

SUBJECT: Creating the Flood Infrastructure Fund, making an appropriation

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Larson, Metcalf, Dominguez, Harris, Lang, Nevárez, Oliverson, Price, Ramos

0 nays

2 absent — Farrar, T. King

SENATE VOTE: On final passage, March 20 — 31-0

WITNESSES: For — Taylor Landin, Greater Houston Partnership; Carl Woodward, Harris County Flood Control District; Stephen Costello, City of Houston Mayor's Office; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Dana Harris, Austin Chamber of Commerce; Matt Phillips, Brazos River Authority; Tammy Embrey, City of Corpus Christi; Sally Bakko, City of Galveston; Bill Kelly and Jamaal Smith, City of Houston Mayor's Office; Donna Warndof, Harris County Commissioners Court; Logan Spence, Harris Plus Flood Solutions; Laurie Filipelli, League of Women Voters of Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Tom Oney, Lower Colorado River Authority; J.D. Hale, Texas Association of Builders; Mia Hutchens, Texas Association of Business; Billy Howe, Texas Farm Bureau; Wes Birdwell, Texas Floodplain Management Association; Dean Robbins and Stacey Steinbach, Texas Water Conservation Association; Rachel Ching; Wesley Eichenwald; Michael Thompson; Brian Wilson)

Against — (*Registered, but did not testify*: Bill Kelberlau; Ronda McCauley)

On — (*Registered, but did not testify*: Jeff Walker, Texas Water Development Board)

DIGEST: CSSB 7 would create and regulate the Flood Infrastructure Fund, establish

certain flood planning procedures, and make an appropriation.

Flood Infrastructure Fund. CSSB 7 would create the Flood Infrastructure Fund as a special fund in the state treasury outside the general revenue fund. The Flood Infrastructure Fund could be used by the Texas Water Development Board (TWDB) as provided by the bill without further legislative appropriation.

The fund would consist of legislative appropriations, general obligation bond proceeds, dedicated fees, loan repayments, interest, gifts, grants, donations, and money from revenue bonds or other sources dedicated by TWDB.

The bill would allow TWDB to use the fund only:

- to make a loan to a political subdivision at or below market interest rates for a flood project;
- to make a grant or low- or zero-interest loan to an eligible political subdivision for a flood project to serve an area outside a metropolitan statistical area or 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 activities related to a flood project;
- to make a grant to a political subdivision to provide matching funds for participation in a federal program for a flood project;
- as a source of revenue or security for the principal and interest payment on bonds issued by TWDB for purposes of the fund, if the bond proceeds would be deposited in the fund; and
- to pay the expenses of TWDB in administering the fund.

Principal and interest payments on loans made for planning and design or permitting costs could be deferred for up to 10 years or until the construction of the flood project was completed, whichever was earlier.

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

county.

The bill would define "flood project" as a drainage, flood mitigation, or flood control project, including planning and design activities, work to obtain regulatory approval for structural or nonstructural flood mitigation and drainage, and related construction and implementation of structural and nonstructural projects.

Applications for financial assistance. Political subdivisions 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 subdivisions' area;
- all affected political subdivisions participated in the process of developing the proposed project;
- the subdivisions held public meetings on proposed projects; and
- the technical requirements for the proposed project were completed and compared against any other potential flood projects in the area.

A political subdivision applying for a loan for planning and design or permitting costs would not be required to demonstrate the completion of technical requirements.

The application also 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.

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 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 under the bill would not subject an eligible political subdivision to civil liability in regard to a flood project.

Cooperative flood control. A water district, including a river authority, could participate in cooperative flood planning to obtain money from the infrastructure fund as an eligible political subdivision for a flood control project.

Flood control planning contracts. The bill would specify that "flood control planning," for the purposes of planning contracts entered into by TWDB and political subdivisions for the research and planning costs of flood control plans, would mean any work related to:

- planning for flood protection;
- obtaining regulatory approvals at the local, state, or federal level;
- activities associated with administrative or legal proceedings by regulatory agencies; and
- preparing engineering plans and specifications to provide structural or nonstructural flood mitigation and drainage.

Rules adopted by TWDB establishing criteria for the eligibility for flood control planning money would have to give greater importance to a county that had a median household income not greater than 85 percent of the median state household income.

Contingency provisions. Contingent on passage of legislation in the regular session of the 86th Legislature that would require the creation of a

state flood plan, on the date TWDB adopted the initial state flood plan other provisions of this bill would take effect that would:

- repeal the section of this bill on allowable uses of the Flood Infrastructure Fund; and
- allow TWDB to use the fund only to provide financing for flood projects included in the state flood plan; and
- allow money from the fund to be awarded to several eligible political subdivisions for a single flood project.

Appropriation. CSSB 7 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 the 86th Legislature, Regular Session, 2019, 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:

CSSB 7 would support regional planning and coordination on flood mitigation projects to better provide for vital infrastructure in the state by creating the Flood Infrastructure Fund. A significant funding source is necessary to ensure cooperation among regions and all affected stakeholders and to create a more resilient Texas.

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 CSSB 7 would provide loans at or below market rates to help local governments meet matching fund needs and assist with basic flood project planning, grant applications, and the engineering of structural and nonstructural flood mitigation projects.

The appropriation made by CSSB 7 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, CSSB 7 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:

According to the Legislative Budget Board, the bill would have a negative impact of \$5.8 million to general revenue related funds through fiscal 2020-21. The bill also would appropriate \$3.26 billion from the Economic Stabilization Fund in fiscal 2020 if the bill was approved by a vote of two-thirds of the membership of each house.

Certain provisions in CSSB 7 are contingent on the passage of legislation that would create a state flood plan.