

By: Creighton

H.B. No. 3073

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the transfer of authority for dam safety and levee
3 management from the Texas Commission on Environmental Quality to
4 the division of emergency management in the office of the governor
5 and the transfer of authority for the National Flood Insurance
6 Program from the commission to the Texas Water Development Board.

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

8 SECTION 1. Section 5.013(a), Water Code, is amended to read
9 as follows:

10 (a) The commission has general jurisdiction over:

11 (1) water and water rights including the issuance of
12 water rights permits, water rights adjudication, cancellation of
13 water rights, and enforcement of water rights;

14 (2) continuing supervision over districts created
15 under Article III, Sections 52(b)(1) and (2), and Article XVI,
16 Section 59, of the Texas Constitution;

17 (3) the state's water quality program including
18 issuance of permits, enforcement of water quality rules, standards,
19 orders, and permits, and water quality planning;

20 (4) the determination of the feasibility of certain
21 federal projects;

22 (5) ~~[the adoption and enforcement of rules and~~
23 ~~performance of other acts relating to the safe construction,~~
24 ~~maintenance, and removal of dams,~~

1 ~~[(6)]~~ conduct of the state's hazardous spill
2 prevention and control program;

3 (6) ~~[(7)]~~ the administration of the state's program
4 relating to inactive hazardous substance, pollutant, and
5 contaminant disposal facilities;

6 (7) ~~[(8)]~~ the administration of a portion of the
7 state's injection well program;

8 (8) ~~[(9)]~~ the administration of the state's programs
9 involving underground water and water wells and drilled and mined
10 shafts;

11 (9) ~~[(10)]~~ the state's responsibilities relating to
12 regional waste disposal;

13 (10) ~~[(11)]~~ the responsibilities assigned to the
14 commission by Chapters 361, 363, 382, and 401, Health and Safety
15 Code;

16 (11) ~~[(12) the administration of the national flood
17 insurance program,~~

18 ~~[(13)]~~ administration of the state's water rate
19 program under Chapter 13 ~~[of this code]~~; and

20 (12) ~~[(14)]~~ any other areas assigned to the commission
21 by this code and other laws of this state.

22 SECTION 2. Sections 11.0842(a) and (b), Water Code, are
23 amended to read as follows:

24 (a) If a person violates this chapter, a rule or order
25 adopted under this chapter ~~[or Section 16.236 of this code]~~, or a
26 permit, certified filing, or certificate of adjudication issued
27 under this chapter, the commission may assess an administrative

1 penalty against that person as provided by this section.

2 (b) The penalty may be in an amount not to exceed \$5,000 for
3 each day the person is in violation of this chapter, the rule or
4 order adopted under this chapter, or the permit, certified filing,
5 or certificate of adjudication issued under this chapter. [~~The
6 penalty may be in an amount not to exceed \$1,000 for each day the
7 person is in violation of the rule or order adopted under Section
8 16.236 of this code.~~] Each day a violation continues may be
9 considered a separate violation for purposes of penalty assessment.

10 SECTION 3. Section 11.126(c), Water Code, is amended to
11 read as follows:

12 (c) If the application proposes construction of a dam
13 greater than six feet in height either for diversion or storage, the
14 executive director may also require filing a copy of all plans and
15 specifications and a copy of the engineer's field notes of any
16 survey of the lake or reservoir. No work on the project shall
17 proceed until the applicant submits plans to the executive director
18 that have been approved by the division of emergency management in
19 the office of the governor [~~approval of the plans is obtained from~~
20 ~~the executive director~~].

21 SECTION 4. Chapter 418, Government Code, is amended by
22 adding Subchapter I with a heading to read as follows:

23 SUBCHAPTER I. DAM SAFETY AND LEVEE MANAGEMENT

24 SECTION 5. Section 12.052, Water Code, is transferred to
25 Subchapter I, Chapter 418, Government Code, as added by this Act,
26 redesignated as Section 418.201, Government Code, and amended to
27 read as follows:

1 Sec. 418.201 [~~12.052~~]. DAM SAFETY. (a) The division
2 [~~commission~~] shall make and enforce rules and orders and shall
3 perform all other acts necessary to provide for the safe
4 construction, maintenance, repair, and removal of dams located in
5 this state.

6 (b) Rules and orders made by the division [~~commission~~] shall
7 be made after proper notice and hearing as provided in the rules of
8 the division [~~commission~~].

9 (c) If the owner of a dam that is required to be constructed,
10 reconstructed, repaired, or removed in order to comply with the
11 rules and orders promulgated under Subsection (a) [~~of this section~~]
12 wilfully fails or refuses to comply within the 30-day period
13 following the date of the division's [~~commission's~~] final,
14 nonappealable order to do so or if a person wilfully fails to comply
15 with any rule or other order issued by the division [~~commission~~]
16 under this section within the 30-day period following the effective
17 date of the order, the owner or person [~~he~~] is liable to a penalty of
18 not more than \$5,000 a day for each day the owner or person [~~he~~]
19 continues to violate this section. The state may recover the
20 penalty by suit brought for that purpose in the district court of
21 Travis County.

22 (d) If the division [~~commission~~] determines that the
23 existing condition of the dam is creating or will cause extensive or
24 severe property damage or economic loss to others or is posing an
25 immediate and serious threat to human life or health and that other
26 procedures available to the division [~~commission~~] to remedy or
27 prevent the occurrence of the situation will result in unreasonable

1 delay, the division [~~commission~~] may issue an emergency order,
2 either mandatory or prohibitory in nature, directing the owner of a
3 dam to repair, modify, maintain, dewater, or remove the dam which
4 the division [~~commission~~] determines is unsafe. The emergency
5 order may be issued without notice to the dam owner or with notice
6 the division [~~commission~~] considers practicable under the
7 circumstances. The notice does not have to comply with Chapter
8 2001[~~, Government Code~~].

9 (e) If the division [~~commission~~] issues an emergency order
10 under authority of this section without notice to the dam owner, the
11 division [~~commission~~] shall fix a time and place for a hearing which
12 shall be held as soon as practicable to affirm, modify, or set aside
13 the emergency order. The notice does not have to comply with
14 Chapter 2001[~~, Government Code~~]. If the nature of the division's
15 [~~commission's~~] action requires further proceedings, those
16 proceedings shall be conducted as appropriate under Chapter 2001
17 [~~the Administrative Procedure and Texas Register Act, as amended~~
18 (~~Article 6252-13a, Vernon's Texas Civil Statutes~~)].

19 (f) Nothing in this section or in rules or orders made by the
20 division [~~commission~~] shall be construed to relieve an owner or
21 operator of a dam or reservoir of the legal duties, obligations, or
22 liabilities incident to ownership or operation.

23 SECTION 6. Section 11.144, Water Code, is transferred to
24 Subchapter I, Chapter 418, Government Code, as added by this Act,
25 redesignated as Section 418.202, Government Code, and amended to
26 read as follows:

27 Sec. 418.202 [~~11.144~~]. APPROVAL FOR ALTERATIONS. All

1 holders of permits and certified filings issued under Chapter 11,
2 Water Code, shall obtain the approval of the division [~~commission~~]
3 before making any alterations, enlargements, extensions, or other
4 changes to any reservoir, dam, main canal, or diversion work on
5 which a permit has been granted or a certified filing recorded. A
6 detailed statement and plans for alterations or changes shall be
7 approved by the division and filed with the Texas Commission on
8 Environmental Quality [~~commission and approved by the executive~~
9 ~~director~~] before the alterations or changes are made. This section
10 does not apply to the ordinary maintenance or emergency repair of
11 the facility.

12 SECTION 7. Sections 16.231, 16.232, 16.233, 16.234, 16.235,
13 16.236, and 16.237, Water Code, are transferred to Subchapter I,
14 Chapter 418, Government Code, as added by this Act, redesignated as
15 Sections 418.203, 418.204, 418.205, 418.206, 418.207, 418.208, and
16 418.209, Government Code, respectively, and amended to read as
17 follows:

18 Sec. 418.203 [~~16.231~~]. DESIGN OF IMPROVEMENTS OR SYSTEM OF
19 IMPROVEMENTS. Insofar as possible, improvements necessary to
20 reclaim overflowed land, swampland, and other land in this state
21 that is not suitable for use because of temporary or permanent
22 excessive accumulation of water on or contiguous to the land for
23 agricultural or other use shall be designed with primary
24 consideration to the topographic and hydrographic conditions and in
25 such a manner that each division of a project shall be a complete,
26 united project forming a coordinate part of an ultimately finished
27 series of projects so constituted that the successful operation of

1 each united project shall coordinate with the successful operation
2 of other projects within the same hydraulic influence.

3 Sec. 418.204 [~~16.232~~]. LOCATION OF PROJECTS; REPORTS. The
4 division [~~executive director~~] shall maintain files reflecting
5 engineering reports, studies, drawings, and staff findings and
6 recommendations pertaining to the location and effect of
7 reclamation projects.

8 Sec. 418.205 [~~16.233~~]. COOPERATION WITH OTHER AGENCIES. In
9 performing functions that are a part of duties assigned to the
10 division [~~commission~~] or the Texas Water Development Board [~~board~~]
11 by this subchapter, the Water Code, [~~code~~] or other law, the
12 division [~~executive director, with the approval of the commission,~~]
13 or the executive administrator of the Texas Water Development
14 Board, with the approval of the board, may confer with federal and
15 state agencies and with political subdivisions and may execute
16 cooperative agreements with them. The division [~~executive~~
17 ~~director~~] or executive administrator may cancel any such agreement
18 on 10 days notice to the other party.

19 Sec. 418.206 [~~16.234~~]. ADVICE TO DISTRICTS. The division
20 [~~executive director~~] shall confer with districts requesting
21 technical advice on the adequate execution of proposed levee and
22 drainage improvements.

23 Sec. 418.207 [~~16.235~~]. DISTRICTS TO FILE INFORMATION WITH
24 DIVISION [~~COMMISSION~~]. Immediately before having its bonds
25 approved by the attorney general, each drainage district and levee
26 improvement district shall file with the division [~~commission~~], on
27 forms furnished by the division [~~commission~~], a complete record

1 showing each step in the organization of the district, the amount of
2 bonds to be issued, and a description of the area and boundaries of
3 the district, accompanied by plans, maps, and profiles of
4 improvements and the district engineer's estimates and reports on
5 them.

6 Sec. 418.208 [~~16.236~~]. CONSTRUCTION OF LEVEE WITHOUT
7 APPROVAL OF PLANS; LEVEE SAFETY. (a) No person may construct,
8 attempt to construct, cause to be constructed, maintain, or cause
9 to be maintained any levee or other such improvement on, along, or
10 near any stream of this state that is subject to floods, freshets,
11 or overflows so as to control, regulate, or otherwise change the
12 floodwater of the stream without first obtaining approval of the
13 plans by the division [~~commission~~].

14 (b) The division [~~commission~~] shall make and enforce rules
15 and orders and shall perform all other acts necessary to provide for
16 the safe construction, maintenance, repair, and removal of levees
17 located in this state.

18 (c) If the owner of a levee that is required to be
19 constructed, reconstructed, repaired, or removed to comply with the
20 rules and orders promulgated under this section wilfully fails or
21 refuses to comply within the 30-day period following the date of an
22 order of the division [~~commission~~] requiring such action or
23 compliance or if a person wilfully fails to comply with any rule or
24 order issued by the division [~~commission~~] under this section within
25 the 30-day period following the effective date of the order, the
26 person is liable for a penalty of not more than \$1,000 a day for each
27 day the person continues to violate this section. The state may

1 recover the penalty by suit brought for that purpose in a district
2 court of Travis County.

3 (d) If the division [~~commission~~] determines that the
4 existing condition of a levee is creating or will cause extensive or
5 severe property damage or economic loss to others or is posing an
6 immediate and serious threat to human life or health and that other
7 procedures available to the division [~~commission~~] to remedy or
8 prevent such property damage or economic loss will result in
9 unreasonable delay, the division [~~commission~~] may issue an
10 emergency order, either mandatory or prohibitory in nature,
11 directing the owner of the levee to repair, modify, maintain,
12 dewater, or remove the levee which the division [~~commission~~]
13 determines is unsafe. The emergency order may be issued without
14 notice to the levee owner or with notice the division [~~commission~~]
15 considers practicable under the circumstances.

16 (e) If the division [~~commission~~] issues an emergency order
17 under authority of this section without notice to the levee owner,
18 the division [~~commission~~] shall fix a time and place for a hearing,
19 to be held as soon as practicable but not later than 20 days after
20 the emergency order is authorized, to affirm, modify, or set aside
21 the emergency order. If the nature of the division's [~~commission's~~]
22 action requires further proceedings, those proceedings shall be
23 conducted, as appropriate, under Chapter 2001[~~, Government Code~~].

24 (f) Nothing in this section or in rules or orders adopted by
25 the division [~~commission~~] shall be construed to relieve an owner or
26 operator of a levee of the legal duties, obligations, or
27 liabilities incident to ownership or operation.

1 (g) Any person who violates any provision of Subsection (a)
2 [~~of this section~~] is guilty of a Class C misdemeanor and upon
3 conviction is punishable by a fine of not more than \$1,000. A
4 separate offense is committed each day a structure constructed in
5 violation of this section is maintained.

6 (h) Subsection (a) [~~of this section~~] does not apply to:

7 (1) any dam, reservoir, or canal system associated
8 with a water right issued or recognized by the Texas Commission on
9 Environmental Quality [~~commission~~];

10 (2) dams authorized by Section 11.142, Water Code [~~of~~
11 ~~this code~~];

12 (3) a levee or other improvement within the corporate
13 limits of a city or town provided: (a) plans for the construction or
14 maintenance or both must be approved by the city or town as a
15 condition precedent to starting the project and (b) the city or town
16 requires that such plans be in substantial compliance with rules
17 and standards adopted by the division [~~commission~~];

18 (4) a levee or other improvement within the boundaries
19 of any political subdivision which has qualified for the National
20 Flood Insurance Program as authorized by the National Flood
21 Insurance Act of 1968 (Title 42, U.S.C., Sections 4001-4127)
22 provided: (a) plans for the construction or maintenance or both
23 must be approved by the political subdivision which is
24 participating in the national flood insurance program as a
25 condition precedent to starting the project and (b) the political
26 subdivision requires that such plans be in substantial compliance
27 with rules and standards adopted by the division [~~commission~~];

1 (5) projects implementing soil and water conservation
2 practices set forth in a conservation plan with a landowner or
3 operator and approved by the governing board of a soil and water
4 conservation district organized under Chapter 201, Agriculture
5 Code [~~the State Soil Conservation Law, as amended (Article 165a-4,~~
6 ~~Vernon's Texas Civil Statutes)~~], provided that the governing board
7 finds the practices do not significantly affect stream flooding
8 conditions on, along, or near a state stream; or

9 (6) any levee or other improvement constructed outside
10 of the 100-year floodway. For the purposes of this section,
11 "100-year floodway" is defined as the channel of a stream and the
12 adjacent land areas that must be reserved in order to discharge the
13 100-year flood without cumulatively increasing the water surface
14 elevation more than one foot above the 100-year flood elevation
15 prior to encroachment.

16 (i) On projects located within the corporate limits of a
17 city or town or within the boundaries of any political subdivision
18 which are exempt from the provisions of Subsection (a) [~~of this~~
19 ~~section~~] by [~~Subdivision (3) or (4) of~~] Subsection (h)(3) or (4)
20 [~~(h) of this section~~], any person whose property is located outside
21 of the corporate limits of such city or town or of the boundaries of
22 such a political subdivision and whose property is affected or
23 potentially affected by the effect of the project on the
24 floodwaters of the stream may appeal the decision of such political
25 subdivision. The appeal shall be in writing and shall specify the
26 grounds therefor and a copy shall be sent by certified mail to the
27 project applicant and to the city or town or such political

1 subdivision. The timely filing of such an appeal with the division
2 [~~executive director~~] suspends the decision of the city or town or
3 political subdivision until a final decision is rendered by the
4 division [~~commission~~]. The division [~~executive director~~] shall
5 review the complaint and investigate the facts surrounding the
6 nature of the complaint. If the division [~~executive director~~]
7 finds that the complaint is frivolous or nonmeritorious or made
8 solely for purposes of harassment or delay, the division [~~then he~~]
9 shall dismiss the appeal. Otherwise, the division [~~executive~~
10 ~~director shall refer the appeal to the commission which~~] shall,
11 after due notice, hold a hearing to determine whether the project
12 should be approved using the standards established by the division
13 [~~commission~~] and shall hear such appeal de novo under the
14 procedural rules established by the division [~~commission~~] for other
15 reclamation projects.

16 Sec. 418.209 [~~16.237~~]. ADMINISTRATIVE PENALTY; CIVIL
17 REMEDY. (a) If a person violates Section 418.202 or a division
18 [~~commission~~] rule or order adopted under Section 418.208 [~~16.236 of~~
19 ~~this code~~], the division [~~commission~~] may assess an administrative
20 penalty against that person in the same manner that the Texas
21 Commission on Environmental Quality may assess an administrative
22 penalty as provided by Section 11.0842, Water Code, except that the
23 amount of the penalty for a violation of a division rule or order
24 adopted under Section 418.208 may not exceed \$1,000 for each day the
25 person is in violation of the rule or order [~~of this code~~].

26 (b) Nothing in this subchapter [~~chapter~~] affects the right
27 of any private corporation, individual, or political subdivision

1 that has a justiciable interest in pursuing any available
2 common-law remedy to enforce a right or to prevent or seek redress
3 or compensation for the violation of a right or otherwise redress an
4 injury.

5 SECTION 8. Sections 16.314, 16.315, 16.316, 16.317, and
6 16.318, Water Code, are amended to read as follows:

7 Sec. 16.314. COOPERATION OF BOARD [~~COMMISSION~~]. In
8 recognition of the necessity for a coordinated effort at all levels
9 of government, the board [~~commission~~] shall cooperate with the
10 Federal Emergency Management Agency in the planning and carrying
11 out of state participation in the National Flood Insurance Program;
12 however, the responsibility for qualifying for the National Flood
13 Insurance Program shall belong to any interested political
14 subdivision, whether presently in existence or created in the
15 future.

16 Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH
17 FEDERAL REQUIREMENTS. All political subdivisions are hereby
18 authorized to take all necessary and reasonable actions to comply
19 with the requirements and criteria of the National Flood Insurance
20 Program, including but not limited to:

21 (1) making appropriate land use adjustments to
22 constrict the development of land which is exposed to flood damage
23 and minimize damage caused by flood losses;

24 (2) guiding the development of proposed future
25 construction, where practicable, away from a location which is
26 threatened by flood hazards;

27 (3) assisting in minimizing damage caused by floods;

1 (4) authorizing and engaging in continuing studies of
2 flood hazards in order to facilitate a constant reappraisal of the
3 flood insurance program and its effect on land use requirements;

4 (5) engaging in floodplain management and adopting and
5 enforcing permanent land use and control measures consistent with
6 the criteria established under the National Flood Insurance Act;

7 (6) declaring property, when such is the case, to be in
8 violation of local laws, regulations, or ordinances which are
9 intended to discourage or otherwise restrict land development or
10 occupancy in flood-prone areas and notifying the director, or
11 whomever the director designates, of such property;

12 (7) consulting with, giving information to, and
13 entering into agreements with the Federal Emergency Management
14 Agency for the purpose of:

15 (A) identifying and publishing information with
16 respect to all flood areas, including coastal areas; and

17 (B) establishing flood-risk zones in all such
18 areas and making estimates with respect to the rates of probable
19 flood-caused loss for the various flood-risk zones for each of
20 these areas;

21 (8) cooperating with the director's studies and
22 investigations with respect to the adequacy of local measures in
23 flood-prone areas as to land management and use, flood control,
24 flood zoning, and flood damage prevention;

25 (9) taking steps, using regional, watershed, and
26 multi-objective approaches, to improve the long-range management
27 and use of flood-prone areas;

1 (10) purchasing, leasing, and receiving property from
2 the director when such property is owned by the federal government
3 and lies within the boundaries of the political subdivision
4 pursuant to agreements with the Federal Emergency Management Agency
5 or other appropriate legal representative of the United States
6 Government;

7 (11) requesting aid pursuant to the entire
8 authorization from the board [~~commission~~];

9 (12) satisfying criteria adopted and promulgated by
10 the board [~~commission~~] pursuant to the National Flood Insurance
11 Program;

12 (13) adopting permanent land use and control measures
13 with enforcement provisions which are consistent with the criteria
14 for land management and use adopted by the director;

15 (14) adopting more comprehensive floodplain
16 management rules that the political subdivision determines are
17 necessary for planning and appropriate to protect public health and
18 safety;

19 (15) participating in floodplain management and
20 mitigation initiatives such as the National Flood Insurance
21 Program's Community Rating System, Project Impact, or other
22 initiatives developed by federal, state, or local government; and

23 (16) collecting reasonable fees to cover the cost of
24 administering a local floodplain management program.

25 Sec. 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL
26 PROGRAMS BY BOARD [~~COMMISSION~~]. (a) The board [~~commission~~] shall
27 aid, advise, and coordinate the efforts of present and future

1 political subdivisions endeavoring to qualify for participation in
2 the National Flood Insurance Program.

3 (b) Pursuant to the National Flood Insurance Program and
4 state and local efforts complementing the program, the board
5 [~~commission~~] shall aid, advise, and cooperate with political
6 subdivisions, the Texas Department of Insurance, and the Federal
7 Emergency Management Agency when aid, advice, and cooperation are
8 requested or deemed advisable by the board [~~commission~~].

9 (c) The aforementioned aid may include but is not
10 necessarily limited to:

11 (1) coordinating local, state, and federal programs
12 relating to floods, flood losses, and floodplain management;

13 (2) evaluating the present structure of all federal,
14 state, and political subdivision flood control programs within or
15 adjacent to the state, including an assessment of the extent to
16 which public and private floodplain management activities have been
17 instituted;

18 (3) carrying out studies with respect to the adequacy
19 of present public and private measures, laws, regulations, and
20 ordinances in flood-prone areas as to land management and use,
21 flood control, flood zoning, and flood damage prevention;

22 (4) evaluating all available engineering, hydrologic,
23 and geologic data relevant to flood-prone areas and flood control
24 in those areas; and

25 (5) carrying out floodplain studies and mapping
26 programs of floodplains, flood-prone areas, and flood-risk zones.

27 (d) On the basis of such studies and evaluations, the board

1 ~~[commission]~~, to the extent of its capabilities, shall periodically
2 identify and publish information and maps with respect to all
3 floodplain areas, including the state's coastal area, which have
4 flood hazards, and where possible aid the federal government in
5 identifying and establishing flood-risk zones in all such areas.

6 Sec. 16.317. COOPERATION OF TEXAS DEPARTMENT OF INSURANCE.
7 Pursuant to the National Flood Insurance Program, the Texas
8 Department of Insurance shall aid, advise, and cooperate with
9 political subdivisions, the board ~~[commission]~~, and the Federal
10 Emergency Management Agency when such aid, advice, and cooperation
11 are requested or deemed advisable by the Texas Department of
12 Insurance.

13 Sec. 16.318. RULES. Political subdivisions which qualify
14 for the National Flood Insurance Program, the Texas Department of
15 Insurance, and the board ~~[commission]~~ may adopt and promulgate
16 reasonable rules which are necessary for the orderly effectuation
17 of the respective authorizations herein.

18 SECTION 9. The heading to Subchapter G, Chapter 16, Water
19 Code, is repealed.

20 SECTION 10. (a) On January 1, 2008, the following are
21 transferred from the Texas Commission on Environmental Quality to
22 the division of emergency management in the office of the governor:

23 (1) the powers, duties, functions, programs, and
24 activities of the Texas Commission on Environmental Quality
25 relating to the safe construction, maintenance, and removal of
26 dams;

27 (2) all obligations and contracts of the Texas

1 Commission on Environmental Quality relating to a power, duty,
2 function, program, or activity transferred under this subsection;

3 (3) all property and records in the custody of the
4 Texas Commission on Environmental Quality relating to a power,
5 duty, function, program, or activity transferred under this
6 subsection and all funds appropriated by the legislature for that
7 power, duty, function, program, or activity; and

8 (4) all personnel of the Texas Commission on
9 Environmental Quality whose functions predominantly involve
10 powers, duties, obligations, functions, and activities related to
11 the safe construction, maintenance, and removal of dams.

12 (b) A rule or form adopted by the Texas Commission on
13 Environmental Quality relating to a power, duty, function, program,
14 or activity transferred under Subsection (a) of this section is a
15 rule or form of the division of emergency management in the office
16 of the governor and remains in effect until altered by the division.

17 (c) A reference in law to the Texas Commission on
18 Environmental Quality relating to a power, duty, function, program,
19 or activity transferred under Subsection (a) of this section means
20 the division of emergency management in the office of the governor.

21 SECTION 11. The Texas Commission on Environmental Quality
22 and the division of emergency management in the office of the
23 governor shall enter into a memorandum of understanding that:

24 (1) identifies in detail the applicable powers and
25 duties that are transferred to the division of emergency management
26 in the office of the governor by this Act; and

27 (2) establishes a plan for the identification and

1 transfer of the records, personnel, property, and unspent
2 appropriations of the Texas Commission on Environmental Quality
3 that are used for purposes of the commission's powers and duties
4 related to the safe construction, maintenance, and removal of dams.

5 SECTION 12. (a) On January 1, 2008, the following are
6 transferred from the Texas Commission on Environmental Quality to
7 the Texas Water Development Board:

8 (1) the powers, duties, functions, programs, and
9 activities of the Texas Commission on Environmental Quality
10 relating to the administration of the National Flood Insurance
11 Program;

12 (2) all obligations and contracts of the Texas
13 Commission on Environmental Quality relating to a power, duty,
14 function, program, or activity transferred under this subsection;

15 (3) all property and records in the custody of the
16 Texas Commission on Environmental Quality relating to a power,
17 duty, function, program, or activity transferred under this
18 subsection and all funds appropriated by the legislature for that
19 power, duty, function, program, or activity; and

20 (4) all personnel of the Texas Commission on
21 Environmental Quality whose functions predominantly involve
22 powers, duties, obligations, functions, and activities related to
23 the administration of the National Flood Insurance Program.

24 (b) A rule or form adopted by the Texas Commission on
25 Environmental Quality relating to a power, duty, function, program,
26 or activity transferred under Subsection (a) of this section is a
27 rule or form of the Texas Water Development Board and remains in

1 effect until altered by the board.

2 (c) A reference in law to the Texas Commission on
3 Environmental Quality relating to a power, duty, function, program,
4 or activity transferred under Subsection (a) of this section means
5 the Texas Water Development Board.

6 SECTION 13. The Texas Commission on Environmental Quality
7 and the Texas Water Development Board shall enter into a memorandum
8 of understanding that:

9 (1) identifies in detail the applicable powers and
10 duties that are transferred to the Texas Water Development Board by
11 this Act; and

12 (2) establishes a plan for the identification and
13 transfer of the records, personnel, property, and unspent
14 appropriations of the Texas Commission on Environmental Quality
15 that are used for purposes of the commission's powers and duties
16 related to the administration of the National Flood Insurance
17 Program.

18 SECTION 14. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2007.