By:  Phelan H.B. No. 13

A BILL TO BE ENTITLED

AN ACT

relating to flood planning, mitigation, and infrastructure projects; making an appropriation.

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

SECTION 1.  The heading to Section 15.405, Water Code, is amended to read as follows:

Sec. 15.405.  FLOOD CONTROL PLANNING CONTRACTS.

SECTION 2.  Section 15.405, Water Code, is amended by amending Subsections (a), (f), and (g) and adding Subsection (a-1) to read as follows:

(a)  In this section, "flood control planning" means any work related to:

(1)  planning for flood protection;

(2)  preparing applications for and obtaining regulatory approvals at the local, state, or federal level;

(3)  activities associated with administrative or legal proceedings by regulatory agencies; and

(4)  preparing engineering plans and specifications to provide structural or nonstructural flood mitigation and drainage.

(a-1)  The board may enter into contracts with political subdivisions to pay from the research and planning fund all or part of the cost of [~~developing~~] flood control planning [~~plans~~] for the political subdivision.

(f)  The board shall adopt rules establishing criteria of eligibility for flood control planning money that considers:

(1)  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;

(2)  the legal authority of the political subdivision to plan for and control flooding; and

(3)  the effect of flood control planning by the political subdivision on overall flood control in the state and within the area in which the political subdivision is located.

(g)  The board shall require that flood control planning documents [~~plans~~] developed under contracts entered into under this section be made available to the commission.

SECTION 3.  Chapter 15, Water Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. FLOOD INFRASTRUCTURE FUND

Sec. 15.531.  DEFINITIONS. In this subchapter:

(1)  "Economically distressed area" means an area that has a median household income that is not greater than 85 percent of the median state household income for the most recent year for which the applicable statistics are available.

(2)  "Eligible political subdivision" means a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a municipality, or a county.

(3)  "Flood project" means a drainage, flood mitigation, or flood control project, including:

(A)  planning and design activities;

(B)  work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage; and

(C)  construction of structural flood mitigation and drainage infrastructure.

(4)  "Fund" means the flood infrastructure fund.

(5)  "Metropolitan statistical area" means an area so designated by the United States Office of Management and Budget.

(6)  "Political subdivision bonds" means bonds or other obligations issued by a political subdivision to fund a project and purchased by the board from money in the fund.

Sec. 15.532.  FINDINGS. The legislature finds that:

(1)  the creation of the fund and the administration of the fund by the board will encourage the development of nonstructural and structural flood mitigation in the state;

(2)  the use of the fund is in furtherance of the public purpose of mitigating the effects of flooding in the state; and

(3)  the use of the fund for the purposes provided by this subchapter is for the benefit of both the state and the political subdivisions to which the board makes financial assistance available in accordance with this subchapter and constitutes a program under Sections 49-d-3 and 52-a, Article III, Texas Constitution.

Sec. 15.533.  FLOOD INFRASTRUCTURE FUND. (a) The flood infrastructure fund is a special fund in the state treasury outside the general revenue fund.

(b)  The fund may be used by the board, without further legislative appropriation, only as provided by this subchapter.

(c)  The fund consists of:

(1)  appropriations from the legislature for a purpose of the fund;

(2)  proceeds of general obligation bonds issued for a purpose of the fund;

(3)  any fees or other sources of revenue that the legislature dedicates for deposit to the fund;

(4)  repayments of loans made from the fund;

(5)  interest earned on money credited to the fund;

(6)  depository interest allocable to the fund;

(7)  money from gifts, grants, or donations to the fund;

(8)  money from revenue bonds or other sources designated by the board for deposit to the fund; and

(9)  proceeds from the sale of political subdivision bonds or obligations held in the fund and not otherwise pledged to the discharge, repayment, or redemption of revenue bonds or other bonds, the proceeds of which were placed in the fund.

Sec. 15.534.  USE OF FUND. (a) The board may use the fund only:

(1)  to make a loan to an eligible political subdivision at or below market interest rates for a flood project;

(2)  to make a grant, low interest loan, or zero interest loan to an eligible political subdivision for:

(A)  a flood project to serve an area outside of a metropolitan statistical area in order to ensure that the flood project is implemented; or

(B)  a flood project to serve an economically distressed area;

(3)  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;

(4)  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;

(5)  as a source of revenue or security for the payment of principal and interest on bonds issued by the board if the proceeds of the sale of the bonds will be deposited in the fund; and

(6)  to pay the necessary and reasonable expenses of the board in administering the fund.

(b)  Principal and interest payments on loans made under Subsection (a)(3) may be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

Sec. 15.535.  APPLICATION REQUIREMENTS. (a) Except as provided by Subsection (c), an eligible political subdivision applying for financial assistance under this subchapter for a proposed flood project must demonstrate in the application that:

(1)  the eligible political subdivision has acted cooperatively with other political subdivisions to address flood control needs in the area in which the eligible political subdivisions are located;

(2)  all eligible political subdivisions substantially affected by the proposed flood project have participated in the process of developing the proposed flood project;

(3)  the eligible political subdivisions, separately or in cooperation, have held public meetings to accept comment on proposed flood projects from interested parties; and

(4)  the technical requirements for the proposed flood project have been completed and compared against any other potential flood projects in the same area.

(b)  The application must include an analysis of whether the proposed flood project could use floodwater capture techniques for water supply purposes, including floodwater harvesting, detention or retention basins, or other methods of capturing storm flow or unappropriated flood flow.

(c)  An eligible political subdivision applying for assistance under Section 15.534(a)(3) is not required to make the demonstration described by Subsection (a)(4) of this section.

Sec. 15.536.  APPROVAL OF APPLICATIONS. On review and recommendation by the executive administrator, the board may approve an application only if the board finds that:

(1)  the application and the assistance applied for meet the requirements of this subchapter and board rules;

(2)  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

(3)  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.

Sec. 15.537.  APPLICABLE LAW. Subchapter E, Chapter 17, applies to financial assistance made available from the fund, except that the board may execute contracts as necessary to evidence grant agreements.

Sec. 15.538.  RULES. The board shall adopt rules necessary to carry out this subchapter, including rules:

(1)  that establish procedures for an application for and for the award of financial assistance;

(2)  for the investment of money; and

(3)  for the administration of the fund.

Sec. 15.539.  SALE OF POLITICAL SUBDIVISION BONDS. (a) The board may sell or dispose of political subdivision bonds at the price and under the terms that the board determines to be reasonable.

(b)  The board may sell political subdivision bonds without making a previous offer to the eligible political subdivision that issued the bonds and without advertising, soliciting, or receiving bids for sale.

(c)  Notwithstanding other provisions of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the fund and may apply the proceeds of a sale in the manner provided by this section.

(d)  Proceeds from the sale of political subdivision bonds under this section shall be deposited in the fund for use as provided by Section 15.534.

(e)  As part of a sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the eligible political subdivision pays the debt service on political subdivision bonds sold and observes the conditions and requirements stated in those bonds.

(f)  The board may exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

Sec. 15.540.  INFORMATION CLEARINGHOUSE. The board shall 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.

Sec. 15.541.  LIABILITY. Participation in cooperative flood planning to obtain money under this subchapter does not subject an eligible political subdivision to civil liability in regards to a flood project.

SECTION 4.  Subchapter C, Chapter 16, Water Code, is amended by adding Sections 16.061 and 16.062 to read as follows:

Sec. 16.061.  STATE FLOOD PLAN. Not later than September 1, 2024, and before the end of each successive five-year period after that date, the board shall prepare and adopt a comprehensive state flood plan that incorporates regional flood plans approved by the board as provided by rule.

Sec. 16.062.  TEN-YEAR DAM REPAIR AND MAINTENANCE PLAN; REPORT. The board shall prepare and adopt a plan describing the repair and maintenance needs of flood control dams as provided by rule and prepare and adopt a new plan before the end of the 10th year following the adoption of a plan.

SECTION 5.  Title 5, Water Code, is amended by designating Chapter 152 as Subtitle A and adding a subtitle heading to read as follows:

SUBTITLE A. RIVER AUTHORITIES

SECTION 6.  Subtitle A, Title 5, Water Code, as added by this Act, is amended by adding Chapter 150 to read as follows:

CHAPTER 150. PROVISIONS GENERALLY APPLICABLE TO RIVER AUTHORITIES

Sec. 150.0101.  DEFINITIONS. In this chapter:

(1)  "Director" means a member of the board of directors of a river authority.

(2)  "River authority" means a district created under the authority of Section 59, Article XVI, Texas Constitution, as a regional water management entity to provide water development and planning services and other services to a river basin or portion of a river basin.

Sec. 150.0102.  PARTICIPATION IN COOPERATIVE FLOOD PLANNING. A river authority may participate in cooperative flood planning to obtain money from the flood infrastructure fund under Subchapter I, Chapter 15, Water Code, including:

(1)  providing administrative or technical support; and

(2)  participation by a director, general manager, or other river authority staff in the cooperative flood planning process.

SECTION 7.  (a) The amount of $3.26 billion is appropriated out of the economic stabilization fund to the flood infrastructure fund for purposes of implementing Subchapter I, Chapter 15, Water Code, as added by this Act.

(b)  This section takes effect only if this Act is approved by a vote of two-thirds of the members present in each house of the legislature, as provided by Section 49-g(m), Article III, Texas Constitution.

SECTION 8.  This Act takes effect January 1, 2020, but only if the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, 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. If that amendment is not approved by the voters, this Act has no effect.