

By: Creighton, et al.

S.B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to flood control planning and the funding of flood planning, mitigation, and infrastructure projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 16, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. FLOOD PROJECT FUNDING

Sec. 16.451. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the Texas Infrastructure Resiliency Fund Advisory Committee.

(2) "Eligible political subdivision" means a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a municipality, or a county.

(3) "Flood project" means a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide structural and nonstructural flood mitigation and drainage; and

(C) construction of structural flood mitigation and drainage infrastructure.

(4) "Resiliency fund" means the Texas infrastructure resiliency fund.

Sec. 16.452. TEXAS INFRASTRUCTURE RESILIENCY FUND. (a)

The Texas infrastructure resiliency fund is a special fund in the

1 state treasury outside the general revenue fund.

2 (b) The resiliency fund shall be administered by the board
3 in accordance with this subchapter.

4 (c) The board may invest, reinvest, and direct the
5 investment of any available money in the resiliency fund as
6 provided by law for the investment of money under Section 404.024,
7 Government Code.

8 Sec. 16.453. FLOODPLAIN MANAGEMENT ACCOUNT. (a) The
9 floodplain management account is an account of the resiliency fund.

10 (b) The account consists of:

11 (1) money deposited to the credit of the account under
12 Section 251.004, Insurance Code;

13 (2) money directly appropriated to the board; and

14 (3) money from gifts or grants from the United States
15 government, local or regional governments, private sources, or
16 other sources.

17 (c) The board may use the account to provide financing for:

18 (1) the board's functions under Section 16.316; or

19 (2) any other activities related to:

20 (A) the collection and analysis of flood-related
21 information;

22 (B) flood planning, protection, mitigation, or
23 adaptation;

24 (C) the provision of flood-related information
25 to the public through educational or outreach programs; or

26 (D) evaluating the response to and mitigation of
27 flood incidents affecting residential property, including

1 multi-family units, located in floodplains.

2 Sec. 16.454. HURRICANE HARVEY ACCOUNT. (a) The Hurricane
3 Harvey account is an account in the resiliency fund.

4 (b) The board may use the account only to provide financing
5 for flood projects related to Hurricane Harvey. Financing under
6 this section includes making a:

7 (1) grant, low-interest loan, or zero-interest loan to
8 an eligible political subdivision:

9 (A) for a flood project; or

10 (B) to provide matching funds to enable the
11 subdivision to participate in a federal program for a flood
12 project;

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

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

24 (c) The board shall establish a point system for
25 prioritizing flood projects for which money from the Hurricane
26 Harvey account is sought. The system must include a standard for
27 the board to apply in determining whether a flood project qualifies

1 for funding at the time the application for funding is filed with
2 the board.

3 (d) The board shall give the highest consideration in
4 awarding points to a flood project that will have a substantial
5 effect, including a flood project that:

6 (1) is recommended or approved by the director of the
7 Texas Division of Emergency Management or the successor in function
8 to that entity; and

9 (2) meets an emergency need in a county where the
10 governor has declared a state of disaster.

11 (e) After review and recommendation by the executive
12 administrator and with input from the director of the Texas
13 Division of Emergency Management or the successor in function to
14 that entity, the board may approve an application for financial
15 assistance under this section only if the board finds that:

16 (1) the application and assistance applied for meet
17 the requirements of this subchapter and board rules;

18 (2) the application demonstrates a sufficient level of
19 cooperation among applicable political subdivisions and includes
20 all of the political subdivisions substantially affected by the
21 flood project; and

22 (3) the taxes or other revenue, or both the taxes and
23 other revenue, pledged by the applicant, if applicable, will be
24 sufficient to meet all the obligations assumed by the applicant.

25 (f) Principal and interest payments on loans made under
26 Subsection (b)(2) may be deferred for not more than 10 years or
27 until construction of the flood project is completed, whichever is

1 earlier.

2 (g) Money from the account may be awarded to several
3 eligible political subdivisions for a single flood project.

4 (h) An eligible political subdivision that receives a grant
5 for a flood project also may receive a loan from the account.

6 (i) This section expires September 1, 2031. The remaining
7 balance of the account on that date is transferred to the economic
8 stabilization fund.

9 Sec. 16.455. FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) The
10 flood plan implementation account is an account in the resiliency
11 fund.

12 (b) The board may use the account only:

13 (1) to make a grant, low-interest loan, or
14 zero-interest loan to an eligible political subdivision:

15 (A) for a flood project; or

16 (B) to provide matching funds to enable the
17 subdivision to participate in a federal program for a flood
18 project;

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

24 (3) to make a grant to an eligible political
25 subdivision to provide matching funds to enable the subdivision to
26 participate in a federal program for the development of a hazard
27 mitigation plan, under guidelines issued by the Federal Emergency

1 Management Agency or the Texas Division of Emergency Management or
2 the successor in function to those entities.

3 (c) The board shall establish a point system for
4 prioritizing flood projects for which money from the flood plan
5 implementation account is sought. The system must include a
6 standard for the board to apply in determining whether a flood
7 project qualifies for funding at the time the application for
8 funding is filed with the board.

9 (d) The board shall give the highest consideration in
10 awarding points to a flood project that will have a substantial
11 effect, including a flood project that:

12 (1) is recommended or approved by the director of the
13 Texas Division of Emergency Management or the successor in function
14 to that entity;

15 (2) meets an emergency need in a county where the
16 governor has declared a state of disaster;

17 (3) is funded partially through federal matching
18 funds;

19 (4) includes a component that will increase water
20 supply; and

21 (5) contains any other factor the board determines is
22 relevant to the purposes of resiliency.

23 (e) After review and recommendation by the executive
24 administrator and with input from the director of the Texas
25 Division of Emergency Management or the successor in function to
26 that entity, the board may approve an application only if the board
27 finds that:

1 (1) the application and the assistance applied for
2 meet the requirements of this subchapter and board rules; and

3 (2) the application demonstrates a sufficient level of
4 cooperation among eligible political subdivisions and includes all
5 of the political subdivisions substantially affected by the flood
6 project.

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

11 (g) Money from the account may be awarded to several
12 eligible political subdivisions for a single flood project.

13 (h) An award issued as a grant may finance not more than 75
14 percent of the total cost of a flood project.

15 (i) An eligible political subdivision that receives a grant
16 for a flood project also may receive a loan from the account.

17 Sec. 16.456. FEDERAL MATCHING ACCOUNT. (a) The federal
18 matching account is an account in the resiliency fund.

19 (b) The board may use the account only to meet matching
20 requirements for projects funded partially by federal money,
21 including projects funded by the United States Army Corps of
22 Engineers.

23 Sec. 16.457. TEXAS INFRASTRUCTURE RESILIENCY FUND ADVISORY
24 COMMITTEE. (a) The Texas Infrastructure Resiliency Fund Advisory
25 Committee is composed of the seven members that serve on the State
26 Water Implementation Fund for Texas Advisory Committee described by
27 Section 15.438, with the co-presiding officers of that committee

1 1 serving as presiding officers of the advisory committee. The
2 director of the Texas Division of Emergency Management or the
3 successor in function to that entity serves as a nonvoting member of
4 the advisory committee, as an additional duty of the director's
5 office.

6 (b) The advisory committee may hold public hearings, formal
7 meetings, or work sessions. Either co-presiding officer of the
8 advisory committee may call a public hearing, formal meeting, or
9 work session of the advisory committee at any time. The advisory
10 committee may not take formal action at a public hearing, formal
11 meeting, or work session unless a quorum of the committee is
12 present.

13 (c) Except as otherwise provided by this subsection, a
14 member of the advisory committee is not entitled to receive
15 compensation for service on the committee or reimbursement for
16 expenses incurred in the performance of official duties as a member
17 of the committee. Service on the advisory committee by a member of
18 the senate or house of representatives is considered legislative
19 service for which the member is entitled to reimbursement and other
20 benefits in the same manner and to the same extent as for other
21 legislative service.

22 (d) The advisory committee may submit comments and
23 recommendations to the board regarding the use of money in the
24 resiliency fund and for use by the board in adopting rules.

25 (e) The advisory committee shall review the overall
26 operation, function, and structure of the resiliency fund at least
27 semiannually and may provide comments and recommendations to the

1 board on any matter.

2 (f) The advisory committee may adopt rules, procedures, and
3 policies as needed to administer this section and implement its
4 responsibilities.

5 (g) The advisory committee shall make recommendations to
6 the board regarding information on the resiliency fund to be posted
7 on the board's Internet website.

8 (h) The advisory committee may evaluate and may provide
9 comments or recommendations on the feasibility of the state owning,
10 constructing, operating, and maintaining flood projects, including
11 reservoirs and coastal barriers.

12 (i) The board shall provide an annual report to the advisory
13 committee on:

14 (1) the board's compliance with statewide annual goals
15 relating to historically underutilized businesses; and

16 (2) the participation level of historically
17 underutilized businesses in flood projects that receive money from
18 the resiliency fund.

19 (j) If the aggregate level of participation by historically
20 underutilized businesses in flood projects that receive money from
21 the resiliency fund does not meet statewide annual goals adopted
22 under Chapter 2161, Government Code, the advisory committee shall
23 make recommendations to the board to improve the participation
24 level.

25 (k) The board shall supply staff support to the advisory
26 committee.

27 (l) Chapter 2110, Government Code, does not apply to the

1 size, composition, or duration of the advisory committee.

2 Sec. 16.458. REPORT REQUIRED. (a) In this section, "state
3 agency" means:

4 (1) a department, commission, board, office, or other
5 agency in the executive branch of state government created by the
6 state constitution or a state statute; and

7 (2) a general academic teaching institution as defined
8 by Section 61.003, Education Code.

9 (b) A state agency that uses or disburses federal money for
10 flood research, planning, or mitigation projects shall submit a
11 report to the board on a quarterly basis.

12 (c) The report must include the following information about
13 federal money used or disbursed for flood research, planning, or
14 mitigation projects:

15 (1) the original total of federal money received;

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

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

20 Sec. 16.459. APPLICABLE LAW. Subchapter E, Chapter 17,
21 applies to financial assistance made available from the resiliency
22 fund, except that the board may execute contracts as necessary to
23 evidence grant agreements.

24 Sec. 16.460. TRANSPARENCY REQUIREMENTS. The board shall
25 post the following information on the board's Internet website
26 regarding the use of the resiliency fund and regularly update the
27 information posted:

- 1 (1) the progress made in developing flood projects
2 statewide;
- 3 (2) a description of each flood project that receives
4 money from the resiliency fund, including:
- 5 (A) the expected date of completion of the flood
6 project;
- 7 (B) the current status of the flood project;
- 8 (C) the proposed benefit of the flood project;
- 9 (D) the initial total cost estimate of the flood
10 project and variances to the initial cost estimate exceeding five
11 percent;
- 12 (E) a listing of the eligible political
13 subdivisions receiving money from the resiliency fund;
- 14 (F) a listing of each political subdivision
15 served by each flood project;
- 16 (G) an estimate of matching funds that will be
17 available for the flood project resulting from the use of the
18 resiliency fund; and
- 19 (H) the status of repayment of each loan provided
20 in connection with a flood project, including an assessment of the
21 risk of default based on a standard risk rating system;
- 22 (3) a description of the point system for prioritizing
23 flood projects established by the board under Sections 16.454 and
24 16.455 and the number of points awarded by the board for each flood
25 project;
- 26 (4) any nonconfidential information submitted to the
27 board as part of an application for funding under this subchapter

1 that is approved by the board;

2 (5) the administrative and operating expenses
3 incurred by the board in administering the resiliency fund; and

4 (6) any other information required by board rule.

5 Sec. 16.461. RULES. The board shall adopt rules necessary
6 to carry out this subchapter, including rules:

7 (1) that establish procedures for an application for
8 and for the award of financial assistance;

9 (2) that establish the prioritization system for flood
10 projects that receive money from the resiliency fund;

11 (3) for the repayment of a loan from the resiliency
12 fund; and

13 (4) for the administration of the resiliency fund.

14 SECTION 2. Section 16.3161, Water Code, is repealed.

15 SECTION 3. On the effective date of this Act, the Floodplain
16 Management Account No. 0330 is transferred to the Texas
17 infrastructure resiliency fund as an account of that fund and the
18 balance of the Floodplain Management Account No. 0330 is
19 transferred to the floodplain management account of the Texas
20 infrastructure resiliency fund.

21 SECTION 4. (a) Not later than the 90th day after the
22 effective date of this Act, the Texas Infrastructure Resiliency
23 Fund Advisory Committee shall submit recommendations to the Texas
24 Water Development Board on the rules to be adopted by the board
25 under Section 16.461, Water Code, as added by this Act.

26 (b) Not later than the 90th day after the date the Texas
27 Water Development Board receives the recommendations described by

1 Subsection (a) of this section, the board shall adopt rules under
2 Section 16.461, Water Code, as added by this Act.

3 SECTION 5. Contingent on legislation of the 86th
4 Legislature, Regular Session, 2019, that requires the creation of a
5 state flood plan passing and becoming law, on the date that the
6 Texas Water Development Board adopts the initial state flood plan
7 in accordance with that law:

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

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

12 Sec. 16.4551. FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) The
13 flood plan implementation account is an account in the resiliency
14 fund.

15 (b) The board may use the account only to provide financing
16 for projects included in the state flood plan.

17 (c) Money from the account may be awarded to several
18 eligible political subdivisions for a single flood project.

19 SECTION 6. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2019.