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S.B. No. 2452

A BILL TO BE ENTITLED

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. The heading to Subchapter K, Chapter 17, Water Code, is amended to read as follows:

SUBCHAPTER K. ASSISTANCE TO ECONOMICALLY DISTRESSED AREAS FOR WATER SUPPLY, ~~[AND]~~ SEWER SERVICE, AND RESIDENTIAL DRAINAGE PROJECTS

SECTION 2. Sections 17.921(1) and (2), Water Code, are amended to read as follows:

(1) "Economically distressed area" means an area in which:

(A) water supply, ~~[or]~~ sewer, or residential drainage services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply, ~~[or]~~ sewer, or residential drainage services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005, as determined by the board.

(2) "Financial assistance" means the funds provided by the board to political subdivisions for water supply, ~~[and]~~ sewer, and residential drainage services under this subchapter.

SECTION 3. 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, and residential drainage 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, and residential drainage 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, or residential drainage service to any

1 area that is not an economically distressed area.

2 SECTION 4. Subchapter K, Chapter 17, Water Code, is amended
3 by adding Section 17.9226 to read as follows:

4 Sec. 17.9226. USE OF CERTAIN GENERAL OBLIGATION BONDS. The
5 board shall:

6 (1) work to maximize the effectiveness of the
7 additional general obligation bonds authorized by Section
8 49-d-10(a-1), Article III, Texas Constitution, by using the
9 additional bonds in conjunction with other sources of financial
10 assistance, including nonpublic funds, to provide financial
11 assistance to political subdivisions for the construction,
12 acquisition, or improvement of water supply, sewer, and residential
13 drainage services; and

14 (2) use the additional general obligation bonds
15 authorized by Section 49-d-10(a-1), Article III, Texas
16 Constitution, to promote and support public-private partnerships
17 that the board determines:

18 (A) are financially viable;

19 (B) will diversify the methods of financing
20 available for water supply, sewer, and residential drainage
21 services; and

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

24 SECTION 5. Sections 17.927(a), (b), and (c), Water Code,
25 are amended to read as follows:

26 (a) A political subdivision may apply to the board for
27 financial assistance under this subchapter by submitting an

1 application together with a plan for providing water supply, ~~and~~
2 sewer, or residential drainage services to an economically
3 distressed area for which the financial assistance is to be used.

4 (b) The application and plan must include:

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

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

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

11 (A) describe the proposed planning, design, and
12 construction activities necessary to provide water supply, ~~and~~
13 sewer, or residential drainage services that meet minimum state
14 standards provided by board rules; and

15 (B) identify the households to which the water
16 supply, ~~and~~ sewer, or residential drainage services will be
17 provided;

18 (4) a budget that estimates the total cost of
19 providing water supply, ~~and~~ sewer, or residential drainage
20 services to the economically distressed area and a proposed
21 schedule and method for repayment of financial assistance
22 consistent with board rules and guidelines;

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

1 (6) documentation that the appropriate political
2 subdivision has adopted and enforces the model rules developed
3 under Section 16.343;

4 (7) information identifying the median household
5 income for the area to be served by the proposed project; and

6 (8) the total amount of assistance requested from the
7 economically distressed areas account.

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

14 SECTION 6. Subchapter K, Chapter 17, Water Code, is amended
15 by adding Section 17.9275 to read as follows:

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

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

25 (c) The board shall give the highest consideration to
26 projects that will have a substantial effect, including projects
27 that will serve an area for which the board or the Department of

1 State Health Services has determined that a nuisance dangerous to
2 the public health and safety exists resulting from water supply and
3 sanitation problems.

4 (d) In addition to the criteria provided by Subsection (c),
5 the board must also consider at least the following criteria in
6 prioritizing projects:

7 (1) the local contribution to be made to finance the
8 project, including the up-front capital to be provided by the
9 applicant;

10 (2) the financial capacity of the applicant to repay
11 the financial assistance provided;

12 (3) the ability of the board and the applicant to
13 timely leverage state financing with local and federal funding;

14 (4) whether there is an emergency need for the project
15 as determined by the board;

16 (5) whether the applicant is ready to proceed with the
17 project at the time of the application, including whether:

18 (A) all preliminary planning and design work
19 associated with the project has been completed; and

20 (B) the applicant is able to begin implementing
21 or constructing the project; and

22 (6) the cost per connection of the project.

23 (e) The board by rule may provide for the consideration of
24 additional criteria.

25 SECTION 7. Section 17.928(c), Water Code, is amended to
26 read as follows:

27 (c) If an applicant includes a proposal for treatment or

1 residential drainage works, the board may not deliver funds for the
2 treatment or residential drainage works until the applicant has
3 received:

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

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

12 SECTION 8. Section 17.929(a), Water Code, is amended to
13 read as follows:

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

16 (1) the need of the economically distressed area to be
17 served by the water supply, ~~[and]~~ sewer, or residential drainage
18 services in relation to the need of other political subdivisions
19 requiring financial assistance under this subchapter and the
20 relative costs and benefits of all applications;

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

24 (3) the financing of the proposed water supply, ~~[and]~~
25 sewer, or residential drainage project, including consideration
26 of:

27 (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, or residential drainage service and the feasibility of financing the facility by using funds from the economically distressed areas account or any other financial assistance.

SECTION 9. 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 10. Sections 17.933(a), (b), and (d), Water Code, are amended to read as follows:

(a) The board may use money in the economically distressed

1 areas account to provide financial assistance to a political
 2 subdivision in the form of a loan, ~~[including]~~ a loan with zero
 3 interest, a grant, or other type of financial assistance to be
 4 determined by the board taking into consideration the information
 5 provided by Section 17.927(b)(7).

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

22 (d) In determining the amount and form of financial
 23 assistance and the amount and form of repayment, if any, the board
 24 shall consider:

25 (1) rates, fees, and charges that the average customer
 26 to be served by the project will be able to pay ~~[based on a~~
 27 ~~comparison of what other families of similar income who are~~

1 ~~similarly situated pay for comparable services];~~

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

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

9 (4) the just, fair, and reasonable charges for water,
10 ~~and~~ wastewater, and residential drainage service as provided in
11 this code.

12 SECTION 11. Section 17.936(d), Water Code, is amended to
13 read as follows:

14 (d) The provider of water or wastewater utility or
15 residential drainage service to an economically distressed area may
16 recover from a developer or owner of an undeveloped lot
17 economically distressed areas program impact fees as provided by
18 rules adopted by the board.

19 SECTION 12. Subchapter K, Chapter 17, Water Code, is
20 amended by adding Section 17.937 to read as follows:

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

25 (b) The report must include:

26 (1) a description of each project;

27 (2) the location of each project;

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

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

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

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

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

13 SECTION 13. Section 17.933(b-1), Water Code, is repealed.

14 SECTION 14. This Act takes effect on the date on which the
15 constitutional amendment proposed by the 86th Legislature, Regular
16 Session, 2019, providing for the issuance of additional general
17 obligation bonds by the Texas Water Development Board in an amount
18 not to exceed \$400 million to provide financial assistance for the
19 development of certain projects in economically distressed areas
20 takes effect. If that amendment is not approved by the voters, this
21 Act has no effect.