

By: Armbrister

S.B. No. 1374

A BILL TO BE ENTITLED

AN ACT

relating to public waters and provision for environmental flows by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.

(a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being.

(c) The legislature has expressly required the commission 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 commission's regular granting of permits for the use of state waters.

(d) The legislature has not expressly authorized granting water rights exclusively for:

(1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or

(2) other similar beneficial uses.

1 (e) The fact that greater pressures and demands are being
2 placed on the water resources of the state makes it of paramount
3 importance to reexamine the process for ensuring that these
4 important priorities are effectively addressed in clear
5 delegations of authority to the commission.

6 Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL
7 FLOWS. (a) In recognition of the importance that the ecological
8 soundness of our riverine, bay, and estuary systems and riparian
9 lands has on the economy, health, and well-being of the state there
10 is created the Study Commission on Water for Environmental Flows.

11 (b) The study commission is composed of 15 members as
12 follows:

13 (1) two members appointed by the governor;
14 (2) five members appointed by the lieutenant governor;
15 (3) five members appointed by the speaker of the house
16 of representatives;

17 (4) the presiding officer of the commission or the
18 presiding officer's designee;

19 (5) the chairman of the board or the chairman's
20 designee; and

21 (6) the presiding officer of the Parks and Wildlife
22 Commission or the presiding officer's designee.

23 (c) Of the members appointed under Subsection (b)(2):

24 (1) one member must represent a river authority or
25 municipal water supply agency or authority;

26 (2) one member must represent an entity that is
27 distinguished by its efforts in resource protection; and

1 (3) three members must be members of the senate.

2 (d) Of the members appointed under Subsection (b)(3):

3 (1) one member must represent a river authority or
4 municipal water supply agency or authority;

5 (2) one member must represent an entity that is
6 distinguished by its efforts in resource protection; and

7 (3) three members must be members of the house of
8 representatives.

9 (e) Each appointed member of the study commission serves at
10 the will of the person who appointed the member.

11 (f) The appointed senator with the most seniority serves as
12 presiding officer of the study commission.

13 (g) A member of the study commission is not entitled to
14 receive compensation for service on the study commission but is
15 entitled to reimbursement of the travel expenses incurred by the
16 member while conducting the business of the study commission, as
17 provided by the General Appropriations Act.

18 (h) The study commission may accept gifts and grants from
19 any source to be used to carry out a function of the study
20 commission.

21 (i) The commission shall provide staff support for the study
22 commission.

23 (j) The study commission shall conduct public hearings and
24 study public policy implications for balancing the demands on the
25 water resources of the state resulting from a growing population
26 with the requirements of the riverine, bay, and estuary systems
27 including granting permits for instream flows dedicated to

1 environmental needs or bay and estuary inflows, use of the Texas
2 Water Trust, and any other issues that the study commission
3 determines have importance and relevance to the protection of
4 environmental flows. In evaluating the options for providing
5 adequate environmental flows, the study commission shall take
6 notice of the strong public policy imperative that exists in this
7 state recognizing that environmental flows are important to the
8 biological health of our parks, game preserves, and bay and estuary
9 systems and are high priorities in the permitting process. The
10 study commission shall specifically address ways that the
11 ecological soundness of these systems will be ensured in the water
12 allocation process.

13 (k) The study commission:

14 (1) shall appoint an advisory scientific committee
15 that will:

16 (A) serve as impartial scientific advisors and
17 reviewers for the study commission; and

18 (B) have a membership of no fewer than five and no
19 more than nine total members chosen by the study commission to
20 represent a variety of areas of relevant technical expertise;

21 (2) may appoint additional advisory committees to
22 assist the study commission; and

23 (3) may draft proposed legislation to modify existing
24 water-rights permitting statutes.

25 (1) Not later than December 1, 2004, the study commission
26 shall issue a report summarizing:

27 (1) any hearings conducted by the study commission;

- 1 (2) any studies conducted by the study commission;
- 2 (3) any legislation proposed by the study commission;
- 3 and
- 4 (4) any other findings and recommendations of the
- 5 study commission.

6 (m) The study commission shall promptly deliver copies of
7 the report to the governor, lieutenant governor, and speaker of the
8 house of representatives.

9 (n) The study commission shall adopt rules to administer
10 this section.

11 (o) The study commission is abolished and this section
12 expires September 1, 2005.

13 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO
14 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The
15 commission may not issue a new permit for instream flows dedicated
16 to environmental needs or bay and estuary inflows. This section
17 does not prohibit the commission from issuing an amendment to an
18 existing permit or certificate of adjudication to change the use to
19 or add a use for instream flows dedicated to environmental needs or
20 bay and estuary inflows.

21 (b) This section does not alter the commission's
22 obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F),
23 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

24 (c) This section expires September 1, 2005.

25 SECTION 2. Subsections (d) and (e), Section 11.147, Water
26 Code, are amended to read as follows:

27 (d) In its consideration of an application to store, take,

1 or divert water, the commission shall include in the permit, to the
2 extent practicable when considering all public interests, those
3 conditions considered by the commission necessary to maintain
4 ~~[consider the effect, if any, of the issuance of the permit on]~~
5 existing instream uses and water quality of the stream or river to
6 which the application applies.

7 (e) The commission shall include in the permit, to the
8 extent practicable when considering all public interests, those
9 conditions considered by the commission necessary to maintain ~~[also~~
10 ~~consider the effect, if any, of the issuance of the permit on]~~ fish
11 and wildlife habitats.

12 SECTION 3. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2003.

COMMITTEE AMENDMENT NO. 1

Amend S.B. 1374 as follows:

(1) In SECTION 1 of the bill, proposed Section 11.0236(b), Water Code (Senate Engrossment, page 3, line 1), after the word "senate" and before the underlined period, add "one of whom shall be the chair of the Senate Natural Resources Committee"

(1) In SECTION 1 of the bill, proposed Section 11.0236(b), Water Code (Senate Engrossment, page 3, line 8), after the word "representatives" and before the underlined period, add "one of whom shall be the chair of the House Natural Resources Committee"

Wolens

COMMITTEE AMENDMENT NO. 2

Amend S.B. 1374 as follows:

In SECTION 1 of the bill, proposed Section 11.0236(b), Water Code (Senate Engrossment, page 3), strike lines 11 and 12 and substitute the following:

(f) 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.

Wolens

COMMITTEE AMENDMENT NO. 3

Amend S.B. 1374 as follows:

(1) In SECTION 1 of the bill, proposed Section 11.0236(b), Water Code (Senate Engrossment, page 2, line 11), strike "15" and substitute "17".

(2) In SECTION 1 of the bill, proposed Section

1 11.0236(b)(1), Water Code (Senate Engrossment, page 2, line 13),
2 strike "two" and substitute "three".

3 (3) In SECTION 1 of the bill, following proposed Section
4 11.0236(b)(5), Water Code (Senate Engrossment, page 2, line 20),
5 strike "and".

6 (4) In SECTION 1 of the bill, proposed Section
7 11.0236(b)(6), Water Code, between "designee" and the underlined
8 period (Senate Engrossment, page 2, line 22), insert the following:
9 ;and

10 (7) the commissioner of agriculture or the commissioner's
11 designee

12 (5) In SECTION 1 of the bill, proposed Section 11.0236,
13 Water Code, between Subsections (b) and (c) of that section (Senate
14 Engrossment, page 2, between lines 22 and 23), insert the following
15 subsection and reletter the subsequent subsections of that section
16 and cross-reference to those subsections appropriately:

17 (c) Of the members appointed under Subsection (b)(1), one
18 member must be actively engaged in irrigated agriculture and one
19 member must represent a conservation and reclamation district.

20 Hardcastle