

BILL ANALYSIS

C.S.S.B. 2314
By: Averitt
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.S.B. 2314 requires 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 are authorized to be used to provide assistance to an eligible applicant for public works. The bill authorizes the board to adopt rules in an expedient manner in order to comply with federal funding terms, if necessary, and continues the validity of rules adopted in such a manner if the board readopts the rules as required by the Administrative Procedure Act within 180 days of initial adoption.

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.S.B. 2314 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, are authorized to be used to provide assistance to an eligible applicant, rather than a political subdivision, for public works. The bill requires such rules to require 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 capitalization grant was awarded.

C.S.S.B. 2314 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 and requires such rules to require 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.

C.S.S.B. 2314 specifies that provisions on rulemaking under the Administrative Procedure Act do not apply 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 such procedures do not allow for the adoption of the rules in a sufficiently prompt manner. The bill requires the board, in such an event, to post notice of a meeting to adopt rules not later than 72 hours before the time the meeting is scheduled and adopt the necessary rules at the meeting. The bill requires the board to file a rule adopted in this manner and the board's written determinations of the board in the office of the secretary of state for publication in the Texas Register and authorizes the board, not later than the 180th day after the date rules are adopted, to readopt or amend the rules in accordance with the applicable administrative procedures. The bill provides that such rules

adopted at a meeting expire on the 180th day after adoption if the board does not readopt or amend the rules in that manner, and specifies that provisions relating to the 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.S.B. 2314 requires the Texas Water Development Board to adopt rules specifying the manner in which any capitalization grant, rather than special capitalization grant as in the original, under the state water pollution control revolving fund is authorized to be used to provide assistance to an eligible applicant for public works.

C.S.S.B. 2314 differs from the original by adding a temporary provision detailing the content of and an expedited procedure by which the board may adopt rules specifying the manner in which certain special capitalization grants may be used, whereas the original authorizes the board to proceed with the immediate adoption of rules necessary for compliance with the terms of any special capitalization grant or other federal funding if such rules are required to be adopted more expeditiously than authorized by the Administrative Procedure Act.

C.S.S.B. 2314 differs from the original by establishing that the rules adapted under the expedited procedure expire on the 180th day after adoption if not readopted or amended according to the Administrative Procedure Act, whereas the original establishes that the rules are void if not readopted according to the act on or before the 180th day after adoption.