By:  Creighton, et al. S.B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to flood control planning and the funding of flood planning, mitigation, and infrastructure projects.

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

SECTION 1.  Chapter 16, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. FLOOD PROJECT FUNDING

Sec. 16.451.  DEFINITIONS. In this subchapter:

(1)  "Advisory committee" means the Texas Infrastructure Resiliency Fund Advisory Committee.

(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 structural and nonstructural flood mitigation and drainage;

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

(D)  nonstructural or natural flood control strategies.

(4)  "Resiliency fund" means the Texas infrastructure resiliency fund.

Sec. 16.452.  TEXAS INFRASTRUCTURE RESILIENCY FUND. (a)  The Texas infrastructure resiliency fund is a special fund in the state treasury outside the general revenue fund.

(b)  The resiliency fund shall be administered by the board in accordance with this subchapter.

(c)  The board may invest, reinvest, and direct the investment of any available money in the resiliency fund as provided by law for the investment of money.

(d)  Investment earnings, interest earned on amounts credited to the resiliency fund, and interest earned on loans made from the fund shall be deposited to the credit of the fund.

Sec. 16.453.  FLOODPLAIN MANAGEMENT ACCOUNT. (a)  The floodplain management account is an account of the resiliency fund.

(b)  The account consists of:

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

(2)  money directly appropriated to the board; and

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

(c)  The board may use the account to provide financing for:

(1)  the board's functions under Section 16.316; or

(2)  any other activities related to:

(A)  the collection and analysis of flood-related information;

(B)  flood planning, protection, mitigation, or adaptation;

(C)  the provision of flood-related information to the public through educational or outreach programs; or

(D)  evaluating the response to and mitigation of flood incidents affecting residential property, including multifamily units, located in floodplains.

Sec. 16.454.  HURRICANE HARVEY ACCOUNT. (a)  The Hurricane Harvey account is an account in the resiliency fund.

(b)  The board may use the account only to provide financing for flood projects related to Hurricane Harvey. Financing under this section includes making a:

(1)  grant, low-interest loan, or zero-interest loan to an eligible political subdivision to provide nonfederal matching funds to enable the subdivision to participate in a federal program for the development of a:

(A)  hazard mitigation plan, under guidelines issued by the Federal Emergency Management Agency or the Texas Division of Emergency Management or the successor in function to those entities; or

(B)  public assistance plan, under guidelines issued by the Federal Emergency Management Agency or the Texas Division of Emergency Management or the successor in function to those entities; and

(2)  loan to an eligible political subdivision at or below market interest rates for the political subdivision's planning or design costs, permitting costs, or other costs associated with state or federal regulatory activities with respect to a flood project.

(c)  A grant or loan awarded under this section:

(1)  may be awarded only after the applicant demonstrates that any available insurance, other state funds, and eligible federal funds have been exhausted and that community development block grant disaster recovery funds from the United States Department of Housing and Urban Development have been applied toward the cost of eligible matching funds; and

(2)  may not provide more than 75 percent of the portion of the cost of the project that is paid with money other than money from a federal program.

(d)  The board shall establish a point system for prioritizing flood projects for which money from the Hurricane Harvey account is sought. The system must include a standard for the board to apply in determining whether a flood project qualifies for funding at the time the application for funding is filed with the board.

(e)  The board shall give the highest consideration in awarding points to a flood project that will have a substantial effect, including a flood project that:

(1)  is recommended or approved by the director of the Texas Division of Emergency Management or the successor in function to that entity; and

(2)  meets an emergency need in a county where the governor has declared a state of disaster.

(f)  After review and recommendation by the executive administrator and with input from the director of the Texas Division of Emergency Management or the successor in function to that entity, the board may approve an application for financial assistance under this section only if the board finds that:

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

(2)  the application demonstrates a sufficient level of cooperation among applicable political subdivisions and includes all of the 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, if applicable, will be sufficient to meet all the obligations assumed by the applicant.

(g)  Principal and interest payments on loans made under Subsection (b)(2) may be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

(h)  Money from the account may be awarded to several eligible political subdivisions for a single flood project.

(i)  An eligible political subdivision that receives a grant for a flood project also may receive a loan from the account.

(j)  This section expires September 1, 2031. The remaining balance of the account on that date is transferred to the flood plan implementation account.

Sec. 16.455.  FLOOD PLAN IMPLEMENTATION ACCOUNT. (a)  The flood plan implementation account is an account in the resiliency fund.

(b)  The board may use the account only to make:

(1)  a grant, low-interest loan, or zero-interest loan to an eligible political subdivision:

(A)  for a flood project; or

(B)  to provide matching funds to enable the subdivision to participate in a federal program for a flood project;

(2)  a loan to an eligible political subdivision at or below market interest rates for the subdivision's planning or design costs, permitting costs, or other costs associated with state or federal regulatory activities with respect to a flood project; and

(3)  a grant to an eligible political subdivision to provide matching funds to enable the subdivision to participate in a federal program for the development of a hazard mitigation plan, under guidelines issued by the Federal Emergency Management Agency or the Texas Division of Emergency Management or the successor in function to those entities.

(c)  The board shall establish a point system for prioritizing flood projects for which money from the flood plan implementation account is sought. The system must include a standard for the board to apply in determining whether a flood project qualifies for funding at the time the application for funding is filed with the board.

(d)  The board shall give the highest consideration in awarding points to a flood project that will have a substantial effect, including a flood project that:

(1)  is recommended or approved by the director of the Texas Division of Emergency Management or the successor in function to that entity;

(2)  meets an emergency need in a county where the governor has declared a state of disaster;

(3)  is funded partially through federal matching funds;

(4)  includes a component that will increase water supply; and

(5)  contains any other factor the board determines is relevant to the purposes of resiliency.

(e)  After review and recommendation by the executive administrator and with input from the director of the Texas Division of Emergency Management or the successor in function to that entity, the board may approve an application under this section 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 political subdivisions substantially affected by the flood project;

(3)  the taxes or other revenue, or both the taxes and other revenue, pledged by the applicant, if applicable, will be sufficient to meet all the obligations assumed by the applicant; and

(4)  any other state funds and eligible federal funds have been exhausted and that community development block grant disaster recovery funds from the United States Department of Housing and Urban Development have been applied toward the cost of eligible matching funds.

(f)  Principal and interest payments on loans made under Subsection (b)(2) may be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

(g)  Money from the account may be awarded to several eligible political subdivisions for a single flood project.

(h)  An award issued as a grant may finance not more than 75 percent of the total cost of a flood project.

(i)  An eligible political subdivision that receives a grant for a flood project also may receive a loan from the account.

Sec. 16.456.  FEDERAL MATCHING ACCOUNT. (a)  The federal matching account is an account in the resiliency fund.

(b)  The board may use the account only to meet matching requirements for projects funded partially by federal money, including projects funded by the United States Army Corps of Engineers.

Sec. 16.457.  TEXAS INFRASTRUCTURE RESILIENCY FUND ADVISORY COMMITTEE. (a)  The Texas Infrastructure Resiliency Fund Advisory Committee is composed of the seven members that serve on the State Water Implementation Fund for Texas Advisory Committee described by Section 15.438, with the co-presiding officers of that committee serving as presiding officers of the advisory committee. The director of the Texas Division of Emergency Management or the successor in function to that entity serves as a nonvoting member of the advisory committee, as an additional duty of the director's office.

(b)  The advisory committee may hold public hearings, formal meetings, or work sessions. Either co-presiding officer of the advisory committee may call a public hearing, formal meeting, or work session of the advisory committee at any time. The advisory committee may not take formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present.

(c)  Except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee. 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.

(d)  The advisory committee may submit comments and recommendations to the board regarding the use of money in the resiliency fund and for use by the board in adopting rules.

(e)  The advisory committee shall review the overall operation, function, and structure of the resiliency fund at least semiannually and may provide comments and recommendations to the board on any matter.

(f)  The advisory committee may adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(g)  The advisory committee shall make recommendations to the board regarding information on the resiliency fund to be posted on the board's Internet website.

(h)  The advisory committee may evaluate and may provide comments or recommendations on the feasibility of the state owning, constructing, operating, and maintaining flood projects, including reservoirs and coastal barriers.

(i)  The board shall provide an annual report to the advisory committee on:

(1)  the board's compliance with statewide annual goals relating to historically underutilized businesses; and

(2)  the participation level of historically underutilized businesses in flood projects that receive money from the resiliency fund.

(j)  If the aggregate level of participation by historically underutilized businesses in flood projects that receive money from the resiliency fund does not meet statewide annual goals adopted under Chapter 2161, Government Code, the advisory committee shall make recommendations to the board to improve the participation level.

(k)  The board shall supply staff support to the advisory committee.

(l)  Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

Sec. 16.458.  REPORT REQUIRED. (a)  In this section, "state agency" means:

(1)  a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute; and

(2)  a general academic teaching institution as defined by Section 61.003, Education Code.

(b)  A state agency that uses or disburses federal money for flood research, planning, or mitigation projects shall submit a report to the board on a quarterly basis.

(c)  The report must include the following information about federal money used or disbursed for flood research, planning, or mitigation projects:

(1)  the original total of federal money received;

(2)  the amount of the federal money spent or disbursed to date; and

(3)  the eligibility requirements for receiving the federal money.

Sec. 16.459.  APPLICABLE LAW. Subchapter E, Chapter 17, applies to financial assistance made available from the resiliency fund, except that the board may execute contracts as necessary to evidence grant agreements.

Sec. 16.460.  TRANSPARENCY REQUIREMENTS. The board shall post the following information on the board's Internet website regarding the use of the resiliency fund and regularly update the information posted:

(1)  the progress made in developing flood projects statewide;

(2)  a description of each flood project that receives money from the resiliency fund, including:

(A)  the expected date of completion of the flood project;

(B)  the current status of the flood project;

(C)  the proposed benefit of the flood project;

(D)  the initial total cost estimate of the flood project and variances to the initial cost estimate exceeding five percent;

(E)  a listing of the eligible political subdivisions receiving money from the resiliency fund;

(F)  a listing of each political subdivision served by each flood project;

(G)  an estimate of matching funds that will be available for the flood project resulting from the use of the resiliency fund; and

(H)  the status of repayment of each loan provided in connection with a flood project, including an assessment of the risk of default based on a standard risk rating system;

(3)  a description of the point system for prioritizing flood projects established by the board under Sections 16.454 and 16.455 and the number of points awarded by the board for each flood project;

(4)  any nonconfidential information submitted to the board as part of an application for funding under this subchapter that is approved by the board;

(5)  the administrative and operating expenses incurred by the board in administering the resiliency fund; and

(6)  any other information required by board rule.

Sec. 16.461.  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)  that establish the prioritization system for flood projects that receive money from the resiliency fund;

(3)  for the repayment of a loan from the resiliency fund; and

(4)  for the administration of the resiliency fund.

SECTION 2.  Section 251.004(b), Insurance Code, is amended to read as follows:

(b)  Each state fiscal year, the comptroller shall reallocate to the floodplain management account established under Section 16.453 [~~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 3.  Section 16.3161, Water Code, is repealed.

SECTION 4.  On the effective date of this Act, the Floodplain Management Account No. 0330 is transferred to the Texas infrastructure resiliency fund as an account of that fund and the balance of the Floodplain Management Account No. 0330 is transferred to the floodplain management account of the Texas infrastructure resiliency fund.

SECTION 5.  (a)  Not later than the 90th day after the effective date of this Act, the Texas Infrastructure Resiliency Fund Advisory Committee shall submit recommendations to the Texas Water Development Board on the rules to be adopted by the board under Section 16.461, Water Code, as added by this Act.

(b)  Not later than the 90th day after the date the Texas Water Development Board receives the recommendations described by Subsection (a) of this section, the board shall adopt rules under Section 16.461, Water Code, as added by this Act.

SECTION 6.  Contingent on legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan passing and becoming law, on the date that the Texas Water Development Board adopts the initial state flood plan in accordance with that law:

(1)  Section 16.455, Water Code, as added by this Act, expires; and

(2)  Subchapter L, Chapter 16, Water Code, is amended by adding Section 16.4551 to read as follows:

Sec. 16.4551.  FLOOD PLAN IMPLEMENTATION ACCOUNT. (a)  The flood plan implementation account is an account in the resiliency fund.

(b)  The board may use the account only to provide financing for projects included in the state flood plan.

(c)  Money from the account may be awarded to several eligible political subdivisions for a single flood project.

SECTION 7.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.