

1-1 By: Armbrister S.B. No. 1374  
1-2 (In the Senate - Filed March 13, 2003; March 19, 2003, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 29, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 10, Nays 0, 1 present not  
1-6 voting; April 29, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1374 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to public waters and provision for environmental flows by  
1-11 the Texas Commission on Environmental Quality.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter B, Chapter 11, Water Code, is amended  
1-14 by adding Sections 11.0235, 11.0236, and 11.0237 to read as  
1-15 follows:

1-16 Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.

1-17 (a) The waters of the state are held in trust for the public, and  
1-18 the right to use state water may be appropriated only as expressly  
1-19 authorized by law.

1-20 (b) Maintaining the biological soundness of the state's  
1-21 rivers, lakes, bays, and estuaries is of great importance to the  
1-22 public's economic health and general well-being.

1-23 (c) The legislature has expressly required the commission  
1-24 while balancing all other interests to consider and provide for the  
1-25 freshwater inflows necessary to maintain the viability of the  
1-26 state's bay and estuary systems in the commission's regular  
1-27 granting of permits for the use of state waters.

1-28 (d) The legislature has not expressly authorized granting  
1-29 water rights exclusively for:

1-30 (1) instream flows dedicated to environmental needs or  
1-31 inflows to the state's bay and estuary systems; or

1-32 (2) other similar beneficial uses.

1-33 (e) The fact that greater pressures and demands are being  
1-34 placed on the water resources of the state makes it of paramount  
1-35 importance to reexamine the process for ensuring that these  
1-36 important priorities are effectively addressed in clear  
1-37 delegations of authority to the commission.

1-38 (f) This section expires September 1, 2005.

1-39 Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL  
1-40 FLOWS. (a) In recognition of the importance that the ecological  
1-41 soundness of our riverine, bay, and estuary systems and riparian  
1-42 lands has on the economy, health, and well-being of the state there  
1-43 is created the Study Commission on Water for Environmental Flows.

1-44 (b) The study commission is composed of 15 members as  
1-45 follows:

1-46 (1) two members appointed by the governor;

1-47 (2) five members appointed by the lieutenant governor;

1-48 (3) five members appointed by the speaker of the house  
1-49 of representatives;

1-50 (4) the presiding officer of the commission or the  
1-51 presiding officer's designee;

1-52 (5) the chairman of the board or the chairman's  
1-53 designee; and

1-54 (6) the presiding officer of the Parks and Wildlife  
1-55 Commission or the presiding officer's designee.

1-56 (c) Of the members appointed under Subsection (b)(2):

1-57 (1) one member must represent a river authority or  
1-58 municipal water supply agency or authority;

1-59 (2) one member must represent an entity that is  
1-60 distinguished by its efforts in resource protection; and

1-61 (3) three members must be members of the senate.

1-62 (d) Of the members appointed under Subsection (b)(3):

1-63 (1) one member must represent a river authority or

2-1 municipal water supply agency or authority;  
2-2 (2) one member must represent an entity that is  
2-3 distinguished by its efforts in resource protection; and  
2-4 (3) three members must be members of the house of  
2-5 representatives.

2-6 (e) Each appointed member of the study commission serves at  
2-7 the will of the person who appointed the member.

2-8 (f) The appointed senator with the most seniority serves as  
2-9 presiding officer of the study commission.

2-10 (g) A member of the study commission is not entitled to  
2-11 receive compensation for service on the study commission but is  
2-12 entitled to reimbursement of the travel expenses incurred by the  
2-13 member while conducting the business of the study commission, as  
2-14 provided by the General Appropriations Act.

2-15 (h) The study commission may accept gifts and grants from  
2-16 any source to be used to carry out a function of the study  
2-17 commission.

2-18 (i) The commission shall provide staff support for the study  
2-19 commission.

2-20 (j) The study commission shall conduct public hearings and  
2-21 study public policy implications for balancing the demands on the  
2-22 water resources of the state resulting from a growing population  
2-23 with the requirements of the riverine, bay, and estuary systems  
2-24 including granting permits for instream flows dedicated to  
2-25 environmental needs or bay and estuary inflows, use of the Texas  
2-26 Water Trust, and any other issues that the commission determines  
2-27 have importance and relevance to the protection of environmental  
2-28 flows. In evaluating the options for providing adequate  
2-29 environmental flows, the study commission shall take notice of the  
2-30 strong public policy imperative that exists in this state  
2-31 recognizing that environmental flows are important to the  
2-32 biological health of our parks, game preserves, and bay and estuary  
2-33 systems and are high priorities in the permitting process. The  
2-34 study commission shall specifically address ways that the  
2-35 ecological soundness of these systems will be ensured in the water  
2-36 allocation process.

2-37 (k) The study commission:

2-38 (1) shall appoint an advisory scientific committee  
2-39 that will:

2-40 (A) serve as impartial scientific advisors and  
2-41 reviewers for the study commission; and

2-42 (B) have a membership of no fewer than five and no  
2-43 more than nine total members chosen by the study commission to  
2-44 represent a variety of areas of relevant technical expertise;

2-45 (2) may appoint additional advisory committees to  
2-46 assist the study commission; and

2-47 (3) may draft proposed legislation to modify existing  
2-48 water-rights permitting statutes.

2-49 (1) Not later than December 1, 2004, the study commission  
2-50 shall issue a report summarizing:

2-51 (1) any hearings conducted by the study commission;

2-52 (2) any studies conducted by the study commission;

2-53 (3) any legislation proposed by the study commission;

2-54 and

2-55 (4) any other findings and recommendations of the  
2-56 study commission.

2-57 (m) The study commission shall promptly deliver copies of  
2-58 the report to the governor, lieutenant governor, and speaker of the  
2-59 house of representatives.

2-60 (n) The study commission shall adopt rules to administer  
2-61 this section.

2-62 (o) The study commission is abolished and this section  
2-63 expires September 1, 2005.

2-64 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO  
2-65 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The

2-66 commission may not grant an application filed after January 1,  
2-67 2000, to issue a new permit for instream flows dedicated to

2-68 environmental needs or bay and estuary inflows. This section does  
2-69 not prohibit the commission from issuing an amendment to an

3-1 existing permit or certificate of adjudication to change the use to  
3-2 or add a use for instream flows dedicated to environmental needs or  
3-3 bay and estuary inflows. This section does not apply to any permit  
3-4 granted before the effective date of this section.

3-5 (b) This section does not alter the commission's  
3-6 obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F),  
3-7 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

3-8 (c) This section expires September 1, 2005.

3-9 SECTION 2. Subsections (d) and (e), Section 11.147, Water  
3-10 Code, are amended to read as follows:

3-11 (d) In its consideration of an application to store, take,  
3-12 or divert water, the commission shall include in the permit, to the  
3-13 extent practicable when considering all public interests, those  
3-14 conditions considered by the commission necessary to maintain  
3-15 [consider the effect, if any, of the issuance of the permit on]  
3-16 existing instream uses and water quality of the stream or river to  
3-17 which the application applies.

3-18 (e) The commission shall include in the permit, to the  
3-19 extent practicable when considering all public interests, those  
3-20 conditions considered by the commission necessary to maintain [also  
3-21 consider the effect, if any, of the issuance of the permit on] fish  
3-22 and wildlife habitats.

3-23 SECTION 3. This Act takes effect immediately if it receives  
3-24 a vote of two-thirds of all the members elected to each house, as  
3-25 provided by Section 39, Article III, Texas Constitution. If this  
3-26 Act does not receive the vote necessary for immediate effect, this  
3-27 Act takes effect September 1, 2003.

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