

By: Creighton

S.B. No. 2331

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 (e)]~~ Section 16.4021(d) ~~[15.106 of this code]~~, the applicant ~~[he]~~ shall state the exemption in the ~~[his]~~ application and provide

1 information relating to the exemption as required by board rules.

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

4 (b) The application must include the following information:

5 (1) the name of the issuer;

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

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

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

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

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

17 (7) the water conservation plan required by Section
18 16.4021; and

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

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

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

1 applicant has failed to:

2 (1) provide information regarding ~~[submit or~~
3 ~~implement]~~ a water conservation plan in accordance with Section
4 16.4021 ~~[11.1271]~~; or

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

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

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

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

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

- 1 (1) its name and its principal officers;
- 2 (2) a citation of the law under which the subdivision
3 or corporation operates and was created;
- 4 (3) a description of the water or wastewater project
5 for which the financial assistance will be used;
- 6 (4) the total cost of the project;
- 7 (5) the amount of state financial assistance
8 requested;
- 9 (6) the plan for repaying any loan provided by the
10 board for the project; ~~and~~
- 11 (7) the water conservation plan required by Section
12 16.4021; and
- 13 (8) any other information the board requires in order
14 to perform its duties and to protect the public interest.

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

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

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

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

26 (3) the project will meet water needs in a manner
27 consistent with the state and regional water plans as required by

1 Section 16.053(j), unless otherwise specified by an act of the
2 legislature.

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

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

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

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

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

17 (2) has obtained all necessary permits;

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

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

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

25 (c) The executive administrator shall review each water
26 conservation plan and annual report to determine compliance with
27 the minimum requirements established by Section 16.4021 [~~11.1271~~]

1 and the submission deadlines developed under Subsection (e) of this
2 section.

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

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

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

11 (1) Subchapters C, D, E, G, H, J, O, Q, and R, Chapter
12 15;

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

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

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

19 (1) must:

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

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

24 (C) include specific, quantified five-year and
25 10-year targets for water savings, including goals for water loss
26 programs and municipal use measured in gallons per capita per day;
27 and

1 (2) may include:

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

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

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

8 (D) educational programs;

9 (E) universal metering;

10 (F) conservation-oriented water rate structures;

11 (G) drought contingency plans; and

12 (H) distribution system leak detection and
13 repair.

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

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

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

19 (3) the applicant demonstrates that the
20 implementation of a water conservation plan is not reasonably
21 necessary for conservation; or

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

24 (e) The board may not provide financial assistance to an
25 applicant to which this section applies unless the applicant
26 demonstrates that the water conservation plan described in the
27 application has been adopted and implemented.

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

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

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

14 SECTION 11. Section 16.403, Water Code, as added by Chapter
15 595 (S.B. 181), Acts of the 82nd Legislature, Regular Session,
16 2011, is amended to read as follows:

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

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

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

1 ~~per day has not been established;~~

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

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

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

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

25 ~~[(b)]~~ The board and the commission, in consultation with the
26 Water Conservation Advisory Council, shall develop a uniform,
27 consistent methodology and guidance for calculating water use and

1 conservation to be used by a municipality or water utility in
2 developing water conservation plans and preparing reports required
3 under this code. At a minimum, the methodology and guidance must
4 include:

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

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

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

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

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

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

25 (b) [~~(c)~~] The board or the commission, as appropriate,
26 shall use the methodology and guidance developed under Subsection
27 (a) [~~(b)~~] in evaluating a water conservation plan, program of water

1 conservation, survey, or other report relating to water
2 conservation submitted to the board or the commission under:

- 3 (1) Section 11.1271;
4 (2) Section 13.146;
5 (3) [~~Section 15.106~~;
6 [~~(4) Section 15.607~~;
7 [~~(5) Section 15.975~~;
8 [~~(6) Section 15.995~~;
9 [~~(7)] Section 16.012(m)~~;
10 (4) [~~(8)] Section 16.402~~; or
11 (5) Section 16.4021
12 [~~(9) Section 17.125~~;
13 [~~(10) Section 17.277~~;
14 [~~(11) Section 17.857~~; or
15 [~~(12) Section 17.927~~].

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

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

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

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

1 (e) Data included in a water conservation plan or report
2 required under this code and submitted to the board or commission
3 must be interpreted in the context of variations in local water use.
4 The data may not be the only factor considered by the commission in
5 determining the highest practicable level of water conservation and
6 efficiency achievable in the jurisdiction of a municipality or
7 water utility for purposes of Section 11.085(1).

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

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

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

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

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

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

19 (5) the amount of state financial assistance
20 requested;

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

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

26 (8) the water conservation plan required by Section
27 16.4021; and

1 (9) any other information the board requires.

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

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

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

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

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

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

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

19 (5) the amount of state financial assistance
20 requested;

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

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

26 (8) the water conservation plan required by Section
27 16.4021; and

1 (9) any other information the board requires.

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

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

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

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

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

16 (3) the total cost of the project;

17 (4) the amount of state financial assistance
18 requested;

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

21 (6) the water conservation plan required by Section
22 16.4021; and

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

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

27 (b) The application and plan must include:

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

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

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

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

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

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

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

21 (6) documentation that the appropriate political
22 subdivision has adopted the model rules developed under Section
23 [16.343](#);

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

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

1 (9) the water conservation plan required by Section
2 16.4021.

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

- 5 (1) Section 15.103(d);
- 6 (2) Sections 15.106(b), (b-1), (c), (d), (e), and (f);
- 7 (3) Sections 15.208(b), (c), and (d);
- 8 (4) Section 15.910(c);
- 9 (5) Section 15.975(b);
- 10 (6) Section 16.403, as added by Chapter 1233 (S.B.
11 660), Acts of the 82nd Legislature, Regular Session, 2011;
- 12 (7) Sections 17.125(b), (b-1), (b-2), (c), (d), (e),
13 and (f);
- 14 (8) Section 17.274(b);
- 15 (9) Sections 17.277(b), (b-1), (c), (d), (e), and (f);
- 16 (10) Sections 17.857(b), (b-1), (c), and (d); and
- 17 (11) Section 17.927(c).

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

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