86R5453 SLB-D

By:  Perry S.B. No. 397

A BILL TO BE ENTITLED

AN ACT

relating to funding of certain flood-related projects by the Texas Water Development Board and the reporting and administration of certain flood-related projects by the State Soil and Water Conservation Board.

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

SECTION 1.  Subchapter B, Chapter 201, Agriculture Code, is amended by adding Section 201.0227 to read as follows:

Sec. 201.0227.  TEN-YEAR DAM REPAIR AND MAINTENANCE PLAN; REPORT. (a) In this section:

(1)  "Plan" means the 10-year dam repair and maintenance plan adopted under this section.

(2)  "Water development board" means the Texas Water Development Board.

(b)  The state board shall prepare and adopt a plan describing the repair and maintenance needs of flood control dams in this state and prepare and adopt a new plan before the expiration of the 10th year following the adoption of a plan.

(c)  The state board shall deliver the plan adopted under this section to the water development board.

(d)  Each year, the state board shall deliver to the water development board a report regarding progress made on items listed in the plan. If an update to the report or plan is necessary before the yearly report or before the end of the 10-year cycle, the state board must deliver to the water development board an amended report or plan.

SECTION 2.  Chapter 15, Water Code, is amended by adding Subchapter J-1 to read as follows:

SUBCHAPTER J-1. STATE FLOOD PLAN IMPLEMENTATION FUND

Sec. 15.651.  DEFINITIONS. In this subchapter:

(1)  "Advisory committee" means the State Flood Plan Implementation Advisory Committee.

(2)  "Fund" means the state flood plan implementation fund.

(3)  "Trust company" means the Texas Treasury Safekeeping Trust Company.

Sec. 15.652.  FUND. (a) The state flood plan implementation fund is a special fund in the state treasury outside the general revenue fund to be used by the board, without further legislative appropriation, for the purpose of implementing the state flood plan and flood control projects administered by the State Soil and Water Conservation Board as provided by this subchapter.

(b)  The fund contains the following two accounts:

(1)  the dam repair and maintenance account, from which the board may allocate money to be transferred to the State Soil and Water Conservation Board to be used as provided by Section 15.655; and

(2)  the flood plan implementation account, from which the board may provide financing for the implementation of the state flood plan, as provided by this subchapter.

(c)  The fund and the fund's accounts are kept and held by the trust company for and in the name of the board. The board has legal title to money and investments in the fund until money is disbursed from the fund as provided by this subchapter and board rules.

(d)  Money in the fund may be used only as provided by this subchapter.

(e)  The fund consists of:

(1)  money transferred or deposited to the credit of the fund by law, including money from any source transferred or deposited to the credit of the fund at the board's discretion as authorized by law;

(2)  any other revenue that the legislature by statute dedicates for deposit to the credit of the fund; and

(3)  investment earnings and interest earned on amounts credited to the fund.

Sec. 15.653.  MANAGEMENT AND INVESTMENT OF FUND. (a) The trust company shall hold and invest the fund, and the accounts established in the fund, for and in the name of the board, taking into account the purposes for which money in the fund may be used. The fund may be invested with the state treasury pool.

(b)  The overall objective for the investment of the fund is to maintain sufficient liquidity to meet the needs of the fund while striving to preserve the purchasing power of the fund.

(c)  The trust company has any power necessary to accomplish the purposes of managing and investing the assets of the fund. In managing the assets of the fund, through procedures and subject to restrictions the trust company considers appropriate, the trust company may acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(d)  The trust company may charge fees to cover its costs incurred in managing and investing the fund. The fees must be consistent with the fees the trust company charges other state and local governmental entities for which it provides investment management services. The trust company may recover fees it charges under this subsection only from the earnings of the fund.

(e)  The trust company annually shall provide a written report to the board and to the advisory committee with respect to the investment of the fund. The trust company shall contract with a certified public accountant to conduct an independent audit of the fund annually and shall present the results of each annual audit to the board and to the advisory committee. This subsection does not affect the state auditor's authority to conduct an audit of the fund under Chapter 321, Government Code.

(f)  The trust company shall adopt a written investment policy that is appropriate for the fund. The trust company shall present the investment policy to the investment advisory board established under Section 404.028, Government Code. The investment advisory board shall submit to the trust company recommendations regarding the policy.

Sec. 15.654.  DISBURSEMENTS FROM FUND. The trust company shall disburse money from the fund as directed by the board.

Sec. 15.655.  USE OF DAM REPAIR AND MAINTENANCE ACCOUNT. (a) The board shall allocate money in the dam repair and maintenance account to the State Soil and Water Conservation Board solely for use by the conservation board to fund projects described in the 10-year dam repair and maintenance plan described by Section 201.0227, Agriculture Code, including projects authorized under:

(1)  the Flood Control Act of 1944 (Pub. L. No. 78-534, Section 13);

(2)  the pilot watershed program authorized under the Department of Agriculture Appropriation Act, 1954 (Pub. L. No. 156-67);

(3)  the Watershed Protection and Flood Prevention Act (Pub. L. No. 83-566); and

(4)  Subtitle H, Title XV, of the Agriculture and Food Act of 1981 (Pub. L. No. 97-98).

(b)  The board shall adopt rules for the use of the money allocated under this section.

Sec. 15.656.  USE OF FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) The board shall allocate money in the flood plan implementation account solely for the purpose of providing financial assistance for projects included in the state flood plan.

(b)  The board shall allocate not less than 25 percent of the money in the flood plan implementation account solely for projects in rural areas.

Sec. 15.657.  PRIORITIZATION OF PROJECTS BY BOARD. (a) The board shall prioritize projects included in the state flood plan for the purpose of providing financial assistance under this subchapter.

(b)  The board shall establish a point system for prioritizing projects for which financial assistance is sought from the board. The system must include a standard for the board to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with the board.

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

(1)  meet an emergency need;

(2)  be funded partially through federal matching funds; and

(3)  include a component that will increase water supply.

Sec. 15.658.  ADVISORY COMMITTEE. (a) The State Flood Plan Implementation Fund Advisory Committee is composed of the following seven members:

(1)  the comptroller, or a person designated by the comptroller;

(2)  three members of the senate appointed by the lieutenant governor, including:

(A)  a member of the committee of the senate having primary jurisdiction over matters relating to finance; and

(B)  a member of the committee of the senate having primary jurisdiction over water; and

(3)  three members of the house of representatives appointed by the speaker of the house of representatives, including:

(A)  a member of the committee of the house of representatives having primary jurisdiction over appropriations; and

(B)  a member of the committee of the house of representatives having primary jurisdiction over water.

(b)  The following persons shall serve as staff support for the advisory committee:

(1)  the deputy executive administrator of the board who is responsible for water science and flood mitigation or a person who holds an equivalent position at the board, or a person designated by that person;

(2)  the deputy executive administrator of the board who is responsible for state flood planning and information or a person who holds an equivalent position at the board, or a person designated by that person;

(3)  the chief financial officer of the board, or a person who holds an equivalent position at the board;

(4)  the fiscal officer of the State Soil and Water Conservation Board; and

(5)  the deputy executive administrator of the State Soil and Water Conservation Board who is responsible for water science and flood mitigation or a person who holds an equivalent position at the conservation board, or a person designated by that person.

(c)  The advisory committee may hold public hearings, formal meetings, or work sessions. 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.

(d)  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.

(e)  The advisory committee shall submit comments and recommendations to the board regarding the use of money in the flood plan implementation account of the fund for use by the board in adopting rules, policies, and procedures under this subchapter. The submission must include:

(1)  comments and recommendations on rulemaking related to the prioritization of projects in the state flood plan;

(2)  comments and recommendations on rulemaking related to establishing standards for determining whether projects meet the criteria provided by the board;

(3)  an evaluation of the available programs for providing financing for projects included in the state flood plan and guidelines for implementing those programs, including guidelines for providing financing for projects included in the state flood plan;

(4)  an evaluation of the funding practices of the board and guidelines for funding standards;

(5)  an evaluation of the use of money by the board to provide support for financial assistance for flood projects;

(6)  an evaluation of methods for encouraging participation in the procurement process by companies domiciled in this state; and

(7)  an evaluation of the overall operation, function, and structure of the flood plan implementation account of the fund.

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

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

(h)  The advisory committee shall make recommendations to the board regarding information to be posted on the board's Internet website under Section 15.440(b).

Sec. 15.659.  RULES. The board shall adopt rules providing for the use of money in the fund that are consistent with this subchapter, including rules:

(1)  establishing standards for determining whether projects meet the criteria provided by Section 15.657; and

(2)  specifying the manner for prioritizing projects for purposes of Section 15.657.

SECTION 3.  (a) Not later than September 1, 2021, the speaker of the house of representatives, the lieutenant governor, and the governor shall appoint the initial members of the State Flood Plan Implementation Fund Advisory Committee created under Section 15.658, Water Code, as added by this Act.

(b)  Notwithstanding Section 15.658, Water Code, as added by this Act, the State Flood Plan Implementation Fund Advisory Committee may not perform any duty or function described by Subchapter J-1, Chapter 15, Water Code, as added by this Act, before September 1, 2021.

SECTION 4.  Not later than December 1, 2019, the Texas Water Development Board shall adopt rules under Subchapter J-1, Chapter 15, Water Code, as added by this Act.

SECTION 5.  (a) Of the $1.2 billion deposited to the credit of the state flood plan implementation fund, the comptroller shall transfer $591,971,801 to the credit of the dam repair and maintenance account described by Section 15.652, Water Code, as added by this Act.

(b)  Of the $1.2 billion deposited to the credit of the state flood plan implementation fund, the comptroller shall transfer $608,028,190 to the credit of the flood plan implementation account described by Section 15.652, Water Code, as added by this Act.

(c)  As soon as practicable after the effective date of this Act, the Texas Water Development Board shall allocate money from the dam repair and maintenance account described by Section 15.652, Water Code, to the State Soil and Water Conservation Board for use as described by Section 15.655, Water Code, as added by this Act.

SECTION 6.  This Act takes effect on the date on which the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, adding Section 49-d-14, Article III, Texas Constitution, creating the state flood plan implementation fund takes effect. If that amendment is not approved by the voters, this Act has no effect.