

BILL ANALYSIS

C.S.S.B. 7
By: Creighton
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that the impact of flooding events continues to increase as the state's population grows and spreads across Texas, without regard to political subdivision boundaries. There are concerns, however, that there may be insufficient cooperation and organization among local government entities as the state plans flood resiliency projects. C.S.S.B. 7 seeks to address these concerns by creating the flood infrastructure fund and providing for an appropriation of \$3.26 billion from the rainy day fund.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 3 of this bill.

ANALYSIS

C.S.S.B. 7 amends the Water Code to establish the flood infrastructure fund as a special fund in the state treasury outside the general revenue fund. The bill, if approved by a vote of two-thirds of the members present in each house of the legislature, appropriates the amount of \$3.26 billion out of the rainy day fund to the flood infrastructure fund. The bill authorizes the flood infrastructure fund to be used by the Texas Water Development Board (TWDB), without further legislative appropriation, only as provided by the bill. The bill provides for the composition of the fund and sets out certain legislative findings relating to the creation, administration, and use of the fund.

C.S.S.B. 7 restricts the use of the flood infrastructure fund by the TWDB to the following uses:

- to make a loan to an eligible political subdivision at or below market interest rates for a flood project;
- to make a grant, low interest loan, or zero interest loan to an eligible political subdivision for a flood project to serve an area outside of a metropolitan statistical area to ensure that the flood project is implemented or for a flood project to serve an economically distressed area;
- to make a loan at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;
- to make a grant to an eligible political subdivision to provide matching funds to enable the eligible political subdivision to participate in a federal program for a flood project;

- as a source of revenue or security for the payment of principal and interest on bonds issued by the TWDB if the proceeds of the sale of the bonds will be deposited in the fund; and
- to pay the necessary and reasonable expenses of the TWDB in administering the fund.

C.S.S.B. 7 authorizes principal and interest payments on loans made for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project to be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier. The bill, contingent on legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan passing and becoming law, sets these provisions of the bill relating to the use of the fund by the TWDB to expire on the date that the TWDB adopts the initial state flood plan in accordance with that law, and does the following:

- restricts the use of the fund by the TWDB to the provision of financing for flood projects included in the state flood plan; and
- authorizes money from the fund to be awarded to several eligible political subdivisions for a single flood project.

C.S.S.B. 7 defines, among other terms:

- "eligible political subdivision" as a district or authority created under certain provisions of the Texas Constitution, a municipality, or a county; and
- "flood project" as a drainage, flood mitigation, or flood control project, including the following:
 - planning and design activities;
 - work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage;
 - construction of structural flood mitigation and drainage infrastructure; and
 - construction and implementation of nonstructural projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk.

C.S.S.B. 7 requires an eligible political subdivision applying for financial assistance from the fund for a proposed flood project to make certain demonstrations in the application and requires the application to include an analysis of whether the proposed flood project could use floodwater capture techniques for water supply purposes.

C.S.S.B. 7 authorizes the TWDB, on review and recommendation by the executive administrator of the TWDB, to approve an application only if the TWDB finds that:

- the application and the assistance applied for meet the requirements of the fund and TWDB rules;
- the application demonstrates a sufficient level of cooperation among eligible political subdivisions and includes all of the eligible political subdivisions substantially affected by the flood project; and
- the taxes or other revenue, or both the taxes and other revenue, pledged by the applicant will be sufficient to meet all the obligations assumed by the eligible political subdivision.

C.S.S.B. 7 requires the TWDB to adopt rules necessary to carry out the bill's provisions relating to the fund, including rules that establish procedures for an application for and for the award of financial assistance, rules for the investment of money, and rules for the administration of the fund. The bill requires the TWDB to act as a clearinghouse for information about state and federal flood planning, mitigation, and control programs that may serve as a source of funding for flood projects. The bill establishes that participation in cooperative flood planning to obtain

money under the fund does not subject an eligible political subdivision to civil liability in regard to a flood project. The bill authorizes certain water districts, including a river authority, to participate in cooperative flood control planning for the purpose of obtaining financial assistance as an eligible political subdivision for a flood control project under the fund.

C.S.S.B. 7, for purposes of flood control planning contracts under the research and planning program, defines "flood control planning" as any work related to:

- planning for flood protection;
- preparing applications for and obtaining regulatory approvals at the local, state, or federal level;
- activities associated with administrative or legal proceedings by regulatory agencies; and
- preparing engineering plans and specifications to provide structural or nonstructural flood mitigation and drainage.

C.S.S.B. 7 specifies that the rules the TWDB is required to adopt are rules establishing eligibility criteria for flood control planning money under the research and planning program that considers the relative need of the political subdivision for the money, giving greater importance to a county that has a median household income that is not greater than 85 percent of the median state household income.

EFFECTIVE DATE

January 1, 2020, if the constitutional amendment authorizing the legislature to provide for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects is approved by the voters.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 7 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute provides for a flood infrastructure fund whereas the original provides for a Texas infrastructure resiliency fund. The substitute does not include provisions relating to:

- the floodplain management account and a transfer of the Floodplain Management Account No. 0330;
- the Hurricane Harvey account;
- the flood plan implementation account;
- the federal matching account;
- the Texas Infrastructure Resiliency Fund Advisory Committee;
- required reports;
- applicability of certain Water Code provisions with respect to financial assistance from the resiliency fund; and
- transparency requirements.

The substitute includes provisions relating to:

- legislative findings;
- an appropriation out of the rainy day fund;
- an information clearinghouse;

- liability of an eligible political subdivision;
- cooperative flood control with respect to certain water districts; and
- flood control planning contracts.

The substitute differs from the original with respect to TWDB rulemaking, the bill's effective date, and provisions that are contingent on certain legislation relating to the creation of a state flood plan passing and becoming law.