

SUBJECT: Transfer of National Flood Insurance Program from TCEQ to TWDB

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Puente, Hamilton, Creighton, Guillen, Hilderbran, O'Day

0 nays

3 absent — Gattis, Gallego, Laubenberg

SENATE VOTE: On final passage, May 2 — 29-1 (Williams)

WITNESSES: *(On similar bill, HB 3073 by Creighton:)*

For — Wes Birdwell, Texas Floodplain Management Association; Greg Rothe, San Antonio River Authority; Bruce Barr, Texas Association of Counties/CFM; *(Registered, but did not testify: Dean Robbins, Texas Water Conservation Association)*

Against — None

On — *(Registered, but did not testify: Carolyn Brittin, Kevin Ward, and Lorelei Weitzel, Texas Water Development Board; Gary Johnson, Texas Comptroller's Office; Mike Howard, Texas Commission on Environmental Quality; Joe Meyer, Texas Department of Insurance)*

BACKGROUND: The National Flood Insurance Program (NFIP) was established by Congress in the National Flood Insurance Act of 1968. The program is administered by the Federal Insurance Administration and the Mitigation Directorate, components of the Federal Emergency Management Agency (FEMA). Under this program, FEMA makes flood insurance available on the condition that a community implements adequate floodplain management regulations to mitigate flood risk.

Under current law, the Texas Commission on Environmental Quality (TCEQ) administers NFIP at the state level. The commission's relevant duties include aiding, advising, and coordinating the efforts of political subdivisions trying to qualify for participation in NFIP. These duties include:

- coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;
- evaluating federal, state, and political subdivision flood control programs in or adjacent to the state;
- conducting studies on the adequacy of laws, regulations, and ordinances in flood-prone areas in regard to land management and use, flood control, flood zoning, and flood damage prevention;
- evaluating engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas;
- conducting floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones; and
- identifying and publishing information and maps on floodplain areas with flood hazards to aid the federal government in identifying and establishing flood-risk zones in such areas.

DIGEST: SB 1436 would transfer administration and funding of the National Flood Insurance Program from TCEQ to the Texas Water Development Board (TWDB).

Duties. TWDB would have general jurisdiction over the administration of NFIP and in cooperating with FEMA to facilitate Texas' participation in the program. By aiding, advising, and coordinating the efforts of political subdivisions attempting to qualify for NFIP, the board would carry out duties formerly delegated to TCEQ.

The bill would assign new duties to the board in regard to aiding, advising, and coordinating program participation. TWDB's new duties would include:

- encouraging FEMA to evaluate flood-prone areas by river basin and river system;
- coordinating the use of federal, state, and local grant money;
- making floodplain maps and floodplain information accessible to the public, including on the board's web site; and
- maintaining at least one staff member in each of the board's field offices to encourage program participation through outreach and coordinating efforts.

Funding. The bill would require the 80th Legislature to appropriate at least \$6.1 million to TWDB for program administration over the next

fiscal biennium. Additionally, a floodplain management account would be created as a special fund in the state treasury. Every fiscal year, the comptroller would reallocate the first \$3.05 million of maintenance taxes collected from insurers on gross premiums collected from certain incidents to the floodplain management account. The fund would be composed of:

- money deposited to the credit of the Texas Department of Insurance (TDI) operating account;
- money directly appropriated to the board; and
- money from the federal government, local or regional governments, private sources, or other sources.

The floodplain management account would fund the board's duties. It would exist outside of the general revenue fund and would be administered by TWDB. The board would be authorized to invest money in the account, following provisions outlined in the Government Code.

TCEQ would transfer the powers, duties, and funds that relate to NFIP administration to TWDB no later than January 1, 2008. The relevant rules, policies, forms, procedures, and decisions of TCEQ would be continued in effect until superseded by a rule or action by TWDB.

The act would take effect September 1, 2007, if the 80th Legislature appropriated at least \$6.1 million to the board for program administration. The act would not take effect if the 80th Legislature did not appropriate that amount.

**SUPPORTERS
SAY:**

SB 1463 would transfer TCEQ's NFIP duties to TWDB, an entity that oversees a variety of water programs and would be better suited to administer NFIP at the state level and coordinate the use of grant money. The bill stems from the Senate Intergovernmental Relations Committee's interim report on floodplain management. Improved administration by TWDB and increased program funding would bolster the state's ability to protect Texas from floods.

Texas ranks first nationwide in lives lost as a result of flooding. Floods also represent the most costly natural hazard facing the state. Problems associated with flooding are expected to grow, as the state's population increases. Development spurred from population growth transforms floodplains and increases storm water runoff, exposing people and properties to increased flooding hazards. Despite the safety and financial

risks posed by flooding, the state ranks 30th in floodplain funding. The state's current efforts at facilitating the participation of local communities in NFIP are inadequate, which inhibits access to the lower flood insurance premiums available through FEMA. SB 1436 would allow the state to better coordinate efforts under the program.

Current data on floodplains is insufficient. This paucity of information prevents local governments and developers from planning development projects around floodplains in order to minimize future flooding hazards. SB 1436 would authorize TWDB to petition FEMA to evaluate floodplain areas with the intent of enhancing floodplain management efforts. Also, TWDB currently manages a geographic information system to support floodplain mapping, which would be expanded under the bill. By making floodplain maps and information more accessible, local governments could facilitate development patterns to better protect lives and property.

OPPONENTS
SAY:

SB 1436 only would take effect if the Legislature appropriated \$6.1 million over the next biennium for program administration. According to the Legislative Budget Board (LBB), this would cause TDI to increase maintenance taxes on insurers to generate sufficient revenue to offset that cost. According to the Comptroller's Office, this increase in maintenance tax rates would have negative retaliatory tax implications. Higher insurance taxes in Texas would cause other states to impose higher retaliatory taxes on Texas insurers, raising their business costs and making them less competitive in those states.

Conversely, higher taxes imposed in Texas would reduce the amount of revenue this state collected in retaliatory taxes from other states, estimated as a reduction of \$211,000 each fiscal biennium, according to the LBB. Because of the constitutional dedication of occupation taxes, this loss would be split 75/25 between general revenue and the Foundation School Fund, resulting in a loss of \$53,000 to the Foundation School Fund each fiscal biennium.

NOTES:

According to the LBB, the bill would cost \$211,000 in general revenue-related funds in fiscal 2008-09.

A similar bill, HB 3073 by Creighton, was placed on the General State Calendar for May 9, but no further action was taken by the House.