

By: Perry

S.B. No. 397

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to funding of certain flood-related projects by the Texas  
3 Water Development Board and the reporting and administration of  
4 certain flood-related projects by the State Soil and Water  
5 Conservation Board.

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

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

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

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

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

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

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

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

1 board must deliver to the water development board an amended report  
2 or plan.

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

5 SUBCHAPTER J-1. STATE FLOOD PLAN IMPLEMENTATION FUND

6 Sec. 15.651. DEFINITIONS. In this subchapter:

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

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

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

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

19 (b) The fund contains the following two accounts:

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

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

27 (c) The fund and the fund's accounts are kept and held by the

1 trust company for and in the name of the board. The board has legal  
2 title to money and investments in the fund until money is disbursed  
3 from the fund as provided by this subchapter and board rules.

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

6 (e) The fund consists of:

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

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

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

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

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

23 (c) The trust company has any power necessary to accomplish  
24 the purposes of managing and investing the assets of the fund. In  
25 managing the assets of the fund, through procedures and subject to  
26 restrictions the trust company considers appropriate, the trust  
27 company may acquire, exchange, sell, supervise, manage, or retain

1 any kind of investment that a prudent investor, exercising  
2 reasonable care, skill, and caution, would acquire or retain in  
3 light of the purposes, terms, distribution requirements, and other  
4 circumstances of the fund then prevailing, taking into  
5 consideration the investment of all the assets of the fund rather  
6 than a single investment.

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

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

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

27 Sec. 15.654. DISBURSEMENTS FROM FUND. The trust company

1 shall disburse money from the fund as directed by the board.

2 Sec. 15.655. USE OF DAM REPAIR AND MAINTENANCE ACCOUNT. (a)

3 The board shall allocate money in the dam repair and maintenance  
4 account to the State Soil and Water Conservation Board solely for  
5 use by the conservation board to fund projects described in the  
6 10-year dam repair and maintenance plan described by Section  
7 201.0227, Agriculture Code, including projects authorized under:

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

10 (2) the pilot watershed program authorized under the  
11 Department of Agriculture Appropriation Act, 1954 (Pub. L. No.  
12 156-67);

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

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

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

19 Sec. 15.656. USE OF FLOOD PLAN IMPLEMENTATION ACCOUNT. (a)

20 The board shall allocate money in the flood plan implementation  
21 account solely for the purpose of providing financial assistance  
22 for projects included in the state flood plan.

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

26 Sec. 15.657. PRIORITIZATION OF PROJECTS BY BOARD. (a) The

27 board shall prioritize projects included in the state flood plan

1 for the purpose of providing financial assistance under this  
2 subchapter.

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

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

- 12 (1) meet an emergency need;  
13 (2) be funded partially through federal matching  
14 funds; and  
15 (3) include a component that will increase water  
16 supply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       (c) The advisory committee may hold public hearings, formal  
2 meetings, or work sessions. The advisory committee may not take  
3 formal action at a public hearing, formal meeting, or work session  
4 unless a quorum of the committee is present.

5       (d) Except as otherwise provided by this subsection, a  
6 member of the advisory committee is not entitled to receive  
7 compensation for service on the committee or reimbursement for  
8 expenses incurred in the performance of official duties as a member  
9 of the committee. Service on the advisory committee by a member of  
10 the senate or house of representatives is considered legislative  
11 service for which the member is entitled to reimbursement and other  
12 benefits in the same manner and to the same extent as for other  
13 legislative service.

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

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

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

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



1 state flood plan;

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

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

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

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

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

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

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

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

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

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

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

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

11 SECTION 4. Not later than December 1, 2019, the Texas Water  
12 Development Board shall adopt rules under Subchapter J-1, Chapter  
13 15, Water Code, as added by this Act.

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

19 (b) Of the \$1.2 billion deposited to the credit of the state  
20 flood plan implementation fund, the comptroller shall transfer  
21 \$608,028,190 to the credit of the flood plan implementation account  
22 described by Section 15.652, Water Code, as added by this Act.

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

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