By: Averitt S.B. No. 2317

A BILL TO BE ENTITLED

AN ACT

relating to the composition, duties, recommendations, and expenses of certain entities created to study and provide advice regarding environmental flows.

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

SECTION 1. Subsections (e) and (j), Section 11.0236, Water Code, are amended to read as follows:

(e) The lieutenant governor shall designate an appointed senator [~~with the most seniority~~] and the speaker of the house of representatives shall designate an [~~the~~] appointed house member to [~~with the most seniority~~] serve together as co-presiding officers of the advisory group.

(j) The advisory group may adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362. The advisory group may submit comments regarding environmental flows to the board, the commission, or the Parks and Wildlife Department at any time.

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

(a) The Texas environmental flows science advisory committee consists of at least five but not more than nine members appointed by the board [~~advisory group~~].

(b) The board, after consulting with the advisory group, the commission, and the Parks and Wildlife Department, shall 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) In making an appointment under this section, the board shall 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) Members of the science advisory committee serve five-year terms expiring March 1. A vacancy on the science advisory committee is filled by appointment by the board [~~co-presiding officers of the advisory group~~] for the unexpired term.

(f) To assist the board [~~advisory group~~] to assess the extent to which the recommendations of the science advisory committee are considered and implemented, the commission and [~~,~~] the Parks and Wildlife Department[~~, and the board~~] shall provide written reports to the board and the advisory group, at intervals determined by the board [~~advisory group~~], that describe:

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

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

SECTION 3. Section 11.02362, Water Code, is amended by amending Subsections (c), (d), (e), (f), (g), (n), (o), (p), and (q) and adding Subsections (d-1), (f-1), (i-1), and (q-1) to read as follows:

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

(1) the board, after consulting with the advisory group, the commission, and the Parks and Wildlife Department, shall appoint the basin and bay area stakeholders committee not later than November 1, 2007;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2008;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the board, the advisory group, [~~and~~] the commission, and the Parks and Wildlife Department not later than March 1, 2010 [~~2009~~], except that at the request of the basin and bay area stakeholders committee for good cause shown, the board [~~advisory group~~] may extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee shall submit to the board, the advisory group, the commission, and the Parks and Wildlife Department its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2010 [~~2009~~]; [~~and~~]

(5) if appropriate, the board shall submit to the commission 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

(6) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2011 [~~2010~~].

(d) For the river basin and bay systems listed in Subsection (b)(2):

(1) the board, after consulting with the [~~The~~] advisory group, the commission, and the Parks and Wildlife Department, shall appoint the basin and bay area stakeholders committee [~~committees for the river basin and bay systems listed in Subsection (b)(2)~~] not later than November [~~September~~] 1, 2009;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2010;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the board, the advisory group, the commission, and the Parks and Wildlife Department not later than July 1, 2011, except that at the request of the basin and bay area stakeholders committee for good cause shown, the board may extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee shall submit to the board, the advisory group, the commission, and the Parks and Wildlife Department its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than February 1, 2012;

(5) if appropriate, the board shall submit to the commission 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

(6) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2013 [~~2008, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2009. The advisory group shall 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. 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) shall make recommendations to the advisory group with regard to the schedule applicable to that river basin and bay system. The advisory group shall 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, the commission, the Parks and Wildlife Department, and the board in establishing the schedule~~].

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

(1) the board, after consulting with the advisory group, the commission, and the Parks and Wildlife Department, shall appoint the basin and bay area stakeholders committee not later than November 1, 2010;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2011;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the board, the advisory group, the commission, and the Parks and Wildlife Department not later than July 1, 2012, except that at the request of the basin and bay area stakeholders committee for good cause shown, the board may extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee shall submit to the board, the advisory group, the commission, and the Parks and Wildlife Department its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than February 1,

2013;

(5) if appropriate, the board shall submit to the commission 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

(6) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2014.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the board [~~advisory group~~] shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The board [~~advisory group~~] shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the advisory group [~~board~~], and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The board [~~advisory group~~] may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the board [~~advisory group~~] has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop

information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The board, after consulting with the advisory group, the commission, and the Parks and Wildlife Department, shall 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). Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The membership of each committee must:

(1) reflect a fair and equitable balance of interest groups concerned with the particular river basin and bay system for which the committee is established; and

(2) be representative of appropriate stakeholders, including the following if they have a presence in the particular river basin and bay system for which the committee is established:

(A) agricultural water users, including representatives of each of the following sectors:

(i) agricultural irrigation;

(ii) free-range livestock; and

(iii) concentrated animal feeding operation;

(B) recreational water users, including coastal recreational anglers and businesses supporting water recreation;

(C) municipalities;

(D) soil and water conservation districts;

(E) industrial water users, including representatives of each of the following sectors:

(i) refining;

(ii) chemical manufacturing;

(iii) electricity generation; and

(iv) production of paper products or timber;

(F) commercial fishermen;

(G) public interest groups;

(H) regional water planning groups;

(I) groundwater conservation districts;

(J) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and

(K) environmental interests.

(f-1) In appointing a member to a basin and bay area stakeholders committee, the board shall 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) Members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. On the expiration of a member's term, the board shall make an appointment to the committee in accordance with Subsections (f) and (f-1). If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(i-1) In appointing a member to a basin and bay expert science team, the basin and bay area stakeholders committee shall 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) Each basin and bay expert science team shall submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the board, the advisory group, [~~and~~] the commission, and the Parks and Wildlife Department in accordance with the applicable schedule specified by or established under Subsection (c), (d), (d-1), or (e). The basin and bay area stakeholders committee and the board [~~advisory group~~] may not change the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

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

may not recommend any environmental flow regime that would result in a violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission, the board, [~~and to~~] the advisory group, and the Parks and Wildlife Department in accordance with the applicable schedule specified by or established under Subsection (c), (d), (d-1), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to the commission, each basin and bay area stakeholders committee, with the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the board [~~advisory group~~] a work plan. The work plan must:

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

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

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and

environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), (d-1), or (e), the board [~~advisory group~~], with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the board [~~advisory group~~] shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

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

SECTION 4. Subsection (b), Section 11.1471, Water Code, is amended to read as follows:

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

(1) the definition of the geographical extent of the river basin and bay system adopted by the advisory group under Section 11.02362(a) and the definition and designation of the river basin by the board under Section 16.051(c);

(2) the schedule established by the board [~~advisory~~

~~group~~] under Section 11.02362(d) or (e) for the adoption of environmental flow standards for the river basin and bay system, if applicable;

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

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

(5) any comments submitted by the board [~~advisory group~~] to the commission under Section 11.02362(q);

(6) the specific characteristics of the river basin and bay system;

(7) economic factors;

(8) the human and other competing water needs in the river basin and bay system;

(9) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(10) any other appropriate information.

SECTION 5. Section 15.4063, Water Code, is amended to read as follows:

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

(1) to compensate the members of the Texas environmental flows science advisory committee established under

Section 11.02361 for attendance and participation at meetings of the 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;

(2) for contracts with cooperating state and federal agencies and universities and with private entities as necessary to provide technical assistance to enable the Texas environmental flows science advisory committee and the basin and bay expert science teams established under Section 11.02362 to perform their statutory duties;

(3) to compensate the members of the basin and bay expert science teams established under Section 11.02362 for attendance and participation at meetings of the basin and bay expert science teams 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; and

(4) for contracts with political subdivisions designated as representatives of basin and bay area stakeholders committees established under Section 11.02362 to fund all or part of the administrative expenses incurred in conducting meetings of the basin and bay area stakeholders committees or the pertinent basin and bay expert science teams.

SECTION 6. 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 Texas environmental flows 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. Those changes in law apply only to a member appointed on or after the effective date of this Act.

SECTION 7. This Act takes effect September 1, 2009.