

BILL ANALYSIS

C.S.H.B. 3
By: Puente
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Water Code 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, and expressly 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 the TCEQ's regular granting of permits for the use of state waters.

In order to address environmental flow needs, C.S.H.B. 3 provides for the creation of a basin-by-basin process for developing recommendations to meet instream needs as well as freshwater inflows to affected bays and estuaries. Through this process, the TCEQ would adopt recommendations in the form of environmental flow standards. The flow standards developed 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. C.S.H.B. 3 creates the Environmental Flows Advisory Group (advisory group) to oversee this process. The advisory group would 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 would be charged with issuing a biennial report to the governor, lieutenant governor and the speaker of the House.

C.S.H.B. 3 also includes provisions eliminating watermaster and water quality fees for water rights deposited into the Texas Water Trust for a period of at least 20 years and makes all water master activities similar no matter the method by which the watermaster was established.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Environmental Flows Advisory Group in SECTION 7 of this bill.

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 14 of this bill.

ANALYSIS

SECTION 1. 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 2. 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 3. 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, rather than for applications for instream use water rights.

SECTION 4. Amends Section 11.002, Water Code, by adding Subdivisions (15), (16), (17), (18), and (19) to define "environmental flow analysis", "environmental flow regime", "environmental flow standards", "Advisory group", and "Science advisory committee."

SECTION 5. Amends Section 11.023(a), Water Code, to authorize state water to be appropriated, stored, or diverted for specific 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 6. Amends Section 11.0235, Water Code, by amending Subsections (c) and (e) and adding Subsections (d-1), (d-2), (d-3), (d-4), (d-5), (d-6) and (f), as follows:

(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 viability of the state's streams, rivers, 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) Sets forth legislative findings that existing water rights that are converted to water rights 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) Sets forth legislative findings that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timeframes 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.

(d-3) Sets forth legislative findings that:

(1) in those basins in which water is available for appropriation, the TCEQ should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water that will be set aside for instream flow and freshwater inflow protection is not sufficient to fully satisfy the environmental flow standards established by the TCEQ, a variety of market approaches, both public and private, for filling the gap must be explored and pursued.

(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 development of a regional consensus-based approach involving balanced representation throughout the state.

(e) Provides that pressures and demands on water resources make it of paramount importance to ensure that priorities are effectively addressed by detailing how environmental flow standards are to be developed using environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those standards will be integrated into the regional water planning and water permitting processes.

(f) Sets forth legislative acknowledgement that effective implementation of the approach provided by this chapter in order to protect instream flows and freshwater inflows, requires more effective water rights administration and enforcement systems than currently available.

SECTION 7. Amends Subchapter B, Chapter 11, Water Code, by adding Section 11.0236, 11.02361, 11.02362, and 11.0237 to read as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) Creates the Environmental Flows Advisory Group (advisory group).

(b) - (e) Sets forth terms, composition, and appointment procedures for members of the advisory group.

(f) Provides that a member of advisory group is not entitled to receive compensation for service on the advisory group but is entitled 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.

(g) Provides that the advisory group may accept gifts and grants from any source to carry out the functions of the advisory group.

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

(i) Requires advisory group to conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any 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 recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. Requires the advisory group to specifically address certain issues.

(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 Committee), 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 specific government officials, not later than December 1, 2008, and every two years thereafter, copies of a report summarizing specific hearings, proposed legislation, certain studies, progress made in the implementation of Sections 11.02361 and 11.02362, and any other findings and recommendations of the advisory group.

(m) Provides that the advisory group is abolished on the date that the commission 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 to the science advisory committee who will provide an objective perspective and diverse technical experience in specific fields pertinent to the evaluation of environmental flows.

(c) Provides that 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 provide overall direction, coordination, and consistency relating to specific issues concerning environmental flows.

(f) Requires TCEQ, TPWD, and the Texas Water Development Board (TWDB), 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, those recommendations not implemented, and reasons for it not being implemented.

(g) Provides that the science advisory committee is abolished 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 sole 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, and Aransas Rivers and 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 and 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 appoints 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 science 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;

(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), no later than September 1, 2008, and those river basin and bay systems listed in Subsection (b)(3) no 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 Subsection (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 the 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 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 and the adoption of environmental flow standards.

(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 specific members representing appropriate enumerated stakeholders. Each committee must reflect a fair and equitable balance of interest groups concerned with a particular river basin and bay system for which the committee is established and be representative of appropriate 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 meetings of the basin and bay area stakeholders committee to 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 them to serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Requires meetings of a basin and bay expert science team, where reasonably practicable, to 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. For the Rio Grande below Fort Quitman, any uses attributable to Mexican water flows must be excluded from environmental flow regime recommendations.

(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 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 area stakeholders committee to review 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 watermaster 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, 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 analyses and recommendations.

(r) Notwithstanding the other provisions of Section 11.02362, in the event TCEQ, by permit or order, has established an estuary advisory council with duties specifically related to the implementation of permit conditions for environmental flows, that council may continue in full force and effect and shall act as and perform the duties of the basin and bay area stakeholders committee for the applicable river basin and bay system as provided by Section 11.02362. TCEQ shall appoint additional members to an estuary advisory council as necessary so

that the composition of the council conforms to the requirements of Subsection (f) for the composition of a basin and bay area stakeholders committee.

(s) Each basin and bay area stakeholder committee and basin and bay expert science team is abolished 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 certain sections of the Water Code.

SECTION 8. Amends Section 11.082(b), Water Code, to authorize the state to seek those penalties, described 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 [of state water] is alleged to have occurred. Also makes a nonsubstantive change.

SECTION 9. 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;

(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 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. Also makes a nonsubstantive change.

SECTION 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. Deletes existing text relating to the watermaster's deputy, as defined by TCEQ rule. Also makes nonsubstantive changes.

SECTION 12. Amends Section 11.134(b), Water Code, to require TCEQ to grant the application only if the proposed appropriation considers any applicable environmental flow standards established under Section 11.1471. Also makes a nonsubstantive change.

SECTION 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 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 considered 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 (Evaluation of Bays and Estuaries Data). 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 (Effects of Permits on Water Quality).

(e) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider any assessment performed under Section 11.152 (Effects of Permits on Fish and Wildlife Habitats).

(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 amended water right to provide for protection of instream flows or freshwater inflows. With respect to an amended water right, the provision may not allow the 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. This subsection does not affect an appropriation or authorization 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. Provides that the adjustment:

(1) in combination with any previous adjustments made under this subsection, is prohibited from increasing the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or the water right amended and applicable only to the increase in the amount of water authorized under the amended right;

(2) is required to be based on appropriate consideration of the priority dates and diversion locations of any other water rights grants in the same river basin that are subject to adjustment under this subsection; and

(3) is required to be based on appropriate consideration of any voluntary contributions to the Texas Water Trust, and of any voluntary amendments to existing water rights to change the use of a specified quantity of water to or add a use of a specified quantity of water for instream flows dedicated to environmental needs or bay and estuary inflows as authorized by Section 11.0237(a), that actually contribute toward meeting the applicable environmental flows standards.

(e-2) Requires that any water right holder who makes a contribution or amends a water right as described by Subsection (e-1)(3) is entitled to appropriate credit for the benefits of the contribution or amendment against the adjustment of the holder's water right pursuant to 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 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:

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(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 Sections 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 and the definition and designation of the river basin by the TWDB under Section 16.051(c), schedule for the adoption of environmental flow standards, the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team, recommendations developed by the appropriate basin and bay area stakeholders committee and strategies to meet the flow standards, comments submitted by the advisory group, 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, including any scientific information provided by the science advisory committee, 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. In establishing a schedule, TCEQ shall 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 applicable work plan approved by the advisory group provides for a periodic review to occur more frequently. 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. A rulemaking process must provide for the participation of stakeholders having interests in the particular river basin and bay system for which the process is undertaken.

SECTION 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. 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 such time and TCEQ is required to consider those comments before issuing its order implementing the proposed action. Also makes conforming and nonsubstantive 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). Also makes a nonsubstantive change.

SECTION 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. Also makes conforming and nonsubstantive changes.

SECTION 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 chapters.

SECTION 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 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 consisting of at least nine but not more than 15 members. Requires a member of the advisory 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 advisory 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 an advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) Provides that an advisory 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 advisory 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 advisory committee to make specific recommendations, reviews, and comments, and perform other advisory duties as requested by the executive director of TCEQ.

SECTION 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 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 specific compensations and contracts.

SECTION 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 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, to provide that,

(h) 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]. Also makes conforming and nonsubstantive changes.

SECTION 25. Repealer: Section 11.1491(b), Water Code (referring to creation and establishment of advisory council for data collection and studies).

SECTION 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 added by this Act, 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 Texas environmental flows science advisory committee as provided by Section 11.02361, Water Code, as added by this Act. Provides that the terms of the initial members of the committee expire on 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 Act. 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 Act. Provides that the terms of the initial members of each team 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 watermaster advisory committee under Section 11.4531, Water Code, as added by this Act, 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 27. Provides that the changes in law made by this Act 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 a permit or amendment for which an application is pending with TCEQ on the effective date of this Act or is filed with TCEQ on or after that date.

SECTION 28. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 6:

C.S.H.B. 3 adds a new Section 11.0235 (d-1) setting forth legislative findings that existing water rights that are converted to water rights 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. Subsequent subsections are renumbered accordingly.

SECTION 7:

C.S.H.B. 3 clarifies, in Section 11.02362(f)(2) that the basin and bay stakeholders committee be representative of appropriate stakeholders, if they have a presence in the particular river basin and bay system for which the committee is established.

C.S.H.B. 3 adds language in Section 11.02362(r) to provide that notwithstanding the other provisions of Section 11.02362, in the event TCEQ, by permit or order, has established an estuary advisory council with duties specifically related to the implementation of permit conditions for environmental flows, that council may continue in full force and effect and shall act as and perform the duties of the basin and bay area stakeholders committee for the applicable river basin and bay system as provided by Section 11.02362. TCEQ shall appoint additional members to an estuary advisory council as necessary so that the composition of the council

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conforms to the requirements of Subsection (f) for the composition of a basin and bay area stakeholders committee. The original version only provided that, in the event the TCEQ, by permit or order, has established an estuary advisory council, that council may continue in full force and effect.

SECTION 13:

In Section 11.147(b), C.S.H.B. 3 requires TCEQ, for permits 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 considered necessary to maintain "beneficial inflows" to any affected bay and estuary system, rather than to maintain "freshwater inflows", as provided in the original version.

In Section 11.147(e-1)(3), C.S.H.B. 3 adds language stating that adjustments of permits or amendments must be based on appropriate consideration of any voluntary amendments to existing water rights to change the use of a specified quantity of water to or add a use of a specified quantity of water for instream flows dedicated to environmental needs or bay and estuary inflows as authorized by Section 11.0237(a), in addition to appropriate consideration of any voluntary contributions to the Texas Water Trust, that actually contribute toward meeting the applicable environmental flows standards.

In Section 11.147(e-2), C.S.H.B. 3 adds language requiring that any water right holder who amends a water right as described by Subsection (e-1)(3) as well as who makes a contribution as described by Subsection (e-1)(3), is entitled to appropriate credit for the benefits of the contribution or amendment against the adjustment of the holder's water right under Subsection (e-1).

SECTION 23 (was SECTION 24 in the Original Version):

C.S.H.B. 3 amends Section 16.059(d) to require the priority studies to be completed not later than December 31, 2016. The original version required the studies to be completed not later than December 31, 2014.

Removed SECTION 23, Original Version:

C.S.H.B. 3 removes Section 23 of the original version of the bill in its entirety. In the original version of the bill, Section 23 amended Section 15.7031, Water Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) requiring the dedication of any water rights placed in the trust to be reviewed by the advisory group, basin and bay area stakeholders committee and the basin and bay expert science team established under Section 11.02362 for the river basin and bay system to which the water right pertains.

(e) providing that while a water right is held in the trust, the water authorized for beneficial use under the terms of the water right is considered to be held for instream flows, water quality, fish and wildlife habitat, bay and estuary inflows, or other environmental uses without the need for a permit amendment. After the water right is withdrawn in whole or in part from the trust, the use of the water right or portion of the water right withdrawn must be in accordance with the terms of the water right.

Subsequent SECTIONS of the bill are renumbered accordingly in the substitute.