

By: Gallegos

S.B. No. 1726

A BILL TO BE ENTITLED

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

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

Sec. 17.941. DEFINITIONS. In this subchapter:

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

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

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

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

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

(3) "Political subdivision" means a county, a municipality, a nonprofit water supply corporation created and operating under Chapter 67, or a district or authority created

1 under Section 52, Article III, or Section 59, Article XVI, Texas
2 Constitution.

3 (4) "Sewer services" and "sewer facilities" mean
4 treatment works or individual, on-site, or cluster treatment
5 systems such as septic tanks and include drainage facilities and
6 other improvements for proper functioning of the sewer services and
7 other facilities.

8 Sec. 17.942. FINANCIAL ASSISTANCE. The economically
9 distressed areas program account may be used by the board to provide
10 financial assistance to political subdivisions for the
11 construction, acquisition, or improvement of water supply and sewer
12 services, including providing money from the account for the
13 state's participation in federal programs that provide assistance
14 to political subdivisions. Money from the proceeds of bonds issued
15 under the authority of Section 49-d-7(b) or 49-d-8, Article III,
16 Texas Constitution, may not be used to provide financial assistance
17 under this subchapter.

18 Sec. 17.943. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A
19 political subdivision may apply to the board for financial
20 assistance under this subchapter by submitting an application
21 together with a plan for providing water supply or sewer services to
22 an economically distressed area.

23 (b) The application and plan must include:

24 (1) the name of the political subdivision and its
25 principal officers;

26 (2) a citation of the law under which the political
27 subdivision was created and operates;

1 (3) a description of the existing water supply and
2 sewer facilities located in the area to be served by the proposed
3 project and, along with the description, a statement prepared and
4 certified by an engineer registered to practice in this state that
5 the facilities do not meet minimum state standards;

6 (4) information identifying the median household
7 income for the area to be served by the proposed project;

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

10 (A) describes the proposed planning, design, and
11 construction activities necessary for providing water supply and
12 sewer services that meet minimum state standards; and

13 (B) identifies the households to which the
14 services will be provided;

15 (6) a budget that estimates the total cost of
16 providing water supply and sewer services to the economically
17 distressed area and a proposed schedule and method for repayment of
18 financial assistance consistent with board rules and guidelines;
19 and

20 (7) the total amount of assistance requested from the
21 economically distressed areas program account.

22 (c) A program of water conservation for the more effective
23 use of water is required for the approval of an application for
24 financial assistance under this section in the same manner as such a
25 program is required for the approval of an application for
26 financial assistance under Section 17.125.

27 (d) Before considering the application, the board may

1 require the applicant to:

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

5 (2) provide a written determination by the commission
6 of the applicant's managerial, financial, and technical
7 capabilities to operate the system for which assistance is being
8 requested;

9 (3) request that the comptroller perform a financial
10 management review of the applicant's current operations and, if the
11 comptroller is available to perform the review, provide the board
12 with the results of the review; or

13 (4) provide any other information required by the
14 board or the executive administrator.

15 Sec. 17.944. CONSIDERATIONS IN REVIEWING APPLICATION.

16 (a) In reviewing an application for financial assistance, the
17 board shall consider:

18 (1) the need of the economically distressed area to be
19 served by the water supply or sewer services in relation to the need
20 of other political subdivisions requiring financial assistance
21 under this subchapter and the relative costs and benefits of all
22 applications;

23 (2) the availability of revenue or alternative
24 financial assistance for the area served by the project, from all
25 sources, for the payment of the cost of the proposed project;

26 (3) the financing of the proposed water supply or
27 sewer project, including consideration of:

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

3 (B) other items included in the application
4 relating to financing; and

5 (C) other financial information and data
6 available to the board; and

7 (4) the feasibility of achieving cost savings by
8 providing a regional facility for water supply or wastewater
9 service and the feasibility of financing the project by using money
10 from the economically distressed areas program account or any other
11 available financial assistance.

12 (b) At the time an application for financial assistance is
13 considered, the board must also find that the area to be served by a
14 proposed project has a median household income of not more than 75
15 percent of the median state household income for the most recent
16 year for which statistics are available.

17 Sec. 17.945. APPROVAL OR DISAPPROVAL OF APPLICATION. After
18 considering the matters described by Section 17.944, the board by
19 resolution shall:

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

21 (2) approve the plan and application subject to the
22 requirements identified by the board or commission for the
23 applicant to obtain the managerial, financial, and technical
24 capabilities to operate the system and any other requirements,
25 including training under Subchapter M, the board considers
26 appropriate;

27 (3) deny the application and identify the requirements

1 or remedial steps the applicant must complete before the applicant
2 may be reconsidered for financial assistance;

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

9 (5) deny the application.

10 Sec. 17.946. FINDINGS REGARDING PERMITS. (a) The board
11 may not release money for the construction of that portion of a
12 project that proposes surface water or groundwater development
13 until the executive administrator makes a written finding:

14 (1) that an applicant proposing surface water
15 development has the necessary water right authorizing it to
16 appropriate and use the water that the water supply project will
17 provide; or

18 (2) that an applicant proposing groundwater
19 development has the right to use water that the water supply project
20 will provide.

21 (b) The board may release money for the costs of planning,
22 engineering, architectural, legal, title, fiscal, or economic
23 investigation, studies, surveys, or designs before making the
24 finding required under Subsection (a) if the executive
25 administrator determines that a reasonable expectation exists that
26 the finding will be made before the release of funds for
27 construction.

1 (c) If an applicant includes a proposal for treatment works,
2 the board may not deliver money for the treatment works until the
3 applicant has received a permit for construction and operation of
4 the treatment works and approval of the plans and specifications
5 from the commission, unless such a permit is not required by the
6 commission.

7 Sec. 17.947. METHOD OF FINANCIAL ASSISTANCE. (a) The
8 board may provide financial assistance to political subdivisions
9 under this subchapter by using money in the economically distressed
10 areas program account to purchase political subdivision bonds.

11 (b) The board may make financial assistance available to
12 political subdivisions in any other manner that it considers
13 feasible, including:

14 (1) contracts or agreements with a political
15 subdivision for acceptance of financial assistance that establish
16 any repayment based on the political subdivision's ability to repay
17 the assistance and that establish requirements for acceptance of
18 the assistance; or

19 (2) contracts or agreements for providing financial
20 assistance in any federal or federally assisted project or program.

21 Sec. 17.948. TERMS OF FINANCIAL ASSISTANCE. (a) The board
22 may use money in the economically distressed areas program account
23 to provide financial assistance under this subchapter to a
24 political subdivision to be repaid in the form, manner, and time
25 provided by board rules and in the agreement between the board and
26 the political subdivision, taking into consideration the
27 information provided under Section 17.943.

1 (b) In providing financial assistance to an applicant under
2 this subchapter, the board may not provide to the applicant
3 financial assistance for which repayment is not required in an
4 amount that exceeds 50 percent of the total amount of the financial
5 assistance plus interest on any amount that must be repaid, unless
6 the Department of State Health Services issues a finding that a
7 nuisance dangerous to the public health and safety exists resulting
8 from water supply and sanitation problems in the area to be served
9 by the proposed project. The board and the applicant shall provide
10 to the department information necessary to make a determination,
11 and the board and the department may enter into memoranda of
12 understanding necessary to carry out this subsection.

13 (c) The total amount of financial assistance provided by the
14 board to political subdivisions under this subchapter from
15 state-issued bonds for which repayment is not required may not
16 exceed at any time 90 percent of the total principal amount of
17 issued and unissued bonds authorized for purposes of this
18 subchapter.

19 (d) In determining the amount and form of financial
20 assistance and the amount and form of repayment, if any, the board
21 shall consider:

22 (1) rates, fees, and charges that the average customer
23 to be served by the project will be able to pay based on a comparison
24 of what other families of similar income who are similarly situated
25 pay for comparable services;

26 (2) sources of funding available to the political
27 subdivision from federal and private money and from other state

1 money;

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

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

8 (e) In making its determination under Subsection (d)(1),
9 the board may consider any study, survey, data, criteria, or
10 standard developed or prepared by any federal, state, or local
11 agency, private foundation, banking or financial institution, or
12 other reliable source of statistical or financial data or
13 information.

14 (f) The board may provide financial assistance money under
15 this subchapter for treatment works only if the board determines
16 that it is not feasible in the area covered by the application to
17 use septic tanks as the method for providing sewer services under
18 the applicant's plan.

19 SECTION 2. Subsection (c), Section 17.958, Water Code, is
20 amended to read as follows:

21 (c) Money on deposit in the economically distressed areas
22 program account may be used by the board for purposes provided by
23 Subchapter K or K-1 in the manner that the board determines
24 necessary for the administration of the fund.

25 SECTION 3. Subsection (i), Section 15.407, and Subsection
26 (b), Section 15.974, Water Code, are repealed.

27 SECTION 2. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2005.