

1-1 By: Averitt S.B. No. 2317  
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 24, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 24, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2317 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the composition, duties, recommendations, and expenses  
1-11 of certain entities created to study and provide advice regarding  
1-12 environmental flows.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsections (e) and (j), Section 11.0236, Water  
1-15 Code, are amended to read as follows:

1-16 (e) The lieutenant governor shall designate an appointed  
1-17 senator ~~[with the most seniority]~~ and the speaker of the house of  
1-18 representatives shall designate an ~~[the]~~ appointed house member to  
1-19 ~~[with the most seniority]~~ serve together as co-presiding officers  
1-20 of the advisory group.

1-21 (j) The advisory group may adopt rules, procedures, and  
1-22 policies as needed to administer this section, to implement its  
1-23 responsibilities, and to exercise its authority under Sections  
1-24 11.02361 and 11.02362. The advisory group may submit comments  
1-25 regarding environmental flows to the board, the commission, or the  
1-26 Parks and Wildlife Department at any time.

1-27 SECTION 2. Section 11.02361, Water Code, is amended by  
1-28 amending Subsections (a), (b), (c), and (f) and adding Subsection  
1-29 (b-1) to read as follows:

1-30 (a) The Texas environmental flows science advisory  
1-31 committee consists of at least five but not more than nine members  
1-32 appointed by the board ~~[advisory group]~~.

1-33 (b) The board, after consulting with the advisory group, the  
1-34 commission, and the Parks and Wildlife Department, shall appoint to  
1-35 the science advisory committee persons who will provide an  
1-36 objective perspective and diverse technical expertise, including  
1-37 expertise in hydrology, hydraulics, water resources, aquatic and  
1-38 terrestrial biology, geomorphology, geology, water quality,  
1-39 computer modeling, and other technical areas pertinent to the  
1-40 evaluation of environmental flows.

1-41 (b-1) In making an appointment under this section, the board  
1-42 shall ensure that the appointee to the science advisory committee  
1-43 is not disqualified from service on the committee under provisions  
1-44 of state law that apply to such appointees, including provisions  
1-45 regarding conflicts of interest.

1-46 (c) Members of the science advisory committee serve  
1-47 five-year terms expiring March 1. A vacancy on the science advisory  
1-48 committee is filled by appointment by the board ~~[co-presiding~~  
1-49 ~~officers of the advisory group]~~ for the unexpired term.

1-50 (f) To assist the board ~~[advisory group]~~ to assess the  
1-51 extent to which the recommendations of the science advisory  
1-52 committee are considered and implemented, the commission and ~~[r]~~  
1-53 the Parks and Wildlife Department ~~[, and the board]~~ shall provide  
1-54 written reports to the board and the advisory group, at intervals  
1-55 determined by the board ~~[advisory group]~~, that describe:

1-56 (1) the actions taken by each agency in response to  
1-57 each recommendation; and

1-58 (2) for each recommendation not implemented, the  
1-59 reason it was not implemented.

1-60 SECTION 3. Section 11.02362, Water Code, is amended by  
1-61 amending Subsections (c), (d), (e), (f), (g), (n), (o), (p), and (q)  
1-62 and adding Subsections (d-1), (f-1), (i-1), and (q-1) to read as  
1-63 follows:

2-1 (c) For the river basin and bay systems listed in Subsection  
2-2 (b)(1):  
2-3 (1) the board, after consulting with the advisory  
2-4 group, the commission, and the Parks and Wildlife Department, shall  
2-5 appoint the basin and bay area stakeholders committee not later  
2-6 than November 1, 2007;  
2-7 (2) the basin and bay area stakeholders committee  
2-8 shall establish a basin and bay expert science team not later than  
2-9 March 1, 2008;  
2-10 (3) the basin and bay expert science team shall  
2-11 finalize environmental flow regime recommendations and submit them  
2-12 to the basin and bay area stakeholders committee, the board, the  
2-13 advisory group, [and] the commission, and the Parks and Wildlife  
2-14 Department not later than March 1, 2010 [2009], except that at the  
2-15 request of the basin and bay area stakeholders committee for good  
2-16 cause shown, the board [advisory group] may extend the deadline  
2-17 provided by this subdivision;  
2-18 (4) the basin and bay area stakeholders committee  
2-19 shall submit to the board, the advisory group, the commission, and  
2-20 the Parks and Wildlife Department its comments on and  
2-21 recommendations regarding the basin and bay expert science team's  
2-22 recommended environmental flow regime not later than September 1,  
2-23 2010 [2009]; [and]  
2-24 (5) if appropriate, the board shall submit to the  
2-25 commission its comments on the environmental flow analyses and  
2-26 environmental flow regime recommendations submitted by the basin  
2-27 and bay expert science team not later than six months after the date  
2-28 of receipt of the analyses and recommendations as provided by  
2-29 Subsection (q); and  
2-30 (6) the commission shall adopt the environmental flow  
2-31 standards as provided by Section 11.1471 not later than September  
2-32 1, 2011 [2010].  
2-33 (d) For the river basin and bay systems listed in Subsection  
2-34 (b)(2):  
2-35 (1) the board, after consulting with the [The]  
2-36 advisory group, the commission, and the Parks and Wildlife  
2-37 Department, shall appoint the basin and bay area stakeholders  
2-38 committee [committees for the river basin and bay systems listed in  
2-39 Subsection (b)(2)] not later than November [September] 1, 2009;  
2-40 (2) the basin and bay area stakeholders committee  
2-41 shall establish a basin and bay expert science team not later than  
2-42 March 1, 2010;  
2-43 (3) the basin and bay expert science team shall  
2-44 finalize environmental flow regime recommendations and submit them  
2-45 to the basin and bay area stakeholders committee, the board, the  
2-46 advisory group, the commission, and the Parks and Wildlife  
2-47 Department not later than July 1, 2011, except that at the request  
2-48 of the basin and bay area stakeholders committee for good cause  
2-49 shown, the board may extend the deadline provided by this  
2-50 subdivision;  
2-51 (4) the basin and bay area stakeholders committee  
2-52 shall submit to the board, the advisory group, the commission, and  
2-53 the Parks and Wildlife Department its comments on and  
2-54 recommendations regarding the basin and bay expert science team's  
2-55 recommended environmental flow regime not later than February 1,  
2-56 2012;  
2-57 (5) if appropriate, the board shall submit to the  
2-58 commission its comments on the environmental flow analyses and  
2-59 environmental flow regime recommendations submitted by the basin  
2-60 and bay expert science team not later than six months after the date  
2-61 of receipt of the analyses and recommendations as provided by  
2-62 Subsection (q); and  
2-63 (6) the commission shall adopt the environmental flow  
2-64 standards as provided by Section 11.1471 not later than February 1,  
2-65 2013 [2008, and shall appoint the basin and bay area stakeholders  
2-66 committees for the river basin and bay systems listed in Subsection  
2-67 (b)(3) not later than September 1, 2009. The advisory group shall  
2-68 establish a schedule for the performance of the tasks listed in  
2-69 Subsections (c)(2) through (5) with regard to the river basin and

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

3-14 (d-1) For the river basin and bay systems listed in  
3-15 Subsection (b)(3):

3-16 (1) the board, after consulting with the advisory  
3-17 group, the commission, and the Parks and Wildlife Department, shall  
3-18 appoint the basin and bay area stakeholders committee not later  
3-19 than November 1, 2010;

3-20 (2) the basin and bay area stakeholders committee  
3-21 shall establish a basin and bay expert science team not later than  
3-22 March 1, 2011;

3-23 (3) the basin and bay expert science team shall  
3-24 finalize environmental flow regime recommendations and submit them  
3-25 to the basin and bay area stakeholders committee, the board, the  
3-26 advisory group, the commission, and the Parks and Wildlife  
3-27 Department not later than July 1, 2012, except that at the request  
3-28 of the basin and bay area stakeholders committee for good cause  
3-29 shown, the board may extend the deadline provided by this  
3-30 subdivision;

3-31 (4) the basin and bay area stakeholders committee  
3-32 shall submit to the board, the advisory group, the commission, and  
3-33 the Parks and Wildlife Department its comments on and  
3-34 recommendations regarding the basin and bay expert science team's  
3-35 recommended environmental flow regime not later than February 1,  
3-36 2013;

3-37 (5) if appropriate, the board shall submit to the  
3-38 commission its comments on the environmental flow analyses and  
3-39 environmental flow regime recommendations submitted by the basin  
3-40 and bay expert science team not later than six months after the date  
3-41 of receipt of the analyses and recommendations as provided by  
3-42 Subsection (g); and

3-43 (6) the commission shall adopt the environmental flow  
3-44 standards as provided by Section 11.1471 not later than February 1,  
3-45 2014.

3-46 (e) For a river basin and bay system or a river basin that  
3-47 does not have an associated bay system in this state not listed in  
3-48 Subsection (b), the board [~~advisory group~~] shall establish a  
3-49 schedule for the development of environmental flow regime  
3-50 recommendations and the adoption of environmental flow standards.  
3-51 The board [~~advisory group~~] shall develop the schedule in  
3-52 consultation with the commission, the Parks and Wildlife  
3-53 Department, the advisory group [~~board~~], and the pertinent basin and  
3-54 bay area stakeholders committee and basin and bay expert science  
3-55 team. The board [~~advisory group~~] may, on its own initiative or on  
3-56 request, modify a schedule established under this subsection to be  
3-57 more responsive to particular circumstances, local desires,  
3-58 changing conditions, or time-sensitive conflicts. This subsection  
3-59 does not prohibit, in a river basin and bay system for which the  
3-60 board [~~advisory group~~] has not yet established a schedule for the  
3-61 development of environmental flow regime recommendations and the  
3-62 adoption of environmental flow standards, an effort to develop  
3-63 information on environmental flow needs and ways in which those  
3-64 needs can be met by a voluntary consensus-building process.

3-65 (f) The board, after consulting with the advisory group, the  
3-66 commission, and the Parks and Wildlife Department, shall appoint a  
3-67 basin and bay area stakeholders committee for each river basin and  
3-68 bay system in this state for which a schedule for the development of  
3-69 environmental flow regime recommendations and the adoption of

4-1 environmental flow standards is specified by or established under  
4-2 Subsection (c), (d), (d-1), or (e). Chapter 2110, Government Code,  
4-3 does not apply to the size, composition, or duration of a basin and  
4-4 bay area stakeholders committee. Each committee must consist of at  
4-5 least 17 members. The membership of each committee must:  
4-6 (1) reflect a fair and equitable balance of interest  
4-7 groups concerned with the particular river basin and bay system for  
4-8 which the committee is established; and  
4-9 (2) be representative of appropriate stakeholders,  
4-10 including the following if they have a presence in the particular  
4-11 river basin and bay system for which the committee is established:  
4-12 (A) agricultural water users, including  
4-13 representatives of each of the following sectors:  
4-14 (i) agricultural irrigation;  
4-15 (ii) free-range livestock; and  
4-16 (iii) concentrated animal feeding  
4-17 operation;  
4-18 (B) recreational water users, including coastal  
4-19 recreational anglers and businesses supporting water recreation;  
4-20 (C) municipalities;  
4-21 (D) soil and water conservation districts;  
4-22 (E) industrial water users, including  
4-23 representatives of each of the following sectors:  
4-24 (i) refining;  
4-25 (ii) chemical manufacturing;  
4-26 (iii) electricity generation; and  
4-27 (iv) production of paper products or  
4-28 timber;  
4-29 (F) commercial fishermen;  
4-30 (G) public interest groups;  
4-31 (H) regional water planning groups;  
4-32 (I) groundwater conservation districts;  
4-33 (J) river authorities and other conservation and  
4-34 reclamation districts with jurisdiction over surface water; and  
4-35 (K) environmental interests.  
4-36 (f-1) In appointing a member to a basin and bay area  
4-37 stakeholders committee, the board shall ensure that the appointee  
4-38 is not disqualified from service on the committee under provisions  
4-39 of state law that apply to such appointees, including provisions  
4-40 regarding conflicts of interest.  
4-41 (g) Members of a basin and bay area stakeholders committee  
4-42 serve five-year terms expiring March 1. On the expiration of a  
4-43 member's term, the board shall make an appointment to the committee  
4-44 in accordance with Subsections (f) and (f-1). If a vacancy occurs  
4-45 on a committee, the remaining members of the committee by majority  
4-46 vote shall appoint a member to serve the remainder of the unexpired  
4-47 term.  
4-48 (i-1) In appointing a member to a basin and bay expert  
4-49 science team, the basin and bay area stakeholders committee shall  
4-50 ensure that the appointee is not disqualified from service on the  
4-51 team under provisions of state law that apply to such appointees,  
4-52 including provisions regarding conflicts of interest.  
4-53 (n) Each basin and bay expert science team shall submit its  
4-54 environmental flow analyses and environmental flow regime  
4-55 recommendations to the pertinent basin and bay area stakeholders  
4-56 committee, the board, the advisory group, ~~and~~ the commission, and  
4-57 the Parks and Wildlife Department in accordance with the applicable  
4-58 schedule specified by or established under Subsection (c), (d),  
4-59 (d-1), or (e). The basin and bay area stakeholders committee and  
4-60 the board ~~advisory group~~ may not change the environmental flow  
4-61 analyses or environmental flow regime recommendations of the basin  
4-62 and bay expert science team.  
4-63 (o) Each basin and bay area stakeholders committee shall  
4-64 review the environmental flow analyses and environmental flow  
4-65 regime recommendations submitted by the committee's basin and bay  
4-66 expert science team and shall consider them in conjunction with  
4-67 other factors, including the present and future needs for water for  
4-68 other uses related to water supply planning in the pertinent river  
4-69 basin and bay system. For the Rio Grande, the basin and bay area

5-1 stakeholders committee shall also consider the water accounting  
 5-2 requirements for any international water sharing treaty, minutes,  
 5-3 and agreement applicable to the Rio Grande and the effects on  
 5-4 allocation of water by the Rio Grande watermaster in the middle and  
 5-5 lower Rio Grande. The Rio Grande basin and bay expert science team  
 5-6 may not recommend any environmental flow regime that would result  
 5-7 in a violation of a treaty or court decision. The basin and bay area  
 5-8 stakeholders committee shall develop recommendations regarding  
 5-9 environmental flow standards and strategies to meet the  
 5-10 environmental flow standards and submit those recommendations to  
 5-11 the commission, the board, ~~and to~~ the advisory group, and the  
 5-12 Parks and Wildlife Department in accordance with the applicable  
 5-13 schedule specified by or established under Subsection (c), (d),  
 5-14 (d-1), or (e). In developing its recommendations, the basin and bay  
 5-15 area stakeholders committee shall operate on a consensus basis to  
 5-16 the maximum extent possible.

5-17 (p) In recognition of the importance of adaptive  
 5-18 management, after submitting its recommendations regarding  
 5-19 environmental flow standards and strategies to meet the  
 5-20 environmental flow standards to the commission, each basin and bay  
 5-21 area stakeholders committee, with the assistance of the pertinent  
 5-22 basin and bay expert science team, shall prepare and submit for  
 5-23 approval by the board ~~[advisory group]~~ a work plan. The work plan  
 5-24 must:

5-25 (1) establish a periodic review of the basin and bay  
 5-26 environmental flow analyses and environmental flow regime  
 5-27 recommendations, environmental flow standards, and strategies, to  
 5-28 occur at least once every 10 years;

5-29 (2) prescribe specific monitoring, studies, and  
 5-30 activities; and

5-31 (3) establish a schedule for continuing the validation  
 5-32 or refinement of the basin and bay environmental flow analyses and  
 5-33 environmental flow regime recommendations, the environmental flow  
 5-34 standards adopted by the commission, and the strategies to achieve  
 5-35 those standards.

5-36 (q) In accordance with the applicable schedule specified by  
 5-37 or established under Subsection (c), (d), (d-1), or (e), the board  
 5-38 ~~[advisory group]~~, with input from the science advisory committee,  
 5-39 shall review the environmental flow analyses and environmental flow  
 5-40 regime recommendations submitted by each basin and bay expert  
 5-41 science team. If appropriate, the board ~~[advisory group]~~ shall  
 5-42 submit comments on the analyses and recommendations to the  
 5-43 commission for use by the commission in adopting rules under  
 5-44 Section 11.1471. Comments must be submitted not later than six  
 5-45 months after the date of receipt of the analyses and  
 5-46 recommendations.

5-47 (q-1) In performing its duties and exercising its authority  
 5-48 related to environmental flows under this section or other law, the  
 5-49 board shall consult with the advisory group.

5-50 SECTION 4. Subsection (b), Section 11.1471, Water Code, is  
 5-51 amended to read as follows:

5-52 (b) In adopting environmental flow standards for a river  
 5-53 basin and bay system under Subsection (a)(1), the commission shall  
 5-54 consider:

5-55 (1) the definition of the geographical extent of the  
 5-56 river basin and bay system adopted by the advisory group under  
 5-57 Section 11.02362(a) and the definition and designation of the river  
 5-58 basin by the board under Section 16.051(c);

5-59 (2) the schedule established by the board ~~[advisory~~  
 5-60 ~~group]~~ under Section 11.02362(d) or (e) for the adoption of  
 5-61 environmental flow standards for the river basin and bay system, if  
 5-62 applicable;

5-63 (3) the environmental flow analyses and the  
 5-64 recommended environmental flow regime developed by the applicable  
 5-65 basin and bay expert science team under Section 11.02362(m);

5-66 (4) the recommendations developed by the applicable  
 5-67 basin and bay area stakeholders committee under Section 11.02362(o)  
 5-68 regarding environmental flow standards and strategies to meet the  
 5-69 flow standards;

- 6-1 (5) any comments submitted by the board [~~advisory~~
- 6-2 ~~group~~] to the commission under Section 11.02362(q);
- 6-3 (6) the specific characteristics of the river basin
- 6-4 and bay system;
- 6-5 (7) economic factors;
- 6-6 (8) the human and other competing water needs in the
- 6-7 river basin and bay system;
- 6-8 (9) all reasonably available scientific information,
- 6-9 including any scientific information provided by the science
- 6-10 advisory committee; and
- 6-11 (10) any other appropriate information.

6-12 SECTION 5. Section 15.4063, Water Code, is amended to read

6-13 as follows:

6-14 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may

6-15 authorize the use of money in the research and planning fund:

6-16 (1) to compensate the members of the Texas

6-17 environmental flows science advisory committee established under

6-18 Section 11.02361 for attendance and participation at meetings of

6-19 the committee and for transportation, meals, lodging, or other

6-20 travel expenses other than out-of-state travel expenses associated

6-21 with attendance at those meetings as provided by the General

6-22 Appropriations Act;

6-23 (2) for contracts with cooperating state and federal

6-24 agencies and universities and with private entities as necessary to

6-25 provide technical assistance to enable the Texas environmental

6-26 flows science advisory committee and the basin and bay expert

6-27 science teams established under Section 11.02362 to perform their

6-28 statutory duties;

6-29 (3) to compensate the members of the basin and bay

6-30 expert science teams established under Section 11.02362 for

6-31 attendance and participation at meetings of the basin and bay

6-32 expert science teams and for transportation, meals, lodging, or

6-33 other travel expenses other than out-of-state travel expenses

6-34 associated with attendance at those meetings as provided by the

6-35 General Appropriations Act; and

6-36 (4) for contracts with political subdivisions

6-37 designated as representatives of basin and bay area stakeholders

6-38 committees established under Section 11.02362 to fund all or part

6-39 of the administrative expenses incurred in conducting meetings of

6-40 the basin and bay area stakeholders committees or the pertinent

6-41 basin and bay expert science teams.

6-42 SECTION 6. The changes in law made by this Act to Sections

6-43 11.02361 and 11.02362, Water Code, in the appointment and

6-44 qualifications of members of the Texas environmental flows science

6-45 advisory committee, a basin and bay area stakeholders committee,

6-46 and a basin and bay expert science team do not affect the

6-47 entitlement of a member serving on a committee or team immediately

6-48 before the effective date of this Act to continue to serve and

6-49 function as a member of the committee or team for the remainder of

6-50 the member's term. Those changes in law apply only to a member

6-51 appointed on or after the effective date of this Act.

6-52 SECTION 7. This Act takes effect September 1, 2009.

6-53

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