

AN ACT

relating to the transfer of responsibility for the National Flood Insurance Program from the Texas Commission on Environmental Quality to the Texas Water Development Board and the administration and funding of the program and to the creation of a center to study elevation and related data; providing for the imposition of penalties.

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

SECTION 1. Section 251.004, Insurance Code, is amended to read as follows:

Sec. 251.004. DEPOSIT OF MAINTENANCE TAXES. (a) Except as provided by Subsection (b), maintenance ~~[Maintenance]~~ taxes collected under this subtitle shall be deposited in the general revenue fund and reallocated to the Texas Department of Insurance operating account.

(b) Each state fiscal year, the comptroller shall reallocate to the floodplain management account established under Section 16.3161, Water Code, the first \$3.05 million of the maintenance taxes collected under Chapter 252 and deposited in the general revenue fund.

SECTION 2. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of

1 water rights permits, water rights adjudication, cancellation of  
2 water rights, and enforcement of water rights;

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

6 (3) the state's water quality program including  
7 issuance of permits, enforcement of water quality rules, standards,  
8 orders, and permits, and water quality planning;

9 (4) the determination of the feasibility of certain  
10 federal projects;

11 (5) the adoption and enforcement of rules and  
12 performance of other acts relating to the safe construction,  
13 maintenance, and removal of dams;

14 (6) conduct of the state's hazardous spill prevention  
15 and control program;

16 (7) the administration of the state's program relating  
17 to inactive hazardous substance, pollutant, and contaminant  
18 disposal facilities;

19 (8) the administration of a portion of the state's  
20 injection well program;

21 (9) the administration of the state's programs  
22 involving underground water and water wells and drilled and mined  
23 shafts;

24 (10) the state's responsibilities relating to regional  
25 waste disposal;

26 (11) the responsibilities assigned to the commission  
27 by Chapters 361, 363, 382, and 401, Health and Safety Code;

(12) ~~[the administration of the national flood insurance program;~~

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

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

SECTION 3. Subsection (a), Section 6.012, Water Code, is amended to read as follows:

(a) The board has general jurisdiction over:

(1) the development and implementation of a statewide water plan;

(2) the administration of the state's various water assistance and financing programs including those created by the constitution; ~~and~~

(3) the administration of the National Flood Insurance Program; and

(4) other areas specifically assigned to the board by this code or other law.

SECTION 4. Section 16.314, Water Code, is amended to read as follows:

Sec. 16.314. COOPERATION OF BOARD ~~[COMMISSION]~~. In recognition of the necessity for a coordinated effort at all levels of government, the board ~~[commission]~~ shall cooperate with the Federal Emergency Management Agency in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political

1 subdivision, whether presently in existence or created in the  
2 future.

3 SECTION 5. Section 16.315, Water Code, is amended to read as  
4 follows:

5 Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH  
6 FEDERAL REQUIREMENTS. All political subdivisions are hereby  
7 authorized to take all necessary and reasonable actions that are  
8 not less stringent than ~~[to comply with]~~ the requirements and  
9 criteria of the National Flood Insurance Program, including but not  
10 limited to:

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

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

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

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

21 (5) engaging in floodplain management, ~~[and]~~ adopting  
22 and enforcing permanent land use and control measures that are not  
23 less stringent than those ~~[consistent with the criteria]~~  
24 established under the National Flood Insurance Act, and providing  
25 for the imposition of penalties on landowners who violate this  
26 subchapter or rules adopted or orders issued under this subchapter;

27 (6) declaring property, when such is the case, to be in

1 violation of local laws, regulations, or ordinances which are  
2 intended to discourage or otherwise restrict land development or  
3 occupancy in flood-prone areas and notifying the director, or  
4 whomever the director designates, of such property;

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

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

10 (B) establishing flood-risk zones in all such  
11 areas and making estimates with respect to the rates of probable  
12 flood-caused loss for the various flood-risk zones for each of  
13 these areas;

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

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

21 (10) purchasing, leasing, and receiving property from  
22 the director when such property is owned by the federal government  
23 and lies within the boundaries of the political subdivision  
24 pursuant to agreements with the Federal Emergency Management Agency  
25 or other appropriate legal representative of the United States  
26 Government;

27 (11) requesting aid pursuant to the entire

1 authorization from the board [~~commission~~];

2 (12) satisfying criteria adopted and promulgated by  
3 the board [~~commission~~] pursuant to the National Flood Insurance  
4 Program;

5 (13) adopting permanent land use and control measures  
6 with enforcement provisions that are not less stringent than [~~which~~  
7 ~~are consistent with~~] the criteria for land management and use  
8 adopted by the director;

9 (14) adopting more comprehensive floodplain  
10 management rules that the political subdivision determines are  
11 necessary for planning and appropriate to protect public health and  
12 safety;

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

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

19 SECTION 6. Section 16.316, Water Code, is amended to read as  
20 follows:

21 Sec. 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL  
22 PROGRAMS BY BOARD [~~COMMISSION~~]. (a) The board [~~commission~~] shall  
23 aid, advise, and coordinate the efforts of present and future  
24 political subdivisions endeavoring to qualify for participation in  
25 the National Flood Insurance Program.

26 (b) Pursuant to the National Flood Insurance Program and  
27 state and local efforts complementing the program, the board

1 ~~[commission]~~ shall aid, advise, and cooperate with political  
2 subdivisions, the Texas Department of Insurance, and the Federal  
3 Emergency Management Agency when aid, advice, and cooperation are  
4 requested or deemed advisable by the board ~~[commission]~~.

5 (c) The aforementioned aid may include but is not  
6 necessarily limited to:

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

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

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

18 (4) evaluating all available engineering, hydrologic,  
19 and geologic data relevant to flood-prone areas and flood control  
20 in those areas; ~~[and]~~

21 (5) carrying out floodplain studies and mapping  
22 programs of floodplains, flood-prone areas, and flood-risk zones;

23 (6) encouraging the Federal Emergency Management  
24 Agency to evaluate flood-prone areas by river basin and river  
25 system;

26 (7) coordinating the use of federal, state, and local  
27 grant money;

1           (8) making floodplain maps and floodplain information  
2 accessible to the public, including in an electronic format through  
3 the board's Internet website; and

4           (9) maintaining at least one staff member in each of  
5 the board's field offices to encourage participation in the  
6 National Flood Insurance Program by performing education and  
7 outreach and coordinating the efforts of political subdivisions.

8           (d) On the basis of such studies and evaluations, the board  
9 [commission], to the extent of its capabilities, shall periodically  
10 identify and publish information and maps with respect to all  
11 floodplain areas, including the state's coastal area, which have  
12 flood hazards, and where possible aid the federal government in  
13 identifying and establishing flood-risk zones in all such areas.

14           SECTION 7. Subchapter I, Chapter 16, Water Code, is amended  
15 by adding Section 16.3161 to read as follows:

16           Sec. 16.3161. FLOODPLAIN MANAGEMENT ACCOUNT. (a) The  
17 floodplain management account is a special fund in the state  
18 treasury outside the general revenue fund. The fund is composed of:

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

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

22                   (3) money from gifts or grants from the United States  
23 government, local or regional governments, private sources, or  
24 other sources.

25           (b) The account shall be administered by the board in  
26 accordance with this section.

27           (c) The board may use the account to fund the performance of

1 the board's functions under Section 16.316.

2 (d) The board may invest, reinvest, and direct the  
3 investment of any available money in the account as provided by law  
4 for the investment of money under Section 404.024, Government Code.

5 SECTION 8. Section 16.317, Water Code, is amended to read as  
6 follows:

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

14 SECTION 9. Section 16.318, Water Code, is amended to read as  
15 follows:

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

21 SECTION 9A. Section 16.319, Water Code, is amended to read  
22 as follows:

23 Sec. 16.319. QUALIFICATION. Political subdivisions  
24 wishing to qualify under the National Flood Insurance Program shall  
25 have the authority to do so by complying with the directions of the  
26 Federal Emergency Management Agency and by:

27 (1) evidencing to the director a positive interest in

1   securing flood insurance coverage under the National Flood  
2   Insurance Program; and

3           (2)   giving to the director satisfactory assurance that  
4   measures will have been adopted for the political subdivision that  
5   ~~[which measures]~~ will be not less stringent than ~~[consistent with]~~  
6   the comprehensive criteria for land management and use developed by  
7   the Federal Emergency Management Agency.

8           SECTION 10.   (a)   Not later than January 1, 2008:

9           (1)   all   powers,   duties,   obligations,   rights,  
10   contracts,   leases,   records,   assets,   property,   funds,   and  
11   appropriations of the Texas Commission on Environmental Quality  
12   that relate primarily to the administration of the National Flood  
13   Insurance Program are transferred to the Texas Water Development  
14   Board;

15          (2)   all   rules,   policies,   forms,   procedures,   and  
16   decisions of the Texas Commission on Environmental Quality that  
17   relate primarily to the administration of the National Flood  
18   Insurance Program are continued in effect as rules, policies,  
19   forms, procedures, and decisions of the Texas Water Development  
20   Board, until superseded by a rule or other appropriate action of the  
21   Texas Water Development Board; and

22          (3)   any investigation, complaint, action, contested  
23   case, or other proceeding involving the Texas Commission on  
24   Environmental Quality that relates primarily to the administration  
25   of the National Flood Insurance Program is transferred without  
26   change in status to the Texas Water Development Board, and the Texas  
27   Water Development Board assumes, without a change in status, the

1 position of the Texas Commission on Environmental Quality in any  
2 investigation, complaint, action, contested case, or other  
3 proceeding that relates primarily to the administration of the  
4 National Flood Insurance Program involving the Texas Commission on  
5 Environmental Quality.

6 (b) The transfer of the powers and duties of the Texas  
7 Commission on Environmental Quality that relate primarily to the  
8 administration of the National Flood Insurance Program to the Texas  
9 Water Development Board does not affect the validity of a right,  
10 privilege, or obligation accrued, a contract or acquisition made,  
11 any liability incurred, a permit or license issued, a penalty,  
12 forfeiture, or punishment assessed, a rule adopted, a proceeding,  
13 investigation, or remedy begun, a decision made, or other action  
14 taken by or in connection with the Texas Commission on  
15 Environmental Quality.

16 SECTION 11. Sections 16.315 and 16.319, Water Code, are  
17 amended to read as follows:

18 Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH  
19 FEDERAL REQUIREMENTS. All political subdivisions are hereby  
20 authorized to take all necessary and reasonable actions that are  
21 not less stringent than ~~[to comply with]~~ the requirements and  
22 criteria of the National Flood Insurance Program, including but not  
23 limited to:

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

27 (2) guiding the development of proposed future

1 construction, where practicable, away from a location which is  
2 threatened by flood hazards;

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

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

7 (5) engaging in floodplain management, ~~[and]~~ adopting  
8 and enforcing permanent land use and control measures that are not  
9 less stringent than those ~~[consistent with the criteria]~~  
10 established under the National Flood Insurance Act, and providing  
11 for the imposition of penalties on landowners who violate this  
12 subchapter or rules adopted or orders issued under this subchapter;

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

18 (7) consulting with, giving information to, and  
19 entering into agreements with the Federal Emergency Management  
20 Agency for the purpose of:

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

23 (B) establishing flood-risk zones in all such  
24 areas and making estimates with respect to the rates of probable  
25 flood-caused loss for the various flood-risk zones for each of  
26 these areas;

27 (8) cooperating with the director's studies and

1 investigations with respect to the adequacy of local measures in  
2 flood-prone areas as to land management and use, flood control,  
3 flood zoning, and flood damage prevention;

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

7 (10) purchasing, leasing, and receiving property from  
8 the director when such property is owned by the federal government  
9 and lies within the boundaries of the political subdivision  
10 pursuant to agreements with the Federal Emergency Management Agency  
11 or other appropriate legal representative of the United States  
12 Government;

13 (11) requesting aid pursuant to the entire  
14 authorization from the commission;

15 (12) satisfying criteria adopted and promulgated by  
16 the commission pursuant to the National Flood Insurance Program;

17 (13) adopting permanent land use and control measures  
18 with enforcement provisions that are not less stringent than ~~[which~~  
19 ~~are consistent with]~~ the criteria for land management and use  
20 adopted by the director;

21 (14) adopting more comprehensive floodplain  
22 management rules that the political subdivision determines are  
23 necessary for planning and appropriate to protect public health and  
24 safety;

25 (15) participating in floodplain management and  
26 mitigation initiatives such as the National Flood Insurance  
27 Program's Community Rating System, Project Impact, or other

1 initiatives developed by federal, state, or local government; and

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

4 Sec. 16.319. QUALIFICATION. Political subdivisions  
5 wishing to qualify under the National Flood Insurance Program shall  
6 have the authority to do so by complying with the directions of the  
7 Federal Emergency Management Agency and by:

8 (1) evidencing to the director a positive interest in  
9 securing flood insurance coverage under the National Flood  
10 Insurance Program; and

11 (2) giving to the director satisfactory assurance that  
12 measures will have been adopted for the political subdivision that  
13 ~~[which measures]~~ will be not less stringent than ~~[consistent with]~~  
14 the comprehensive criteria for land management and use developed by  
15 the Federal Emergency Management Agency.

16 SECTION 12. (a) Except as otherwise provided by this  
17 section, this Act takes effect September 1, 2007.

18 (b) Sections 1-10 of this Act take effect September 1, 2007,  
19 but only if before that date the 80th Legislature appropriates at  
20 least \$6.1 million to the Texas Water Development Board for the  
21 state fiscal biennium beginning September 1, 2007, specifically  
22 for the purpose of administering the National Flood Insurance  
23 Program. If before that date the 80th Legislature does not  
24 appropriate at least that amount to the Texas Water Development  
25 Board for that state fiscal biennium specifically for that purpose,  
26 Sections 1-10 of this Act have no effect.

27 (c) If Sections 1 through 10 of this Act take effect,

Section 11 of this Act has no effect.

SECTION 13. Subchapter E, Chapter 88, Education Code, is amended by adding Section 88.503 to read as follows:

Sec. 88.503. SPATIAL REFERENCE CENTER. (a) The board may create and operate a spatial reference center at Texas A&M University--Corpus Christi for the purpose of:

(1) facilitating the federal height modernization project for the state;

(2) conducting basic and applied research regarding elevation and geodetic and vertical datums in the state;

(3) collecting geodetic data for state mapping and control; and

(4) establishing and maintaining an official digital spatial reference system for the state, in coordination with:

(A) the United States National Geodetic Survey;

(B) the National Oceanic and Atmospheric Administration; and

(C) the Texas Water Development Board.

(b) The board shall adopt rules relating to the operation of the spatial reference center.

(c) The spatial reference center may solicit and accept gifts, grants, and appropriations for the purposes of this section.

SECTION 14. This Act takes effect September 1, 2007, but only if before that date the 80th Legislature appropriates at least \$6.1 million to the Texas Water Development Board for the state fiscal biennium beginning September 1, 2007, specifically for the purpose of administering the National Flood Insurance Program. If

1 before that date the 80th Legislature does not appropriate at least  
2 that amount to the Texas Water Development Board for that state  
3 fiscal biennium specifically for that purpose, this Act has no  
4 effect.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1436 passed the Senate on May 2, 2007, by the following vote: Yeas 29, Nays 1; and that the Senate concurred in House amendments on May 26, 2007, by the following vote: Yeas 29, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1436 passed the House, with amendments, on May 23, 2007, by the following vote: Yeas 144, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor