

By: Harris

H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to the oversight and financing of certain water infrastructure matters under the jurisdiction of the Texas Water Development Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. WATER INFRASTRUCTURE DEVELOPMENT

SECTION 1.1. Section 15.153(b), Water Code, is amended to read as follows:

(b) The fund may be used to:

(1) provide financial assistance to political subdivisions to develop water supply projects that create new water sources for the state, including:

(A) desalination projects, including marine and brackish water desalination;

(B) produced water treatment projects, other than projects that are only for purposes of oil and gas exploration;

(C) aquifer storage and recovery projects; ~~and~~

(D) reservoir projects for which:

(i) a permit for the discharge of dredged or fill material has been issued by the United States secretary of the army under Section 404, Federal Water Pollution Control Act (33 U.S.C. Section 1344); and

(ii) a permit for the storage, taking, or diversion of state water has been issued by the commission under

Section 11.121; and

(E) the development of infrastructure to transport or integrate into a water supply system water that is made available by a project described by this subdivision; and

(F) potable water reuse projects;

(2) make transfers from the fund:

(A) to the state water implementation fund for Texas established under Subchapter G or the Texas Water Development Fund II established under Subchapter L, Chapter 17; and

(B) for a purpose described by Subdivision (1);
~~[and]~~

(3) make transfers from the fund to the water bank account established under Section 15.707; and

(4) make transfers from the fund:

(A) to the Texas Water Development Fund II state participation account established under Section 17.957; and

(B) for a purpose described by Subdivision (1).

SECTION 1.2. Section 15.502(b), Water Code, is amended to read as follows:

(b) The board may use the fund only to transfer money to:

(1) the water assistance fund established under Subchapter B;

(2) the new water supply for Texas fund established under Subchapter C-1;

(3) the state water implementation fund for Texas established under Subchapter G;

(4) the state water implementation revenue fund for

1 Texas established under Subchapter H;

2 (4-a) the flood infrastructure fund established under
3 Subchapter I;

4 (5) a revolving fund established under Subchapter J;

5 (6) the rural water assistance fund established under
6 Subchapter R;

7 (7) the statewide water public awareness account
8 established under Section 16.027;

9 (8) the Texas Water Development Fund II water
10 financial assistance account established under Section 17.959;
11 [~~and~~]

12 (9) the Texas Water Development Fund II state
13 participation account established under Section 17.957;

14 (10) the water access assessment account established
15 under Section 16.028;

16 (11) the agricultural water conservation fund; and

17 (12) the economically distressed areas program
18 account.

19 SECTION 1.3. Section 15.502(e), Water Code, is amended to
20 read as follows:

21 (e) The fund consists of:

22 (1) money transferred or deposited to the credit of
23 the fund by law, including:

24 (A) money transferred or deposited to the fund as
25 provided by Section 7-e, Article VIII, Texas Constitution;

26 (B) money appropriated by the legislature
27 directly to the fund; and

1 (C) money from any source transferred or
2 deposited to the credit of the fund as authorized by law;

3 (2) any other revenue that the legislature by statute
4 dedicates for deposit to the credit of the fund;

5 (3) investment earnings and interest earned on amounts
6 credited to the fund;

7 (4) money from gifts, grants, or donations to the
8 fund; and

9 (5) money returned from any authorized transfer.

10 SECTION 1.4. Section 15.504(c), Water Code, is amended to
11 read as follows:

12 (c) The board shall ensure that a portion of the money
13 transferred from the fund is used for:

14 (1) water and wastewater infrastructure projects,
15 prioritized by risk or need as described by the water access
16 assessment required under Section 6.116, for:

17 (A) rural political subdivisions; and

18 (B) municipalities with a population of less than
19 150,000;

20 (2) projects for which all required state or federal
21 permitting has been substantially completed, as determined by the
22 board;

23 (3) the statewide water public awareness program
24 established under Section 16.026;

25 (4) water conservation strategies; and

26 (5) water loss mitigation projects.

27 SECTION 1.5. Section 15.703(a), Water Code, is amended to

1 read as follows:

2 (a) The board may take all actions necessary to operate the
3 water bank and to facilitate the transfer of water rights from the
4 water bank for future beneficial use, including but not limited to:

5 (1) negotiating a sale price and terms acceptable to
6 the depositor and purchaser;

7 (2) maintaining a registry of water bank deposits and
8 those water users in need of additional supplies;

9 (3) informing water users in need of additional supply
10 of water rights available in the bank;

11 (4) encouraging water right holders to implement water
12 conservation practices and deposit the right to use the conserved
13 water into the bank;

14 (5) establishing requirements for deposit of a water
15 right into the water bank, including minimum terms for deposit;

16 (6) purchasing, holding, and transferring water or
17 water rights in its own name, including purchasing, holding, and
18 transferring water or water rights originating outside this state
19 for the purpose of providing water for the use or benefit of this
20 state;

21 (7) establishing regional water banks;

22 (8) acting as a clearinghouse for water marketing
23 information including water availability, pricing of water
24 transactions, environmental considerations, and potential buyers
25 and sellers of water rights;

26 (9) preparing and publishing a manual on structuring
27 water transactions;

1 (10) accepting and holding donations of water rights
2 to meet instream, water quality, fish and wildlife habitat, or bay
3 and estuary inflow needs;

4 (11) entering into contracts with persons to pay for
5 feasibility studies or the preparation of plans and specifications
6 relating to water conservation efforts or to estimate the amount of
7 water that would be saved through conservation efforts; and

8 (12) other actions to facilitate water transactions.

9 SECTION 1.6. Section 16.131(a), Water Code, is amended to
10 read as follows:

11 (a) The board may use the state participation account of the
12 development fund to encourage optimum regional and interregional
13 development of projects, including the design, acquisition, lease,
14 construction, reconstruction, development, or enlargement in whole
15 or part of:

16 (1) reservoirs and storm water retention basins for
17 water supply, flood protection, and groundwater recharge;

18 (2) facilities for the transmission and treatment of
19 water;

20 (3) treatment works as defined by Section 17.001;
21 ~~[and]~~

22 (4) interregional water supply projects selected
23 under Section 16.145; and

24 (5) projects described by Section 15.153(b)(1).

25 SECTION 1.7. The following provisions of the Water Code are
26 repealed:

27 (1) Section 16.131(c); and

(2) Section 16.146(h).

ARTICLE 2. LEGISLATIVE OVERSIGHT

SECTION 2.1. Section 15.431(a)(1), Water Code, is amended to read as follows:

(1) "Advisory committee" means the ~~[State Water Implementation Fund for]~~ Texas Water Fund Advisory Committee.

SECTION 2.2. Section 15.438, Water Code, is transferred to Subchapter A, Chapter 15, Water Code, redesignated as Section 15.009, Water Code, and amended to read as follows:

Sec. 15.009 [~~15.438~~]. TEXAS WATER FUND ADVISORY COMMITTEE.

(a) The ~~[State Water Implementation Fund for]~~ Texas Water Fund Advisory Committee is composed of the following eight ~~[seven]~~ members:

(1) the comptroller, or a person designated by the comptroller;

(2) the chair of the committee of the senate having primary jurisdiction over water resources;

(3) the chair of the committee of the house of representatives having primary jurisdiction over water resources;

(4) two ~~[three]~~ members of the senate appointed by the lieutenant governor, including at least one ~~[+]~~

~~[(A) a]~~ member of the committee of the senate having primary jurisdiction over matters relating to finance;

(5) two ~~[and~~

~~[(B) the chair of the committee of the senate having primary jurisdiction over water resources, and~~

~~[(3) three]~~ members of the house of representatives

appointed by the speaker of the house of representatives, including
at least one[-

~~[(A) a]~~ member of the committee of the house of
representatives having primary jurisdiction over appropriations;
and

(6) the director of the Texas Division of Emergency
Management or the successor in function to that entity, or a person
designated by that person, who serves as a nonvoting member

~~[(B) the chair of the committee of the house of
representatives having primary jurisdiction over water resources].~~

(b) The board ~~[following persons]~~ shall designate agency
personnel to serve as staff support for the advisory committee[-

~~(1) the deputy executive administrator of the board
who is responsible for water science and conservation or a person
who holds an equivalent position at the agency, or a person
designated by that person;~~

~~(2) the deputy executive administrator of the board
who is responsible for water resources planning and information or
a person who holds an equivalent position at the agency, or a person
designated by that person; and~~

~~(3) the chief financial officer of the board, or a
person who holds an equivalent position at the agency].~~

(c) A ~~[An appointed]~~ member of the advisory committee
designated under Subsection (a)(1) or (6) or appointed under
Subsection (a)(4) or (5) serves at the will of the person who
designated or appointed the member.

(d) The members of the advisory committee described by

1 Subsections (a)(2) and (3) serve as ~~[lieutenant governor shall~~
2 ~~appoint a]~~ co-presiding officers ~~[officer]~~ of the ~~[advisory]~~
3 committee ~~[from among the members appointed by the lieutenant~~
4 ~~governor, and the speaker of the house of representatives shall~~
5 ~~appoint a co-presiding officer of the committee from among the~~
6 ~~members appointed by the speaker]~~.

7 (e) The advisory committee may hold public hearings, formal
8 meetings, or work sessions. Either co-presiding officer of the
9 advisory committee may call a public hearing, formal meeting, or
10 work session of the advisory committee at any time. The advisory
11 committee may not take formal action at a public hearing, formal
12 meeting, or work session unless a quorum of the committee is
13 present.

14 (f) Except as otherwise provided by this subsection, a
15 member of the advisory committee is not entitled to receive
16 compensation for service on the committee or reimbursement for
17 expenses incurred in the performance of official duties as a member
18 of the committee. Service on the advisory committee by a member of
19 the senate or house of representatives is considered legislative
20 service for which the member is entitled to reimbursement and other
21 benefits in the same manner and to the same extent as for other
22 legislative service.

23 (g) As needed, the ~~[The]~~ advisory committee shall submit
24 comments and recommendations to the board regarding the use of
25 money in:

26 (1) the state water implementation fund for Texas
27 established under Subchapter G ~~[fund]~~ for use by the board in

adopting rules under Section 15.439 and in adopting policies and procedures under Section 15.441;

(2) the Texas water fund established under Subchapter H-1 for use by the board in adopting rules under Section 15.507;

(3) the flood infrastructure fund established under Subchapter I for use by the board in adopting rules under Section 15.537; and

(4) the Texas infrastructure resiliency fund established under Section 16.452 for use by the board in adopting rules under Section 16.460 ~~[The submission must include:~~

~~[(1) comments and recommendations on rulemaking related to the prioritization of projects in regional water plans and the state water plan in accordance with Section 15.437;~~

~~[(2) comments and recommendations on rulemaking related to establishing standards for determining whether projects meet the criteria provided by Section 15.434(b);~~

~~[(3) an evaluation of the available programs for providing financing for projects included in the state water plan and guidelines for implementing those programs, including guidelines for providing financing for projects included in the state water plan that are authorized under Subchapter Q or R of this chapter, Subchapter E or F, Chapter 16, or Subchapter J, Chapter 17;~~

~~[(4) an evaluation of the lending practices of the board and guidelines for lending standards;~~

~~[(5) an evaluation of the use of funds by the board to provide support for financial assistance for water projects, including support for the purposes described by Section 15.435(c);~~

1 ~~[(6) an evaluation of whether premium financing~~
2 ~~programs should be established within the funds described by~~
3 ~~Section 15.435 to serve the purposes of this subchapter, especially~~
4 ~~in connection with projects described by Section 15.434(b),~~

5 ~~[(7) an evaluation of methods for encouraging~~
6 ~~participation in the procurement process by companies domiciled in~~
7 ~~this state or that employ a significant number of residents of this~~
8 ~~state; and~~

9 ~~[(8) an evaluation of the overall operation, function,~~
10 ~~and structure of the fund].~~

11 (h) The advisory committee shall review the overall
12 operation, function, and structure of each fund listed in
13 Subsection (g) [the fund] at least semiannually ~~[and may provide~~
14 ~~comments and recommendations to the board on any matter].~~

15 (i) The advisory committee may:

16 (1) provide comments and recommendations to the board
17 on any matter;

18 (2) review the overall operation, function, and
19 structure of any fund established under this chapter or Chapter 16
20 that is not listed in Subsection (g); and

21 (3) adopt rules, procedures, and policies as needed to
22 administer this section and implement its responsibilities.

23 (j) Chapter 2110, Government Code, does not apply to the
24 size, composition, or duration of the advisory committee.

25 (k) The advisory committee is not subject to Chapter 325,
26 Government Code (Texas Sunset Act). ~~[Unless continued in existence~~
27 ~~as provided by that chapter, the advisory committee is abolished~~

1 ~~and this section expires September 1, 2035.]~~

2 (1) As needed, the [The] advisory committee shall make
3 recommendations to the board regarding information to be posted on
4 the board's Internet website relating to the funds listed in
5 Subsection (g) [under Section 15.440(b)].

6 (m) The advisory committee shall evaluate and may provide
7 comments or recommendations on the feasibility of the state owning,
8 constructing, and operating water supply projects, including
9 reservoirs and major water supply conveyance infrastructure,
10 through existing financial assistance programs under Subchapter E
11 of this chapter, Subchapter E or F, Chapter 16, or other mechanisms.

12 (n) The executive administrator shall provide an annual
13 report to the advisory committee on:

14 (1) the board's progress towards expanding state and
15 regional water supply portfolios, including:

16 (A) the annual financial commitments by program
17 for water supply projects and management strategies;

18 (B) the net amount of water projected to be
19 developed, conserved, or reclaimed through those annual
20 commitments;

21 (C) the amount of water developed, conserved, or
22 reclaimed through the completion of state-funded water supply
23 projects or management strategies during the prior fiscal year; and

24 (D) state and regional achievement towards
25 completing water supply projects and management strategies that
26 address water shortages during a drought of record as described
27 within the most recent state and regional water plans;

1 (2) the board's progress towards providing financial
2 assistance for drinking water and clean water utilities that are
3 eligible for state financial assistance, and:

4 (A) endure a significant number of boil water
5 notices;

6 (B) have water losses that meet or exceed the
7 threshold established by rule under Section 16.0121;

8 (C) have significant health, safety, or
9 environmental protection violations according to commission data;
10 or

11 (D) identified as failing or at risk of failing
12 according to the water risk assessment required under 6.116;

13 (3) the estimated aggregate value of the savings
14 provided to customers through the board's financial assistance
15 programs;

16 (4) [~~1~~] the board's compliance with statewide annual
17 goals relating to historically underutilized businesses; and

18 (5) [~~2~~] the participation level of historically
19 underutilized businesses in projects that receive funding related
20 to a bond enhancement agreement under Subchapter G [~~this~~
21 ~~subchapter~~].

22 (o) If the aggregate level of participation by historically
23 underutilized businesses in projects that receive funding related
24 to a bond enhancement agreement under Subchapter G [~~this~~
25 ~~subchapter~~] does not meet statewide annual goals adopted under
26 Chapter 2161, Government Code, the advisory committee shall make
27 recommendations to the board to improve the participation level.

1 (p) Notwithstanding the requirements of Sec. 551.008,
2 Government Code, the advisory committee shall have a right of
3 access to all records that relate to the administration of the funds
4 described in this section that are maintained by any entity under
5 contract with the board.

6 SECTION 2.3. The following provisions of the Water Code are
7 repealed:

- 8 (1) Section 15.506;
9 (2) Section 15.540;
10 (3) Section 16.451(1); and
11 (4) Section 16.456.

12 ARTICLE 3. PERFORMANCE AND ACCOUNTABILITY

13 SECTION 3.1. Subchapter D, Chapter 6, Water Code, is
14 amended by adding Sections 6.116, 6.117, and 6.118 to read as
15 follows:

16 Sec. 6.116. WATER ACCESS ASSESSMENT. (a) In this section:

17 (1) "Access assessment" means the water access
18 assessment established under this section.

19 (2) "Utility" means a retail public utility, as
20 defined by Section 13.002.

21 (b) The board by rule and in consultation with the
22 commission, the Public Utilities Commission of Texas, and
23 institutions of higher education, as defined by Section 61.003,
24 Education Code, shall establish:

25 (1) a water access assessment to determine the extent
26 of water access needs among utilities in this state; and

27 (2) a schedule that ensures that an access assessment

1 is conducted not less than once every 10 years for each utility.

2 (c) The access assessment must identify utilities that are
3 failing or at risk of failing through a ranking system that
4 evaluates and assigns numerical values to factors including:

5 (1) the overall condition of the utility's
6 infrastructure, including:

7 (A) the utility system's age;

8 (B) the presence of lead service lines;

9 (C) the presence of cast-iron pipes more than 30
10 years old;

11 (D) the utility's rates of water loss;

12 (E) the number of interconnections to other
13 systems; and

14 (F) susceptibility to extreme weather;

15 (2) availability of water to the utility, including
16 the utility's:

17 (A) number of water sources;

18 (B) drought and water shortage risk;

19 (C) groundwater production sustainability; and

20 (D) reliance on bottled or hauled water;

21 (3) the quality of the utility's water, including
22 whether the utility has any drinking water quality standard
23 violations;

24 (4) affordability of services the utility provides, as
25 determined by:

26 (A) median income of households the utility
27 serves;

1 (B) the average monthly amount the utility bills
2 to its customers relative to the average monthly billing amounts
3 among similarly sized utilities;

4 (C) rural areas the utility serves; and

5 (D) disadvantaged areas the utility serves; and

6 (5) the financial, managerial, and technical capacity
7 of the utility as indicated by factors including:

8 (A) certification violations of the utility's
9 operators;

10 (B) the utility's monitoring and reporting
11 violations;

12 (C) the utility's absence of a qualified
13 workforce; and

14 (D) the ratio of the utility's revenues to its
15 operating expenses.

16 (d) For each utility that an access assessment identifies as
17 failing or at risk of failing, the board shall send notice of the
18 identification to:

19 (1) the utility;

20 (2) the commission;

21 (3) the Public Utility Commission of Texas; and

22 (4) each standing committee of the legislature with
23 primary jurisdiction over the board.

24 (e) The board shall make available on its Internet website
25 the result of an access assessment performed under this section.

26 (f) In implementing this section, the board may:

27 (1) consult with the commission and the Public Utility

1 Commission of Texas in the development of category risk factors,
2 associated rankings of factors, and the development of scoring
3 thresholds for identifying utilities that are failing or at risk of
4 failing;

5 (2) reevaluate the risk factors and the factors'
6 associated numerical values every two years;

7 (3) enter into a memorandum of understanding with the
8 commission, the Public Utility Commission of Texas, and the
9 Department of State Health Services for the open transfer and
10 sharing of utilities' data, including critical infrastructure
11 data; and

12 (4) contract or otherwise partner with an institution
13 of higher education for the purposes of conducting a water access
14 assessment.

15 Sec. 6.117. PUBLIC INFORMATION. (a) The board shall
16 develop and maintain on its Internet website a publicly available
17 tool by which a person may obtain information regarding:

18 (1) state progress towards implementing water supply
19 projects and water management strategies that address potential
20 water supply shortfalls during a repeat of a drought of record as
21 described within the most recent state water plan;

22 (2) how many water utilities are classified as either
23 failing or at risk of failing as determined by an assessment
24 conducted under Section 6.116; and

25 (3) the proportion of failing or at-risk utilities
26 that have taken steps to no longer be classified as failing or at
27 risk of failing.

1 (b) The board shall update the information required to be
2 maintained under Subsection (a) not less than once a year.

3 Sec. 6.118. ANNUAL REPORT. (a) In this section, "Texas
4 water fund" means the fund established under Section 49-d-16,
5 Article III, Texas Constitution, as proposed by S.J.R. 75, 88th
6 Legislature, Regular Session, 2023.

7 (b) Not later than December 31 of each even-numbered year,
8 the board shall submit to the legislature a report that describes:

9 (1) the allocation of money from the Texas water fund
10 to other eligible board-administered funds;

11 (2) water supply projects within the state water plan
12 that have received funding commitments in the preceding biennium;

13 (3) the provision of financial assistance in the
14 preceding biennium from the Texas water fund to water and
15 wastewater systems that have been classified as failing or at risk
16 of failing as determined by an assessment conducted under Section
17 6.116;

18 (4) the state's progress towards closing anticipated
19 water infrastructure funding gaps;

20 (5) the state's progress towards closing potential
21 water supply deficits during a repeat of a drought of record;

22 (6) the state's progress towards fixing aging or
23 deteriorating water and wastewater systems; and

24 (7) the positive economic impact attributable to each
25 project receiving financial assistance from the Texas water fund.

26 SECTION 3.2. Subchapter B, Chapter 16, Water Code, is
27 amended by adding Section 16.028 to read as follows:

1 Sec. 16.028. WATER ACCESS ASSESSMENT ACCOUNT. (a) The
2 water access assessment account is an account in the general
3 revenue fund. The account consists of:

4 (1) money appropriated to the board for deposit to the
5 credit of the account;

6 (2) money transferred by the board to the credit of the
7 account from other funds available to the board;

8 (3) money from gifts or grants to the account from any
9 source, including the federal government, an educational
10 institution, or a private donor;

11 (4) proceeds from the sale of educational or public
12 awareness materials, publications, and other items deposited to the
13 credit of the account; and

14 (5) interest earned on the investment of money in the
15 account and depository interest allocable to the account.

16 (b) The account may be used by the board to develop,
17 administer, and implement the water access assessment established
18 by Section 6.116.

19 ARTICLE 4. EFFECTIVE DATES

20 SECTION 4.1. This Act takes effect January 1, 2026, but only
21 if the constitutional amendment proposed by the 89th Legislature,
22 Regular Session, 2025, providing for the dedication of certain
23 sales and use tax revenue to the Texas water fund is approved by the
24 voters. If that constitutional amendment is not approved by the
25 voters, this Act has no effect.