

## **BILL ANALYSIS**

Senate Research Center

S.B. 7  
By: Creighton et al.  
Water & Rural Affairs  
6/26/2019  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Since 1953, Texas has had the most federal major disaster declarations of any state. In 2017, Texas was hit by the most destructive storm in United States history. To build a more resilient Texas that can withstand future storms, Texas needs a funding mechanism to assist in financing flood mitigation projects in an efficient and transparent manner.

S.B. 7 amends the existing floodplain management account to create the Texas Infrastructure Resiliency Fund, or TIRF. TIRF will house four accounts within the fund:

- the floodplain management account, which will continue to be used for grants, data collection, stream gaging, and outreach;
- the Hurricane Harvey account, which will be used to meet local match requirements to leverage federally appropriated money for recovery use as a result of Hurricane Harvey;
- the flood plan implementation account, which will be used to finance flood mitigation projects included in the state flood plan; and
- the federal matching account, which will be used to meet matching requirements for projects funded partially by the United States Army Corps of Engineers.

S.B. 7 also includes oversight by an advisory committee, a report from agencies that utilize federal dollars to better track revenue streams and expenses, transparency requirements, and cost sharing requirements with political subdivisions. TIRF will be used to quickly get Texans' tax dollars back down from Washington, D.C. to build a stronger and more resilient Texas. (Original Author's/Sponsor's Statment of Intent)

S.B. 7 amends current law relating to flood planning, mitigation, and infrastructure projects.

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

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Water Development Board (TWDB) in SECTION 2.01 and 3.01 (Section 15.537 and 16.460, Water Code) of this bill.

Rulemaking authority is expressly granted to the State Water Implementation Fund for Texas Advisory Committee in SECTION 2.01 (Section 15.450, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Infrastructure Resiliency Fund Advisory Committee in SECTION 3.01 (Section 16.456, Water Code) of this bill.

Rulemaking authority previously granted to TWDB is modified in SECTION 1.02 (Section 15.405, Water Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. FLOOD CONTROL PLANNING

SECTION 1.01. Amends the heading to Section 15.405, Water Code, to read as follows:

Sec. 15.405. FLOOD CONTROL PLANNING CONTRACTS.

SECTION 1.02. 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) 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 the cost of 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; and

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

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

SECTION 2.01. Amends Chapter 15, Water Code, by adding Subchapter I, as follows:

#### SUBCHAPTER I. FLOOD INFRASTRUCTURE FUND

Sec. 15.531. DEFINITIONS. Defines "eligible political subdivision," "flood project," "infrastructure fund," and "metropolitan statistical area" 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 (Programs 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; and
- (8) money from revenue bonds or other sources designated by TWDB for deposit to 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 or loan at or below market interest rates to an eligible political subdivision for a flood project to serve an area outside of a metropolitan statistical area in order to ensure that the flood project is implemented;
- (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) to make a grant to an eligible political subdivision for a flood project if TWDB determines that the eligible political subdivision does not have the ability to repay a loan;
- (6) 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;
- (7) to pay the necessary and reasonable expenses of TWDB in administering the infrastructure fund; and
- (8) to make transfers to the research and planning fund created under Section 15.402 (Research and Planning Fund) of this chapter.

(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, 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. 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. 15.538. 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. 15.539. LIABILITY. Provides that participation in cooperative flood planning to obtain money under this subchapter does not subject the state or an eligible political subdivision to civil liability in regard to a flood project.

Sec. 15.540. ADVISORY COMMITTEE. (a) Defines "advisory committee" as the State Water Implementation Fund for Texas Advisory Committee described by Section 15.438 for purposes of this section.

(b) Requires the advisory committee to:

(1) review the overall operation, function, and structure of the infrastructure fund at least semiannually and authorizes the advisory committee to provide comments and recommendations to TWDB on any matter; and

(2) make recommendations to TWDB regarding information on the infrastructure fund to be posted on TWDB's Internet website.

(c) Authorizes the advisory committee to:

(1) submit comments and recommendations to TWDB regarding the use of money in the infrastructure fund and for use by TWDB in adopting rules; and

(2) adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

SECTION 2.02. 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 2.03. Provides that, contingent on legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan passing and becoming law, on the date that TWDB adopts the initial state flood plan in accordance with that law:

(1) Section 15.534, Water Code, as added by this Act, expires; and

(2) Subchapter I, Chapter 15, Water Code, is amended by adding Section 15.5341, as follows:

Sec. 15.5341. USE OF INFRASTRUCTURE FUND. (a) Authorizes TWDB to use the infrastructure fund only to provide financing for flood projects included in the state flood plan.

(b) Authorizes money from the infrastructure fund to be awarded to several eligible political subdivisions for a single flood project.

### ARTICLE 3. TEXAS INFRASTRUCTURE RESILIENCY FUND

SECTION 3.01. Amends Chapter 16, Water Code, by adding Subchapter L, as follows:

#### SUBCHAPTER L. FLOOD PROJECT FUNDING

Sec. 16.451. DEFINITIONS. Defines "advisory committee" as the Texas Infrastructure Resiliency Fund Advisory Committee, defines "eligible political subdivision," defines "flood project," and defines "resiliency fund" as the Texas Infrastructure Resiliency Fund for purposes of this subchapter.

Sec. 16.452. TEXAS INFRASTRUCTURE RESILIENCY FUND. (a) Provides that the resiliency fund is a special fund in the state treasury outside the general revenue fund.

(b) Requires the resiliency fund to be administered by TWDB in accordance with this subchapter.

(c) Authorizes TWDB to invest, reinvest, and direct the investment of any available money in the resiliency fund as provided by law for the investment of public funds.

(d) Requires investment earnings, interest earned on amounts credited to the resiliency fund, and interest earned on loans made from the fund to be deposited to the credit of the fund.

Sec. 16.453. FLOODPLAIN MANAGEMENT ACCOUNT. (a) Provides that the floodplain management account is an account of the resiliency fund.

(b) Provides that the account consists of:

(1) money deposited to the credit of the account under Section 251.004 (Deposit of Maintenance Taxes), Insurance Code;

(2) money directly appropriated to TWDB; and

(3) money from gifts or grants from the United States government, local or regional governments, private sources, or other sources.

(c) Authorizes TWDB to use the account to provide financing for activities related to:

(1) the collection and analysis of flood-related information;

(2) flood planning, protection, mitigation, or adaptation;

(3) the provision of flood-related information to the public through educational or outreach programs; or

(4) evaluating the response to and mitigation of flood incidents affecting residential property, including multifamily units, located in floodplains.

Sec. 16.454. HURRICANE HARVEY ACCOUNT. (a) Provides that the Hurricane Harvey account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only to provide moneys to the Texas Division of Emergency Management (TDEM) for TDEM to provide financing for projects related to Hurricane Harvey. Provides that financing under this section includes making a:

(1) grant to an eligible political subdivision to provide nonfederal matching funds to enable the subdivision to participate in a federal program for the participation in or development of:

(A) a hazard mitigation project, under guidelines issued by the Federal Emergency Management Agency (FEMA) or TDEM or the successor in function to those entities;

(B) a public assistance project, under guidelines issued by FEMA or TDEM or the successor in function to those entities; or

(C) assistance under guidelines issued by the Natural Resources Conservation Service, the United States Economic Development Administration, or the United States Department of Housing and Urban Development, or the successor in function to those entities; and

(2) loan to an eligible political subdivision at or below market interest rates for the political subdivision's planning or design costs, permitting costs, construction costs, or other costs associated with state or federal regulatory activities with respect to a flood project.

(c) Prohibits a grant or loan awarded under this section from providing more than 75 percent of the portion of the cost of the project that is paid with money other than money from a federal program.

(d) Requires TWDB, in collaboration with TDEM, to establish a point system for prioritizing flood projects other than public assistance grants for which money from the Hurricane Harvey account is sought. Requires the system to include a standard for TWDB to apply in determining whether a flood project qualifies for funding at the time the application for funding is filed with TWDB.

(e) Requires TDEM to give the highest consideration in awarding points to a flood project that will have a substantial effect, including a flood project that:

(1) is recommended or approved by the director of TDEM or the successor in function to that entity; and

(2) meets an emergency need in a county where the governor has declared a state of disaster.

(f) Authorizes TDEM, after review and recommendation by the executive administrator of TWDB and with input from the director of TDEM or the successor in function to that entity, to approve an application for financial assistance under this section only if TDEM finds that:

(1) the application and assistance applied for meet the requirements of this subchapter and TDEM rules;

(2) the application demonstrates a sufficient level of cooperation among applicable political subdivisions and includes all of the 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, if applicable, will be sufficient to meet all the obligations assumed by the applicant.

(g) Authorizes principal and interest payments on loans made under Subsection (b)(2) to be deferred for not more than 10 years or until construction of the flood project is completed, whichever is the shorter period.

(h) Authorizes money from the account to be awarded to several eligible political subdivisions for a single flood project.

(i) Authorizes an eligible political subdivision that receives a grant for a flood project also to receive a loan from the account.

(j) Provides that this section expires September 1, 2031. Provides that the remaining balance of the account on that date is transferred to the flood plan implementation account.

Sec. 16.455. FEDERAL MATCHING ACCOUNT. (a) Provides that the federal matching account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only to meet matching requirements for projects funded partially by federal money, including projects funded by the United States Army Corps of Engineers.

(c) Authorizes TWDB to use the account to make a loan to an eligible political subdivision below market interest rates and under flexible repayment terms, including a line of credit or loan obligation with early prepayment terms, to provide financing for the local share of a federally authorized ship channel improvement project.

Sec. 16.456. TEXAS INFRASTRUCTURE RESILIENCY FUND ADVISORY COMMITTEE. (a) Provides that the advisory committee is composed of the seven members that serve on the State Water Implementation Fund for Texas Advisory Committee described by Section 15.438 (Advisory Committee), with the co-presiding officers of that committee serving as presiding officers of the advisory committee. Provides that the director of TDEM or the successor in function to that entity serves as a nonvoting member of the advisory committee, as an additional duty of the director's office.

(b) Authorizes the advisory committee to hold public hearings, formal meetings, or work sessions. Authorizes either co-presiding officer of the advisory committee to call a public hearing, formal meeting, or work session of the advisory committee at any time. Prohibits the advisory committee from taking formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present.

(c) Provides that, except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee. Provides that service on the advisory committee by a member of the senate or house of representatives is considered legislative service for which the member is entitled to reimbursement and other benefits in the same manner and to the same extent as for other legislative service.

(d) Authorizes the advisory committee to submit comments and recommendations to TWDB regarding the use of money in the resiliency fund and for use by TWDB in adopting rules.

(e) Requires the advisory committee to review the overall operation, function, and structure of the resiliency fund at least semiannually and to provide comments and recommendations to TWDB on any matter.

(f) Authorizes the advisory committee to adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(g) Requires the advisory committee to make recommendations to TWDB regarding information on the resiliency fund to be posted on TWDB's Internet website.



(h) Authorizes the advisory committee to evaluate and to provide comments or recommendations on the feasibility of the state owning, constructing, operating, and maintaining flood projects, including reservoirs and coastal barriers.

(i) Requires TWDB to provide an annual report to the advisory committee on:

(1) TWDB's compliance with statewide annual goals relating to historically underutilized businesses; and

(2) the participation level of historically underutilized businesses in flood projects that receive money from the resiliency fund.

(j) Requires the advisory committee, if the aggregate level of participation by historically underutilized businesses in flood projects that receive money from the resiliency fund does not meet statewide annual goals adopted under Chapter 2161 (Historically Underutilized Businesses), Government Code, to make recommendations to TWDB to improve the participation level.

(k) Requires TWDB to supply staff support to the advisory committee.

(l) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee.

Sec. 16.457. REPORT REQUIRED. (a) Defines "state agency" for purposes of this section.

(b) Requires a state agency that uses or disburses federal money for flood research, planning, or mitigation projects to submit a report to TWDB on a quarterly basis.

(c) Requires the report to include the following information about federal money used or disbursed for flood research, planning, or mitigation projects:

(1) the original total of federal money received;

(2) the amount of the federal money spent or disbursed to date; and

(3) the eligibility requirements for receiving the federal money.

Sec. 16.458. APPLICABLE LAW. Provides that Subchapter E (Provisions Generally Applicable to Financial Assistance), Chapter 17, applies to financial assistance made available from the resiliency fund, except that TWDB is authorized to execute contracts as necessary to evidence grant agreements.

Sec. 16.459. TRANSPARENCY REQUIREMENTS. Requires TWDB to post the following information on TWDB's Internet website regarding the use of the resiliency fund and regularly update the information posted:

(1) the progress made in developing flood projects statewide;

(2) a description of each flood project that receives money from the resiliency fund, including:

(A) the expected date of completion of the flood project;

(B) the current status of the flood project;

(C) the proposed benefit of the flood project;

(D) the initial total cost estimate of the flood project and variances to the initial cost estimate exceeding five percent;

(E) a listing of the eligible political subdivisions receiving money from the resiliency fund;

(F) a listing of each political subdivision served by each flood project;

(G) an estimate of matching funds that will be available for the flood project resulting from the use of the resiliency fund; and

(H) the status of repayment of each loan provided in connection with a flood project, including an assessment of the risk of default based on a standard risk rating system;

(3) a description of the point system for prioritizing flood projects and the number of points awarded by TWDB for each flood project;

(4) any nonconfidential information submitted to TWDB as part of an application for funding under this subchapter that is approved by TWDB;

(5) the administrative and operating expenses incurred by TWDB in administering the resiliency fund; and

(6) any other information required by TWDB rule.

Sec. 16.460. 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) that establish the prioritization system for flood projects that receive money from the resiliency fund;

(3) for the repayment of a loan from the resiliency fund; and

(4) for the administration of the resiliency fund.

SECTION 3.02. Amends Section 251.004(b), Insurance Code, as follows:

(b) Requires the comptroller of public accounts of the State of Texas, each state fiscal year, to reallocate to the floodplain management account established under Section 16.453, Water Code, rather than Section 16.3161 (Floodplain Management Account), Water Code, the first \$3.05 million of the maintenance taxes collected under Chapter 252 (Fire and Allied Lines Insurance) and deposited in the general revenue fund.

SECTION 3.03. Repealer: Section 16.3161 (Floodplain Management Account), Water Code.

SECTION 3.04. Provides that, on the effective date of this Act, the Floodplain Management Account No. 0330 is transferred to the Texas infrastructure resiliency fund as an account of that fund and the balance of the Floodplain Management Account No. 0330 is transferred to the floodplain management account of the Texas infrastructure resiliency fund.

SECTION 3.05. (a) Requires the advisory committee, not later than the 90th day after the effective date of this Act, to submit recommendations to TWDB on the rules to be adopted by TWDB under Section 16.460, Water Code, as added by this Act.

(b) Requires TWDB, not later than the 90th day after the date TWDB receives the recommendations described by Subsection (a) of this section, to adopt rules under Section 16.460, Water Code, as added by this Act.

SECTION 3.06. Provides that, contingent on legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan passing and becoming law, on the date that TWDB adopts the initial state flood plan in accordance with that law, Subchapter L, Chapter 16, Water Code, as added by this Act, is amended by adding Section 16.4545, as follows:

Sec. 16.4545. FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) Provides that the flood plan implementation account is an account in the resiliency fund.

(b) Authorizes TWDB to use the account only to provide financing for projects included in the state flood plan.

(c) Authorizes money from the account to be awarded to several eligible political subdivisions for a single flood project.

#### ARTICLE 4. REVENUE BONDS

SECTION 4.01. Amends Section 17.852(5), Water Code, to redefine "project" to include water supply projects, treatment works, and flood projects, as defined by Section 15.531 or 16.451.

SECTION 4.02. Amends Section 17.853(c), Water Code, as follows:

(c) Authorizes TWDB to use the Texas water resources fund only:

(1)–(5) makes no changes to these subdivisions;

(6)–(7) makes nonsubstantive changes to these subdivisions;

(8) to provide funds to the flood infrastructure fund created under Section 15.533;  
and

(9) to provide funds to the Texas infrastructure resiliency fund created under Section 16.452.

#### ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2019.

(b) Provides that Article 2 of this Act takes effect January 1, 2020, but only if 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 is approved by the voters. Provides that, if that amendment is not approved by the voters, Article 2 has no effect.