

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 25, 2007

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB3 by Averitt (Relating to the development, management, and preservation of the water resources of the state; providing penalties.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB3, As Passed 2nd House: a negative impact of (\$4,845,027) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$2,515,769)
2009	(\$2,329,258)
2010	(\$2,371,127)
2011	(\$2,295,027)
2012	(\$2,045,227)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from <i>GENERAL REVENUE FUND 1</i>	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND 1</i>	Probable Savings/ (Cost) from <i>GAME, FISH, WATER SAFETY AC 9</i>	Probable Revenue Gain/(Loss) from <i>FOUNDATION SCHOOL FUND 193</i>
2008	(\$5,476,860)	\$2,987,591	(\$224,739)	(\$26,500)
2009	(\$5,290,349)	\$2,987,591	(\$219,054)	(\$26,500)
2010	(\$5,332,218)	\$2,987,591	(\$219,978)	(\$26,500)
2011	(\$5,256,118)	\$2,987,591	(\$219,978)	(\$26,500)
2012	(\$5,006,318)	\$2,987,591	(\$220,902)	(\$26,500)

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Floodplain Management Account</i>	Probable Savings/ (Cost) from <i>Floodplain Management Account</i>	Change in Number of State Employees from FY 2005
2008	\$3,050,000	(\$2,167,824)	22.1
2009	\$3,050,000	(\$2,744,894)	26.1
2010	\$3,050,000	(\$2,985,597)	27.3
2011	\$3,050,000	(\$3,158,656)	27.3
2012	\$3,050,000	(\$3,357,570)	27.3

Fiscal Analysis

Article 1 - Environmental Flows

The bill amends various sections of the Water Code to set out a new regulatory approach to provide surface water to meet environmental flow needs. The bill creates an Environmental Flows Advisory Group supported by an Environmental Flows Science Advisory Committee (SAC), to oversee regional consensus-based Bay and Basin Stakeholders Committees as they develop environmental flow standard recommendations for consideration by the Texas Commission on Environmental Quality (TCEQ). These stakeholder committees would also be supported by Basin and Bay Expert Science Teams (BBESTs). The TCEQ, the Texas Water Development Board (TWDB), and the Texas Parks and Wildlife Department (TPWD) would be responsible for coordinating with the advisory group and stakeholder committees, providing reports regarding the groups' recommendations, and providing technical assistance.

The bill would allow the TWDB to use money in the research and planning fund of the Water Assistance Fund No. 480 to compensate members of the SAC and the BBEST for meeting expenses. It would also allow the TWDB to pay contract costs for technical assistance to SAC and BBESTs and costs incurred by political subdivisions designated as representatives of the stakeholder committees.

Article 2 - Water Conservation and Planning

Water Conservation Awareness Program and Conservation Plans

The bill would require the TWDB to develop and implement a statewide water conservation awareness program to educate residents of the state about water conservation. The bill also would require the TWDB to review water conservation plans and annual reports submitted by water utilities. It would also authorize expedited amendment processes for regional water plans, and it directs the TWDB to perform compliance reviews of certain water conservation plans and annual reports.

Climate Change Study

The bill directs the TWDB in coordination with the Far West Texas Regional Water Planning Group to conduct a study on the impacts of climate change on surface water supplies from the Rio Grande and to submit a report to the Legislature no later than December 31, 2008 on these impacts. As part of this study, the TWDB is to convene a conference within the Far West Texas regional water planning area to review current analyses regarding the impact of climate change on surface water supplies in other states and to make recommendations for the incorporation of potential impacts of climate change into the Far West Texas Regional Water Plan.

Water Conservation Advisory Council

The bill establishes a new Water Conservation Advisory Council (Council) composed of 23 members appointed by the TWDB to represent the following: state agencies; federal agencies; municipalities; groundwater conservation districts; river authorities; environmental groups; irrigation districts; industries; institutional water users; professional organizations focused on water conservation; higher education; agricultural groups; and representatives from certain interest groups.

The Council shall provide expertise in water conservation including: monitoring trends and new technologies in water conservation implementation; developing and implementing a state water management resource library; and monitoring the implementation of water conservation strategies by water users included in regional water plans. The Council would be required to submit a report to the Legislature and the Governor in even-numbered years on progress made in state water conservation. The Council would also be required to conduct a study by December 1, 2008 to evaluate the desirability of requiring the TWDB to designate certified water conservation training entities and programs; this study would also be submitted to the Legislature and Governor. The TWDB would be responsible for assisting the Council in performance of these duties. The members would serve without compensation, but would be eligible for reimbursement of Council related expenses.

Interregional Conflicts

The bill would amend Chapter 16 of the Water Code to specify that an interregional conflict includes an inconsistency between water plans proposed by two or more regional water planning groups regarding the construction of a water project or the use of a water supply in a particular regional water planning area.

National Flood Insurance Program Transfer

The bill would transfer responsibility for the National Flood Insurance Program (NFIP) including all powers, duties, records, assets, property, funds and appropriations from the TCEQ to the TWDB no later than January 1, 2008.

The bill is contingent on the Eightieth Legislature appropriating at least \$6.1 million to the TWDB for the 2008-09 biennium for the purpose of administering the NFIP; if the Legislature does not appropriate at least this amount to the agency, the bill would have no effect.

The bill would expand the TWDB's duties related to the management of the NFIP by requiring that the TWDB make floodplain maps and floodplain information accessible to the public, including in an electronic format through the TWDB's website, and that the TWDB provide public education and outreach through the agency's field offices to encourage participation in the NFIP.

The bill would require that each fiscal year the first \$3.05 million of the maintenance taxes collected under Chapter 252 of the Insurance Code and deposited in the General Revenue Fund be deposited to the Floodplain Management Account. The bill would establish the Floodplain Management Account as a special fund in the state treasury outside the General Revenue Fund. The account would consist of the allocation of insurance maintenance taxes (\$6.1 million per biennium); appropriations; gifts; and grants, and it would be managed by TWDB to fund the performance of its duties with respect to the management of the NFIP.

Optional Fee for Water Trust

The bill would amend the Parks and Wildlife Code to authorize an optional fee (minimum \$5) on fishing licenses for the benefit of the Texas Water Trust. The fee would be deposited in the General Revenue Fund to the credit of the water bank account for the use of the TWDB to acquire water rights from willing sellers.

The bill also includes several private property protection provisions associated with designated reservoir sites.

Article 3 - Unique Reservoir Sites and Sites of Unique Ecological Value

Unique Reservoir Designation

As authorized by Section 16.051(g), Water Code, the legislature would, through passage of the bill, designate 14 specific sites as having unique value for the construction of a dam and reservoir. In so doing, no state agency nor political subdivision of the state (some exceptions are specified in the bill) may obtain a fee title or an easement that would significantly prevent the construction of a reservoir on any of the designated sites.

Region C Study Commission

The bill would create the Study Commission on Region C Water Supply and would require the TWDB to provide staff support and funding for professional services and for the reimbursement of commission-related duties. The bill specifies that the Study Commission will review water supply alternatives available to Region C including existing and proposed reservoirs and groundwater supplies.

Edwards Aquifer Authority

The bill would make changes in requirements for the administration and operation of the Edwards Aquifer Authority (authority), including changing the calculation used for determining withdrawal limits from the Edwards Aquifer. The bill would change requirements related to the number of acre-feet of groundwater rights to be retired. In addition, the bill would change the dates related to initial regular permits. A steering committee and a science subcommittee would be created by the authority with assistance from Texas A&M University to develop various program documents, reports, and recommendations. The bill identifies various state agencies required to participate. The authority and other stakeholders and state agencies listed would be required to provide money as necessary to finance the activities of the steering committee and subcommittees.

Article 4 - Legislative Joint Interim Committee

The bill creates a joint interim oversight committee, co-chaired by the Chairmen of the Senate and House Committees on Natural Resources, to review financing of water infrastructure projects and funding for water programs administered by state agencies. The remaining membership of the joint oversight committee will consist of three appointees of the Lieutenant Governor and three appointees of the Speaker of the House.

Methodology

Article 1--Environmental Flows

To provide technical support to the committees and stakeholder groups established in this bill, 5.0 additional FTEs including a hydrologist, three aqua scientists, and a natural resource specialist and related costs are expected to be needed by the TCEQ totaling \$365,582 per fiscal year. In addition, the TCEQ would have contract service costs of \$250,000 per year to upgrade and maintain water availability models. The agency anticipates General Revenue funding will be necessary to implement the provisions in the bill because projected balances in the GR-Dedicated Water Resource Management Account No. 153 would not be adequate.

The TWDB also expects to need additional staff and related costs to provide data and expertise to the committees and stakeholder groups established in this bill, as well as funding for costs incurred by the SAC and BBEST as well as administrative costs for designated political subdivisions and studies relating to bays and estuaries. The agency anticipates needing 3.1 FTEs in fiscal year 2008, 4.1 FTEs in fiscal year 2009 and 5.3 FTEs in subsequent fiscal years. The annual costs for the TWDB range from \$737,610 to \$1,317,968 during the five year period. The agency anticipates General Revenue funding will be necessary to implement the provisions in the bill because projected balances in the Water Assistance Fund No. 480 would not be adequate.

The TPWD estimates it will need additional staff (3 FTEs) and travel, operating and equipment costs to provide technical assistance to the BBESTs. The agency anticipates funding to be provided by the General Revenue-Dedicated Game, Fish and Water Safety Account No. 9.

This fiscal note assumes that existing studies and information will be used by SAC and the BBEST. Funds are not included to do additional studies through grant funds.

Article 2 - Water Conservation and Planning

No significant fiscal implications are expected to the TCEQ as a result of provisions in Article 2 of the bill. It is anticipated that any costs associated with the regulation of irrigation systems can be absorbed by the TCEQ.

Water Conservation Awareness Program and Conservation Plans

The TWDB estimates that they will need 2.0 FTEs for the public awareness program to provide oversight and administration of the program at a cost of approximately \$270,000 for the 2008-09 biennium. The agency anticipates needing two FTEs for this function in subsequent fiscal years as well. This cost would be paid out of the General Revenue Fund. Providing a public awareness campaign on the scale of the Texas Department of Transportation's "Don't Mess with Texas"

campaign, could cost as much as \$9 million for the biennium. However, these costs are not included in this estimate. Instead it is assumed that the TWDB would use existing resources to begin developing a statewide water conservation public awareness campaign.

The TWDB anticipates needing 1 additional FTE and related costs to review the water conservation plans and annual reports of retail water supply systems, as required in Article 2, for a total of approximately \$125,000 for the 2008-09 biennium. The agency anticipates needing one FTE for this function in subsequent fiscal years as well. This cost would be paid out of the General Revenue Fund.

Climate Change Study

According to TWDB, the cost to perform the Rio Grande River climate change impact study would be approximately \$25,000 and the cost to convene the associated conference would be \$5,000 in fiscal year 2008. It is anticipated that these costs can be absorbed within existing agency resources.

Water Conservation Advisory Council

The TWDB anticipates needing 1 additional FTE (Program Specialist II) and associated expenses in each fiscal year to provide operational assistance to the Water Conservation Advisory Council for a total of approximately \$61,000 a fiscal year. In order to conduct studies and provide data requested by the Council, one FTE (Research Specialist I) and associated operating expenses would be required each fiscal year, for a total of \$49,000 a fiscal year. The agency also estimates an additional other operating expense of \$5,000 a fiscal year in fiscal year 2009 and fiscal year 2011 related to development and publication of the report on water conservation in the state. The agency anticipates the cost to reimburse the members of the Council for Council-related duties to be \$20,300 a fiscal year.

In this cost estimate it is assumed that TWDB staff would be able to provide any necessary studies requested by the Council. If these studies were not able to be done with existing staff resources, the TWDB estimates that it could cost as much as \$100,000 a fiscal year to contract out to do such studies. These costs, however, are not included in this estimate.

Interregional Conflicts

According to the TWDB, in the worst case scenario, these interregional conflicts could lead to the removal of water projects from the state water plan. According to the agency, there are currently 10 projects that could potentially be removed from the plan as a result of an interregional conflict. If all 10 projects were to be removed, the potential cost to the state to provide the regions in which these projects reside with planning grants to develop replacement water projects could be as much as \$1.4 million for the 2008-09 biennium.

According to the TWDB, there could also be some additional administrative costs associated with the facilitation of these interregional conflicts, for purposes of this fiscal note; however, it is assumed that the TWDB could absorb those costs within existing resources.

National Flood Insurance Program Transfer

According to the Comptroller's Office, the insurance maintenance tax imposed under Chapter 252 of the Insurance Code applies broadly to "fire and allied lines," which include damage and loss from fire, flood, hail, windstorm, earthquake, invasion, insurrection, bombardment, and 18 other lines. Chapter 252 directs the Commissioner of Insurance to adjust the maintenance tax rate annually, subject to a maximum rate, so that the tax imposed that year, taking into account any unexpended balances, produces the amount necessary to pay the expenses the succeeding year of regulating all of the lines of insurance under Chapter 252. For the purposes of this fiscal note, it was assumed that the Commissioner of Insurance would increase maintenance taxes to generate sufficient revenue to offset the \$6.1 million biennial loss and cover the necessary expenses associated with regulating the lines of insurance under Chapter 252.

According to the Comptroller's Office, an increase in insurance maintenance tax rates would have two

negative retaliatory tax implications. First, the higher effective insurance taxes imposed by this state would cause Texas-based insurance companies to face higher retaliatory taxes in other states, raising their costs of doing business and making them less competitive in those states. Second, the higher insurance taxes levied by this state would reduce the amount of retaliatory taxes collected by Texas on insurance companies based in other states. It was estimated that a \$6.1 million biennial increase in maintenance taxes would trigger a corresponding reduction in retaliatory taxes of \$211,000. Because of the constitutional dedication of occupation taxes, the retaliatory tax loss would be split 75/25 between the General Revenue Fund and the Foundation School Fund No. 193.

Administration of the NFIP is funded by the Federal Emergency Management Agency (FEMA) at a 75/25 cost share. The FEMA share of the \$335,000 annual cost to administer the program is estimated to be \$250,000, with a corresponding state share of \$85,000 out of the GR-Dedicated Water Resource Management Account No. 153. These funds would be transferred from the TCEQ to the TWDB as part of the proposed legislation; these funds, however, are not included in the estimates provided in this fiscal note.

Given that the transfer of the NFIP from the TCEQ to the TWDB is to happen no later than January 1, 2008, many of costs for fiscal year 2008 have been pro-rated to indicate 8 rather than 12 months of expenses. To implement the expanded provisions of the bill associated with digitizing the floodplain maps to make them accessible to the public, the TWDB anticipates needing 2.7 additional FTEs in fiscal year 2008 for a total of \$237,793 and 4 additional FTEs in each subsequent fiscal year totaling \$356,690 per fiscal year. The agency also anticipates needing 3.3 FTEs in fiscal year 2008 for a total of \$171,011, and 5 additional FTEs in each subsequent fiscal year, 1 FTE in each TWDB field office, to perform the necessary outreach and public education duties required by the bill for a total of \$256,516 per fiscal year. There would also be additional costs associated with: 1) the purchase, storage, and maintenance of topography, surface water, and ground control data to create the floodplain maps, totaling approximately \$1.5 million each fiscal year; and 2) DIR services for data storage and maintenance (\$106,353 in fiscal year 2008, \$402,688 in fiscal year 2009, \$643,391 in fiscal year 2010, \$816,450 in fiscal year 2011 and \$1,015,364 in fiscal year 2012). Professional fees, totaling \$152,667 in fiscal year 2008 and \$229,000 in each subsequent fiscal year would also be necessary to contract for database development, web development, and development of tools for modeling and analyzing flood plain risk and developing floodplain boundary maps.

It is assumed that all costs incurred under the provisions of the bill would be paid for from the new Floodplain Management Account.

Optional Fee for Water Trust

According to TPWD, since all department licenses are issued through an electronic system that currently cannot accept optional fee amounts, extensive reprogramming will be required by the third-party vendor. The estimated cost to reprogram the system is \$245,000 for 2,500 hours by the third-party vendor. It is assumed this cost will come from the General Revenue Fund because TPWD reports use of the Game, Fish and Water Safety Account No. 9 for this purpose could result in diversion criticism by the US Department of Interior and the potential loss of \$28.0 million per year in federal funds the State receives for sportfish restoration and other wildlife and fishery purposes.

This estimate assumes 0.25% of fishing customers would pay the optional fee and generate approximately \$19,565 in revenues per year, which would be reduced by \$2,974 in transaction fees, for a total of \$16,591 in revenue per year to the General Revenue Fund.

Article 3 - Unique Reservoir Sites and Sites of Unique Ecological Value

Unique Reservoir Designation

Regarding the unique reservoir sites, expenses would occur only if a dam or reservoir were to be built at any of the designated sites; otherwise, no fiscal implications are anticipated.

Region C Study Commission

The TWDB does not anticipate needing additional FTEs to carry out the provisions associated with the Study Commission on Region C Water Supply, there will be a cost, however, of \$600,000 for the 2008-09 biennium for the agency to contract with outside entities to carry out the studies required by the bill. It is anticipated that the all additional costs associated with the new Commission including the reimbursement of commission members and the production of the required report can be absorbed within existing agency resources.

Edwards Aquifer Authority

No significant fiscal impact is anticipated for either the TCEQ or the TWDB regarding the provisions in the bill dealing with Edwards Aquifer Authority. Both agencies anticipate being able to absorb any associated costs within existing agency resources.

Article 4 - Legislative Joint Interim Committee

No significant fiscal implications to the state are expected from the creation of this legislative joint interim committee.

The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

Councils and committees created, expanded or modified by the bill could incur administrative costs. However, these costs are not expected to be significant, since state agencies are required to provide technical and staff support to these entities.

Article 2 - Water Conservation and Planning

The bill could reduce or eliminate a local government's ability to divert water under a water right issued after September 1, 2007 for municipal use on a case by case basis. The fiscal impacts to a local government would depend on the cost of obtaining water supply from another source.

The bill would require each political subdivision to pay the property owner an encumbrance payment not less than 2.5 times the ad valorem taxes imposed in the tax year that precedes the year in which the payment is made on the property for which the payment is made. The amount of local fiscal impact associated with these provisions cannot be determined.

The bill could further the reduction of water demands on public water suppliers and the wastewater load on wastewater treatment plants, thus reducing or deferring capital infrastructure costs to local governments providing water and wastewater services.

Article 3 - Unique Reservoir Sites and Sites of Unique Ecological Value

The bill would prevent local governments from obtaining a fee title or an easement that would significantly prevent the construction of a reservoir or adversely affect a unique river or stream segment designated by the bill. Potential impacts cannot be determined or quantified at this time, however.

Edwards Aquifer Authority

Sections of the bill that would affect the Edwards Aquifer Authority (EAA or authority) would have varying fiscal impact to the authority and to the counties and municipalities within its boundaries. The Edwards Aquifer Authority reports that provisions of the bill related to determining withdrawal limits requirements related to the number of acre-feet of groundwater rights to be retired would provide a significant total savings to the authority of \$48.5 million per fiscal year for the first five years following implementation. The authority reports that changing the calculation for the limit on total withdrawals will prevent the authority from having to buy down 99,000 acre-feet of groundwater rights; as a result, the associated expense would be borne entirely by Edwards Aquifer groundwater permit holders. In addition, the proposed elimination of retiring groundwater rights would result in a

savings to the authority and to the downstream water users in equal amounts. Those counties and municipalities that rely on the Edwards Aquifer would experience costs and savings proportionately as identified by the authority.

The fiscal impact to stakeholders in the Edwards Aquifer as a result of changing pumping deadlines and withdrawal calculations is not expected to be significant. The fiscal impact to local governments within the boundaries of the Edwards Aquifer Authority may experience additional costs related to implementing a water management program; however, not knowing what that program will entail, an estimate is not possible at this time; however, the fiscal implication to units of local government is not anticipated to be significant.

Participation in the steering committee and the science subcommittee is not anticipated to have a significant fiscal impact. In addition, because expenses related to the committees' activities would be shared among so many stakeholders, it is anticipated that those costs would also be minimal.

The EAA estimates that the portion of the bill that would change the dates regarding existing users would have a significant fiscal impact on the authority and consequently on local government stakeholders. The authority reports that it is aware of three entities that applied for initial regular permits that either did not use Edwards Aquifer groundwater within the original historical period (1972-1993) or submitted their applications for initial regular permit after the original due date of December 30, 1996. The total groundwater claimed by these entities equates to approximately 2,000 acre-feet. If the authority were to issue permits based on these claims and its total authorized groundwater "cap" is not raised accordingly from 572,000, the authority states that it would need to proportionately reduce groundwater rights across the region. Based on the estimated market cost of \$5,000 per acre-foot, the total cost to the region would be about \$10 million, which would result in an increase in the annual aquifer management fee of about \$30 per acre-foot for one year (almost double the current \$37 rate) for all municipal and industrial permit holders. According to the EAA, the cost estimates related to the change in the original historical period would be higher than reported in this fiscal note if there are other affected entities of which the authority is unaware.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality, 802 Parks and Wildlife Department, 304 Comptroller of Public Accounts

LBB Staff: JOB, JF, DB, SD, WK, ZS, TL