

1-1 By: Bailey, et al. (Senate Sponsor - Gallegos) H.B. No. 467
1-2 (In the Senate - Received from the House April 21, 2005;
1-3 April 22, 2005, read first time and referred to Committee on
1-4 Natural Resources; May 17, 2005, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 10,
1-6 Nays 0; May 17, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 467 By: Staples

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the financing of water and sewer programs in
1-11 disadvantaged areas.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 17, Water Code, is amended by adding
1-14 Subchapter K-1 to read as follows:

1-15 SUBCHAPTER K-1. STATEWIDE ASSISTANCE TO ECONOMICALLY DISTRESSED
1-16 AREAS FOR WATER SUPPLY AND SEWER SERVICE PROJECTS

1-17 Sec. 17.941. DEFINITIONS. In this subchapter:

1-18 (1) "Economically distressed area" means an area in
1-19 this state in which:

1-20 (A) water supply or sewer services are inadequate
1-21 to meet minimal needs of residential users as defined by board rule;

1-22 (B) financial resources are inadequate to
1-23 provide water supply and sewer services that will satisfy those
1-24 needs; and

1-25 (C) an established residential subdivision was
1-26 located on June 1, 2005, as determined by the board.

1-27 (2) "Financial assistance" means the funds provided by
1-28 the board to political subdivisions for water supply or sewer
1-29 services under this subchapter.

1-30 (3) "Political subdivision" means a county, a
1-31 municipality, a nonprofit water supply corporation created and
1-32 operating under Chapter 67, or a district or authority created
1-33 under Section 52, Article III, or Section 59, Article XVI, Texas
1-34 Constitution.

1-35 (4) "Sewer services" and "sewer facilities" mean
1-36 treatment works or individual, on-site, or cluster treatment
1-37 systems such as septic tanks and include drainage facilities and
1-38 other improvements for proper functioning of the sewer services and
1-39 other facilities.

1-40 Sec. 17.942. FINANCIAL ASSISTANCE. The economically
1-41 distressed areas program account may be used by the board to provide
1-42 financial assistance to political subdivisions for the
1-43 construction, acquisition, or improvement of water supply and sewer
1-44 services, including providing money from the account for the
1-45 state's participation in federal programs that provide assistance
1-46 to political subdivisions. Money from the proceeds of bonds issued
1-47 under the authority of Section 49-d-7(b) or 49-d-8, Article III,
1-48 Texas Constitution, may not be used to provide financial assistance
1-49 under this subchapter.

1-50 Sec. 17.943. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A
1-51 political subdivision may apply to the board for financial
1-52 assistance under this subchapter by submitting an application
1-53 together with a plan for providing water supply or sewer services to
1-54 an economically distressed area.

1-55 (b) The application and plan must include:

1-56 (1) the name of the political subdivision and its
1-57 principal officers;

1-58 (2) a citation of the law under which the political
1-59 subdivision was created and operates;

1-60 (3) a description of the existing water supply and
1-61 sewer facilities located in the area to be served by the proposed
1-62 project and, along with the description, a statement prepared and
1-63 certified by an engineer registered to practice in this state that

2-1 the facilities do not meet minimum state standards;

2-2 (4) information identifying the median household
2-3 income for the area to be served by the proposed project;

2-4 (5) a project plan prepared and certified by an
2-5 engineer registered to practice in this state that:

2-6 (A) describes the proposed planning, design, and
2-7 construction activities necessary for providing water supply and
2-8 sewer services that meet minimum state standards; and

2-9 (B) identifies the households to which the
2-10 services will be provided;

2-11 (6) a budget that estimates the total cost of
2-12 providing water supply and sewer services to the economically
2-13 distressed area and a proposed schedule and method for repayment of
2-14 financial assistance consistent with board rules and guidelines;
2-15 and

2-16 (7) the total amount of assistance requested from the
2-17 economically distressed areas program account.

2-18 (c) A program of water conservation for the more effective
2-19 use of water is required for the approval of an application for
2-20 financial assistance under this section in the same manner as such a
2-21 program is required for the approval of an application for
2-22 financial assistance under Section 17.125.

2-23 (d) Before considering the application, the board may
2-24 require the applicant to:

2-25 (1) participate with the board in reviewing the
2-26 applicant's managerial, financial, or technical capabilities to
2-27 operate the system for which assistance is being requested;

2-28 (2) provide a written determination by the commission
2-29 of the applicant's managerial, financial, and technical
2-30 capabilities to operate the system for which assistance is being
2-31 requested;

2-32 (3) request that the comptroller perform a financial
2-33 management review of the applicant's current operations and, if the
2-34 comptroller is available to perform the review, provide the board
2-35 with the results of the review; or

2-36 (4) provide any other information required by the
2-37 board or the executive administrator.

2-38 Sec. 17.944. CONSIDERATIONS IN REVIEWING APPLICATION.

2-39 (a) In reviewing an application for financial assistance, the
2-40 board shall consider:

2-41 (1) the need of the economically distressed area to be
2-42 served by the water supply or sewer services in relation to the need
2-43 of other political subdivisions requiring financial assistance
2-44 under this subchapter and the relative costs and benefits of all
2-45 applications;

2-46 (2) the availability of revenue or alternative
2-47 financial assistance for the area served by the project, from all
2-48 sources, for the payment of the cost of the proposed project;

2-49 (3) the financing of the proposed water supply or
2-50 sewer project, including consideration of:

2-51 (A) the budget and repayment schedule submitted
2-52 under Section 17.943(b)(6);

2-53 (B) other items included in the application
2-54 relating to financing; and

2-55 (C) other financial information and data
2-56 available to the board; and

2-57 (4) the feasibility of achieving cost savings by
2-58 providing a regional facility for water supply or wastewater
2-59 service and the feasibility of financing the project by using money
2-60 from the economically distressed areas program account or any other
2-61 available financial assistance.

2-62 (b) At the time an application for financial assistance is
2-63 considered, the board must also find that the area to be served by a
2-64 proposed project has a median household income of not more than 75
2-65 percent of the median state household income for the most recent
2-66 year for which statistics are available.

2-67 Sec. 17.945. APPROVAL OR DISAPPROVAL OF APPLICATION. After
2-68 considering the matters described by Section 17.944, the board by
2-69 resolution shall:

3-1 (1) approve the plan and application as submitted;

3-2 (2) approve the plan and application subject to the
 3-3 requirements identified by the board or commission for the
 3-4 applicant to obtain the managerial, financial, and technical
 3-5 capabilities to operate the system and any other requirements,
 3-6 including training under Subchapter M, the board considers
 3-7 appropriate;

3-8 (3) deny the application and identify the requirements
 3-9 or remedial steps the applicant must complete before the applicant
 3-10 may be reconsidered for financial assistance;

3-11 (4) if the board finds that the applicant will be
 3-12 unable to obtain the managerial, financial, or technical
 3-13 capabilities to build and operate a system, deny the application
 3-14 and issue a determination that a service provider other than the
 3-15 applicant is necessary or appropriate to undertake the proposed
 3-16 project; or

3-17 (5) deny the application.

3-18 Sec. 17.946. FINDINGS REGARDING PERMITS. (a) The board
 3-19 may not release money for the construction of that portion of a
 3-20 project that proposes surface water or groundwater development
 3-21 until the executive administrator makes a written finding:

3-22 (1) that an applicant proposing surface water
 3-23 development has the necessary water right authorizing it to
 3-24 appropriate and use the water that the water supply project will
 3-25 provide; or

3-26 (2) that an applicant proposing groundwater
 3-27 development has the right to use water that the water supply project
 3-28 will provide.

3-29 (b) The board may release money for the costs of planning,
 3-30 engineering, architectural, legal, title, fiscal, or economic
 3-31 investigation, studies, surveys, or designs before making the
 3-32 finding required under Subsection (a) if the executive
 3-33 administrator determines that a reasonable expectation exists that
 3-34 the finding will be made before the release of funds for
 3-35 construction.

3-36 (c) If an applicant includes a proposal for treatment works,
 3-37 the board may not deliver money for the treatment works until the
 3-38 applicant has received a permit for construction and operation of
 3-39 the treatment works and approval of the plans and specifications
 3-40 from the commission, unless such a permit is not required by the
 3-41 commission.

3-42 Sec. 17.947. METHOD OF FINANCIAL ASSISTANCE. (a) The
 3-43 board may provide financial assistance to political subdivisions
 3-44 under this subchapter by using money in the economically distressed
 3-45 areas program account to purchase political subdivision bonds.

3-46 (b) The board may make financial assistance available to
 3-47 political subdivisions in any other manner that it considers
 3-48 feasible, including:

3-49 (1) contracts or agreements with a political
 3-50 subdivision for acceptance of financial assistance that establish
 3-51 any repayment based on the political subdivision's ability to repay
 3-52 the assistance and that establish requirements for acceptance of
 3-53 the assistance; or

3-54 (2) contracts or agreements for providing financial
 3-55 assistance in any federal or federally assisted project or program.

3-56 Sec. 17.948. TERMS OF FINANCIAL ASSISTANCE. (a) The board
 3-57 may use money in the economically distressed areas program account
 3-58 to provide financial assistance under this subchapter to a
 3-59 political subdivision to be repaid in the form, manner, and time
 3-60 provided by board rules and in the agreement between the board and
 3-61 the political subdivision, taking into consideration the
 3-62 information provided under Section 17.943.

3-63 (b) In providing financial assistance to an applicant under
 3-64 this subchapter, the board may not provide to the applicant
 3-65 financial assistance for which repayment is not required in an
 3-66 amount that exceeds 50 percent of the total amount of the financial
 3-67 assistance plus interest on any amount that must be repaid, unless
 3-68 the Department of State Health Services issues a finding that a
 3-69 nuisance dangerous to the public health and safety exists resulting

4-1 from water supply and sanitation problems in the area to be served
4-2 by the proposed project. The board and the applicant shall provide
4-3 to the department information necessary to make a determination,
4-4 and the board and the department may enter into memoranda of
4-5 understanding necessary to carry out this subsection.

4-6 (c) The total amount of financial assistance provided by the
4-7 board to political subdivisions under this subchapter from
4-8 state-issued bonds for which repayment is not required may not
4-9 exceed at any time 90 percent of the total principal amount of
4-10 issued and unissued bonds authorized for purposes of this
4-11 subchapter.

4-12 (d) In determining the amount and form of financial
4-13 assistance and the amount and form of repayment, if any, the board
4-14 shall consider:

4-15 (1) rates, fees, and charges that the average customer
4-16 to be served by the project will be able to pay based on a comparison
4-17 of what other families of similar income who are similarly situated
4-18 pay for comparable services;

4-19 (2) sources of funding available to the political
4-20 subdivision from federal and private money and from other state
4-21 money;

4-22 (3) any local money of the political subdivision to be
4-23 served by the project if the economically distressed area to be
4-24 served by the board's financial assistance is within the boundary
4-25 of the political subdivision; and

4-26 (4) the just, fair, and reasonable charges for water
4-27 and wastewater service as provided by this code.

4-28 (e) In making its determination under Subsection (d)(1),
4-29 the board may consider any study, survey, data, criteria, or
4-30 standard developed or prepared by any federal, state, or local
4-31 agency, private foundation, banking or financial institution, or
4-32 other reliable source of statistical or financial data or
4-33 information.

4-34 (f) The board may provide financial assistance money under
4-35 this subchapter for treatment works only if the board determines
4-36 that it is not feasible in the area covered by the application to
4-37 use septic tanks as the method for providing sewer services under
4-38 the applicant's plan.

4-39 SECTION 2. Subsection (c), Section 17.958, Water Code, is
4-40 amended to read as follows:

4-41 (c) Money on deposit in the economically distressed areas
4-42 program account may be used by the board for purposes provided by
4-43 Subchapter K or K-1 in the manner that the board determines
4-44 necessary for the administration of the fund.

4-45 SECTION 3. Subsection (i), Section 15.407, and Subsection
4-46 (b), Section 15.974, Water Code, are repealed.

4-47 SECTION 4. This Act takes effect immediately if it receives
4-48 a vote of two-thirds of all the members elected to each house, as
4-49 provided by Section 39, Article III, Texas Constitution. If this
4-50 Act does not receive the vote necessary for immediate effect, this
4-51 Act takes effect September 1, 2005.

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