

BILL ANALYSIS

C.S.S.B. 28
By: Perry
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas House Natural Resources Committee Interim Report to the 88th Legislature noted that Texas' water and wastewater infrastructure is at a crisis point and that the legislature should consider large-scale investments in water development. According to the 2022 State Water Plan, Texas' population is expected to increase by 73 percent from 2020 to 2070, and water demands are projected to increase by approximately nine percent, from 17.7 million to 19.2 million acre-feet per year. However, in that same timeframe, Texas' existing water supplies are projected to decline by approximately 18 percent, resulting in a potential water shortage of 6.9 million acre-feet per year in 2070. The Texas Section of the American Society of Civil Engineers has given the state a grade of "C-" for drinking water infrastructure and "D" for wastewater infrastructure. The study "Hidden Reservoirs: Addressing Water Loss in Texas" found that Texas utilities are losing at least 572,000 acre-feet of water per year, which is more than the water needs of Austin, Fort Worth, El Paso, Laredo, and Lubbock combined.

C.S.S.B. 28 seeks to create the New Water Supply for Texas fund, the statewide water public awareness account, and the Texas Water Fund to provide financial assistance to address these pressing water challenges.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Water Development Board in SECTIONS 2, 6, and 8 and to the State Water Implementation Fund for Texas advisory committee in SECTION 6 of this bill.

ANALYSIS

C.S.S.B. 28 amends the Water Code to create the New Water Supply for Texas Fund, the statewide water public awareness account, and the Texas Water Fund to provide financial assistance for certain projects relating to water supply in Texas.

Texas Water Fund

C.S.S.B. 28 establishes the Texas Water Fund as a special fund in the state treasury outside the general revenue fund administered by the Texas Water Development Board (TWDB). The bill establishes that money in the fund may be used only as provided by the bill and restricts authorized uses of the fund by the TWDB to the transfer of money to the following funds or accounts:

- the water assistance fund;

- the New Water Supply for Texas Fund established under the bill's provisions;
- the State Water Implementation Fund for Texas;
- the State Water Implementation Revenue Fund for Texas;
- a revolving fund established for financial assistance for water pollution control;
- the rural water assistance fund;
- the statewide water public awareness account established under the bill's provisions;
- the Texas Water Development Fund II water financial assistance account; and
- the Texas Water Development Fund II state participation account.

The bill authorizes the TWDB by resolution to transfer money from the Texas Water Fund into any such fund or account for an authorized purpose and prohibits the TWDB from transferring money to such a fund or account until the application for the applicable project has been approved. The bill authorizes the TWDB to restore to the Texas Water Fund money transferred from the fund and deposited to the credit of such a fund or account and authorizes such a fund or account to accept a transfer of money made under the bill's provisions. The bill requires money and investments in the fund to be kept and held for and in the name of the TWDB and prohibits the comptroller of public accounts from using the fund for certification of bills containing appropriations.

C.S.S.B. 28 establishes that the fund consists of the following:

- money transferred or deposited to the credit of the fund by law, including money appropriated by the legislature directly to the fund and money from any source transferred or deposited to the credit of the fund as authorized by law;
- any other revenue that the legislature by statute dedicates for deposit to the credit of the fund;
- investment earnings and interest earned on amounts credited to the fund;
- money from gifts, grants, or donations to the fund; and
- money returned from any authorized transfer.

C.S.S.B. 28 requires money in the fund to be invested as determined by the TWDB. The bill authorizes such money to be managed by the TWDB, the comptroller, or a corporate trustee that is a trust company or a bank that has the powers of a trust company for and on behalf of the TWDB and provides for the investment of the money by an order, resolution, or rule of the TWDB, if applicable. If managed by the comptroller, the fund may be invested with the state treasury pool. The bill requires the fund and any accounts established in the fund to be kept and maintained by or at the direction of the TWDB. If directed by the TWDB to manage the fund, a corporate trustee must manage the fund in strict accordance with the bill's provisions and the orders, resolutions, and rules of the TWDB. In managing the assets of the fund, the TWDB, comptroller, or corporate trustee may 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 fund rather than a single investment. The reasonable expenses of managing the fund's assets must be paid from the fund.

C.S.S.B. 28 requires the TWDB to ensure that a portion of the money transferred from the fund is used for the following:

- water or wastewater infrastructure projects, prioritized by risk or need, for municipalities with a population of less than 150,000 and rural political subdivisions;
- projects for which all required state or federal permitting has been substantially completed, as determined by the TWDB;
- the statewide water public awareness program; and
- water conservation strategies.

The bill authorizes money transferred from the Texas Water Fund for such purposes to be used to provide financial assistance under criteria developed by the TWDB and in accordance with

law. The bill authorizes the TWDB to use the fund to pay necessary and reasonable expenses of administering the fund.

C.S.S.B. 28 authorizes the TWDB to adopt rules providing for the use of money in the fund that are consistent with the bill's provisions and that must require each recipient of financial assistance administered through the fund to submit to the TWDB a water conservation plan consistent with statutory provisions applicable to such a plan.

C.S.S.B. 28 requires the State Water Implementation Fund for Texas advisory committee to submit comments and recommendations to the TWDB regarding the use of money in the fund for the TWDB to use in adopting rules. The bill requires the advisory committee to review the overall operation, function, and structure of the fund at least annually and authorizes the committee to provide comments and recommendations to the TWDB on any matter. The bill authorizes the advisory committee to adopt rules, procedures, and policies as needed to implement its responsibilities and administer the bill's provisions relating to the advisory committee. The bill prohibits the advisory committee from recommending specific projects for consideration for receipt of financial assistance from the fund. The bill's provisions relating to the Texas Water Fund take effect January 1, 2024, contingent on voter approval of the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, creating the Texas Water Fund to assist in financing water projects in Texas.

New Water Supply for Texas Fund

C.S.S.B. 28 establishes the New Water Supply for Texas Fund as a special fund in the state treasury. The fund consists of the following:

- money appropriated for transfer or deposit to the credit of the fund;
- money the TWDB transfers to the fund from any available source;
- depository interest allocable to the fund and other investment returns on money in the fund;
- money from gifts, grants, or donations to the fund; and
- any other fees or sources of revenue that the legislature may dedicate for deposit to the fund.

The bill exempts the fund from the application of statutory provisions relating to the use of dedicated revenue for purposes of managing treasury funds.

C.S.S.B. 28 requires the TWDB by rule to undertake to finance projects through the fund that will lead to the acquisition or creation of seven million acre-feet of new water supplies by December 31, 2033. The bill authorizes the fund to be used for the following purposes under TWDB-developed criteria:

- provide financial assistance to political subdivisions to develop water supply projects that create new water sources for the state, except the expenses associated with the maintenance or operation of such a water supply project, including the following projects:
 - the acquisition of water from other states;
 - desalination projects, including marine and brackish water desalination;
 - produced water treatment projects, other than projects that are only for purposes of oil and gas exploration;
 - aquifer storage and recovery projects;
 - potable water reuse projects; and
 - the development of infrastructure to transport water that is made available by any such project;
- make transfers from the fund for such financial assistance or to the State Water Implementation Fund for Texas or the Texas Water Development Fund II; and
- make transfers from the fund to the water bank account only for the acquisition or transfer of water originating outside Texas.

The bill authorizes a loan made from the fund to provide for repayment terms of up to 30 years, under TWDB discretion. The bill authorizes financial assistance to be provided under the fund for a qualifying public and private facilities and infrastructure project only if the project complies with statutory provisions relating to such a project.

C.S.S.B. 28 requires the TWDB to adopt rules necessary to administer the fund, including rules establishing procedures for the application for and awarding of financial assistance, the distribution of financial assistance, the investment of funds, and the administration of financial assistance and the fund. The bill requires the TWDB, when evaluating an application for financial assistance from a political subdivision, to consider the following:

- 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 the state overall, and the relationship of the project to the state water plan;
- the amount of water expected to be produced by the project; and
- 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.S.S.B. 28 authorizes the TWDB to approve by resolution an application if, after considering those and other relevant factors, the TWDB finds that the public interest is served by state assistance for the project and, 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. The bill requires a financial assistance application from a political subdivision to comply with water conservation plan requirements.

C.S.S.B. 28 requires the repayment of principal or interest on a loan made under the New Water Supply for Texas Fund to be deposited to the credit of the Texas Water Fund. This requirement does not apply to a loan made under other law with money transferred under the fund for an authorized water supply project or transferred to the State Water Implementation Fund for Texas or the Texas Water Development Fund II. The bill establishes that certain statutory provisions generally applicable to financial assistance apply to the construction of projects funded by the New Water Supply for Texas Fund.

Water Audits

C.S.S.B. 28 requires the TWDB by rule to establish a program to provide technical assistance to retail public utilities providing potable water in conducting required water audits and in applying for financial assistance from the TWDB to mitigate the utility system's water loss. The TWDB may provide for the implementation of such a program by contracting or partnering with other entities. The bill requires the TWDB rules to provide for the prioritization of technical assistance to retail public utilities based on water loss audits submitted to the TWDB, the population served by the utility, and the integrity of the utility's system. The bill requires the TWDB to post on its website information that, as follows:

- summarizes certain information relating to the required water audits;
- summarizes the measures taken by retail public utilities to reduce water loss;
- identifies the utilities participating in the program; and
- details the use of financial assistance provided under the program.

The bill requires the TWDB to adopt rules relating to the program not later than January 1, 2024.

Statewide Water Public Awareness Account and Program

C.S.S.B. 28 establishes the statewide water public awareness account as an account in the general revenue fund that consists of the following:

- money appropriated to the TWDB for deposit to the credit of the account;

- money transferred by the TWDB to the credit of the account from other funds available to the TWDB;
- money from gifts or grants to the account from any source;
- proceeds from the sale of educational or public awareness materials, publications, and other items deposited to the credit of the account; and
- interest earned on the investment of money in the account and depository interest allocable to the account.

The bill authorizes the TWDB to invest, reinvest, and direct the investment of available money in the account as provided by law for the authorized investment of state funds and exempts the account from the application of statutory provisions relating to the use of dedicated revenue for purposes of managing treasury funds.

C.S.S.B. 28 revises provisions relating to the statewide water conservation public awareness program by renaming the program as the statewide water public awareness program, under statutory provisions generally applicable to water development, and specifying the program's purposes of complementing and supporting existing local and regional water education or awareness programs. The bill authorizes the statewide water public awareness account to be used by the TWDB to develop, administer, and implement the statewide water public awareness program.

Miscellaneous Provisions

C.S.S.B. 28 revises provisions relating to the advisory committee of the State Water Implementation Fund for Texas by replacing the advisory committee members that are members of each committee of the senate and house having primary jurisdiction over natural resources with the chair of each committee of the senate and house having primary jurisdiction over water resources.

C.S.S.B. 28 specifies that obtaining and using financing from funds and accounts administered by the TWDB are authorized uses of the rural water assistance fund.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 28 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

New Water Supply for Texas Fund

The substitute, unlike the engrossed, exempts the fund from the application of statutory provisions relating to the use of dedicated revenue for purposes of managing treasury funds.

While both versions of the bill set out authorized uses of the fund, they differ as follows:

- the engrossed provided for the undertaking of projects financed through the fund that will lead to the acquisition or creation of seven million acre-feet per year of new water supplies by the established date, whereas the substitute provides for the undertaking of such projects that will lead to the acquisition or creation of seven million acre-feet of new water supplies by the established date;
- the engrossed specified that the fund may be used only for the established authorized uses;
- the engrossed included among such authorized uses the provision of financial assistance for the development of infrastructure to transport water from other states and grants to

institutions of higher education or qualified research entities to conduct research into new technology that may lead to the development of significant new water supply sources, whereas the substitute does not include this provision;

- the substitute includes among such authorized uses the provision of financial assistance for aquifer storage and recovery projects, potable water reuse projects, and the development of infrastructure to transport water that is made available by an applicable project, whereas the engrossed does not include this provision;
- the substitute includes among such authorized uses transfers to the State Water Implementation Fund for Texas, the Texas Water Development Fund II, and the water bank account, whereas the engrossed does not include this provision; and
- the engrossed prohibited the TWDB from providing financial assistance from the fund if the fund's balance is less than \$50 million, whereas the substitute does not include this provision.

Whereas the engrossed provided for rules relating to the investment of funds and the awarding, distribution, and administration of loans and the fund, the substitute provides for rules relating to the investment of funds and the awarding, distribution, and administration of financial assistance and the fund.

Whereas the engrossed provided for the consideration of revenue or taxes pledged by the political subdivision or wholesale water provider and the ability to meet obligations during the succeeding period of not more than 30 years, the substitute provides for the consideration of money or revenue pledged by a political subdivision and the ability to meet obligations during the term of the loan.

The substitute includes a specification not in the engrossed that the bill's provisions relating to the fund do not apply to a loan made under other law with money transferred under the fund for an authorized project or to the State Water Implementation Fund for Texas or the Texas Water Development Fund II.

Texas Water Fund

The substitute includes the following provisions relating to the Texas Water Fund that were not present in the engrossed:

- a provision including the statewide water public awareness account and the Texas Water Development Fund II financial assistance account among the authorized recipients of transferred money under the Texas Water Fund;
- a specification that money appropriated by the legislature directly to the fund is included in the fund; and
- a provision that includes the TWDB among authorized managers of the money in the fund.

The substitute omits a provision present in the engrossed that included the Texas Water Development Fund among the authorized recipients of transferred money under the Texas Water Fund.

While both versions of the bill provide for authorized uses of the fund, they differ as follows:

- the engrossed included a specification that TWDB authority to make transfers from the fund is subject to legislative appropriation;
- the substitute specifies that the TWDB by resolution may make transfers from the fund;
- whereas the engrossed provided for the transfer of money for certain water infrastructure projects to prevent or repair water main failure, the substitute provides for the transfer of money for water or wastewater infrastructure projects;
- whereas the engrossed provided for the transfer of money for projects for which all applicable permitting has been completed, the substitute provides for the transfer of money for projects for which all applicable permitting has been substantially completed, as determined by the TWDB;

- whereas the engrossed authorized the transfer of money from the fund to be used to provide low interest loans, zero interest loans, negative interest loans, loan forgiveness, or grants, the substitute authorizes the transfer of such money to be used to provide financial assistance; and
- the substitute includes a provision not in the engrossed that authorizes the TWDB to use the fund to pay certain expenses of administering the fund.

The substitute includes a provision not in the engrossed setting out authorizations for the TWDB relating to the transfer of money from the fund.

Other Provisions

The substitute includes provisions not in the engrossed that provide for the following:

- revisions relating to the advisory committee of the State Water Implementation Fund for Texas;
- revisions relating to the statewide water public awareness program; and
- the establishment of the statewide water public awareness account.