

By: Puente

H.B. No. 40

Substitute the following for H.B. No. 40:

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C.S.H.B. No. 40

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the management of the water resources of the state,
3 including the protection of instream flows and freshwater inflows.

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

5 SECTION 1. The heading to Section 5.506, Water Code, is
6 amended to read as follows:

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

11 SECTION 2. Section 5.506, Water Code, is amended by adding
12 Subsection (a-1) and amending Subsections (b) and (c) to read as
13 follows:

14 (a-1) State water that is set aside by the commission to
15 meet the needs for freshwater inflows to affected bays and
16 estuaries and instream uses under Section 11.1471(a)(2) may be made
17 available temporarily for other essential beneficial uses if the
18 commission finds that an emergency exists that cannot practically
19 be resolved in another way.

20 (b) The commission must give written notice of the proposed
21 action [~~suspension~~] to the Parks and Wildlife Department before the
22 commission suspends a permit condition under Subsection (a) or
23 makes water available temporarily under Subsection (a-1) [~~this~~
24 ~~section~~]. The commission shall give the Parks and Wildlife

1 Department an opportunity to submit comments on the proposed action
2 [~~suspension~~] for a period of 72 hours from receipt of the notice and
3 must consider those comments before issuing an order implementing
4 the proposed action [~~imposing the suspension~~].

5 (c) The commission may suspend a permit condition under
6 Subsection (a) or make water available temporarily under Subsection
7 (a-1) [~~this section~~] without notice except as required by
8 Subsection (b).

9 SECTION 3. Section 5.701(j), Water Code, is amended to read
10 as follows:

11 (j) The fee for other uses of water not specifically named
12 in this section is \$1 per acre-foot, except that no political
13 subdivision may be required to pay fees to use water for recharge of
14 underground freshwater-bearing sands and aquifers or for abatement
15 of natural pollution. A fee is not required for a water right that
16 is [~~This fee is waived for applications for instream-use water~~
17 ~~rights~~] deposited into the Texas Water Trust.

18 SECTION 4. Section 11.002, Water Code, is amended by adding
19 Subdivisions (15), (16), (17), (18), and (19) to read as follows:

20 (15) "Environmental flow analysis" means the
21 application of a scientifically derived process for predicting the
22 response of an ecosystem to changes in instream flows or freshwater
23 inflows.

24 (16) "Environmental flow regime" means a schedule of
25 flow quantities that reflects seasonal and yearly fluctuations that
26 typically would vary geographically, by specific location in a
27 watershed, and that are shown to be adequate to support a sound

1 ecological environment and to maintain the productivity, extent,
2 and persistence of key aquatic habitats in and along the affected
3 water bodies.

4 (17) "Environmental flow standards" means those
5 requirements adopted by the commission under Section 11.1471.

6 (18) "Flows commission" means the Environmental Flows
7 Commission.

8 (19) "Science advisory committee" means the Texas
9 Environmental Flows Science Advisory Committee.

10 SECTION 5. Section 11.023(a), Water Code, is amended to
11 read as follows:

12 (a) To the extent that state water has not been set aside by
13 the commission under Section 11.1471(a)(2) to meet downstream
14 instream flow needs or freshwater inflow needs, state [~~State~~] water
15 may be appropriated, stored, or diverted for:

16 (1) domestic and municipal uses, including water for
17 sustaining human life and the life of domestic animals;

18 (2) agricultural uses and industrial uses, meaning
19 processes designed to convert materials of a lower order of value
20 into forms having greater usability and commercial value, including
21 the development of power by means other than hydroelectric;

22 (3) mining and recovery of minerals;

23 (4) hydroelectric power;

24 (5) navigation;

25 (6) recreation and pleasure;

26 (7) public parks; and

27 (8) game preserves.

1 SECTION 6. Section 11.0235, Water Code, is amended by
2 amending Subsections (c) and (e) and adding Subsections (d-1)
3 through (d-5) and (f) to read as follows:

4 (c) The legislature has expressly required the commission
5 while balancing all other public interests to consider and, to the
6 extent practicable, provide for the freshwater inflows and instream
7 flows necessary to maintain the viability of the state's streams,
8 rivers, and bay and estuary systems in the commission's regular
9 granting of permits for the use of state waters. As an essential
10 part of the state's environmental flows policy, all permit
11 conditions relating to freshwater inflows to affected bays and
12 estuaries and instream flow needs must be subject to temporary
13 suspension if necessary for water to be applied to essential
14 beneficial uses during emergencies.

15 (d-1) The legislature finds that to provide certainty in
16 water management and development and to provide adequate protection
17 of the state's streams, rivers, and bays and estuaries, the state
18 must have a process with specific timelines for prompt action to
19 address environmental flow issues in the state's major basin and
20 bay systems, especially those systems in which unappropriated water
21 is still available.

22 (d-2) The legislature finds that:

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

27 (2) in those basins in which the unappropriated water

1 that will be set aside for instream flow and freshwater inflow
2 protection is not sufficient to fully satisfy the environmental
3 flow standards established by the commission, a variety of market
4 approaches, both public and private, for filling the gap must be
5 explored and pursued.

6 (d-3) The legislature finds that while the state has
7 pioneered tools to address freshwater inflow needs for bays and
8 estuaries, there are limitations to those tools in light of both
9 scientific and public policy evolution. To fully address bay and
10 estuary environmental flow issues, the foundation of work
11 accomplished by the state should be improved. While the state's
12 instream flow studies program appears to encompass a comprehensive
13 and scientific approach for establishing a process to assess
14 instream flow needs for rivers and streams across the state, more
15 extensive review and examination of the details of the program,
16 which may not be fully developed until the program is under way, are
17 needed to ensure an effective tool for evaluating riverine
18 environmental flow conditions.

19 (d-4) The legislature finds that the management of water to
20 meet instream flow and freshwater inflow needs should be evaluated
21 on a regular basis and adapted to reflect both improvements in
22 science related to environmental flows and future changes in
23 projected human needs for water. In addition, the development of
24 management strategies for addressing environmental flow needs
25 should be an ongoing, adaptive process that considers and addresses
26 local issues.

27 (d-5) The legislature finds that recommendations for state

1 action to protect instream flows and freshwater inflows should be
2 developed through a consensus-based, regional approach involving
3 balanced representation of stakeholders and that such a process
4 should be encouraged throughout the state.

5 (e) The fact that greater pressures and demands are being
6 placed on the water resources of the state makes it of paramount
7 importance to ensure [~~reexamine the process for ensuring~~] that
8 these important priorities are effectively addressed by detailing
9 how environmental flow standards are to be developed using the
10 environmental studies that have been and are to be performed by the
11 state and others and specifying in clear delegations of authority
12 how those environmental flow standards will be integrated into the
13 regional water planning and water permitting process [~~to the~~
14 ~~commission~~].

15 (f) The legislature recognizes that effective
16 implementation of the approach provided by this chapter for
17 protecting instream flows and freshwater inflows will require more
18 effective water rights administration and enforcement systems than
19 are currently available in most areas of the state.

20 SECTION 7. (a) This section takes effect only if this Act
21 takes effect immediately. If this Act does not take effect
22 immediately, this section has no effect.

23 (b) The heading to Section 11.0236, Water Code, is amended
24 to read as follows:

25 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
26 FLOWS COMMISSION.

27 (c) Section 11.0236, Water Code, is amended by amending

1 Subsections (a), (b), (c), (e) through (j), (n), and (o) and adding
2 Subsection (p) to read as follows:

3 (a) In recognition of the importance that the ecological
4 soundness of our riverine, bay, and estuary systems and riparian
5 lands has on the economy, health, and well-being of the state there
6 is created the [~~Study Commission on Water for~~] Environmental Flows
7 Commission.

8 (b) The flows [~~study~~] commission is composed of nine [~~15~~]
9 members as follows:

- 10 (1) five [~~two~~] members appointed by the governor;
- 11 (2) two [~~five~~] members of the senate appointed by the
12 lieutenant governor; and
- 13 (3) two [~~five~~] members of the house of representatives
14 appointed by the speaker of the house of representatives[~~+~~
- 15 [~~(4) the presiding officer of the commission or the~~
16 ~~presiding officer's designee;~~
- 17 [~~(5) the chairman of the board or the chairman's~~
18 ~~designee; and~~
- 19 [~~(6) the presiding officer of the Parks and Wildlife~~
20 ~~Commission or the presiding officer's designee].~~

- 21 (c) Of the members appointed under Subsection (b)(1):
- 22 (1) one member must be a member of the commission;
- 23 (2) one member must be a member of the board;
- 24 (3) one member must be a member of the Parks and
25 Wildlife Commission; and
- 26 (4) two members must represent the public [~~(b)(2)~~];
- 27 [~~(1) one member must represent a river authority or~~

1 ~~municipal water supply agency or authority;~~

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

4 ~~[(3) three members must be members of the senate].~~

5 (e) Each ~~[appointed]~~ member of the flows ~~[study]~~ commission
6 serves at the will of the person who appointed the member.

7 (f) The appointed senator with the most seniority and the
8 appointed house member with the most seniority serve together as
9 co-presiding officers of the flows ~~[study]~~ commission.

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

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

18 (i) The commission shall provide staff support for the flows
19 ~~[study]~~ commission.

20 (j) The flows ~~[study]~~ commission shall conduct public
21 hearings and study public policy implications for balancing the
22 demands on the water resources of the state resulting from a growing
23 population with the requirements of the riverine, bay, and estuary
24 systems including granting permits for instream flows dedicated to
25 environmental needs or bay and estuary inflows, use of the Texas
26 Water Trust, and any other issues that the flows ~~[study]~~ commission
27 determines have importance and relevance to the protection of

1 environmental flows. In evaluating the options for providing
2 adequate environmental flows, the flows [~~study~~] commission shall
3 take notice of the strong public policy imperative that exists in
4 this state recognizing that environmental flows are important to
5 the biological health of our public and private lands, streams and
6 rivers [~~parks, game preserves~~], and bay and estuary systems and are
7 high priorities in the water management [~~permitting~~] process. The
8 flows [~~study~~] commission shall specifically address:

9 (1) ways that the ecological soundness of those
10 [these] systems will be ensured in the water rights administration
11 and enforcement and water allocation processes; and

12 (2) appropriate methods to encourage persons
13 voluntarily to convert reasonable amounts of existing water rights
14 to use for environmental flow protection temporarily or permanently
15 [process].

16 (n) The flows [~~study~~] commission may [~~shall~~] adopt rules,
17 procedures, and policies as needed to administer this section, to
18 implement its responsibilities, and to exercise its authority under
19 Sections 11.02361 and 11.02362.

20 (o) Chapter 2110, Government Code, does not apply to the
21 size, composition, or duration of the flows commission.

22 (p) Not later than December 1, 2006, and every two years
23 thereafter, the flows commission shall issue and promptly deliver
24 to the governor, lieutenant governor, and speaker of the house of
25 representatives copies of a report summarizing:

26 (1) any hearings conducted by the flows commission;

27 (2) any studies conducted by the flows commission;

1 (3) any legislation proposed by the flows commission;

2 (4) progress made in implementing Sections 11.02361
3 and 11.02362; and

4 (5) any other findings and recommendations of the
5 flows commission [~~The study commission is abolished and this~~
6 ~~section expires September 1, 2005~~].

7 SECTION 8. (a) This section takes effect only if this Act
8 does not take effect immediately. If this Act takes effect
9 immediately, this section has no effect.

10 (b) Subchapter B, Chapter 11, Water Code, is amended by
11 adding Section 11.0236 to read as follows:

12 Sec. 11.0236. ENVIRONMENTAL FLOWS COMMISSION. (a) In
13 recognition of the importance that the ecological soundness of our
14 riverine, bay, and estuary systems and riparian lands has on the
15 economy, health, and well-being of the state there is created the
16 Environmental Flows Commission.

17 (b) The flows commission is composed of nine members as
18 follows:

19 (1) five members appointed by the governor;

20 (2) two members of the senate appointed by the
21 lieutenant governor; and

22 (3) two members of the house of representatives
23 appointed by the speaker of the house of representatives.

24 (c) Of the members appointed under Subsection (b)(1):

25 (1) one member must be a member of the commission;

26 (2) one member must be a member of the board;

27 (3) one member must be a member of the Parks and

1 Wildlife Commission; and

2 (4) two members must represent the public.

3 (e) Each member of the flows commission serves at the will
4 of the person who appointed the member.

5 (f) The appointed senator with the most seniority and the
6 appointed house member with the most seniority serve together as
7 co-presiding officers of the flows commission.

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

13 (h) The flows commission may accept gifts and grants from
14 any source to be used to carry out a function of the flows
15 commission.

16 (i) The commission shall provide staff support for the flows
17 commission.

18 (j) The flows commission shall conduct public hearings and
19 study public policy implications for balancing the demands on the
20 water resources of the state resulting from a growing population
21 with the requirements of the riverine, bay, and estuary systems
22 including granting permits for instream flows dedicated to
23 environmental needs or bay and estuary inflows, use of the Texas
24 Water Trust, and any other issues that the flows commission
25 determines have importance and relevance to the protection of
26 environmental flows. In evaluating the options for providing
27 adequate environmental flows, the flows commission shall take

1 notice of the strong public policy imperative that exists in this
2 state recognizing that environmental flows are important to the
3 biological health of our public and private lands, streams and
4 rivers, and bay and estuary systems and are high priorities in the
5 water management process. The flows commission shall specifically
6 address:

7 (1) ways that the ecological soundness of those
8 systems will be ensured in the water rights administration and
9 enforcement and water allocation processes; and

10 (2) appropriate methods to encourage persons
11 voluntarily to convert reasonable amounts of existing water rights
12 to use for environmental flow protection temporarily or
13 permanently.

14 (n) The flows commission may adopt rules, procedures, and
15 policies as needed to administer this section, to implement its
16 responsibilities, and to exercise its authority under Sections
17 11.02361 and 11.02362.

18 (o) Chapter 2110, Government Code, does not apply to the
19 size, composition, or duration of the flows commission.

20 (p) Not later than December 1, 2006, and every two years
21 thereafter, the flows commission shall issue and promptly deliver
22 to the governor, lieutenant governor, and speaker of the house of
23 representatives copies of a report summarizing:

24 (1) any hearings conducted by the flows commission;

25 (2) any studies conducted by the flows commission;

26 (3) any legislation proposed by the flows commission;

27 (4) progress made in implementing Sections 11.02361

1 and 11.02362; and

2 (5) any other findings and recommendations of the
3 flows commission.

4 SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
5 by adding Sections 11.02361 and 11.02362 to read as follows:

6 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
7 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
8 Committee consists of at least five but not more than nine members
9 appointed by the flows commission.

10 (b) The flows commission shall appoint to the science
11 advisory committee persons who will provide an objective
12 perspective and diverse technical expertise, including expertise
13 in hydrology, hydraulics, water resources, aquatic and terrestrial
14 biology, geomorphology, geology, water quality, computer modeling,
15 and other technical areas pertinent to the evaluation of
16 environmental flows.

17 (c) Members of the science advisory committee serve
18 five-year terms expiring March 1. A vacancy on the science advisory
19 committee is filled by appointment by the co-presiding officers of
20 the flows commission for the unexpired term.

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

23 (e) The science advisory committee shall:

24 (1) serve as an objective scientific body to advise
25 and make recommendations to the flows commission on issues relating
26 to the science of environmental flow protection; and

27 (2) develop recommendations to help provide overall

1 direction, coordination, and consistency relating to:

2 (A) environmental flow methodologies for bay and
3 estuary studies and instream flow studies;

4 (B) environmental flow programs at the
5 commission, the Parks and Wildlife Department, and the board; and

6 (C) the work of the basin and bay expert science
7 teams described in Section 11.02362.

8 (f) To assist the flows commission to assess the extent to
9 which the recommendations of the science advisory committee are
10 considered and implemented, the commission, the Parks and Wildlife
11 Department, and the board shall provide written reports to the
12 flows commission, at intervals determined by the flows commission,
13 that describe:

14 (1) the actions taken by each agency in response to
15 each recommendation; and

16 (2) for each recommendation not implemented, the
17 reason it was not implemented.

18 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
19 RECOMMENDATIONS. (a) For the purposes of this section, the flows
20 commission, not later than January 1, 2006, shall define the
21 geographical extent of each river basin and bay system in this state
22 for the sole purpose of developing environmental flow regime
23 recommendations under this section and adoption of environmental
24 flow standards under Section 11.1471.

25 (b) The flows commission shall give priority in descending
26 order to the following river basin and bay systems of the state for
27 the purpose of developing environmental flow regime

1 recommendations and adopting environmental flow standards:

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

6 (2) the river basin and bay system consisting of the
7 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
8 river basin and bay system consisting of the Guadalupe, San
9 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
10 Bays; and

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

16 (c) For the river basin and bay systems listed in Subsection
17 (b)(1):

18 (1) the flows commission shall appoint the basin and
19 bay area stakeholders committee not later than January 1, 2006;

20 (2) the basin and bay area stakeholders committee
21 shall establish a basin and bay expert science team not later than
22 March 1, 2006;

23 (3) the basin and bay expert science team shall
24 finalize environmental flow regime recommendations and submit them
25 to the basin and bay area stakeholders committee, the flows
26 commission, and the commission not later than March 1, 2007;

27 (4) the basin and bay area stakeholders committee

1 shall submit to the commission its comments on and recommendations
2 regarding the basin and bay expert science team's recommended
3 environmental flow regime not later than September 1, 2007; and

4 (5) the commission shall adopt the environmental flow
5 standards as provided by Section 11.1471 not later than September
6 1, 2008.

7 (d) The flows commission shall appoint the basin and bay
8 area stakeholders committees for the river basin and bay systems
9 listed in Subsection (b)(2) not later than September 1, 2006, and
10 shall appoint the basin and bay area stakeholders committees for
11 the river basin and bay systems listed in Subsection (b)(3) not
12 later than September 1, 2007. The flows commission shall establish
13 a schedule for the performance of the tasks listed in Subsections
14 (c)(2)-(5) with regard to the river basin and bay systems listed in
15 Subsections (b)(2) and (3) that will result in the adoption of
16 environmental flow standards for that river basin and bay system by
17 the commission as soon as is reasonably possible. Each basin and
18 bay area stakeholders committee and basin and bay expert science
19 team for a river basin and bay system listed in Subsection (b)(2) or
20 (3) shall make recommendations to the flows commission with regard
21 to the schedule applicable to that river basin and bay system. The
22 flows commission shall consider the recommendations of the basin
23 and bay area stakeholders committee and basin and bay expert
24 science team as well as coordinate with, and give appropriate
25 consideration to the recommendations of, the commission, the Parks
26 and Wildlife Department, and the board in establishing the
27 schedule.

1 (e) For a river basin and bay system or a river basin that
2 does not have an associated bay system in this state not listed in
3 Subsection (b), the flows commission shall establish a schedule for
4 the development of environmental flow regime recommendations and
5 the adoption of environmental flow standards. The flows commission
6 shall develop the schedule in consultation with the commission, the
7 Parks and Wildlife Department, the board, and the pertinent basin
8 and bay area stakeholders committee and basin and bay expert
9 science team. The flows commission may, on its own initiative or on
10 request, modify a schedule established under this subsection to be
11 more responsive to particular circumstances, local desires,
12 changing conditions, or time-sensitive conflicts. This subsection
13 does not prohibit, in a river basin and bay system for which the
14 flows commission has not yet established a schedule for the
15 development of environmental flow regime recommendations and the
16 adoption of environmental flow standards, an effort to develop
17 information on environmental flow needs and ways in which those
18 needs can be met by a voluntary consensus-building process.

19 (f) The flows commission shall appoint a basin and bay area
20 stakeholders committee for each river basin and bay system in this
21 state for which a schedule for the development of environmental
22 flow regime recommendations and the adoption of environmental flow
23 standards is specified by or established under Subsection (c), (d),
24 or (e). Chapter 2110, Government Code, does not apply to the size,
25 composition, or duration of a basin and bay area stakeholders
26 committee. Each committee must consist of at least 17 members. The
27 members must represent appropriate stakeholders, including

1 representatives of:

2 (1) agricultural water users;

3 (2) recreational water users, including coastal
4 recreational anglers and businesses supporting water recreation;

5 (3) municipalities;

6 (4) soil and water conservation districts;

7 (5) industrial water users, including representatives
8 of both the manufacturing and refining sectors;

9 (6) commercial fishermen;

10 (7) public interest groups;

11 (8) regional water planning groups;

12 (9) groundwater conservation districts;

13 (10) river authorities and other conservation and
14 reclamation districts with jurisdiction over surface water; and

15 (11) environmental interests.

16 (g) Members of a basin and bay area stakeholders committee
17 serve five-year terms expiring March 1. If a vacancy occurs on a
18 committee, the remaining members of the committee by majority vote
19 shall appoint a member to serve the remainder of the unexpired term.

20 (h) Meetings of a basin and bay area stakeholders committee
21 must be open to the public.

22 (i) Each basin and bay area stakeholders committee shall
23 establish a basin and bay expert science team for the river basin
24 and bay system for which the committee is established. The basin
25 and bay expert science team must be established not later than six
26 months after the date the basin and bay area stakeholders committee
27 is established. Chapter 2110, Government Code, does not apply to

1 the size, composition, or duration of a basin and bay expert science
2 team. Each basin and bay expert science team must be composed of
3 technical experts with special expertise regarding the river basin
4 and bay system or regarding the development of environmental flow
5 regimes. A person may serve as a member of more than one basin and
6 bay expert science team at the same time.

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

12 (k) The science advisory committee shall appoint one of its
13 members to serve as a liaison to each basin and bay expert science
14 team to facilitate coordination and consistency in environmental
15 flow activities throughout the state. The commission, the Parks
16 and Wildlife Department, and the board shall provide technical
17 assistance to each basin and bay expert science team, including
18 information about the studies conducted under Sections 16.058 and
19 16.059, and may serve as nonvoting members of the basin and bay
20 expert science team to facilitate the development of environmental
21 flow regime recommendations.

22 (l) Where reasonably practicable, meetings of a basin and
23 bay expert science team must be open to the public.

24 (m) Each basin and bay expert science team shall develop
25 environmental flow analyses and a recommended environmental flow
26 regime for the river basin and bay system for which the team is
27 established through a collaborative process designed to achieve a

1 consensus. In developing the analyses and recommendations, the
2 science team must consider all reasonably available science,
3 without regard to the need for the water for other uses, and the
4 science team's recommendations must be based solely on the best
5 science available. For the Rio Grande below Fort Quitman, any uses
6 attributable to Mexican water flows must be excluded from
7 environmental flow regime recommendations.

8 (n) Each basin and bay expert science team shall submit its
9 environmental flow analyses and environmental flow regime
10 recommendations to the pertinent basin and bay area stakeholders
11 committee, the flows commission, and the commission in accordance
12 with the applicable schedule specified by or established under
13 Subsection (c), (d), or (e). The basin and bay area stakeholders
14 committee and the flows commission may not change the environmental
15 flow analyses or environmental flow regime recommendations of the
16 basin and bay expert science team.

17 (o) Each basin and bay area stakeholders committee shall
18 review the environmental flow analyses and environmental flow
19 regime recommendations submitted by the committee's basin and bay
20 expert science team and shall consider them in conjunction with
21 other factors, including the present and future needs for water for
22 other uses related to water supply planning in the pertinent river
23 basin and bay system. For the Rio Grande, the basin and bay area
24 stakeholders committee shall also consider the water accounting
25 requirements for any international water sharing treaty, minutes,
26 and agreement applicable to the Rio Grande and the effects on
27 allocation of water by the Rio Grande watermaster in the middle and

1 lower Rio Grande. The Rio Grande basin and bay expert science team
2 may not recommend any environmental flow regime that would result
3 in a violation of a treaty or court decision. The basin and bay area
4 stakeholders committee shall develop recommendations regarding
5 environmental flow standards and strategies to meet the
6 environmental flow standards and submit those recommendations to
7 the commission and to the flows commission in accordance with the
8 applicable schedule specified by or established under Subsection
9 (c), (d), or (e). In developing its recommendations, the basin and
10 bay area stakeholders committee shall operate on a consensus basis
11 to the maximum extent possible.

12 (p) In recognition of the importance of adaptive
13 management, after submitting its recommendations regarding
14 environmental flow standards and strategies to meet the
15 environmental flow standards to the commission, each basin and bay
16 area stakeholders committee, with the assistance of the pertinent
17 basin and bay expert science team, shall prepare and submit for
18 approval by the flows commission a work plan. The work plan must:

19 (1) establish a periodic review of the basin and bay
20 environmental flow analyses and environmental flow regime
21 recommendations, environmental flow standards, and strategies, to
22 occur at least once every 10 years;

23 (2) prescribe specific monitoring, studies, and
24 activities; and

25 (3) establish a schedule for continuing the validation
26 or refinement of the basin and bay environmental flow analyses and
27 environmental flow regime recommendations, the environmental flow

1 standards adopted by the commission, and the strategies to achieve
2 those standards.

3 (g) In accordance with the applicable schedule specified by
4 or established under Subsection (c), (d), or (e), the flows
5 commission, with input from the science advisory committee, shall
6 review the environmental flow analyses and environmental flow
7 regime recommendations submitted by each basin and bay expert
8 science team. If appropriate, the flows commission shall submit
9 comments on the analyses and recommendations to the commission for
10 use by the commission in adopting rules under Section 11.1471.
11 Comments must be submitted not later than six months after the date
12 of receipt of the analyses and recommendations.

13 (r) In the event the commission, by permit or order, has
14 established an estuary advisory council, that council may continue
15 in full force and effect.

16 SECTION 10. (a) This section takes effect only if this Act
17 takes effect immediately. If this Act does not take effect
18 immediately, this section has no effect.

19 (b) Sections 11.0237(a) and (b), Water Code, are amended to
20 read as follows:

21 (a) The commission may not issue a new permit for instream
22 flows dedicated to environmental needs or bay and estuary inflows.
23 The [This section does not prohibit the] commission may approve
24 [from issuing] an application to amend [amendment to] an existing
25 permit or certificate of adjudication to change the use to or add a
26 use for instream flows dedicated to environmental needs or bay and
27 estuary inflows.

1 (b) This section does not alter the commission's
2 obligations under Section 11.042(b) or (c), 11.046(b),
3 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
4 11.150, 11.152, 16.058, or 16.059.

5 SECTION 11. (a) This section takes effect only if this Act
6 does not take effect immediately. If this Act takes effect
7 immediately, this section has no effect.

8 (b) Subchapter B, Chapter 11, Water Code, is amended by
9 adding Section 11.0237 to read as follows:

10 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO
11 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission
12 may not issue a new permit for instream flows dedicated to
13 environmental needs or bay and estuary inflows. The commission may
14 approve an application to amend an existing permit or certificate
15 of adjudication to change the use to or add a use for instream flows
16 dedicated to environmental needs or bay and estuary inflows.

17 (b) This section does not alter the commission's
18 obligations under Section 11.042(b) or (c), 11.046(b),
19 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
20 11.150, 11.152, 16.058, or 16.059.

21 SECTION 12. Section 11.082(b), Water Code, is amended to
22 read as follows:

23 (b) The state may recover the penalties prescribed in
24 Subsection (a) [~~of this section~~] by suit brought for that purpose in
25 a court of competent jurisdiction. The state may seek those
26 penalties regardless of whether a watermaster has been appointed
27 for the water division, river basin, or segment of a river basin

1 where the unlawful use is alleged to have occurred.

2 SECTION 13. Section 11.0841, Water Code, is amended by
3 adding Subsection (c) to read as follows:

4 (c) For purposes of this section, the Parks and Wildlife
5 Department has:

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

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

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

16 SECTION 14. Section 11.0842(a), Water Code, is amended to
17 read as follows:

18 (a) If a person violates this chapter, a rule or order
19 adopted under this chapter or Section 16.236 [~~of this code~~], or a
20 permit, certified filing, or certificate of adjudication issued
21 under this chapter, the commission may assess an administrative
22 penalty against that person as provided by this section. The
23 commission may assess an administrative penalty for a violation
24 relating to a water division or a river basin or segment of a river
25 basin regardless of whether a watermaster has been appointed for
26 the water division or river basin or segment of the river basin.

27 SECTION 15. Section 11.0843(a), Water Code, is amended to

1 read as follows:

2 (a) Upon witnessing a violation of this chapter or a rule or
3 order or a water right issued under this chapter, the executive
4 director or a person designated by the executive director,
5 including a watermaster or the watermaster's deputy, [~~as defined by~~
6 ~~commission rule,~~] may issue the alleged violator a field citation
7 alleging that a violation has occurred and providing the alleged
8 violator the option of either:

9 (1) without admitting to or denying the alleged
10 violation, paying an administrative penalty in accordance with the
11 predetermined penalty amount established under Subsection (b) [~~of~~
12 ~~this section~~] and taking remedial action as provided in the
13 citation; or

14 (2) requesting a hearing on the alleged violation in
15 accordance with Section 11.0842 [~~of this code~~].

16 SECTION 16. Section 11.134(b), Water Code, is amended to
17 read as follows:

18 (b) The commission shall grant the application only if:

19 (1) the application conforms to the requirements
20 prescribed by this chapter and is accompanied by the prescribed
21 fee;

22 (2) unappropriated water is available in the source of
23 supply;

24 (3) the proposed appropriation:

25 (A) is intended for a beneficial use;

26 (B) does not impair existing water rights or
27 vested riparian rights;

1 (C) is not detrimental to the public welfare;

2 (D) considers any applicable environmental flow
3 standards established under Section 11.1471 and, if applicable, the
4 assessments performed under Sections 11.147(d) and (e) and Sections
5 11.150, 11.151, and 11.152; and

6 (E) addresses a water supply need in a manner
7 that is consistent with the state water plan and the relevant
8 approved regional water plan for any area in which the proposed
9 appropriation is located, unless the commission determines that
10 conditions warrant waiver of this requirement; and

11 (4) the applicant has provided evidence that
12 reasonable diligence will be used to avoid waste and achieve water
13 conservation as defined by [~~Subdivision (8)(B),~~] Section
14 11.002(8)(B) [~~11.002~~].

15 SECTION 17. Section 11.147, Water Code, is amended by
16 amending Subsections (b), (d), and (e) and adding Subsections
17 (e-1), (e-2), and (e-3) to read as follows:

18 (b) In its consideration of an application for a permit to
19 store, take, or divert water, the commission shall assess the
20 effects, if any, of the issuance of the permit on the bays and
21 estuaries of Texas. For permits issued within an area that is 200
22 river miles of the coast, to commence from the mouth of the river
23 thence inland, the commission shall include in the permit any
24 conditions considered necessary to maintain freshwater inflows to
25 any affected bay and estuary system, to the extent practicable when
26 considering all public interests and the studies mandated by
27 Section 16.058 as evaluated under Section 11.1491[~~, those~~

1 ~~conditions considered necessary to maintain beneficial inflows to~~
2 ~~any affected bay and estuary system].~~

3 (d) In its consideration of an application to store, take,
4 or divert water, the commission shall include in the permit, to the
5 extent practicable when considering all public interests, those
6 conditions considered by the commission necessary to maintain
7 existing instream uses and water quality of the stream or river to
8 which the application applies. In determining what conditions to
9 include in the permit under this subsection, the commission shall
10 consider among other factors:

11 (1) the studies mandated by Section 16.059; and

12 (2) any water quality assessment performed under
13 Section 11.150.

14 (e) The commission shall include in the permit, to the
15 extent practicable when considering all public interests, those
16 conditions considered by the commission necessary to maintain fish
17 and wildlife habitats. In determining what conditions to include
18 in the permit under this subsection, the commission shall consider
19 any assessment performed under Section 11.152.

20 (e-1) Any permit for a new appropriation of water or an
21 amendment to an existing water right that increases the amount of
22 water authorized to be stored, taken, or diverted must include a
23 provision allowing the commission to adjust the conditions included
24 in the permit or amended water right to provide for protection of
25 instream flows or freshwater inflows. With respect to an amended
26 water right, the provision may not allow the commission to adjust a
27 condition of the amendment other than a condition that applies only

1 to the increase in the amount of water to be stored, taken, or
2 diverted authorized by the amendment. This subsection does not
3 affect an appropriation of or an authorization to store, take, or
4 divert water under a permit or amendment to a water right issued
5 before November 1, 2005. The commission shall adjust the
6 conditions if the commission determines, through an expedited
7 public comment process, that such an adjustment is appropriate to
8 achieve compliance with applicable environmental flow standards
9 adopted under Section 11.1471. The adjustment:

10 (1) in combination with any previous adjustments made
11 under this subsection may not increase the amount of the
12 pass-through or release requirement for the protection of instream
13 flows or freshwater inflows by more than 12.5 percent of the
14 annualized total of that requirement contained in the permit as
15 issued or of that requirement contained in the amended water right
16 and applicable only to the increase in the amount of water
17 authorized to be stored, taken, or diverted under the amended water
18 right;

19 (2) must be based on appropriate consideration of the
20 priority dates and diversion locations of any other water rights
21 granted in the same river basin that are subject to adjustment under
22 this subsection; and

23 (3) must be based on appropriate consideration of any
24 voluntary contributions to the Texas Water Trust that contribute
25 toward meeting the environmental flow standards.

26 (e-2) Any water right holder making a contribution
27 described by Subsection (e-1)(3) is entitled to appropriate credit

1 of such benefits against adjustments of the holder's water right
2 pursuant to Subsection (e-1)(1).

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

11 SECTION 18. Subchapter D, Chapter 11, Water Code, is
12 amended by adding Section 11.1471 to read as follows:

13 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

14 (a) The commission by rule shall:

15 (1) adopt appropriate environmental flow standards
16 for each river basin and bay system in this state that are adequate
17 to support a sound ecological environment, to the maximum extent
18 reasonable considering other public interests and other relevant
19 factors;

20 (2) establish an amount of unappropriated water, if
21 available, to be set aside to satisfy the environmental flow
22 standards to the maximum extent reasonable when considering human
23 water needs; and

24 (3) establish procedures for implementing an
25 adjustment of the conditions included in a permit or an amended
26 water right as provided by Sections 11.147(e-1) and (e-2).

27 (b) In adopting environmental flow standards for a river

1 basin and bay system under Subsection (a)(1), the commission shall
2 consider:

3 (1) the definition of the geographical extent of the
4 river basin and bay system adopted by the flows commission under
5 Section 11.02362(a) and the definition and designation of the river
6 basin by the board under Section 16.051(c);

7 (2) the schedule for the adoption of environmental
8 flow standards for the river basin and bay system established by the
9 flows commission under Section 11.02362(d) or (e), if applicable;

10 (3) the environmental flow analyses and the
11 recommended environmental flow regime developed by the applicable
12 basin and bay expert science team under Section 11.02362(m);

13 (4) the recommendations regarding environmental flow
14 standards and strategies to meet the flow standards developed by
15 the applicable basin and bay area stakeholders committee under
16 Section 11.02362(o);

17 (5) the specific characteristics of the river basin
18 and bay system;

19 (6) economic factors;

20 (7) the human and other competing water needs in the
21 river basin and bay system;

22 (8) all reasonably available scientific information,
23 including any scientific information provided by the science
24 advisory committee; and

25 (9) any other appropriate information.

26 (c) Environmental flow standards adopted under Subsection
27 (a)(1) must consist of a schedule of flow quantities, reflecting

1 seasonal and yearly fluctuations that may vary geographically by
2 specific location in a river basin and bay system.

3 (d) As provided by Section 11.023, the commission may not
4 issue a permit for a new appropriation or an amendment to an
5 existing water right that increases the amount of water authorized
6 to be stored, taken, or diverted if the issuance of the permit or
7 amendment would impair an environmental flow set-aside established
8 under Subsection (a)(2). A permit for a new appropriation or an
9 amendment to an existing water right that increases the amount of
10 water authorized to be stored, taken, or diverted that is issued
11 after the adoption of an applicable environmental flow set-aside
12 must contain appropriate conditions to ensure protection of the
13 environmental flow set-aside.

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

24 (f) An environmental flow standard or environmental flow
25 set-aside adopted under Subsection (a) may be altered by the
26 commission in a rulemaking process undertaken in accordance with a
27 schedule established by the commission. The commission's schedule

1 may not provide for the rulemaking process to occur more frequently
2 than once every 10 years unless the applicable work plan approved by
3 the flows commission under Section 11.02362(p) provides for a
4 periodic review under that section to occur more frequently than
5 once every 10 years. In that event, the commission may provide for
6 the rulemaking process to be undertaken in conjunction with the
7 periodic review if the commission determines that schedule to be
8 appropriate.

9 SECTION 19. The heading to Section 11.148, Water Code, is
10 amended to read as follows:

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

14 SECTION 20. Section 11.148, Water Code, is amended by
15 adding Subsection (a-1) and amending Subsections (b) and (c) to
16 read as follows:

17 (a-1) State water that is set aside by the commission to
18 meet the needs for freshwater inflows to affected bays and
19 estuaries and instream uses under Section 11.1471(a)(2) may be made
20 available temporarily for other essential beneficial uses if the
21 commission finds that an emergency exists that cannot practically
22 be resolved in another way.

23 (b) Before the commission suspends a permit condition under
24 Subsection (a) or makes water available temporarily under
25 Subsection (a-1) [~~of this section~~], it must give written notice to
26 the Parks and Wildlife Department of the proposed action
27 [~~suspension~~]. The commission shall give the Parks and Wildlife

1 Department an opportunity to submit comments on the proposed action
2 [~~suspension~~] within 72 hours from such time and the commission
3 shall consider those comments before issuing its order implementing
4 the proposed action [~~imposing the suspension~~].

5 (c) The commission may suspend the permit condition under
6 Subsection (a) or make water available temporarily under Subsection
7 (a-1) without notice to any other interested party other than the
8 Parks and Wildlife Department as provided by Subsection (b) [~~of~~
9 ~~this section~~]. However, all affected persons shall be notified
10 immediately by publication, and a hearing to determine whether the
11 suspension should be continued shall be held within 15 days of the
12 date on which the order to suspend is issued.

13 SECTION 21. Section 11.1491(a), Water Code, is amended to
14 read as follows:

15 (a) The Parks and Wildlife Department and the commission
16 shall have joint responsibility to review the studies prepared
17 under Section 16.058 [~~of this code~~], to determine inflow conditions
18 necessary for the bays and estuaries, and to provide information
19 necessary for water resources management. Each agency shall
20 designate an employee to share equally in the oversight of the
21 program. Other responsibilities shall be divided between the Parks
22 and Wildlife Department and the commission to maximize present
23 in-house capabilities of personnel and to minimize costs to the
24 state. Each agency shall have reasonable access to all information
25 produced by the other agency. Publication of reports completed
26 under this section shall be submitted for comment to [~~both~~] the
27 commission, [~~and~~] the Parks and Wildlife Department, the flows

1 commission, the science advisory committee, and any applicable
2 basin and bay area stakeholders committee and basin and bay expert
3 science team.

4 SECTION 22. Section 11.329(g), Water Code, is amended to
5 read as follows:

6 (g) The commission may not assess costs under this section
7 against a holder of a non-priority hydroelectric right that owns or
8 operates privately owned facilities that collectively have a
9 capacity of less than two megawatts or against a holder of a water
10 right placed in the Texas Water Trust for a term of at least 20
11 years. [~~This subsection is not intended to affect in any way the~~
12 ~~fees assessed on a water right holder by the commission under~~
13 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~
14 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~
15 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~
16 ~~non-priority hydroelectric right that owns or operates privately~~
17 ~~owned facilities that collectively have a capacity of less than two~~
18 ~~megawatts shall be assessed fees at the same rate per acre-foot~~
19 ~~charged to a holder of a non-priority hydroelectric right that owns~~
20 ~~or operates privately owned facilities that collectively have a~~
21 ~~capacity of more than two megawatts.~~]

22 SECTION 23. Section 11.404(e), Water Code, is amended to
23 read as follows:

24 (e) The court may not assess costs and expenses under this
25 section against:

26 (1) a holder of a non-priority hydroelectric right
27 that owns or operates privately owned facilities that collectively

1 have a capacity of less than two megawatts; or

2 (2) a holder of a water right placed in the Texas Water
3 Trust for a term of at least 20 years.

4 SECTION 24. Subchapter I, Chapter 11, Water Code, is
5 amended by adding Section 11.4531 to read as follows:

6 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
7 each river basin or segment of a river basin for which the executive
8 director appoints a watermaster under this subchapter, the
9 executive director shall appoint a watermaster advisory committee
10 consisting of at least nine but not more than 15 members. A member
11 of the advisory committee must be a holder of a water right or a
12 representative of a holder of a water right in the river basin or
13 segment of the river basin for which the watermaster is appointed.
14 In appointing members to the advisory committee, the executive
15 director shall consider:

16 (1) geographic representation;

17 (2) amount of water rights held;

18 (3) different types of holders of water rights and
19 users, including water districts, municipal suppliers, irrigators,
20 and industrial users; and

21 (4) experience and knowledge of water management
22 practices.

23 (b) An advisory committee member is not entitled to
24 reimbursement of expenses or to compensation.

25 (c) An advisory committee member serves a two-year term
26 expiring August 31 of each odd-numbered year and holds office until
27 a successor is appointed.

1 (d) The advisory committee shall meet within 30 days after
2 the date the initial appointments have been made and shall select a
3 presiding officer to serve a one-year term. The committee shall
4 meet regularly as necessary.

5 (e) The advisory committee shall:

6 (1) make recommendations to the executive director
7 regarding activities of benefit to the holders of water rights in
8 the administration and distribution of water to holders of water
9 rights in the river basin or segment of the river basin for which
10 the watermaster is appointed;

11 (2) review and comment to the executive director on
12 the annual budget of the watermaster operation; and

13 (3) perform other advisory duties as requested by the
14 executive director regarding the watermaster operation or as
15 requested by holders of water rights and considered by the
16 committee to benefit the administration of water rights in the
17 river basin or segment of the river basin for which the watermaster
18 is appointed.

19 SECTION 25. Sections 11.454 and 11.455, Water Code, are
20 amended to read as follows:

21 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
22 Section 11.327 applies to the duties and authority of a watermaster
23 appointed for a river basin or segment of a river basin under this
24 subchapter in the same manner as that section applies to the duties
25 and authority of a watermaster appointed for a water division under
26 Subchapter G [A watermaster as the agent of the commission and under
27 the executive director's supervision shall:

1 ~~[(1) divide the water of the streams or other sources~~
2 ~~of supply of his segment or basin in accordance with the authorized~~
3 ~~water rights,~~

4 ~~[(2) regulate or cause to be regulated the controlling~~
5 ~~works of reservoirs and diversion works in time of water shortage,~~
6 ~~as is necessary because of the rights existing in the streams of his~~
7 ~~segment or basin, or as is necessary to prevent the waste of water~~
8 ~~or its diversion, taking, storage, or use in excess of the~~
9 ~~quantities to which the holders of water rights are lawfully~~
10 ~~entitled; and~~

11 ~~[(3) perform any other duties and exercise any~~
12 ~~authority directed by the commission].~~

13 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
14 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
15 compensation and expenses of a watermaster appointed for a river
16 basin or segment of a river basin under this subchapter in the same
17 manner as that section applies to the payment of the compensation
18 and expenses of a watermaster appointed for a water division under
19 Subchapter G.

20 (b) The executive director shall deposit the assessments
21 collected under this section to the credit of the watermaster fund.

22 (c) Money deposited under this section to the credit of the
23 watermaster fund may be used only for the purposes specified by
24 Section 11.3291 with regard to the watermaster operation under this
25 subchapter with regard to which the assessments were collected ~~[The~~
26 ~~commission may assess the costs of the watermaster against all~~
27 ~~persons who hold water rights in the river basin or segment of the~~

1 ~~river basin under the watermaster's jurisdiction in accordance with~~
2 ~~Section 11.329 of this code].~~

3 SECTION 26. Subchapter F, Chapter 15, Water Code, is
4 amended by adding Section 15.4063 to read as follows:

5 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
6 authorize the use of money in the research and planning fund:

7 (1) to compensate the members of the Texas
8 Environmental Flows Science Advisory Committee established under
9 Section 11.02361 for attendance and participation at meetings of
10 the committee and for transportation, meals, lodging, or other
11 travel expenses associated with attendance at those meetings as
12 provided by the General Appropriations Act;

13 (2) for contracts with cooperating state and federal
14 agencies and universities and with private entities as necessary to
15 provide technical assistance to enable the Texas Environmental
16 Flows Science Advisory Committee and the basin and bay expert
17 science teams established under Section 11.02362 to perform their
18 statutory duties;

19 (3) to compensate the members of the expert science
20 teams created pursuant to Section 11.02362(i) for attendance and
21 participation at meetings of the teams and for transportation,
22 meals, lodging, or other travel expenses associated with attendance
23 at those meetings as provided by the General Appropriations Act;
24 and

25 (4) for contracts with political subdivisions
26 designated as representatives of stakeholder committees
27 established pursuant to Section 11.02362 to fund all or part of the

1 administrative expenses for conducting meetings of the stakeholder
2 committee or the associated expert science team.

3 SECTION 27. Section 15.7031, Water Code, is amended by
4 amending Subsection (c) and adding Subsection (e) to read as
5 follows:

6 (c) The dedication of any water rights placed in trust must
7 be reviewed and approved by the commission, in consultation with
8 the board, ~~[and]~~ the Parks and Wildlife Department, and the
9 Environmental Flows Commission. In addition, the Department of
10 Agriculture and the basin and bay area stakeholders committee and
11 basin and bay expert science team established under Section
12 11.02362 for the river basin and bay system to which the water right
13 pertains may provide input to the commission, as appropriate,
14 during the review and approval process for dedication of water
15 rights.

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

24 SECTION 28. Section 16.059(d), Water Code, is amended to
25 read as follows:

26 (d) The priority studies shall be completed not later than
27 December 31, 2014 [~~2010~~]. The Parks and Wildlife Department, the

1 commission, and the board shall establish a work plan that
2 prioritizes the studies and that sets interim deadlines providing
3 for publication of flow determinations for individual rivers and
4 streams on a reasonably consistent basis throughout the prescribed
5 study period. Before publication, completed studies shall be
6 submitted for comment to the commission, the board, and the Parks
7 and Wildlife Department.

8 SECTION 29. Section 26.0135(h), Water Code, as amended by
9 Chapters 234 and 965, Acts of the 77th Legislature, Regular
10 Session, 2001, is reenacted and amended to read as follows:

11 (h) The commission shall apportion, assess, and recover the
12 reasonable costs of administering the water quality management
13 programs under this section from users of water and wastewater
14 permit holders in the watershed according to the records of the
15 commission generally in proportion to their right, through permit
16 or contract, to use water from and discharge wastewater in the
17 watershed. Irrigation water rights, ~~and~~ non-priority
18 hydroelectric rights of a water right holder that owns or operates
19 privately owned facilities that collectively have a capacity of
20 less than two megawatts, and water rights held in the Texas Water
21 Trust for terms of at least 20 years will not be subject to this
22 assessment. The cost to river authorities and others to conduct
23 water quality monitoring and assessment shall be subject to prior
24 review and approval by the commission as to methods of allocation
25 and total amount to be recovered. The commission shall adopt rules
26 to supervise and implement the water quality monitoring,
27 assessment, and associated costs. The rules shall ensure that

1 water users and wastewater dischargers do not pay excessive
2 amounts, that program funds are equitably apportioned among basins,
3 that a river authority may recover no more than the actual costs of
4 administering the water quality management programs called for in
5 this section, and that no municipality shall be assessed cost for
6 any efforts that duplicate water quality management activities
7 described in Section 26.177 [~~of this chapter~~]. The rules
8 concerning the apportionment and assessment of reasonable costs
9 shall provide for a recovery of not more than \$5,000,000 annually.
10 Costs recovered by the commission are to be deposited to the credit
11 of the water resource management account and may be used only to
12 accomplish the purposes of this section. The commission may apply
13 not more than 10 percent of the costs recovered annually toward the
14 commission's overhead costs for the administration of this section
15 and the implementation of regional water quality assessments. The
16 commission, with the assistance and input of each river authority,
17 shall file a written report accounting for the costs recovered
18 under this section with the governor, the lieutenant governor, and
19 the speaker of the house of representatives on or before December 1
20 of each even-numbered year.

21 SECTION 30. (a) This section takes effect only if this Act
22 takes effect immediately. If this Act does not take effect
23 immediately, this section has no effect.

24 (b) Sections 11.0236(d), (k), (l), and (m) and 11.0237(c),
25 Water Code, are repealed.

26 SECTION 31. Section 11.1491(b), Water Code, is repealed.

27 SECTION 32. (a) This section takes effect only if this Act

1 takes effect immediately. If this Act does not take effect
2 immediately, this section has no effect.

3 (b) The Study Commission on Water for Environmental Flows is
4 abolished on the effective date of this Act.

5 SECTION 33. (a) The governor, lieutenant governor, and
6 speaker of the house of representatives shall appoint the initial
7 members of the Environmental Flows Commission as provided by
8 Section 11.0236, Water Code, as amended or added by this Act, as
9 soon as practicable on or after the effective date of this Act.

10 (b) As soon as practicable after taking office, the initial
11 members of the Environmental Flows Commission shall appoint the
12 initial members of the Texas Environmental Flows Science Advisory
13 Committee as provided by Section 11.02361, Water Code, as added by
14 this Act. The terms of the initial members of the committee expire
15 March 1, 2010.

16 (c) The Environmental Flows Commission shall appoint the
17 members of each basin and bay area stakeholders committee as
18 provided by Section 11.02362, Water Code, as added by this Act. The
19 terms of the initial members of each committee expire March 1 of the
20 fifth year that begins after the year in which the initial
21 appointments are made.

22 (d) Each basin and bay area stakeholders committee shall
23 appoint the members of the basin and bay expert science team for the
24 river basin and bay system for which the committee is established as
25 provided by Section 11.02362, Water Code, as added by this Act. The
26 terms of the initial members of each team expire April 1 of the
27 fifth year that begins after the year in which the initial

1 appointments are made.

2 (e) The executive director of the Texas Commission on
3 Environmental Quality shall appoint the members of the watermaster
4 advisory committee under Section 11.4531, Water Code, as added by
5 this Act, for each river basin or segment of a river basin for which
6 the executive director appoints a watermaster under Subchapter I,
7 Chapter 11, Water Code. The terms of the initial members of each
8 committee expire August 31 of the first odd-numbered year that
9 begins after the year in which the initial appointments are made.

10 SECTION 34. The changes in law made by this Act relating to
11 a permit for a new appropriation of water or to an amendment to an
12 existing water right that increases the amount of water authorized
13 to be stored, taken, or diverted apply only to:

14 (1) water appropriated under a permit for a new
15 appropriation of water the application for which is pending with
16 the Texas Commission on Environmental Quality on the effective date
17 of this Act or is filed with the commission on or after that date; or

18 (2) the increase in the amount of water authorized to
19 be stored, taken, or diverted under an amendment to an existing
20 water right that increases the amount of water authorized to be
21 stored, taken, or diverted and the application for which is pending
22 with the Texas Commission on Environmental Quality on the effective
23 date of this Act or is filed with the commission on or after that
24 date.

25 SECTION 35. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

C.S.H.B. No. 40

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect November 1, 2005.