

By: Lucio, et al.

S.B. No. 964

Substitute the following for S.B. No. 964:

By: Chavez

C.S.S.B. No. 964

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authorization, administration, and funding of the
3 program to provide financial assistance for the construction,
4 acquisition, or improvement of water supply and sewer services for
5 economically distressed areas.

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

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

9 (a) In this section, "economically distressed area" and
10 "political subdivision" have the meanings assigned by Section
11 17.921 [~~16.341 of this code~~].

12 SECTION 2. Subdivisions (1) and (2), Section 16.341, Water
13 Code, are amended to read as follows:

14 (1) "Affected county" means a county[+
15 [~~(A)~~] that has an economically distressed area
16 which has a median household income that is not greater than 75
17 percent of the median state household income [~~a per capita income~~
18 ~~that averaged 25 percent below the state average for the most recent~~
19 ~~three consecutive years for which statistics are available and an~~
20 ~~unemployment rate that averaged 25 percent above the state average~~
21 ~~for the most recent three consecutive years for which statistics~~
22 ~~are available, or~~

23 [~~(B) that is adjacent to an international~~
24 ~~border~~].

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

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

6 [~~(B) financial resources are inadequate to~~
7 ~~provide water supply or sewer services that will satisfy those~~
8 ~~needs; and~~

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

11 SECTION 3. Subsections (b) and (c), Section 16.343, Water
12 Code, are amended to read as follows:

13 (b) The model rules must:

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

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

24 (c) The model rules must:

25 (1) assure that adequate sewer facilities are
26 available to the residential areas through either septic tanks or
27 an organized sewage disposal system that is a publicly or privately

1 owned system for the collection, treatment, and disposal of sewage
2 operated in accordance with the terms and conditions of a valid
3 waste discharge permit issued by the commission or private sewage
4 facilities in accordance with Chapter 366, Health and Safety Code,
5 and the Construction Standards for On-Site Sewerage Facilities
6 adopted by the commission and other law and rules applicable to
7 sewage facilities; and

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

11 SECTION 4. Section 17.0112, Water Code, is amended to read
12 as follows:

13 Sec. 17.0112. AUTHORIZATION OF CERTAIN BONDS FOR FINANCIAL
14 ASSISTANCE. (a) The board may issue not more than \$25 million in
15 bonds dedicated under Section 17.0111 of this code and may issue not
16 more than \$50 million in bonds authorized under Section 49-d-10,
17 Article III, Texas Constitution, during a fiscal year to provide
18 financial assistance for water supply and sewer services as
19 provided under Subchapter K of this chapter.

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

1 authorization of additional bonds. Before the bond review board
2 adopts such a resolution, it shall give notice and hold a hearing to
3 determine whether the limits should be waived and the authorization
4 given.

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

8 (1) "Economically distressed area" means an area in
9 which:

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

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

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

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

22 SECTION 6. Subsection (b), Section 17.922, Water Code, is
23 amended to read as follows:

24 (b) To the extent practicable, the board shall use the funds
25 in the economically distressed areas account in conjunction with
26 the other financial assistance available through the board to
27 encourage the use of cost-effective water supply and wastewater

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

14 SECTION 7. Subsections (b), (c), and (d), Section 17.927,
15 Water Code, are amended to read as follows:

16 (b) The application and plan must include:

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

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

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

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

1 (B) identify the households to which the water
2 supply and sewer services will be provided [~~describe the method for~~
3 ~~complying with minimum state standards for water supply and sewer~~
4 ~~services adopted by the board under Section 16.342 of this code~~];

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

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

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

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

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

23 (7) [~~include~~] information identifying the median
24 household income for the area to be served by the proposed project
25 [~~on the ability of potential customers to pay for the services~~
26 ~~provided by the project including composite data prepared by the~~
27 ~~applicant pursuant to board rules and guidelines from surveys of~~

1 ~~those potential customers covering income, family size, personal~~
2 ~~expenses, employment status, and other information required by~~
3 ~~board rule]; and~~

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

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

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

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

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

27 [~~(13) include a map of the economically distressed~~

1 ~~area together with supporting information relating to dwellings in~~
2 ~~the area;~~

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

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

10 ~~[(16) include any other information required by the~~
11 ~~board].~~

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

19 (d) Before considering an application, the board may
20 require the applicant to:

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

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

1 requested;

2 (3) request that the comptroller perform a financial
3 management review of the applicant and, if the review is performed,
4 provide the board with the results of the review; or

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

9 [~~(1) the name of the political subdivision and its~~
10 ~~principal officers;~~

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

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

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

17 [~~(5) the amount of state financial assistance~~
18 ~~requested;~~

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

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

22 SECTION 8. Section 17.929, Water Code, is amended to read as
23 follows:

24 Sec. 17.929. CONSIDERATIONS IN PASSING ON APPLICATION.

25 (a) In passing on an application for financial assistance, the
26 board shall consider:

27 (1) the need of the economically distressed area to be

1 served by the water supply and sewer services in relation to the
2 need of other political subdivisions requiring financial
3 assistance under this subchapter and the relative costs and
4 benefits of all applications;

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

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

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

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

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

20 (B) other items included in the application
21 relating to financing; and

22 (C) other financial information and data
23 available to the board;

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

27 [~~(7)~~] whether the county and other appropriate

1 political subdivisions have [~~has~~] adopted model rules pursuant to
2 Section 16.343 [~~of this code~~] and the manner of enforcement of model
3 rules;

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

9 [~~(9) the percentage of the total project cost that the~~
10 ~~financial assistance will comprise;~~] and

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

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

23 SECTION 9. Subsection (b), Section 17.930, Water Code, is
24 amended to read as follows:

25 (b) After making the considerations provided by Section
26 17.929 [~~of this code~~], the board by resolution shall:

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

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

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

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

16 (5) deny the application.

17 SECTION 10. Subsections (a) and (c), Section 17.933, Water
18 Code, are amended to read as follows:

19 (a) The board may use money in the economically distressed
20 areas account to provide financial assistance to a political
21 subdivision [~~to be repaid~~] in the form of a loan, including a loan
22 with zero interest, grant, or other type of financial assistance to
23 be determined [~~, manner, and time provided~~] by the board [~~rules and~~
24 ~~in the agreement between the board and the political subdivision~~]
25 taking into consideration the information provided by Section
26 17.927(b)(7) [~~of this code~~].

27 (c) The total amount of financial assistance provided by the

1 board to political subdivisions under this subchapter from
2 state-issued bonds for which repayment is not required may not
3 exceed at any time 90 percent of the total principal amount of
4 issued and unissued bonds authorized under Article III, Sections
5 [~~Section~~] 49-d-7 and 49-d-10, of the Texas Constitution, for
6 purposes of this subchapter plus outstanding interest on those
7 bonds.

8 SECTION 11. Section 17.952, Water Code, is amended to read
9 as follows:

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

16 SECTION 12. Subsection (a), Section 17.993, Water Code, is
17 amended to read as follows:

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

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

22 (2) requests more time to meet its obligations under a
23 repayment schedule;

24 (3) does not provide required documentation; or

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

27 SECTION 13. Subsection (a), Section 212.0105, Local

1 Government Code, is amended to read as follows:

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

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

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

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

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

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

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

16 Sec. 232.071. APPLICABILITY. This subchapter applies only
17 to the subdivision of land located:

18 (1) outside the corporate limits of a municipality;
19 and

20 (2) in a county:

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

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

26 SECTION 15. Subsection (i), Section 15.407, Subsection (f),
27 Section 16.343, Sections 17.923 through 17.926, and Subsection (g),

1 Section 17.933, Water Code, are repealed.

2 SECTION 16. The changes in law made by this Act apply only
3 to an application for financial assistance pending or filed on or
4 after the effective date of this Act.

5 SECTION 17. This Act takes effect on the date on which the
6 constitutional amendment proposed by the 79th Legislature, Regular
7 Session, 2005, providing for the issuance of additional general
8 obligation bonds by the Texas Water Development Board in an amount
9 not to exceed \$785 million to provide assistance to economically
10 distressed areas, takes effect. If that amendment is not approved
11 by the voters, this Act has no effect.