

**SUBJECT:** Enabling new sources and uses of money in the rural water assistance fund

**COMMITTEE:** Natural Resources — committee substitute recommended

**VOTE:** 10 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, D. Miller, Price

0 nays

1 absent — Martinez Fischer

**WITNESSES:** For — James Morrison, Texas Rural Water Association; (*Registered, but did not testify*: Monty Wynn, Texas Municipal League; Janet Adams, Fort Davis Water Supply Corporation)

Against — None

On — Piper Montemayor, Ken Petersen, Texas Water Development Board

**BACKGROUND:** Water Code, title 2, subtitle C addresses water development and is primarily administered by the Texas Water Development Board (TWDB). Within the subtitle, ch. 15 establishes the Texas Water Assistance Program and the Rural Water Assistance Fund, and ch. 17 covers public funding for water development.

Ch. 15, sec. 15.992(4) defines “rural political subdivision” as a county containing no urban area with a population greater than 50,000 or as a nonprofit water supply or sewer service corporation, district, or municipality with a service area population of 10,000 or less or that qualifies for financing from a federal agency.

Multiple statutory mechanisms exist to direct bond proceeds into the Rural Water Assistance Fund. One pathway channels proceeds from the sale of water financial assistance bonds through a financial assistance account within the Texas Water Development Fund into the Rural Water Assistance Fund (see secs. 17.956 and 17.9615). Another pathway channels proceeds from the sale of political subdivision bonds through the Water Assistance Fund into the Rural Water Assistance Fund (see secs. 17.0871 and 15.011).

DIGEST:

CSHB 865 would expand the funding sources and permitted uses of the Rural Water Assistance Fund.

**Use of the Rural Water Assistance Fund.** The bill would expand the permitted uses for a low-interest loan made to a rural political subdivision from the Rural Water Assistance Fund. Newly permitted uses of low-interest loans would include:

- water projects in the state water plan or a regional water plan;
- additional kinds of water-related and water quality enhancement projects;
- the development and acquisition of water sources and rights;
- the acquisition of retail public utilities (i.e., for-compensation water supply and/or sewer services);
- acquisition of other political subdivisions' water supply or sewer service facilities or systems;
- project costs related to state or federal regulatory activities; and
- water and wastewater projects to serve economically distressed areas.

The bill would authorize TWDB to use the Rural Water Assistance Fund to provide zero- or negative-interest loans, loan forgiveness, or grants for any purpose permitted for low-interest loans under criteria that would be developed by TWDB.

The bill would allow TWDB to use the fund to provide financial assistance to rural political subdivisions, in addition to the currently allowed outreach and technical assistance.

The bill would add a new section to ch. 15 allowing TWDB to provide financial assistance to a nonprofit water supply or sewer service corporation by entering into a loan agreement with the applicant. To be eligible for financial assistance, the applicant would have to execute a promissory note for the full amount of the loan and provide to TWDB an attorney's opinion stating that the applicant had the authority to incur the debt. The applicant would not be required to appoint or employ a bond counsel or a financial advisor.

The bill would define "nonprofit water supply or sewer service corporation" with a reference to ch. 67 of the Water Code.

The bill would allow two rural political subdivisions to submit a joint application for financial assistance from the Rural Water Assistance Fund, and it would allow TWDB to coordinate review of applications with a federal agency to avoid duplicating efforts and costs.

**Funding sources of the Rural Water Assistance Fund.** The bill would expand the funding sources of the Rural Water Assistance Fund to include gifts, grants, and donations to the fund; fees or other revenue the Legislature chose to dedicate to the fund; and the money transferred from the Water Assistance Fund under sec. 15.011, including the political subdivision bond proceeds channeled into the Water Assistance Fund under sec. 17.0871. The bill would also specify that, of the money directly appropriated to TWDB, only those dollars appropriated for a purpose of the fund would be held in the fund.

**Effective date.** The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

CSHB 865 would consolidate existing water project funding programs that serve rural political subdivisions, allowing TWDB to offer these entities a “one-stop shop” for all financial assistance available to them. The bill would simplify the process of funding rural water projects, which currently is complicated and burdensome on small rural utilities. The bill would add flexibility in how the fund could be supported financially and in how the fund could be used.

The bill would codify current TWDB rules and practices. TWDB and the Texas Rural Water Association worked together with the author’s office to help craft the bill, and both entities support the changes the bill would make to statute. For example, the bill would codify TWDB’s current rule that a nonprofit water supply corporation does not need to hire a bond counsel or a financial advisor to be eligible for a loan. TWDB adopted this rule because the small rural water supply corporations are entering loan agreements and not issuing bond instruments themselves, can get any advice they need from TWDB, and cannot afford to hire such outside advisors.

The bill could save local governments money through low-interest loans and would have no fiscal implication to the state. All bonds sold for the Rural Water Assistance Fund are self-supporting, so no general revenue appropriations are or would be needed to cover the debt service of the

program's low-interest loans. TWDB would be able to absorb any costs associated with this bill within existing resources. While the bill would make more funding sources permissible, it would not require any additional funding. If a future Legislature decided to appropriate funding for no-interest loans, grants, and loan forgiveness, the bill would relieve local governments even more.

CShB 865 would help level the playing field for small local governments and rural water supply corporations that do not have the same financial resources as large private utility companies that seek to acquire all other retail public utilities to minimize their competition. The bill would help rural communities retain and develop their own water supply systems.

OPPONENTS  
SAY:

CShB 865 would be harmful to investor-owned utilities because it would enable rural political subdivisions to use low-interest loans from the fund for the acquisition of a retail public utility. Consequently, the bill would put private-sector utilities at a competitive disadvantage to public and nonprofit entities with regard to acquiring another retail public utility. If TWDB took advantage of the bill's provisions that would enable zero- or negative-interest loans, loan forgiveness, and/or grants, investor-owned utilities would be even more severely impacted.

NOTES:

The committee substitute differs from the bill as filed by specifying that the money directly appropriated to TWDB for the fund would be for a purpose of the fund.

The Legislative Budget Board estimates provisions in the bill could provide savings to local governments that borrowed money from the fund, depending on a variety of factors.

The companion bill, SB 360 by Fraser, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 24 and was reported favorably, without amendment, by the House Natural Resources Committee on March 31, making it eligible for consideration in lieu of HB 865.