By:  Creighton S.B. No. 2331

(In the Senate - Filed March 8, 2019; March 21, 2019, read first time and referred to Committee on Water & Rural Affairs; April 26, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 0; April 26, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Creighton       X

Alvarado        X

Johnson         X

Kolkhorst       X

Rodríguez       X

Taylor          X

COMMITTEE SUBSTITUTE FOR S.B. No. 2331 By:  Creighton

A BILL TO BE ENTITLED

AN ACT

relating to requirements for programs of water conservation and water conservation plans.

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

SECTION 1.  Sections 15.103(a) and (e), Water Code, are amended to read as follows:

(a)  In an application to the board for financial assistance from the loan fund, the applicant shall include:

(1)  the name of each political subdivision or federal agency and its principal officers;

(2)  a citation of the law under which each political subdivision or federal agency operates and was created;

(3)  the total cost of the project;

(4)  the amount of state financial assistance requested;

(5)  the plan for repaying the total cost of the project; [~~and~~]

(6)  the water conservation plan required by Section 16.4021; and

(7)  any other information the board requires in order to perform its duties and to protect the public interest.

(e)  If the applicant claims an exemption under [~~Subsection (c),~~] Section 16.4021(d) [~~15.106 of this code~~], the applicant [~~he~~] shall state the exemption in the [~~his~~] application and provide information relating to the exemption as required by board rules.

SECTION 2.  Section 15.206(b), Water Code, is amended to read as follows:

(b)  The application must include the following information:

(1)  the name of the issuer;

(2)  citations of the laws under which the issuer is created and operates and under which the bonds to be insured are to be issued;

(3)  the total amount of bonds for which insurance coverage is sought and the anticipated interest rate on the bonds;

(4)  the term for which the bonds are to be issued;

(5)  the purpose or purposes for which the bonds are to be issued;

(6)  financial information relating to the issuance of the bonds and to the financial stability and future of the issuer; [~~and~~]

(7)  the water conservation plan required by Section 16.4021; and

(8)  any other information the board requires by its rules or otherwise considers necessary in making a determination of the application.

SECTION 3.  Section 15.435(g), Water Code, is amended to read as follows:

(g)  The board may not direct the trust company to enter into a bond enhancement agreement with respect to bonds issued by the board the proceeds of which may be used to provide financial assistance to an applicant if at the time of the request the applicant has failed to:

(1)  provide information regarding [~~submit or implement~~] a water conservation plan in accordance with Section 16.4021 [~~11.1271~~]; or

(2)  satisfactorily complete a request by the executive administrator or a regional water planning group for information relevant to the project for which the financial assistance is sought, including a water infrastructure financing survey under Section 16.053(q).

SECTION 4.  Section 15.607, Water Code, is amended to read as follows:

Sec. 15.607.  APPROVAL OF APPLICATION. On review of recommendations by the executive administrator, the board by resolution may approve an application if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all the obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal act and state law, including Section 16.4021. [~~A program of water conservation for the more effective use of water shall be required in the same manner as required for approval of an application for financial assistance under Section 15.106 of this code.~~]

SECTION 5.  Section 15.910(a), Water Code, is amended to read as follows:

(a)  In an application to the board for financial assistance from the fund, a political subdivision or water supply corporation must include:

(1)  its name and its principal officers;

(2)  a citation of the law under which the subdivision or corporation operates and was created;

(3)  a description of the water or wastewater project for which the financial assistance will be used;

(4)  the total cost of the project;

(5)  the amount of state financial assistance requested;

(6)  the plan for repaying any loan provided by the board for the project; [~~and~~]

(7)  the water conservation plan required by Section 16.4021; and

(8)  any other information the board requires in order to perform its duties and to protect the public interest.

SECTION 6.  Section 15.975(a), Water Code, is amended to read as follows:

(a)  On review and recommendation by the executive administrator, the board by resolution may approve an application if the board finds that:

(1)  the application and the assistance applied for meet the requirements of this subchapter, Section 16.4021, and board rules;

(2)  the revenue or taxes, or both the revenue and taxes, pledged by the applicant will be sufficient to meet all the obligations assumed by the political subdivision; and

(3)  the project will meet water needs in a manner consistent with the state and regional water plans as required by Section 16.053(j), unless otherwise specified by an act of the legislature.

SECTION 7.  Section 15.995(e), Water Code, is amended to read as follows:

(e)  An application from a rural political subdivision [~~A program of water conservation for the more efficient use of water shall be required in the same manner as is required for approval of an application~~] for financial assistance under this subchapter must comply with the requirements of Section 16.4021 [~~Section 15.106~~].

SECTION 8.  Section 16.136, Water Code, is amended to read as follows:

Sec. 16.136.  FACILITIES WANTED BY POLITICAL SUBDIVISION. The board may acquire all or part of any authorized facility to the extent that the board finds that the political subdivision:

(1)  is willing and reasonably able to finance that portion of the cost of the facility that the board does not acquire;

(2)  has obtained all necessary permits;

(3)  has proposals that are consistent with the objectives of the state water plan; and

(4)  has complied with [~~a program of~~] water conservation plan requirements [~~for the more efficient use of water~~] as required by Section 16.4021 [~~15.106 of this code~~].

SECTION 9.  Section 16.402(c), Water Code, is amended to read as follows:

(c)  The executive administrator shall review each water conservation plan and annual report to determine compliance with the minimum requirements established by Section 16.4021 [~~11.1271~~] and the submission deadlines developed under Subsection (e) of this section.

SECTION 10.  Subchapter K, Chapter 16, Water Code, is amended by adding Section 16.4021 to read as follows:

Sec. 16.4021.  WATER CONSERVATION PLAN REQUIREMENTS. (a)  In this section, "water conservation plan" means a plan that describes a program of water conservation for the more efficient use of water.

(b)  This section applies to an application for financial assistance under:

(1)  Subchapters C, D, E, G, H, J, O, Q, and R, Chapter 15;

(2)  Subchapters E and F of this chapter; and

(3)  Subchapters D, F, I, K, and L, Chapter 17.

(c)  Except as provided by Subsection (d), an applicant must submit with the application a description of the applicant's proposed or adopted water conservation plan. The water conservation plan:

(1)  must:

(A)  incorporate the practices, techniques, and technology described by Section 15.001(9)(B);

(B)  meet reasonably anticipated local needs and conditions, as determined by the board; and

(C)  include specific, quantified five-year and 10-year targets for water savings, including goals for water loss programs and municipal use measured in gallons per capita per day; and

(2)  may include:

(A)  restrictions on discretionary water uses, including lawn watering;

(B)  plumbing code standards for water conservation in new building construction;

(C)  retrofit programs to improve water-use efficiency in existing buildings;

(D)  educational programs;

(E)  universal metering;

(F)  conservation-oriented water rate structures;

(G)  drought contingency plans; and

(H)  distribution system leak detection and repair.

(d)  An applicant is not required to submit a water conservation plan under this section if:

(1)  an emergency exists as determined by the board;

(2)  the amount of financial assistance under consideration is not greater than $500,000;

(3)  the applicant demonstrates and the board finds that the implementation of a water conservation plan is not reasonably necessary for conservation; or

(4)  the financial assistance is to fund a project that consists of construction outside this state.

(e)  The board may not provide financial assistance to an applicant to which this section applies unless the applicant demonstrates that it has adopted and implemented a water conservation plan that meets the requirements for a water conservation plan under Subsection (c).

(f)  The board shall establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation plans.

(g)  If the applicant will use the project to furnish water or services to another entity that will furnish the water or services to the ultimate consumer, the requirement for an applicant to demonstrate adoption and implementation of a water conservation plan can be met through contractual agreements between the applicant and the other entity providing for the adoption and implementation of a water conservation plan by the other entity.

(h)  Rules adopted under this section must state the criteria for preparation, review, and enforcement of an applicant's water conservation plan.

SECTION 11.  Section 16.403, Water Code, as added by Chapter 595 (S.B. 181), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Sec. 16.403.  WATER USE REPORTING. (a)  [~~The legislature finds that:~~

[~~(1)  tracking water use over time and evaluating the effects of water conservation programs or strategies are vital components of planning for and managing the state's water resources to estimate and meet future water demand requirements;~~

[~~(2)  gallons per capita per day, the common metric used by municipalities and water utilities for water supply planning and the calculation of water use, is not an accurate measure of water use or water conservation because a uniform, consistent methodology for the calculation of gallons per capita per day has not been established;~~

[~~(3)  using a single gallons per capita per day metric to compare the water use of municipalities and water utilities does not produce a reliable comparison because water use is dependent on several variables, including differences in the amount of water used for commercial and industrial sector activities, power production, permanent versus temporary service populations, and agricultural sector production;~~

[~~(4)  if valid water use comparisons and evaluations of a municipality's or water utility's water conservation programs are to be made over time for statewide resource management and water supply planning and permitting purposes, the methodology used to calculate gallons per capita per day must be uniform for all water suppliers;~~

[~~(5)  a municipality's or water utility's industrial and agricultural sector's gallons per capita per day figures are not an accurate measure of actual water use and conservation by entities within those sectors because water use in the industrial and agricultural sectors is not population-dependent and therefore not accurately calculated using a population-based metric; and~~

[~~(6)  a sector-based water use metric, adjusted for variables in water use by municipalities and water utilities, is necessary in order to provide an accurate comparison of water use and water conservation among municipalities and water utilities.~~

[~~(b)~~]  The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1)  a method of calculating total water use by a municipality or water utility, including water billed and nonrevenue water used, and a method of calculating water use for each sector of water users served by a municipality or water utility;

(2)  a method of calculating total water use by a municipality or water utility in gallons per capita per day;

(3)  a method of classifying water users within sectors;

(4)  a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(5)  a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(6)  guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) [~~(c)~~]  The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) [~~(b)~~] in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

(1)  Section 11.1271;

(2)  Section 13.146;

(3)  [~~Section 15.106;~~

[~~(4)  Section 15.607;~~

[~~(5)  Section 15.975;~~

[~~(6)  Section 15.995;~~

[~~(7)~~]  Section 16.012(m);

(4) [~~(8)~~]  Section 16.402; or

(5)  Section 16.4021

[~~(9)  Section 17.125;~~

[~~(10)  Section 17.277;~~

[~~(11)  Section 17.857; or~~

[~~(12)  Section 17.927~~].

(c) [~~(d)~~]  The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) [~~(e)~~]  Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

(1)  statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and

(2)  the data collection and reporting program developed under Subsection (c) [~~(d)~~].

(e)  Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l).

SECTION 12.  Sections 17.122(a) and (c), Water Code, are amended to read as follows:

(a)  In an application to the board for financial assistance for a water supply project, the applicant shall include:

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

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

(3)  a description of the water supply project for which the financial assistance will be used;

(4)  the total cost of the water supply project;

(5)  the amount of state financial assistance requested;

(6)  the plan for repaying the total cost of the water supply project;

(7)  the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision; [~~and~~]

(8)  the water conservation plan required by Section 16.4021; and

(9)  any other information the board requires.

(c)  If the applicant claims an exemption under [~~Subsection (c),~~] Section 16.4021 [~~17.125, of this code~~], the applicant [~~he~~] shall state the exemption in the [~~his~~] application and provide information relating to that exemption as provided by board rules.

SECTION 13.  Sections 17.274(a) and (c), Water Code, are amended to read as follows:

(a)  In an application to the board for financial assistance for water quality enhancement purposes, the applicant shall include:

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

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

(3)  a description of the treatment works for which the financial assistance will be used;

(4)  the estimated total cost of construction of the treatment works;

(5)  the amount of state financial assistance requested;

(6)  the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

(7)  the plan for repaying the financial assistance; [~~and~~]

(8)  the water conservation plan required by Section 16.4021; and

(9)  any other information the board requires.

(c)  If the applicant claims an exemption under [~~Subsection (d),~~] Section 16.4021 [~~17.277, of this code~~], the applicant shall state the exemption in the application and provide information relating to that exemption as provided by board rules.

SECTION 14.  Section 17.855(a), Water Code, is amended to read as follows:

(a)  In an application to the board for financial assistance through the acquisition of acquired obligations, the participant shall include:

(1)  the name of the participant and its principal officer or officers;

(2)  a citation of the law under which the participant was created, operates, and proposes to issue its obligations to be acquired by the board;

(3)  the total cost of the project;

(4)  the amount of state financial assistance requested;

(5)  the plan for paying the principal of and interest on its obligations to be acquired by the board; [~~and~~]

(6)  the water conservation plan required by Section 16.4021; and

(7)  any other information the board requires in order to perform its duties and to protect the public interest.

SECTION 15.  Section 17.927(b), Water Code, is amended to read as follows:

(b)  The application and plan must include:

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

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

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

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

(B)  identify the households to which the water supply and sewer services will be provided;

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

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

(6)  documentation that the appropriate political subdivision has adopted the model rules developed under Section 16.343;

(7)  information identifying the median household income for the area to be served by the proposed project; [~~and~~]

(8)  the total amount of assistance requested from the economically distressed areas account; and

(9)  the water conservation plan required by Section 16.4021.

SECTION 16.  The following provisions of the Water Code are repealed:

(1)  Section 15.103(d);

(2)  Sections 15.106(b), (b-1), (c), (d), (e), and (f);

(3)  Sections 15.208(b), (c), and (d);

(4)  Section 15.910(c);

(5)  Section 15.975(b);

(6)  Section 16.403, as added by Chapter 1233 (S.B. 660), Acts of the 82nd Legislature, Regular Session, 2011;

(7)  Sections 17.125(b), (b-1), (b-2), (c), (d), (e), and (f);

(8)  Section 17.274(b);

(9)  Sections 17.277(b), (b-1), (c), (d), (e), and (f);

(10)  Sections 17.857(b), (b-1), (c), and (d); and

(11)  Section 17.927(c).

SECTION 17.  The changes in law made by this Act apply only to an application for financial assistance or public funding submitted to the Texas Water Development Board on or after the effective date of this Act. An application submitted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 18.  This Act takes effect September 1, 2019.

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