

AN ACT

relating to the financing of water and sewer programs in disadvantaged areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 15.407(a), Water Code, is amended to read as follows:

(a) In this section, "economically distressed area" and "political subdivision" have the meanings assigned by Section 17.921 [~~16.341 of this code~~].

SECTION 2. Sections 16.341(1) and (2), Water Code, are amended to read as follows:

(1) "Affected county" means a county[~~+~~  
[~~(A)~~] that has an economically distressed area which has a median household income that is not greater than 75 percent of the median state household income [~~a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available, or~~  
[~~(B)~~ that is adjacent to an international border].

(2) "Economically distressed area" has the meaning assigned by Section 17.921 [~~means an area in which:~~

1                   ~~[(A) water supply or sewer services are~~  
2 ~~inadequate to meet minimal needs of residential users as defined by~~  
3 ~~board rules,~~

4                   ~~[(B) financial resources are inadequate to~~  
5 ~~provide water supply or sewer services that will satisfy those~~  
6 ~~needs, and]~~

7                   ~~[(C) an established residential subdivision was~~  
8 ~~located on June 1, 1989, as determined by the board].~~

9           SECTION 3.   Sections 16.343(b) and (c), Water Code, are  
10 amended to read as follows:

11           (b)   The model rules must:

12                   (1)   assure that adequate drinking water is available  
13 to the residential areas in accordance with Chapter 341, Health and  
14 Safety Code, and the Rules and Regulations for Public Water Systems  
15 and the Drinking Water Standards Governing Water Quality and  
16 Reporting Requirements for Public Water Supply Systems adopted by  
17 the commission [~~Texas Board of Health~~] and other law and rules  
18 applicable to drinking water; and

19                   (2)   provide criteria applicable to tracts that were  
20 divided into two or more parts to lay out a subdivision and were not  
21 platted or recorded before September 1, 2005 [~~1989~~].

22           (c)   The model rules must:

23                   (1)   assure that adequate sewer facilities are  
24 available to the residential areas through either septic tanks or  
25 an organized sewage disposal system that is a publicly or privately  
26 owned system for the collection, treatment, and disposal of sewage  
27 operated in accordance with the terms and conditions of a valid

1 waste discharge permit issued by the commission or private sewage  
2 facilities in accordance with Chapter 366, Health and Safety Code,  
3 and the Construction Standards for On-Site Sewerage Facilities  
4 adopted by the commission and other law and rules applicable to  
5 sewage facilities; and

6 (2) provide criteria applicable to tracts that were  
7 divided into two or more parts to lay out a subdivision and were not  
8 platted or recorded before September 1, 2005 [~~1989~~].

9 SECTION 4. Section 17.0112, Water Code, is amended to read  
10 as follows:

11 Sec. 17.0112. AUTHORIZATION OF CERTAIN BONDS FOR FINANCIAL  
12 ASSISTANCE. (a) The board may issue not more than \$25 million in  
13 bonds dedicated under Section 17.0111 of this code and may issue not  
14 more than \$50 million in bonds authorized under Article III, Texas  
15 Constitution, during a fiscal year to provide financial assistance  
16 for water supply and sewer services as provided under Subchapter K  
17 of this chapter.

18 (b) On request of the board, the bond review board by  
19 resolution may waive during any state fiscal year the limits  
20 [~~limit~~] provided by Subsection (a) [~~of this section~~] and authorize  
21 the board to issue an additional amount of bonds if the bond review  
22 board finds that the amount of bonds authorized for that state  
23 fiscal year has been exhausted or there is not a sufficient amount  
24 of bonds to meet needs of the program during the state fiscal year  
25 and that the public health and safety require immediate  
26 authorization of additional bonds. Before the bond review board  
27 adopts such a resolution, it shall give notice and hold a hearing to

1 determine whether the limits should be waived and the authorization  
2 given.

3 SECTION 5. Section 17.921, Water Code, is amended by  
4 amending Subdivision (1) and adding Subdivision (6) to read as  
5 follows:

6 (1) "Economically distressed area" means an area in  
7 which:

8 (A) water supply or sewer services are inadequate  
9 to meet minimal needs of residential users as defined by board  
10 rules;

11 (B) financial resources are inadequate to  
12 provide water supply or sewer services that will satisfy those  
13 needs; and

14 (C) an established residential subdivision was  
15 located on June 1, 2005 [~~1989~~], as determined by the board.

16 (6) "Economically distressed areas account" means the  
17 economically distressed areas account in the Texas Water  
18 Development Fund or the economically distressed areas program  
19 account in the Texas Water Development Fund II.

20 SECTION 6. Section 17.922(b), Water Code, is amended to  
21 read as follows:

22 (b) To the extent practicable, the board shall use the funds  
23 in the economically distressed areas account in conjunction with  
24 the other financial assistance available through the board to  
25 encourage the use of cost-effective water supply and wastewater  
26 systems, including regional systems, to maximize the long-term  
27 economic development of counties eligible for financial assistance

1 under the economically distressed areas program. Any savings  
2 derived from the construction of a regional system that includes or  
3 serves an economically distressed area project shall be factored  
4 into the board's determination of financial assistance for the  
5 economically distressed area in a manner that assures the  
6 economically distressed area receives appropriate benefits from  
7 the savings. In no event shall financial assistance provided from  
8 the economically distressed areas account be used to provide water  
9 supply or wastewater service to any area that is not ~~[defined as]~~ an  
10 economically distressed area ~~[pursuant to Section 17.921(1)(A) of~~  
11 ~~this code]~~.

12 SECTION 7. Sections 17.927(b), (c), and (d), Water Code,  
13 are amended to read as follows:

14 (b) The application and plan must include:

15 (1) the name of the political subdivision and its  
16 principal officers ~~[comply with board requirements]~~;

17 (2) a citation of the law under which the political  
18 subdivision was created and operates ~~[describe in detail the method~~  
19 ~~for delivering water supply and sewer services and the persons to~~  
20 ~~whom the services will be provided]~~;

21 (3) a project plan, prepared and certified by an  
22 engineer registered to practice in this state, that must:

23 (A) describe the proposed planning, design, and  
24 construction activities necessary to provide water supply and sewer  
25 services that meet minimum state standards; and

26 (B) identify the households to which the water  
27 supply and sewer services will be provided ~~[describe the method for~~

1 ~~complying with minimum state standards for water supply and sewer~~  
2 ~~services adopted by the board under Section 16.342 of this code];~~

3 (4) [~~include~~] a budget that estimates the total cost  
4 of providing water supply and sewer services to the economically  
5 distressed area and a proposed schedule and method for repayment of  
6 financial assistance consistent with board rules and guidelines;

7 (5) a description of the [~~describe~~] existing water  
8 supply and sewer facilities located in the [~~economically~~  
9 ~~distressed~~] area to be served by the proposed project, including a  
10 statement [~~and include with the description:~~

11 [~~(A) the county map required by Section 366.036,~~  
12 ~~Health and Safety Code, or~~

13 [~~(B) a document~~] prepared and certified by an  
14 engineer registered to practice in this state that the facilities  
15 do not meet minimum state standards [~~describing the plan for~~  
16 ~~providing water supply and sewer services to the economically~~  
17 ~~distressed area~~];

18 (6) documentation [~~provide proof~~] that the  
19 appropriate political subdivision has adopted the model rules  
20 developed under Section 16.343 [~~of this code~~];

21 (7) [~~include~~] information identifying the median  
22 household income for the area to be served by the proposed project  
23 [~~on the ability of potential customers to pay for the services~~  
24 ~~provided by the project including composite data prepared by the~~  
25 ~~applicant pursuant to board rules and guidelines from surveys of~~  
26 ~~those potential customers covering income, family size, personal~~  
27 ~~expenses, employment status, and other information required by~~

1 ~~board rule]; and~~

2 (8) the total amount of assistance requested from the  
3 economically distressed areas account~~[include an estimate of the~~  
4 ~~per household cost of providing the services contemplated by the~~  
5 ~~project with supporting data;~~

6 [~~(9) describe the procedures to be used to collect~~  
7 ~~money from residents who use the proposed water supply and sewer~~  
8 ~~services including procedures for collection of delinquent~~  
9 ~~accounts;~~

10 [~~(10) include a requirement that a contractor who~~  
11 ~~agrees to acquire, construct, extend, or provide water supply and~~  
12 ~~sewer services executes a performance bond in the amount of 100~~  
13 ~~percent of the contract price;~~

14 [~~(11) contain an agreement to comply with applicable~~  
15 ~~procurement procedures in contract awards for water supply and~~  
16 ~~sewer services;~~

17 [~~(12) if located in the service area of a retail public~~  
18 ~~utility or public utility that has a certificate of public~~  
19 ~~convenience and necessity under Chapter 13 of this code, include a~~  
20 ~~document in the form of an affidavit signed by the chief executive~~  
21 ~~officer of the utility, which shall cooperate with the political~~  
22 ~~subdivision, stating that the utility does not object to the~~  
23 ~~construction and operation of the services and facilities in its~~  
24 ~~service area;~~

25 [~~(13) include a map of the economically distressed~~  
26 ~~area together with supporting information relating to dwellings in~~  
27 ~~the area;~~

1           ~~[(14) describe in detail the methods for incorporating~~  
2 ~~water conservation into the provision of water and sewer services~~  
3 ~~to the economically distressed area;~~

4           ~~[(15) include, on request of the board, a written~~  
5 ~~determination by the commission on the managerial, financial, and~~  
6 ~~technical capabilities of the applicant to operate the system for~~  
7 ~~which assistance is being requested; and~~

8           ~~[(16) include any other information required by the~~  
9 ~~board].~~

10           (c) Before the board approves the application or provides  
11 any funds under an application, it shall require an applicant to  
12 adopt a program of water conservation for the more effective use of  
13 water that meets the criteria established under Section 17.125 [~~if~~  
14 ~~an applicant is a district or nonprofit water supply corporation,~~  
15 ~~the applicant must include with the application proof that the~~  
16 ~~appropriate county and municipalities have given their consent)].~~

17           (d) Before considering an application, the board may  
18 require the applicant to:

19                   (1) provide documentation to the executive  
20 administrator sufficient to allow review of the applicant's  
21 managerial, financial, and technical capabilities to operate the  
22 system for which assistance is being requested;

23                   (2) provide a written determination by the commission  
24 on the applicant's managerial, financial, and technical  
25 capabilities to operate the system for which assistance is being  
26 requested;

27                   (3) request that the comptroller perform a financial



1 management review of the applicant and, if the review is performed,  
2 provide the board with the results of the review; or

3 (4) provide any other information required by the  
4 board or the executive administrator [~~In an application to the~~  
5 ~~board for financial assistance for a water supply project or for~~  
6 ~~sewer services, the applicant shall include:~~

7 [~~(1) the name of the political subdivision and its~~  
8 ~~principal officers;~~

9 [~~(2) a citation of the law under which the political~~  
10 ~~subdivision operates and was created;~~

11 [~~(3) a description of the water supply project or the~~  
12 ~~sewer services for which the financial assistance will be used;~~

13 [~~(4) the estimated total cost of the water supply~~  
14 ~~project or sewer services construction;~~

15 [~~(5) the amount of state financial assistance~~  
16 ~~requested;~~

17 [~~(6) the plan for repaying the financial assistance~~  
18 ~~provided for the water supply project or sewer services; and~~

19 [~~(7) any other information the board requires].~~

20 SECTION 8. Section 17.929, Water Code, is amended to read as  
21 follows:

22 Sec. 17.929. CONSIDERATIONS IN PASSING ON  
23 APPLICATION. (a) In passing on an application for financial  
24 assistance, the board shall consider:

25 (1) the need of the economically distressed area to be  
26 served by the water supply and sewer services in relation to the  
27 need of other political subdivisions requiring financial

1 assistance under this subchapter and the relative costs and  
2 benefits of all applications;

3 (2) the availability to the area to be served by the  
4 project of revenue or financial assistance from alternative sources  
5 for the payment of the cost of the proposed project [~~efforts by the~~  
6 ~~residents of the economically distressed area to provide necessary~~  
7 ~~water supply and sewer services~~];

8 (3) [~~the proposed use of labor from inside the~~  
9 ~~political subdivision to perform contracts for providing water~~  
10 ~~supply and sewer services~~;

11 [~~(4) the relationship of the proposed water supply and~~  
12 ~~sewer services to minimum state standards for water supply and~~  
13 ~~sewer services adopted under Section 16.343 of this code~~;

14 [~~(5)~~] the financing of the proposed water supply and  
15 sewer project including consideration of:

16 (A) the budget and repayment schedule submitted  
17 under Section 17.927(b)(4) [~~of this code~~];

18 (B) other items included in the application  
19 relating to financing; and

20 (C) other financial information and data  
21 available to the board;

22 (4) [~~(6) whether the applicant has proposed methods~~  
23 ~~for incorporating water conservation into the provision of water~~  
24 ~~and sewer services to the economically distressed area~~;

25 [~~(7)~~] whether the county and other appropriate  
26 political subdivisions have [~~has~~] adopted model rules pursuant to  
27 Section 16.343 [~~of this code~~] and the manner of enforcement of model

1 rules;

2 ~~[(8) the feasibility of creating a conservation and~~  
3 ~~reclamation district under Article XVI, Section 59, of the Texas~~  
4 ~~Constitution, to provide the services and finance the water supply~~  
5 ~~and sewer services covered by the application with district bonds~~  
6 ~~issued and sold through the regular bond market;~~

7 ~~[(9) the percentage of the total project cost that the~~  
8 ~~financial assistance will comprise,] and~~

9 (5) ~~[(10)]~~ the feasibility of achieving cost savings  
10 by providing a regional facility for water supply or wastewater  
11 service and the feasibility of financing the facility by using  
12 funds from the economically distressed areas account or any other  
13 financial assistance.

14 (b) At the time an application for financial assistance is  
15 considered, the board also must find that the area to be served by a  
16 proposed project has a median household income that is not greater  
17 than 75 percent of the median state household income ~~[an average per~~  
18 ~~capita income that is at least 25 percent below the state average]~~  
19 for the most recent year ~~[three consecutive years]~~ for which  
20 statistics are available.

21 SECTION 9. Section 17.930(b), Water Code, is amended to  
22 read as follows:

23 (b) After making the considerations provided by Section  
24 17.929 ~~[of this code]~~, the board by resolution shall:

25 (1) approve the plan and application as submitted;

26 (2) approve the plan and application subject to the  
27 requirements identified by the board or commission for the

1 applicant to obtain the managerial, financial, and technical  
2 capabilities to operate the system and any other requirements,  
3 including training under Subchapter M, the board considers  
4 appropriate;

5 (3) deny the application and identify the requirements  
6 or remedial steps the applicant must complete before the applicant  
7 may be reconsidered for financial assistance;

8 (4) if the board finds that the applicant will be  
9 unable to obtain the managerial, financial, or technical  
10 capabilities to build and operate a system, deny the application  
11 and issue a determination that a service provider other than the  
12 applicant is necessary or appropriate to undertake the proposed  
13 project; or

14 (5) deny the application.

15 SECTION 10. Sections 17.933(a) and (c), Water Code, are  
16 amended to read as follows:

17 (a) The board may use money in the economically distressed  
18 areas account to provide financial assistance to a political  
19 subdivision [~~to be repaid~~] in the form of a loan, including a loan  
20 with zero interest, grant, or other type of financial assistance to  
21 be determined [~~, manner, and time provided~~] by the board [~~rules and~~  
22 ~~in the agreement between the board and the political subdivision~~]  
23 taking into consideration the information provided by Section  
24 17.927(b)(7) [~~of this code~~].

25 (c) The total amount of financial assistance provided by the  
26 board to political subdivisions under this subchapter from  
27 state-issued bonds for which repayment is not required may not

1 exceed at any time 90 percent of the total principal amount of  
2 issued and unissued bonds authorized under Article III [~~Section~~  
3 ~~49-d-7~~] of the Texas Constitution, for purposes of this subchapter  
4 plus outstanding interest on those bonds.

5 SECTION 11. Section 17.952, Water Code, is amended to read  
6 as follows:

7 Sec. 17.952. ISSUANCE OF WATER FINANCIAL ASSISTANCE  
8 BONDS. The board by resolution may provide for the issuance of  
9 water financial assistance bonds, which shall be general obligation  
10 bonds of the state, in an aggregate principal amount not to exceed  
11 the principal amount authorized to be issued by the [~~Section~~  
12 ~~49-d-8, Article III,~~] Texas Constitution.

13 SECTION 12. Section 17.993(a), Water Code, is amended to  
14 read as follows:

15 (a) The commission or the board may evaluate whether an  
16 operating entity needs training if the operating entity:

17 (1) requests financial assistance or an amendment to  
18 the project plan or budget [~~additional funding~~];

19 (2) requests more time to meet its obligations under a  
20 repayment schedule;

21 (3) does not provide required documentation; or

22 (4) has a history of compliance problems, as  
23 determined by the commission.

24 SECTION 13. Section 212.0105(a), Local Government Code, is  
25 amended to read as follows:

26 (a) This section applies only to a person who:

27 (1) is the owner of a tract of land in [~~either~~

1                   ~~[(A) a county that is contiguous to an~~  
2 ~~international border; or~~

3                   ~~[(B)]~~ a county in which a political subdivision  
4 that is eligible for and has applied for ~~[has received]~~ financial  
5 assistance through Subchapter K, Chapter 17, Water Code;

6                   (2) divides the tract in a manner that creates any lots  
7 that are intended for residential purposes and are five acres or  
8 less; and

9                   (3) is required under this subchapter to have a plat  
10 prepared for the subdivision.

11                  SECTION 14. Section 232.071, Local Government Code, is  
12 amended to read as follows:

13                  Sec. 232.071. APPLICABILITY. This subchapter applies only  
14 to the subdivision of land located:

15                   (1) outside the corporate limits of a municipality;  
16 and

17                   (2) in a county:

18                   (A) in which is located a political subdivision  
19 that is eligible for and has applied for financial assistance under  
20 Section 15.407, Water Code, or Subchapter K, Chapter 17, Water  
21 Code; and

22                   (B) to which Subchapter B does not apply.

23                  SECTION 15. Section 15.407(i), Section 16.343(f), Sections  
24 17.923 through 17.926, and Section 17.933(g), Water Code, are  
25 repealed.

26                  SECTION 16. The changes in law made by this Act apply only  
27 to an application for financial assistance pending or filed on or

1 after the effective date of this Act.

2 SECTION 17. This Act takes effect on September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 467 was passed by the House on April 20, 2005, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 467 on May 27, 2005, by the following vote: Yeas 139, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 467 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 30, Nays 1.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor