

SUBJECT: Extending the deadline for priority instream flow studies

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Puente, Hamilton, Gattis, Creighton, Gallego, Hilderbran
0 nays
3 absent — Guillen, Laubenberg, O'Day

WITNESSES: For — None
Against — None
On — William F. "Bill" Mullican, Texas Water Development Board

BACKGROUND: Surface water belongs to the state, which grants rights to use it through permits from the Texas Commission on Environmental Quality (TCEQ). Cities, individuals, and river authorities may apply for water rights permits. TCEQ requires that surface water be used for a “beneficial purpose.” In order to obtain a permit, an applicant must show that there is a source of unappropriated water available. Water permits do not guarantee that water will be available, only that the holder has a right to available water. The principle of “prior appropriation” gives priority to those whose water rights have greater seniority.

In 2001, the 77th Legislature enacted SB 2 by Brown. Among its provisions, the bill established an instream flow program under which TCEQ, the Texas Parks and Wildlife Department (TPWD), and the Texas Water Development Board (TWDB) would collaborate to study river and stream flow conditions necessary to support a sound ecological environment.

DIGEST: HB 2108 would extend from December 31, 2010, to December 31, 2016 the date by which the environmental flow studies authorized and taking place under current law would have to be completed.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2108 would implement a realistic timeframe for state environmental agencies to complete the instream flow priority studies. SB 2 by Brown, 77th Legislature, in 2001 directed TCEQ, TPWD, and TWDB to establish an instream flow data collection program and to study how to determine the flow conditions in state rivers and streams required to support a sound ecological environment. This process was designed to gather the best available science on the appropriated flow regimes to conserve fish and wildlife while providing sustained benefits for recreational, agricultural, and other human uses of water resources. These agencies did not receive the appropriations needed to complete these tasks. Because of these funding limitations and the extensive peer review required as part of the study, the 2010 deadline cannot be achieved. A deadline of 2016 would be more realistic to complete this process, provided that adequate funding were made available.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

HB 3 by Puente, which passed the House by 142-1 on March 1, includes a provision identical to the one in HB 2108. HB 3 has been referred to the Senate Natural Resources Committee.