

1-1 By: Creighton S.B. No. 2331
 1-2 (In the Senate - Filed March 8, 2019; March 21, 2019, read
 1-3 first time and referred to Committee on Water & Rural Affairs;
 1-4 April 26, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; April 26, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 2331 By: Creighton

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to requirements for programs of water conservation and
 1-20 water conservation plans.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Sections 15.103(a) and (e), Water Code, are
 1-23 amended to read as follows:

1-24 (a) In an application to the board for financial assistance
 1-25 from the loan fund, the applicant shall include:

1-26 (1) the name of each political subdivision or federal
 1-27 agency and its principal officers;

1-28 (2) a citation of the law under which each political
 1-29 subdivision or federal agency operates and was created;

1-30 (3) the total cost of the project;

1-31 (4) the amount of state financial assistance
 1-32 requested;

1-33 (5) the plan for repaying the total cost of the
 1-34 project; ~~and~~

1-35 (6) the water conservation plan required by Section
 1-36 16.4021; and

1-37 (7) any other information the board requires in order
 1-38 to perform its duties and to protect the public interest.

1-39 (e) If the applicant claims an exemption under ~~[Subsection~~
 1-40 ~~(c),]~~ Section 16.4021(d) ~~[15.106 of this code],~~ the applicant [he]
 1-41 shall state the exemption in the [his] application and provide
 1-42 information relating to the exemption as required by board rules.

1-43 SECTION 2. Section 15.206(b), Water Code, is amended to
 1-44 read as follows:

1-45 (b) The application must include the following information:

1-46 (1) the name of the issuer;

1-47 (2) citations of the laws under which the issuer is
 1-48 created and operates and under which the bonds to be insured are to
 1-49 be issued;

1-50 (3) the total amount of bonds for which insurance
 1-51 coverage is sought and the anticipated interest rate on the bonds;

1-52 (4) the term for which the bonds are to be issued;

1-53 (5) the purpose or purposes for which the bonds are to
 1-54 be issued;

1-55 (6) financial information relating to the issuance of
 1-56 the bonds and to the financial stability and future of the issuer;
 1-57 ~~and~~

1-58 (7) the water conservation plan required by Section
 1-59 16.4021; and

1-60 (8) any other information the board requires by its

2-1 rules or otherwise considers necessary in making a determination of
2-2 the application.

2-3 SECTION 3. Section 15.435(g), Water Code, is amended to
2-4 read as follows:

2-5 (g) The board may not direct the trust company to enter into
2-6 a bond enhancement agreement with respect to bonds issued by the
2-7 board the proceeds of which may be used to provide financial
2-8 assistance to an applicant if at the time of the request the
2-9 applicant has failed to:

2-10 (1) provide information regarding [submit or
2-11 implement] a water conservation plan in accordance with Section
2-12 16.4021 [11.1271]; or

2-13 (2) satisfactorily complete a request by the executive
2-14 administrator or a regional water planning group for information
2-15 relevant to the project for which the financial assistance is
2-16 sought, including a water infrastructure financing survey under
2-17 Section 16.053(q).

2-18 SECTION 4. Section 15.607, Water Code, is amended to read as
2-19 follows:

2-20 Sec. 15.607. APPROVAL OF APPLICATION. On review of
2-21 recommendations by the executive administrator, the board by
2-22 resolution may approve an application if the board finds that in its
2-23 opinion the revenue or taxes or both revenue and taxes pledged by
2-24 the applicant will be sufficient to meet all the obligations
2-25 assumed by the applicant and that the application and assistance
2-26 applied for meet the requirements of the federal act and state law,
2-27 including Section 16.4021. ~~[A program of water conservation for~~
2-28 ~~the more effective use of water shall be required in the same manner~~
2-29 ~~as required for approval of an application for financial assistance~~
2-30 ~~under Section 15.106 of this code.]~~

2-31 SECTION 5. Section 15.910(a), Water Code, is amended to
2-32 read as follows:

2-33 (a) In an application to the board for financial assistance
2-34 from the fund, a political subdivision or water supply corporation
2-35 must include:

2-36 (1) its name and its principal officers;

2-37 (2) a citation of the law under which the subdivision
2-38 or corporation operates and was created;

2-39 (3) a description of the water or wastewater project
2-40 for which the financial assistance will be used;

2-41 (4) the total cost of the project;

2-42 (5) the amount of state financial assistance
2-43 requested;

2-44 (6) the plan for repaying any loan provided by the
2-45 board for the project; ~~and~~

2-46 (7) the water conservation plan required by Section
2-47 16.4021; and

2-48 (8) any other information the board requires in order
2-49 to perform its duties and to protect the public interest.

2-50 SECTION 6. Section 15.975(a), Water Code, is amended to
2-51 read as follows:

2-52 (a) On review and recommendation by the executive
2-53 administrator, the board by resolution may approve an application
2-54 if the board finds that:

2-55 (1) the application and the assistance applied for
2-56 meet the requirements of this subchapter, Section 16.4021, and
2-57 board rules;

2-58 (2) the revenue or taxes, or both the revenue and
2-59 taxes, pledged by the applicant will be sufficient to meet all the
2-60 obligations assumed by the political subdivision; and

2-61 (3) the project will meet water needs in a manner
2-62 consistent with the state and regional water plans as required by
2-63 Section 16.053(j), unless otherwise specified by an act of the
2-64 legislature.

2-65 SECTION 7. Section 15.995(e), Water Code, is amended to
2-66 read as follows:

2-67 (e) An application from a rural political subdivision ~~[A~~
2-68 ~~program of water conservation for the more efficient use of water~~
2-69 ~~shall be required in the same manner as is required for approval of~~

3-1 ~~an application]~~ for financial assistance under this subchapter must
3-2 comply with the requirements of Section 16.4021 [Section 15.106].

3-3 SECTION 8. Section 16.136, Water Code, is amended to read as
3-4 follows:

3-5 Sec. 16.136. FACILITIES WANTED BY POLITICAL SUBDIVISION.
3-6 The board may acquire all or part of any authorized facility to the
3-7 extent that the board finds that the political subdivision:

3-8 (1) is willing and reasonably able to finance that
3-9 portion of the cost of the facility that the board does not acquire;

3-10 (2) has obtained all necessary permits;

3-11 (3) has proposals that are consistent with the
3-12 objectives of the state water plan; and

3-13 (4) has complied with [a program of] water
3-14 conservation plan requirements [for the more efficient use of
3-15 water] as required by Section 16.4021 [15.106 of this code].

3-16 SECTION 9. Section 16.402(c), Water Code, is amended to
3-17 read as follows:

3-18 (c) The executive administrator shall review each water
3-19 conservation plan and annual report to determine compliance with
3-20 the minimum requirements established by Section 16.4021 [11.1271]
3-21 and the submission deadlines developed under Subsection (e) of this
3-22 section.

3-23 SECTION 10. Subchapter K, Chapter 16, Water Code, is
3-24 amended by adding Section 16.4021 to read as follows:

3-25 Sec. 16.4021. WATER CONSERVATION PLAN REQUIREMENTS.

3-26 (a) In this section, "water conservation plan" means a plan that
3-27 describes a program of water conservation for the more efficient
3-28 use of water.

3-29 (b) This section applies to an application for financial
3-30 assistance under:

3-31 (1) Subchapters C, D, E, G, H, J, O, Q, and R, Chapter
3-32 15;

3-33 (2) Subchapters E and F of this chapter; and

3-34 (3) Subchapters D, F, I, K, and L, Chapter 17.

3-35 (c) Except as provided by Subsection (d), an applicant must
3-36 submit with the application a description of the applicant's
3-37 proposed or adopted water conservation plan. The water
3-38 conservation plan:

3-39 (1) must:

3-40 (A) incorporate the practices, techniques, and
3-41 technology described by Section 15.001(9)(B);

3-42 (B) meet reasonably anticipated local needs and
3-43 conditions, as determined by the board; and

3-44 (C) include specific, quantified five-year and
3-45 10-year targets for water savings, including goals for water loss
3-46 programs and municipal use measured in gallons per capita per day;
3-47 and

3-48 (2) may include:

3-49 (A) restrictions on discretionary water uses,
3-50 including lawn watering;

3-51 (B) plumbing code standards for water
3-52 conservation in new building construction;

3-53 (C) retrofit programs to improve water-use
3-54 efficiency in existing buildings;

3-55 (D) educational programs;

3-56 (E) universal metering;

3-57 (F) conservation-oriented water rate structures;

3-58 (G) drought contingency plans; and

3-59 (H) distribution system leak detection and
3-60 repair.

3-61 (d) An applicant is not required to submit a water
3-62 conservation plan under this section if:

3-63 (1) an emergency exists as determined by the board;

3-64 (2) the amount of financial assistance under
3-65 consideration is not greater than \$500,000;

3-66 (3) the applicant demonstrates and the board finds
3-67 that the implementation of a water conservation plan is not
3-68 reasonably necessary for conservation; or

3-69 (4) the financial assistance is to fund a project that

4-1 consists of construction outside this state.

4-2 (e) The board may not provide financial assistance to an
4-3 applicant to which this section applies unless the applicant
4-4 demonstrates that it has adopted and implemented a water
4-5 conservation plan that meets the requirements for a water
4-6 conservation plan under Subsection (c).

4-7 (f) The board shall establish an educational and technical
4-8 assistance program to assist political subdivisions in developing
4-9 comprehensive water conservation plans.

4-10 (g) If the applicant will use the project to furnish water
4-11 or services to another entity that will furnish the water or
4-12 services to the ultimate consumer, the requirement for an applicant
4-13 to demonstrate adoption and implementation of a water conservation
4-14 plan can be met through contractual agreements between the
4-15 applicant and the other entity providing for the adoption and
4-16 implementation of a water conservation plan by the other entity.

4-17 (h) Rules adopted under this section must state the criteria
4-18 for preparation, review, and enforcement of an applicant's water
4-19 conservation plan.

4-20 SECTION 11. Section 16.403, Water Code, as added by Chapter
4-21 595 (S.B. 181), Acts of the 82nd Legislature, Regular Session,
4-22 2011, is amended to read as follows:

4-23 Sec. 16.403. WATER USE REPORTING. (a) ~~[The legislature~~
4-24 ~~finds that:~~

4-25 ~~[(1) tracking water use over time and evaluating the~~
4-26 ~~effects of water conservation programs or strategies are vital~~
4-27 ~~components of planning for and managing the state's water resources~~
4-28 ~~to estimate and meet future water demand requirements;~~

4-29 ~~[(2) gallons per capita per day, the common metric~~
4-30 ~~used by municipalities and water utilities for water supply~~
4-31 ~~planning and the calculation of water use, is not an accurate~~
4-32 ~~measure of water use or water conservation because a uniform,~~
4-33 ~~consistent methodology for the calculation of gallons per capita~~
4-34 ~~per day has not been established;~~

4-35 ~~[(3) using a single gallons per capita per day metric~~
4-36 ~~to compare the water use of municipalities and water utilities does~~
4-37 ~~not produce a reliable comparison because water use is dependent on~~
4-38 ~~several variables, including differences in the amount of water~~
4-39 ~~used for commercial and industrial sector activities, power~~
4-40 ~~production, permanent versus temporary service populations, and~~
4-41 ~~agricultural sector production;~~

4-42 ~~[(4) if valid water use comparisons and evaluations of~~
4-43 ~~a municipality's or water utility's water conservation programs are~~
4-44 ~~to be made over time for statewide resource management and water~~
4-45 ~~supply planning and permitting purposes, the methodology used to~~
4-46 ~~calculate gallons per capita per day must be uniform for all water~~
4-47 ~~suppliers;~~

4-48 ~~[(5) a municipality's or water utility's industrial~~
4-49 ~~and agricultural sector's gallons per capita per day figures are~~
4-50 ~~not an accurate measure of actual water use and conservation by~~
4-51 ~~entities within those sectors because water use in the industrial~~
4-52 ~~and agricultural sectors is not population-dependent and therefore~~
4-53 ~~not accurately calculated using a population-based metric; and~~

4-54 ~~[(6) a sector-based water use metric, adjusted for~~
4-55 ~~variables in water use by municipalities and water utilities, is~~
4-56 ~~necessary in order to provide an accurate comparison of water use~~
4-57 ~~and water conservation among municipalities and water utilities.~~

4-58 ~~[(b)]~~ The board and the commission, in consultation with the
4-59 Water Conservation Advisory Council, shall develop a uniform,
4-60 consistent methodology and guidance for calculating water use and
4-61 conservation to be used by a municipality or water utility in
4-62 developing water conservation plans and preparing reports required
4-63 under this code. At a minimum, the methodology and guidance must
4-64 include:

4-65 (1) a method of calculating total water use by a
4-66 municipality or water utility, including water billed and
4-67 nonrevenue water used, and a method of calculating water use for
4-68 each sector of water users served by a municipality or water
4-69 utility;

- 5-1 (2) a method of calculating total water use by a
- 5-2 municipality or water utility in gallons per capita per day;
- 5-3 (3) a method of classifying water users within
- 5-4 sectors;
- 5-5 (4) a method of calculating water use in the
- 5-6 residential sector that includes both single-family and
- 5-7 multifamily residences, in gallons per capita per day;
- 5-8 (5) a method of calculating water use in the
- 5-9 industrial, agricultural, commercial, and institutional sectors
- 5-10 that is not dependent on a municipality's population or the number
- 5-11 of customers served by a water utility; and
- 5-12 (6) guidelines on the use of service populations by a
- 5-13 municipality or water utility in developing a per-capita-based
- 5-14 method of calculation, including guidance on the use of permanent
- 5-15 and temporary populations in making calculations.

5-16 (b) ~~[(c)]~~ The board or the commission, as appropriate,

5-17 shall use the methodology and guidance developed under Subsection

5-18 (a) ~~[(b)]~~ in evaluating a water conservation plan, program of water

5-19 conservation, survey, or other report relating to water

5-20 conservation submitted to the board or the commission under:

- 5-21 (1) Section 11.1271;
- 5-22 (2) Section 13.146;
- 5-23 (3) ~~[Section 15.106;~~
- 5-24 ~~[(4) Section 15.607;~~
- 5-25 ~~[(5) Section 15.975;~~
- 5-26 ~~[(6) Section 15.995;~~
- 5-27 ~~[(7)]~~ Section 16.012(m);
- 5-28 (4) ~~[(8)]~~ Section 16.402; or
- 5-29 (5) Section 16.4021
- 5-30 ~~[(9) Section 17.125;~~
- 5-31 ~~[(10) Section 17.277;~~
- 5-32 ~~[(11) Section 17.857; or~~
- 5-33 ~~[(12) Section 17.927].~~

5-34 (c) ~~[(d)]~~ The board, in consultation with the commission

5-35 and the Water Conservation Advisory Council, shall develop a data

5-36 collection and reporting program for municipalities and water

5-37 utilities with more than 3,300 connections.

5-38 (d) ~~[(e)]~~ Not later than January 1 of each odd-numbered

5-39 year, the board shall submit to the legislature a report that

5-40 includes the most recent data relating to:

- 5-41 (1) statewide water usage in the residential,
- 5-42 industrial, agricultural, commercial, and institutional sectors;
- 5-43 and
- 5-44 (2) the data collection and reporting program
- 5-45 developed under Subsection (c) ~~[(d)]~~.

5-46 (e) Data included in a water conservation plan or report

5-47 required under this code and submitted to the board or commission

5-48 must be interpreted in the context of variations in local water use.

5-49 The data may not be the only factor considered by the commission in

5-50 determining the highest practicable level of water conservation and

5-51 efficiency achievable in the jurisdiction of a municipality or

5-52 water utility for purposes of Section 11.085(l).

5-53 SECTION 12. Sections 17.122(a) and (c), Water Code, are

5-54 amended to read as follows:

5-55 (a) In an application to the board for financial assistance

5-56 for a water supply project, the applicant shall include:

- 5-57 (1) the name of the political subdivision and its
- 5-58 principal officers;
- 5-59 (2) a citation of the law under which the political
- 5-60 subdivision operates and was created;
- 5-61 (3) a description of the water supply project for
- 5-62 which the financial assistance will be used;
- 5-63 (4) the total cost of the water supply project;
- 5-64 (5) the amount of state financial assistance
- 5-65 requested;
- 5-66 (6) the plan for repaying the total cost of the water
- 5-67 supply project;
- 5-68 (7) the method for obtaining the financial assistance,
- 5-69 whether by purchase of bonds or purchase of other obligations of the

6-1 political subdivision; ~~and~~
6-2 (8) the water conservation plan required by Section
6-3 16.4021; and
6-4 (9) any other information the board requires.

6-5 (c) If the applicant claims an exemption under [~~Subsection~~
6-6 ~~(c)~~], Section 16.4021 [~~17.125, of this code~~], the applicant [~~he~~]
6-7 shall state the exemption in the [~~his~~] application and provide
6-8 information relating to that exemption as provided by board rules.

6-9 SECTION 13. Sections 17.274(a) and (c), Water Code, are
6-10 amended to read as follows:

6-11 (a) In an application to the board for financial assistance
6-12 for water quality enhancement purposes, the applicant shall
6-13 include:

6-14 (1) the name of the political subdivision and its
6-15 principal officers;

6-16 (2) a citation of the law under which the political
6-17 subdivision operates and was created;

6-18 (3) a description of the treatment works for which the
6-19 financial assistance will be used;

6-20 (4) the estimated total cost of construction of the
6-21 treatment works;

6-22 (5) the amount of state financial assistance
6-23 requested;

6-24 (6) the method for obtaining the financial assistance,
6-25 whether by purchase of bonds or purchase of other obligations of the
6-26 political subdivision;

6-27 (7) the plan for repaying the financial assistance;
6-28 ~~and~~

6-29 (8) the water conservation plan required by Section
6-30 16.4021; and

6-31 (9) any other information the board requires.

6-32 (c) If the applicant claims an exemption under [~~Subsection~~
6-33 ~~(d)~~], Section 16.4021 [~~17.277, of this code~~], the applicant shall
6-34 state the exemption in the application and provide information
6-35 relating to that exemption as provided by board rules.

6-36 SECTION 14. Section 17.855(a), Water Code, is amended to
6-37 read as follows:

6-38 (a) In an application to the board for financial assistance
6-39 through the acquisition of acquired obligations, the participant
6-40 shall include:

6-41 (1) the name of the participant and its principal
6-42 officer or officers;

6-43 (2) a citation of the law under which the participant
6-44 was created, operates, and proposes to issue its obligations to be
6-45 acquired by the board;

6-46 (3) the total cost of the project;

6-47 (4) the amount of state financial assistance
6-48 requested;

6-49 (5) the plan for paying the principal of and interest
6-50 on its obligations to be acquired by the board; ~~and~~

6-51 (6) the water conservation plan required by Section
6-52 16.4021; and

6-53 (7) any other information the board requires in order
6-54 to perform its duties and to protect the public interest.

6-55 SECTION 15. Section 17.927(b), Water Code, is amended to
6-56 read as follows:

6-57 (b) The application and plan must include:
6-58 (1) the name of the political subdivision and its
6-59 principal officers;

6-60 (2) a citation of the law under which the political
6-61 subdivision was created and operates;

6-62 (3) a project plan, prepared and certified by an
6-63 engineer registered to practice in this state, that must:

6-64 (A) describe the proposed planning, design, and
6-65 construction activities necessary to provide water supply and sewer
6-66 services that meet minimum state standards; and

6-67 (B) identify the households to which the water
6-68 supply and sewer services will be provided;

6-69 (4) a budget that estimates the total cost of

- 7-1 providing water supply and sewer services to the economically
- 7-2 distressed area and a proposed schedule and method for repayment of
- 7-3 financial assistance consistent with board rules and guidelines;
- 7-4 (5) a description of the existing water supply and
- 7-5 sewer facilities located in the area to be served by the proposed
- 7-6 project, including a statement prepared and certified by an
- 7-7 engineer registered to practice in this state that the facilities
- 7-8 do not meet minimum state standards;
- 7-9 (6) documentation that the appropriate political
- 7-10 subdivision has adopted the model rules developed under Section
- 7-11 16.343;
- 7-12 (7) information identifying the median household
- 7-13 income for the area to be served by the proposed project; ~~and~~
- 7-14 (8) the total amount of assistance requested from the
- 7-15 economically distressed areas account; and
- 7-16 (9) the water conservation plan required by Section
- 7-17 16.4021.

7-18 SECTION 16. The following provisions of the Water Code are
7-19 repealed:

- 7-20 (1) Section 15.103(d);
- 7-21 (2) Sections 15.106(b), (b-1), (c), (d), (e), and (f);
- 7-22 (3) Sections 15.208(b), (c), and (d);
- 7-23 (4) Section 15.910(c);
- 7-24 (5) Section 15.975(b);
- 7-25 (6) Section 16.403, as added by Chapter 1233 (S.B.
- 7-26 660), Acts of the 82nd Legislature, Regular Session, 2011;
- 7-27 (7) Sections 17.125(b), (b-1), (b-2), (c), (d), (e),
- 7-28 and (f);
- 7-29 (8) Section 17.274(b);
- 7-30 (9) Sections 17.277(b), (b-1), (c), (d), (e), and (f);
- 7-31 (10) Sections 17.857(b), (b-1), (c), and (d); and
- 7-32 (11) Section 17.927(c).

7-33 SECTION 17. The changes in law made by this Act apply only
7-34 to an application for financial assistance or public funding
7-35 submitted to the Texas Water Development Board on or after the
7-36 effective date of this Act. An application submitted before the
7-37 effective date of this Act is governed by the law in effect
7-38 immediately before the effective date of this Act, and the former
7-39 law is continued in effect for that purpose.

7-40 SECTION 18. This Act takes effect September 1, 2019.

7-41 * * * * *