

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 964
By: Lucio
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 71st Legislature, Regular Session, 1989, passed S.B. 2, which was the state's first major attempt to address the problems associated with colonias. S.B. 2 established the Economically Distressed Areas Program (EDAP) which provided financial assistance in the form of grants and loans for water and wastewater service to economically distressed areas. Under the bill, the Texas Water Development Board (board) was made the EDAP administrator. S.B. 2 directed the board to develop model rules to assure water and sewer services to residential developments and to strengthen platting requirements. Under EDAP, counties or municipalities would be required to adopt the model rules to become eligible for state financial assistance for water and wastewater projects.

While discussing S.B. 2, the office of the attorney general has reported that "incidentally, a basic policy underlying the legislation was that the state would spend millions of dollars to address water and sewer infrastructure needs in existing colonias, but there would be strict laws and rules to prevent new colonias (and costly remediation) from happening."

EDAP was financed in the early 1990s through voter-approved constitutional amendments that authorized the board to issue up to \$250 million in general obligation EDAP bonds. Currently, only a fraction of this bonding authority is left to address the remaining water and wastewater needs of approximately \$785 million in currently-existing traditional EDAP communities.

C.S.S.B. 964 continues the built-in provisions of EDAP's original eligibility requirements to prevent future substandard colonia-like developments in different parts of the state. C.S.S.B. 964 extends EDAP statewide to address traditional EDAP communities' and non-EDAP communities' water and wastewater needs by providing the board new bonding authority, contingent on voter approval, of up to \$500 million.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 7 (Section 17.087, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Water Development Board is modified in SECTION 5 (Section 16.343, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 15.407(a), Water Code, to redefine "economically distressed area" and "political subdivision."

SECTION 2. Amends Section 15.973, Water Code, to authorize money in the water infrastructure fund (fund) to be used to pay for the implementation of water projects recommended through the state and regional water planning processes under this subchapter, as well as under Sections 16.051 and 16.053, and for other uses authorized by this subchapter. Provides that the fund includes money from the retail water and sewer utility service fee under Section 17.087. Makes nonsubstantive changes.

SECTION 3. Amends Section 15.974, Water Code, by adding Subsection (d), to authorize money deposited in the fund from the retail water and sewer utility service fee under Section

17.087 to be transferred by the Texas Water Development Board (board) only to certain specified accounts or funds.

SECTION 4. Amends Section 16.341, Water Code, by amending Subdivisions (1) and (2) and adding Subdivisions (1-a) and (2-a), to redefine "affected county" and "economically distressed area" and to define "border county" and "non-border county."

SECTION 5. Amends Sections 16.343(b) and (c), Water Code, as follows:

(b) Requires the model rules [adopted by the board] to assure that drinking water is available to residential areas in accordance with certain rules and regulations adopted by the Texas Commission on Environmental Quality (commission), rather than the Texas Board of Health. Requires the model rules to provide certain criteria applicable to certain tracts specifically for both border counties and non-border counties, rather than for all counties.

(c) Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 17.0112, Water Code, to authorize the board to issue not more than \$50 million in bonds authorized under Section 49-d-10, Article III, Texas Constitution, during a fiscal year to provide financial assistance for certain water supply and sewer services. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Subchapter C, Chapter 17, Water Code, by adding Section 17.087, as follows:

Sec. 17.087. RETAIL WATER AND SEWER UTILITY SERVICE FEES. (a) Defines "retail public utility" and "retail water or sewer utility service."

(b) Requires each retail public utility to collect from each household to which the utility provides retail water or sewer utility service a fee in an amount determined by the commission. Sets a cap on the fee.

(c) Requires the board to report to the commission, not later than January 1 of each year, the amount anticipated to be necessary to service, for the next state fiscal year, the debt for the bonds issued or to be issued under Section 49-d-10, Texas Constitution, and the anticipated cost, for the next state fiscal year, of facility engineering in economically distressed areas under Section 15.407 of this code.

(d) Requires the commission, not later than March 1 of each year, to establish, by rule, the fee at an amount that the commission reasonably anticipates will generate an amount of money sufficient to pay certain costs.

(e) Authorizes the fee to be listed on the household's bill as a separate item. Requires the fee to be collected in addition to other charges for utility service.

(f) Authorizes the commission, by rule, to establish the due date of the fee, the procedures for collection, and the penalty for late payment.

(g) Requires the executive director of the commission to collect the fee from the retail public utilities.

(h) Requires fees collected under this section to be deposited to the credit of the water infrastructure fund.

SECTION 8. Amends Section 17.921, Water Code, by amending Subdivision (1) and adding Subdivisions (6), (7), and (8), to redefine "economically distressed area" and define "border county," "non-border county," and "economically distressed areas account."

SECTION 9. Amends Section 17.922, Water Code, to authorize the board to provide assistance to political subdivisions in border and non-border counties, and provides for caps on the assistance for the respective types of counties. Prohibits certain financial assistance to be used to provide certain water services to any area that is not an economically distressed area, rather than any area not defined as an economically distressed area pursuant to Section 17.921(1)(A) of this code.

SECTION 10. Amends Sections 17.927(b), (c), and (d), Water Code, as follows:

(b) Requires an application and plan [submitted by a political subdivision to the board for financial assistance] to include certain information, and deletes references to other required information. Makes nonsubstantive changes.

(c) Requires the board, before it approves the application or provides funds, to require an applicant to adopt a certain water conservation program. Deletes the reference to certain applicants including proof with the application of county or municipality consent.

(d) Authorizes the board, before considering an application, to require the applicant to provide certain information and documentation, provide a written determination by the commission on the applicant's capabilities to operate the system for which assistance is being requested, and request a financial review of the applicant. Deletes existing text relating to certain other information an applicant must include in an application for financial assistance.

SECTION 11. Amends Section 17.929, Water Code, as follows:

(a) Sets forth a new element the board is required to consider in passing on an application for financial assistance, and deletes other elements the board was required to consider. Makes conforming and nonsubstantive changes.

(b) Requires the board to find that the area to be served by the proposed project has a median house hold income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available, rather than an average per capita income that is at least 25 percent below the state average for the most recent three consecutive years for which statistics are available.

SECTION 12. Amends Section 17.930(b), Water Code, to require the board by resolution, among other options, to approve the plan and application subject to certain requirements identified by the board or commission, rather than by the commission, for the applicant to obtain. Makes a nonsubstantive change.

SECTION 13. Amends Sections 17.933(a) and (c), Water Code, as follows:

(a) Authorizes the board to use money in the economically distressed areas account to provide financial assistance to a political subdivision in the form of a loan, grant, or other type of financial assistance to be determined by the board, rather than to a political subdivision to be repaid in the form, manner, and time provided by board rules and the agreement between the board and political subdivision. Makes a nonsubstantive change.

(c) Provides that the total amount of financial assistance from state-issued bonds for which repayment is not required may not exceed 90 percent of the total principal amount of issued and unissued bonds authorized under Article III, Sections 49-d-7 and 49-d-10, rather than Section 49-d-7, of the Texas Constitution.

SECTION 14. Amends Section 17.936(c), Water Code, to apply this section only to property located in the unincorporated area of a border or non-border county, rather than an affected county. Makes a conforming change.

SECTION 15. Amends Section 17.952, Water Code, to authorize the board by resolution to provide for the issuance of water financial assistance bonds in an aggregate principal amount not

to exceed the principal amount authorized to be issued by Section 49-d-8 or 49-d-10, rather than just Section 49-d-8, Article III, Texas Constitution.

SECTION 16. Amends Section 17.993(a), Water Code, to authorize the commission or the board to evaluate whether an operating entity needs training if the operating entity requests financial assistance or an amendment to the project plan or budget, rather than additional funding.

SECTION 17. Amends Section 232.071, Local Government Code, to provide that this subchapter (County Planning Commission) applies to the subdivision of land located in a county in which is located a political subdivision that is eligible for or has applied for financial assistance under Section 15.407, Water Code, or Subchapter K (Assistance to Economically Distressed Areas for Water Supply and Sewer Service Projects), Chapter 17, Water Code, rather than in a county eligible for financial assistance under those provisions in the Water Code.

SECTION 18. Repealer: Sections 15.407(i) (relating to continued eligibility for funds after a county has an increase in per capita income or a decrease in unemployment), 16.343(f) (providing that only an affected county may adopt the model rules), 17.923 (County Eligibility for Financial Assistance), 17.924 (Municipality Eligible for Financial Assistance), 17.925 (Districts and Nonprofit Water Supply Corporations Eligible for Financial Assistance), 17.926 (Applicants' Continued Eligibility), and 17.933(g) (relating to the cap on the amount of financial assistance for which repayment is not required), Water Code.

SECTION 19. Makes application of this Act prospective to applications for financial assistance pending or filed on or after the effective date of this Act.

SECTION 20. Requires the commission to adopt rules to implement Section 17.087, Water Code, as added by this Act, not later than March 1, 2006. Makes application of the fee required by Section 17.087, Water Code, as added by this Act, prospective to April 1, 2006.

SECTION 21. Effective date: upon approval by the voters of the constitutional amendment proposed by the 79th Legislature, Regular Session, 2005, providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$500 million to provide assistance to economically distressed areas. Makes application of this Act contingent upon approval by the voters of the amendment.