

BILL ANALYSIS

C.S.H.B. 3526
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted by the 111th United States Congress and signed into law by the President on February 17, 2009. The ARRA provides appropriations to states for job preservation and creation, infrastructure investment, unemployment assistance and state and local fiscal stabilization. The ARRA also includes appropriations to the Environmental Protection Agency for capitalization grants for states to finance high priority infrastructure projects needed to ensure clean water and safe drinking water under the state revolving fund programs financed by capitalization grants under the federal Water Pollution Control Act and Safe Drinking Water Act.

As a result of ARRA, the State of Texas will receive an estimated \$179.1 million in an additional capitalization grant for the state's clean water state revolving fund (CWSRF) and \$160.7 million in an additional capitalization grant for the state's drinking water state revolving fund (DWSRF). The ARRA requires that funds for both CWSRF and DWSRF be reallocated to other states if projects are not under contract or construction by February 2010. Also, states are required to "give preference to activities that can be started and completed expeditiously" with a goal of 50 percent within 120 days of enactment.

C.S.H.B. 3526 authorizes the Texas Water Development Board to change the board's rules for administering the CWSRF and DWSRF in a manner that any special federal capitalization grant received as a result of federal economic recovery legislation would require the rules to be changed to prevent reallocation of the funds to other states.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Water Development Board in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 3526 amends the Water Code to require the Texas Water Development Board to adopt rules specifying the manner in which any capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund, as well as any additional state revolving fund hereafter established by the board, may be used to provide financial assistance to an eligible applicant, rather than political subdivisions, for public works.

C.S.H.B. 3526 authorizes the board to adopt rules specifying the manner in which any special capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund received as a result of federal economic recovery legislation may be used to provide financial assistance to an eligible applicant for public works. The bill requires the rules to require such financial assistance to be provided for the purpose or purposes, and on the terms authorized by, the federal legislation or federal agency program under which the additional state revolving fund was established or the

special capitalization grant was awarded. The bill establishes that, if the board determines that it is necessary to adopt rules to comply with the terms of a special capitalization grant or other source of federal funding, and that the procedures prescribed under rulemaking provisions in the state Administrative Procedure Act do not allow for the adoption of the rules in a sufficiently prompt manner, the procedures prescribed under such provisions do not apply to the adoption of the rules. The bill requires the board, in such a case, to post notice of a meeting to adopt rules not later than 72 hours before the time the meeting is scheduled and to adopt the necessary rules at the meeting. The bill requires the board to file a rule adopted in such a manner and the board's related written determinations in the office of the secretary of state for publication in the Texas Register in the manner prescribed under provisions governing the Texas Register and Texas Administrative Code. The bill authorizes the board, not later than the 180th day after the date such rules are adopted, to readopt or amend the rules in accordance with the Administrative Procedures Act. The bill establishes that, if the board does not readopt or amend such rules in that manner, the rules expire on the 180th day after the date the rules were adopted. The bill makes its provisions relating to rulemaking authority for special federal capitalization grants expire September 1, 2011.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3526 adds a provision not in the original authorizing the board to adopt rules specifying the manner in which any special capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund received as a result of federal economic recovery legislation may be used to provide financial assistance to an eligible applicant for public works. The substitute adds a provision not in the original requiring board-adopted rules to require such financial assistance to be provided for the purpose or purposes, and on the terms authorized by, the federal legislation or federal agency program under which the additional state revolving fund was established or the special capitalization grant was awarded. The substitute adds a provision not in the original establishing that the provisions relating to rulemaking authority for special federal capitalization grants expire September 1, 2011.