

1-1 By: West S.B. No. 1436
1-2 (In the Senate - Filed March 8, 2007; March 20, 2007, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; April 23, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 3, Nays 0;
1-6 April 23, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1436 By: Patrick

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the transfer of responsibility for the National Flood
1-11 Insurance Program from the Texas Commission on Environmental
1-12 Quality to the Texas Water Development Board and the administration
1-13 and funding of the program.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 251.004, Insurance Code, is amended to
1-16 read as follows:

1-17 Sec. 251.004. DEPOSIT OF MAINTENANCE TAXES. (a) Except as
1-18 provided by Subsection (b), maintenance ~~[Maintenance]~~ taxes
1-19 collected under this subtitle shall be deposited in the general
1-20 revenue fund and reallocated to the Texas Department of Insurance
1-21 operating account.

1-22 (b) Each state fiscal biennium, the comptroller shall
1-23 reallocate to the floodplain management account established under
1-24 Section 16.3161, Water Code, the first \$6.1 million of the
1-25 maintenance taxes collected under this subtitle and deposited in
1-26 the general revenue fund.

1-27 SECTION 2. Subsection (a), Section 5.013, Water Code, is
1-28 amended to read as follows:

1-29 (a) The commission has general jurisdiction over:

1-30 (1) water and water rights including the issuance of
1-31 water rights permits, water rights adjudication, cancellation of
1-32 water rights, and enforcement of water rights;

1-33 (2) continuing supervision over districts created
1-34 under Article III, Sections 52(b)(1) and (2), and Article XVI,
1-35 Section 59, of the Texas Constitution;

1-36 (3) the state's water quality program including
1-37 issuance of permits, enforcement of water quality rules, standards,
1-38 orders, and permits, and water quality planning;

1-39 (4) the determination of the feasibility of certain
1-40 federal projects;

1-41 (5) the adoption and enforcement of rules and
1-42 performance of other acts relating to the safe construction,
1-43 maintenance, and removal of dams;

1-44 (6) conduct of the state's hazardous spill prevention
1-45 and control program;

1-46 (7) the administration of the state's program relating
1-47 to inactive hazardous substance, pollutant, and contaminant
1-48 disposal facilities;

1-49 (8) the administration of a portion of the state's
1-50 injection well program;

1-51 (9) the administration of the state's programs
1-52 involving underground water and water wells and drilled and mined
1-53 shafts;

1-54 (10) the state's responsibilities relating to regional
1-55 waste disposal;

1-56 (11) the responsibilities assigned to the commission
1-57 by Chapters 361, 363, 382, and 401, Health and Safety Code;

1-58 (12) ~~[the administration of the national flood
1-59 insurance program,~~

1-60 ~~[-(13)-]~~ administration of the state's water rate
1-61 program under Chapter 13 of this code; and

1-62 (13) ~~[-(14)-]~~ any other areas assigned to the commission
1-63 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 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 subdivision, whether presently in existence or created in the future.

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

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

- (1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;
- (2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;
- (3) assisting in minimizing damage caused by floods;
- (4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;
- (5) engaging in floodplain management and adopting and enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;
- (6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;
- (7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:
 - (A) identifying and publishing information with respect to all flood areas, including coastal areas; and
 - (B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;
- (8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;
- (9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;
- (10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-1 Sec. 16.3161. FLOODPLAIN MANAGEMENT ACCOUNT. (a) The
 4-2 floodplain management account is a special fund in the state
 4-3 treasury outside the general revenue fund. The fund is composed of:

4-4 (1) money deposited to the credit of the account under
 4-5 Section 251.004, Insurance Code;

4-6 (2) money directly appropriated to the board; and

4-7 (3) money from gifts or grants from the United States
 4-8 government, local or regional governments, private sources, or
 4-9 other sources.

4-10 (b) The account shall be administered by the board in
 4-11 accordance with this section.

4-12 (c) The board may use the account to fund the performance of
 4-13 the board's functions under Section 16.316.

4-14 (d) The board may invest, reinvest, and direct the
 4-15 investment of any available money in the account as provided by law
 4-16 for the investment of money under Section 404.024, Government Code.

4-17 SECTION 8. Section 16.317, Water Code, is amended to read as
 4-18 follows:

4-19 Sec. 16.317. COOPERATION OF TEXAS DEPARTMENT OF INSURANCE.
 4-20 Pursuant to the National Flood Insurance Program, the Texas
 4-21 Department of Insurance shall aid, advise, and cooperate with
 4-22 political subdivisions, the board [~~commission~~], and the Federal
 4-23 Emergency Management Agency when such aid, advice, and cooperation
 4-24 are requested or deemed advisable by the Texas Department of
 4-25 Insurance.

4-26 SECTION 9. Section 16.318, Water Code, is amended to read as
 4-27 follows:

4-28 Sec. 16.318. RULES. Political subdivisions which qualify
 4-29 for the National Flood Insurance Program, the Texas Department of
 4-30 Insurance, and the board [~~commission~~] may adopt and promulgate
 4-31 reasonable rules which are necessary for the orderly effectuation
 4-32 of the respective authorizations herein.

4-33 SECTION 10. (a) Not later than January 1, 2008:

4-34 (1) all powers, duties, obligations, rights,
 4-35 contracts, leases, records, assets, property, funds, and
 4-36 appropriations of the Texas Commission on Environmental Quality
 4-37 that relate primarily to the administration of the National Flood
 4-38 Insurance Program are transferred to the Texas Water Development
 4-39 Board;

4-40 (2) all rules, policies, forms, procedures, and
 4-41 decisions of the Texas Commission on Environmental Quality that
 4-42 relate primarily to the administration of the National Flood
 4-43 Insurance Program are continued in effect as rules, policies,
 4-44 forms, procedures, and decisions of the Texas Water Development
 4-45 Board, until superseded by a rule or other appropriate action of the
 4-46 Texas Water Development Board; and

4-47 (3) any investigation, complaint, action, contested
 4-48 case, or other proceeding involving the Texas Commission on
 4-49 Environmental Quality that relates primarily to the administration
 4-50 of the National Flood Insurance Program is transferred without
 4-51 change in status to the Texas Water Development Board, and the Texas
 4-52 Water Development Board assumes, without a change in status, the
 4-53 position of the Texas Commission on Environmental Quality in any
 4-54 investigation, complaint, action, contested case, or other
 4-55 proceeding that relates primarily to the administration of the
 4-56 National Flood Insurance Program involving the Texas Commission on
 4-57 Environmental Quality.

4-58 (b) The transfer of the powers and duties of the Texas
 4-59 Commission on Environmental Quality that relate primarily to the
 4-60 administration of the National Flood Insurance Program to the Texas
 4-61 Water Development Board does not affect the validity of a right,
 4-62 privilege, or obligation accrued, a contract or acquisition made,
 4-63 any liability incurred, a permit or license issued, a penalty,
 4-64 forfeiture, or punishment assessed, a rule adopted, a proceeding,
 4-65 investigation, or remedy begun, a decision made, or other action
 4-66 taken by or in connection with the Texas Commission on
 4-67 Environmental Quality.

4-68 SECTION 11. This Act takes effect September 1, 2007, but
 4-69 only if before that date the 80th Legislature appropriates at least

5-1 \$6.1 million to the Texas Water Development Board for the state
5-2 fiscal biennium beginning September 1, 2007, specifically for the
5-3 purpose of administering the National Flood Insurance Program. If
5-4 before that date the 80th Legislature does not appropriate at least
5-5 that amount to the Texas Water Development Board for that state
5-6 fiscal biennium specifically for that purpose, this Act has no
5-7 effect.

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