

**SUBJECT:** Continuing the Texas State Soil and Water Conservation Board

**COMMITTEE:** Agriculture and Livestock — committee substitute recommended

**VOTE:** 7 ayes — Swinford, McReynolds, Hardcastle, Miller, B. Brown, Green, Hupp  
0 nays  
2 absent — Christian, Kolkhorst

**WITNESSES:** For — James Grimm, Texas Poultry Federation; Billy Howe, Texas Farm Bureau; Ed Small, Texas and Southwestern Cattle Raisers Association  
Against — None  
On — Edward G. Albrecht, Robert G. Buckley, James Moore, Texas State Soil and Water Conservation Board; Donnie Dippel, Texas Department of Agriculture; Susan Solterman, Sunset Advisory Commission

**BACKGROUND:** The Legislature created the Soil and Water Conservation Board (SWCB) in 1939 to work with agricultural landowners to promote land practices that conserve soil and water. The agency works with the state's 216 local soil and water conservation districts to encourage landowners to implement conservation programs.

In the past few years, the agency's focus has expanded to include protecting the environment through pollution-abatement programs, such as by abating agricultural runoff. The board establishes the state's management plan for abating nonpoint-source pollution from agricultural and forestry operations. Nonpoint-source pollution includes runoff from sources that cannot be identified specifically, as in agricultural operations.

The board also encourages soil and water conservation by providing technical and financial assistance to agricultural landowners for planning, management, and abatement of agricultural and forest-related nonpoint-

source pollution and to ranchers for a brush-control pilot program in the North Concho River watershed.

The SWCB has 65 employees and a budget of \$28.3 million for fiscal 2000-01. The board includes five members elected by delegates from each of five geographical regions.

The agency last underwent sunset review in 1985. It will be abolished September 1, 2001, unless continued by the Legislature.

**DIGEST:**

CSHB 2310 would continue the SWCB until September 1, 2013. It would require the agency to establish goals, identify priority areas, change its board-election process, differentiate its jurisdiction from that of the Texas Natural Resource Conservation Commission (TNRCC), and increase cooperation with TNRCC.

**Goals and priorities.** The SWCB would have to establish as its goals:

- ! setting priorities among voluntary efforts to reduce nonpoint-source pollution and promoting those efforts; and
- ! helping landowners prevent regulatory enforcement actions related to nonpoint-source pollution.

The board would have to inform the agricultural community about the jurisdictions of the SWCB and TNRCC in regard to nonpoint-source pollution.

At least every four years, the SWCB would have to update its priority areas for nonpoint-source pollution control. In considering the updates, the board would have to consider bodies of water identified by TNRCC as impaired, threatened areas in which action was necessary to prevent pollution, and other areas of concern, including groundwater.

**Election of directors.** Eligible voters would have to meet each year to elect SWCB directors between September 30 and October 16. In July, the directors would have to designate a date, time, and place for that year's election. To be eligible for election to the board, a person would have to file a written notice of candidacy in August, during business hours at a location

designated by the soil and water conservation district, and in accordance with district rules.

The district would have to post a notice of eligibility requirements in a prominent public place. If only one candidate filed, an election would not be required. Instead, on the established election day, the directors would have to declare and certify the single candidate as the director for that office.

For an election with more than one candidate, the district would have print ballots with the candidates' names and allow eligible voters to cast their votes at designated locations instead of at the meeting. Votes would have to be accepted at these locations during business hours for a period beginning 17 days before the date of the meeting and ending the fourth day before the date of the meeting. If it were not possible to begin early voting on the prescribed date, early voting would have to begin as early as practicable.

If no nominee received a majority of votes from early voting and at the scheduled meeting, the two candidates receiving the most votes would be voted on in a second ballot. The candidate receiving the most votes among those cast before the meeting and those cast at the meeting on the second ballot would be elected. The district would have to certify eligible voters at the designated locations and the meeting.

**Water-quality management.** CSHB 2310 would specify that landowners who did not own or operate on their property a facility regulated by the Water Code would not have to obtain permits to apply animal waste to their property for beneficial use at agronomic rates. At the request of such a landowner, the SWCB could create and certify a water-quality management plan for the land. TNRCC would retain authority to investigate or take enforcement action against a point-source discharge.

If the SWCB decertified an animal feeding operation's water-quality management plan, the SWCB would have to inform TNRCC no later than the 10th business day after the decertification.

The SWCB would have to maintain detailed records about each referral of an agricultural or silvicultural (forest-related) operation to TNRCC for

enforcement. The records would have to include TNRCC's final disposition of the referral, including any enforcement action taken.

In setting priorities for allocation of cost-share assistance funds, the SWCB would have to give greater weight to allocation of funds to landowners in priority areas with water-quality problems. The board also would have to keep records of financial incentive disbursements to landowners in these priority areas.

**Miscellaneous provisions.** CSHB 2310 would specify that the Texas Department of Agriculture (TDA) could represent the state before any federal agency in matters relating to the Federal Insecticide, Fungicide, and Rodenticide Act, as TNRCC and the General Land Office now may do.

The bill would add standard sunset provisions governing conflict of interest, training of board members, grounds for removal, standards of conduct, development of equal employment opportunity policy, and maintenance of written complaints.

The bill would take effect September 1, 2001. The changes would not affect the entitlement of a current board member to serve the rest of his term, nor to be reelected to the board if qualified. The board-election changes would apply only to elections required to be held in 2002 or thereafter.

SUPPORTERS  
SAY:

The Soil and Water Conservation Board serves a valuable function in promoting conservation and controlling non-point source pollution. It should be continued as a separate agency to devote attention to these important duties.

**Board composition.** SWCB directors should continue to have to be elected and to hold qualifications that reflect the agency's traditional mission of helping agricultural landowners protect soil and water resources for their continuing benefit. Voter eligibility includes holding title to farmland, being at least 18 years old, being a resident of the district, and being actively engaged in farming or ranching. These elected officials have a direct stake in maintaining the productivity of Texas agriculture.

The presence of a TNRCC representative on the board might impede the board's voluntary programs. However, TNRCC representatives would be welcome to attend the board meetings on a regular basis.

**Water-quality management.** The SWCB now devotes much of its attention and resources to areas before the TNRCC conducts more extensive and scientific analyses of the impaired bodies of water. CSHB 2310 would require the board to update its water-quality priority areas in accordance with TNRCC analyses and to reexamine its financial incentives for establishing water-quality management plans to reflect these updates. It would require the board to give greater weight in its funding decisions to landowners in the updated priority areas. The board could redirect state funds to address water-quality problem areas identified by TNRCC.

The bill would require the board to use all available resources for making water-quality management plans effective in abating agricultural nonpoint-source pollution. Currently, the board uses outdated priorities to guide some of its water-quality efforts. The board initially targeted parts of the state for attention using its own knowledge of erosion control and runoff problems. At that time, it did not have access to TNRCC's water-quality data, which the board now can use to identify impaired stream segments.

The bill would require the SWCB to keep detailed records on its referrals of farming operations to TNRCC and to report to TNRCC whenever the board decertified a water-quality management plan for an animal feeding operation. By working together, the SWCB and TNRCC could take stronger, more effective enforcement actions when necessary and could develop more effective programs to improve water quality.

**District elections.** Under CSHB 2310, the SWCB would have to require local districts to offer ballots to voters in district elections rather than limiting participation to attendees at annual meetings. Opening up the election process would encourage greater participation in these local elections and could increase the pool of candidates to serve on the state board.

Convention-style elections discourage active participation, because they require voters to show up at an exact time and place. Because farming is

subject to unpredictable weather patterns, often requiring a farmer to work all night to sow or harvest a crop, farmers may find it difficult to participate in convention-style elections.

**Unexpended balance authority.** The bill need not address the issue of whether the SWCB should be allowed to carry forward its unexpended balances. Such issues are best left to the appropriations process.

OPPONENTS  
SAY:

**Board composition.** In the past several years, the SWCB's mission has expanded to include protecting the state's water resources. The board should be expanded from five to eight members by adding two gubernatorial appointees and TNRCC's chair or designee. Adding these members would improve the board's ability to oversee its water-quality programs by ensuring its accountability and objectivity, water-quality expertise, and comprehensive perspective. Adding TNRCC representation also would strengthen the relationship between the two agencies.

A wholly elected board does not ensure full representation of all interests. As it is, the elections reflect only the interests of a limited number of landowners by limiting the field of candidates to landowners who are actively engaged in agriculture and meet other criteria. Appointed members would provide objectivity to balance the agricultural expertise of the five elected members. The board now finds itself in an uncomfortable position when it has to refer cases to TNRCC for enforcement against the same people on whom the board members rely for votes.

A wholly elected board does not provide as high a level of accountability as other state agency governing boards in Texas and comparable agencies in other states. Except for boards elected by a statewide vote, all other state boards rely at least in part on appointments by the governor, subject to the advice and consent of the Senate. The governor, unlike agricultural landowners, is accountable to the general public. States such as Arkansas, Arizona, and Oklahoma have agencies overseen by boards with both appointed and elected members.

**Water-quality management.** The bill should require the SWCB specifically to work more closely with TNRCC's Clean Rivers Programs. Currently, SWCB representatives does not have to attend the monitoring meetings of

these programs. However, SWCB attendance at these meetings would enable the board and TNRCC to share information on the locations of water-quality management plans. It also would link the two agencies' monitoring efforts, allowing for better judgment of the effectiveness of these plans.

The bill also should require local districts to obligate their financial incentive funds early in the fiscal year and to follow up before the end of the fiscal year. Districts that did not obligate their fund quickly would lose their allocations, allowing the board to redirect this money for other water-quality management plans with a demonstrated need. This process also would make more time available for follow-up visits before the end of each fiscal year, allowing local districts to work with landowners to use funds before the three-year obligation period expired and the money lapsed back to the state.

Rather than distributing them statewide, the board should target its status reviews of water-quality management plans at the highest-risk areas. By trying to distribute its status reviews to plans across the state, the board risks misallocating its resources to districts with fewer plans and less serious water-quality issues. This system misses many plans in parts of the state with more serious water-quality problems.

**District elections.** Rather than allowing the use of absentee ballots in local district elections, the board should have to improve its outreach to encourage landowners to participate in the convention. Currently, poor outreach limits the pool of available candidates for director elections. Local districts could conduct conservation tours of agricultural operations or provide educational programs for landowners. Districts active in community outreach have shown higher-than-average voter turnouts.

**Unexpended balance authority.** The bill should authorize the SWCB to carry forward unexpended balances. In the past four fiscal years, lapsed funds ranged from about \$128,999 to \$520,000 per year. The board encumbers financial incentives that have been obligated to a farmer for three years while the farmer implements a water-quality program. When a farmer fails to implement a program, the encumbered funds lapse back to general revenue. If these funds did not lapse, the board could use the unspent money in the next fiscal year for water-quality purposes.

NOTES:

The committee substitute differs from the filed version by providing that landowners whose land did not contain a facility regulated by the Water Code would not have to obtain permits or authorization to apply animal waste to their property if the application was for beneficial agronomic use. The substitute would allow the SWCB to create and certify a water-quality management plan for such land, while TNRCC would retain authority to investigate or take enforcement action against a point-source discharge.

The substitute changed the proposed time period for notifying TNRCC of decertifications from “immediately” to no later than the 10th business day after the decertification. The substitute also would expand the bodies of water to be considered to include any identified as impaired by TNRCC.

The substitute added the provision that would authorize TDA to represent the state in certain federal matters. It also changed the original to require detailed records about agricultural and silvicultural operations, rather than farming operations.

The substitute would allow the election of directors to occur at a location designated by the district rather than at the district’s business office. It would specify that considerations regarding the allocation of funds include owners of land in priority areas instead of owners of land adjacent to priority areas.

The companion bill, SB 308 by Zaffirini, has been referred to the Senate Natural Resources Committee.