

BILL ANALYSIS

Senate Research Center

H.B. 1052
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Water & Rural Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The State Participation Fund is a separate fund administered by the Texas Water Development Board which is focused on purchasing excess capacity in surface water reservoirs and water pipelines where excess demand is anticipated. The Board, using the fund, can purchase the excess capacity and have its position bought out as the population and demand grows for the water. To date, the TWDB has provided roughly \$225,368,000 in financial assistance through State Participation to 15 projects.

HB 1052 would authorize the TWDB's State Participation Fund account to be used for desalination, aquifer storage and recovery (ASR), and interregional projects not in the State Water Plan. The new program would allow the Board to enter into an agreement with a private entity (in addition to a public entity) thus providing a P3 option that does not currently exist within the SWIFT program.

H.B. 1052 amends current law relating to the authority of the Texas Water Development Board to use the state participation account of the water development fund to provide financial assistance for the development of certain facilities.

Note: While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality as the successor agency to TNRCC.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Texas State Water Investment Fund Act.

SECTION 2. Amends the heading to Section 16.131, Water Code, to read as follows:

Sec. 16.131. AUTHORIZED PROJECTS FOR STATE PARTICIPATION ACCOUNT.

SECTION 3. Amends Section 16.131, Water Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the Texas Water Development Board (TWDB) to use the state participation account of the development fund to encourage optimum regional and interregional development of projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of:

- (1) makes no changes to this subdivision;
- (2)–(3) makes nonsubstantive changes to these subdivisions; and
- (4) interregional water supply projects selected under Section 16.145.

(c) Requires not less than 50 percent of money used from the state participation account of the development fund in any fiscal year to be used for interregional water projects selected under Section 16.145.

SECTION 4. Amends Subchapter E, Chapter 16, Water Code, by adding Sections 16.145 and 16.146, as follows:

Sec. 16.145. INTERREGIONAL WATER SUPPLY PROJECTS. (a) Requires TWDB to identify, establish selection criteria for, and issue a request for proposals for water supply projects that benefit multiple water planning regions. Requires the selection criteria established under this section to prioritize projects that:

- (1) maximize the use of private financial resources;
- (2) combine the financial resources of multiple water planning regions; and
- (3) have a substantial economic benefit to the regions served by:
 - (A) affecting a large population;
 - (B) creating jobs in the regions served; and
 - (C) meeting a high percentage of the water supply needs of the water users served by the project.

(b) Requires TWDB and the Texas Natural Resource Conservation Commission (TNRCC) to enter into a memorandum of understanding for the expedited approval of permits for projects selected under this section.

Sec. 16.146. AUTHORIZED PROJECTS FOR STATE PARTICIPATION ACCOUNT II. (a) Authorizes TWDB to use the state participation account II created under Section 17.957 to provide financial assistance for the development of a desalination or aquifer storage and recovery facility, including associated intake or distribution facilities, to meet existing or projected future water needs by acquiring such a facility or an ownership interest in such a facility.

(b) Authorizes TWDB to act singly or in a joint venture in partnership with any person, including a public or private entity, an agency or political subdivision of this state, another state or a political subdivision of another state, the United States, or a foreign nation, to the extent permitted by law. Authorizes TWDB to provide financial assistance under this section for a facility without regard to any TWDB requirements provided rules regarding the portion of the capacity of the facility that will serve an existing need or the portion of the cost of the facility that the applicant will finance from sources other than the state participation account II.

(c) Provides that Section 16.135 (Board Findings) does not apply to the use of the state participation account II to develop a facility described by Subsection (a) of this section by acquiring the facility or an interest in the facility.

(d) Provides that, before TWDB is authorized to acquire a facility or an interest in a facility described by Subsection (a), TWDB must find affirmatively that:

- (1) it is reasonable to expect that the state will recover its investment in the facility; and
- (2) the public interest will be served by the acquisition of the facility.

(e) Prohibits TWDB from providing financial assistance under this section for a facility unless the facility is included in the state water plan.

(f) Requires TWDB to establish a point system for prioritizing facilities for which financial assistance is sought from TWDB under this section. Requires the system to include a standard for TWDB to apply in determining whether a facility qualifies for financial assistance at the time the application for financial assistance is filed with TWDB.

(g) Prohibits TWDB from issuing more than \$200 million in water financial assistance bonds designated by TWDB as issued to provide financial assistance for facilities under this section.

(h) Provides that, if TWDB does not provide financial assistance for a facility under this section from the state participation account II before September 1, 2024, TWDB is prohibited from providing financial assistance for any facility from that account after that date.

SECTION 5. Amends Section 16.182, Water Code, to read as follows:

Sec. 16.182. New heading: PERMITS REQUIRED. (a) Creates this subsection from existing text. Requires the applicant, before TWDB grants the application to buy, receive, or lease the facilities, to first secure all appropriate permits, rather than secure a permit for water use from TNRCC. Authorizes a permit, if the facilities are to be leased, to be for a term of years. Makes a nonsubstantive change.

(b) Authorizes TWDB to assist the applicant with securing permits for a facility described by Section 16.146.

SECTION 6. Amends Section 17.957, Water Code, by amending Subsections (b) and (c) and adding Subsection (c-1), as follows:

(b) Provides that the state participation account is composed of:

(1) money and assets attributable to water financial assistance bonds designated by TWPD as issued for projects described in Sections 16.131 (Authorized Projects) and 16.146;

(2) makes no changes to this subdivision;

(3) makes a conforming change; and

(4)–(6) makes no changes to these subdivisions.

(c) Makes a conforming change.

(c-1) Requires the comptroller of public accounts of the State of Texas to establish a subaccount in the state participation account to be known as the state participation account II. Authorizes TWDB to credit to the subaccount money in the state participation account allocated by TWDB for the purposes of Section 16.146. Authorizes TWDB to transfer money from the subaccount to the state participation account if TWDB determines the money is needed for the purposes of Section 16.131.

SECTION 7. Effective date: September 1, 2019.