

By: Averitt

S.B. No. 1512

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use and management of surface water resources and
3 regional water planning.

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. Subsection (j), Section 5.701, Water Code, is
10 amended to read 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
19 amending Subdivision (1) and adding Subdivisions (15), (16), (17),
20 (18), and (19) to read as follows:

21 (1) "Commission" means the Texas [~~Natural Resource~~
22 ~~Conservation~~] Commission on Environmental Quality.

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

27 (16) "Environmental flow regime" means a schedule of

1 flow quantities that reflects seasonal and yearly fluctuations that
2 typically would vary geographically, by specific location in a
3 watershed, and that are shown to be adequate to support a sound
4 ecological environment and to maintain the productivity, extent,
5 and persistence of key aquatic habitats in and along the affected
6 water bodies.

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

9 (18) "Flows commission" means the Environmental Flows
10 Commission.

11 (19) "Science advisory committee" means the Texas
12 Environmental Flows Science Advisory Committee.

13 SECTION 5. Subsections (a) and (e), Section 11.023, Water
14 Code, are amended to read as follows:

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

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

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

25 (3) mining and recovery of minerals;

26 (4) hydroelectric power;

27 (5) navigation;

- 1 (6) recreation and pleasure;
- 2 (7) public parks; and
- 3 (8) game preserves.

4 (e) The amount of water appropriated for each purpose
5 mentioned in this section shall be specifically appropriated,
6 stored, or diverted for that purpose, subject to the preferences
7 prescribed in Section 11.024 of this code. The commission may
8 authorize appropriation of a single amount or volume of water for
9 more than one purpose of use. In the event that a single amount or
10 volume of water is appropriated for more than one purpose of use,
11 the total amount of water actually diverted for all of the
12 authorized purposes may not exceed the total amount of water
13 appropriated.

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

17 (c) The legislature has expressly required the commission
18 while balancing all other public interests to consider and, to the
19 extent practicable, provide for the freshwater inflows and instream
20 flows necessary to maintain the viability of the state's streams,
21 rivers, and bay and estuary systems in the commission's regular
22 granting of permits for the use of state waters. As an essential
23 part of the state's environmental flows policy, all permit
24 conditions relating to freshwater inflows to affected bays and
25 estuaries and instream flow needs must be subject to temporary
26 suspension if necessary for water to be applied to essential
27 beneficial uses during emergencies.

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

8 (d-2) The legislature finds that:

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

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

19 (d-3) The legislature finds that while the state has
20 pioneered tools to address freshwater inflow needs for bays and
21 estuaries, there are limitations to those tools in light of both
22 scientific and public policy evolution. To fully address bay and
23 estuary environmental flow issues, the foundation of work
24 accomplished by the state should be improved. While the state's
25 instream flow studies program appears to encompass a comprehensive
26 and scientific approach for establishing a process to assess
27 instream flow needs for rivers and streams across the state, more

1 extensive review and examination of the details of the program,
2 which may not be fully developed until the program is under way, are
3 needed to ensure an effective tool for evaluating riverine
4 environmental flow conditions.

5 (d-4) The legislature finds that the management of water to
6 meet instream flow and freshwater inflow needs should be evaluated
7 on a regular basis and adapted to reflect both improvements in
8 science related to environmental flows and future changes in
9 projected human needs for water. In addition, the development of
10 management strategies for addressing environmental flow needs
11 should be an ongoing, adaptive process that considers and addresses
12 local issues.

13 (d-5) The legislature finds that recommendations for state
14 action to protect instream flows and freshwater inflows should be
15 developed through a consensus-based, regional approach involving
16 balanced representation of stakeholders and that such a process
17 should be encouraged throughout the state.

18 (e) The fact that greater pressures and demands are being
19 placed on the water resources of the state makes it of paramount
20 importance to ensure [~~reexamine the process for ensuring~~] that
21 these important priorities are effectively addressed by detailing
22 how environmental flow standards are to be developed using the
23 environmental studies that have been and are to be performed by the
24 state and others and specifying in clear delegations of authority
25 how those environmental flow standards will be integrated into the
26 regional water planning and water permitting process [~~to the~~
27 ~~commission~~].

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

6 SECTION 7. The heading to Section 11.0236, Water Code, is
7 amended to read as follows:

8 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
9 FLOWS COMMISSION.

10 SECTION 8. Section 11.0236, Water Code, is amended by
11 amending Subsections (a), (b), (c), (e) through (j), (n), and (o)
12 and adding Subsection (p) to read as follows:

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

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

20 (1) three [~~two~~] members appointed by the governor;

21 (2) three [~~five~~] members of the senate appointed by
22 the lieutenant governor; and

23 (3) three [~~five~~] members of the house of
24 representatives appointed by the speaker of the house of
25 representatives[~~+~~

26 [~~(4) the presiding officer of the commission or the~~
27 ~~presiding officer's designee,~~

1 ~~[(5) the chairman of the board or the chairman's~~
2 ~~designee; and~~

3 ~~[(6) the presiding officer of the Parks and Wildlife~~
4 ~~Commission or the presiding officer's designee].~~

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

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

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

8 (3) one member must be a member of the Parks and
9 Wildlife Commission ~~[(b)(2):~~

10 ~~[(1) one member must represent a river authority or~~
11 ~~municipal water supply agency or authority;~~

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

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

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

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

20 (g) A member of the flows ~~[study]~~ commission is not entitled
21 to receive compensation for service on the flows ~~[study]~~ commission
22 but is entitled to reimbursement of the travel expenses incurred by
23 the member while conducting the business of the flows ~~[study]~~
24 commission, as provided by the General Appropriations Act.

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

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

3 (j) The flows [~~study~~] commission shall conduct public
4 hearings and study public policy implications for balancing the
5 demands on the water resources of the state resulting from a growing
6 population with the requirements of the riverine, bay, and estuary
7 systems including granting permits for instream flows dedicated to
8 environmental needs or bay and estuary inflows, use of the Texas
9 Water Trust, and any other issues that the flows [~~study~~] commission
10 determines have importance and relevance to the protection of
11 environmental flows. In evaluating the options for providing
12 adequate environmental flows, the flows [~~study~~] commission shall
13 take notice of the strong public policy imperative that exists in
14 this state recognizing that environmental flows are important to
15 the biological health of our public and private lands, streams and
16 rivers [~~parks, game preserves~~], and bay and estuary systems and are
17 high priorities in the water management [~~permitting~~] process. The
18 flows [~~study~~] commission shall specifically address:

19 (1) ways that the ecological soundness of those
20 [~~these~~] systems will be ensured in the water rights administration
21 and enforcement and water allocation processes; and

22 (2) appropriate methods to encourage persons
23 voluntarily to convert reasonable amounts of existing water rights
24 to use for environmental flow protection temporarily or permanently
25 [~~process~~].

26 (n) The flows [~~study~~] commission may [~~shall~~] adopt rules,
27 procedures, and policies as needed to administer this section, to

1 implement its responsibilities, and to exercise its authority under
2 Sections 11.02361 and 11.02362.

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

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

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

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

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

12 (4) progress made in implementing Sections 11.02361
13 and 11.02362; and

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

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

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

23 (b) The flows commission shall appoint to the science
24 advisory committee persons who will provide an objective
25 perspective and diverse technical expertise, including expertise
26 in hydrology, hydraulics, water resources, aquatic and terrestrial
27 biology, geomorphology, geology, water quality, computer modeling,

1 and other technical areas pertinent to the evaluation of
2 environmental flows.

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

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

9 (e) The science advisory committee shall:

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

13 (2) develop recommendations to help provide overall
14 direction, coordination, and consistency relating to:

15 (A) environmental flow methodologies for bay and
16 estuary studies and instream flow studies;

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

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

21 (f) To assist the flows commission to assess the extent to
22 which the recommendations of the science advisory committee are
23 considered and implemented, the commission, the Parks and Wildlife
24 Department, and the board shall provide written reports to the
25 flows commission, at intervals determined by the flows commission,
26 that describe:

27 (1) the actions taken by each agency in response to

1 each recommendation; and

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

4 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
5 RECOMMENDATIONS. (a) For the purposes of this section, the flows
6 commission, not later than November 1, 2005, shall define the
7 geographical extent of each river basin and bay system in this state
8 for the sole purpose of developing environmental flow regime
9 recommendations under this section and adoption of environmental
10 flow standards under Section 11.1471.

11 (b) The flows commission shall give priority in descending
12 order to the following river basin and bay systems of the state for
13 the purpose of developing environmental flow regime
14 recommendations and adopting environmental flow standards:

15 (1) the river basin and bay system consisting of the
16 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
17 and bay system consisting of the Sabine and Neches Rivers and Sabine
18 Lake Bay;

19 (2) the river basin and bay system consisting of the
20 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
21 river basin and bay system consisting of the Guadalupe, San
22 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
23 Bays; and

24 (3) the river basin and bay system consisting of the
25 Nueces River and Corpus Christi and Baffin Bays, the river basin and
26 bay system consisting of the Rio Grande, the Rio Grande estuary, and
27 the Lower Laguna Madre, and the Brazos River and its associated bay

1 and estuary system.

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

4 (1) the flows commission shall appoint the basin and
5 bay area stakeholders committee not later than November 1, 2005;

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

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

13 (4) the basin and bay area stakeholders committee
14 shall submit to the commission its comments on and recommendations
15 regarding the basin and bay expert science team's recommended
16 environmental flow regime not later than September 1, 2007; and

17 (5) the commission shall adopt the environmental flow
18 standards as provided by Section 11.1471 not later than September
19 1, 2008.

20 (d) The flows commission shall appoint the basin and bay
21 area stakeholders committees for the river basin and bay systems
22 listed in Subsection (b)(2) not later than September 1, 2006, and
23 shall appoint the basin and bay area stakeholders committees for
24 the river basin and bay systems listed in Subsection (b)(3) not
25 later than September 1, 2007. The flows commission shall establish
26 a schedule for the performance of the tasks listed in Subsections
27 (c)(2)-(5) with regard to the river basin and bay systems listed in

1 Subsections (b)(2) and (3) that will result in the adoption of
2 environmental flow standards for that river basin and bay system by
3 the commission as soon as is reasonably possible. Each basin and
4 bay area stakeholders committee and basin and bay expert science
5 team for a river basin and bay system listed in Subsection (b)(2) or
6 (3) shall make recommendations to the flows commission with regard
7 to the schedule applicable to that river basin and bay system. The
8 flows commission shall consider the recommendations of the basin
9 and bay area stakeholders committee and basin and bay expert
10 science team as well as coordinate with, and give appropriate
11 consideration to the recommendations of, the commission, the Parks
12 and Wildlife Department, and the board in establishing the
13 schedule.

14 (e) For a river basin and bay system or a river basin that
15 does not have an associated bay system in this state not listed in
16 Subsection (b), the flows commission shall establish a schedule for
17 the development of environmental flow regime recommendations and
18 the adoption of environmental flow standards. The flows commission
19 shall develop the schedule in consultation with the commission, the
20 Parks and Wildlife Department, the board, and the pertinent basin
21 and bay area stakeholders committee and basin and bay expert
22 science team. The flows commission may, on its own initiative or on
23 request, modify a schedule established under this subsection to be
24 more responsive to particular circumstances, local desires,
25 changing conditions, or time-sensitive conflicts. This subsection
26 does not prohibit, in a river basin and bay system for which the
27 flows commission has not yet established a schedule for the

1 development of environmental flow regime recommendations and the
2 adoption of environmental flow standards, an effort to develop
3 information on environmental flow needs and ways in which those
4 needs can be met by a voluntary consensus-building process.

5 (f) The flows commission shall appoint a basin and bay area
6 stakeholders committee for each river basin and bay system in this
7 state for which a schedule for the development of environmental
8 flow regime recommendations and the adoption of environmental flow
9 standards is specified by or established under Subsection (c), (d),
10 or (e). Chapter 2110, Government Code, does not apply to the size,
11 composition, or duration of a basin and bay area stakeholders
12 committee. Each committee must consist of at least 17 members. The
13 members must represent appropriate stakeholders, including
14 representatives of:

- 15 (1) agricultural water users;
16 (2) recreational water users, including coastal
17 recreational anglers and businesses supporting water recreation;
18 (3) municipalities;
19 (4) soil and water conservation districts;
20 (5) industrial water users, including representatives
21 of both manufacturing and refining sectors;
22 (6) commercial fishermen;
23 (7) public interest groups;
24 (8) regional water planning groups;
25 (9) groundwater conservation districts;
26 (10) river authorities and other conservation and
27 reclamation districts with jurisdiction over surface water; and

1 (11) environmental interests.

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

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

8 (i) Each basin and bay area stakeholders committee shall
9 establish a basin and bay expert science team for the river basin
10 and bay system for which the committee is established. The basin
11 and bay expert science team must be established not later than six
12 months after the date the basin and bay area stakeholders committee
13 is established. Chapter 2110, Government Code, does not apply to
14 the size, composition, or duration of a basin and bay expert science
15 team. Each basin and bay expert science team must be composed of
16 technical experts with special expertise regarding the river basin
17 and bay system or regarding the development of environmental flow
18 regimes. A person may serve as a member of more than one basin and
19 bay expert science team at the same time.

20 (j) The members of a basin and bay expert science team serve
21 five-year terms expiring April 1. A vacancy on a basin and bay
22 expert science team is filled by appointment by the pertinent basin
23 and bay area stakeholders committee to serve the remainder of the
24 unexpired term.

25 (k) The science advisory committee shall appoint one of its
26 members to serve as a liaison to each basin and bay expert science
27 team to facilitate coordination and consistency in environmental

1 flow activities throughout the state. The commission, the Parks
2 and Wildlife Department, and the board shall provide technical
3 assistance to each basin and bay expert science team, including
4 information about the studies conducted under Sections 16.058 and
5 16.059, and may serve as nonvoting members of the basin and bay
6 expert science team to facilitate the development of environmental
7 flow regime recommendations.

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

10 (m) Each basin and bay expert science team shall develop
11 environmental flow analyses and a recommended environmental flow
12 regime for the river basin and bay system for which the team is
13 established through a collaborative process designed to achieve a
14 consensus. In developing the analyses and recommendations, the
15 science team must consider all reasonably available science,
16 without regard to the need for the water for other uses, and the
17 science team's recommendations must be based solely on the best
18 science available. For the Rio Grande below Fort Quitman, any uses
19 attributable to Mexican water flows must be excluded from
20 environmental flow regime recommendations.

21 (n) Each basin and bay expert science team shall submit its
22 environmental flow analyses and environmental flow regime
23 recommendations to the pertinent basin and bay area stakeholders
24 committee, the flows commission, and the commission in accordance
25 with the applicable schedule specified by or established under
26 Subsection (c), (d), or (e). The basin and bay area stakeholders
27 committee and the flows commission may not change the environmental

1 flow analyses or environmental flow regime recommendations of the
2 basin and bay expert science team.

3 (o) Each basin and bay area stakeholders committee shall
4 review the environmental flow analyses and environmental flow
5 regime recommendations submitted by the committee's basin and bay
6 expert science team and shall consider them in conjunction with
7 other factors, including the present and future needs for water for
8 other uses related to water supply planning in the pertinent river
9 basin and bay system. For the Rio Grande, the basin and bay area
10 stakeholders committee shall also consider the water accounting
11 requirements for any international water-sharing treaty, minutes,
12 and agreements applicable to the Rio Grande and the effects on
13 allocation of water by the Rio Grande watermaster in the middle and
14 lower Rio Grande. The Rio Grande basin and bay expert science team
15 may not recommend any environmental flow regime that would result
16 in a violation of a treaty or court decision. The basin and bay area
17 stakeholders committee shall develop recommendations regarding
18 environmental flow standards and strategies to meet the
19 environmental flow standards and submit those recommendations to
20 the commission and to the flows commission in accordance with the
21 applicable schedule specified by or established under Subsection
22 (c), (d), or (e). In developing its recommendations, the basin and
23 bay area stakeholders committee shall operate on a consensus basis
24 to the maximum extent possible.

25 (p) In recognition of the importance of adaptive
26 management, after submitting its recommendations regarding
27 environmental flow standards and strategies to meet the

1 environmental flow standards to the commission, each basin and bay
2 area stakeholders committee, with the assistance of the pertinent
3 basin and bay expert science team, shall prepare and submit for
4 approval by the flows commission a work plan. The work plan must:

5 (1) establish a periodic review of the basin and bay
6 environmental flow analyses and environmental flow regime
7 recommendations, environmental flow standards, and strategies, to
8 occur at least once every 10 years;

9 (2) prescribe specific monitoring, studies, and
10 activities; and

11 (3) establish a schedule for continuing the validation
12 or refinement of the basin and bay environmental flow analyses and
13 environmental flow regime recommendations, the environmental flow
14 standards adopted by the commission, and the strategies to achieve
15 those standards.

16 (g) In accordance with the applicable schedule specified by
17 or established under Subsection (c), (d), or (e), the flows
18 commission, with input from the science advisory committee, shall
19 review the environmental flow analyses and environmental flow
20 regime recommendations submitted by each basin and bay expert
21 science team. If appropriate, the flows commission shall submit
22 comments on the analyses and recommendations to the commission for
23 use by the commission in adopting rules under Section 11.1471.
24 Comments must be submitted not later than six months after the date
25 of receipt of the analyses and recommendations.

26 (r) In the event the commission, by permit or order, has
27 established an estuary advisory council, that council may continue

1 in full force and effect.

2 SECTION 10. Subsections (a) and (b), Section 11.0237, Water
3 Code, are amended to read as follows:

4 (a) The commission may not issue a new permit for instream
5 flows dedicated to environmental needs or bay and estuary inflows.
6 The [~~This section does not prohibit the~~] commission may approve
7 [~~from issuing~~] an application to amend [~~amendment to~~] an existing
8 permit or certificate of adjudication to change the use to or add a
9 use for instream flows dedicated to environmental needs or bay and
10 estuary inflows.

11 (b) This section does not alter the commission's
12 obligations under Section 11.042(b), 11.042(c), 11.046(b),
13 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
14 11.150, 11.152, 16.058, or 16.059.

15 SECTION 11. Subsection (b), Section 11.082, Water Code, is
16 amended to read as follows:

17 (b) The state may recover the penalties prescribed in
18 Subsection (a) [~~of this section~~] by suit brought for that purpose in
19 a court of competent jurisdiction. The state may seek those
20 penalties regardless of whether a watermaster has been appointed
21 for the water division, river basin, or segment of a river basin
22 where the unlawful use is alleged to have occurred.

23 SECTION 12. Section 11.0841, Water Code, is amended by
24 adding Subsection (c) to read as follows:

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

27 (1) the rights of a holder of a water right that is

1 held in the Texas Water Trust, including the right to file suit in a
2 civil court to prevent the unlawful use of such a right;

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

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

10 SECTION 13. Subsection (a), Section 11.0842, Water Code, is
11 amended to read as follows:

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

21 SECTION 14. Subsection (a), Section 11.0843, Water Code, is
22 amended to read as follows:

23 (a) Upon witnessing a violation of this chapter or a rule or
24 order or a water right issued under this chapter, the executive
25 director or a person designated by the executive director,
26 including a watermaster or the watermaster's deputy, [~~as defined by~~
27 ~~commission rule,~~] may issue the alleged violator a field citation

1 alleging that a violation has occurred and providing the alleged
2 violator the option of either:

3 (1) without admitting to or denying the alleged
4 violation, paying an administrative penalty in accordance with the
5 predetermined penalty amount established under Subsection (b) [~~of~~
6 ~~this section~~] and taking remedial action as provided in the
7 citation; or

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

10 SECTION 15. Subsection (c), Section 11.126, Water Code, is
11 amended to read as follows:

12 (c) If the application proposes construction of a dam
13 greater than six feet in height, measured from the channel invert
14 elevation to the top of the dam, either for diversion or storage,
15 the executive director may also require filing a copy of all plans
16 and specifications and a copy of the engineer's field notes of any
17 survey of the lake or reservoir. No work on the project shall
18 proceed until approval of the plans is obtained from the executive
19 director.

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

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

23 (1) the application conforms to the requirements
24 prescribed by this chapter and is accompanied by the prescribed
25 fee;

26 (2) unappropriated water is available in the source of
27 supply;

1 (3) the proposed appropriation:

2 (A) is intended for a beneficial use;

3 (B) does not impair existing water rights or
4 vested riparian rights;

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

6 (D) considers any applicable environmental flow
7 standards established under Section 11.1471 and, if applicable, the
8 assessments performed under Sections 11.147(d) and (e) and Sections
9 11.150, 11.151, and 11.152; and

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

15 (4) the applicant has provided evidence that
16 reasonable diligence will be used to avoid waste and achieve water
17 conservation as defined by [~~Subdivision (8)(B),~~] Section
18 11.002(8)(B) [~~11.002~~].

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

22 (b) In its consideration of an application for a permit to
23 store, take, or divert water, the commission shall assess the
24 effects, if any, of the issuance of the permit on the bays and
25 estuaries of Texas. For permits issued within an area that is 200
26 river miles of the coast, to commence from the mouth of the river
27 thence inland, the commission shall include in the permit any

1 conditions considered necessary to maintain freshwater inflows to
2 any affected bay and estuary system, to the extent practicable when
3 considering all public interests and the studies mandated by
4 Section 16.058 as evaluated under Section 11.1491[~~, those~~
5 ~~conditions considered necessary to maintain beneficial inflows to~~
6 ~~any affected bay and estuary system~~].

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

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

16 (2) any water quality assessment performed under
17 Section 11.150.

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

24 (e-1) Any permit for a new appropriation of water or an
25 amendment to an existing water right that increases the amount of
26 water authorized to be stored, taken, or diverted must include a
27 provision allowing the commission to adjust the conditions included

1 in the permit or amended water right to provide for protection of
2 instream flows or freshwater inflows. With respect to an amended
3 water right, the provision may not allow the commission to adjust a
4 condition of the amendment other than a condition that applies only
5 to the increase in the amount of water to be stored, taken, or
6 diverted authorized by the amendment. This subsection does not
7 affect an appropriation of or an authorization to store, take, or
8 divert water under a permit or amendment to a water right issued
9 before September 1, 2005. The commission shall adjust the
10 conditions if the commission determines, through an expedited
11 public comment process, that such an adjustment is appropriate to
12 achieve compliance with applicable environmental flow standards
13 adopted under Section 11.1471. The adjustment:

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

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

27 (3) must be based on appropriate consideration of any

1 voluntary contributions to the Texas Water Trust that contribute
2 toward meeting the environmental flow standards.

3 (e-2) Any water right holder making such donation shall be
4 entitled to appropriate credit of such benefits against adjustments
5 of his water right pursuant to Subsection (e-1)(1).

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

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

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

17 (a) The commission by rule shall:

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

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

27 (3) establish procedures for implementing an

1 adjustment of the conditions included in a permit or an amended
2 water right as provided by Sections 11.147(e-1) and (e-2).

3 (b) In adopting environmental flow standards for a river
4 basin and bay system under Subsection (a)(1), the commission shall
5 consider:

6 (1) the definition of the geographical extent of the
7 river basin and bay system adopted by the flows commission under
8 Section 11.02362(a);

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

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

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

19 (5) the specific characteristics of the river basin
20 and bay system;

21 (6) economic factors;

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

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

27 (9) any other appropriate information.

1 (c) Environmental flow standards adopted under Subsection
2 (a)(1) must consist of a schedule of flow quantities, reflecting
3 seasonal and yearly fluctuations that may vary geographically by
4 specific location in a river basin and bay system.

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

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

26 (f) An environmental flow standard or environmental flow
27 set-aside adopted under Subsection (a) may be altered by the

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

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

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

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

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

25 (b) Before the commission suspends a permit condition under
26 Subsection (a) or makes water available temporarily under
27 Subsection (a-1) [~~of this section~~], it must give written notice to

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

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

15 SECTION 21. Subsection (a), Section 11.1491, Water Code, is
16 amended to read as follows:

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

1 under this section shall be submitted for comment to [~~both~~] the
2 commission, [~~and~~] the Parks and Wildlife Department, the flows
3 commission, the science advisory committee, and any applicable
4 basin and bay area stakeholders committee and basin and bay expert
5 science team.

6 SECTION 22. Subsection (g), Section 11.329, Water Code, is
7 amended to read as follows:

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

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

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

1 (1) a holder of a non-priority hydroelectric right
2 that owns or operates privately owned facilities that collectively
3 have a capacity of less than two megawatts; or

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

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

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

18 (1) geographic representation;
19 (2) amount of water rights held;
20 (3) different types of holders of water rights and
21 users, including water districts, municipal suppliers, irrigators,
22 and industrial users; and

23 (4) experience and knowledge of water management
24 practices.

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

27 (c) An advisory committee member serves a two-year term

1 expiring August 31 of each odd-numbered year and holds office until
2 a successor is appointed.

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

7 (e) The advisory committee shall:

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

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

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

21 SECTION 25. Section 11.454, Water Code, is amended to read
22 as follows:

23 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
24 Section 11.327 applies to the duties and authority of a watermaster
25 appointed for a river basin or segment of a river basin under this
26 subchapter in the same manner as that section applies to the duties
27 and authority of a watermaster appointed for a water division under

1 Subchapter G [~~A watermaster as the agent of the commission and under~~
2 ~~the executive director's supervision shall:~~

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

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

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

15 SECTION 26. Section 11.455, Water Code, is amended to read
16 as follows:

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

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

26 (c) Money deposited under this section to the credit of the
27 watermaster fund may be used only for the purposes specified by

1 Section 11.3291 with regard to the watermaster operation under this
2 subchapter with regard to which the assessments were collected [~~The~~
3 ~~commission may assess the costs of the watermaster against all~~
4 ~~persons who hold water rights in the river basin or segment of the~~
5 ~~river basin under the watermaster's jurisdiction in accordance with~~
6 ~~Section 11.329 of this code~~].

7 SECTION 27. Subchapter F, Chapter 15, Water Code, is
8 amended by adding Section 15.4063 to read as follows:

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

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

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

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

1 and

2 (4) for contracts with political subdivisions
3 designated as representatives of stakeholder committees
4 established pursuant to Section 11.02362 to fund all or part of the
5 administrative expenses for conducting meetings of the stakeholder
6 committee or the associated expert science team.

7 SECTION 28. Section 15.7031, Water Code, is amended by
8 amending Subsection (c) and adding Subsection (e) to read as
9 follows:

10 (c) The dedication of any water rights placed in trust must
11 be reviewed and approved by the commission, in consultation with
12 the board, ~~and~~ the Parks and Wildlife Department, and the
13 Environmental Flows Commission. In addition, the Department of
14 Agriculture and the basin and bay area stakeholders committee and
15 basin and bay expert science team established under Section
16 11.02362 for the river basin and bay system to which the water right
17 pertains may provide input to the commission, as appropriate,
18 during the review and approval process for dedication of water
19 rights.

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

1 SECTION 29. Subsection (h), Section 16.053, Water Code, is
2 amended by adding Subdivisions (10), (11), and (12) to read as
3 follows:

4 (10) The regional water planning group may amend the
5 regional water plan after the plan has been approved by the board.
6 Subdivisions (1)-(9) apply to an amendment to the plan in the same
7 manner as those subdivisions apply to the plan.

8 (11) This subdivision applies only to an amendment to
9 a regional water plan approved by the board. This subdivision does
10 not apply to the adoption of a subsequent regional water plan for
11 submission to the board as required by Subsection (i).
12 Notwithstanding Subdivision (10), the regional water planning
13 group may amend the plan in the manner provided by this subdivision
14 if the executive administrator issues a written determination that
15 the amendment qualifies for adoption in the manner provided by this
16 subdivision before the regional water planning group votes on
17 adoption of the amendment. An amendment qualifies for adoption in
18 the manner provided by this subdivision only if the amendment will
19 not result in the overallocation of any existing or planned source
20 of water, does not relate to a new reservoir, and will not have a
21 significant effect on instream flows or freshwater inflows to bays
22 and estuaries. If the executive administrator determines that an
23 amendment qualifies for adoption in the manner provided by this
24 subdivision, the regional water planning group may adopt the
25 amendment at a public meeting held in accordance with Chapter 551,
26 Government Code. The amendment must be placed on the agenda for the
27 meeting, and notice of the meeting must be given in the manner

1 provided by Chapter 551, Government Code, at least two weeks before
2 the date the meeting is held. The public must be provided an
3 opportunity to comment on the amendment at the meeting.

4 (12) Notwithstanding Subdivisions (10) and (11), a
5 regional water planning group may revise a regional water plan
6 approved by the board without complying with Subdivisions (1)-(9)
7 or obtaining a determination from the executive administrator that
8 the revision qualifies for adoption in the manner provided by
9 Subdivision (11) if the revision consists only of substituting an
10 alternative water management strategy previously evaluated in the
11 planning process and already contained in the current regional
12 water plan for a water management strategy recommended in the plan.
13 The regional water planning group may adopt the revision to the
14 regional water plan at a public meeting held in accordance with
15 Chapter 551, Government Code.

16 SECTION 30. Subsection (d), Section 16.059, Water Code, is
17 amended to read as follows:

18 (d) The priority studies shall be completed not later than
19 December 31, 2014 [~~2010~~]. The Parks and Wildlife Department, the
20 commission, and the board shall establish a work plan that
21 prioritizes the studies and that sets interim deadlines providing
22 for publication of flow determinations for individual rivers and
23 streams on a reasonably consistent basis throughout the prescribed
24 study period. Before publication, completed studies shall be
25 submitted for comment to the commission, the board, and the Parks
26 and Wildlife Department.

27 SECTION 31. Subsection (h), Section 26.0135, Water Code, as

1 amended by Chapters 234 and 965, Acts of the 77th Legislature,
2 Regular Session, 2001, is reenacted and amended to read as follows:

3 (h) The commission shall apportion, assess, and recover the
4 reasonable costs of administering the water quality management
5 programs under this section from users of water and wastewater
6 permit holders in the watershed according to the records of the
7 commission generally in proportion to their right, through permit
8 or contract, to use water from and discharge wastewater in the
9 watershed. Irrigation water rights, ~~and~~ non-priority
10 hydroelectric rights of a water right holder that owns or operates
11 privately owned facilities that collectively have a capacity of
12 less than two megawatts, and water rights held in the Texas Water
13 Trust for terms of at least 20 years will not be subject to this
14 assessment. The cost to river authorities and others to conduct
15 water quality monitoring and assessment shall be subject to prior
16 review and approval by the commission as to methods of allocation
17 and total amount to be recovered. The commission shall adopt rules
18 to supervise and implement the water quality monitoring,
19 assessment, and associated costs. The rules shall ensure that
20 water users and wastewater dischargers do not pay excessive
21 amounts, that program funds are equitably apportioned among basins,
22 that a river authority may recover no more than the actual costs of
23 administering the water quality management programs called for in
24 this section, and that no municipality shall be assessed cost for
25 any efforts that duplicate water quality management activities
26 described in Section 26.177 [~~of this chapter~~]. The rules
27 concerning the apportionment and assessment of reasonable costs

1 shall provide for a recovery of not more than \$5,000,000 annually.
2 Costs recovered by the commission are to be deposited to the credit
3 of the water resource management account and may be used only to
4 accomplish the purposes of this section. The commission may apply
5 not more than 10 percent of the costs recovered annually toward the
6 commission's overhead costs for the administration of this section
7 and the implementation of regional water quality assessments. The
8 commission, with the assistance and input of each river authority,
9 shall file a written report accounting for the costs recovered
10 under this section with the governor, the lieutenant governor, and
11 the speaker of the house of representatives on or before December 1
12 of each even-numbered year.

13 SECTION 32. Subsections (d), (k), (l), and (m), Section
14 11.0236, Subsection (c), Section 11.0237, and Subsection (b),
15 Section 11.1491, Water Code, are repealed.

16 SECTION 33. The Study Commission on Water for Environmental
17 Flows is abolished on the effective date of this Act.

18 SECTION 34. (a) The governor, lieutenant governor, and
19 speaker of the house of representatives shall appoint the initial
20 members of the Environmental Flows Commission as provided by
21 Section 11.0236, Water Code, as amended by this Act, as soon as
22 practicable on or after the effective date of this Act.

23 (b) As soon as practicable after taking office, the initial
24 members of the Environmental Flows Commission shall appoint the
25 initial members of the Texas Environmental Flows Science Advisory
26 Committee as provided by Section 11.02361, Water Code, as added by
27 this Act. The terms of the initial members of the committee expire

1 March 1, 2010.

2 (c) The Environmental Flows Commission shall appoint the
3 members of each basin and bay area stakeholders committee as
4 provided by Section 11.02362, Water Code, as added by this Act. The
5 terms of the initial members of each committee expire March 1 of the
6 fifth year that begins after the year in which the initial
7 appointments are made.

8 (d) Each basin and bay area stakeholders committee shall
9 appoint the members of the basin and bay expert science team for the
10 river basin and bay system for which the committee is established as
11 provided by Section 11.02362, Water Code, as added by this Act. The
12 terms of the initial members of each team expire April 1 of the
13 fifth year that begins after the year in which the initial
14 appointments are made.

15 (e) The executive director of the Texas Commission on
16 Environmental Quality shall appoint the members of the watermaster
17 advisory committee under Section 11.4531, Water Code, as added by
18 this Act, for each river basin or segment of a river basin for which
19 the executive director appoints a watermaster under Subchapter I,
20 Chapter 11, Water Code. The terms of the initial members of each
21 committee expire August 31 of the first odd-numbered year that
22 begins after the year in which the initial appointments are made.

23 SECTION 35. The changes in law made by this Act relating to
24 a permit for a new appropriation of water or to an amendment to an
25 existing water right that increases the amount of water authorized
26 to be stored, taken, or diverted apply only to:

27 (1) water appropriated under a permit for a new

1 appropriation of water the application for which is pending with
2 the Texas Commission on Environmental Quality on the effective date
3 of this Act or is filed with the commission on or after that date; or

4 (2) the increase in the amount of water authorized to
5 be stored, taken, or diverted under an amendment to an existing
6 water right that increases the amount of water authorized to be
7 stored, taken, or diverted and the application for which is pending
8 with the Texas Commission on Environmental Quality on the effective
9 date of this Act or is filed with the commission on or after that
10 date.

11 SECTION 36. This Act takes effect September 1, 2005.