



# Legislative Priorities

84th Legislative Session





# **Legislative Priorities Report**

## **84th Legislative Session**





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# Legislative Priorities Report

## Texas Water Development Board

*84<sup>th</sup> Texas Legislative Session*

## Executive Summary

The mission of the Texas Water Development Board (TWDB) is to provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas. To further our mission, we collect, analyze, and distribute water and geographic data which helps businesses, citizens, local governments, and water providers make informed decisions. We coordinate regional water planning and prepare the state water plan to show Texans what actions are needed to achieve water security in times of drought. And we administer cost-effective financial assistance programs for water supply, wastewater treatment, flood control, and agricultural water conservation projects.

The TWDB was created by constitutional amendment in 1957 after several years of drought had devastated the Texas economy. Since that time, the TWDB has been charged with addressing the state's water needs through planning and financial assistance. While local communities carry out the responsibility for providing water to their residents, the TWDB has a leadership and support role through guiding, enabling, and supporting the conservation and responsible development of the state's water resources.

While Texas has experienced many droughts, 2011 was the worst one-year drought on record, resulting in unprecedented agricultural and other economic losses. Three years later, the drought is still persisting in many parts of the state. In some areas, the severity of the drought is close to surpassing the drought of the 1950s.

As a result of this ongoing drought and an increasing focus on implementing water management strategies in the state water plan, the 83rd Texas Legislature in 2013 passed House Bill (HB) 4, HB 1025, and Senate Joint Resolution (SJR) 1. This historic legislation authorized a one-time, \$2 billion investment from the Economic Stabilization Fund to the newly created State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) upon approval by Texas voters. Proposition 6 passed on November 5, 2013 with greater than 70 percent voter approval. HB 4 included governance changes to the TWDB, transitioning the part-time, volunteer six-member board to a full-time, professional, three-member board to ensure oversight of the funds and greater accountability.

Since the passage of HB 4 and Proposition 6, the TWDB has made a concerted effort to streamline our financial assistance and water planning processes and to improve customer service. In

addition to serving our current customers, we are looking to establish new relationships with potential customers that may not have considered the benefits of state assistance in the past. We look forward to implementing strategies in the state water plan so that Texas communities are prepared for drought and will continue to grow and prosper in the decades to come.

Section 6.156 of the Texas Water Code requires the TWDB to provide a biennial report to the governor and members of the legislature that must include a statement of agency activities and recommendations for necessary and desirable legislation. Working toward implementing the agency's vision, the TWDB examined water management policies and funding issues in order to make recommendations to the 84th Legislature.

This Legislative Priorities Report includes the following recommendations to the 84th Texas Legislature:

- Enact statutory provisions to allow the Clean Water State Revolving Fund (CWSRF) to cross-collateralize the Drinking Water State Revolving Fund (DWSRF).
- Conform Chapter 20, Subchapter B, of the Texas Water Code to changes in the governing structure of the TWDB's Board made by the 83rd Legislature.
- Amend Texas Water Code § 16.053(j) to remove certain references for clarity regarding water supply project funding.
- Revise Texas Health and Safety Code § 366.035 to exempt the requirement for water supplies, and add a provision that allows designation of an already authorized agent.
- Modify the law related to House Bill 3605 passed by the 83rd Legislature to allow flexibility in conditioning loans if a water provider is already addressing its water loss, either with previous board funding or with its own internal resources.

In conjunction with these legislative priorities, this report also includes summaries of the TWDB's Exceptional Item Requests included in the agency's Legislative Appropriations Request for Fiscal Years 2016–2017. These requests include:

- Secure Long Term funding for Existing Operations.
- HB 4 Continuation for Authorized Positions.

# Outcomes of the 83rd Legislative Session

In addition to HB 4, the TWDB is working to implement several budget riders and other legislation from the 83rd Texas Legislative Session. Riders include Demonstration Projects for Near-Term Alternative Water Supplies (Rider 21); Texas Alliance for Water Conservation Demonstration Project (Rider 22); Water Conservation Education Grants (Rider 23); development of an online tool to consolidate the Water Use Survey and Water Loss and Conservation Reports (Rider 24); and Agricultural Water Conservation Monitoring (Rider 25). Rules have been developed to implement HB 3605, which requires retail public utilities that receive TWDB financial assistance to use a portion of that assistance to mitigate water loss if the utility's system meets or exceeds an established water loss threshold. Rules have also been developed to implement HB 857 relating to the frequency of annual water loss audits submitted to the TWDB.

## **TWDB-Related Legislation from the 83rd Session of the Texas Legislature**

<b>Legislation</b>	<b>Description</b>
HB 4	Administration of the TWDB and funding of water projects
HB 1025	\$2 billion supplemental appropriation from Economic Stabilization Fund to SWIFT
SJR 1	Constitutional amendment providing for creation of SWIFT and SWIRFT
HB 857	Water loss audit frequency
HB 1461	Customer notification of significant water loss by a retail public utility
HB 2781	Rainwater harvesting training and backflow prevention
HB 3605	Use of TWDB financial assistance to mitigate water loss
SB 198	Restrictive covenants regulating drought-resistant landscaping and turf
HB 3604	Implementation of water conservation and drought contingency plans
SB 1282	Extension of aquifer Desired Future Conditions submission deadline to May 1, 2016
SB 1599	Statewide system of identifying colonias

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# Priorities for the 84th Legislative Session

## Recommendation:

*Enact statutory provisions to allow the Clean Water State Revolving Fund (CWSRF) to cross-collateralize the Drinking Water State Revolving Fund (DWSRF).*

### Background:

Cross-collateralization allows funds from one State Revolving Fund (SRF) program to be used to secure the other SRF from revenue shortfalls. Cross-collateralization can have a significant positive impact on the State Revolving Fund program. This is especially important when leveraging a SRF program that may not have a history with bond investors, may not have an existing rating, or may have a low rating. The use of cross-collateralization can result in the following benefits:

- Stronger bond ratings for DWSRF bonds because they are supported by the very strong cash flows of the CWSRF program.
- Stronger bond ratings that translate into lower interest rates on DWSRF bonds and cost savings to DWSRF borrowers

The TWDB currently leverages the CWSRF. This means it sells bonds to increase the amount of funds available through the program. The CWSRF is a more mature program and has an underlying credit pool and cash flow to warrant the highest AAA bond ratings from all of the major rating agencies. While the TWDB has the authority to leverage the DWSRF, the underlying credit pool and weaker cash flows would most likely result in a lesser bond rating which would make it more difficult to sell leverage bonds. This would make the bonds more expensive which translates to higher interest rates for the ultimate borrowers from the program. A statutory change to allow the CWSRF to cross-collateralize the DWSRF would result in the benefits outlined above.

### Statutory Change: Chapter 15 (Subchapter J) of the Texas Water Code

## Recommendation:

*Conform Chapter 20, Subchapter B, of the Texas Water Code to changes in the governing structure of the TWDB's Board made by the 83rd Legislature.*

### Background:

Effective September 1, 2013, as provided for in House Bill 4 and passed by the 83rd Legislature, the membership of the Texas Water Development Board changed from a six-member, part-time board to a three-member, full-time board. Texas Water Code § 20.012 currently governing the

Texas Water Resources Finance Authority refers to the "six directors of the development board." § 20.013 specifies that "directors are not entitled to receive compensation for their service," and "the board is entitled to be reimbursed for their expenses in performing their powers and duties under this chapter." Texas Water Code § 20.015 refers to "three or more directors." These provisions should be conformed to changes made by HB 4.

### **Statutory Change:**

#### **Amend Texas Water Code § 20.012 as follows:**

BOARD OF DIRECTORS.

- (a) The authority is governed by a board of directors composed of the [six] directors of the development board.
- (b) Each director serves on the board as an additional duty to those required of a member of the development board.

#### **Remove Texas Water Code § 20.013:**

[COMPENSATION; REIMBURSEMENT.

The directors are not entitled to receive compensation for their service on the board but are entitled to be reimbursed for their expenses in performing their powers and duties under this chapter.]

#### **Amend Texas Water Code § 20.015 as follows:**

BOARD MEETINGS.

- (a) The board shall hold regular meetings at times provided by its rules and shall meet at least once each calendar year.
- (b) The board may hold special meetings at the call of the chairman or on request of [three or more directors].

### **Recommendation:**

*Amend Texas Water Code § 16.053(j) to remove certain references for clarity regarding water supply project funding.*

### **Background:**

The TWDB does not fund water supply projects through the following subchapters referenced in § 16.053(j):

- Chapter 15, Subchapter D (Water Bond Insurance Program).
- Chapter 15, Subchapter F (Research and Planning Fund). We did fund facility engineering in economically distressed areas; but there is no longer any money available through the program for that purpose.

- Chapter 15, Subchapter O (Program for Water and Wastewater Financial Assistance for Disadvantaged Rural Communities). Although this program is still in statute and in our rules, no funds are available through the program, nor have they been for some time.
- CWSRF/DWSRF, Subchapter J (Financial Assistance for Water Pollution Control) contains laws related to both the CWSRF and the DWSRF. Section § 16.053, by referring to "Subchapter J," inadvertently incorporates both programs. But Section § 16.053 is concerned only with water supply (that is, drinking water) projects. We have, as a procedural matter, applied the consistency finding only in DWSRF projects. But the addition of a phrase such as "with respect only to projects requesting financial assistance under the Safe Drinking Water Revolving Fund," or "Section 15.6041 of Subchapter J," would provide clarity.

The issue here is exemplified by the Water Loss Audit rulemaking, to which this subsection also applies. When one looks at the programs, rather than just the subchapter designations, the references do not make sense for purposes of our actual funding programs and the purpose of the subsection.

*Note that this is the consistency statute.*

**Statutory Change: Amend Texas Water Code § 16.053(j) as follows:**

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, [D,] E, [F,] [J, O,] Q, [and] R, and Section 15.6041 of Subchapter J, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

1. The board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan;
2. Beginning January 5, 2002, the board:
  - (a) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and
  - (b) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan; and
3. The board finds that the water audit required under Section 16.0121 has been completed and filed.

**Recommendation:**

*Revise Texas Health and Safety Code § 366.035 to exempt the requirement for water supplies. Also add a provision that allows designation of an already authorized agent.*

## **Background:**

Texas Health and Safety Code § 366.035 requires a local governmental entity that applies for financial assistance under the Economically Distressed Areas program (EDAP) to receive and maintain a designation as an authorized agent for inspection of on-site septic systems. Chapter 366 of the Health and Safety Code applies to the inspection and management of on-site sewage disposal systems. As § 366.035 is written and has been interpreted, the TWDB has required that local governmental entities applying for financial assistance for water supplies also receive and maintain this designation. In addition, the statute has been interpreted to require an applicant to obtain the designation even if another entity (usually the county) is already filling this role on behalf of Texas Commission on Environmental Quality. The statute should be amended to clarify that this provision is applicable only to wastewater funding and only when another authority is not already exercising that responsibility in the area to be served by the project.

## **Statutory Change: Amend Texas Health and Safety Code § 366.035 as follows:**

A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas *for the construction of a wastewater system* must take all actions necessary to receive and maintain a designation as an authorized agent of the commission *unless a local governmental entity is already exercising such authority in the area to be served by the project.*

## **Recommendation:**

*Modify the law related to House Bill 3605 passed by the 83rd Legislature to allow flexibility in conditioning loans if a water provider is already addressing its water loss, either with previous board funding or with its own internal resources.*

## **Background:**

According to Section § 16.0121(g) of the Texas Water Code, a retail public utility providing potable water that receives financial assistance from the Texas Water Development Board (TWDB) is required to use a portion of that financial assistance, or any additional financial assistance provided by the TWDB, to mitigate the utility's system water loss if, based on a water audit filed by the utility, the water loss meets or exceeds the threshold established by TWDB rule. Additionally, Section § 16.0121(h) states that the TWDB shall adopt rules regarding:

1. The amount of system water loss that requires a utility to take action under Subsection (g); and
2. The use of financial assistance from TWDB as required by Subsection (g) to mitigate system water loss.

In late 2014 the TWDB adopted rules establishing water loss thresholds for retail public utilities providing potable water that apply for financial assistance from the TWDB. The thresholds were developed based on industry performance indicators for both apparent loss ("paper loss" of water, including meter inaccuracies, billing adjustments, and theft) and for real loss (actual loss of water from leaks and breaks and also loss from unknown and unreported sources). While drafting the rules, consideration was given to systems that provide wholesale service through their retail distribution system.

*In developing the thresholds for water loss and reviewing data from submitted water loss during the rulemaking process for House Bill 3605, several utilities were identified as meeting or exceeding the thresholds. These utilities either had loans with the TWDB that included addressing their water loss, or had established a program to address their water loss through their own operations. The current statute states that utilities "shall use a portion of that financial assistance, or any additional financial assistance provided by the board for the purpose described by this subsection, to mitigate the utility's system water loss if, based on a water audit filed by the utility under this section, the water loss meets or exceeds the threshold established by board rule." However, the statute does not allow for any flexibility when a utility has already taken steps or is presently taking steps to mitigate their water loss.*

While the TWDB recognizes the importance of ensuring and assisting a utility to mitigate its water loss, it is also important to acknowledge existing programs that a utility may have in place and the steps it has taken to reduce its water loss. This could be accomplished by having the utility provide information on:

1. Areas of their system operations that have reduced water loss.
2. Tracking progress in reducing water loss.
3. Established water loss programs and water loss goals.

**Statutory Change: Amend Texas Water Code § 16.0121 (g) and (h) as follows:**

The proposed policy would necessitate changes in Texas Water Code § 16.0121 (g) and (h) to allow for flexibility in requiring or mandating the use of financial assistance from the TWDB to mitigate system water loss for utilities that are addressing their water loss.

# Legislative Appropriations Request Exceptional Items

## Secure Long Term funding for Existing Operations

### Description and Justification

The Texas Water Development Board (TWDB) seeks to secure a long-term and stable fund source such as general revenues to fund its ongoing operating budget. This request is to swap ongoing operating costs currently funded by the Texas Water Resources Finance Authority (TWRFA) to general revenues. This request does not seek to increase the TWDB base budget in total. TWRFA funds are allocated across the TWDB's operating budget and are part of the method of finance for a majority of TWDB strategies.

TWRFA contributions to TWDB's operating budget are shown as appropriated receipts in the accompanying legislative appropriations request and represent the majority of those totals. TWDB's operating budget currently relies upon a significant annual draw from the assets of TWRFA to fund ongoing, reoccurring operations, including approximately 9 percent of the agency's total salaries and wages costs. TWRFA funds are not a sustainable fund source for ongoing costs and such funds are depleting as annual draws continue. TWRFA's assets are estimated to withstand annual draws at current levels to approximately fiscal year 2020 at the latest.

TWRFA was created in 1989 and initially issued bonds to purchase loans from the Texas Water Development Board. The bonds are paid off and there is no plan for TWRFA to fund a new loan program. A small number of TWRFA loans are outstanding and repaying into the fund. The TWDB shifted an increasing amount of operating costs to TWRFA funds as the TWRFA bonds were paid off and the TWDB faced cuts to essential operations due to general revenue budget reductions. In addition to the reoccurring costs included in the amount of this exceptional item, TWRFA is also funding a variety of grant and research programs at the TWDB.

The requested exceptional item funding would be used to continue an existing agency initiative. The agency does not anticipate entering into a contract for service as a result of the funding request.

### External and Internal Factors

In the event that the swap of general revenue for TWRFA appropriated receipts is not approved, a significant balance of ongoing TWDB operations would continue to be linked to a limited and closed fund source. As a result, the TWRFA funds would be depleted at a high rate leaving less TWRFA funds available to fund regional water planning grants, flood protection planning grants, and other research projects.

No later than 2020, if no swap is made, the TWDB would face the need for significant cuts to full time equivalents, grant programs, professional fees and services, and other operating expenses. The TWDB's core operations and programs would suffer substantially and be challenged to continue with the loss of such resources.

The TWDB is in the midst of implementing and managing major programs vital to our state's management of water resources. The continued linkage of significant portions of our ongoing operating budget to a limited and depleting fund source does not align with the TWDB's long-term perspective and mission.

## **HB 4 Continuation for Authorized Positions**

### **Description and Justification**

The exceptional item request of \$651,584 is to fully fund the positions added in the contingency appropriation for HB 4. The 12.3 positions were funded for 2015. Due to the multiple-year implementation of HB 4, the full time equivalents were not included in the FY 2014 budget, and based on the methodology utilized to determine the agency's 2016-2017 base the agency cannot fully fund the 12.3 full time equivalents. The agency is requesting the additional appropriation to fully fund the positions for the 2016-2017 biennium.

The requested exceptional item funding would be used to continue an existing agency initiative. The agency does not anticipate entering into a contract for service as a result of the funding request.

### **External and Internal Factors**

Without the additional funding, the TWDB will not be able to support the positions for the implementation of HB 4. Without the additional funding, the TWDB will not have the necessary resources to adequately meet the statutory requirements of HB 4.

### **Our Mission**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

### **Board Members**

Carlos Rubinstein, Chairman | Bech Bruun, Member | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator