

By: Creighton, et al.
(Phelan)

S.B. No. 7

Substitute the following for S.B. No. 7:

By: Metcalf

C.S.S.B. No. 7

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

1 eligibility for flood control planning money that considers:

2 (1) the relative need of the political subdivision for
3 the money, giving greater importance to a county that has a median
4 household income that is not greater than 85 percent of the median
5 state household income;

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

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

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

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

16 SUBCHAPTER I. FLOOD INFRASTRUCTURE FUND

17 Sec. 15.531. DEFINITIONS. In this subchapter:

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

21 (2) "Flood project" means a drainage, flood
22 mitigation, or flood control project, including:

23 (A) planning and design activities;

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

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

1 (D) construction and implementation of
2 nonstructural projects, including projects that use nature-based
3 features to protect, mitigate, or reduce flood risk.

4 (3) "Infrastructure fund" means the flood
5 infrastructure fund.

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

8 Sec. 15.532. FINDINGS. The legislature finds that:

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

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

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

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

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

1 (c) The infrastructure fund consists of:

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

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

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

8 (4) repayments of loans made from the infrastructure
9 fund;

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

12 (6) depository interest allocable to the
13 infrastructure fund;

14 (7) money from gifts, grants, or donations to the
15 infrastructure fund; and

16 (8) money from revenue bonds or other sources
17 designated by the board for deposit to the infrastructure fund.

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

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

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

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

27 (B) a flood project to serve an economically

1 distressed area;

2 (3) to make a loan at or below market interest rates
3 for planning and design costs, permitting costs, and other costs
4 associated with state or federal regulatory activities with respect
5 to a flood project;

6 (4) to make a grant to an eligible political
7 subdivision to provide matching funds to enable the eligible
8 political subdivision to participate in a federal program for a
9 flood project;

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

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

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

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

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

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

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

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

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

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

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

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

23 (2) the application demonstrates a sufficient level of
24 cooperation among eligible political subdivisions and includes all
25 of the eligible political subdivisions substantially affected by
26 the flood project; and

27 (3) the taxes or other revenue, or both the taxes and

1 other revenue, pledged by the applicant will be sufficient to meet
2 all the obligations assumed by the eligible political subdivision.

3 Sec. 15.537. RULES. The board shall adopt rules necessary
4 to carry out this subchapter, including rules:

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

7 (2) for the investment of money; and

8 (3) for the administration of the infrastructure fund.

9 Sec. 15.538. INFORMATION CLEARINGHOUSE. The board shall
10 act as a clearinghouse for information about state and federal
11 flood planning, mitigation, and control programs that may serve as
12 a source of funding for flood projects.

13 Sec. 15.539. LIABILITY. Participation in cooperative flood
14 planning to obtain money under this subchapter does not subject an
15 eligible political subdivision to civil liability in regard to a
16 flood project.

17 SECTION 4. Subchapter H, Chapter 49, Water Code, is amended
18 by adding Section 49.239 to read as follows:

19 Sec. 49.239. COOPERATIVE FLOOD CONTROL. A district,
20 including a river authority, may participate in cooperative flood
21 control planning for the purpose of obtaining financial assistance
22 as an eligible political subdivision for a flood control project
23 under Subchapter I, Chapter 15.

24 SECTION 5. Contingent on legislation of the 86th
25 Legislature, Regular Session, 2019, that requires the creation of a
26 state flood plan passing and becoming law, on the date that the
27 Texas Water Development Board adopts the initial state flood plan

1 in accordance with that law:

2 (1) Section 15.534, Water Code, as added by this Act,
3 expires; and

4 (2) Subchapter I, Chapter 15, Water Code, is amended
5 by adding Section 15.5341 to read as follows:

6 Sec. 15.5341. USE OF INFRASTRUCTURE FUND. (a) The board may
7 use the infrastructure fund only to provide financing for flood
8 projects included in the state flood plan.

9 (b) Money from the infrastructure fund may be awarded to
10 several eligible political subdivisions for a single flood project.

11 SECTION 6. (a) The amount of \$3.26 billion is appropriated
12 out of the economic stabilization fund to the flood infrastructure
13 fund for purposes of implementing Subchapter I, Chapter 15, Water
14 Code, as added by this Act.

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

19 SECTION 7. This Act takes effect January 1, 2020, but only
20 if the constitutional amendment proposed by the 86th Legislature,
21 Regular Session, 2019, authorizing the legislature to provide for
22 the creation of the flood infrastructure fund to assist in the
23 financing of drainage, flood mitigation, and flood control projects
24 is approved by the voters. If that amendment is not approved by the
25 voters, this Act has no effect.