

BILL ANALYSIS

Senate Research Center

S.B. 2452
By: Lucio et al.
Water & Rural Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Economically Distressed Areas Program (EDAP) administered by the Texas Water Development Board (TWDB) provides financial assistance for construction of water and wastewater infrastructure projects in economically distressed areas across the state where services either do not exist or existing systems do not meet minimum state standards. EDAP was created in 1989 by the 71st Legislature with two major goals: deliver water and wastewater services to meet immediate health and safety concerns and stop the proliferation of substandard residential subdivision planning using model subdivision rules.

Eligible applicants include political subdivisions such as cities, counties, and water districts, as well as nonprofit water supply corporations. EDAP funding may be provided in the form of a grant or a grant/loan combination and can be used for planning, land acquisition, design, and construction. To date, TWDB has leveraged EDAP and other associated programs to provide over \$1 billion for projects estimated to ultimately serve approximately 400,000 residents.

Constitutional bond authorizations totaling \$500 million provide funding for the program, and historically the legislature has appropriated funds to support issuance of \$50 million in bonds each fiscal year of the biennium to fund EDAP projects. There is currently no remaining unissued EDAP bonding authority.

S.B. 2452, as filed, would enhance the existing EDAP program administered by TWDB. S.B. 2452 would add residential drainage as an eligible project to address the public health concern of standing water and improper drainage in the areas intended to be served by the program. S.B. 2452 would also require TWDB to maximize the effectiveness of general obligation bonds issued for the program by using the bond proceeds in conjunction with other sources of financial assistance, including private funds and public-private partnerships. (Original Author's/Sponsor's Statement of Intent)

S.B. 2452 amends current law relating to the provision by the Texas Water Development Board of financial assistance for the development of certain projects in economically distressed areas.

Note: Although statutory citations in this legislation are to the Texas Natural Resource Conservation Commission (TNRCC), amendments made by this bill affect the Texas Commission on Environment Quality as successor agency to TNRCC.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 4 (Section 17.9275, Water Code) and SECTION 8 (Section 17.933, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 17.922, Water Code, as follows:

Sec. 17.922. FINANCIAL ASSISTANCE. (a) Requires the Texas Water Development Board (TWDB) to use the economically distressed areas account to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer 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, rather than authorizing the economically distressed areas account to be used by TWDB to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services, including providing funds from the account for the state's participation in federal programs that provide assistance to political subdivisions.

(b) Requires TWDB, to the extent practicable, to use money, rather than the funds, in the economically distressed areas account in conjunction with the other financial assistance available through TWDB to encourage the use of cost-effective water supply and wastewater systems, including regional systems, to maximize the long-term economic development of political subdivisions, rather than counties, eligible for financial assistance under the economically distressed areas program.

SECTION 2. Amends Subchapter K, Chapter 17, Water Code, by adding Section 17.9226, as follows:

Sec. 17.9226. USE OF CERTAIN GENERAL OBLIGATION BONDS. Authorizes TWDB to:

(1) maximize the effectiveness of the additional general obligation bonds authorized by Section 49-d-14, Article III, Texas Constitution, by using the additional bonds in conjunction with other sources of financial assistance, including nonpublic funds, to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services; and

(2) use the additional general obligation bonds authorized by Section 49-d-14, Article III, Texas Constitution, to promote and support public-private partnerships that TWDB determines:

(A) are financially viable;

(B) will diversify the methods of financing available for water supply and sewer services; and

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

SECTION 3. Amends Sections 17.927(b) and (c), Water Code, as follows:

(b) Requires the application for financial assistance under this Subchapter (Assistance to Economically Distressed Areas For Water Supply and Sewer Service Projects) and plan to include:

(1)–(2) makes no changes to these subdivisions;

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

(A) describe the proposed planning, design, and construction activities necessary to provide water supply and sewer services that meet minimum state standards provided by TWDB rules, rather than water supply and sewer services that meet minimum state standards; and

(B) makes no changes to this paragraph;

(4)–(5) makes no changes to these subdivisions;

(6) documentation that the appropriate political subdivision has adopted and enforces, rather than has adopted, the model rules developed under Section 16.343 (Minimum State Standards and Model Political Subdivision Rules); and

(7)–(8) makes no changes to these subdivisions.

(c) Requires TWDB, before it approves the application or provides any funds under an application, to require an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125 (Approval of Application) for water supply projects or under Section 17.277 (Approval of Application) for water quality enhancement projects.

SECTION 4. Amends Subchapter K, Chapter 17, Water Code, by adding Section 17.9275, as follows:

Sec. 17.9275. PRIORITIZATION OF PROJECTS BY BOARD. (a) Requires TWDB to prioritize projects for the purpose of providing financial assistance under this subchapter.

(b) Requires TWDB to establish a system for prioritizing projects for which financial assistance is sought from TWDB. Requires the system to include a standard for TWDB to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with TWDB.

(c) Requires the board to give the highest consideration to projects that will have a substantial effect, including projects:

(1) that will serve an area for which TWDB or the Department of State Health Services (DSHS) has determined that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems; or

(2) for which the applicant:

(A) is subject to an enforcement action, including a final order, judgment, or consent decree, by the Texas Natural Resource Conservation Commission (TNRCC), the state, or the United States Environmental Protection Agency, related to public health and safety issues resulting from water supply or sewer services; and

(B) did not cause or allow the violations that are the subject of the enforcement action.

(d) Authorizes TWDB by rule to provide for the consideration of additional criteria.

SECTION 5. Amends Section 17.928(c), Water Code, as follows:

(c) Creates Subdivisions (1) and (2) from existing text and makes nonsubstantive changes. Prohibits TWDB, if an applicant includes a proposal for treatment works, from delivering funds for the treatment works until the applicant has received:

(1) a permit for construction and operation of the treatment works from TNRCC or other applicable permitting authority unless such a permit is not required; and

(2) approval of the plans and specifications from TNRCC, the executive administrator of TWDB (executive administrator), or other applicable authority, rather than approval of the plans and specifications from TNRCC or unless such a permit is not required by TNRCC.

SECTION 6. Amends Section 17.929(a), Water Code as follows:

(a) Requires TWDB, in passing on an application for financial assistance, to consider the ability of the applicant to repay the financial assistance. Makes nonsubstantive changes.

SECTION 7. Amends Section 17.931, Water Code, as follows:

Sec. 17.931. APPLICATION AMENDMENT. (a) Authorizes a political subdivision to request the executive administrator, rather than TWDB, 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) Prohibits a change or modification requested under Subsection (a) from being implemented unless the executive administrator provides written approval, rather than prohibiting a change of modification from being implemented unless TWDB provides its written approval.

SECTION 8. Amends Sections 17.933(a), (b), (c) and (d), Water Code, as follows:

(a) Authorizes TWDB to use money in the economically distressed areas account to provide financial assistance to a political subdivision in the form of a loan, a loan with zero interest, a grant, or other type of financial assistance to be determined by TWDB taking into consideration the information provided by Section 17.927(b)(7) (relating to information identifying the median household income for the area to be served by the proposed project) and the political subdivision's ability to repay the financial assistance, rather than in the form of a loan, including a loan with zero interest, grant, or other type of financial assistance to be determined by TWDB taking into consideration the information provided by Section 17.027 (b)(7).

(b) Prohibits TWDB, in providing financial assistance to an applicant under this subchapter, from providing to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance, rather than 50 percent of the total amount of the financial assistance plus interest on any amount that is required to be repaid, unless TWDB or DSHS determines that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project, rather than unless the Texas Department of Health issues a finding that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. Authorizes TWDB to provide the repayable portion of financial assistance from any financial assistance program for which the applicant is eligible. Requires the applicant, rather than TWDB and the applicant, to provide to TWDB or DSHS information necessary to make a determination, and authorizes TWDB and DSHS to enter into necessary memoranda of understanding to carry out this subsection. Makes conforming changes.

(c) Prohibits the total amount of financial assistance provided by TWDB to political subdivisions under this subchapter from state-issued bonds for which repayment is not required from exceeding at any time 70, rather than 90, percent of the total principal amount of issued and unissued bonds authorized under Article III of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

(d) Requires TWDB, in determining the amount and form of financial assistance and the amount and form of repayment, if any, to establish repayment based on the political subdivision's ability to repay the financial assistance and to consider, rather than to consider:

(1) rates, fees, and charges that the average customer to be served by the project will be able to pay, rather than able to pay based on a comparison of what other

families of similar income who are similarly situated pay for comparable services; and

(2) makes no changes to this subdivision;

(3)–(4) makes no changes to these subdivisions; and

(5) the ability of TWDB to maximize the portion of financial assistance for which repayment is required based on the political subdivision's ability to repay the assistance, as provided by TWDB rule.

SECTION 9. Amends Subchapter K, Chapter 17, Water Code, by adding Section 17.937, as follows:

Sec. 17.937. REPORTING AND TRANSPARENCY REQUIREMENTS. (a) Requires TWDB to post annually on TWDB's Internet website a report detailing each project for which TWDB has provided financial assistance under this subchapter.

(b) Requires the report to include:

(1) a description of each project;

(2) the location of each project;

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

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

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

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

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

SECTION 10. Repealer: Section 17.933(b-1) (relating to the requirement that TWDB make certain bans without charging interest), Water Code.

SECTION 11. Requires TWDB to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, TWDB, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 12. Provides that this Act takes effect on the date on which the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, providing for the issuance of additional general obligation bonds by TWDB in an amount not to exceed \$200 million to provide financial assistance for the development of certain projects in economically distressed areas takes effect. Provides that if that amendment is not approved by the voters, this Act has no effect.