

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2331  
By: Creighton  
Water & Rural Affairs  
4/25/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 2331 enacts statutory changes so that there is a single, consistent requirement for water conservation plans for all applicants for financial assistance at the Texas Water Development Board (TWDB). The requirement that each applicant adopt or implement a water conservation plan is located in various sections of statutes applicable to each TWDB financial assistance program, and these requirements are not all consistent with one another. To ensure consistency and clarity, S.B. 2331 will locate this statutory requirement in one section that is applicable to all relevant TWDB financial assistance programs. One consistent water conservation plan requirement for all programs would eliminate discrepancies and apply the requirement to both surface water and groundwater projects for all programs. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2331 amends current law relating to requirements for programs of water conservation and water conservation plans.

While statutory references in this bill are to the Texas Natural Resource Conservation Commission (TNRCC), changes made by this legislation affect the Texas Commission on Environmental Quality as 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. Amends Sections 15.103(a) and (e), Water Code, as follows:

(a) Requires the applicant, in an application to the Texas Water Development Board (TWDB) for financial assistance from the water loan assistance fund, to include:

- (1)–(4) makes no changes to this subdivision;
- (5) makes a nonsubstantive change to this subdivision;
- (6) the water conservation plan required by Section 16.4021; and
- (7) creates this subdivision from existing text and makes no further changes;

(e) Requires the applicant, if the applicant claims an exemption under Section 16.4021(d), rather than under Subsection (c) (relating to conditions under which TWDB is prohibited from requiring a program of water conservation to be adopted), Section 15.106 (Approval of Application) of this code, to state the exemption in the application and provide information relating to the exemption as required by TWDB rules. Makes nonsubstantive changes.

SECTION 2. Amends Section 15.206(b), Water Code, as follows:

(b) Requires the application for insurance under the water bond insurance program to include the water conservation plan required by Section 16.4021 among other information. Makes nonsubstantive changes.

SECTION 3. Amends Section 15.435(g), Water Code, as follows:

(g) Prohibits TWDB from directing the trust company to enter into a bond enhancement agreement with respect to bonds issued by TWDB the proceeds of which are authorized to be used to provide financial assistance to an applicant if at the time of the request the applicant has failed to:

(1) provide information regarding, rather than submit or implement, a water conservation plan in accordance with Section 16.4021, rather than Section 11.1271 (Additional Requirements: Water Conservation Plans); or

(2) makes no changes to this subdivision.

SECTION 4. Amends Section 15.607, Water Code, as follows:

Sec. 15.607. APPROVAL OF APPLICATION. Authorizes TWDB by resolution, on review of recommendations by the executive administrator of TWDB (executive administrator), to approve an application if TWDB finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all the obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal act and state law, including Section 16.4021. Deletes existing text requiring a program of water conservation for the more effective use of water to be required in the same manner as required for approval of an application for financial assistance under Section 15.106 of this code.

SECTION 5. Amends Section 15.910(a), Water Code, as follows:

(a) Requires a political subdivision of water supply corporation, in an application to TWDB for financial assistance from the disadvantaged rural community water and wastewater financial assistance fund, to include:

(1)–(5) makes no changes to these subdivisions;

(6) makes a nonsubstantive change to this subdivision;

(7) the water conservation plan required by Section 16.4021; and

(8) creates this subdivision from existing text and makes no further changes.

SECTION 6. Amends Section 15.975(a), Water Code, as follows:

(a) Authorizes TWDB by resolution, on review and recommendation by the executive administrator, to approve an application if TWDB finds that:

(1) the application and the assistance applied for meet the requirements of this subchapter (Water Infrastructure Fund), Section 16.4021, and TWDB rules, rather than this subchapter and TWDB rules; and

(2)–(3) makes no changes to these subdivisions.

SECTION 7. Amends Section 15.995(e), Water Code, as follows:

(e) Requires an application from a rural political subdivision for financial assistance under this subchapter (Rural Water Assistance Fund) to comply with the requirements of Section 16.4021. Deletes existing text requiring a program of water conservation for the

more efficient use of water to be required in the same manner as is required for approval of an application for financial assistance under Section 15.106.

SECTION 8. Amends Section 16.136, Water Code, as follows:

Sec. 16.136. FACILITIES WANTED BY POLITICAL SUBDIVISION. Authorizes TWDB to acquire all or part of any authorized facility to the extent that TWDB finds that the political subdivision:

(1)–(3) makes no changes to these subdivisions; and

(4) has complied with water conservation plan requirements as required by Section 16.4021, rather than has a program of water conservation for the more efficient use of water as required by Section 15.106 of this code.

SECTION 9. Amends Section 16.402(c), Water Code, as follows:

(c) Requires the executive administrator to review each water conservation plan and annual report to determine compliance with the minimum requirements established by Section 16.4021, rather than Section 11.1271, and the submission deadlines developed under Subsection (e) (relating to rules governing water conservation plan review) of this section.

SECTION 10. Amends Subchapter K, Chapter 16, Water Code, by adding Section 16.4021, as follows:

Sec. 16.4021. WATER CONSERVATION PLAN REQUIREMENTS. (a) Defines "water conservation plan" for purposes of this section.

(b) Provides that this section applies to an application for financial assistance under:

(1) Subchapters C (Water Loan Assistance Program), D (Water Bond Insurance Program), E (Storage Acquisition Program), G (State Water Implementation Fund For Texas), H (State Water Implementation Revenue Fund For Texas), J (Financial Assistance For Water Pollution Control), O (Program For Water and Wastewater Financial Assistance For Disadvantaged Rural Communities), Q (Water Infrastructure Fund), and R Chapter 15 (Texas Water Assistance Program);

(2) Subchapters E (Acquisition and Development of Facilities) and F (Sale or Lease of Facilities) of this chapter; and

(3) Subchapters D (Assistance to Political Subdivisions For Water Supply Projects), F (Financial Assistance For Water Quality Enhancement Purposes), I (Revenue Bond Program), K (Assistance to Economically Distressed Areas For Water Supply and Sewer Service Projects), and L (Water Financial Assistance Bond Program), Chapter 17 (Public Funding).

(c) Requires an applicant, except as provided by Subsection (d), to submit with the application a description of the applicant's proposed or adopted water conservation plan. Provides that the water conservation plan:

(1) is required to:

(A) incorporate the practices, techniques, and technology described by Section 15.001(9)(B) (relating to the definition of "conservation" including practices techniques and technologies that will reduce the consumption and loss of water and improve the efficiency and use of water or recycling and reuse of water);

(B) meet reasonably anticipated local needs and conditions, as determined by TWDB; and

(C) include specific, quantified five-year and 10-year targets for water savings, including goals for water loss programs and municipal use measured in gallons per capita per day; and

(2) is authorized to include:

(A) restrictions on discretionary water uses, including lawn watering;

(B) plumbing code standards for water conservation in new building construction;

(C) retrofit programs to improve water-use efficiency in existing buildings;

(D) educational programs;

(E) universal metering;

(F) conservation-oriented water rate structures;

(G) drought contingency plans; and

(H) distribution system leak detection and repair.

(d) Provides that an applicant is not required to submit a water conservation plan under this section if:

(1) an emergency exists as determined by TWDB;

(2) the amount of financial assistance under consideration is not greater than \$500,000;

(3) the applicant demonstrates and TWDB finds that the implementation of a water conservation plan is not reasonably necessary for conservation; or

(4) the financial assistance is to fund a project that consists of construction outside this state.

(e) Prohibits TWDB from providing financial assistance to an applicant to which this section applies unless the applicant demonstrates that it has adopted and implemented a water conservation plan that meets the requirements for a water conservation plan under Subsection (c).

(f) Requires TWDB to establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation plans.

(g) Provides that if the applicant will use the project to furnish water or services to another entity that will furnish the water or services to the ultimate consumer, the requirement for an applicant to demonstrate adoption and implementation of a water conservation plan can be met through contractual agreements between the applicant and the other entity providing for the adoption and implementation of a water conservation plan by the other entity.

(h) Requires rules adopted under this section to state the criteria for preparation, review, and enforcement of an applicant's water conservation plan.

SECTION 11. Amends Section 16.403, Water Code, as added by Chapter 595 (S.B. 181), Acts of the 82nd Legislature, Regular Session, 2011 as follows:

Sec. 16.403. WATER USE REPORTING. Deletes existing text of Subsection (a) relating to legislative findings regarding water use. Redesignates existing Subsections (b)-(e) as Subsections (a)-(d).

(a) Makes no further changes to this subsection.

(b) Requires TWDB or the Texas Natural Resource Conservation Commission (TNRCC), as appropriate, to use the methodology and guidance developed under Subsection (a), rather than Subsection (b), in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to TWDB or TNRCC under certain sections. Deletes existing text including certain sections under which reports are produced and makes nonsubstantive changes.

(c) Makes no further changes to this subsection.

(d) Requires TWDB, not later than January 1 of each odd-numbered year, to submit to the legislature a report that includes the most recent data relating to certain information, including the data collection and reporting program developed under Subsection (c), rather than Subsection (d).

(e) Requires data included in a water conservation plan or report required under this code and submitted to TWDB or TNRCC to be interpreted in the context of variations in local water use. Prohibits the data from being the only factor considered by TNRCC in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l) (relating to criteria for granting interbasin transfers).

SECTION 12. Amends Sections 17.122(a) and (c), Water Code, as follows:

(a) Requires the applicant, in an application to TWDB for financial assistance for a water supply project, to include certain information, including the water conservation plan required by Section 16.4021. Makes nonsubstantive changes.

(c) Requires the applicant, if the applicant claims an exemption under Section 16.4021, rather than under Subsection (c) (relating to conditions under which TWDB is prohibited from requiring a program of water conservation to be adopted), Section 17.125, of this code, to state the exemption in the application and provide information relating to that exemption as provided by TWDB rules. Makes nonsubstantive changes.

SECTION 13. Amends Sections 17.274(a) and (c), Water Code, as follows:

(a) Requires the applicant, in an application to TWDB for financial assistance for water quality enhancement purposes, to include certain information, including the water conservation plan required by Section 16.4021.

(c) Requires the applicant, if the applicant claims an exemption under Section 16.4021, rather than Subsection (d) (relating to requiring TWDB to establish an educational and technical assistance program), Section 17.277, of this code, to state the exemption in the application and provide information relating to that exemption as provided by TWDB rules.

SECTION 14. Amends Section 17.855(a), Water Code, to require the participant, in an application to TWDB for financial assistance through the acquisition of acquired obligations, to include certain information, including the water conservation plan required by Section 16.4021.

SECTION 15. Amends Section 17.927(b), Water Code, to require the application for financial assistance to economically distressed areas for water supply and sewer service projects and plan to include the water conservation plan required by Section 16.4021.

SECTION 16. Repealer: 15.103(d) (relating to the requirement that an applicant state in his application that he has a program of water conservation and to describe that program in a manner required TWDB rules, under certain circumstances), Water Code.

Repealer: Section 15.106(b) (relating to the requirement that TWDB require an applicant to adopt or to have already implemented a program of water conservation that is authorized to include certain criteria), Water Code.

Repealer: Section 15.106(b-1) (relating to the requirement that water conservation plans include specific, quantified 5-year and 10-year targets for water savings), Water Code.

Repealer: Section 15.106(c) (relating to the prohibition of water conservation plans from requiring a program of water conservation to be adopted under certain circumstances), Water Code.

Repealer: Section 15.106(d) (relating to the requirement that TWDB, to the extent funds are available, establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation plans required by this section and other sections of this code), Water Code.

Repealer: Section 15.106(e) (relating to the process by which the requirements of the water conservation plan can be met via contractual agreements), Water Code.

Repealer: Section 15.106(f) (relating to requiring rules adopted under this section to state the criteria for preparation, review, and enforcement of an applicant's conservation program), Water Code.

Repealer: Section 15.208(b) (relating to authorizing TWDB to require the applicant to develop a conservation program to provide for more efficient use of water), Water Code.

Repealer: Section 15.208(c) (relating to authorizing TWDB to establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation programs), Water Code.

Repealer: Section 15.208(d) (relating to the process by which the requirements of TWDB relative to a water conservation plan can be met via contractual agreements), Water Code.

Repealer: Section 15.910(c) (relating to the requirement that the subdivision or corporation state in the application that the subdivision or corporation has a program of water conservation), Water Code.

Repealer: Section 15.975(b) (relating to the requirement that a program of a water conservation through a more effective use of water be required in the same manner as for approval of an application for financial assistance under Section 15.106), Water Code.

Repealer: Section 16.403 (Water Use Reporting), Water Code, as added by Chapter 1233 (S.B. 660), Acts of the 82nd Legislature, Regular Session, 2011.

Repealer: Section 17.125(b) (relating to the requirement that TWDB require an applicant to adopt a program of water conservation for the more efficient use of water that incorporates certain practices, techniques, or technology), Water Code.

Repealer: Section 17.125(b-1) (relating to the requirement that all water conservation plans required under this section include specific, quantified 5-year and 10-year targets for water savings), Water Code.

Repealer: Section 17.125(b-2) (relating to the requirement that TWDB give priority to applications for funds for implementation of water supply projects in the state water plan by certain entities), Water Code.

Repealer: Section 17.125(c) (relating to prohibiting TWDB from requiring a program of water conservation to be adopted under Subsection (b) of this section, under certain circumstances), Water Code.

Repealer: Section 17.125(d) (relating to the requirement that TWDB establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation plans), Water Code.

Repealer: Section 17.125(e) (relating to providing that TWDB requirements can be met through contractual agreements between the political subdivisions), Water Code.

Repealer: Section 17.125(f) (relating to the requirement that rules adopted under this section state the criteria for preparation, review, and enforcement of an applicant's conservation program), Water Code.

Repealer: Section 17.274(b) (relating to the requirement that the applicant state certain information in the application), Water Code.

Repealer: Section 17.277(b) (relating to the requirement that an applicant adopt a program of water conservation for the more efficient use of water), Water Code.

Repealer: Section 17.277(b-1) (relating to the requirement that all water conservation plans include specific, quantified 5-year and 10-year targets for water savings), Water Code.

Repealer: Section 17.277(c) (relating to prohibiting TWDB from requiring a program of water conservation to be adopted under Subsection (b), under certain conditions), Water Code.

Repealer: Section 17.277(d) (relating to requiring TWDB to establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water development plans), Water Code.

Repealer: Section 17.277(e) (relating to providing that TWDB requirements relative to water conservation can be met through contractual agreements), Water Code.

Repealer: Section 17.277(f) (relating to requiring rules adopted under this section to state the criteria for preparation, review, and enforcement of an applicant's conservation program) Water Code.

Repealer: Section 17.857(b) (relating to the requirement that an applicant adopt a program of water conservation), Water Code.

Repealer: Section 17.857(b-1) (relating to the requirement that all water plans include certain information), Water Code.

Repealer: Section 17.857(c) (relating to prohibiting TWDB from requiring a program of water conservation to be adopted under Subsection (b) if certain criteria are met), Water Code.

Repealer: Section 17.857(d) (relating to providing that TWDB requirements relative to water conservation can be met through contractual agreements), Water Code.

Repealer: Section 17.927(c) (relating to requiring an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125), Water Code.

SECTION 17. Makes application of this Act prospective.

SECTION 18. Effective date: September 1, 2019.