

BILL ANALYSIS

Senate Research Center

H.B. 13
By: Phelan et al. (Creighton)
Water & Rural Affairs
5/15/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 13 amends current law relating to flood planning, mitigation, and infrastructure projects, and makes an appropriation.

Note: While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the amendments made by this bill affect the Texas Commission on Environmental Quality as the successor agency to TNRCC.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Water Development Board (TWDB) is modified in SECTION 2 (15.405, Water Code) of this bill.

Rulemaking authority is expressly granted to TWDB in SECTION 3 (Section 15.538 Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 15.405, Water Code, as follows:

Sec. 15.405. FLOOD CONTROL PLANNING CONTRACTS.

SECTION 2. Amends Section 15.405, Water Code, by amending Subsections (a), (f), and (g) and adding Subsection (a-1), as follows:

(a) Defines "flood control planning" for purposes of this section.

(a-1) Creates this subsection from existing text. Authorizes the Texas Water Development Board (TWDB) to enter into contracts with political subdivisions to pay from the research and planning fund all or part of the cost of flood control planning for the political subdivision, rather than developing flood control plans for the political subdivision.

(f) Requires TWDB to adopt rules establishing criteria of eligibility for flood control planning money that considers:

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

(2)–(3) makes no changes to these subdivisions.

(g) Requires TWDB to require that flood control planning documents, rather than plans, developed under contracts entered into under this section be made available to, the Texas Natural Resource Conservation Commission (TNRCC).

SECTION 3. Amends Chapter 15, Water Code, by adding Subchapter I, as follows:

SUBCHAPTER I. FLOOD INFRASTRUCTURE FUND

Sec. 1531. DEFINITIONS. Defines "eligible political subdivision," "flood project," "infrastructure fund," "metropolitan statistical area," and "political subdivision bonds" for purposes of this subchapter.

Sec. 15.532. FINDINGS. Provides that the legislature finds that:

- (1) the creation of the infrastructure fund and the administration of the fund by TWDB will encourage the development of nonstructural and structural flood mitigation in the state;
- (2) the use of the infrastructure fund is in furtherance of the public purpose of mitigating the effects of flooding in the state; and
- (3) the use of the infrastructure fund for the purposes provided by this subchapter is for the benefit of both the state and the political subdivisions to which TWDB makes financial assistance available in accordance with this subchapter and constitutes a program under Sections 49-d-3 (Creation and Use of Special Funds For Water Projects) and 52-a (Program and Loans or Grants of Public Money For Economic Development), Article III, Texas Constitution.

Sec. 15.533. FLOOD INFRASTRUCTURE FUND. (a) Provides that the flood infrastructure fund is a special fund in the state treasury outside the general revenue fund.

(b) Authorizes the infrastructure fund to be used by TWDB, without further legislative appropriation, only as provided by this subchapter.

(c) Provides that the infrastructure fund consists of:

- (1) appropriations from the legislature for a purpose of the infrastructure fund;
- (2) proceeds of general obligation bonds issued for a purpose of the infrastructure fund;
- (3) any fees or other sources of revenue that the legislature dedicates for deposit to the infrastructure fund;
- (4) repayments of loans made from the infrastructure fund;
- (5) interest earned on money credited to the infrastructure fund;
- (6) depository interest allocable to the infrastructure fund;
- (7) money from gifts, grants, or donations to the infrastructure fund;
- (8) money from revenue bonds or other sources designated by TWDB for deposit to the infrastructure fund; and
- (9) proceeds from the sale of political subdivision bonds or obligations held in the infrastructure fund and not otherwise pledged to the discharge, repayment, or redemption of revenue bonds or other bonds, the proceeds of which were placed in the infrastructure fund.

Sec. 15.534. USE OF INFRASTRUCTURE FUND. (a) Authorizes TWDB to use the infrastructure fund only:

- (1) to make a loan to an eligible political subdivision at or below market interest rates for a flood project;
- (2) to make a grant, low interest loan, or zero interest loan to an eligible

political subdivision for:

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

(B) a flood project to serve an economically distressed area;

(3) 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 activities with respect to a flood project;

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

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

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

(b) Authorizes principal and interest payments on loans made under Subsection (a)(3) to be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

Sec. 15.535. APPLICATION REQUIREMENTS (a) Requires an eligible political subdivision applying for financial assistance under this subchapter for a proposed flood project, except as provided by Subsection (c), to demonstrate in the application that:

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

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

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

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

(b) Requires the application 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 flow or unappropriated flood flow.

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

Sec. 15.536. APPROVAL OF APPLICATIONS. Authorizes TWDB, on review and recommendation by the executive administrator of TWDB (executive administrator), to approve an application only if TWDB finds that:

(1) the application and the assistance applied for meet the requirements of

this subchapter and TWDB rules;

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

(3) the taxes or other revenue, or both the taxes and other revenue, pledged by the applicant will be sufficient to meet all the obligations assumed by the eligible political subdivision.

Sec. 15.537. **APPLICABLE LAW.** Provides that Subchapter E (Provisions Generally Applicable to Financial Assistance), Chapter 17, applies to financial assistance made available from the infrastructure fund, except that TWDB is authorized to execute contracts as necessary to evidence grant agreements.

Sec. 15.538. **RULES.** Requires TWDB to adopt rules necessary to carry out this subchapter, including rules:

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

(2) for the investment of money; and

(3) for the administration of the infrastructure fund.

Sec. 15.539. **SALE OF POLITICAL SUBDIVISION BONDS.** (a) Authorizes TWDB to sell or dispose of political subdivision bonds at the price and under the terms that TWDB determines to be reasonable.

(b) Authorizes TWDB to sell political subdivision bonds without making a previous offer to the eligible political subdivision that issued the bonds and without advertising, soliciting, or receiving bids for sale.

(c) Authorizes TWDB, notwithstanding other provisions of this chapter (Texas Water Assistance Program), to sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the infrastructure fund and to apply the proceeds of a sale in the manner provided by this section.

(d) Requires proceeds from the sale of political subdivision bonds under this section to be deposited in the infrastructure fund for use as provided by Section 15.534.

(e) Authorizes TWDB, as part of a sales agreement with the Texas Water Resources Finance Authority, by contract to agree to perform the functions required to ensure that the eligible political subdivision pays the debt service on political subdivision bonds sold and observes the conditions and requirements stated in those bonds.

(f) Authorizes TWDB to exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

Sec. 15.540. **INFORMATION CLEARINGHOUSE.** Requires TWDB to act as a clearinghouse for information about state and federal flood planning, mitigation, and control programs that may serve as a source of funding for flood projects.

Sec. 15.541. **LIABILITY.** Provides that participation in cooperative flood planning to obtain money under this subchapter does not subject an eligible political subdivision to civil liability in regard to a flood project.

SECTION 4. Amends Subchapter C, Chapter 16, Water Code, by adding Sections 16.061 and 16.062, as follows:

Sec. 16.061. STATE FLOOD PLAN. Requires TWDB, not later than September 1, 2024, and before the end of each successive five-year period after that date, to prepare and adopt a comprehensive state flood plan that incorporates the regional flood plans approved by TWDB.

Sec. 16.062. TEN-YEAR DAM REPAIR AND MAINTENANCE PLAN. Requires the Texas State Soil and Water Conservation Board to prepare and adopt a plan describing the repair and maintenance needs of flood control dams as provided by rule and prepare and adopt a new plan before the end of the 10th year following the adoption of a plan.

SECTION 5. Amends Subchapter H, Chapter 49, Water Code, by adding Section 49.239, as follows:

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

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

(b) Provides that this section takes effect only if this Act is approved by a vote of two-thirds of the members present in each house of the legislature, as provided by Section 49-g(m) (relating to authorizing the legislature to make appropriations by a two-thirds vote of the members present in each house), Article III, Texas Constitution.

SECTION 7. Effective date: January 1, 2020, contingent upon approval by the voters of the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, authorizing the legislature to provide for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects.