

SUBJECT: Expanding Economically Distressed Areas Program

COMMITTEE: Border and International Affairs — committee substitute recommended

VOTE: 4 ayes — Chavez, Alonzo, Castro, Vo

1 nays — Griggs

1 absent — Merritt

SENATE VOTE: On final passage, May 3 — 26-5 (Estes, Fraser, Harris, Nelson, Ogden)

WITNESSES: For — John Henneberger, Texas Low Income Housing Information Service and Boarder Low Income Housing Coalition; (*Registered, but did not testify*: Veronica de Lafuente, Office of Cameron County Judge Gilberto Hinojosa; Cyrus Reed, Lone Star Chapter of Sierra Club; Chuck Rice, Texas Land Developers Association)

Against — None

On — Ignacio Madera, Jr., Jonathan Steinberg and Kevin Ward, Texas Water Development Board

BACKGROUND: In 1989, the 71st Legislature enacted SB 2 by Santiesteban, which established the Economically Distressed Areas Program (EDAP) to be administered by the Texas Water Development Board (TWDB). EDAP provides financial assistance in the form of grants, loans, or grant/loan combinations to bring water and wastewater services to *colonias*, primarily along the Texas-Mexico border. The program funds construction, acquisition, and improvements to water supply and wastewater collection and treatment facilities, including all necessary engineering work. Maintenance and operations must be funded by the applicant. All political subdivisions in affected counties are eligible to apply.

Under the program, an economically distressed area is defined as an area that had inadequate water supply or wastewater systems, that lacked the financial resources to improve those systems, and where an established

residential subdivision was located on June 1, 1989. EDAP projects must be located in economically distressed areas within affected counties. Affected counties are defined as those next to an international border or those with a per capita income at least 25 percent below the state average and unemployment levels at least 25 percent above the state average during the past three years. Thirty-four counties were eligible to participate in the program as of September 2004.

The program is authorized under Water Code ch. 16, subch. J. Sec. 16.343 requires the TWDB to adopt model rules to ensure that minimum water and wastewater standards are in place in residential areas of political subdivisions. These rules must, among their provisions, prohibit the establishment of residential developments with lots of five acres or less without adequate water and wastewater services in EDAP counties. Sec. 17.927 lays out the criteria for EDAP applications. Under sec. 17.125, an applicant must adopt a water conservation program before receiving funding. No more than 50 percent of the financial assistance provided may be given without a requirement of repayment unless there is a finding that the water supply and sanitation problems in the area constitute a danger to public health and safety. In any case, the amount of financial assistance for which repayment is not required may not exceed 90 percent.

Water Code, sec. 15.407 allows the TWDB to pay for the cost of facility engineering, including the preparation of plans and specifications, in economically distressed areas.

DIGEST:

CSSB 964 would allow the TWDB to issue no more than \$50 million in bonds per year of the \$785 million of general obligation bonds that would be authorized under SJR 27 by Lucio, if approved by voters, unless a greater amount was approved by the Bond Review Board.

CSSB 964 would expand the EDAP program statewide by redefining an “affected county” as any county in the state that had an economically distressed area with a median household income at or below 75 percent of the median state household income during the past year. The bill also would define an “economically distressed area” as one in which an established residential subdivision was located on June 1, 2005, rather than June 1, 1989.

The bill also would revise the EDAP application criteria. Applications would be required to include a project plan, prepared and certified by a

registered engineer, that described the proposed planning, design, and construction activities necessary to provide water supply and sewer services that met minimum state standards and identify the households that would be served. The application also would have to include information identifying the median household income for the area and a statement prepared and certified by a registered engineer that the facilities in the area did not meet minimum state standards. The bill would remove several current application criteria, including the requirements that the application contain, among other items:

- information on the ability of potential customers to pay for the services provided by the project and a plan for payment collection;
- an agreement to comply with applicable procurement procedures in contract awards;
- a requirement that a contractor execute a performance bond in the amount of 100 percent of the contract price; and
- an affidavit by the chief executive officer of a utility in the area, if there were one, that the utility did not object to the construction and operation of the services and facilities in its service area.

In passing on an application, the TWDB would have to consider the availability to the area of financial assistance from alternative sources. The bill would remove the requirement that the TWDB consider the proposed use of labor from inside the political subdivision, the percentage of the total project cost that the financial assistance would comprise, and the feasibility of creating a conservation and reclamation district.

CSSB 964 also would:

- allow all areas eligible for EDAP assistance to be eligible to receive funds for facility engineering; and
- allow the board to evaluate whether an operating entity needed training upon submission of an application or an amendment to the project plan or budget.

The bill would take effect on the date on which the constitutional amendment proposed in SJR 27 by Lucio took effect. The changes made by the bill would apply only to applications pending or filed on or after the effective date. If the amendment was not approved by voters, the bill would have no effect.

SUPPORTERS
SAY:

CSSB 964 would expand the highly successful EDAP program statewide and simplify the eligibility criteria to meet the water and wastewater needs of citizens throughout the state. The bill also would set an annual cap on the amount of bonds that could be issued under the constitutional amendment proposed in SJR 27 by Lucio.

SJR 27 would, upon voter approval, authorize the TWDB to issue \$785 million in general obligation bonds for the EDAP program. By setting a conservative cap of \$50 million on the amount of bonds that could be issued by the TWDB each year under this new authority, CSSB 964 would spread out the state's financial liability for the repayment of those bonds. Consequently, the bill would cost the state just \$7 million for fiscal 2006-07 biennium. Although the state has limited general revenue available, ensuring that citizens have the access to clean water and adequate sanitation necessary to promote public health should be one of its highest priorities.

Extending water service to unincorporated areas makes strong economic sense. While many of the communities without water and wastewater infrastructure are poor, existence of water lines would enable businesses to move into the area, improving the tax base and providing jobs for residents. Investing in necessary infrastructure would be a wise use of state funds.

By removing the border criteria and redefining "affected county" to include any county that contained an economically distressed area, CSSB 964 significantly would increase the number of counties eligible to apply for EDAP funding. There are many communities throughout the state with inadequate water and wastewater infrastructure that currently are not being served through EDAP. The communities that would be served by this change face challenges similar to the *colonias* that have received funds through EDAP, and there is no reasonable justification for denying similar opportunities to economically distressed areas in other parts of the state. The bill also would streamline eligibility and the application process while retaining safeguards to prevent the proliferation of *colonias* and other substandard housing developments by requiring counties and other appropriate political subdivisions to adopt model subdivision rules. The bill would not encourage developers to create new substandard developments in anticipation of future legislation further extending the date on which a subdivision had to be in place since this would be a one-time change as the program expanded statewide. Moreover, because the

board may require any additional information it chooses of applicants, the board would continue to have the authority to request information demonstrating the ability of potential customers to pay for the services provided by the project.

OPPONENTS
SAY:

The EDAP program should be allowed to sunset. Since EDAP was created in 1989, TWDB has received \$542 million in state and federal funds to provide assistance under the program, yet the problem has not gone away. In fact, continuing to extend water lines to unincorporated areas could prove counterproductive, since it effectively encourages people to move into the regions that are costly to serve. Further, changing the date that a community had to be in existence in order to receive funding from 1989 to 2005 would appear to reverse the state's longstanding position that it would not fund projects in new substandard developments and therefore could tempt developers to build substandard developments in anticipation of future legislation. With so many underfunded priorities this session, the state cannot afford to authorize more bonds that further would drain the state's general revenue and increase state debt. The state should search for other ways to address the state's water and wastewater needs, such as expanding grants and tax credits for low-income housing or providing counties with the authority to regulate and develop unincorporated areas.

OTHER
OPPONENTS
SAY:

As initially proposed, SB 964 would have included a penny-per-day fee for retail water and sewer utility services in order to pay for the bonds authorized in SJR 27. This provision would have provided a funding mechanism for the bonds without draining valuable general revenue. This or a similar provision should be included in the bill to minimize the amount of general revenue needed. Adding a funding mechanism also would ensure sufficient monies to be able to issue bonds, because it has been very difficult in previous sessions to appropriate general revenue for these bonds.

By removing the requirement that applicants demonstrate the ability of potential customers to pay for the services provided by the project, the bill could allow for the financing of a project that was not financially sustainable. With so many critical water and wastewater needs across Texas, the state cannot afford to waste resources on unsustainable projects. This eligibility requirement should remain intact.

NOTES:

The committee substitute increased the amount of bonds mentioned in the enacting clause to conform with changes made to SJR 27 by Lucio, which

would authorize issuance of \$785 million in general obligation bonds to fund water and wastewater infrastructure in economically distressed areas.

The fiscal note projects a cost to the state in general revenue-related funds of approximately \$7.1 million in fiscal 2006-07 for debt service payments and related administrative costs.

SJR 27 by Lucio, the constitutional amendment that accompanies CSSB 964, is on today's Constitutional Amendments Calendar.