provided that any payments due from the board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on the bonds constitute payments of principal of and interest on the bonds.

(c) Authorizes bond enhancement agreements to include, on terms and conditions approved by the board, interest rate swap agreements; currency swap agreements; forward payment conversion agreements; agreements providing for payments based on levels of or changes in interest rates or currency exchange rates; agreements to exchange cash flows or a series of payments; agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure; or other agreements that further enhance the marketability, security, or creditworthiness of water financial assistance bonds.

SECTION 11. Amends Section 17.895, Water Code, as follows:

Sec. 17.895. SOURCES OF ASSETS. Provides that the fund is composed of certain monies.

SECTION 12. Amends Section 17.896, Water Code, as follows:

Sec. 17.896. REPAYMENT PROCEEDS. Requires the board to designate a transfer of repayment of principal and interest on a loan made under this subchapter to the fund, the interest and sinking fund, or any account in the funds.

SECTION 13. Amends Section 17.897, Water Code, as follows:

Sec. 17.897. CONSERVATION PROGRAM. (a) Defines "conservation program."

(b) Provides that the costs of a conservation program eligible for financial assistance under Section 17.899 are the costs of the capital equipment, materials, labor, preparation, installation, or administration directly

associated with implementing and completing the program.

SECTION 14. Amends Section 17.898, Water Code, as follows:

Sec. 17.898. CONSERVATION PROJECT. (a) Defines "conservation project."

(b) Provides that the costs of a conservation project eligible for financial assistance under Section 17.899 are the costs of the capital equipment, materials, labor, preparation, installation, or administration directly associated with implementing and completing the project.

SECTION 15. Amends Section 17.899, Water Code, as follows:

Sec. 17.899. ELIGIBLE FUND USES. (a) Authorizes money in the fund, excluding money in the interest and sinking fund, to be used by the board to make certain provisions.

(b) Authorizes money in the interest and sinking fund to be used for the payment of bonds or, to the extent there are funds in excess of bond payment requirements, for transfers to the fund, or any other account in the funds.

SECTION 16. Amends Section 17.900, Water Code, as follows:

Sec. 17.900. GRANT TO STATE AGENCY. (a) Requires a state agency seeking a grant for a conservation program or conservation project as provided by legislative appropriation to file an application with the board.

(b) Requires the board, in reviewing an application for a grant, to consider the terms of the legislative appropriation language. Requires the board, to approve the grant, to make the determination required by the legislative language.

(c) Authorizes the board to make money available to a state agency in any manner that it considers feasible, including a grant agreement with the state agency.

SECTION 17. Amends Section 17.901, Water Code, as follows:

Sec. 17.901. GRANT OR LOAN TO POLITICAL SUBDIVISION. Authorizes the board to make a grant or loan to a political subdivision for a conservation program or conservation project. Requires a political subdivision seeking a grant or loan to file an application with the board.

SECTION 18. Amends Section 17.902, Water Code, as follows:

Sec. 17.902. REVIEW OF APPLICATION FOR AND APPROVAL OF GRANT. (a) Requires the board, in reviewing an application by a political subdivision for a grant, to consider certain factors.

(b) Requires the board, to approve a grant to a political subdivision, to find that certain factors exist.

SECTION 19. Amends Chapter 17J, Water Code, by adding Sections 17.9021 and 17.9022, as follows:

Sec. 17.9021. APPLICATION FOR AND APPROVAL OF LOAN. (a) Requires the board, in reviewing an application by a political subdivision for a loan, to consider the ability of the political subdivision to repay the loan and whether the loan will further water conservation in this state.

(b) Requires the board, to approve a loan to a political subdivision, to determine that certain factors exist.

(c) Requires the board by rule to establish the rate of interest it charges for a loan to a political subdivision.

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. (a) Authorizes the board to make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. Prohibits the board from purchasing bonds or securities that have not been approved by the attorney general and registered by the comptroller.

(b) Requires the attorney general, in the event of a default in payment of the principal of or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement, to seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees to cure the default by performing the duties they are legally obligated to perform. Requires the proceedings to be brought in and provides that venue is in a district court in Travis County. Provides that this subsection is cumulative of any other rights or remedies to which the board may be entitled.

SECTION 20. Amends Section 17.903, Water Code, as follows:

Sec. 17.903. CONTRACT AUTHORITY. (a) Authorizes a political subdivision to borrow money for the purposes of this subchapter and to adopt necessary rules to carry out this subchapter. Requires the board to have the power to enter into any contracts to carry out the provisions of this subchapter.

(b) Created from text of existing Subsection (c). Deletes text of existing Subsection (b).

SECTION 21. Amends Chapter 17J, Water Code, by adding Sections 17.904-17.912, as follows:

Sec. 17.904. LINKED DEPOSIT. Provides that a linked deposit is a deposit governed by a written deposit agreement between the board and an eligible lending institution that provides certain criteria.

Sec. 17.905. LINKED DEPOSIT PROGRAM. (a) Authorizes the board by rule to establish an agricultural water conservation linked deposit program in accordance with this subchapter.

(b) Authorizes an eligible lending institution to participate in the program established under this section as provided by this subchapter.

Sec. 17.906. APPLICATION BY ELIGIBLE LENDING INSTITUTIONS TO PARTICIPATE IN LINKED DEPOSIT PROGRAM. Requires an eligible lending institution, to participate in the agricultural water conservation linked deposit program, to perform certain acts.

Sec. 17.907. APPROVAL OR REJECTION OF APPLICATION. Authorizes the board to approve or reject an application of an eligible lending institution to participate in the program. Authorizes the board to delegate its authority to approve or reject applications to the executive director.

Sec. 17.908. DEPOSIT AGREEMENT. Requires the board and the eligible lending institution, if the board approves an application of an eligible lending institution, to enter into a written deposit agreement. Requires the agreement to contain the conditions on which the linked deposit is made. Requires the board, rather than the comptroller, on execution of the agreement, to place a linked deposit from the fund with the eligible lending institution in accordance with the agreement. Provides that a delay in payment or a default on a loan by an applicant does not affect the validity of the deposit agreement.

Sec. 17.909. COMPLIANCE. (a) Requires an eligible lending institution, on accepting a linked deposit, to lend money to an approved applicant in accordance with the deposit agreement and this subchapter. Requires the eligible lending institution to forward a compliance report to the board in accordance with board rules. Requires the board to adopt rules regarding the compliance report.

(b) Requires the board to monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Sec. 17.910. STATE LIABILITY PROHIBITED. Provides that the state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant.

Provides that a linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 17.911. LIMITATIONS ON PROGRAM. (a) Provides that the maximum amount of a loan under the linked deposit program is \$250,000.

(b) Authorizes the board to withdraw linked deposits from an eligible lending institution if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state.

Sec. 17.912. RULES. Requires the board to adopt rules necessary to carry out this subchapter. Requires applications to be in the form and manner as provided by board rules.

SECTION 22. Provides that the agricultural trust fund and the agricultural soil and water conservation fund are abolished and all assets of those funds are transferred to the agricultural water conservation fund.

SECTION 23. Repealer: Chapters 15G, H, and I (Texas Water Assistance Program); and Sections 17.871(2) (Definitions), 17.871(7) (Definitions), and 17.8955 (Conservation Loans for Brush Control and Precipitation), Water Code.

SECTION 24. Requires the Texas Water Development Board to continue to administer a loan made before the effective date of this Act under the pilot program for low-interest loans for agricultural water conservation equipment until the loan is fully repaid. Provides that Chapter 15I, Water Code, is continued in effect for the limited purpose of allowing the board to administer those loans and to pursue remedies if a loan recipient defaults on a loan or otherwise violates the terms of the loan or of any loan guarantee instrument.

SECTION 25. Requires the Texas Water Development Board to continue to administer a conservation loan made before the effective date of this Act under Chapter 17J, Water Code. Provides that Chapter 17J, Water Code, as it existed immediately before the effective date of this Act, is continued in effect for the limited purpose of allowing the board to administer those loans and to pursue remedies if a loan recipient defaults on a loan or otherwise violates the terms of the loan or of any loan guarantee.

SECTION 26. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003

EXPLANATION OF AMENDMENTS

Committee amendment No. 1 provides that state agencies may apply for and receive grants from the Agricultural Water Conservation Fund by getting a specific legislative appropriation, or by applying to the Texas Water Development Board.

The amendment lays out the findings that must be made in either of these cases.