

BILL ANALYSIS

Senate Research Center
86R15767 SLB-F

S.B. 7
By: Creighton et al.
Water & Rural Affairs
3/8/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since 1953, Texas has had the most federal major disaster declarations of any state. In 2017, Texas was hit by the most destructive storm in United States history. To build a more resilient Texas that can withstand future storms, Texas needs a funding mechanism to assist in financing flood mitigation projects in an efficient and transparent manner.

S.B. 7 amends the existing floodplain management account to create the Texas Infrastructure Resiliency Fund, or TIRF. TIRF will house four accounts within the fund:

- the floodplain management account, which will continue to be used for grants, data collection, stream gaging, and outreach;
- the Hurricane Harvey account, which will be used to meet local match requirements to leverage federally appropriated money for recovery use as a result of Hurricane Harvey;
- the flood plan implementation account, which will be used to finance flood mitigation projects included in the state flood plan; and
- the federal matching account, which will be used to meet matching requirements for projects funded partially by the United States Army Corps of Engineers.

S.B. 7 also includes oversight by an advisory committee, a report from agencies that utilize federal dollars to better track revenue streams and expenses, transparency requirements, and cost sharing requirements with political subdivisions. TIRF will be used to quickly get Texans tax dollars back down from Washington, D.C. to build a stronger and more resilient Texas.

As proposed, S.B. 7 amends current law relating to flood control planning and the funding of flood planning, mitigation, and infrastructure projects.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Infrastructure Resiliency Fund Advisory Committee in SECTION 1 (Section 16.457, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 1 (Section 16.461, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 16, Water Code, by adding Subchapter L, as follows:

SUBCHAPTER L. FLOOD PROJECT FUNDING

Sec. 16.451. DEFINITIONS. Defines "advisory committee," "eligible political subdivision," "flood project," and "resiliency fund."

Sec 16.452. TEXAS INFRASTRUCTURE RESILIENCY FUND. (a) Provides that the Texas infrastructure resiliency fund is a special fund in the state treasury outside the general revenue fund.

(b) Requires the resiliency fund to be administered by the Texas Water Development Board (TWDB) in accordance with this subchapter.

(c) Authorizes TWDB to invest, reinvest, and direct the investment of any available money in the resiliency fund as provided by law for the investment of money under Section 404.024 (Authorized Investments), Government Code.

Sec. 16.453. FLOODPLAIN MANAGEMENT ACCOUNT. (a) Provides that the floodplain management account is an account of the resiliency fund.

(b) Provides that the account consists of money deposited to the credit of the account under Section 251.004 (Deposit of Maintenance Taxes), Insurance Code, money directly appropriated to TWDB, and money from gifts or grants from the United States government, local or regional governments, private sources, or other sources.

(c) Authorizes TWDB to use the account to provide financing for TWDB's functions under Section 16.316 (Coordination of Local, State, and Federal Programs by Board) or any other activities related to the collection and analysis of flood-related information, flood planning, protection, mitigation, or adaptation, the provision of flood-related information to the public through educational or outreach programs, or evaluating the response to and mitigation of flood incidents affecting residential property, including multi-family units, located in floodplains.

Sec. 16.454. HURRICANE HARVEY ACCOUNT. (a) Provides that the Hurricane Harvey account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only to provide financing for flood projects related to Hurricane Harvey. Provides that financing under this section includes making a:

(1) grant, low-interest loan, or zero-interest loan to an eligible political subdivisions for a flood project or to provide matching funds to enable the subdivision to participate in a federal program for a flood project;

(2) loan to an eligible political subdivision at or below market interest rates for the subdivision's planning or design costs, permitting costs, or other costs associated with state or federal regulatory activities with respect to a flood project; and

(3) grant to an eligible political subdivision to provide matching funds to enable the subdivision to participate in a federal program for the development of a hazard mitigation plan, under guidelines issued by the Federal Emergency Management Agency (FEMA) or the Texas Division of Emergency Management (TDEM) or the successor in function to those entities.

(c) Requires TWDB to establish a point system for prioritizing flood projects for which money from the Hurricane Harvey account is sought. Requires the system to include a standard for TWDB to apply in determining whether a flood project qualifies for funding at the time the application for funding is filed with TWDB.

(d) Requires TWDB to give the highest consideration in awarding points to a flood project that will have a substantial effect, including a flood project that is recommended or approved by the director of TDEM or the successor in function

to that entity and that meets an emergency need in a county where the governor has declared a state of disaster.

(e) Authorizes TWDB, after a review and recommendation by the executive administrator of TWDB (executive administrator) and with input from the director of TDEM or the successor in function to that entity, to approve an application for financial assistance under this section only if TWDB finds that the application and assistance applied for meet the requirements of this subchapter and TWDB rules, that the application demonstrates a sufficient level of cooperation among applicable political subdivisions and includes all of the political subdivisions substantially affected by the flood project, and that the taxes or other revenue, pledged by the applicant, if applicable, will be sufficient to meet all the obligations assumed by the applicant.

(f) Authorizes principal and interest payments on loans made under Subsection (b)(2) to be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

(g) Authorizes money from the account to be awarded to several eligible political subdivisions for a single flood project.

(h) Authorizes an eligible political subdivision that receives a grant for a flood project to also receive a loan from the account.

(i) Provides that this section expires September 1, 2031. Provides that the remaining balance of the account on that date is transferred to the economic stabilization fund.

Sec. 16.455. FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) Provides that the flood plan implementation account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only:

(1) to make a grant, low-interest loan, or zero-interest loan to an eligible political subdivision for a flood project or to provide matching funds to enable the subdivision to participate in a federal program for a flood project;

(2) to make a loan to an eligible political subdivision at or below market interest rates for the subdivision's planning or design costs, permitting costs, or other costs associated with state or federal regulatory activities with respect to a flood project; and

(3) to make a grant to an eligible political subdivision to provide matching funds to enable the subdivision to participate in a federal program for the development of a hazard mitigation plan, under guidelines issued by FEMA or TDEM or the successor in function to those entities.

(c) Requires TWDB to establish a point system for prioritizing flood projects for which money from the flood plan implementation account is sought. Requires the system to include a standard for TWDB to apply in determining whether a flood project qualifies for funding at the time the application for funding is filed with TWDB.

(d) Requires TWDB to give the highest consideration in awarding points to a flood project that will have a substantial effect, including a flood project that is recommended or approved by the director of TDEM or the successor in function to that entity, meets an emergency need in a county where the governor has declared a state of disaster, is funded partially through federal matching funds,

includes a component that will increase water supply, and contains any other factor TWDB determines is relevant to the purposes of resiliency.

(e) Requires TWDB, after a review and recommendation by the executive administrator and with input from the director of TDEM or the successor in function to that entity, to approve an application only if TWDB finds that the application and the assistance applied for meet the requirements of this subchapter and TWDB rules and the application demonstrates a sufficient level of cooperation among eligible political subdivisions and includes all of the political subdivisions substantially affected by the flood project.

(f) Authorizes principal and interest payments on loans made under Subsection (b)(2) to be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

(g) Authorizes money from the account to be awarded to several eligible political subdivisions for a single flood project.

(h) Authorizes an award issued as a grant to finance not more than 75 percent of the total cost of a flood project.

(i) Authorizes an eligible political subdivision that receives a grant for a flood project to also receive a loan from the account.

Sec. 16.456. FEDERAL MATCHING ACCOUNT. (a) Provides that the federal matching account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only to meet matching requirements for projects funded partially by federal money, including projects funded by the United States Army Corps of Engineers.

Sec. 16.457. TEXAS INFRASTRUCTURE RESILIENCY FUND ADVISORY COMMITTEE. (a) Provides that the Texas Infrastructure Resiliency Fund Advisory Committee (advisory committee) is composed of the seven members that serve on the State Water Implementation Fund for Texas Advisory Committee described by Section 15.438 (Advisory Committee), with the co-presiding officers of that committee serving as presiding officers of the advisory committee. Provides that the director of TDEM or the successor in function to that entity serves as a nonvoting member of the advisory committee, as an additional duty of the director's office.

(b) Authorizes the advisory committee to hold public hearings, formal meetings, or work sessions. Authorizes either co-presiding officer of the advisory committee to call a public hearing, formal meeting, or work session of the advisory committee at any time. Prohibits the advisory committee from taking formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present.

(c) Provides that, except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the advisory committee or reimbursement for expenses incurred in the performance of official duties as a member of the advisory committee. Provides that service on the advisory committee by a member of the senate or house of representatives is considered legislative service for which the member is entitled to reimbursement and other benefits in the same manner and to the same extent as for other legislative service.

(d) Requires the advisory committee to submit comments and recommendations to TWDB regarding the use of money in the resiliency fund and for use by TWDB in adopting rules.

(e) Requires the advisory committee to review the overall operation, function, and structure of the resiliency fund at least semiannually and authorizes the advisory committee to provide comments and recommendation to TWDB on any matter.

(f) Authorizes the advisory committee to adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(g) Requires the advisory committee to make recommendations to TWDB regarding information on the resiliency fund to be posted on TWDB's Internet website.

(h) Authorizes the advisory committee to evaluate and to provide comments or recommendations on the feasibility of the state owning, constructing, operating, and maintaining flood projects, including reservoirs and coastal barriers.

(i) Requires TWDB to provide an annual report to the advisory committee on TWDB's compliance with statewide annual goals relating to historically underutilized businesses and the participation level of historically underutilized businesses in flood projects that receive money from the resiliency fund.

(j) Requires the advisory committee, if the aggregate level of participation by historically underutilized businesses in flood projects that receive money from the resiliency fund does not meet statewide annual goals adopted under Chapter 2161 (Historically Underutilized Businesses), Government Code, to make recommendations to TWDB to improve the participation level.

(k) Requires TWDB to supply staff support to the advisory committee.

(l) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee.

Sec. 16.458. REPORT REQUIRED. (a) Defines "state agency."

(b) Requires a state agency that uses or disburses federal money for flood research, planning, or mitigation projects to submit a report to TWDB on a quarterly basis.

(c) Requires the report to include the following information about federal money used or disbursed for flood research, planning, or mitigation projects:

(1) the original total of federal money received;

(2) the amount of the federal money spent or disbursed to date; and

(3) the eligibility requirements for receiving the federal money.

Sec. 16.459. APPLICABLE LAW. Provides that Subchapter E (Provisions Generally Applicable to Financial Assistance), Chapter 17, applies to financial assistance made available from the resiliency fund, except that TWDB is authorized to execute contracts as necessary to evidence grant agreements.

Sec. 16.460. TRANSPARENCY REQUIREMENTS. Requires TWDB to post the following information on TWDB's Internet website regarding the use of resiliency fund and regularly update the information posted:

(1) the progress made in developing flood projects statewide;

(2) a description of each flood project that receives money from the resiliency fund, including the expected date of completion of the flood

project, the current status of the flood project, the proposed benefit of the flood project, the initial total cost estimate of the flood project and variances to the initial cost estimate exceeding five percent, a listing of the eligible political subdivisions receiving money from the resiliency fund, a listing of each political subdivision served by each flood project, an estimate of matching funds that will be available for the flood project resulting from the use of the resiliency fund, and the status of repayment of each loan provided in connection with a flood project, including an assessment of the risk of default based on standard risk rating system;

(3) a description of the point system for prioritizing flood projects established by TWDB under Sections 16.454 and 16.455 and the number of points awarded by TWDB for each flood project;

(4) any nonconfidential information submitted to TWDB as part of an application for funding under this subchapter that is approved by TWDB;

(5) the administrative and operating expenses incurred by TWDB in administering the resiliency fund; and

(6) any other information required by TWDB rule.

Sec. 16.461. RULES. Requires TWDB to adopt rules necessary to carry out this subchapter, including rules that establish procedures for an application for and the award of financial assistance, that establish the prioritization system for flood projects that receive money from the resiliency fund, for the repayment of a loan from the resiliency fund, and for the administration of the resiliency fund.

SECTION 2. Repealer: Section 16.3161 (Floodplain Management Account), Water Code.

SECTION 3. Provides that on the effective date of this Act, the Floodplain Management Account No. 0330 is transferred to the Texas infrastructure resiliency fund as an account of that fund and the balance of the Floodplain Management Account No. 0330 is transferred to the floodplain management account of the Texas infrastructure resiliency fund.

SECTION 4. (a) Requires the advisory committee, not later than the 90th day after the effective date of this Act, to submit recommendations to TWDB on the rules adopted by TWDB under Section 16.461, Water Code, as added by this Act.

(b) Requires TWDB, not later than the 90th day after the date TWDB receives the recommendations described by Subsection (a) of this section, to adopt rules under Section 16.461, Water Code, as added by this Act.

SECTION 5. Provides that, contingent on legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan passing and becoming law, on the date that TWDB adopts the initial state flood plan in accordance with that law:

(1) Section 16.455, Water Code, as added by this Act, expires; and

(2) Subchapter L, Chapter 16, Water Code, is amended by adding Section 16.4551, as follows:

Sec. 16.4551. FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) Provides that the flood plan implementation account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only to provide financing for projects included in the state flood plan.

(c) Authorizes money from the account to be awarded to several eligible political subdivisions for a single flood project.

SECTION 6. Effective date: upon passage or September 1, 2019.