

## **BILL ANALYSIS**

Senate Research Center

S.B. 28  
By: Perry  
Water, Agriculture & Rural Affairs  
6/12/2023  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, based on population and water usage estimates, the state will have a shortage of 7 million acre feet per year by 2070. Texas's growth in all areas of the state is putting a strain on the water supply. This finite resource is being used as if it were infinite in supply. Water supply development is expensive, requires long-term planning, and often not realized due to water still available to the end user.

On the heels of Winter Storm Uri, Texans not only faced electric outages but also boil water notices. In the days and weeks following the storm, 16 million Texans were left without access to potable water. What this disaster did was reveal literal cracks in our water infrastructure that have been plaguing the state for years prior.

The Texas Water Development Board estimates that 136 billion gallons per year are lost due to leaky pipes. The National Wildlife Federation recently completed a study that claims the amount of water lost to bad infrastructure in the state could supply Austin, Fort Worth, El Paso, Laredo, and Lubbock combined for an entire year. That's over 500,000 acre feet.

We have the opportunity to fix our infrastructure and set up our future water supply for years to come.

(Original Author's/Sponsor's Statement of Intent)

S.B. 28 amends current law relating to financial assistance provided and programs administered by the Texas Water Development Board.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 2 (Sections 15.153 and 15.154, Water Code), SECTION 6 (Section 15.507, Water Code), and SECTION 8 (Section 16.0121, Water Code).

Rulemaking authority is expressly granted to the State Water Implementation Fund for Texas Advisory Committee in SECTION 6 (Section 15.506, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 10.010, Water Code, as follows:

Sec. 10.010. POWERS AND DUTIES OF COUNCIL. Requires the Water Conservation Advisory Council (council) to take certain actions, including monitoring the effectiveness of the statewide water public awareness program developed under Section 16.026, rather than the statewide water conservation public awareness program developed under Section 16.401, and associated local involvement in implementation of the program.

SECTION 2. Amends Chapter 15, Water Code, by adding Subchapter C-1, as follows:

#### **SUBCHAPTER C-1. NEW WATER SUPPLY FOR TEXAS FUND**

Sec. 15.151. DEFINITION. Defines "fund."

Sec. 15.152. FUND. (a) Provides that the new water supply for Texas fund (new supply fund) is a special fund in the state treasury administered by the Texas Water Development Board (TWDB). Provides that the new supply fund consists of:

- (1) money appropriated for transfer or deposit to the credit of the new supply fund;
- (2) money TWDB transfers to the new supply fund from any available source;
- (3) depository interest allocable to the new supply fund and other investment returns on money in the new supply fund;
- (4) money from gifts, grants, or donations to the new supply fund; and
- (5) any other fees or sources of revenue that the legislature is authorized to dedicate for deposit to the new supply fund.

(b) Provides that the new supply fund is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

Sec. 15.153. USE OF FUND. (a) Requires TWDB by rule to undertake to finance projects through the new supply fund that will lead to seven million acre-feet of new water supplies by December 31, 2033.

(b) Authorizes the new supply fund to be used to:

- (1) provide financial assistance to political subdivisions to develop water supply projects that create new water sources for the state, including:
  - (A) desalination projects, including marine and brackish water desalination;
  - (B) produced water treatment projects, other than projects that are only for purposes of oil and gas exploration;
  - (C) aquifer storage and recovery projects; and
  - (D) the development of infrastructure to transport water that is made available by a project described by this subdivision;

(2) make transfers from the new supply fund:

- (A) to the state water implementation fund for Texas established under Subchapter G (State Water Implementation Fund for Texas) (water implementation fund) or the Texas Water Development Fund II established under Subchapter L (Water Financial Assistance Bond Program), Chapter 17; and
- (B) for a purpose described by Subdivision (1); and

(3) make transfers from the new supply fund to the water bank account established under Section 15.707 (Water Bank Account).

(c) Authorizes the new supply fund to be used for any purpose described by Subsection (b) under criteria developed by TWDB. Authorizes a loan made from the new supply fund under this subchapter to provide for repayment terms of up to 30 years, in TWDB's discretion.

(d) Provides that financial assistance for a purpose described by Subsection (b)(1):

(1) is authorized to be provided for a qualifying project under Chapter 2267 (Public and Private Facilities and Infrastructure), Government Code, only if the project complies with that chapter; and

(2) is prohibited from being provided for expenses associated with the maintenance or operation of a water supply project described by Subsection (b)(1).

Sec. 15.154. FINANCIAL ASSISTANCE. (a) Requires TWDB to adopt rules necessary to administer this subchapter, including rules establishing procedures for the application for and award of financial assistance, the distribution of financial assistance, the investment of funds, and the administration of financial assistance and the new supply fund.

(b) Requires TWDB, when evaluating an application for financial assistance from a political subdivision, to consider:

(1) the intended end users of the water supply, the needs of the area to be served by the project, the expected benefit of the project to the area, the relationship of the project to the water supply needs of this state overall, and the relationship of the project to the state water plan;

(2) the amount of water expected to be produced by the project; and

(3) the availability of money or revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including all interest.

(c) Authorizes TWDB by resolution to approve an application if, after considering the factors listed in Subsection (b) and other relevant factors, TWDB finds that:

(1) the public interest is served by state assistance for the project; and

(2) for an application for financial assistance in the form of a loan, the money or revenue pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the term of the loan.

(d) Requires that the repayment of principal or interest on a loan made under this subchapter be deposited to the credit of the Texas water fund. Provides that this subsection does not apply to a loan made under other law with money transferred under Section 15.153(b)(2).

(e) Requires that an application from a political subdivision for financial assistance under this subchapter comply with the requirements of Section 16.4021 (Water Conservation Plan Requirements).

(f) Provides that Sections 17.183 (Construction Contract Requirements)-17.187 (Certificate of Approval) apply to the construction of projects funded under this subchapter.

SECTION 3. Amends Section 15.438(a), Water Code, as follows:

(a) Provides that the State Water Implementation Fund for Texas Advisory Committee (advisory committee) is composed of the following seven members:

- (1) makes no changes to this subdivision;
- (2) three members of the senate appointed by the lieutenant governor, including the chair, rather than a member, of the committee of the senate having primary jurisdiction over water resources, rather than natural resources; and
- (3) makes conforming changes to this subdivision.

SECTION 4. Amends Section 15.472(a), Water Code, as follows:

(a) Provides that the state water implementation revenue fund for Texas is a special fund in the state treasury outside the general revenue fund to be used by TWDB, without further legislative appropriation, only for the purpose of providing financing for projects included in the state water plan that are authorized under certain subchapters, including Subchapter C-1 of this chapter, or Subchapter L, Chapter 17. Makes nonsubstantive changes.

SECTION 5. Amends Section 15.474(a), Water Code, to make conforming changes.

SECTION 6. Amends Chapter 15, Water Code, by adding Subchapter H-1, as follows:

#### SUBCHAPTER H-1. TEXAS WATER FUND

Sec. 15.501. DEFINITION. Defines "fund."

Sec. 15.502. FUND. (a) Provides that the Texas water fund (water fund) is a special fund in the state treasury outside the general revenue fund. Provides that the water fund is administered by TWDB.

(b) Authorizes TWDB to use the water fund only to transfer money to:

- (1) the water assistance fund established under Subchapter B (Water Assistance Fund);
- (2) the new supply fund established under Subchapter C-1;
- (3) the water implementation fund;
- (4) the state water implementation revenue fund for Texas established under Subchapter H (State Water Implementation Revenue Fund for Texas);
- (5) a revolving fund established under Subchapter J (Financial Assistance for Water Pollution Control);
- (6) the rural water assistance fund established under Subchapter R (Rural Water Assistance Fund);
- (7) the statewide water public awareness account (water account) established under Section 16.027;
- (8) the Texas Water Development Fund II water financial assistance account established under Section 17.959 (Financial Assistance Account); and
- (9) the Texas Water Development Fund II state participation account established under Section 17.957 (State Participation Account).

(c) Requires that money and investments in the water fund be kept and held for and in the name of TWDB.

(d) Authorizes money in the water fund to be used only as provided by this subchapter.

(e) Provides that the water fund consists of:

(1) money transferred or deposited to the credit of the water fund by law, including money appropriated by the legislature directly to the water fund and money from any source transferred or deposited to the credit of the water fund as authorized by law;

(2) any other revenue that the legislature by statute dedicates for deposit to the credit of the water fund;

(3) investment earnings and interest earned on amounts credited to the water fund;

(4) money from gifts, grants, or donations to the water fund; and

(5) money returned from any authorized transfer.

Sec. 15.503. MANAGEMENT AND INVESTMENT OF FUND. (a) Requires that money in the water fund be held and invested by the Texas Treasury Safekeeping Trust Company (trust company), taking into account the purposes for which money in the water fund is authorized to be used.

(b) Requires that the water fund and any accounts established in the water fund be kept and maintained by or at the direction of TWDB.

(c) Authorizes the trust company, in managing the assets of the water fund, to acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the water fund rather than a single investment. Requires that the reasonable expenses of managing the water fund's assets be paid from the water fund.

(d) Provides that Section 404.094(d) (relating to authorizing a state agency that receives money from securities transactions under certain applicable law, as an alternative to the deposit of certain funds, to net funds received against purchases of securities occurring within one business day), Government Code, applies to the water fund.

Sec. 15.504. USE OF FUND. (a) Authorizes TWDB by resolution to make transfers from the water fund to a fund or account described by Section 15.502(b) for an authorized purpose of the receiving fund or account.

(b) Prohibits TWDB from transferring money to a fund or account described by Section 15.502(b) until the application for the project for which the money is to be used has been approved.

(c) Requires TWDB to ensure that a portion of the money transferred from the water fund is used for:

(1) water infrastructure projects, prioritized by risk or need, for:

(A) rural political subdivisions; and

(B) municipalities with a population of less than 150,000;

(2) projects for which all required state or federal permitting has been substantially completed, as determined by TWDB;

(3) the statewide water public awareness program established under Section 16.026;

(4) water conservation strategies; and

(5) water loss mitigation projects.

(d) Authorizes money transferred from the water fund for the purposes described by Subsection (c) to be transferred to funds or accounts described by Section 15.502(b) to be used to provide financial assistance for any purpose described by Subsection (c) under criteria developed by TWDB and in accordance with law.

(e) Authorizes money deposited to the credit of the water fund as provided by Section 15.154(d) to be used only for the purposes described by Section 15.153(b).

(f) Authorizes TWDB to use the fund to pay the necessary and reasonable expenses of TWDB in administering the water fund not to exceed two percent.

Sec. 15.505. TRANSFER OF MONEY. Provides that, notwithstanding any other law:

(1) TWDB is authorized to:

(A) transfer money from the water fund into any other fund or account described by Section 15.502(b); and

(B) restore to the water fund money transferred from the water fund and deposited to the credit of a fund or account described by Section 15.502(b); and

(2) a fund or account described by Section 15.502(b) is authorized to accept a transfer of money made under this subchapter.

Sec. 15.506. ADVISORY COMMITTEE. (a) Provides that the advisory committee established under Section 15.438 (Advisory Committee):

(1) is required to submit comments and recommendations to TWDB regarding the use of money in the water fund for use by TWDB in adopting rules under Section 15.507;

(2) is required to review the overall operation, function, and structure of the water fund at least annually and is authorized to provide comments and recommendations to TWDB on any matter; and

(3) is authorized to adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

Sec. 15.507. RULES. (a) Authorizes TWDB to adopt rules providing for the use of money in the water fund that are consistent with this subchapter.

(b) Requires that rules adopted under this section require each recipient of financial assistance administered through the water fund to submit to TWDB a water conservation plan consistent with the requirements of Section 16.4021.

SECTION 7. Amends Section 15.994(c), Water Code, as follows:

(c) Authorizes TWDB to use money in the rural water assistance fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions for a purpose described by Section 15.994 (Use of Fund), including in obtaining and using financing from funds and accounts administered by TWDB, rather than to assist rural political subdivisions in obtaining and using financing from any source for a purpose described by this section.

SECTION 8. Amends Section 16.0121, Water Code, by adding Subsections (k) and (l), as follows:

(k) Requires TWDB by rule to establish a program to provide technical assistance to retail public utilities in conducting water audits required under Subsections (b) (relating to requiring a retail public utility providing potable water to perform and to file with TWDB an annual water audit) and (b-1) (relating to requiring a retail public utility providing potable water meeting certain criteria to perform and file with TWDB every five years a water audit) and in applying for financial assistance from TWDB to mitigate the utility system's water loss. Authorizes TWDB to provide for the implementation of the program established by this subsection by contracting or partnering with other entities. Requires that rules adopted under Section 16.0121 (Water Audits) provide for the prioritization of technical assistance to retail public utilities based on water loss audits submitted to TWDB, the population served by the utility, and the integrity of the utility's system.

(l) Requires TWDB to post on TWDB's Internet website information that summarizes the information compiled under Subsection (f) (relating to requiring TWDB to compile the information included in the water audits), summarizes the measures taken by retail public utilities to reduce water loss, and identifies the retail public utilities participating in the program established under Subsection (k) and details the use of financial assistance provided under that subsection.

SECTION 9. Transfers Section 16.401, Water Code, to Subchapter B, Chapter 16, Water Code, redesignates it as Section 16.026, Water Code, and amends it, as follows:

Sec. 16.026. New heading: STATEWIDE WATER PUBLIC AWARENESS PROGRAM. (a) Requires the executive administrator to develop and implement a statewide water public awareness program, rather than a statewide water conservation public awareness program, to educate residents of this state about water, rather than about water conservation. Requires that the statewide water public awareness program take into account the differences in water needs, rather than water conservation needs, of various geographic regions of the state and be designed to complement and support existing local and regional water education or awareness programs, rather than local and regional water conservation programs.

(b) Makes no changes to this subsection.

SECTION 10. Amends Subchapter B, Chapter 16, Water Code, by adding Section 16.027, as follows:

Sec. 16.027. STATEWIDE WATER PUBLIC AWARENESS ACCOUNT. (a) Provides that the water account is an account in the general revenue fund. Provides that the water account consists of:

- (1) money appropriated to TWDB for deposit to the credit of the water account;
- (2) money transferred by TWDB to the credit of the water account from other funds available to TWDB;

(3) money from gifts or grants to the water account from any source, including the federal government, an educational institution, or a private donor;

(4) proceeds from the sale of educational or public awareness materials, publications, and other items deposited to the credit of the water account; and

(5) interest earned on the investment of money in the water account and depository interest allocable to the water account.

(b) Authorizes the water account to be used by TWDB to develop, administer, and implement the statewide water public awareness program established by Section 16.026.

(c) Provides that the water account is exempt from the application of Section 403.095, Government Code.

SECTION 11. Amends Section 16.4021(b), Water Code, to provide that this section applies to an application for financial assistance under certain subchapters, including Subchapter C-1, Chapter 15.

SECTION 12. Requires TWDB, not later than January 1, 2024, to adopt rules as required by Section 16.0121(k), Water Code, as added by this Act.

SECTION 13. (a) Effective date, except as otherwise provided by this Act: September 1, 2023.

(b) Effective date, Section 6 of this Act: January 1, 2024, contingent upon approval by the voters of the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, creating the Texas water fund to assist in financing water projects in this state.