

BILL ANALYSIS

Senate Research Center
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H.B. 1565
By: Canales et al. (Perry)
Water, Agriculture & Rural Affairs
4/28/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Water Development Board (TWDB) provides loans and grants for water supply, water and wastewater treatment, flood control, and agricultural conservation projects, and plans for drought and flood conditions. The Sunset Advisory Commission found TWDB to be well-run, but identified several opportunities to increase the efficiency of TWDB's project review process and improve the effectiveness of the water supply planning process. TWDB is not subject to abolishment under the Sunset Act since it is constitutionally created.

The Sunset Commission also evaluated and found a continuing need for the State Water Implementation Fund for Texas (SWIFT) Advisory Committee. SWIFT provides financial assistance for projects in the state water plan and the advisory committee provides legislative guidance on the fund's operation, function, and structure. The SWIFT Advisory Committee is subject to abolishment under the Sunset Act on September 1, 2023, unless continued by the legislature.

Major Provisions in Engrossed Version

- Amends TWDB's next Sunset review date to 2035.
 - Continues the SWIFT Advisory Committee for 12 years.
- Improves the efficiency of TWDB's project review process.
 - Authorizes TWDB to implement a risk-based approach to project review.
 - Requires TWDB to develop, collect, and analyze performance metrics and establish goals for evaluating its project review process.
- Improves the effectiveness of TWDB's water supply planning process.
 - Requires regional water planning groups to include in regional water plans implementation updates about large projects, including status updates about expenditures, permit applications, and construction.
 - Authorizes regional water planning groups to use a drought worse than the drought of record as the baseline for planning purposes.
- Applies a standard Sunset good government provision on board member training and eliminates three unnecessary reporting requirements.

Comparison of Engrossed Version to the Introduced Version

The engrossed version modifies the introduced of the bill by making the following change:

Rather than requiring TWDB to conduct a feasibility review of certain projects in the state water plan, it requires regional water planning groups to report on the implementation status of large projects.

[Note: While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission, the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to the Texas Natural Resource Conservation Commission.]

H.B. 1565 amends current law relating to the functions of the Texas Water Development Board and continuation and functions of the State Water Implementation Fund for Texas Advisory Committee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 6 (Section 17.276, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 6.013, Water Code, as follows:

Sec. 6.013. SUNSET PROVISION. Requires the Texas Water Development Board (TWDB) to be reviewed during the period in which state agencies abolished in 2035, rather than in 2023, and every 12th year after 2035, rather than 2023, are reviewed.

SECTION 2. Amends Section 6.062, Water Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires that the training program for a TWDB board member provide the person with information regarding:

- (1) the law governing TWDB operations;
- (2) the programs, functions, rules, and budget of TWDB;
- (3) the scope of and limitations on the rulemaking authority of TWDB;
- (4) redesignates existing Subdivision (6) as Subdivision (4);
- (5) the requirements of:
 - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
 - (B) other laws applicable to members of a state policy-making body in performing their duties; and
- (6) redesignates existing Subdivision (8) as Subdivision (6).

Deletes existing text requiring that the training program provide the person with information regarding the legislation that created TWDB; the programs operated by TWDB; the role and functions of TWDB; the rules of TWDB, with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for TWDB; and the requirements of certain statutes and other laws relating to public officials, including conflict of interest laws.

(d) Requires the executive administrator of TWDB (executive administrator) to create a training manual that includes the information required by Subsection (b). Requires the executive administrator to distribute a copy of the training manual annually to each TWDB board member. Requires each board member to sign and submit to the executive administrator a statement acknowledging that the member received and reviewed the training manual.

SECTION 3. Amends Section 15.438(k), Water Code, to provide that the State Water Implementation Fund for Texas Advisory Committee, unless continued in existence as provided by Chapter 325 (Sunset Law), is abolished and Section 15.438 (Advisory Committee) expires September 1, 2035, rather than 2023.

SECTION 4. Amends Section 16.053, Water Code, by amending Subsection (e) and adding Subsection (e-2), as follows:

(e) Requires each regional water planning group to submit to TWDB a regional water plan that:

(1)-(8) makes no changes to these subdivisions;

(9) includes information on:

(A)-(B) makes nonsubstantive changes to these paragraphs;

(C) the implementation of large projects, including reservoirs, interstate water transfers, innovative technology projects, desalination plants, and other large projects as determined by TWDB, including information regarding:

(i) expenditures of sponsor money;

(ii) permit applications, including the status of a permit application; and

(iii) status updates on the phase of construction of a project; and

(10)-(12) makes no changes to these subdivisions.

(e-2) Authorizes a regional water planning group to plan for drought conditions worse than the drought of record when developing a regional water plan under Subsection (e).

SECTION 5. Amends Subchapter E, Chapter 16, Water Code, by adding Section 16.147, as follows:

Sec. 16.147. ESTABLISHMENT OF CERTAIN PERFORMANCE GOALS AND METRICS. (a) Requires TWDB to develop and implement performance goals and performance metrics as part of a comprehensive evaluation of TWDB's review of proposed projects for compliance with programmatic and design requirements.

(b) Requires TWDB to periodically:

(1) collect data regarding the performance metrics;

(2) analyze the data described by Subdivision (1) related to the performance metrics to identify relevant trends; and

(3) use the performance metrics to assess TWDB's progress toward meeting TWDB's performance goals.

(c) Requires TWDB to periodically review the performance goals and performance metrics to assess the effectiveness and efficiency of TWDB's review of proposed projects.

(d) Requires the executive administrator to periodically update TWDB on the implementation and analysis of the performance metrics and progress toward performance goals.

(e) Requires TWDB to develop and implement periodic reporting schedules for all performance goals and performance metrics required under this section.

SECTION 6. Amends Section 17.276, Water Code, by adding Subsections (d-1), (d-2), and (d-3), as follows:

(d-1) Authorizes TWDB by rule to adopt procedures allowing the use of different standards of review and approval of design criteria for plans and specifications for sewerage collection, treatment, and disposal systems.

(d-2) Requires that the rules, in establishing the appropriate standard of review and approval for plans and specifications under Subsection (d-1), require an individualized assessment that applies risk-based considerations to each project associated with the plans and specifications, including:

- (1) any potential financial risk associated with the project;
- (2) any risk to public health associated with the project; or
- (3) other relevant financial considerations associated with the project.

(d-3) Requires TWDB, for plans and specifications subject to a limited standard of review and approval under Subsection (d-1), to require the registered professional engineer who submitted the plans and specifications to make a finding that:

- (1) the plans and specifications are in substantial compliance with standards established by the Texas Natural Resource Conservation Commission (TNRCC); and
- (2) any deviation from the standards established by TNRCC is based on the best professional judgment of the registered professional engineer.

SECTION 7. Repealers: Sections 15.108 (Recommendations for Funding by Legislature) and 15.218 (Report), Water Code.

Repealer: Section 15.3061 (Recommendation for Funding by Legislature), Water Code.

SECTION 8. (a) Provides that Section 6.062, Water Code, as amended by this Act, except as provided by Subsection (b) of this section, applies to a member of TWDB appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TWDB who, before the effective date of this Act, completed the training program required by Section 6.062, Water Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 6.062, Water Code. Prohibits a TWDB member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TWDB held on or after December 1, 2023, until the member completes the additional training.

SECTION 9. Effective date: September 1, 2023.