

BILL ANALYSIS

S.B. 1374
By: Armbrister
Natural Resources
Committee Report (Amended)

BACKGROUND AND PURPOSE

The Texas Commission on Environmental Quality (TCEQ) regulates the instream uses of Texas surface waterbodies, bays, and estuaries. S.B. 1374 sets forth state policy regarding waters of the state; creates the Study Commission on Water for Environmental Flows in recognition of the importance that the ecological soundness of riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state; and makes provisions regarding water rights permits for instream flows.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Study Commission on Water for Environmental Flows in SECTION 1 (Section 11.0236, Water Code) of this bill.

ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 11, Water Code, by adding Sections 11.0235, 11.0236, and 11.0237, as follows:

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. Sets forth state policy regarding waters of the state and legislative intent regarding water rights.

Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL FLOWS. (a) Creates, in recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well being of the state, the Study Commission on Water for Environmental Flows (study commission).

(b) Provides that the study commission is composed of 15 certain members.

(c) Sets forth stipulations regarding members of the study commission.

(d) Sets forth stipulations regarding members of the study commission.

(e) Provides that each appointed member of the study commission serves at the will of the person who appointed the member.

(f) Provides that the appointed senator with the most seniority serves as presiding officer of the study commission.

(g) Provides that a member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(h) Authorizes the study commission to accept gifts and grants from any source to be used to carry out a function of the study commission.

(i) Requires the Texas Commission on Environmental Quality (TCEQ) to provide staff support for the study commission.

(j) Requires the study commission 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 TCEQ determines have importance and relevance to the protection of environmental flows. Requires the study commission, 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 parks, game preserves, and bay and estuary systems and are high priorities in the permitting process. Requires the study commission to specifically address ways that the ecological soundness of these systems will be ensured in the water allocation process.

(k) Requires the study commission to appoint an advisory scientific committee with certain membership and that will perform certain functions; provides that the study commission may appoint additional advisory committees to assist the study commission; provides that the study commission may draft proposed legislation to modify existing water-rights permitting statutes.

(l) Requires the study commission, not later than December 1, 2004, to issue a report summarizing certain actions and findings.

(m) Requires the study commission to promptly deliver copies of the report to the governor, lieutenant governor and speaker of the house of representatives.

(n) Requires the study commission to adopt rules to administer this section.

(o) Provides that the study commission is abolished, and this section expires, September 1, 2005.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO

ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) Provides that the TCEQ may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. Provides that this section does not prohibit TCEQ from issuing an amendment to 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 Section 11.042(b) (regarding the diversion and reuse of return flows), 11.046(b) (provisions regarding the return of surplus water), 11.085(k)(2)(F) (pertaining to TCEQ's consideration of the impact of a proposed transfer on certain waterways), 11.134(b)(3)(D) (regarding the grant of an application being contingent on certain assessments), 11.147 (Effects of Permit on Bays and Estuaries and Instream Uses), 11.1491 (Evaluation of Bays and Estuaries Data), 16.058 (Collection of Bays and Estuaries Data; Conduct of Studies), or 16.059 (Collection of Instream Flow Data; Conduct of Studies). (c) Provides that this section expires September 1, 2005.

SECTION 2. Amends Subsections (d) and (e), Section 11.147, Water Code, as follows:

(d) Requires TCEQ, in its consideration of an application to store, take, or divert water, to include in the permit, to the extent practicable when considering all public interests, those conditions considered by TCEQ necessary to maintain existing instream uses and water quality of the stream or river to which the application applies.

(e) Requires TCEQ to include in the permit, to the extent practicable when considering all public interests, those conditions considered by TCEQ necessary to maintain fish and wildlife habitats.

SECTION 3. Effective date: upon passage or September 1, 2003.

EFFECTIVE DATE

Upon passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1 provides that of the three senate members appointed to the study

commission, one shall be the chair of the Senate Natural Resources Committee and that of the three house members appointed to the study commission, one shall be the chair of the House Natural Resources Committee.

Committee Amendment No. 2 strikes language providing that the appointed senator with the most seniority serves as presiding officer of the study commission. Instead, the amendment provides that the chair of the House Natural Resources Committee and the chair of the Senate Natural Resources Committee shall serve as joint presiding officers of the study commission.

Committee Amendment No. 3 increases the total number of members of the study commission from 15 to 17; adds one additional Governor-appointed member of the study commission; adds the commissioner of agriculture or the commissioner's designee as a member of the study commission; provides that of the Governor-appointed members, one member must be actively engaged in irrigated agriculture and one member must represent a conservation and reclamation district.