

1-1 By: Dominguez (Senate Sponsor - Creighton) H.B. No. 3339
1-2 (In the Senate - Received from the House May 6, 2019;
1-3 May 6, 2019, read first time and referred to Committee on Water &
1-4 Rural Affairs; May 15, 2019, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 15, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to requirements for programs of water conservation and
1-18 water conservation plans.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Sections 15.103(a) and (e), Water Code, are
1-21 amended to read as follows:

1-22 (a) In an application to the board for financial assistance
1-23 from the loan fund, the applicant shall include:

1-24 (1) the name of each political subdivision or federal
1-25 agency and its principal officers;

1-26 (2) a citation of the law under which each political
1-27 subdivision or federal agency operates and was created;

1-28 (3) the total cost of the project;

1-29 (4) the amount of state financial assistance
1-30 requested;

1-31 (5) the plan for repaying the total cost of the
1-32 project; ~~and~~

1-33 (6) the water conservation plan required by Section
1-34 16.4021; and

1-35 (7) any other information the board requires in order
1-36 to perform its duties and to protect the public interest.

1-37 (e) If the applicant claims an exemption under ~~[Subsection~~
1-38 ~~(c),]~~ Section 16.4021(d) ~~[15.106 of this code],~~ the applicant [he]
1-39 shall state the exemption in the [his] application and provide
1-40 information relating to the exemption as required by board rules.

1-41 SECTION 2. Section 15.206(b), Water Code, is amended to
1-42 read as follows:

1-43 (b) The application must include the following information:

1-44 (1) the name of the issuer;

1-45 (2) citations of the laws under which the issuer is
1-46 created and operates and under which the bonds to be insured are to
1-47 be issued;

1-48 (3) the total amount of bonds for which insurance
1-49 coverage is sought and the anticipated interest rate on the bonds;

1-50 (4) the term for which the bonds are to be issued;

1-51 (5) the purpose or purposes for which the bonds are to
1-52 be issued;

1-53 (6) financial information relating to the issuance of
1-54 the bonds and to the financial stability and future of the issuer;
1-55 ~~and~~

1-56 (7) the water conservation plan required by Section
1-57 16.4021; and

1-58 (8) any other information the board requires by its
1-59 rules or otherwise considers necessary in making a determination of
1-60 the application.

1-61 SECTION 3. Section 15.435(g), Water Code, is amended to

2-1 read as follows:

2-2 (g) The board may not direct the trust company to enter into
2-3 a bond enhancement agreement with respect to bonds issued by the
2-4 board the proceeds of which may be used to provide financial
2-5 assistance to an applicant if at the time of the request the
2-6 applicant has failed to:

2-7 (1) provide information regarding [submit or
2-8 implement] a water conservation plan in accordance with Section
2-9 16.4021 [11.1271]; or

2-10 (2) satisfactorily complete a request by the executive
2-11 administrator or a regional water planning group for information
2-12 relevant to the project for which the financial assistance is
2-13 sought, including a water infrastructure financing survey under
2-14 Section 16.053(q).

2-15 SECTION 4. Section 15.607, Water Code, is amended to read as
2-16 follows:

2-17 Sec. 15.607. APPROVAL OF APPLICATION. On review of
2-18 recommendations by the executive administrator, the board by
2-19 resolution may approve an application if the board finds that in its
2-20 opinion the revenue or taxes or both revenue and taxes pledged by
2-21 the applicant will be sufficient to meet all the obligations
2-22 assumed by the applicant and that the application and assistance
2-23 applied for meet the requirements of the federal act and state law,
2-24 including Section 16.4021. ~~[A program of water conservation for~~
2-25 ~~the more effective use of water shall be required in the same manner~~
2-26 ~~as required for approval of an application for financial assistance~~
2-27 ~~under Section 15.106 of this code.]~~

2-28 SECTION 5. Section 15.910(a), Water Code, is amended to
2-29 read as follows:

2-30 (a) In an application to the board for financial assistance
2-31 from the fund, a political subdivision or water supply corporation
2-32 must include:

2-33 (1) its name and its principal officers;
2-34 (2) a citation of the law under which the subdivision
2-35 or corporation operates and was created;
2-36 (3) a description of the water or wastewater project
2-37 for which the financial assistance will be used;
2-38 (4) the total cost of the project;
2-39 (5) the amount of state financial assistance
2-40 requested;

2-41 (6) the plan for repaying any loan provided by the
2-42 board for the project; ~~and]~~

2-43 (7) the water conservation plan required by Section
2-44 16.4021; and

2-45 (8) any other information the board requires in order
2-46 to perform its duties and to protect the public interest.

2-47 SECTION 6. Section 15.975(a), Water Code, is amended to
2-48 read as follows:

2-49 (a) On review and recommendation by the executive
2-50 administrator, the board by resolution may approve an application
2-51 if the board finds that:

2-52 (1) the application and the assistance applied for
2-53 meet the requirements of this subchapter, Section 16.4021, and
2-54 board rules;

2-55 (2) the revenue or taxes, or both the revenue and
2-56 taxes, pledged by the applicant will be sufficient to meet all the
2-57 obligations assumed by the political subdivision; and

2-58 (3) the project will meet water needs in a manner
2-59 consistent with the state and regional water plans as required by
2-60 Section 16.053(j), unless otherwise specified by an act of the
2-61 legislature.

2-62 SECTION 7. Section 15.995(e), Water Code, is amended to
2-63 read as follows:

2-64 (e) An application from a rural political subdivision [A
2-65 program of water conservation for the more efficient use of water
2-66 shall be required in the same manner as is required for approval of
2-67 an application] for financial assistance under this subchapter must
2-68 comply with the requirements of Section 16.4021 [Section 15.106].

2-69 SECTION 8. Section 16.136, Water Code, is amended to read as

3-1 follows:

3-2 Sec. 16.136. FACILITIES WANTED BY POLITICAL SUBDIVISION.
3-3 The board may acquire all or part of any authorized facility to the
3-4 extent that the board finds that the political subdivision:

3-5 (1) is willing and reasonably able to finance that
3-6 portion of the cost of the facility that the board does not acquire;

3-7 (2) has obtained all necessary permits;

3-8 (3) has proposals that are consistent with the
3-9 objectives of the state water plan; and

3-10 (4) has complied with [a program of] water
3-11 conservation plan requirements [for the more efficient use of
3-12 water] as required by Section 16.4021 [~~15.106 of this code~~].

3-13 SECTION 9. Section 16.402(c), Water Code, is amended to
3-14 read as follows:

3-15 (c) The executive administrator shall review each water
3-16 conservation plan and annual report to determine compliance with
3-17 the minimum requirements established by Section 16.4021 [~~11.1271~~]
3-18 and the submission deadlines developed under Subsection (e) of this
3-19 section.

3-20 SECTION 10. Subchapter K, Chapter 16, Water Code, is
3-21 amended by adding Section 16.4021 to read as follows:

3-22 Sec. 16.4021. WATER CONSERVATION PLAN REQUIREMENTS. (a)
3-23 In this section, "water conservation plan" means a plan that
3-24 describes a program of water conservation for the more efficient
3-25 use of water.

3-26 (b) This section applies to an application for financial
3-27 assistance under:

3-28 (1) Subchapters C, D, E, G, H, J, O, Q, and R, Chapter
3-29 15;

3-30 (2) Subchapters E and F of this chapter; and

3-31 (3) Subchapters D, F, I, K, and L, Chapter 17.

3-32 (c) Except as provided by Subsection (d), an applicant must
3-33 submit with the application a description of the applicant's
3-34 proposed or adopted water conservation plan. The water
3-35 conservation plan:

3-36 (1) must:

3-37 (A) incorporate the practices, techniques, and
3-38 technology described by Section 15.001(9)(B);

3-39 (B) meet reasonably anticipated local needs and
3-40 conditions, as determined by the board; and

3-41 (C) include specific, quantified five-year and
3-42 10-year targets for water savings, including goals for water loss
3-43 programs and municipal use measured in gallons per capita per day;
3-44 and

3-45 (2) may include:

3-46 (A) restrictions on discretionary water uses,
3-47 including lawn watering;

3-48 (B) plumbing code standards for water
3-49 conservation in new building construction;

3-50 (C) retrofit programs to improve water-use
3-51 efficiency in existing buildings;

3-52 (D) educational programs;

3-53 (E) universal metering;

3-54 (F) conservation-oriented water rate structures;

3-55 (G) drought contingency plans; and

3-56 (H) distribution system leak detection and
3-57 repair.

3-58 (d) An applicant is not required to submit a water
3-59 conservation plan under this section if:

3-60 (1) an emergency exists as determined by the board;

3-61 (2) the amount of financial assistance under
3-62 consideration is not greater than \$500,000;

3-63 (3) the applicant demonstrates and the board finds
3-64 that the implementation of a water conservation plan is not
3-65 reasonably necessary for conservation; or

3-66 (4) the financial assistance is to fund a project that
3-67 consists of construction outside this state.

3-68 (e) The board may not provide financial assistance to an
3-69 applicant to which this section applies unless the applicant

4-1 demonstrates that it has adopted and implemented a water
 4-2 conservation plan that meets the requirements for a water
 4-3 conservation plan under Subsection (c).

4-4 (f) The board shall establish an educational and technical
 4-5 assistance program to assist political subdivisions in developing
 4-6 comprehensive water conservation plans.

4-7 (g) If the applicant will use the project to furnish water
 4-8 or services to another entity that will furnish the water or
 4-9 services to the ultimate consumer, the requirement for an applicant
 4-10 to demonstrate adoption and implementation of a water conservation
 4-11 plan can be met through contractual agreements between the
 4-12 applicant and the other entity providing for the adoption and
 4-13 implementation of a water conservation plan by the other entity.

4-14 (h) Rules adopted under this section must state the criteria
 4-15 for preparation, review, and enforcement of an applicant's water
 4-16 conservation plan.

4-17 SECTION 11. Section 16.403, Water Code, as added by Chapter
 4-18 595 (S.B. 181), Acts of the 82nd Legislature, Regular Session,
 4-19 2011, is amended to read as follows:

4-20 Sec. 16.403. WATER USE REPORTING. (a) ~~[The legislature~~
 4-21 ~~finds that:~~

4-22 ~~[(1) tracking water use over time and evaluating the~~
 4-23 ~~effects of water conservation programs or strategies are vital~~
 4-24 ~~components of planning for and managing the state's water resources~~
 4-25 ~~to estimate and meet future water demand requirements;~~

4-26 ~~[(2) gallons per capita per day, the common metric~~
 4-27 ~~used by municipalities and water utilities for water supply~~
 4-28 ~~planning and the calculation of water use, is not an accurate~~
 4-29 ~~measure of water use or water conservation because a uniform,~~
 4-30 ~~consistent methodology for the calculation of gallons per capita~~
 4-31 ~~per day has not been established;~~

4-32 ~~[(3) using a single gallons per capita per day metric~~
 4-33 ~~to compare the water use of municipalities and water utilities does~~
 4-34 ~~not produce a reliable comparison because water use is dependent on~~
 4-35 ~~several variables, including differences in the amount of water~~
 4-36 ~~used for commercial and industrial sector activities, power~~
 4-37 ~~production, permanent versus temporary service populations, and~~
 4-38 ~~agricultural sector production;~~

4-39 ~~[(4) if valid water use comparisons and evaluations of~~
 4-40 ~~a municipality's or water utility's water conservation programs are~~
 4-41 ~~to be made over time for statewide resource management and water~~
 4-42 ~~supply planning and permitting purposes, the methodology used to~~
 4-43 ~~calculate gallons per capita per day must be uniform for all water~~
 4-44 ~~suppliers;~~

4-45 ~~[(5) a municipality's or water utility's industrial~~
 4-46 ~~and agricultural sector's gallons per capita per day figures are~~
 4-47 ~~not an accurate measure of actual water use and conservation by~~
 4-48 ~~entities within those sectors because water use in the industrial~~
 4-49 ~~and agricultural sectors is not population-dependent and therefore~~
 4-50 ~~not accurately calculated using a population-based metric; and~~

4-51 ~~[(6) a sector-based water use metric, adjusted for~~
 4-52 ~~variables in water use by municipalities and water utilities, is~~
 4-53 ~~necessary in order to provide an accurate comparison of water use~~
 4-54 ~~and water conservation among municipalities and water utilities.~~

4-55 ~~[(b)]~~ The board and the commission, in consultation with the
 4-56 Water Conservation Advisory Council, shall develop a uniform,
 4-57 consistent methodology and guidance for calculating water use and
 4-58 conservation to be used by a municipality or water utility in
 4-59 developing water conservation plans and preparing reports required
 4-60 under this code. At a minimum, the methodology and guidance must
 4-61 include:

4-62 (1) a method of calculating total water use by a
 4-63 municipality or water utility, including water billed and
 4-64 nonrevenue water used, and a method of calculating water use for
 4-65 each sector of water users served by a municipality or water
 4-66 utility;

4-67 (2) a method of calculating total water use by a
 4-68 municipality or water utility in gallons per capita per day;

4-69 (3) a method of classifying water users within

5-1 sectors;

5-2 (4) a method of calculating water use in the
5-3 residential sector that includes both single-family and
5-4 multifamily residences, in gallons per capita per day;

5-5 (5) a method of calculating water use in the
5-6 industrial, agricultural, commercial, and institutional sectors
5-7 that is not dependent on a municipality's population or the number
5-8 of customers served by a water utility; and

5-9 (6) guidelines on the use of service populations by a
5-10 municipality or water utility in developing a per-capita-based
5-11 method of calculation, including guidance on the use of permanent
5-12 and temporary populations in making calculations.

5-13 (b) ~~[(c)]~~ The board or the commission, as appropriate,
5-14 shall use the methodology and guidance developed under Subsection
5-15 (a) ~~[(b)]~~ in evaluating a water conservation plan, program of water
5-16 conservation, survey, or other report relating to water
5-17 conservation submitted to the board or the commission under:

5-18 (1) Section 11.1271;

5-19 (2) Section 13.146;

5-20 (3) ~~[Section 15.106,~~

5-21 ~~[(4) Section 15.607,~~

5-22 ~~[(5) Section 15.975,~~

5-23 ~~[(6) Section 15.995,~~

5-24 ~~[(7)]~~ Section 16.012(m);

5-25 (4) ~~[(8)]~~ Section 16.402; or

5-26 (5) Section 16.4021

5-27 ~~[(9) Section 17.125,~~

5-28 ~~[(10) Section 17.277,~~

5-29 ~~[(11) Section 17.857; or~~

5-30 ~~[(12) Section 17.927].~~

5-31 (c) ~~[(d)]~~ The board, in consultation with the commission
5-32 and the Water Conservation Advisory Council, shall develop a data
5-33 collection and reporting program for municipalities and water
5-34 utilities with more than 3,300 connections.

5-35 (d) ~~[(e)]~~ Not later than January 1 of each odd-numbered
5-36 year, the board shall submit to the legislature a report that
5-37 includes the most recent data relating to:

5-38 (1) statewide water usage in the residential,
5-39 industrial, agricultural, commercial, and institutional sectors;
5-40 and

5-41 (2) the data collection and reporting program
5-42 developed under Subsection (c) ~~[(d)]~~.

5-43 (e) Data included in a water conservation plan or report
5-44 required under this code and submitted to the board or commission
5-45 must be interpreted in the context of variations in local water use.
5-46 The data may not be the only factor considered by the commission in
5-47 determining the highest practicable level of water conservation and
5-48 efficiency achievable in the jurisdiction of a municipality or
5-49 water utility for purposes of Section 11.085(l).

5-50 SECTION 12. Sections 17.122(a) and (c), Water Code, are
5-51 amended to read as follows:

5-52 (a) In an application to the board for financial assistance
5-53 for a water supply project, the applicant shall include:

5-54 (1) the name of the political subdivision and its
5-55 principal officers;

5-56 (2) a citation of the law under which the political
5-57 subdivision operates and was created;

5-58 (3) a description of the water supply project for
5-59 which the financial assistance will be used;

5-60 (4) the total cost of the water supply project;

5-61 (5) the amount of state financial assistance
5-62 requested;

5-63 (6) the plan for repaying the total cost of the water
5-64 supply project;

5-65 (7) the method for obtaining the financial assistance,
5-66 whether by purchase of bonds or purchase of other obligations of the
5-67 political subdivision; ~~and~~

5-68 (8) the water conservation plan required by Section
5-69 16.4021; and

6-1 (9) any other information the board requires.
6-2 (c) If the applicant claims an exemption under [~~Subsection~~
6-3 ~~(c)~~,] Section 16.4021 [~~17.125, of this code~~], the applicant [~~he~~]
6-4 shall state the exemption in the [~~his~~] application and provide
6-5 information relating to that exemption as provided by board rules.

6-6 SECTION 13. Sections 17.274(a) and (c), Water Code, are
6-7 amended to read as follows:

6-8 (a) In an application to the board for financial assistance
6-9 for water quality enhancement purposes, the applicant shall
6-10 include:

6-11 (1) the name of the political subdivision and its
6-12 principal officers;

6-13 (2) a citation of the law under which the political
6-14 subdivision operates and was created;

6-15 (3) a description of the treatment works for which the
6-16 financial assistance will be used;

6-17 (4) the estimated total cost of construction of the
6-18 treatment works;

6-19 (5) the amount of state financial assistance
6-20 requested;

6-21 (6) the method for obtaining the financial assistance,
6-22 whether by purchase of bonds or purchase of other obligations of the
6-23 political subdivision;

6-24 (7) the plan for repaying the financial assistance;
6-25 [~~and~~]

6-26 (8) the water conservation plan required by Section
6-27 16.4021; and

6-28 (9) any other information the board requires.

6-29 (c) If the applicant claims an exemption under [~~Subsection~~
6-30 ~~(d)~~,] Section 16.4021 [~~17.277, of this code~~], the applicant shall
6-31 state the exemption in the application and provide information
6-32 relating to that exemption as provided by board rules.

6-33 SECTION 14. Section 17.855(a), Water Code, is amended to
6-34 read as follows:

6-35 (a) In an application to the board for financial assistance
6-36 through the acquisition of acquired obligations, the participant
6-37 shall include:

6-38 (1) the name of the participant and its principal
6-39 officer or officers;

6-40 (2) a citation of the law under which the participant
6-41 was created, operates, and proposes to issue its obligations to be
6-42 acquired by the board;

6-43 (3) the total cost of the project;

6-44 (4) the amount of state financial assistance
6-45 requested;

6-46 (5) the plan for paying the principal of and interest
6-47 on its obligations to be acquired by the board; [~~and~~]

6-48 (6) the water conservation plan required by Section
6-49 16.4021; and

6-50 (7) any other information the board requires in order
6-51 to perform its duties and to protect the public interest.

6-52 SECTION 15. Section 17.927(b), Water Code, is amended to
6-53 read as follows:

6-54 (b) The application and plan must include:

6-55 (1) the name of the political subdivision and its
6-56 principal officers;

6-57 (2) a citation of the law under which the political
6-58 subdivision was created and operates;

6-59 (3) a project plan, prepared and certified by an
6-60 engineer registered to practice in this state, that must:

6-61 (A) describe the proposed planning, design, and
6-62 construction activities necessary to provide water supply and sewer
6-63 services that meet minimum state standards; and

6-64 (B) identify the households to which the water
6-65 supply and sewer services will be provided;

6-66 (4) a budget that estimates the total cost of
6-67 providing water supply and sewer services to the economically
6-68 distressed area and a proposed schedule and method for repayment of
6-69 financial assistance consistent with board rules and guidelines;

7-1 (5) a description of the existing water supply and
7-2 sewer facilities located in the area to be served by the proposed
7-3 project, including a statement prepared and certified by an
7-4 engineer registered to practice in this state that the facilities
7-5 do not meet minimum state standards;

7-6 (6) documentation that the appropriate political
7-7 subdivision has adopted the model rules developed under Section
7-8 16.343;

7-9 (7) information identifying the median household
7-10 income for the area to be served by the proposed project; ~~and~~

7-11 (8) the total amount of assistance requested from the
7-12 economically distressed areas account; and

7-13 (9) the water conservation plan required by Section
7-14 16.4021.

7-15 SECTION 16. The following provisions of the Water Code are
7-16 repealed:

7-17 (1) Section 15.103(d);

7-18 (2) Sections 15.106(b), (b-1), (c), (d), (e), and (f);

7-19 (3) Sections 15.208(b), (c), and (d);

7-20 (4) Section 15.910(c);

7-21 (5) Section 15.975(b);

7-22 (6) Section 16.403, as added by Chapter 1233 (S.B.
7-23 660), Acts of the 82nd Legislature, Regular Session, 2011;

7-24 (7) Sections 17.125(b), (b-1), (b-2), (c), (d), (e),
7-25 and (f);

7-26 (8) Section 17.274(b);

7-27 (9) Sections 17.277(b), (b-1), (c), (d), (e), and (f);

7-28 (10) Sections 17.857(b), (b-1), (c), and (d); and

7-29 (11) Section 17.927(c).

7-30 SECTION 17. The changes in law made by this Act apply only
7-31 to an application for financial assistance or public funding
7-32 submitted to the Texas Water Development Board on or after the
7-33 effective date of this Act. An application submitted before the
7-34 effective date of this Act is governed by the law in effect
7-35 immediately before the effective date of this Act, and the former
7-36 law is continued in effect for that purpose.

7-37 SECTION 18. This Act takes effect September 1, 2019.

7-38 * * * * *