

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 3  
By: Averitt  
Natural Resources  
3/19/2007  
Committee Report (Substituted)

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

Current law recognizes the importance of maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries to the public's economic health and general well-being. The Texas Water Code requires the Texas Commission on Environmental Quality (TCEQ), while balancing all other interests, to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in TCEQ's regular granting of permits for the use of state waters. However, current law does not address environmental flows nor does it provide for an expedited amendment process or give preference to projects with a conservation plan when awarding state aid.

C.S.S.B. 3 creates a basin-by-basin process for developing recommendations to meet instream needs as well as freshwater inflows to affected bays and estuaries and requires TCEQ to adopt recommendations in the form of environmental flow standards. Such standards would be utilized in the decision-making process for new water right applications and in establishing an amount of unappropriated water, if available, to be set aside for the environment.

Furthermore, this bill creates the Environmental Flows Advisory Group (advisory group) to oversee the process. The advisory group is required to conduct hearings and study public policy implications for balancing the demands on water resources of the state resulting from a growing population with the requirements of the state's rivers and bay systems. The advisory group must also submit a biennial report to the governor, lieutenant governor, and the speaker of the house of representatives regarding its findings and progress.

Additionally, C.S.S.B. 3 establishes an expedited amendment process for regional water plans and modifies the voting structure of groundwater management areas to ensure that this statute does not encourage the creation of single-county groundwater conservation districts. Finally, C.S.S.B. 3 provides that priority be given to entities seeking financial assistance from the state for water infrastructure projects that can provide proof of implementation of a conservation plan, designates certain sites as uniquely situated for the building of reservoirs, and creates a joint interim committee to review financing of water infrastructure projects and funding for water programs administered by state agencies.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Environmental Flows Advisory Group in SECTION 1.07 (Section 11.0236, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1.14 (Section 11.1471, Water Code) and SECTION 2.10 (Section 16.402, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 2.10 (Section 16.402, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Natural Resource Conservation Commission is transferred to the Texas Commission on Environmental Quality in SECTION 2.13 (Section 212.0101, Local Government Code) and SECTION 2.14 (Section 232.0032, Local Government Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1.01 Amends the heading to Section 5.506, Water Code, to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.

SECTION 1.02. Amends Section 5.506, Water Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes state water that is set aside by the Texas Commission on Environmental Quality (TCEQ) to meet the needs for freshwater inflows to affected bays, estuaries, and instream uses under Section 11.1471(a)(2) to be made available temporarily for other essential beneficial uses if TCEQ finds that an emergency exists that cannot practically be resolved in another way.

(b) Requires TCEQ to give written notice of the proposed action, rather than suspension, to the Texas Parks and Wildlife Department (TPWD) before TCEQ suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1). Requires TCEQ to give TPWD an opportunity to submit comments on the proposed action, rather than suspension, for a period of 72 hours from receipt of the notice and requires TCEQ to consider those comments before issuing an order implementing the proposed action, rather than imposing suspension.

(c) Authorizes TCEQ to suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

SECTION 1.03. Amends Section 5.701(j), Water Code, to provide that a fee is not required for a water right that is deposited into the Texas Water Trust. Deletes existing text that waives the fee for applications for instream-use water rights.

SECTION 1.04. Amends Section 11.002, Water Code, by adding Subdivisions (15)-(19) to define "environmental flow analysis," "environmental flow regime," "environmental flow standards," "advisory group," and "science advisory committee."

SECTION 1.05. Amends Section 11.023(a), Water Code, to authorize state water to be appropriated, stored, or diverted for certain uses, to the extent that state water has not been set aside by TCEQ under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs.

SECTION 1.06. Amends Section 11.0235, Water Code, by amending Subsections (b), (c), and (e) and adding Subsections (d-1)-(d-6) and (f), as follows:

(b) Provides that the legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

(c) Provides that the legislature has expressly required TCEQ, while balancing all other public interests, to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the validity of the state's stream, rivers, and bay and estuary systems in TCEQ's regular granting of permits for the use of state waters. Requires all permit conditions relating to freshwater inflows to affected bays, estuaries, and instream flow needs, as an essential part of the state's environmental flows policy, to be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) Provides that existing water rights that are amended to authorize use for environmental purposes should be enforced in a manner consistent with the enforcement

of water rights for other purposes as provided by the laws of this state governing the appropriation of state water.

(d-2) Requires the state to have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available, based on legislative findings that provide certainty in water management and development and provide adequate protection of the state's streams, rivers, bays, and estuaries.

(d-3) Sets forth legislative findings regarding basins in which water is available for appropriation and those in which the unappropriated water will be set aside for instream flow and freshwater inflow protection and recommendations for TCEQ's plan of action.

(d-4) Sets forth legislative findings regarding limitations on freshwater inflow needs for bays and estuaries, proposed state improvements, and more extensive reviews and examinations of program details.

(d-5) Sets forth legislative findings regarding the management of water to meet instream flow and freshwater inflow needs, to be evaluated on a regular basis and adapted to reflect scientific improvements and future changes, and the development of management strategies for specific environmental flow needs.

(d-6) Sets forth legislative findings regarding recommendations for state action to protect instream flows and freshwater inflows through a regional consensus-based approach involving balanced representation throughout the state.

(e) Provides that pressures and demands on water resources require priorities to be effectively addressed by detailing the manner in which environmental flow standards are to be developed using the environmental studies and determine the manner in which those standards will be integrated into the regional water planning and water permitting process.

(f) Sets forth legislative recognition that effective implementation of the approach provided by this chapter (Water Rights) for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

SECTION 1.07. Amends Subchapter B, Chapter 11, Water Code, by adding Sections 11.0236, 11.02361, 11.02362, and 11.0237, as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) Creates the environmental flows advisory group (advisory group).

(b) Sets forth the composition of the nine-member advisory group.

(c) Requires the three members of the advisory group appointed by the governor to be appointed from certain entities.

(d) Provides that each member of the advisory group serves at the will of the person who appointed the member.

(e) Provides that the appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the advisory group.

(f) Entitles a member of the advisory group to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory group, as provided by the General Appropriations Act, but prohibits a member of the advisory group from receiving compensation for any other service on the advisory group.

(g) Authorizes the advisory group to accept gifts and grants from any source to be used to carry out a function of the advisory group.

(h) Requires TCEQ to provide staff support for the advisory group.

(i) Requires the advisory group to conduct public hearings and study public policy implications for certain purposes and other issues that the advisory group determines have importance and relevance to the protection of environmental flows. Requires the advisory group, in evaluating the options for providing adequate environmental flows, to take notice of the strong public policy imperative that exists in this state regarding environmental flows. Requires the advisory group to specifically address ways that the ecological soundness of riverine, bay, and estuary systems will be ensured in the water rights administration and enforcement and water allocation processes and appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently.

(j) Authorizes the advisory group to adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

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

(l) Requires the advisory group to issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives by December 1, 2008, and every two years thereafter, copies of a report summarizing certain information.

(m) Abolishes the advisory group on the date that TCEQ has adopted environmental flow standards under Section 11.1471 for all of the river basin and bay systems in this state.

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) Provides that the Texas environmental flows science advisory committee (science advisory committee) consists of at least five, but not more than nine, members appointed by the advisory group.

(b) Requires the advisory group to appoint persons who will provide an objective perspective and diverse technical experience in certain fields pertinent to the evaluation of environmental flows to the science advisory committee.

(c) Provides that the members of the science advisory committee serve five-year terms expiring March 1. Provides that a vacancy on the science advisory committee is filled by appointment by the co-presiding officers of the advisory group for the unexpired term.

(d) Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) Requires the science advisory committee to serve as an objective scientific body to advise and make recommendations to the advisory group on issues relating to the science of environmental flow protection and develop recommendations to help overall direction, coordination, and consistency relating to specific issues concerning environmental flows.

(f) Requires TCEQ, TPWD, and the Texas Water Development Board (TWDB), in order to assist the advisory group in assessing the extent to which the recommendations of the science advisory committee are considered and

implemented, to provide written reports to the advisory group, at intervals determined by the advisory group, that describe the actions taken by each agency in response to each recommendation and, for those recommendations not implemented, the reasons for it not being implemented.

(g) Abolishes the science advisory committee on the date the advisory group is abolished under Section 11.0236(m).

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) Requires the advisory group, no later than November 1, 2007, and for the purposes of this section, to define the geographical extent of each river basin and bay system in the state for the purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) Requires the advisory group to give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, Mission, and Aransas Rivers, and Mission, Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) Requires that for the river basin and bay systems listed in Subsection (b)(1):

(1) the advisory group appoint the basin and bay area stakeholders committee not later than November 1, 2007;

(2) the basin and bay area stakeholders committee establish a basin and bay expert team not later than March 1, 2008;

(3) the basin and bay expert science team finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the advisory group, and TCEQ not later than March 1, 2009, except that at the request of the basin and bay area stakeholders committee for good cause shown, the advisory group is authorized to extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee submit to TCEQ its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2009; and

(5) TCEQ adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2010.

(d) Requires the advisory group to appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2), not later than September 1, 2008, and for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2009. Requires the advisory group

to establish a schedule for the performance of the tasks listed in Subsection (c)(2)-(5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by TCEQ, as soon as is reasonably possible. Requires each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) to make recommendations to the advisory group with regard to the schedule applicable to that river basin and bay system. Requires the advisory group to consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team, as well as coordinate with, and give appropriate consideration to the recommendations of, TCEQ, TPWD, and TWDB in establishing the schedule.

(e) Requires the advisory group, for a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), to establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. Requires the advisory group to develop the schedule in consultation with TCEQ, TPWD, TWDB, and the pertinent basin and bay area stakeholders committee and basin and bay area expert science team. Authorizes the advisory group, on its own initiative or on request, to modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. Provides that this subsection does not prohibit an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process, in a river basin and bay system for which the advisory group has not yet established a schedule for the development of environmental flow regime recommendations.

(f) Requires the advisory group to appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Requires each committee to consist of at least 17 members that reflect a fair and equitable balance of interest groups concerned with the particular river basin and bay system for which the committee is established and be representative of appropriate stakeholders, including certain stakeholders if they have a presence in the particular river basin and bay system for which the committee is established.

(g) Provides that members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. Requires the remaining members of the committee, if a vacancy occurs on a committee, to appoint a member to serve the remainder of the unexpired term by majority vote.

(h) Requires that meetings of a basin and bay area stakeholders committee be open to the public.

(i) Requires each basin and bay area stakeholders committee to establish a basin and bay expert science team for the river basin and bay system for which the committee is established. Requires establishment of the basin and bay expert science team within six months of committee establishment. Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Requires each basin and bay expert science team to be composed of technical experts with special expertise in the river basin and bay system or regarding the development of environmental flow regimes. Authorizes a person to serve as a member of more than one basin and bay expert science team at the same time.

(j) Provides that the members of the basin and bay expert science team serve five-year terms expiring April 1. Provides that a vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) Requires the science advisory committee to appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. Requires TCEQ, TPWD, and TWDB to provide technical assistance to each basin and bay expert science team including information about the studies conducted under Sections 16.058 (Collection of Bays and Estuaries Data: Conduct of Studies) and 16.059 (Collection of Instream Flow Data: Conduct of Studies), and authorizes said state entities to serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Requires that meetings of a basin and bay expert science team, where reasonably practicable, be open to the public.

(m) Requires each basin and bay expert science team to develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. Requires the science team, in developing the analyses and recommendations, to consider all reasonably available science, without regard to the need for the water for other uses, and requires the recommendations to be based solely on the best science available. Requires the basin and bay expert science team environmental flow regime recommendations for the Rio Grande below Fort Quitman to exclude any uses attributable to Mexican water flows.

(n) Requires each basin and bay expert science team to submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the advisory group, and TCEQ in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). Prohibits the basin and bay area stakeholders committee and the advisory group from changing the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Requires each basin and bay stakeholders committee to review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. Requires the basin and bay area stakeholders committee for the Rio Grande to consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande water master in the middle and lower Rio Grande. Prohibits the Rio Grande basin and bay expert science team from recommending any environmental flow regime that would result in a violation of a treaty or court decision. Requires the basin and bay area stakeholders committee to develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to TCEQ and to the advisory group in accordance with the applicable schedule specified or established under Subsection (c), (d), or (e). Requires the basin and bay area stakeholders committee, in developing its recommendations, to operate on a consensus basis to the maximum extent possible.

(p) Requires each basin and bay area stakeholder committee, with the assistance of the pertinent basin and bay expert science team, in recognition of the

importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to TCEQ, to prepare and submit a work plan for approval by the advisory group. Sets forth content requirements for the work plan.

(q) Requires the advisory group, with input from the science advisory committee, in accordance with the applicable schedule specified or established under Subsection (c), (d), or (e), to review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. Requires the advisory group, if appropriate, to submit comments on the analyses and recommendations to TCEQ for use by TCEQ in adopting rules under Section 11.1471. Requires comments to be submitted not later than six months after the date of receipt of the recommendations.

(r) Authorizes an estuary advisory council, in the event TCEQ, by permit or order, has established the council with specific duties related to implementation of permit conditions for environmental flows, to continue in full force and effect and requires the council to act as and perform the duties of the basin and bay area stakeholders committee under this section, notwithstanding the other provisions of this section. Requires the council to add members from stakeholder groups and from appropriate science and technical groups, if necessary, to fully meet the criteria for membership established in Subsection (f) and requires the council to operate under the provisions of this section.

(s) Abolishes each basin and bay area stakeholders committee and basin and bay expert science team on the date the advisory group is abolished under Section 11.0236(m).

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) Prohibits TCEQ from issuing a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. Authorizes TCEQ to approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) Provides that this section does not alter TCEQ's obligations under Sections 11.042(b) or (c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, or 16.059.

SECTION 1.08. Amends Section 11.082(b), Water Code, to authorize the state to seek to recover those penalties prescribed in Subsection (a) regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use is alleged to have occurred. Makes a nonsubstantive change.

SECTION 1.09. Amends Section 11.0841, Water Code, by adding Subsection (c), as follows:

(c) Provides that for purposes of this section, TPWD has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right; and

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.



SECTION 1.10. Amends Section 11.0842(a), Water Code, to authorize TCEQ to assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin. Makes a nonsubstantive change.

SECTION 1.11. Amends Section 11.0843(a), Water Code, to authorize the executive director of TCEQ, or a person designated by the executive director, including a watermaster or the watermaster's deputy, upon witnessing a violation of this chapter, a rule, order, or a water right issued under this chapter, to issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator with specific options. Makes nonsubstantive changes.

SECTION 1.12. Amends Section 11.134(b), Water Code, to require TCEQ to grant the application for appropriations only if the proposed appropriation considers any applicable environmental flow standards established under Section 11.1471. Makes a nonsubstantive change.

SECTION 1.13. Amends Section 11.147, Water Code, by amending Subsections (b), (d), and (e) and adding Subsections (e-1), (e-2), and (e-3), as follows:

(b) Requires TCEQ, for permits to store, take, or divert water issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, to include in the permit any conditions necessary to maintain beneficial inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491. Deletes existing text regarding conditions necessary to maintain beneficial inflows.

(d) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider the studies mandated by Section 16.059 and any water quality assessment performed under Section 11.150.

(e) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider any assessment performed under Section 11.152.

(e-1) Requires any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted to include a provision allowing TCEQ to adjust the conditions included in the permit or water right to provide for protection of instream flows or freshwater inflows. Prohibits a provision, with respect to an amended water right, from authorizing TCEQ to adjust a condition of the amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. Provides that this subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before September 1, 2007. Requires TCEQ to adjust the conditions upon determining, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. Sets forth specific prohibitions and requirements of the adjustment under this subsection.

(e-2) Entitles any water right holder who makes a contribution or amends a water right as described by Subsection (e-1)(3) to appropriate credit for the benefits of the contribution or amendment against the adjustment of the holder's water right under Subsection (e-1).

(e-3) Requires TCEQ, notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, to apply any applicable environmental flow standard, including environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION 1.14. Amends Subchapter D, Chapter 11, Water Code, by adding Section 11.1471, as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES (a)  
Requires TCEQ, by rule, to:

- (1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;
- (2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and
- (3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Section 11.147(e-1) and (e-2).

(b) Requires TCEQ, in adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), to consider specific factors regarding the definition of the geographical extent of the river basin and bay system, the definition and designation of the river basin, schedule for the adoption of environmental flow standards, the environmental flow analyses and recommended environmental flow regime developed by the applicable basin and bay expert science team, recommendations and strategies, comments submitted by the advisory group to TCEQ, specific characteristics of the river basin and bay system, economic factors, the human and other competing water needs in the river basin and bay system, reasonably available scientific information, and any other appropriate information.

(c) Requires environmental flow standards adopted under Subsection (a)(1) to consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) Prohibits TCEQ, as provided by Section 11.023, from issuing a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). Requires a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside to contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) Requires an environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande to be assigned a priority date corresponding to the date TCEQ receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) Authorizes an environmental flow standard or environmental flow set-aside adopted under Subsection (a) to be altered by TCEQ in a rulemaking process undertaken in accordance with a schedule established by TCEQ. Requires TCEQ, in establishing a schedule, to consider the applicable work plan approved by the advisory group under Section 11.02362(p). Prohibits TCEQ's schedule from providing for the rulemaking process to occur more frequently than once every 10 years unless the work plan provides for a periodic review under Section 11.02362(p) to occur more frequently than once every 10 years. Authorizes TCEQ, in that event, to provide for the rulemaking process to be undertaken in conjunction with the periodic review upon determining that schedule to be appropriate. Requires a rulemaking process undertaken under this subsection to

provide for the participation of stakeholders having interests in the particular river basin and bay system for which the process is undertaken.

SECTION 1.15. Amends the heading to Section 11.148, Water Code, to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS.

SECTION 1.16. Amends Section 11.148, Water Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes state water that is set aside by TCEQ to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471 (a)(2) to be made available temporarily for other essential beneficial uses, if TCEQ finds that an emergency exists that cannot practically be resolved in another way.

(b) Requires TCEQ, before suspending a permit condition under Subsection (a) or making water available temporarily under Subsection (a-1), to give written notice to TPWD of the proposed action, rather than suspension. Requires TCEQ to give TPWD an opportunity to submit comments on the proposed action within 72 hours from the time TCEQ is required to consider those comments before issuing its order implementing the proposed action. Makes conforming changes.

(c) Authorizes TCEQ to suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than TPWD as provided by Subsection (b).

SECTION 1.17. Amends Section 11.1491(a), Water Code, to require publication of reports completed under this section to be submitted for comment to TCEQ, TPWD, the advisory group, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team. Makes conforming and nonsubstantive changes.

SECTION 1.18. Amends Section 11.329(g), Water Code, to prohibit TCEQ from assessing costs under this section against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. Deletes existing text regarding this subsection affecting the fees assessed on a water right holder by TCEQ under specific statutes.

SECTION 1.19. Amends Section 11.404(e), Water Code, to prohibit the court from assessing costs and expenses under this section against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

SECTION 1.20. Amends Subchapter I, Chapter 11, Water Code, by adding Section 11.4531, as follows:

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) Requires the executive director of TCEQ, for each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, to appoint a watermaster advisory committee (watermaster committee) consisting of at least nine but not more than 15 members. Requires a member of the watermaster committee to be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. Requires the executive director, in appointing members to the watermaster committee, to consider geographic representation; amount of water rights held; different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users; and experience and knowledge of water management practices.

(b) Provides that a watermaster committee member is not entitled to reimbursement of expenses or to compensation.

(c) Provides that a watermaster committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) Requires the watermaster committee to meet within 30 days after the date the initial appointments have been made and to select a presiding officer to serve a one-year term. Requires the committee to meet regularly as necessary.

(e) Requires the watermaster committee to make specific recommendations, reviews, and comments, and perform other advisory duties as requested by the executive director of TCEQ.

SECTION 1.21. Amends Sections 11.454 and 11.455, Water Code, as follows:

Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER. Provides that Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as the section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G. Deletes existing text regarding duties of a watermaster.

Sec. 11.455. New heading: COMPENSATION AND EXPENSES OF WATERMASTER. (a) Provides that Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) Requires the executive director of TCEQ to deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Authorizes money deposited under this section to the credit of the watermaster fund to be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected. Deletes existing text authorizing TCEQ to assess the costs of the watermaster against all persons who hold water rights in the river basin or segment of the river basin under the watermaster's jurisdiction.

SECTION 1.22. Amends Subchapter F, Chapter 15, Water Code, by adding Section 15.4063, as follows:

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. Authorizes TWDB to authorize the use of money in the research and planning fund for certain compensations and contracts.

SECTION 1.23. Amends Section 16.059(d), Water Code, to require the priority studies to be completed not later than December 31, 2016, rather than 2010.

SECTION 1.24. Reenacts and amends Section 26.0135(h), Water Code, as amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(h) Provides that irrigation water rights, non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to the assessment to recover the costs of administering water quality management programs. Makes nonsubstantive changes.

SECTION 1.25. Repealer: Section 11.1491(b) (regarding creation and establishment of advisory council for data collection and studies), Water Code.

SECTION 1.26. (a) Requires the governor, lieutenant governor, and speaker of the house of representatives to appoint the initial members of the advisory group as provided by Section

11.0236, Water Code, as amended by this article, as soon as practicable on or after the effective date of this Act.

(b) Requires the initial members of the advisory group, as soon as practicable after taking office, to appoint the initial members of the science advisory committee as provided by Section 11.02361, Water Code, as added by this article. Provides that the terms of the initial members of the committee expire March 1, 2012.

(c) Requires the advisory group to appoint the members of each basin and bay area stakeholders committee as provided by Section 11.02362, Water Code, as added by this article. Provides that the terms of the initial members of each committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(d) Requires each basin and bay area stakeholders committee to appoint the members of the basin and bay expert science team for the river basin and bay system for which the committee is established as provided by Section 11.02362, Water Code, as added by this article. Provides that the terms of the initial members of each committee expire April 1 of the fifth year that begins after the year in which the initial appointments are made.

(e) Requires the executive director of TCEQ to appoint the members of the advisory committee under Section 11.4531, Water Code, as added by this article, for each river basin or segment of a river basin for which the executive director appoints a watermaster under Subchapter I, Chapter 11, Water Code. Provides that the terms of the initial members of the committee expire August 31 of the first odd-numbered year that begins after the year in which the initial appointments are made.

SECTION 1.27. Provides that the changes in law made by this article relating to a permit for a new appropriation of water or to an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted apply to water appropriated under a permit for a new appropriation of water the application for which is pending with TCEQ on the effective date of this Act or is filed with TCEQ on or after that date or the increase in the amount of water authorized to be stored, taken, or diverted under an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted and the application for which is pending with TCEQ on the effective date of this Act or is filed with TCEQ on or after that date.

## ARTICLE 2. WATER CONSERVATION AND PLANNING

SECTION 2.01. Amends Section 1.003, Water Code, as follows:

Sec. 1.003. **PUBLIC POLICY.** Provides that it is the public policy of the state to provide for the conservation and development of the state's natural resources, including the voluntary stewardship of public and private lands to benefit waters of the state.

SECTION 2.02. Amends Subchapter A, Chapter 1, Water Code, by adding Section 1.004, as follows:

Sec. 1.004. **FINDINGS AND POLICY REGARDING LAND STEWARDSHIP.** Sets forth legislative findings and state policy regarding responsible voluntary land stewardship as a significant water management tool. Defines "land stewardship."

SECTION 2.03. Amends Section 11.002, Water Code, by adding Subdivision (20), to define "best management practices."

SECTION 2.04. Amends Subchapter E, Chapter 13, Water Code, by adding Section 13.146, as follows:

Sec. 13.146. **WATER CONSERVATION PLAN.** Requires TCEQ to require a retail public utility that provides potable water service to a population of 3,300 or more to submit to the executive administrator of TWDB, a water conservation plan based on specific targets and goals for water savings developed by the retail public utility and

using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies. Requires the population served by a retail public utility, for the purposes of this section, to be determined on the basis of the population estimates contained in the most recent regional water plan adopted for the regional water planning area in which the retail public utility's service area is located.

SECTION 2.05. Amends Section 15.102(b), Water Code, to authorize the water loan assistance fund to be used by TWDB to provide grants for water conservation.

SECTION 2.06. Amends Subchapter Q, Chapter 15, Water Code, by adding Section 15.9751, as follows:

Sec. 15.9751. PRIORITY FOR WATER CONSERVATION. Requires TWDB to give priority to applications for funds for the implementation of water supply projects in the state water plan by entities that have already demonstrated significant water conservation savings or will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

SECTION 2.07. Amends Section 16.053(h), Water Code, by adding Subdivisions (10) and (11), as follows:

(10) Authorizes the regional water planning group to amend the regional water plan after the plan has been approved by TWDB. Provides that Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

(11) Provides that this subdivision applies only to an amendment to a regional water plan approved by TWDB. Provides that this subdivision does not apply to the adoption of a subsequent regional water plan for submission to TWDB as required by Subsection (i). Authorizes the regional water planning group, notwithstanding Subdivision (10), to amend the plan in the manner provided by this subdivision if the executive administrator of TWDB determines that the amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. Provides that an amendment qualifies for adoption in the manner provided by this subdivision only if the amendment will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. Authorizes the regional water planning group, if the executive administrator of TWDB determines that an amendment qualifies for adoption in the manner provided by this subdivision, to adopt the amendment at a public meeting held in accordance with Chapter 551 (Open Meetings), Government Code. Requires the amendment to be placed on the agenda for the meeting, and requires notice of the meeting to be given in the manner provided by Chapter 551, Government Code, at least two weeks before the date the meeting is held. Requires that the public be provided an opportunity to comment on the amendment at the meeting.

SECTION 2.08. Amends Section 16.053(r), Water Code, as added by Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005, to make nonsubstantive changes.

SECTION 2.09. Amends Subchapter E, Chapter 16, Water Code, by adding Section 16.1311, as follows:

Sec. 16.1311. PRIORITY FOR WATER CONSERVATION. Requires TWDB to give priority to applications for funds for implementation of water supply projects in the state water plan by entities that have already demonstrated significant water conservation savings or will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

SECTION 2.10. Amends Chapter 16, Water Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. WATER CONSERVATION

Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS PROGRAM. (a) Requires the executive administrator of TWDB (executive administrator) to develop and implement a statewide conservation public awareness program (program) to educate residents of this state about water conservation. Requires the program to take into account the differences in water conservation needs of various geographic regions of the state and requires the program to be designed to complement and support existing local and regional water conservation programs.

(b) Requires the executive administrator to develop and implement the program in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium for that purpose.

Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Requires each entity that is required to submit a water conservation plan to TCEQ under this code to submit a copy of the plan to the executive administrator.

(b) Requires each entity required to submit a water conservation plan to the executive administrator of TWDB, TWDB, or TCEQ under this code to report annually to the executive administrator on the entity's progress in implementing the plan.

(c) Requires the executive administrator to review each water conservation plan and annual report to determine compliance with the minimum requirements and submission deadlines developed under Subsection (e).

(d) Authorizes TWDB to notify TCEQ if TWDB determines that an entity has violated this section or a rule adopted under this section. Provides that a violation of this section or of a rule adopted under this section, notwithstanding Section 7.051(b), is enforceable in the manner provided by Chapter 7 (Enforcement) for a violation of a provision of this code within TCEQ's jurisdiction or of a rule adopted by TCEQ under a provision of this code within TCEQ's jurisdiction.

(e) Requires TWDB and TCEQ to jointly adopt rules identifying the minimum requirements and submission deadlines for the water conservation plans described by Subsection (b) and the annual reports required by that subsection and providing for the enforcement of this section and rules adopted under this section.

SECTION 2.11. Amends Section 17.125, Water Code, by adding Subsection (b-2), to require TWDB to give priority to applications for funds for implementation of water supply projects in the state water plan by entities that have already demonstrated significant water conservation savings or will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

SECTION 2.12. Amends Chapter 35, Water Code, by adding Section 35.020, as follows:

Sec. 35.020. PUBLIC PARTICIPATION IN GROUNDWATER MANAGEMENT PROCESS. Provides that it is the policy of the state to encourage public participation in the groundwater management process in areas within a groundwater management area not represented by a groundwater conservation district.

SECTION 2.13. Amends Section 212.0101(b), Local Government Code, to require TCEQ, rather than the Texas Natural Resource Conservation Commission, by rule, to establish the appropriate form and content of a certification to be attached to a plat application under this section.

SECTION 2.14. Amends Section 232.0032(b), Local Government Code, to make a conforming change.

SECTION 2.15. (a) Repealer: Chapter 9 (Texas Water Advisory Council), Water Code.

(b) Provides that the Texas Water Advisory Council is abolished on the effective date of this article.

SECTION 2.16. Makes application of Sections 15.102 and 17.125, Water Code, as amended by this article, and Sections 15.9751 and 16.1311, Water Code, as added by this article, prospective.

### ARTICLE 3. UNIQUE RESERVOIR SITES AND SITES OF UNIQUE ECOLOGICAL VALUE

SECTION 3.01. LEGISLATIVE FINDINGS. Sets forth legislative findings: (1) Provides the legislative finding that the development of new water supplies to meet the growing demand for water is necessary for the state and is of concern and importance to this state.

(2) Provides the legislative finding that feasible sites for new reservoir are identified as having unique value in the 2006 regional water plans and the 2007 state water plan.

(3) Provides the legislative finding that most of the proposed reservoirs are also part of recommended strategies for fulfilling identified needs in the 2007 state water plan that may occur as early as 2010 and 2020.

(4) Provides the legislative finding that it is necessary to preempt actions that could circumvent the state's primacy over surface water in the state.

(5) Provides the legislative finding that designation of these sites as unique reservoir sites or river or stream segments of unique ecological value is necessary for the sound economic development of this state, for the protection of natural resources, and for the purpose of promoting the public health, safety, and general welfare of this state.

SECTION 3.02. DESIGNATION OF UNIQUE RESERVOIR SITES. Provides that the legislature designates, as authorized by Section 16.051(g), Water Code, certain sites as having unique value for the construction of a dam and reservoir and further determines that the sites are necessary to meet certain water supply needs.

SECTION 3.03. DESIGNATION OF SITES OF ECOLOGICAL VALUE. Provides that the legislature designates, as authorized by Section 16.051(f), Water Code, those river or stream segment sites recommended in the 2007 state water plan as being of unique ecological value.

SECTION 3.04. EFFECTIVE DATE. Effective date, this article: upon passage or September 1, 2007.

### ARTICLE 4. LEGISLATIVE JOINT INTERIM COMMITTEE

SECTION 4.01. (a) Defines "committee."

(b) Sets forth the composition for the eight-member joint interim committee on state water funding (committee).

(c) Provides that an appointed member of the committee serves at the pleasure of the appointing official.

(d) Requires the committee to meet at least annually with the executive director of TCEQ and the executive administrator of TWDB to receive information on water infrastructure needs as identified in the state water plan, receive information on infrastructure cost and funding options to be used by local entities to meet the needs identified in the state water plan, receive analyses of the funding gap and recommendations on how to address those funding needs, receive information on whether all water fees assessed are sufficient to support the required regulatory water-related state program functions and activities, and identify viable, sustainable, dedicated revenues and fee sources, or increases to existing revenue and fees, to support state water programs and to provide for natural resources data collection and dissemination, financial assistance



programs, and water resources planning, including funding to implement water management strategies in the state water plan.

(e) Authorizes the committee to hold hearings and request reports and other information from state agencies as necessary to carry out this section.

(f) Requires the Senate Committee on Natural Resources and the House Committee on Natural Resources to provide staff necessary for the committee to fulfill its duties.

(g) Requires the committee to report to the governor, the lieutenant governor, and the speaker of the house of representatives on the committee's activities under Subsection (d) of this section by December 1, 2008. Requires the report to include recommendations of any legislative action necessary to address funding needs to support the state's water programs and water infrastructure needs.

#### ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: September 1, 2007, except as otherwise provided by this Act.