

1-1 By: Gallegos S.B. No. 1726
1-2 (In the Senate - Filed March 11, 2005; March 30, 2005, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 29, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 29, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1726 By: Barrientos

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 2. 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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