88R28713 JAM-F

By:  Perry, et al. S.B. No. 28

(King of Uvalde, Troxclair, et al.)

Substitute the following for S.B. No. 28:

By:  King of Uvalde C.S.S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to financial assistance provided and programs administered by the Texas Water Development Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 10.010, Water Code, is amended to read as follows:

Sec. 10.010.  POWERS AND DUTIES OF COUNCIL.  The council shall:

(1)  monitor trends in water conservation implementation;

(2)  monitor new technologies for possible inclusion by the board as best management practices in the best management practices guide developed by the water conservation implementation task force under Chapter 109, Acts of the 78th Legislature, Regular Session, 2003;

(3)  monitor the effectiveness of the statewide water [~~conservation~~] public awareness program developed under Section 16.026 [~~16.401~~] and associated local involvement in implementation of the program;

(4)  develop and implement a state water management resource library;

(5)  develop and implement a public recognition program for water conservation;

(6)  monitor the implementation of water conservation strategies by water users included in regional water plans; and

(7)  monitor target and goal guidelines for water conservation to be considered by the board and commission.

SECTION 2.  Chapter 15, Water Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. NEW WATER SUPPLY FOR TEXAS FUND

Sec. 15.151.  DEFINITION. In this subchapter, "fund" means the new water supply for Texas fund.

Sec. 15.152.  FUND. (a) The new water supply for Texas fund is a special fund in the state treasury. The fund consists of:

(1)  money appropriated for transfer or deposit to the credit of the fund;

(2)  money the board transfers to the fund from any available source;

(3)  depository interest allocable to the fund and other investment returns on money in the fund;

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

(5)  any other fees or sources of revenue that the legislature may dedicate for deposit to the fund.

(b)  The fund is exempt from the application of Section 403.095, Government Code.

Sec. 15.153.  USE OF FUND. (a) The board by rule shall 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.

(b)  The fund may 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)  the acquisition of water from other states;

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

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

(D)  aquifer storage and recovery projects;

(E)  potable water reuse projects; and

(F)  the development of infrastructure to transport water that is made available by a project described by this subdivision;

(2)  make transfers from the fund:

(A)  to the state water implementation fund for Texas established under Subchapter G or the Texas Water Development Fund II established under Subchapter L, Chapter 17; and

(B)  for a purpose described by Subdivision (1); and

(3)  make transfers from the fund to the water bank account established under Section 15.707 only for the acquisition or transfer of water originating outside this state.

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

(d)  Financial assistance for a purpose described by Subsection (b)(1):

(1)  may be provided for a qualifying project under Chapter 2267, Government Code, only if the project complies with that chapter; and

(2)  may not be 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) The board shall 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 fund.

(b)  When evaluating an application for financial assistance from a political subdivision, the board shall 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)  The board by resolution may approve an application if, after considering the factors listed in Subsection (b) and other relevant factors, the board 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)  The repayment of principal or interest on a loan made under this subchapter must be deposited to the credit of the Texas water fund. This subsection does not apply to a loan made under other law with money transferred under Section 15.153(b)(2).

(e)  An application from a political subdivision for financial assistance under this subchapter must comply with the requirements of Section 16.4021.

(f)  Sections 17.183-17.187 apply to the construction of projects funded under this subchapter.

SECTION 3.  Section 15.438(a), Water Code, is amended to read as follows:

(a)  The State Water Implementation Fund for Texas Advisory Committee is composed of the following seven members:

(1)  the comptroller, or a person designated by the comptroller;

(2)  three members of the senate appointed by the lieutenant governor, including:

(A)  a member of the committee of the senate having primary jurisdiction over matters relating to finance; and

(B)  the chair [~~a member~~] of the committee of the senate having primary jurisdiction over water [~~natural~~] resources; and

(3)  three members of the house of representatives appointed by the speaker of the house of representatives, including:

(A)  a member of the committee of the house of representatives having primary jurisdiction over appropriations; and

(B)  the chair [~~a member~~] of the committee of the house of representatives having primary jurisdiction over water [~~natural~~] resources.

SECTION 4.  Section 15.472(a), Water Code, is amended to read as follows:

(a)  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 the board, without further legislative appropriation, only for the purpose of providing financing for projects included in the state water plan that are authorized under Subchapter C-1, Q, or R of this chapter, Subchapter E or F, Chapter 16, or Subchapter J or L, Chapter 17.  The board may establish separate accounts in the fund.  The board has legal title to money and investments in the fund until the money is disbursed as provided by this subchapter and board rules.  It is the intent of the legislature that the fund will never be used:

(1)  for a purpose other than the support of projects in the state water plan; or

(2)  to certify that appropriations from the treasury are within the amount estimated to be available in a fund of the treasury affected by the appropriation.

SECTION 5.  Section 15.474(a), Water Code, is amended to read as follows:

(a)  Except as provided by Subsection (c), money in the fund may be used by the board only to provide financing or refinancing, under terms specified by the board, for projects included in the state water plan that are authorized under Subchapter C-1, Q, or R of this chapter, Subchapter E or F, Chapter 16, or Subchapter J or L, Chapter 17, including water conservation or reuse projects designed to reduce the need for this state or political subdivisions of this state to develop additional water resources.

SECTION 6.  Chapter 15, Water Code, is amended by adding Subchapter H-1 to read as follows:

SUBCHAPTER H-1. TEXAS WATER FUND

Sec. 15.501.  DEFINITION. In this subchapter, "fund" means the Texas water fund.

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

(b)  The board may use the fund only to transfer money to:

(1)  the water assistance fund established under Subchapter B;

(2)  the new water supply for Texas fund established under Subchapter C-1;

(3)  the state water implementation fund for Texas established under Subchapter G;

(4)  the state water implementation revenue fund for Texas established under Subchapter H;

(5)  a revolving fund established under Subchapter J;

(6)  the rural water assistance fund established under Subchapter R;

(7)  the statewide water public awareness account established under Section 16.027;

(8)  the Texas Water Development Fund II water financial assistance account established under Section 17.959; and

(9)  the Texas Water Development Fund II state participation account established under Section 17.957.

(c)  Money and investments in the fund shall be kept and held for and in the name of the board.

(d)  The comptroller may not use the fund for certification under Section 49a, Article III, Texas Constitution.

(e)  Money in the fund may be used only as provided by this subchapter.

(f)  The fund consists of:

(1)  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;

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

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

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

(5)  money returned from any authorized transfer.

Sec. 15.503.  MANAGEMENT AND INVESTMENT OF FUND. (a) Money in the fund shall be invested as determined by the board. If managed by the comptroller, the fund may be invested with the state treasury pool.

(b)  The fund and any accounts established in the fund shall be kept and maintained by or at the direction of the board.

(c)  The money in the fund may be managed by the board, 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 board and pending the money's use for the purposes provided by this subchapter, if managed by a corporate trustee, may be invested as provided by an order, resolution, or rule of the board.

(d)  If directed by the board to manage the fund under Subsection (c), a corporate trustee shall manage the fund in strict accordance with this subchapter and the orders, resolutions, and rules of the board. In managing the assets of the fund, the board, 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 shall be paid from the fund.

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

(b)  The board may not transfer 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)  The board shall ensure that a portion of the money transferred from the fund is used for:

(1)  water or wastewater 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 the board;

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

(4)  water conservation strategies.

(d)  Money transferred from the fund for the purposes described by Subsection (c) may 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 the board and in accordance with law.

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

(f)  The board may use the fund to pay the necessary and reasonable expenses of the board in administering the fund.

Sec. 15.505.  TRANSFER OF MONEY. Notwithstanding any other law:

(1)  the board may:

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

(B)  restore to the fund money transferred from the 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) may accept a transfer of money made under this subchapter.

Sec. 15.506.  ADVISORY COMMITTEE. (a)  The State Water Implementation Fund for Texas Advisory Committee established under Section 15.438:

(1)  shall submit comments and recommendations to the board regarding the use of money in the fund for use by the board in adopting rules under Section 15.507;

(2)  shall review the overall operation, function, and structure of the fund at least annually and may provide comments and recommendations to the board on any matter; and

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

(b)  The advisory committee may not recommend specific projects for consideration for receipt of financial assistance from the fund.

Sec. 15.507.  RULES. (a) The board may adopt rules providing for the use of money in the fund that are consistent with this subchapter.

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

SECTION 7.  Section 15.994(c), Water Code, is amended to read as follows:

(c)  The board may use money in the fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions [~~in obtaining and using financing from any source~~] for a purpose described by this section, including in obtaining and using financing from funds and accounts administered by the board.

SECTION 8.  Section 16.0121, Water Code, is amended by adding Subsections (k) and (l) to read as follows:

(k)  The board by rule shall establish a program to provide technical assistance to retail public utilities in conducting water audits required under Subsections (b) and (b-1) and in applying for financial assistance from the board to mitigate the utility system's water loss. The board may provide for the implementation of the program established under this subsection by contracting or partnering with other entities. Rules adopted under this section must provide for the prioritization of technical assistance to retail public utilities based on:

(1)  water loss audits submitted to the board;

(2)  the population served by the utility; and

(3)  the integrity of the utility's system.

(l)  The board shall post on the board's Internet website information that:

(1)  summarizes the information compiled under Subsection (f);

(2)  summarizes the measures taken by retail public utilities to reduce water loss; and

(3)  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.  Section 16.401, Water Code, is transferred to Subchapter B, Chapter 16, Water Code, redesignated as Section 16.026, Water Code, and amended to read as follows:

Sec. 16.026  [~~16.401~~].  STATEWIDE WATER [~~CONSERVATION~~] PUBLIC AWARENESS PROGRAM.  (a)  The executive administrator shall develop and implement a statewide water [~~conservation~~] public awareness program to educate residents of this state about water [~~conservation~~].  The program shall take into account the differences in water [~~conservation~~] needs of various geographic regions of the state and shall be designed to complement and support existing local and regional water education or awareness [~~conservation~~] programs.

(b)  The executive administrator is required to develop and implement the program required by Subsection (a) in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium specifically for that purpose.

SECTION 10.  Subchapter B, Chapter 16, Water Code, is amended by adding Section 16.027 to read as follows:

Sec. 16.027.  STATEWIDE WATER PUBLIC AWARENESS ACCOUNT. (a) The statewide water public awareness account is an account in the general revenue fund. The account consists of:

(1)  money appropriated to the board for deposit to the credit of the account;

(2)  money transferred by the board to the credit of the account from other funds available to the board;

(3)  money from gifts or grants to the 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 account; and

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

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

(c)  The board may invest, reinvest, and direct the investment of available money in the account as provided by law for the investment of money under Section 404.024, Government Code.

(d)  The account is exempt from the application of Section 403.095, Government Code.

SECTION 11.  Section 16.4021(b), Water Code, is amended to read as follows:

(b)  This section applies to an application for financial assistance under:

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

(2)  Subchapters E and F of this chapter; and

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

SECTION 12.  Not later than January 1, 2024, the Texas Water Development Board shall adopt rules as required by Section 16.0121(k), Water Code, as added by this Act.

SECTION 13.  (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2023.

(b)  Section 6 of this Act takes effect January 1, 2024, but only if 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 is approved by the voters.  If that constitutional amendment is not approved by the voters, Section 6 of this Act has no effect.