

BILL ANALYSIS

Senate Research Center

S.B. 8
By: Perry et al.
Water & Rural Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the aftermath of Hurricane Harvey, along with the devastating 2015 and 2016 floods, local, state, and federal stakeholders began the discussion that pointed to the need for a state flood plan to better coordinate among watersheds. The Texas Water Development Board (TWDB) also completed the state flood assessment in fall 2018. The report pointed out the need for collaboration among communities, projects throughout the state, and updated mapping techniques that would best assist community planning.

S.B. 8 creates the framework for the first state flood plan in Texas through a network of regional watershed groups developed and overseen by TWDB similar to the regional water supply planning process with an emphasis on watershed planning versus political jurisdictions. Representation of the regional flood planning groups will be made up of designated representatives from the general public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities.

There has been substantial support from flood experts and partners throughout the state and the country. (Original Author's/Sponsor's Statement of Intent)

S.B. 8 amends current law relating to state and regional flood planning.

Note: While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 1 (Section 16.0062, Water Code) of this bill.

Rulemaking authority is expressly granted to the State Flood Plan Implementation Advisory Committee in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 16, Water Code, by adding Sections 16.061 and 16.062, as follows:

Sec. 16.061. STATE FLOOD PLAN. (a) Requires the Texas Water Development Board (TWDB), not later than September 1, 2024, and before the end of each successive five-year period after that date, to prepare and adopt a comprehensive state flood plan that incorporates the regional flood plans approved under Section 16.062. Requires the state flood plan to provide for orderly preparation for and response to flood conditions to protect against the loss of life and property, to be a guide to state and local flood control policy, and to contribute to water development where possible.

(b) Requires the state flood plan to include:

- (1) an evaluation of the condition and adequacy of flood control infrastructure on a regional basis;
- (2) a statewide, ranked list of ongoing and proposed flood control and mitigation projects and strategies necessary to protect against the loss of life and property from flooding and a discussion of how those projects and strategies might further water development, where applicable;
- (3) an analysis of completed, ongoing, and proposed flood control projects including previous state flood plans, including which projects received funding;
- (4) an analysis of development in the 100-year floodplain areas as defined by the Federal Emergency Management Agency; and
- (5) legislative recommendations TWDB considers necessary to facilitate flood control planning and project construction.

(c) Requires TWDB, in coordination with the Texas Natural Resource Conservation Commission (TNRCC), the Texas Department of Agriculture (TDA), the Texas General Land Office (GLO), the Texas Parks and Wildlife Department (TPWD), the Texas Division of Emergency Management (TDEM), and the Texas State Soil and Water Conservation Board (TSSWCB), to adopt guidance principles for the state flood plan that reflect the public interest of the entire state. Requires TWDB to review and revise the guidance principles, with input from TNRCC, TDA, GLO, TDEM, and TSSWCB as necessary and at least every fifth year to coincide with the five-year cycle for adoption of a new state flood plan.

(d) Requires TWDB, on adoption of a state flood plan, to deliver the plan to the governor, lieutenant governor, speaker of the house of representatives, and appropriate legislative committees and legislative leadership.

Sec. 16.062. REGIONAL FLOOD PLANNING. (a) Requires TWDB to designate flood planning regions corresponding to each river basin, provide technical and financial assistance to the flood planning groups, and adopt guidance principles for the regional flood plans, including procedures for amending adopted plans.

(b) Authorizes TWDB, in designating flood planning regions, to divide river basins to avoid having an impracticably large area for efficient planning in a flood planning region.

(c) Requires TWDB to designate representatives from each flood planning region to serve as the initial flood planning group. Authorizes the initial flood planning group to then designate additional representatives to serve on the flood planning group. Requires the initial flood planning group to designate additional representatives if necessary to ensure adequate representation from the interests in its region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. Requires the flood planning group to maintain adequate representation from those interests. Requires that, in addition, TWDB, TNRCC, GLO, TPWD, TDA, TSSWCB, and TDEM each appoint a representative to serve as an ex officio member of each flood planning group.

(d) Requires each regional flood planning group to hold public meetings as provided by TWDB rule to gather from interested persons, including members of the public and other political subdivisions located in that county, suggestions and recommendations as to issues, provisions, projects, and strategies that should be considered for inclusion in a regional flood plan.

(e) Requires each flood planning group to consider the information collected under Subsection (d) in creating a regional flood plan. Requires a regional flood plan to use information based on scientific data and updated mapping and include a general description of the condition and functionality of flood control infrastructure in the flood planning region, flood control projects under construction or in the planning stage, information on land use changes and population growth in the flood planning region, an identification of the areas in the flood planning region that are prone to flood and flood control solutions for those areas, and an indication of whether a particular flood control solution meets an emergency need, uses federal money as a funding component, and may also serve as a water supply source.

(f) Requires a flood planning group, after the group prepares a regional flood plan, to hold at least one public meeting in a central location in the flood planning region to accept comments on the regional flood plan. Requires the flood planning group to:

(1) cooperate with TWDB to determine what method of providing notice for the public meeting is most accessible to persons in the flood planning region; and

(2) publish, post, or otherwise disseminate notice of the public meeting according to the method described by Subdivision (1).

(g) Requires the notice published, posted, or otherwise disseminated under Subsection (f) to contain the date, time, and location of the public meeting or hearing, a summary of the regional flood plan, the name, telephone number, and address of a person to whom questions or requests for additional may be submitted, and information on how the public may submit comments.

(h) Requires the flood planning group, after consideration of the comments received at the public meeting, to adopt the regional flood plan and submit the adopted regional flood plan to TWDB. Requires TWDB to make a determination whether the regional flood plan:

(1) satisfies the requirements for regional flood plans adopted in the guidance principles described by Subsection (a);

(2) adequately provides for the preservation of life and property and the development of water supply sources, where applicable; and

(3) affects a neighboring area.

(i) Requires TWDB, if TWDB makes a determination that an element of a regional plan negatively affects a neighboring area, to coordinate with the affected area to adjust the plan to ensure that no neighboring area is negatively affected by the plan.

(j) Requires TWDB to approve a regional flood plan when it satisfies the requirements of Subsections (h)(1) and (2) and does not negatively affect a neighboring area.

(k) Authorizes a flood planning group to amend a regional flood plan after the plan has been approved by TWDB according to rules adopted by TWDB.

(l) Provides that each flood planning group and committee or subcommittee of a flood planning group is subject to Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

SECTION 2. Amends Subchapter B, Chapter 201, Agriculture Code, by adding Section 201.0227, as follows:

Sec. 201.0227. TEN-YEAR DAM REPAIR AND MAINTENANCE PLAN; REPORTS.

(a) Defines "plan" and defines "water development board" as TWDB.

(b) Requires TSSWCB to prepare and adopt a plan describing the repair and maintenance needs of flood control dams described by Subsection (c) and to prepare and adopt a new plan before the end of the 10th year following the adoption of a plan.

(c) Requires the plan to include projects under the jurisdiction of TSSWCB and authorized under Section 13, Flood Control Act of 1944 (Pub. L. No. 78-534), the pilot watershed program authorized under the Department of Agriculture Appropriation Act, 1954 (Pub. L. No. 83-156), the Watershed Protection and Flood Prevention Act (Pub. L. No. 83-566), and Subtitle H, Title XV, Agriculture and Food Act of 1981 (Pub. L. No. 97-98).

(d) Requires TSSWCB to deliver the plan adopted under this section to TWDB.

(d-1) Requires TWDB, in coordination with the TSSWCB and the Texas Commission on Environmental Quality, to prepare a report of the repair and maintenance needs of all dams that:

(1) are not licensed by the Federal Energy Regulatory Commission;

(2) do not have flood storage;

(3) are required to pass floodwaters; and

(4) have failed.

(e) Requires TSSWCB, each year, to deliver to TWDB a report regarding progress made on items listed in the plan. Requires TSSWCB, if an update to the report or plan is necessary before the yearly report or before the end of the 10-year cycle, to deliver to TWDB an amended report or plan.

SECTION 3. (a) Defines "advisory committee" as the State Flood Plan Implementation Advisory Committee (advisory committee) and defines "board" as TWDB for purposes of this section.

(b) Provides that the advisory committee is composed of the following six members:

(1) the chair of the committee of the senate having primary jurisdiction over water resources;

(2) the chair of the committee of the house of representatives having primary jurisdiction over natural resources;

(3) a member of the committee of the senate having primary jurisdiction over matters relating to finance, appointed by the lieutenant governor;

(4) a member of the committee of the house of representatives having primary jurisdiction over appropriations, appointed by the speaker of the house of representatives;

(5) a representative of TDEM, chosen by TDEM; and

(6) a representative of TSSWCB, chosen by TSSWCB.

(c) Provides that the chair of the committee of the senate having primary jurisdiction over water resources and the chair of the committee of the house of representatives having primary jurisdiction over natural resources serve as the co-chairs of the advisory committee.

(d) Authorizes the advisory committee to hold public hearings, formal meetings, or work sessions. Prohibits the advisory committee from taking formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present.

(e) Provides that, except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the advisory committee or reimbursement for expenses incurred in the performance of official duties as a member of the advisory committee. Provides that service on the advisory committee by a member of the senate or house of representatives is considered legislative service for which the member is entitled to reimbursement and other benefits in the same manner and to the same extent as for other legislative service.

(f) Requires the advisory committee to review the overall operation, function, and structure of the state flood plan and rules adopted by TWDB to implement the state flood plan at least semiannually and authorizes the advisory committee to provide comments and recommendations to TWDB on any matter.

(g) Authorizes the advisory committee to adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(h) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee.

(i) Requires the advisory committee to make recommendations to TWDB regarding information to be posted on TWDB's Internet website.

(j) Provides that this section expires and the advisory committee is dissolved on September 1, 2021.

SECTION 4. (a) Requires TWDB, not later than September 1, 2021, to adopt guidance principles for the regional flood plans and designate flood planning regions corresponding to each river basin as required by Section 16.062, Water Code, as added by this Act.

(b) Requires each flood planning group, not later than January 10, 2023, to submit a regional flood plan to TWDB for the group's flood planning region, as required by Section 16.062, Water Code, as added by this Act.

SECTION 5. Effective date: upon passage or September 1, 2019.