

SUBJECT: Creating the Flood Infrastructure Fund, appropriating funds

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Oliverson, Ramos

0 nays

1 absent — Price

WITNESSES: None

BACKGROUND: Water Code sec. 15.405 allows the Texas Water Development Board to enter into contracts with political subdivisions to develop flood control plans.

DIGEST: CSHB 13, the enabling legislation for HJR 4 by Phelan, would create and regulate the Flood Infrastructure Fund, establish certain flood planning procedures, and make an appropriation.

Flood infrastructure fund. The bill would create the Flood Infrastructure Fund as a special fund in the state treasury outside the general revenue fund. The fund would consist of legislative appropriations, proceeds from general obligation bonds, fees, repayments of loans, earned interest, and certain other funds.

CSHB 13 would allow the Texas Water Development Board (TWDB) to use the fund only:

- to make a loan to an eligible political subdivision at or below market interest rates for a flood project;
- to make a grant or a low or zero interest loan to an eligible political subdivision for a flood project outside a metropolitan area or in an economically distressed area;
- to make a loan at or below market interest rates for planning and

- design costs, permitting costs, and other costs associated with state or federal regulatory authorities with respect to a flood project;
- as a source of revenue or security for the principal and interest on bonds; and
 - to pay necessary and reasonable expenses of fund administration.

An eligible political subdivision would include a district or authority created under certain provisions of the Texas Constitution, a city, or a county.

Applications for financial assistance. An eligible political subdivision applying for financial assistance for a proposed flood project would have to demonstrate:

- cooperation with other political subdivisions to address flood control needs in the area;
- participation in the process of developing the project from all other affected political subdivisions;
- that public meetings were held on the proposed projects; and
- the technical requirements for the projects were completed and compared against other potential flood projects.

The application would have to include an analysis of whether the proposed flood project could use floodwater capture techniques for water supply purposes, including floodwater harvesting, detention or retention basins, or other methods of capturing storm or unappropriated flood flow.

On review and recommendation by the executive administrator, TWDB could approve an application that demonstrated a sufficient level of cooperation among eligible political subdivisions, included all affected political subdivisions, demonstrated sufficient taxes or other revenue to meet all obligations, and otherwise met requirements of this bill and board rules.

The bill would apply statutory regulations on public funding for water development to financial assistance from the infrastructure fund, except

TWDB would be able to execute contracts as needed to evidence grant agreements.

TWDB rules and authority. TWDB would have to adopt rules to establish procedures for an application for financial assistance, for the investment of money, and for the administration of the infrastructure fund. The board could exercise any powers necessary to carry out this bill, including contracting ability.

CSHB 13 would allow the TWDB to sell or dispose of political subdivision bonds at the price and under the terms the board determined to be reasonable. TWDB could sell political subdivision bonds without making a previous offer to the political subdivision and without advertising, soliciting, or receiving bids for sale.

TWDB could sell bonds purchased with money from the infrastructure fund to the Texas Water Resources Finance Authority and, as part of a sales agreement, could contract to perform necessary functions to ensure the political subdivision paid the debt service on bonds.

The bill would require TWDB to act as a clearinghouse for information about state and federal flood planning, mitigation, and control programs that could serve as a source of funding for flood projects.

Liability. Participation in cooperative flood planning to obtain money from the infrastructure fund would not subject an eligible political subdivision to civil liability in regard to a flood project.

Flood control planning. The bill would define flood control planning, as used in Water Code sec. 15.405 for contracts with political subdivisions, as any work related to:

- planning for flood protection;
- preparing applications for and obtaining regulatory approval;
- administrative or legal proceedings by regulatory agencies; and
- preparing engineering plans for flood mitigation and drainage.

CSHB 13 would allow TWDB, when establishing criteria of eligibility for flood control planning money, to give greater importance to a county with a median household income at or below 85 percent of the state median.

State flood plan. The bill would require TWDB to prepare and adopt a comprehensive state flood plan incorporating the regional flood plans approved by the board no later than September 1, 2024, and every five years thereafter.

Dam repair and maintenance plan. The Texas State Soil and Water Conservation Board would have to prepare and adopt a plan describing the repair and maintenance needs of flood control dams every ten years.

River authority cooperation. A river authority, or a district created under the Texas Constitution as a regional water management entity providing water development and planning services to a river basin, could participate in cooperative flood planning to obtain money from the infrastructure fund. Cooperation activities could include providing administrative or technical support and the participation of a director, general manager, or other river authority staff in the planning process.

Appropriation. CSHB 13 would appropriate \$3.26 billion from the Economic Stabilization Fund to the Flood Infrastructure Fund. This appropriation would take effect only if the bill was approved by a vote of two-thirds of the membership of each house.

Effective date. The bill would take effect January 1, 2020, but only if the constitutional amendment proposed by this Legislature providing for the creation of the Flood Infrastructure Fund was approved by voters. If that amendment was not approved by voters, the bill would have no effect.

SUPPORTERS
SAY:

By creating the Flood Infrastructure Fund, CSHB 13 would establish regional planning and coordination on flood mitigation projects to better provide for vital infrastructure in the state. A significant funding source is necessary to ensure cooperation among regions and all affected

stakeholders and to create a more resilient Texas.

The bill would provide disbursement oversight for the fund. A local government could only access funds if it had fully cooperated with other entities in the region, held public meetings to accept comments from stakeholders, and completely engineered projects and scored them against one another.

Federal funds are available for flood projects after disastrous events, but counties and cities may not be able to put up the matching funds necessary to access that money. The infrastructure fund created by CSHB 13 would provide loans at or below market rates to assist local governments with basic flood project planning, grant applications, and the engineering of structural and nonstructural flood mitigation projects.

The appropriation made by CSHB 13 would be a one-time expense for necessary flood infrastructure and would be made appropriately through the Economic Stabilization Fund. Infrastructure needs in the state must be met to prepare for future flood events.

**OPPONENTS
SAY:**

While the Legislature should prepare flood planning measures, CSHB 13 would improperly use the Economic Stabilization Fund (ESF) for an appropriation to the Flood Infrastructure Fund. The ESF should be used only for disaster response or relief or for other one-time expenses. Because the infrastructure fund would be an ongoing state program, the money should come from general revenue.

NOTES:

CSHB 13 is the enabling legislation for HJR 4, which would amend the Texas Constitution to create the Flood Infrastructure Fund. HJR 4 is on the Constitutional Amendments Calendar for today.

The Legislative Budget Board estimates CSHB 13 would have a negative impact of \$50.4 million in general revenue related funds for the 2020-21 biennium.

The author plans to offer a floor amendment that would amend the

provision authorizing a river authority to participate in cooperative flood control planning by removing the definition of a river authority.