



ECONOMICALLY DISTRESSED AREAS PROGRAM

AN ISSUE BRIEF FROM LEGISLATIVE BUDGET BOARD STAFF

LEGISLATIVE BUDGET BOARD ID: 8471

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OBJECTIVE

The Economically Distressed Areas Program (EDAP), administered by the Texas Water Development Board (TWDB), provides financial assistance through grants and loans for water and wastewater projects in economically distressed areas statewide where service is inadequate or unavailable.

KEY FACTS

- ◆ Projects must be located in counties that are enforcing Model Subdivision Rules.
- ◆ From fiscal years 1992 to 2023, EDAP has committed more than \$954.2 million for approximately 187 projects across the state. Other TWDB programs have provided additional financial assistance to economically distressed areas in Texas. The state has spent approximately \$450.4 million in General Revenue Funds on debt service for EDAP.

BUDGETARY IMPACT

Appropriations for the 2024–25 biennium include \$71.6 million for debt service, of which \$63.3 million is General Revenue Funds, and \$8.3 million is from loan repayment proceeds. Also included is \$0.8 million in General Revenue Funds for program administration.

STATUTORY REFERENCES

The Texas Constitution, Article 3, Sections 49-d-7, 49-d-8, 49-d-10, and 49-d-14

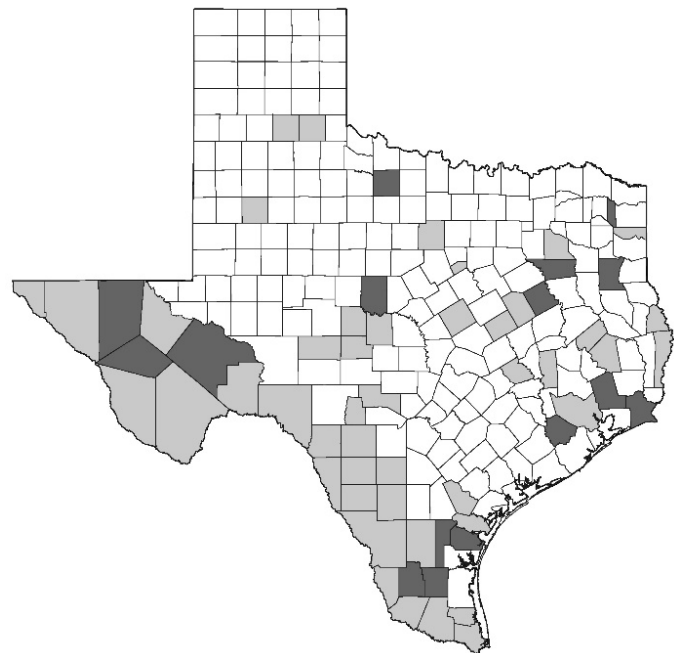
The Texas Water Code, Chapter 15, Subchapter F; Chapter 16, Subchapter J; and Chapter 17, Subchapters K, and L



The Federal Water Pollution Control Act

The U.S. Environmental Protection Agency Appropriations Act, 1992, 1993, 1996, and 1998

The **Economically Distressed Areas Program** (EDAP) provides financial assistance to supply water and wastewater services to economically distressed areas where water or wastewater facilities are inadequate to meet minimum state standards. Local governments, including counties, cities, and water districts, may benefit from EDAP, along with nonprofit water-supply corporations. To be eligible for an EDAP grant or loan, the city or county where a project is located must adopt and enforce Model Subdivision Rules (MSR) and meet other requirements. MSRs are model ordinances that provide criteria to ensure that an adequate supply of safe drinking water and adequate safe sewage facilities are available to residential areas in accordance with state standards. **Figure 1** shows counties that contain EDAP projects and EDAP-eligible counties that have adopted MSRs.

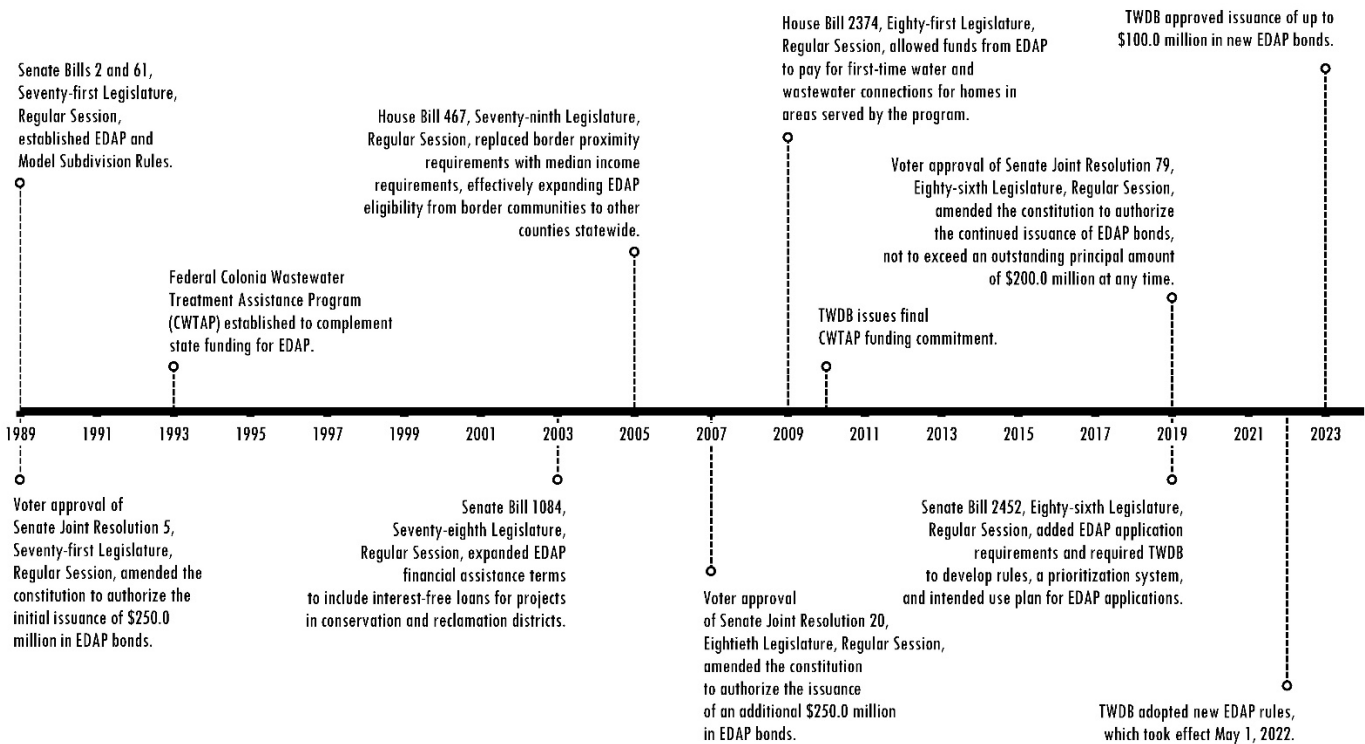
FIGURE 1
TEXAS COUNTIES WITH EDAP PROJECTS AND EDAP-ELIGIBLE COUNTIES THAT HAVE ADOPTED MSRS, FISCAL YEAR 2023



 Counties with Economically Distressed Areas Program (EDAP)
 EDAP-eligible Counties with Approved Model Subdivision Rules (MSR)

NOTE: All counties shown as containing EDAP-funded projects have adopted MSRs.
SOURCE: Texas Water Development Board.

FIGURE 2
SIGNIFICANT LEGISLATION AFFECTING THE ECONOMICALLY DISTRESSED AREAS PROGRAM (EDAP), FISCAL YEARS 1989 TO 2023



SOURCE: Texas Water Development Board (TWDB).

HISTORICAL CHANGES

The Seventy-first Legislature, Regular Session, 1989, established EDAP and MSRs to regulate residential subdivisions. These laws focused on two major goals: delivering water and wastewater services to meet immediate health and safety concerns; and curbing the proliferation of substandard subdivisions through tougher enforcement of development standards. Pursuant to voter-approved constitutional amendments in 1989 and 2007, the **Texas Water Development Board (TWDB)** was authorized to issue \$500.0 million in General Obligation (GO) bonds to provide affordable water and wastewater services in these areas. In addition to this state funding, from fiscal years 1993 to 2010, the federal government provided \$394.0 million through the federal Colonia Wastewater Treatment Assistance Program (CWTAP) to complement the state’s EDAP. Through fiscal year 2023, TWDB has directed \$954.2 million through EDAP and CWTAP funding for approximately 187 projects across the state. **Figure 2** shows a timeline of other key legislative changes to EDAP.

EDAP FUNDING

Eligible entities may apply for EDAP financial assistance, of which no more than 70.0 percent may be provided as grant funding. All

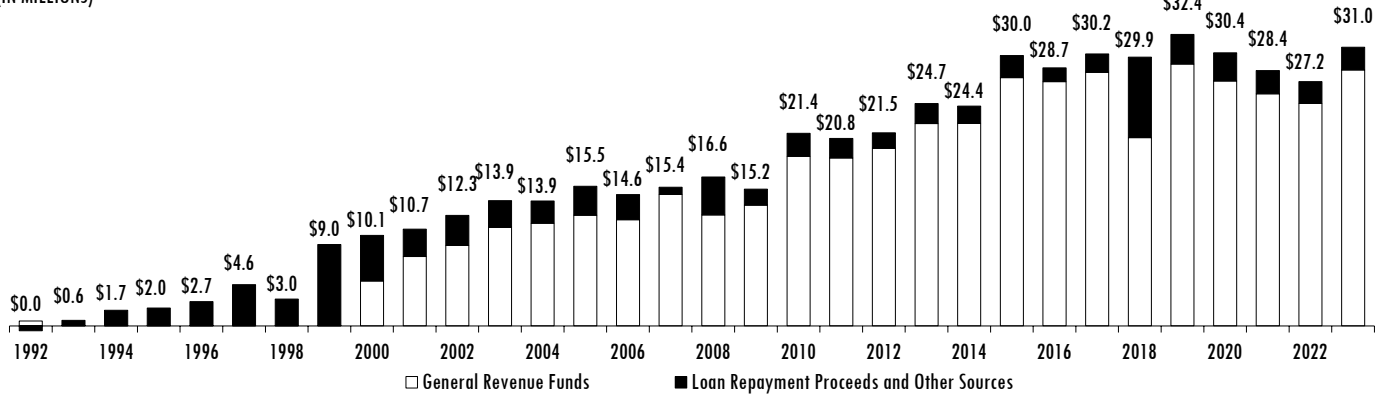
repayments from loans are remitted to TWDB and must be used to pay debt service before using General Revenue Funds. General Revenue Funds are needed to support debt service payments on EDAP bonds because the majority of EDAP funding is grant-based. **Figure 3** shows EDAP-related debt service as funded by General Revenue Funds and Other Funds from the inception of the program to fiscal year 2023. Other Funds consist primarily of EDAP bond repayment proceeds. From fiscal years 2018 to 2021, Appropriated Receipts proceeds from Texas Water Resources Finance Authority (TWRFA) funds, a dormant TWDB fund with minimal remaining balances, were utilized to supplant a portion of General Revenue Funds for EDAP debt service. During fiscal year 2023, the remaining TWRFA funds were exhausted, and the account subsequently was closed. At the end of the biennium, TWDB applies any remaining General Revenue Funds appropriated for EDAP debt service that otherwise would lapse toward retiring existing EDAP debt.

RECENT CHANGES

Voter approval of Proposition 2, 2019, amended the constitution to authorize TWDB to issue additional GO bonds if the principal debt

FIGURE 3
ECONOMICALLY DISTRESSED AREAS PROGRAM DEBT SERVICE, FISCAL YEARS 1992 TO 2023

(IN MILLIONS)



SOURCE: Texas Water Development Board.

outstanding at any time does not exceed \$200.0 million. GO bonds are secured by the state’s pledge to use legally available resources, including tax revenues, to repay bond holders. To exhaust the remaining funding capacity authorized in fiscal year 2007, TWDB issued the remaining \$53.5 million in EDAP bonds in fiscal year 2019 by prioritizing the completion of projects that previously received EDAP funds for preliminary project phases. Senate Joint Resolution 79, and its enabling legislation Senate Bill 2452, Eighty-sixth Legislature, Regular Session, 2019, presented the proposition to amend EDAP and further expand its funding capacity.

The bonding authority enables TWDB to issue EDAP bonds on a continuing basis if the outstanding principal on the new bonds issued pursuant to the Texas Constitution, Article III, Section 49-d-14, does not exceed \$200.0 million. The debt is bound to the Texas Water Code, Section 17.0112(a), which limits issuance of EDAP bonds to \$50.0 million per state fiscal year. EDAP also is a subaccount of the Texas Water Development Fund II (DFund II). Therefore, EDAP’s debt and debt limits are a subset of those of DFund II, which has a debt limit of \$6.0 billion pursuant to the Texas Constitution, Article III, Section 49-d-11.

Additionally, Senate Bill 2452 made the following changes to EDAP: authorized TWDB to use EDAP bond proceeds to support public-private partnerships; required political subdivisions to document their enforcement of MSRs; added application requirements for proposed water-quality enhancement projects; required TWDB to develop and implement a prioritization system for EDAP applications; and added new program reporting requirements which include directing TWDB to produce an annual report discussing projects funded by EDAP.

TWDB adopts an Intended Use Plan (IUP) to determine and outline the use of funds for the specified application period, a process currently utilized by the state revolving funds. Projects previously were funded in order of arrival before Senate Bill 2452 mandated the prioritization process. A city or county in which the project is located must enforce MSRs, qualify as economically distressed, and propose an eligible project type before an application is considered for ranking. **Figure 4** shows the scoring criteria.

RECENT FUNDING

After exhausting the remaining funding capacity, and with the enactment of the new legislation by the Eighty-sixth Legislature, 2019, EDAP bonds were not issued during the 2020–21 biennium while new rules were developed for the program. Accordingly, appropriations totaling \$60.4 million in All Funds were provided to pay existing debt service on EDAP bonds. However, no funding was provided to support debt service payments to issue new bonds. The Eighty-seventh Legislature, Regular Session, 2021, appropriated \$6.1 million in General Revenue Funds to support the issuance of up to \$50.0 million in EDAP bonds each fiscal year of the 2022–23 biennium because the program was expected to resume during fiscal year 2022. However, TWDB did not issue any funding in fiscal year 2022 and instead, pursuant to the Texas Water Code, Chapter 17, Section 17.0112(b), the agency was granted an exemption by the Bond Review Board to exceed the annual authority and issue the total biennial amount of \$100.0 million in bonds during fiscal year 2023. As of August 31, 2023, the principal debt outstanding for all EDAP bonds totaled \$223.0 million, including \$134.5 million in principal outstanding tied to previous debt authorities, and \$88.4

**FIGURE 4
INFORMATION AND APPLICATION SCORING CRITERIA FOR ECONOMICALLY DISTRESSED AREAS PROGRAM, FISCAL YEAR 2024**

ELIGIBLE APPLICANTS

- Political subdivisions, including cities, counties, and water districts
- Nonprofit water supply corporations

ELIGIBLE PROJECTS

Planning, land acquisition, design, and construction for the following projects:

- first-time water and wastewater service
- water supply and/or treatment system improvements; or
- wastewater collection system and/or treatment works improvements

BENEFITS AND TERMS

- Projects with documented public health nuisance determination from the Texas Water Development Board (TWDB) or Texas Department of State Health Services are eligible for grants up to 70.0%; projects without a public health nuisance determination are eligible for grants up to 50.0%
- Portion not paid for by a grant must be provided as an Economically Distressed Areas Program (EDAP) loan
- Loans with low-interest rates are based on the TWDB's cost of funds

PROGRAM REQUIREMENTS

- Prioritization, detailed program requirements, and application process are established in an Intended Use Plan
- Water supply projects must be consistent with the current state water plan
- Service area median household income can be no greater than 75.0% of statewide median household income

PROGRAM REQUIREMENTS (CONTINUED)

- Clear documentation of system inadequacies
- Residential subdivision served by the project must have been established before June 1, 2005
- County or city is enforcing Model Subdivision Rules
- Application and maintenance of authorized agent designation for regulating onsite waste disposal facilities
- Application or possession of Certificate of Convenience and Necessity, if required pursuant to the Texas Water Code, Chapter 13
- Adoption of a water conservation and drought contingency plan for entities receiving assistance greater than \$500,000
- U.S. Iron and Steel requirements
- Review of legislative requirements regarding water loss threshold limits

PRIORITIZATION RANKING CRITERIA

- Projects providing first-time service (15 points)
- Projects resolving public health nuisances and violations (10 points)
- Projects with a previous TWDB investment (8 points)
- Projects addressing violations related to storage capacity or service pressure (3 points)
- Consideration of service areas with the lowest Average Median Household Income is used as a tiebreaking scoring metric

SOURCE: Texas Water Development Board (TWDB).

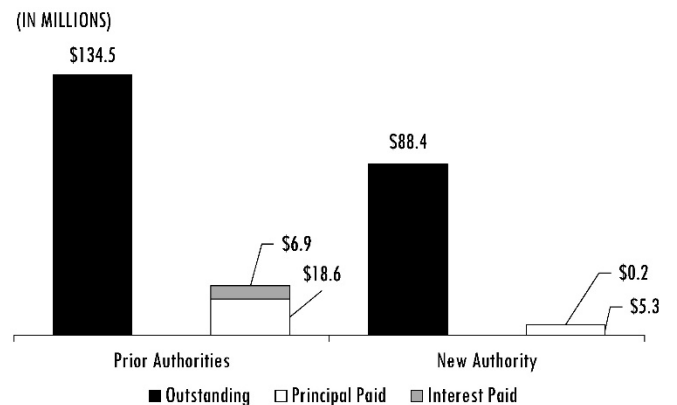
million tied to new debt authority. **Figure 5** shows outstanding principal debt and the total EDAP debt service paid in fiscal year 2023 pursuant to the debt authorities.

2024–25 BIENNIUM AND FORWARD

The Eighty-eighth Legislature, Regular Session, 2023, appropriated \$7.8 million in General Revenue Funds for TWDB to continue issuing \$50.0 million in EDAP bonds each fiscal year during the 2024–25 biennium. TWDB did not issue EDAP bonds during fiscal year 2024, and the agency reported that it intends to seek an exemption to exceed the annual issuance limit for fiscal year 2025. If the agency issues bonds as intended, TWDB would be at or near maximizing the remaining new authority. Annual principal payments would replenish the constitutional authority at a slow pace.

The amount and timing of future issuances depends upon the level of interest received through the IUPs, and as the constitutional limit is reached, the pace of future issuances will be guided by continued interest in EDAP and whether any replenished constitutional authority is sufficient to meet demand. No loan repayment funds are expected to remain when the program ends or final bond payments are made.

**FIGURE 5
OUTSTANDING ECONOMICALLY DISTRESSED AREAS PROGRAM DEBT, FISCAL YEAR 2023**



NOTE: Totals may not sum due to rounding.
SOURCE: Texas Water Development Board.

USEFUL REFERENCES

- www.twdb.texas.gov/financial/programs/EDAP/index.asp
- www.twdb.texas.gov/publications/reports/edap_reports/

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