

## CHAPTER 420

S.B. No. 807

## AN ACT

relating to establishment of a state water pollution control financial assistance program and a water resources revenue bond program; requiring water conservation programs for certain applicants.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 15, Water Code, is amended by adding Subchapter J to read as follows:

**SUBCHAPTER J. FINANCIAL ASSISTANCE FOR WATER  
POLLUTION CONTROL**

*Sec. 15.601. CREATION OF FUND. The state water pollution control revolving fund shall be administered by the board under this subchapter and rules adopted by the board. The fund shall be used to provide financial assistance to political subdivisions for construction of treatment works in accordance with the capitalization grant program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).*

*Sec. 15.602. DEFINITIONS. In this subchapter:*

(1) "Authorized investments" means:

(A) direct obligations of the United States;

(B) other obligations unconditionally guaranteed by the United States;

(C) obligations of the State of Texas;

(D) obligations of cities, counties, and other political subdivisions of the state, except bonds issued to finance a project or treatment works described in this chapter; and

(E) any authorized investments described in Section 2.014, Chapter 240, Acts of the 69th Legislature, Regular Session, 1985 (Article 4393-1, Vernon's Texas Civil Statutes).

(2) "Construction" shall have the meaning assigned by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(3) "Federal Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(4) "Political subdivision" means a municipality, intermunicipal, interstate, or state agency or any other public entity eligible for assistance under the federal act.

(5) "Revolving fund" means the state water pollution control revolving fund.

(6) "Treatment works" has the meaning established by the federal act and the eligible components of the management programs established by Sections 319 and 320 of the federal act.

*Sec. 15.603. CREATION AND ADMINISTRATION OF PROGRAM. (a) The revolving fund is held separately from other funds by the board outside the State Treasury*

to provide financial assistance to political subdivisions for construction of treatment works.

(b) The board may execute agreements with the Environmental Protection Agency or any other federal agency to establish and administer the revolving fund and may discharge the duties and responsibilities required for the administration of the revolving fund.

(c) The revolving fund consists of money derived from federal grants, direct appropriations, investment earnings on amounts credited to the revolving fund, and, at the board's discretion, from any and all sources available to provide the required state match for the purposes of this subchapter.

(d) The revolving fund shall remain available in perpetuity for providing financial assistance in accordance with the federal act.

(e) All payments of principal and interest and all proceeds from the sale, refunding, or prepayment of bonds of political subdivisions acquired in carrying out the purposes of the revolving fund shall be deposited in the revolving fund.

(f) The board shall administer the revolving fund in the manner provided by the federal act, state law, and the rules of the board.

(g) The revolving fund and any accounts established in the revolving fund shall be kept and maintained by or at the direction of the board and do not constitute and are not a part of the State Treasury. However, at the direction of the board, the revolving fund or accounts in the revolving fund may be kept and held in escrow and in trust by the State Treasurer for and on behalf of the board, shall be used only as provided by this subchapter, and pending such use shall be invested in authorized investments as provided by any order, resolution, or rule of the board. Legal title to money and investments in the revolving fund is in the board unless or until paid out as provided by this subchapter, the federal act, and the rules of the board. The State Treasurer, as custodian, shall administer the funds strictly and solely as provided by this subchapter and in the orders, resolutions, and rules, and the state shall take no action with respect to the revolving fund other than that specified in this subchapter, the federal act, and the rules of the board.

Sec. 15.604. FINANCIAL ASSISTANCE UNDER THE REVOLVING FUND. The board may use the revolving fund for financial assistance only as provided by the federal act:

(1) to make loans, on the conditions that:

(A) those loans are made at or below market interest rates, including interest-free loans, at terms not to exceed 20 years;

(B) principal and interest payments will begin not later than one year after completion of any treatment works and all loans will be fully amortized not later than 20 years after completion of the treatment works;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the revolving fund will be credited with all payments of principal of and interest on all loans;

(2) to buy or refinance the debt obligation of political subdivisions at or below market rates if the debt obligations were incurred after March 7, 1985;

(3) to guarantee or purchase insurance for political subdivisions if the guarantee or insurance would improve access to market credit or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the state if the proceeds of the sale of those bonds will be deposited in the revolving fund;

(5) to provide loan guarantees to similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on revolving fund accounts; and

(7) *for the reasonable costs of administering the revolving fund and conducting activities provided for by Title VI of the federal act, except that those amounts may not exceed four percent of all grant awards to the revolving fund under Title VI of the federal act.*

*Sec. 15.605. RULES. The board shall adopt necessary rules to carry out this subchapter.*

*Sec. 15.606. LENDING RATE. The board shall determine and provide for the lending rates to be charged on loans from the revolving fund.*

*Sec. 15.607. APPROVAL OF APPLICATION. On review of recommendations by the executive administrator, the board by resolution may approve if the board 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 political subdivision and that the application and assistance applied for meet the requirements of the federal act and state law. A program of water conservation for the more effective use of water shall be required in the same manner as required for approval of an application for financial assistance under Section 15.106 of this code.*

*Sec. 15.608. APPROVAL AND REGISTRATION. The board may not buy or refinance any bonds or securities or guarantee or purchase insurance for bonds or securities of political subdivisions that have not been approved by the attorney general and registered by the comptroller.*

SECTION 2. Chapter 17, Water Code, is amended by adding Section 17.0821 to read as follows:

*Sec. 17.0821. TRANSFERS TO REVOLVING FUND. (a) In order to meet requirements of Title VI of the Federal Water Pollution Control Act, the board may direct the comptroller to transfer amounts from the water quality enhancement account to the state water pollution control revolving fund created by Section 15.601 of this code to provide financial assistance pursuant to this chapter.*

*(b) The board shall use the state water pollution control revolving fund in accordance with Section 15.604(4) of this code and the Federal Water Pollution Control Act, Section 603(d)(4), as a source of revenue to be deposited in accordance with this chapter for the payment of principal and interest on water quality enhancement bonds issued by the state, the proceeds of which are deposited into the revolving fund.*

SECTION 3. Chapter 17, Water Code, is amended by adding Subchapter I to read as follows:

#### SUBCHAPTER I. REVENUE BOND PROGRAM

*Sec. 17.851. PURPOSE. The purpose of this subchapter is to provide for the benefit of the public additional methods for financing the conservation and development of water resources of this state including an additional method for making financial assistance available to participants in the conservation and development of water resources of this state. This financial assistance is made available on terms and conditions prescribed by this subchapter, and it is found and determined that this subchapter is in furtherance of a public purpose.*

*Sec. 17.852. DEFINITIONS. In this subchapter:*

*(1) "Acquired obligations" means obligations of participants acquired under this subchapter.*

*(2) "Acquired obligations resolution" means the resolution, order, ordinance, or similar instrument duly adopted or passed by the governing body of a participant providing for payments of principal and interest to be made by the participant to the board and includes sufficient money to pay the principal of, premium on, if any, and interest on the acquired obligations and to maintain the funds established or required to be established by the acquired obligations resolution.*

*(3) "Fund" means the Texas water resources fund.*

(4) "Participant" means a political subdivision or agency of the state or a nonprofit corporation organized pursuant to Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that is authorized to finance projects.

(5) "Project" includes water supply projects, treatment works, and flood control projects.

*Sec. 17.853. TEXAS WATER RESOURCES FUND. (a) The Texas water resources fund is in the State Treasury.*

*(b) The fund shall be administered by the board in accordance with this subchapter, and the board shall create accounts within the fund that will facilitate the conservation of water resources and the payment of revenue bonds issued for the conservation of water resources.*

*(c) The board may use the fund only:*

*(1) to provide state matching funds for federal funds provided to the state water pollution control revolving fund;*

*(2) to provide financial assistance from the proceeds of taxable bond issues to water supply corporations organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), and other participants;*

*(3) to provide financial assistance to participants for the construction of water supply projects and treatment works that involve the distribution of water and wastewater to retail customers; and*

*(4) to provide financial assistance for an interim construction period to participants for projects for which the board will provide long-term financing through the water development fund.*

*(d) Money in the fund may be invested by the board as permitted by this subchapter, other applicable law, or as provided by resolutions authorizing the issuance of revenue bonds.*

*Sec. 17.854. METHODS OF FINANCIAL ASSISTANCE. The board may use the fund to acquire obligations of political subdivisions in accordance with the purposes stated in Section 17.853 of this code.*

*Sec. 17.855. FINANCIAL ASSISTANCE BY ACQUISITION OF ACQUIRED OBLIGATIONS. (a) In an application to the board for financial assistance through the acquisition of acquired obligations, the participant shall include:*

*(1) the name of the participant and its principal officer or officers;*

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

*(3) the total cost of the project;*

*(4) the amount of state financial assistance requested;*

*(5) the plan for paying the principal of and interest on its obligations to be acquired by the board; and*

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

*(b) The board may not accept an application for financial assistance unless it is submitted in writing and subscribed to in affidavit form by an official representative of the participant. The board shall prescribe the affidavit form in its rules.*

*(c) The board may require additional factual material from an applicant.*

*Sec. 17.856. CONSIDERATION IN PASSING ON APPLICATION FOR FINANCIAL ASSISTANCE. In passing on an application for financial assistance for a participant, the board shall consider:*

*(1) the needs of the area to be served by the project;*

(2) the availability to the participant of revenues, taxes, or a combination of revenues and taxes for payment of the acquired obligations of the participant; and

(3) the costs to be incurred in the development, construction, and operation of the project.

Sec. 17.857. APPROVAL OF APPLICATION. (a) The board by resolution may approve an application if the board finds:

(1) that the public interest requires state participation in the project; and

(2) that, in its opinion, the revenue, taxes, or combination of revenue and taxes pledged by the participant will be sufficient to pay the principal of and interest on the acquired obligations until the acquired obligations are fully paid.

(b) Before the board grants the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more efficient use of water that incorporates the practices, techniques, or technology prescribed by Paragraph (B) of Subdivision (14) of Section 17.001 of this code and that the board determines will meet reasonably anticipated local needs and conditions. The program may include but is not limited to any or all of the following:

(1) restrictions on discretionary water uses, such as lawn watering;

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

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

(4) educational programs;

(5) universal metering;

(6) conservation-oriented water rate structures;

(7) drought contingency plans; and

(8) distribution system leak detection and repair.

(c) The board may not require a program of water conservation to be adopted under Subsection (b) of this section if:

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

(2) the amount of financial assistance to be provided is \$500,000 or less; or

(3) the applicant demonstrates and the board finds that the submission of such a program is not reasonably necessary to facilitate conservation or conservation measures.

(d) If the political subdivision will utilize the project to furnish water or services to another political subdivision that in turn will furnish the water or services to the ultimate consumer, the requirements of the board relative to water conservation can be met through contractual agreements between the political subdivisions providing for establishment of a water conservation plan and other measures.

Sec. 17.858. ACQUISITION OF ACQUIRED OBLIGATIONS. (a) If the board approves an application for financial assistance under this subchapter and is to purchase acquired obligations from a participant, the acquired obligations resolution must:

(1) provide for development, construction, and operation of the project by the participant or a person contracting with the participant; and

(2) provide that the participant shall make sufficient payments to the board to service the acquired obligations from:

(A) all or part of the revenues from the ownership or operation of the project;

(B) all or part of any other revenues or funds that may lawfully be pledged by the participant;

(C) taxes levied by the participant or other users of the project; or

(D) any combination of Paragraphs (A), (B), and (C) of this subdivision.

(b) *The acquired obligations purchased by the board pursuant to this subchapter shall bear rates of interest and mature in amounts and at times as may be reasonably expected to provide funds for orderly payment of the revenue bonds issued by the board.*

*Sec. 17.859. ISSUANCE OF REVENUE BONDS BY THE BOARD. (a) The board may issue its revenue bonds for the purpose of providing money for the fund, and the money in the fund shall be used for acquiring interests in projects and for providing financial assistance to participants in accordance with this subchapter.*

(b) *The board may issue revenue bonds to refund revenue bonds or bonds and obligations issued or incurred in accordance with other provisions of law, and in addition to the authority granted by this subsection, the board may issue refunding bonds under other applicable law.*

(c) *The revenue bonds are special obligations of the board payable only from designated income and receipts of the board including principal of and interest paid and to be paid on acquired obligations, other designated obligations held by the board, or income from accounts created within the fund by the board, as determined by the board.*

(d) *The revenue bonds do not constitute indebtedness of the state as prohibited by the constitution.*

(e) *The board may require participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.*

(f) *Revenue bonds issued under this subchapter shall be authorized by resolution of the board and shall have the form and characteristics and bear the designations as are provided in the resolution.*

(g) *Revenue bonds may:*

(1) *bear interest at the rate or rates payable annually or otherwise;*

(2) *be dated;*

(3) *mature at the time or times, serially, as term, revenue bonds, or otherwise in not more than 50 years from their dates; and*

(4) *be callable before stated maturity on the terms and at the prices, be in the denominations, be in the form, either coupon or registered, carry registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or one denomination for bonds of other denominations, and successive exchange of registered revenue bonds for coupon revenue bonds, be executed in the manner, and be payable at the place or places inside or outside the state, as provided by the resolution;*

(5) *be issued in temporary or permanent form;*

(6) *be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the board to be the most advantageous reasonably obtainable; and*

(7) *be issued on a parity with and be secured in the manner as other revenue bonds authorized to be issued by this subchapter or may be issued without parity and secured differently than other revenue bonds.*

(h) *All proceedings relating to the issuance of revenue bonds issued pursuant to this subchapter shall be submitted to the attorney general for examination. If the attorney general finds that the revenue bonds have been authorized in accordance with law, he shall approve the revenue bonds, and the revenue bonds shall be registered by the comptroller of public accounts. After the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.*

(i) *The proceeds received from the sale of revenue bonds may be deposited or invested in any manner and in the obligations as may be specified in the resolution or other proceedings authorizing those obligations. Money in the fund or accounts created by this subchapter or created in the resolution or other proceedings authoriz-*

*ing the revenue bonds may be invested in any manner and in any obligations as may be specified in the resolution or other proceedings.*

SECTION 4. Subsection (g), Section 17.072, Water Code, is amended to read as follows:

(g) The state participation account may be used for any project *authorized in Chapter 16 of this code* and in any manner consistent with the constitution and this code.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 22, 1987, by the following vote: Yeas 29, Nays 0; and that the Senate concurred in House amendment on May 23, 1987, by the following vote: Yeas 30, Nays 0. Passed the House, with amendment, on May 21, 1987, by the following vote: Yeas 141, Nays 3, one present not voting.

Approved June 17, 1987.

Effective June 17, 1987.