

BILL ANALYSIS

Senate Research Center

H.B. 2977
By: Hamric (Lindsay)
Natural Resources
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Engrossed

DIGEST

Currently, when developing certain projects in Harris County, there are local flood control guidelines as well as federal and state water quality requirements leaving some concern that this process may ignore the regional approach necessary to effectively address flood and water quality issues. H.B. 2977 sets forth provisions regarding regional flood control plans and certification of federally authorized discharges.

PURPOSE

As proposed, H.B. 2977 sets forth provisions regarding regional flood control plans and certification of federally authorized discharges.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 3 (Section 26.0231(e), Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.104, Water Code, by adding Subsection (c), to require the Texas Natural Resource Conservation Commission (TNRCC) to use its best efforts to develop a memorandum of understanding with the United States Army Corps of Engineers to foster regional programmatic permits under Section 404, Federal Water Pollution Control Act, as amended, in counties in which regional flood control plans have been developed.

SECTION 2. Amends Chapter 16, Water Code, by adding Subchapter K, as follows:'

SUBCHAPTER K. REGIONAL FLOOD CONTROL PLANS

Sec. 16.381. **APPLICABILITY.** Sets forth the governmental entities to which this subchapter applies.

Sec. 16.382. **REGIONAL FLOOD CONTROL PLANNING.** Authorizes a district created under Section 59, Article XVI, Texas Constitution (district) and a county to cooperate to develop and adopt a regional flood control plan (plan) in the manner provided by Sections 16.315 and 16.316. Sets forth requirements for the plan.

Sec. 16.383. **AUTHORITY TO ACQUIRE LAND.** Sets forth provisions regarding acquisition of land by a district or county for a plan. Prohibits a district from acquiring land under this subchapter by the power of eminent domain.

Sec. 16.384. **RULES.** Requires the plan to include rules requiring any development in the county to conform with land use and control measures adopted by the district or county under Section 16.315.

Sec. 16.385. **FUNDING.** Authorizes the plan to identify possible means of funding for the purchase of land including certain funding mechanisms. Authorizes a district that adopts a plan to request advice from the Texas Water Development Board to identify means to finance the purchase of land.

Sec. 16.386. **ADOPTION OF PLAN.** Sets forth procedures for adopting a plan.

Sec. 16.387. FEES. Authorizes the district to facilitate the development of alternative wetland mitigation programs for permit applications in the district under Section 404, Federal Water Pollution Control Act. Authorizes a program to include the imposition of fees instead of wetland mitigation activities. Requires the district to use money from the fees to acquire land in the areas identified as flood hazard areas and not suitable for development.

SECTION 3. Amends Chapter 26B, Water Code, by adding Section 26.0231, as follows:

Sec. 26.0231. CERTIFICATION OF FEDERALLY AUTHORIZED DISCHARGES. Authorizes TNRCC to exercise the powers reserved to the state under Section 401, Federal Water Pollution Control Act, as amended, to certify that the discharge pollutant will not cause a violation of applicable water quality standards or waive certification. Sets forth circumstances under which TNRCC may waive certification. Sets forth the policy of TNRCC in exercising its authority under this section. Requires TNRCC, during the waive period required by Subsection (b), to recognize and accept decisions made by the United States Army Corps of Engineers under Section 404, Federal Water Pollution Control Act, as amended, regarding the appropriate scope and extent of compensatory mitigation for a project, except where necessary to maintain delegation of a federally delegated program or approval of a federally approved program. Requires TNRCC, by rule, to develop an expedited certification review process under Subsection (a) for certain projects. Requires TNRCC develop a review process that meets certain requirements if a review process is required to maintain delegation of a federally delegated program or approval of a federally approved program. Authorizes a district that adopts a plan to request assistance from the Texas Water Development Board to create a system for payment to the district by proponents of projects in areas identified in the plan as located outside the flood hazard areas and suitable for development of fees instead of compensatory wetlands mitigation. Requires the fees to be used by the plan participants for acquisition of land in the areas identified as flood hazard areas and not suitable for development.

SECTION 4. Emergency clause.

Effective date: upon passage.