

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 27th 2023
Date

Honorable Dan Patrick
President of the Senate

Honorable Dade Phelan
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 28 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Chad Perry
Perry

Blanco
Blanco

Peter Flores
Flores

Harcoch
Harcoch

On the part of the Senate
Kotkowski

T. King
T. King

Gomez
Gomez

Beren
Beren

Price
Price

On the part of the House
E. Thompson

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 28

A BILL TO BE ENTITLED

1 AN ACT
2 relating to financial assistance provided and programs
3 administered by the Texas Water Development Board.

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

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

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

9 (1) monitor trends in water conservation
10 implementation;

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

16 (3) monitor the effectiveness of the statewide water
17 ~~[conservation]~~ public awareness program developed under Section
18 16.026 [~~16.401~~] and associated local involvement in implementation
19 of the program;

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

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

24 (6) monitor the implementation of water conservation

1 strategies by water users included in regional water plans; and

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

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

6 SUBCHAPTER C-1. NEW WATER SUPPLY FOR TEXAS FUND

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

9 Sec. 15.152. FUND. (a) The new water supply for Texas fund
10 is a special fund in the state treasury administered by the board.
11 The fund consists of:

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

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

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

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

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

22 (b) The fund is exempt from the application of Section
23 403.095, Government Code.

24 Sec. 15.153. USE OF FUND. (a) The board by rule shall
25 undertake to finance projects through the fund that will lead to
26 seven million acre-feet of new water supplies by December 31, 2033.

27 (b) The fund may be used to:

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

4 (A) desalination projects, including marine and
5 brackish water desalination;

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

8 (C) aquifer storage and recovery projects; and

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

12 (2) make transfers from the fund:

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

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

18 (3) make transfers from the fund to the water bank
19 account established under Section 15.707.

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

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

26 (1) may be provided for a qualifying project under
27 Chapter 2267, Government Code, only if the project complies with

1 that chapter; and

2 (2) may not be provided for expenses associated with
3 the maintenance or operation of a water supply project described by
4 Subsection (b)(1).

5 Sec. 15.154. FINANCIAL ASSISTANCE. (a) The board shall
6 adopt rules necessary to administer this subchapter, including
7 rules establishing procedures for the application for and award of
8 financial assistance, the distribution of financial assistance,
9 the investment of funds, and the administration of financial
10 assistance and the fund.

11 (b) When evaluating an application for financial assistance
12 from a political subdivision, the board shall consider:

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

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

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

23 (c) The board by resolution may approve an application if,
24 after considering the factors listed in Subsection (b) and other
25 relevant factors, the board finds that:

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

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

5 (d) The repayment of principal or interest on a loan made
6 under this subchapter must be deposited to the credit of the Texas
7 water fund. This subsection does not apply to a loan made under
8 other law with money transferred under Section 15.153(b)(2).

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

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

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

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

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

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

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

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

27 (3) three members of the house of representatives

1 appointed by the speaker of the house of representatives,
2 including:

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

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

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

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

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

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

27 SECTION 5. Section 15.474(a), Water Code, is amended to

1 read as follows:

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

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

12 SUBCHAPTER H-1. TEXAS WATER FUND

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

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

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

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

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

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

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

27 (5) a revolving fund established under Subchapter J;

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

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

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

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

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

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

13 (e) The fund consists of:

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

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

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

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

24 (5) money returned from any authorized transfer.

25 Sec. 15.503. MANAGEMENT AND INVESTMENT OF FUND. (a) Money
26 in the fund shall be held and invested by the Texas Treasury
27 Safekeeping Trust Company, taking into account the purposes for

1 which money in the fund may be used.

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

4 (c) In managing the assets of the fund, the trust company
5 may acquire, exchange, sell, supervise, manage, or retain any kind
6 of investment that a prudent investor, exercising reasonable care,
7 skill, and caution, would acquire or retain in light of the
8 purposes, terms, distribution requirements, and other
9 circumstances of the fund then prevailing, taking into
10 consideration the investment of all the assets of the fund rather
11 than a single investment. The reasonable expenses of managing the
12 fund's assets shall be paid from the fund.

13 (d) Section 404.094(d), Government Code, applies to the
14 fund.

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

19 (b) The board may not transfer money to a fund or account
20 described by Section 15.502(b) until the application for the
21 project for which the money is to be used has been approved.

22 (c) The board shall ensure that a portion of the money
23 transferred from the fund is used for:

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

26 (A) rural political subdivisions; and

27 (B) municipalities with a population of less than

1 150,000;

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

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

7 (4) water conservation strategies; and

8 (5) water loss mitigation projects.

9 (d) Money transferred from the fund for the purposes
10 described by Subsection (c) may be transferred to funds or accounts
11 described by Section 15.502(b) to be used to provide financial
12 assistance for any purpose described by Subsection (c) under
13 criteria developed by the board and in accordance with law.

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

17 (f) The board may use the fund to pay the necessary and
18 reasonable expenses of the board in administering the fund not to
19 exceed two percent.

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

22 (1) the board may:

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

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

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

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

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

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

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

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

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

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

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

27 (c) The board may use money in the fund to contract for

1 outreach, financial, planning, and technical assistance to assist
2 rural political subdivisions [~~in obtaining and using financing from~~
3 ~~any source~~] for a purpose described by this section, including in
4 obtaining and using financing from funds and accounts administered
5 by the board.

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

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

17 (1) water loss audits submitted to the board;

18 (2) the population served by the utility; and

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

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

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

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

26 (3) identifies the retail public utilities
27 participating in the program established under Subsection (k) and

1 details the use of financial assistance provided under that
2 subsection.

3 SECTION 9. Section 16.401, Water Code, is transferred to
4 Subchapter B, Chapter 16, Water Code, redesignated as Section
5 16.026, Water Code, and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

12 (c) The account is exempt from the application of Section
13 403.095, Government Code.

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

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

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

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

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

22 SECTION 12. Not later than January 1, 2024, the Texas Water
23 Development Board shall adopt rules as required by Section
24 16.0121(k), Water Code, as added by this Act.

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

27 (b) Section 6 of this Act takes effect January 1, 2024, but

1 only if the constitutional amendment proposed by the 88th
2 Legislature, Regular Session, 2023, creating the Texas water fund
3 to assist in financing water projects in this state is approved by
4 the voters. If that constitutional amendment is not approved by
5 the voters, Section 6 of this Act has no effect.

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Section-by-Section Analysis

SENATE VERSION

No equivalent provision.

SECTION 1. 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.

HOUSE VERSION (IE)

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. Same heading as Senate version.

Sec. 15.151. Same as Senate version.

CONFERENCE

SECTION 1. Same as House version.

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

SUBCHAPTER C-1. Same heading as Senate version.

Sec. 15.151. Same as Senate version.

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SENATE VERSION

Sec. 15.152. FUND. 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 *an* 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.

No equivalent provision.

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 *per year* of new water supplies by December 31, 2033.

(b) The fund may 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; *and*

HOUSE VERSION (IE)

Sec. 15.152. FUND. (a) The new water supply for Texas fund is a special fund in the state treasury *administered by the board*. The fund consists of: [FA1(1)]

- (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. Same heading as Senate version.

(a) Same as Senate version except does not specify that the seven million acre-feet of new water supplies are supplies *per year*.

(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;
(See (b)(1)(F) below.)
 - (B) desalination projects, including marine and brackish water desalination;

CONFERENCE

Sec. 15.152. (a) Same as House version.

(b) Same as House version.

Sec. 15.153. Same heading as Senate version.

(a) Same as House version except does not include reference to *the acquisition or creation of* the new water supplies.

(b) Substantially the same as House version except does not include Subsections (b)(1)(A) and (b)(1)(E) of that version and does not specify that transfers made from the fund to the water bank account are *only for the acquisition or transfer of water originating outside this state*.

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(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 by the board, to conduct research into new technology that may lead to the development of significant new water supply sources, as determined by the board based on the amount of water the technology may produce.

(See (b)(1)(B) above.)

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

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

(1) may be provided for a qualifying project under Chapter 2267, Government Code; and

HOUSE VERSION (IE)

(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

CONFERENCE

(c) Same as House version.

(d) Same as House version.

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(2) may not be provided for expenses associated with the maintenance or operation of a water supply project described by Subsection (b)(1).

(e) The board may not provide financial assistance from the fund if the balance of the fund is less than \$50 million.

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 *loans*, the distribution of *loans*, the investment of funds, and the administration of *loans* 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 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) 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) *the* revenue *or taxes* pledged by the political subdivision

HOUSE VERSION (IE)

~~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).

No equivalent provision.

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*

CONFERENCE

Same as House version.

Sec. 15.154. Same as House version.

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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) The repayment of principal or interest on a loan made under this subchapter must be deposited to the credit of the Texas water fund.

(e) An application from a political subdivision or wholesale water provider 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.

No equivalent provision.

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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

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SECTION 3. Same as House version.

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

No equivalent provision.

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

SECTION 4. Same as House version.

(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.

No equivalent provision.

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

SECTION 5. Same as House version.

(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,

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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:

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

SUBCHAPTER H-1. Same heading as Senate version.

SUBCHAPTER H-1. Same heading as Senate version.

Sec. 15.501. Same as Senate version.

Sec. 15.501. Same as Senate version.

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.

Sec. 15.502. Substantially the same as House version.

- (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

SECTION 2. 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 Texas Water Development Fund established under *Subchapter C, Chapter 17*; and
 - (8) the Texas Water Development Fund II state participation

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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 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 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

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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) [Deleted by FA1(2)]

(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 **held and** invested by the **Texas Treasury Safekeeping Trust Company, taking into account the purposes for which money in** the fund may be **used**. [FA1(3)]

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

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Sec. 15.503. Same as House version.

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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.

(c) In managing the assets of the fund, the trust company 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.
[FA1(4)]

(d) Section 404.094(d), Government Code, applies to the fund. [FA1(5)]

Sec. 15.504. USE OF FUND.

Sec. 15.504. Same heading as Senate version.

Sec. 15.504. Same heading as Senate version.

(a) Subject to legislative appropriation, the board 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.

(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.

(a) Same as House version.

(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.

(b) Same as Senate version.

(b) Same as Senate version.

(c) The board shall ensure that a portion of the money transferred from the fund is used for:

(c) The board shall ensure that a portion of the money transferred from the fund is used for:

(c) Same as House version except does not include reference to wastewater infrastructure projects and does not include

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(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;

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; and

(4) water conservation strategies for new residential construction.

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

(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).

No equivalent provision.

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

(A) rural political subdivisions; [FA3(1)]

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

(C) economically distressed areas, as defined by Section 17.921; [FA3(2)]

(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; [FA2(1)]

(4) water conservation strategies; and

(5) water loss mitigation projects. [FA2(2)]

(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) Same as Senate version.

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

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(c)(1)(C) of that version.

(d) Same as House version.

(e) Same as Senate version.

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

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No equivalent provision.

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.

not to exceed two percent.

Sec. 15.505. Same as House version.

Sec. 15.505. 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 15.506**;
(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. 15.506. Substantially the same as Senate version.

Sec. 15.506. Same as House version.

Sec. 15.506. RULES. (a) The board may adopt rules providing for the use of money in the fund that are consistent with this subchapter.

Sec. 15.507. Same as Senate version.

Sec. 15.507. Same as Senate version.

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(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 3. Section 15.994(c), Water Code, is amended.

SECTION 4. Section 16.0121, Water Code, is amended by adding Subsections (k) and (l).

No equivalent provision.

No equivalent provision.

SECTION 7. Same as Senate version.

SECTION 8. Same as Senate version.

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

SECTION 7. Same as Senate version.

SECTION 8. Same as Senate version.

SECTION 9. Same as House version.

SECTION 10. Same as House version.

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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) [Deleted by FA1(6)]

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

SECTION 5. Section 16.4021(b), Water Code, is amended.

SECTION 11. Same as Senate version.

SECTION 11. Same as Senate version.

SECTION 6. Transition provision.

SECTION 12. Same as Senate version.

SECTION 12. Same as Senate version.

SECTION 7. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2023.

SECTION 13. Substantially the same as Senate version.

SECTION 13. Same as House version.

(b) Section 2 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

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approved by the voters. If that constitutional amendment is not approved by the voters, Section 2 of this Act has no effect.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 27, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB28 by Perry (relating to financial assistance provided and programs administered by the Texas Water Development Board.), **Conference Committee Report**

The fiscal implications of the bill cannot be determined because the amounts and timing of any appropriations; depository interest; loan repayments; and gifts, grants, or donations for the New Water Supply for Texas Fund, Texas Water Fund, and the Statewide Water Public Awareness Account are unknown at this time.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would amend the Water Code to establish three new accounts to be administered by the Texas Water Development Board (TWDB): the New Water Supply for Texas Fund, the Texas Water Fund, and the Statewide Water Public Awareness Account. The bill would require TWDB to use the New Water Supply for Texas Fund for projects that develop new sources of water supply, use the Texas Water Fund to transfer money to other TWDB funds and accounts for various projects, ensuring that a portion of that money transferred is used for certain purposes, and use the Statewide Water Public Awareness Account to develop, administer, and implement the Statewide Water Public Awareness Program. Recipients of financial assistance from the New Water Supply for Texas Fund or the Texas Water Fund would also be required to submit water conservation plans consistent with the requirements of Water Code section 16.4021.

New Water Supply for Texas Fund

The New Water Supply for Texas Fund would be a special fund in the state treasury outside of the General Revenue Fund. TWDB would be required to adopt rules to use the fund to finance projects that will lead to seven million acre-feet of new water supplies by December 31, 2033. The fund may only be used to provide financial assistance to political subdivisions for certain water supply projects that develop or create new sources of water supply. Additionally, the fund would be permitted to make transfers into to the State Water Implementation Fund for Texas (SWIFT), the Texas Water Development Fund II (DFund II), and the Water Bank Account.

The effective date for the New Water Supply for Texas Fund provisions would be September 1, 2023.

Texas Water Fund

The Texas Water Fund would be a special fund in the state treasury outside of the General Revenue Fund. The fund may only be used to disburse money to the following other TWDB funds: the Water Assistance Fund (WAF), the New Water Supply for Texas Fund, the State Water Implementation Fund for Texas (SWIFT), the State Water Implementation Revenue Fund for Texas (SWIRFT), the Clean Water and Drinking Water State Revolving Funds (SRFs), the Rural Water Assistance Fund (RWF), the Statewide Water Public Awareness Account, the Financial Assistance Account of the Texas Water Development Fund II (DFund II), and the State Participation Account of DFund II. The fund would be permitted to transfer to, and restore money

transferred to, these funds and accounts, and those funds or accounts would be permitted to accept any transfer from the fund. The Texas Treasury Safekeeping Trust Company (TTSTC) would hold and invest money in the fund. The TTSTC would manage assets of the fund, and reasonable expenses of managing the fund's assets would be paid from the fund.

TWDB by resolution may make transfers from the fund, and disbursements from the fund could only be made upon approval of a project application. TWDB would be required to ensure that a portion of the money disbursed from the fund is used for: water infrastructure projects in rural political subdivisions, municipalities with a population of less than 150,000, and economically distressed areas, prioritized by risk or need; water infrastructure projects for which all federal or state permitting has been substantially completed as determined by TWDB; the statewide water public awareness program; water conservation strategies; and water loss mitigation projects.

The SWIFT Advisory Committee would oversee use of the fund. The bill also modifies the composition of the committee. At least annually, the committee would be required to submit comments and recommendations to TWDB regarding the use of money in the fund and to review the overall operation, function, and structure of the fund, and may adopt rules to facilitate this process. The committee would be prohibited from recommending specific projects for consideration for receipt of financial assistance.

TWDB would be required to adopt rules providing for the use of money in the fund. The rules would be required to include that recipients of financial assistance from the fund would be required to submit water conservation plans. TWDB may use up to two percent of the fund to pay the reasonable expenses of managing the fund.

The effective date of the Texas Water Fund provisions would be January 1, 2024, but only if the constitutional amendment authorizing the legislature to provide for the creation of the fund to assist in financing water projects in the state is approved by the voters.

Statewide Water Public Awareness Account and Program

The bill would redesignate a program within Chapter 16 of Water Code and rename the program from the Statewide Water Conservation Public Awareness Program to the Statewide Water Public Awareness Program. The bill also makes a conforming change for Water Conservation Advisory Council to monitor the effectiveness of the renamed program. The program is designed for TWDB to support existing local and regional water education or awareness programs.

The bill would create the Statewide Water Public Awareness Account within the General Revenue Fund. The account would be used to develop, administer, and implement the Statewide Water Public Awareness Program. This account would consist of transfers; gifts, grants, and donations; proceeds from sales of educational or public awareness materials; and other sources of revenue legislatively dedicated to the fund. TWDB could invest, reinvest, and direct investment of the account.

The effective date for the statewide water public awareness account and program provisions would be September 1, 2023.

Other Provisions

The bill would expand the use of the RWAFF so that money in the fund for assistance and outreach purposes are not restricted to only being used for obtaining financing. It would also allow rural political subdivisions to use RWAFF funding to obtain financing from other TWDB funds and accounts.

The bill would require TWDB to adopt rules no later than January 1, 2024, that establish a technical assistance program for retail public utilities to conduct water audits and to apply for financial assistance from TWDB to mitigate the water loss of a utility system. TWDB may contract or partner with other entities to implement the program. TWDB would be required to post on its website information including: compiled information from water audits, measures taken by retail public utilities to reduce water loss, and providing details on how participating retail public utilities are utilizing financial assistance provided by the program.

The effective date for the RWAFF and technical assistance program provisions would be September 1, 2023.

Based on information provided by TWDB and the Comptroller of Public Accounts, the fiscal impact cannot be determined because the amounts and timing of any appropriations; depository interest; loan repayments; and gifts, grants, or donations for the new funds are unknown at this time. The bill would establish new responsibilities for TWDB, but the agency has indicated those responsibilities could be absorbed using existing resources. However, if a large appropriation were made to either fund, TWDB indicates it would require additional FTEs, resources to update existing technology systems, and resources to contract for professional services to manage the additional responsibilities. An additional appropriation to any fund is not considered for the purposes of this analysis.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

The bill could have a positive fiscal impact on political subdivisions that receive grants or low interest loans.

Source Agencies: 304 Comptroller of Public Accounts, 580 Water Development Board

LBB Staff: JMc, CMA, MW, AJL, SZ, KDw