

By: Averitt

S.B. No. 2317

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the composition, duties, recommendations, and expenses
3 of certain entities created to study and provide advice regarding
4 environmental flows.

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

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

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

13 (j) The advisory group may adopt rules, procedures, and
14 policies as needed to administer this section, to implement its
15 responsibilities, and to exercise its authority under Sections
16 11.02361 and 11.02362. The advisory group may submit comments
17 regarding environmental flows to the board, the commission, or the
18 Parks and Wildlife Department at any time.

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

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

1 (b) The board, after consulting with the advisory group, the
2 commission, and the Parks and Wildlife Department, shall appoint to
3 the science advisory committee persons who will provide an
4 objective perspective and diverse technical expertise, including
5 expertise in hydrology, hydraulics, water resources, aquatic and
6 terrestrial biology, geomorphology, geology, water quality,
7 computer modeling, and other technical areas pertinent to the
8 evaluation of environmental flows.

9 **(b-1) In making an appointment under this section, the board**
10 **shall ensure that the appointee to the science advisory committee**
11 **is not disqualified from service on the committee under provisions**
12 **of state law that apply to such appointees, including provisions**
13 **regarding conflicts of interest.**

14 (c) Members of the science advisory committee serve
15 five-year terms expiring March 1. A vacancy on the science advisory
16 committee is filled by appointment by the board [~~co-presiding~~
17 ~~officers of the advisory group~~] for the unexpired term.

18 (f) To assist the board [~~advisory group~~] to assess the
19 extent to which the recommendations of the science advisory
20 committee are considered and implemented, the commission and [7]
21 the Parks and Wildlife Department[~~, and the board~~] shall provide
22 written reports to the board and the advisory group, at intervals
23 determined by the board [~~advisory group~~], that describe:

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

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

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

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

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

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

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

22 (4) the basin and bay area stakeholders committee
23 shall submit to the board, the advisory group, the commission, and
24 the Parks and Wildlife Department its comments on and
25 recommendations regarding the basin and bay expert science team's
26 recommended environmental flow regime not later than September 1,
27 2010 ~~[2009]~~; ~~and~~

1 (5) if appropriate, the board shall submit to the
2 commission its comments on the environmental flow analyses and
3 environmental flow regime recommendations submitted by the basin
4 and bay expert science team not later than six months after the date
5 of receipt of the analyses and recommendations as provided by
6 Subsection (g); and

7 (6) the commission shall adopt the environmental flow
8 standards as provided by Section 11.1471 not later than September
9 1, 2011 [~~2010~~].

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

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

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

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

1 (4) the basin and bay area stakeholders committee
2 shall submit to the board, the advisory group, the commission, and
3 the Parks and Wildlife Department its comments on and
4 recommendations regarding the basin and bay expert science team's
5 recommended environmental flow regime not later than February 1,
6 2012;

7 (5) if appropriate, the board shall submit to the
8 commission its comments on the environmental flow analyses and
9 environmental flow regime recommendations submitted by the basin
10 and bay expert science team not later than six months after the date
11 of receipt of the analyses and recommendations as provided by
12 Subsection (g); and

13 (6) the commission shall adopt the environmental flow
14 standards as provided by Section 11.1471 not later than February 1,
15 2013 ~~[2008, and shall appoint the basin and bay area stakeholders~~
16 ~~committees for the river basin and bay systems listed in Subsection~~
17 ~~(b)(3) not later than September 1, 2009. The advisory group shall~~
18 ~~establish a schedule for the performance of the tasks listed in~~
19 ~~Subsections (c)(2) through (5) with regard to the river basin and~~
20 ~~bay systems listed in Subsections (b)(2) and (3) that will result in~~
21 ~~the adoption of environmental flow standards for that river basin~~
22 ~~and bay system by the commission as soon as is reasonably possible.~~
23 ~~Each basin and bay area stakeholders committee and basin and bay~~
24 ~~expert science team for a river basin and bay system listed in~~
25 ~~Subsection (b)(2) or (3) shall make recommendations to the advisory~~
26 ~~group with regard to the schedule applicable to that river basin and~~
27 ~~bay system. The advisory group shall consider the recommendations~~

1 ~~of the basin and bay area stakeholders committee and basin and bay~~
2 ~~expert science team as well as coordinate with, and give~~
3 ~~appropriate consideration to the recommendations of, the~~
4 ~~commission, the Parks and Wildlife Department, and the board in~~
5 ~~establishing the schedule].~~

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

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

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

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

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

1 2013;

2 (5) if appropriate, the board shall submit to the
3 commission its comments on the environmental flow analyses and
4 environmental flow regime recommendations submitted by the basin
5 and bay expert science team not later than six months after the date
6 of receipt of the analyses and recommendations as provided by
7 Subsection (q); and

8 (6) the commission shall adopt the environmental flow
9 standards as provided by Section 11.1471 not later than February 1,
10 2014.

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

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

3 (f) The board, after consulting with the advisory group, the
4 commission, and the Parks and Wildlife Department, shall appoint a
5 basin and bay area stakeholders committee for each river basin and
6 bay system in this state for which a schedule for the development of
7 environmental flow regime recommendations and the adoption of
8 environmental flow standards is specified by or established under
9 Subsection (c), (d), (d-1), or (e). Chapter 2110, Government Code,
10 does not apply to the size, composition, or duration of a basin and
11 bay area stakeholders committee. Each committee must consist of at
12 least 17 members. The membership of each committee must:

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

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

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

21 (i) agricultural irrigation;

22 (ii) free-range livestock; and

23 (iii) concentrated animal feeding
24 operation;

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

27 (C) municipalities;

- 1 (D) soil and water conservation districts;
- 2 (E) industrial water users, including
- 3 representatives of each of the following sectors:
- 4 (i) refining;
- 5 (ii) chemical manufacturing;
- 6 (iii) electricity generation; and
- 7 (iv) production of paper products or
- 8 timber;
- 9 (F) commercial fishermen;
- 10 (G) public interest groups;
- 11 (H) regional water planning groups;
- 12 (I) groundwater conservation districts;
- 13 (J) river authorities and other conservation and
- 14 reclamation districts with jurisdiction over surface water; and
- 15 (K) environmental interests.

16 (f-1) In appointing a member to a basin and bay area

17 stakeholders committee, the board shall ensure that the appointee

18 is not disqualified from service on the committee under provisions

19 of state law that apply to such appointees, including provisions

20 regarding conflicts of interest.

21 (g) Members of a basin and bay area stakeholders committee

22 serve five-year terms expiring March 1. On the expiration of a

23 member's term, the board shall make an appointment to the committee

24 in accordance with Subsections (f) and (f-1). If a vacancy occurs

25 on a committee, the remaining members of the committee by majority

26 vote shall appoint a member to serve the remainder of the unexpired

27 term.

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

6 (n) Each basin and bay expert science team shall submit its
7 environmental flow analyses and environmental flow regime
8 recommendations to the pertinent basin and bay area stakeholders
9 committee, the board, the advisory group, ~~and~~ the commission, and
10 the Parks and Wildlife Department in accordance with the applicable
11 schedule specified by or established under Subsection (c), (d),
12 (d-1), or (e). The basin and bay area stakeholders committee and
13 the board ~~[advisory group]~~ may not change the environmental flow
14 analyses or environmental flow regime recommendations of the basin
15 and bay expert science team.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (7) economic factors;

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

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

21 (10) any other appropriate information.

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

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

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

1 Section 11.02361 for attendance and participation at meetings of
2 the committee and for transportation, meals, lodging, or other
3 travel expenses other than out-of-state travel expenses associated
4 with attendance at those meetings as provided by the General
5 Appropriations Act;

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

12 (3) to compensate the members of the basin and bay
13 expert science teams established under Section 11.02362 for
14 attendance and participation at meetings of the basin and bay
15 expert science teams and for transportation, meals, lodging, or
16 other travel expenses other than out-of-state travel expenses
17 associated with attendance at those meetings as provided by the
18 General Appropriations Act; and

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

25 SECTION 6. The changes in law made by this Act to Sections
26 11.02361 and 11.02362, Water Code, in the appointment and
27 qualifications of members of the Texas environmental flows science

1 advisory committee, a basin and bay area stakeholders committee,
2 and a basin and bay expert science team do not affect the
3 entitlement of a member serving on a committee or team immediately
4 before the effective date of this Act to continue to serve and
5 function as a member of the committee or team for the remainder of
6 the member's term. Those changes in law apply only to a member
7 appointed on or after the effective date of this Act.

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