

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 28  
By: Perry  
Water, Agriculture, & Rural Affairs  
3/20/2023  
Committee Report (Substituted)

### **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)

C.S.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 1 (Sections 15.153 and 15.154, Water Code), SECTION 2 (Section 15.506, Water Code), and SECTION 4 (Section 16.0121, Water Code).

Rulemaking authority is expressly granted to the State Water Implementation Fund for Texas Advisory Committee in SECTION 2 (Section 15.505, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. 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. Provides that the new water supply for Texas fund (new supply fund) is a special fund in the state treasury. Provides that the new supply fund consists of:

- (1) money appropriated to the Texas Water Development Board (TWDB) for a purpose of the new supply fund;

- (2) money TWDB transfers to the new supply fund from an 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 may to dedicate for deposit to the new supply fund.

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 the acquisition or creation of seven million acre-feet per year of new water supplies by December 31, 2033.

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

(1) financial assistance to political subdivisions to develop water supply projects that create new water sources for the state, including:

(A) the acquisition of water from other states;

(B) the development of infrastructure to transport water from other states;

(C) desalination projects, including marine and brackish water desalination;

(D) produced water treatment projects, other than projects that are only for purposes of oil and gas exploration; or

(2) grants to institutions of higher education or qualified research entities, as determined TWDB, to conduct research into new technology that may lead to the development of significant new water supply sources, as determined by TWDB based on the amount of water the technology may produce.

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

(d) Provides that financial assistance described by Subsection (c) 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; 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).

(e) Prohibits TWDB from providing financial assistance from the new supply fund if the balance of the new supply fund is less than \$50 million.

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 loans, the distribution of loans, the investment of funds, and the administration of loans 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 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 revenue to the political subdivision or wholesale water provider 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) the revenue or taxes pledged by the political subdivision or wholesale water provider will be sufficient to meet all the obligations assumed by the political subdivision or wholesale water provider during the succeeding period of not more than 30 years.

(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.

(e) Requires that an application from a political subdivision or wholesale water provider 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 2. 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 state water implementation fund for Texas established under Subchapter G (State Water Implementation Fund for Texas);

(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 Texas Water Development Fund established under Subchapter C (Funding Provisions), Chapter 17; and

(8) the Texas Water Development Fund II state participation account established under Section 17.957 (State Participation Account).

(c) Provides that TWDB has legal title to money and investments in the water fund.

(d) Prohibits the Comptroller of Public Accounts of the State of Texas (comptroller) from using the water fund for certification under Section 49a (Financial Statements and Revenue Estimate by Comptroller of Public Accounts; Limitation of Appropriations and Certification of Bills Containing Appropriations), Article III (Legislative Department), Texas Constitution.

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

(f) Provides that the water fund consists of:

(1) money transferred or deposited to the credit of the water fund by law, including 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) the redeposit of money transferred from the water fund.

Sec. 15.503. MANAGEMENT AND INVESTMENT OF FUND. (a) Requires that money in the water fund be invested as determined by TWDB. Authorizes the water fund to be invested with the state treasury pool.

(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 money in the water fund to be managed by 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 TWDB and pending the money's use for the purposes provided by this subchapter to be invested as provided by an order, resolution, or rule of TWDB.

(d) Requires the comptroller or corporate trustee, if directed by TWDB to manage the water fund under Subsection (c), to manage the water fund in strict accordance with this subchapter and the orders, resolutions, and rules of TWDB. Provides that TWDB, the comptroller, or corporate trustee has any power necessary to accomplish the purposes of managing and investing the assets of the water fund. Authorizes TWDB, the comptroller, or corporate trustee, in managing the assets of the water fund, through procedures and subject to restrictions that TWDB, the

comptroller, or corporate trustee considers appropriate, 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 water fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

Sec. 15.504. USE OF FUND. (a) Authorizes TWDB, subject to legislative appropriation, 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 to prevent or repair water main failure, prioritized by risk or need, for:

(A) rural political subdivisions, as defined by Section 15.992 (Definitions); and

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

(2) projects for which all required state or federal permitting has been completed;

(3) the statewide water conservation public awareness program established under Section 16.401 (Statewide Water Conservation Public Awareness Program); and

(4) water conservation strategies for new residential construction.

(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 low interest loans, zero interest loans, negative interest loans, loan forgiveness, or grants for any purpose described by Subsection (c) under criteria developed by TWDB.

(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).

Sec. 15.505. ADVISORY COMMITTEE. Provides that the State Water Implementation Fund for Texas 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 15.506;

(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. 15.506. 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 that complies with the requirements of Section 16.4021.

SECTION 3. 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 4. 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 5. Amends Section 16.4021(b), Water Code, to provide that this section applies to an application for financial assistance under certain subchapters, including Subchapters C-1, Chapter 15.

SECTION 6. 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 7. (a) Effective date, except as otherwise provided by this Act: September 1, 2023.

(b) Effective date, Section 2 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.