

Lone Star Chapter

**Actions by the 83rd Texas Legislature in the Regular Session to Advance Water Conservation, Curb Water Loss, & Respond to Drought Conditions**

The following is a review of actions taken by the 83rd Texas Legislature in the regular session to advance water conservation, curb water loss, and respond to drought conditions. It is not an exhaustive enumeration of all the water-related legislation that might be characterized at least in part as fostering these objectives. For example, it does not discuss all of the water funding legislation passed by the Legislature. **All of the actions below are subject to action by the Governor. The Governor has not acted on any of these items as of the date of this compilation (5/28/2013).**

**Appropriations (SB 1)**

The Texas Legislature retained current funding and staffing levels for the Texas Water Development Board’s base Water Conservation Education & Assistance activities (Strategy A.3.1. in the TWDB appropriations) - $1,380,848 each fiscal year - and added the following new funding:

* $1 million out of General Revenue for FY 2014 for grants to water conservation education groups to be awarded by a competitive process that may require private matching funds
* $1.8 million for FY 2014 and $1.8 million for FY 2015 out of the Agricultural Water Conservation Fund for the Texas Alliance for Water Conservation Demonstration Project, a partnership project in the Texas Panhandle to enhance agricultural water efficiency to extend the life of the Ogallala Aquifer
* $1.5 million for FY 2014 and $1.5 million for FY 2015 from General Revenue to be used for grants to groundwater conservation districts for agricultural water conservation (grants will go only to districts which require metering of water use and may only be used to offset half the cost of each meter)

The Texas Legislature provided $407,414 for FY 2014 and $326,474 for FY 2015 from General Revenue to the TWDB as part of its appropriations for Water Resources Planning (Strategy A.2.2) to develop an online tool to consolidate reporting requirements related to the water use survey, annual water loss report, and annual water conservation report and make those reports viewable by the public online.

**Legislation** - The Texas Legislature passed the following bills and sent them to the Governor:

**HB 4 (Ritter, et. al./Fraser)** – among its extensive provisions for establishing a new fund for implementation of the state water plan and for restructuring the Texas Water Development Board, HB 4 does the following:

* Requires the TWDB to undertake to apply not less than 20% of the money disbursed in each five-year period to support projects, including agricultural irrigation projects, that are designed for water conservation or reuse
* Requires the TWDB to undertake to apply not less than 10% of the money disbursed in each five-year period to support projects for rural political subdivisions or agricultural water conservation
* Prohibits the use of state financial assistance for a water project if the applicant has failed to submit or implement a water conservation plan
* Requires regional water planning groups in their prioritization of projects for state financial assistance to consider at a minimum such factors as the feasibility, viability, sustainability, and cost-effectiveness of a project – factors which should work in favor of conservation projects
* Requires TWDB in its process for prioritization of projects to receive state financial assistance to consider (among other criteria) the demonstrated or projected effect of the project on water conservation, including preventing the loss of water (taking into consideration whether the applicant has filed a water audit that demonstrates the applicant is accountable with regard to reducing water loss and increasing efficiency in the distribution of water)

**HB 857 (Lucio III/Hegar)** – requires each retail public water utility with more than 3300 connections to conduct a water audit annually to determine its water loss and to submit that audit to the TWDB [a retail public water utility with 3300 or less connections will continue to be required to conduct and submit a water audit once every five years computing the utility’s system water loss during the preceding year] – the initial annual water audit must be submitted by May 1, 2014

**HB 1461 (Aycock/Fraser)** – requires each retail public water utility required to file a water audit with the TWDB to notify each of the utility’s customers of the water loss reported in the water audit (TCEQ will adopt rules to implement this requirement, but the notice may be done through the utility’s annual consumer confidence report or on the next bill the customer receives after the water audit is filed)

**HB 2615 (Johnson/Fraser)** – increases the penalty for failure of a water rights holder to submit an annual water use report to TCEQ [in part because the penalties previously were so low, only about 60% of water rights holders outside watermaster areas reported their annual water use by the deadline] and requires TCEQ to establish a process for submitting these reports electronically through the internet

**HB 2781 (Fletcher/Campbell)** – makes a number of changes in current law governing the use and oversight of rainwater harvesting systems; for example HB 2781 does the following:

* Requires a privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply to have a specified mechanism for ensuring physical separation between the rainwater system and the auxiliary supply [to prevent any possible contamination]
* Requires the permitting staff of each county and municipality with a population of 10,000 or more whose work relates directly to permits involving rainwater harvesting to receive appropriate training (provided by TWDB) regarding rainwater harvesting standards

**HB 3604 (Burnam, Lucio III/Hegar)** – requires an entity to implement its water conservation plan and its drought contingency plan, as applicable, when it is notified that the Governor has declared its respective county or counties as a disaster area based on drought conditions; clarifies the authority of TCEQ to enforce this requirement [previously the law only required the entity to implement either plan, despite the fact that water conservation should be an ongoing activity as contrasted to short-term responses to drought conditions; during the 2011 drought a number of entities in drought disaster areas reportedly did not implement mandatory water use restrictions]

**HB 3605 (Burnam, et. al./Hegar)** – does the following:

* Requires a retail public water utility that receives financial assistance from TWDB to use a portion of that assistance – or any additional assistance provided by TWDB – to mitigate the utility’s system water loss if based on its water audit the water loss meets or exceeds a threshold to be established by TWDB rule
* Requires TWDB in passing on an application for financial assistance from a retail public water utility serving 3300 or more connections to evaluate the utility’s water conservation plan for compliance with TWDB’s best management practices for water conservation and issue a report to the utility detailing the results of that evaluation
* Requires TWDB not later than January 1 of each odd-numbered year to submit to the Legislature a written summary of the results of the evaluations noted above
* Requires plans and specifications submitted to TWDB with an application for financial assistance to include a seal by a licensed engineer affirming that the plans and specifications are consistent with and conform to current industry design and construction standards

**SB 198 (Watson/Dukes)** – prevents a property owners’ association (HOA) from prohibiting or restricting a property owner from using drought-resistant landscaping or water-conserving natural turf but allows an HOA to require the property owner to submit a detailed description of a plan for the installation of such landscaping or turf for review and approval by the HOA to ensure to the extent practicable maximum aesthetic compatibility with other landscaping in the subdivision; the legislation also states that the HOA may not unreasonably deny or withhold approval of the plan or unreasonably determine that the proposed installation is aesthetically incompatible

**SB 385 (Carona/Keffer)** – authorizes a municipality or a county or a combination thereof to establish and implement a program to provide directly or through a third party financing for a permanent improvement to real property that is intended to decrease water or energy consumption or demand, with the repayment of the financing of a qualified project to be done through an assessment collected with property taxes on the assessed property; sets out the procedures, requirements, and options by which such a program may be established, implemented, and operated by the local government through contracts and other mechanisms

**SB 654 (West/Anchia)** – specifically grants to municipalities the authority to enforce through a civil action ordinances related to water conservation measures, including watering restrictions [although some municipalities have taken the position that they already had this authority, this legislation makes it clear that they do and gives municipalities more flexibility in enforcing water conservation ordinances since there may be a reluctance to use criminal law in this regard]

**SB 700 (Hegar/Kacal, Raney)** – does the following:

* Requires the State Energy Conservation Office (SECO) to develop a template for state agencies and higher education institutions to use in preparing their respective comprehensive energy and water management plan (such a plan is already required)
* Requires each agency and higher education institution to set percentage goals for reducing its use of water, electricity, gasoline, and natural gas and include those goals in its energy and water management plan
* Requires that plan to be updated annually (currently updates are required biennially)
* Requires SECO biennially to report to the Governor and the LBB the state and effectiveness of management and conservation activities of the agencies and higher education institutions
* Requires SECO to post that report on its website

**This review was compiled by Ken Kramer, Water Resources Chair, Lone Star Chapter of the Sierra Club. For additional information: 512-626-4204 (cell) or** [**kenwkramer@aol.com**](mailto:kenwkramer@aol.com)**.**