

AGENDA ITEM MEMO

BOARD MEETING DATE: October 5, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Rebecca Trevino, Chief Financial Officer

FROM: Georgia Sanchez, Development Fund Manager

SUBJECT: Waiver Request for Economically Distressed Areas Program (EDAP) Bonds

ACTION REQUESTED

Consider authorizing by resolution the Executive Administrator to request a waiver from the Texas Bond Review Board (BRB) of certain requirements contained in Texas Water Code § 17.0112(a).

BACKGROUND

The Texas Water Development Board (TWDB) is the state agency charged with the responsibility for providing funding for the state's EDAP projects. EDAP funds are made available for water and wastewater service to eligible, economically distressed areas and inadequate systems throughout the state.

On November 5, 2019, voters approved new bonding authority for EDAP projects. Voters approved Section 49-d-14, Art. III, Texas Constitution, authorizing the TWDB to issue Texas General Obligation Water Financial Assistance Bonds for EDAP (EDAP bonds) in an amount not to exceed \$200 million. The \$200 million in new voter authority remains authorized but unissued. The previous constitutional authorization was extinguished in February 2019, when the TWDB issued approximately \$53.5 million in EDAP financial assistance.

Texas Water Code § 17.0112(a) prohibits the issuance of more than \$50 million in EDAP bonds within a single fiscal year. However, Texas Water Code § 17.0112(b) provides a mechanism for the Board to receive a waiver from the BRB to issue more than the \$50 million limit. The Executive Administrator seeks to issue an amount of EDAP bonds that exceeds the statutory limit of \$50 million in Fiscal Year (FY) 2023.

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Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member
Jeff Walker, Executive Administrator

KEY ISSUES

In the 2022-2023 General Appropriations Act, the TWDB was appropriated sufficient general revenue to support the issuance of \$100 million of EDAP bonds during the biennium. It was intended that EDAP bonds would be issued in the amount of \$50 million in FY 2022 as well as FY 2023. In FY 2022, new EDAP rules were adopted, a first-ever EDAP Intended Use Plan was released, and abridged applications for financial assistance were solicited. On April 11, 2022, a competitive General Obligation bond sale for EDAP was initiated by Board action.

On May 11, 2022, the Board approved documents, including a bond resolution and competitive sale bid specifications, for an issuance not to exceed \$50 million in EDAP bonds for FY 2022. Shortly thereafter, the results of the EDAP abridged application solicitation were released, totaling nearly \$532.4 million from 29 entities. Although the solicitation indicated that the need far exceeded the current year limitation for an issuance of EDAP bonds, approval requests were submitted to the Legislative Budget Board (LBB) and the BRB for approval of a bond sale not to exceed \$50 million.

Given the needs of the EDAP program participants, the Executive Administrator deems it prudent to now seek a waiver of the limitation in law to issue more than \$50 million in EDAP bonds in FY 2023. The statutory limit will not allow the full use of the appropriation and maximization of the amount of financial assistance that can be provided to meet the needs of the program and the public health and safety of the State. Immediate authorization of additional bonds is in accordance with § 17.0112(b), Texas Water Code.

As with all other programs, the Executive Administrator will request additional Board authorization as necessary for the sale, delivery, and issuance of any future EDAP bonds.

RECOMMENDATION

Because the need for financial assistance from eligible applicants exceeds the statutory cap on issuing EDAP bonds in a single fiscal year and the agency has sufficient appropriation, the Executive Administrator recommends approving by resolution authority to request a waiver from the Texas BRB of certain requirements contained in Texas Water Code § 17.0112(a) to issue up to \$100 million in EDAP bonds.

Attachment: Resolution 22-

A RESOLUTION OF THE TEXAS WATER
DEVELOPMENT BOARD AUTHORIZING THE
EXECUTIVE ADMINISTRATOR TO REQUEST
A WAIVER FROM THE TEXAS BOND REVIEW
BOARD OF REQUIREMENTS IN TEXAS
WATER CODE SECTION 17.0112(a)

(22 -)

WHEREAS, pursuant to Section 49-d-14 of Article III of the Texas Constitution, the Texas Water Development Board (TWDB or Board) has the authority to issue State of Texas, General Obligation Water Financial Assistance Bonds (Economically Distressed Areas Program) (hereinafter EDAP bonds) in an amount not to exceed \$200,000,000, but may not issue more than \$50,000,000 in EDAP bonds during a state fiscal year in accordance with Texas Water Code § 17.0112(a); and

WHEREAS, \$200,000,000 in EDAP bonds remains constitutionally authorized, but unissued, by the TWDB pursuant to Section 49-d-14 of Article III of the Texas Constitution; and

WHEREAS, approximately \$532,363,077 in Economically Distressed Areas Program (EDAP) abridged applications were received to be funded by the proceeds of EDAP bonds; and

WHEREAS, the Board currently does not have sufficient EDAP bond proceeds available for the aforementioned applicants and projects; and

WHEREAS, in order to accommodate the EDAP program needs in state fiscal year 2023, and to protect the public health and safety in the areas to be served by those projects, the TWDB must issue EDAP bonds in an amount which exceeds the statutory limitation on EDAP bond issuances in a state fiscal year; and

WHEREAS, before the Board may authorize the issuance of more than \$50,000,000 in EDAP bonds in a state fiscal year, it must seek and receive a waiver, and due authorization, from the Texas Bond Review Board pursuant to Texas Water Code § 17.0112(b); and

WHEREAS, the Board deems it necessary to delegate the authority to the Executive Administrator, or his authorized representative, to seek a waiver from the Texas Bond Review Board to authorize the TWDB to request to issue more than \$50,000,000 in EDAP bonds for a proposed, state fiscal year 2023 EDAP bond sale in order to address the current funding needs of the program and protect the public health and safety of economically distressed areas;

NOW, THEREFORE, based on said considerations, the Texas Water Development Board hereby finds:

That the TWDB does not have sufficient bond proceeds to meet the needs of the EDAP program in state fiscal year 2023, and that the public health and safety in the areas to be served by eligible applications and projects require immediate authorization of additional bonds.

NOW, THEREFORE, the Texas Water Development Board hereby resolves:

The TWDB hereby authorizes its Executive Administrator, or his authorized representative, to request:

- a. a waiver from the requirements in Texas Water Code § 17.0112(a) from the Texas Bond Review Board, on the grounds that the TWDB does not have sufficient bond proceeds to meet the needs of the EDAP program in state fiscal year 2023, and that the public health and safety in the areas to be served require immediate authorization of additional bonds; and
- b. authorization for the TWDB to submit a request to the Texas Bond Review Board asking to submit, at a later date, a request to issue EDAP bonds for state fiscal year 2023 in an amount not to exceed \$100,000,000; and
- c. that the Texas Bond Review Board give notice and schedule a hearing, pursuant to Texas Water Code Section 17.0112(b).

APPROVED and ordered of record this 5th day of October 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator