S.B. No. 2452

AN ACT

relating to the provision by the Texas Water Development Board of financial assistance for the development of certain projects in economically distressed areas.

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

SECTION 1.  Section 17.922, Water Code, is amended to read as follows:

Sec. 17.922.  FINANCIAL ASSISTANCE. (a)  The board shall use the economically distressed areas account [~~may be used by the board~~] to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services, including providing funds from the account for the state's participation in federal programs that provide assistance solely for projects intended to serve economically distressed areas [~~to political subdivisions~~].

(b)  To the extent practicable, the board shall use money [~~the funds~~] in the economically distressed areas account in conjunction with the other financial assistance available through the board to encourage the use of cost-effective water supply and wastewater systems, including regional systems, to maximize the long-term economic development of political subdivisions [~~counties~~] eligible for financial assistance under the economically distressed areas program. Any savings derived from the construction of a regional system that includes or serves an economically distressed area project shall be factored into the board's determination of financial assistance for the economically distressed area in a manner that assures the economically distressed area receives appropriate benefits from the savings. In no event shall financial assistance provided from the economically distressed areas account be used to provide water supply or wastewater service to any area that is not an economically distressed area.

SECTION 2.  Subchapter K, Chapter 17, Water Code, is amended by adding Section 17.9226 to read as follows:

Sec. 17.9226.  USE OF CERTAIN GENERAL OBLIGATION BONDS. The board may:

(1)  maximize the effectiveness of the additional general obligation bonds authorized by Section 49-d-14, Article III, Texas Constitution, by using the additional bonds in conjunction with other sources of financial assistance, including nonpublic funds, to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services; and

(2)  use the additional general obligation bonds authorized by Section 49-d-14, Article III, Texas Constitution, to promote and support public-private partnerships that the board determines:

(A)  are financially viable;

(B)  will diversify the methods of financing available for water supply and sewer services; and

(C)  will reduce reliance on the issuance of bonds supported with general revenue.

SECTION 3.  Sections 17.927(b) and (c), Water Code, are 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 provided by board rules; 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 and enforces 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.

(c)  Before the board approves the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125 for water supply projects or under Section 17.277 for water quality enhancement projects.

SECTION 4.  Subchapter K, Chapter 17, Water Code, is amended by adding Section 17.9275 to read as follows:

Sec. 17.9275.  PRIORITIZATION OF PROJECTS BY BOARD. (a)  The board shall prioritize projects for the purpose of providing financial assistance under this subchapter.

(b)  The board shall establish a system for prioritizing projects for which financial assistance is sought from the board. The system must include a standard for the board to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with the board.

(c)  The board shall give the highest consideration to projects that will have a substantial effect, including projects:

(1)  that will serve an area for which the board or the Department of State Health Services has determined that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems; or

(2)  for which the applicant:

(A)  is subject to an enforcement action, including a final order, judgment, or consent decree, by the commission, the state, or the United States Environmental Protection Agency, related to public health and safety issues resulting from water supply or sewer services; and

(B)  did not cause or allow the violations that are the subject of the enforcement action.

(d)  The board by rule may provide for the consideration of additional criteria.

SECTION 5.  Section 17.928(c), Water Code, is amended to read as follows:

(c)  If an applicant includes a proposal for treatment works[~~,~~] the board may not deliver funds for the treatment works until the applicant has received:

(1)  a permit for construction and operation of the treatment works from the commission or other applicable permitting authority unless such a permit is not required; and

(2)  approval of the plans and specifications from the commission, the executive administrator, or other applicable authority [~~or unless such a permit is not required by the commission~~].

SECTION 6.  Section 17.929(a), Water Code, is amended to read as follows:

(a)  In passing on an application for financial assistance, the board shall consider:

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

(2)  the availability to the area to be served by the project of revenue or financial assistance from alternative sources for the payment of the cost of the proposed project;

(3)  the financing of the proposed water supply and sewer project including consideration of:

(A)  the budget and repayment schedule submitted under Section 17.927(b)(4);

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

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

(4)  whether the county and other appropriate political subdivisions have adopted model rules pursuant to Section 16.343 and the manner of enforcement of model rules; [~~and~~]

(5)  the feasibility of achieving cost savings by providing a regional facility for water supply or wastewater service and the feasibility of financing the facility by using funds from the economically distressed areas account or any other financial assistance; and

(6)  the ability of the applicant to repay the financial assistance.

SECTION 7.  Section 17.931, Water Code, is amended to read as follows:

Sec. 17.931.  APPLICATION AMENDMENT. (a)  A political subdivision may request the executive administrator [~~board~~] in writing to approve a change to or a modification of the budget or project plan included in its application if the change or modification does not increase the budget or change the project scope.

(b)  A change or modification requested under Subsection (a) may not be implemented unless the executive administrator [~~board~~] provides [~~its~~] written approval.

SECTION 8.  Sections 17.933(a), (b), (c), and (d), Water Code, are amended to read as follows:

(a)  The board may use money in the economically distressed areas account to provide financial assistance to a political subdivision in the form of a loan, [~~including~~] a loan with zero interest, a grant, or other type of financial assistance to be determined by the board taking into consideration the information provided by Section 17.927(b)(7) and the political subdivision's ability to repay the financial assistance.

(b)  In providing financial assistance to an applicant under this subchapter, the board may not provide to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance [~~plus interest on any amount that must be repaid~~], unless the board or the [~~Texas~~] Department of State Health Services determines [~~issues a finding~~] that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board may provide the repayable portion of financial assistance from any financial assistance program for which the applicant is eligible. The [~~board and the~~] applicant shall provide to the board or the [~~Texas~~] Department of State Health Services information necessary to make a determination, and the board and the [~~Texas~~] Department of State Health Services may enter into necessary memoranda of understanding to carry out this subsection.

(c)  The total amount of financial assistance provided by the board to political subdivisions under this subchapter from state-issued bonds for which repayment is not required may not exceed at any time 70 [~~90~~] percent of the total principal amount of issued and unissued bonds authorized under Article III of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

(d)  In determining the amount and form of financial assistance and the amount and form of repayment, if any, the board shall establish repayment based on the political subdivision's ability to repay the financial assistance and shall consider:

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

(2)  sources of funding available to the political subdivision from federal and private funds and from other state funds;

(3)  any local funds of the political subdivision to be served by the project if the economically distressed area to be served by the board's financial assistance is within the boundary of the political subdivision; [~~and~~]

(4)  the just, fair, and reasonable charges for water and wastewater service as provided in this code; and

(5)  the ability of the board to maximize the portion of financial assistance for which repayment is required based on the political subdivision's ability to repay the assistance, as provided by board rule.

SECTION 9.  Subchapter K, Chapter 17, Water Code, is amended by adding Section 17.937 to read as follows:

Sec. 17.937.  REPORTING AND TRANSPARENCY REQUIREMENTS. (a)  Annually, the board shall post on the board's Internet website a report detailing each project for which the board has provided financial assistance under this subchapter.

(b)  The report must include:

(1)  a description of each project;

(2)  the location of each project;

(3)  the number of residents served by each project;

(4)  the amount of financial assistance provided or anticipated to be provided for each project;

(5)  a statement of whether each project has been completed and, if not, the expected completion date;

(6)  the date on which each appropriate political subdivision adopted the model rules developed under Section 16.343; and

(7)  the date on which each appropriate political subdivision certified that it enforces the applicable model rules developed under Section 16.343 or a description of measures taken to mitigate any deficiencies in compliance.

SECTION 10.  Section 17.933(b-1), Water Code, is repealed.

SECTION 11.  The Texas Water Development Board is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the board may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 12.  This Act takes effect on the date on which the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed $200 million to provide financial assistance for the development of certain projects in economically distressed areas takes effect. If that amendment is not approved by the voters, this Act has no effect.

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I hereby certify that S.B. No. 2452 passed the Senate on May 8, 2019, by the following vote: Yeas 21, Nays 10; and that the Senate concurred in House amendment on May 25, 2019, by the following vote: Yeas 22, Nays 8.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 2452 passed the House, with amendment, on May 22, 2019, by the following vote: Yeas 103, Nays 41, two present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_             Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor