

BILL ANALYSIS

S.B. 2317
By: Averitt
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 2317 makes changes to the environmental flow processes established by S.B. 3, 80th Legislature, Regular Session, 2007. Specifically, the bill amends the Water Code to require the lieutenant governor to appoint a member of the senate and require the speaker of the house of representatives to appoint a member of the house of representatives to serve as co-presiding officers of the Environmental Flows Advisory Group. The bill also requires members of the science advisory committee and the bay and basin stakeholder committees to be appointed by the Texas Water Development Board ("TWBD") and requires conflicts of interest to be considered. Finally, S.B. 2317 adjusts statutory deadlines in response to the date that the environmental processes commenced and prohibits reimbursement for out-of-state travel expenses.

S.B. 2317 amends current law relating to the composition, duties, recommendations, and expenses of certain entities created to study and provide advice regarding environmental flows.

[**Note:** While the statutory reference in this bill is the Texas Natural Resource Conservation Commission ("TNRCC"), the following amendments affect the Texas Commission on Environmental Quality ("TCEQ"), as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

It is the Committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Sections 11.0236(e) and (j), Water Code, as follows:

(e) Requires the lieutenant governor to designate an appointed senator and requires the speaker of the house of representatives to designate an appointed house member to serve together as co-presiding officer of the environmental flows advisory group (advisory group). Deletes existing text providing that the appointed senator and the house member with the most seniority serve together as co-presiding officers of the advisory group.

(j) Authorizes the advisory group to submit comments regarding environmental flows to the Texas Water Development Board ("TWDB"), Texas Natural Resource Conservation Commission ("TNRCC"), or the Texas Parks and Wildlife Department ("TPWD") at any time.

SECTION 2. Amends Section 11.02361, Water Code, by amending Subsections (a)-(c) and (f), and adding Subsection (b-1), as follows:

(a) Provides that the Texas environmental flows science advisory committee (science advisory committee) consists of at least five but not more than nine members appointed by TWDB, rather than the advisory group.

(b) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, to appoint to the science advisory committee persons who will provide an objective perspective and diverse technical expertise, including expertise in hydrology, hydraulics, water resources, aquatic and terrestrial biology, geomorphology, geology, water quality,

computer modeling, and other technical areas pertinent to the evaluation of environmental flows.

(b-1) Requires TWDB, in making an appointment under this section, to ensure that the appointee to the science advisory committee is not disqualified from service on the committee under provisions of state law that apply to such appointees, including provisions regarding conflicts of interest.

(c) Provides that members of the science advisory committee serve five-year terms expiring March 1. Provides that a vacancy on the science advisory committee is filled by appointment by TWDB, rather than the co-presiding officers of the advisory group, for the unexpired term.

(f) Requires TNRCC and TPWD, rather than TNRCC, TPWD, and TWDB, to assist TWDB, rather than the advisory group, to assess the extent to which the recommendations of the science advisory committee are considered and implemented, to provide written reports to TWDB and the advisory group, at intervals determined by TWDB, rather than the advisory group, that describes the actions taken by each agency in response to each recommendation and for each recommendation not implemented, the reason it was not implemented.

SECTION 3. Amends Section 11.02362, Water Code, by amending Subsections (c)-(g) and (n)-(q) and adding Subsections (d-1), (f-1), (i-1), and (q-1), as follows:

(c) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, for the river basin and bay systems listed in Subsection (b)(1) (relating to the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay), to appoint the basin and bay area stakeholders committee not later than November 1, 2007; the basin and bay expert science team is required to finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, TWDB, the advisory group, TNRCC, and TPWD, not later than March 1, 2010, rather than 2009, except that at the request of the basin and bay area stakeholders committee for good cause shown, TWDB, rather than the advisory group, may extend the deadline provided by this subdivision; the basin and bay area stakeholders committee is required to submit to TWDB, the advisory group, TNRCC, and TPWD its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2010, rather than 2009; TWDB, if appropriate, is required to submit to TNRCC its comments on the environmental flow analyses and environmental flow regime recommendations submitted by the basin and bay expert science team not later than six months after the date of receipt of the analyses and recommendations as provided by Subsection (q); and TNRCC is required to adopt the environmental flow standards as provided by Section 11.1471 (Environmental Flow Standards and Set-Asides) not later than September 1, 2011, rather than September 1, 2010.

(d) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, for the river basin and bay systems listed in Subsection (b)(2) (relating to the river basin and bay system consisting of the Colorado and Lavaca Rivers, Matagorda and Lavaca Bays, and the river basin and bay system consisting of the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays), to appoint the basin and bay area stakeholders committee not later than November 1, 2009, rather than committees for the river basin and bay systems listed in Subsection (b)(2) not later than September 1, 2009; requires the basin and bay area stakeholders committee to establish a basin and bay area expert science team not later than March 1, 2010; requires the basin and bay expert science team to finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, TWDB, the advisory group, TNRCC, and TPWD not later than July 1, 2011, except that at the request of the basin and bay area stakeholders committee for good cause shown, TWDB may extend the deadline provided by this subdivision; requires the basin and bay area stakeholders committee to submit to TWDB, the advisory group, TNRCC, and

TPWD its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than February 1, 2012; requires TWDB, if appropriate, to submit to TNRCC its comments on the environmental flow analyses and environmental flow regime recommendations submitted by the basin and bay expert science team not later than six months after the date of receipt of the analyses and recommendations as provided by Subsection (q); and requires TNRCC to adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2013. Deletes existing text relating to appointing the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) (relating to the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system) not later than September 1, 2009. Deletes existing text requiring the advisory group to establish a schedule for the performance of the tasks listed in Subsections (c)(2) through (5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Deletes existing text requiring each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) to make recommendations to the advisory group with regard to the schedule applicable to that river basin and bay system. Deletes existing text requiring the advisory group to consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, TNRCC, TPWD, and TWDB in establishing the schedule.

(d-1) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, for the basin and bay systems listed in (b)(3), to appoint the basin and bay area stakeholders committee not later than November 1, 2010; requires the basin and bay area stakeholders committee to establish a basin and bay expert science team not later than March 1, 2011; requires the basin and bay expert science team to finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, TWDB, the advisory group, TNRCC, and TPWD not later than July 1, 2012, except that at the request of the basin and bay area stakeholders committee for good cause shown, TWDB may extend the deadline provided by this subdivision; requires the basin and bay area stakeholders committee to submit to TWDB, the advisory group, TNRCC, and TPWD its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than February 1, 2013; requires TWDB, if appropriate, to submit to TNRCC its comments on the environmental flow analyses and environmental flow regime recommendations submitted by the basin and bay expert science team not later than six months after the date of receipt of the analyses and recommendations as provided by Subsection (q); and requires TNRCC to adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2014.

(e) Requires TWDB, rather than the advisory group to develop the schedule in consultation with TNRCC, TPWD, and the advisory group, rather than TWDB, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. Makes conforming changes.

(f) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, to appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), (d-1), or (e). Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee.

(f-1) Requires TWDB, in appointing a member to a basin and bay area stakeholders committee, to ensure that the appointee is not disqualified from service on the committee

under provisions of state law that apply to such appointees, including provisions regarding conflicts of interest.

(g) Requires TWDB, on the expiration of a member's term, to make an appointment to the committee in accordance with Subsections (f) (relating to TWDB appointing a basin and bay area stakeholders committee) and (f-1).

(i-1) Requires the basin and bay area stakeholders committee, in appointing a member to a basin and bay expert science team, to ensure that the appointee is not disqualified from service on the team under provisions of state law that apply to such appointees, including provisions regarding conflicts of interest.

(n) Requires each basin and bay expert science team to submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, TWDB, the advisory group, TNRCC, and TPWD in accordance with the applicable schedule specified by or established under Subsection (c), (d), (d-1), or (e). Makes a conforming change.

(o) Makes conforming changes.

(p) Makes a conforming change.

(q) Makes conforming changes.

(q-1) Requires TWDB, in performing its duties and exercising its authority related to environmental flows under this section or other law, to consult with the advisory group.

SECTION 4. Amends Section 11.1471(b), Water Code, to make conforming changes.

SECTION 5. Amends Section 15.4063, Water Code, as follows:

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. Authorizes the board to authorize the use of money in the research and planning fund to compensate the members of the science advisory committee established under Section 11.02361 for attendance and participation at meetings of the science advisory committee and for transportation, meals, lodging, or other travel expenses other than out-of-state travel expenses associated with attendance at those meetings as provided by the General Appropriations Act. Makes a conforming change.

SECTION 6. Provides that the changes in law made by this Act to Sections 11.02361 and 11.02362, Water Code, in the appointment and qualifications of members of the science advisory committee, a basin and bay area stakeholders committee, and a basin and bay expert science team do not affect the entitlement of a member serving on a committee or team immediately before the effective date of this Act to continue to serve and function as a member of the committee or team for the remainder of the member's term. Provides that those changes in law apply only to a member appointed on or after the effective date of this Act.

SECTION 7. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2009.