

SENATE AMENDMENTS

2nd Printing

By: Callegari

H.B. No. 3526

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the adoption of rules by the Texas Water Development
3 Board regarding supplemental funding resulting from federal
4 economic recovery legislation.

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

6 SECTION 1. Section 15.604(b), Water Code, is amended to
7 read as follows:

8 (b) The board shall adopt rules specifying the manner in
9 which any additional state revolving fund hereafter established by
10 the board, or any capitalization grant under the state water
11 pollution control revolving fund, the safe drinking water revolving
12 fund, or any additional state revolving fund, may be used to provide
13 financial assistance to an eligible applicant [~~political~~
14 ~~subdivisions~~] for public works. Such rules shall require financial
15 assistance to be provided for the purpose or purposes and on the
16 terms authorized by the federal legislation or federal agency
17 program under which the additional state revolving fund was
18 established or the capitalization grant was awarded.

19 SECTION 2. Subchapter J, Chapter 15, Water Code, is amended
20 by adding Section 15.6055 to read as follows:

21 Sec. 15.6055. RULEMAKING AUTHORITY FOR SPECIAL FEDERAL
22 CAPITALIZATION GRANTS. (a) The board may adopt rules specifying
23 the manner in which any special capitalization grant under the
24 state water pollution control revolving fund, the safe drinking

1 water revolving fund, or any additional state revolving fund
2 received as a result of federal economic recovery legislation may
3 be used to provide financial assistance to an eligible applicant
4 for public works. The rules must require financial assistance to be
5 provided for the purpose or purposes, and on the terms authorized
6 by, the federal legislation or federal agency program under which
7 the additional state revolving fund was established or the special
8 capitalization grant was awarded.

9 (b) If the board determines that it is necessary to adopt
10 rules to comply with the terms of a special capitalization grant or
11 other source of federal funding, and that the procedures prescribed
12 by Subchapter B, Chapter 2001, Government Code, for adopting rules
13 do not allow for the adoption of the rules in a sufficiently prompt
14 manner, the procedures prescribed by that subchapter do not apply
15 to the adoption of the rules. In that case, the board shall:

16 (1) post notice of a meeting to adopt rules not later
17 than 72 hours before the time the meeting is scheduled; and

18 (2) adopt the necessary rules at the meeting.

19 (c) The board shall file a rule adopted in the manner
20 authorized by Subsection (b) and the board's written determinations
21 made under that subsection in the office of the secretary of state
22 for publication in the Texas Register in the manner prescribed by
23 Chapter 2002, Government Code.

24 (d) Not later than the 180th day after the date rules are
25 adopted under Subsection (b), the board may readopt or amend the
26 rules in accordance with the procedures prescribed by Subchapter B,
27 Chapter 2001, Government Code. If the board does not readopt or

1 amend the rules in that manner, the rules expire on the 180th day
2 after the date the rules were adopted under Subsection (b).

3 (e) This section expires September 1, 2011.

4 SECTION 3. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Letty Shaw
Secretary of the Senate

By: *[Signature]*

H.B. No. 3526

Substitute the following for ___B. No. _____:

By: *[Signature]*

C.S. ___B. No. _____

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the powers and duties of the Texas Water Development
3 Board and related entities, including the funding of projects by
4 the board and the composition, duties, recommendations, and
5 expenses of entities created to study and provide advice regarding
6 environmental flows.

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

8 ARTICLE 1. ADOPTION OF RULES BY THE TEXAS WATER DEVELOPMENT BOARD
9 REGARDING SUPPLEMENTAL FUNDING RESULTING FROM FEDERAL ECONOMIC
10 RECOVERY LEGISLATION

11 SECTION 1.01. Section 15.604(b), Water Code, is amended to
12 read as follows:

13 (b) The board shall adopt rules specifying the manner in
14 which any additional state revolving fund hereafter established by
15 the board, or any capitalization grant under the state water
16 pollution control revolving fund, the safe drinking water revolving
17 fund, or any additional state revolving fund, may be used to provide
18 financial assistance to an eligible applicant [~~political~~
19 ~~subdivisions~~] for public works. Such rules shall require financial
20 assistance to be provided for the purpose or purposes and on the
21 terms authorized by the federal legislation or federal agency
22 program under which the additional state revolving fund was
23 established or the capitalization grant was awarded.

24 SECTION 1.02. Subchapter J, Chapter 15, Water Code, is

1 amended by adding Section 15.6055 to read as follows:

2 Sec. 15.6055. RULEMAKING AUTHORITY FOR SPECIAL FEDERAL
3 CAPITALIZATION GRANTS. (a) The board may adopt rules specifying
4 the manner in which any special capitalization grant under the
5 state water pollution control revolving fund, the safe drinking
6 water revolving fund, or any additional state revolving fund
7 received as a result of federal economic recovery legislation may
8 be used to provide financial assistance to an eligible applicant
9 for public works. The rules must require financial assistance to be
10 provided for the purpose or purposes, and on the terms authorized
11 by, the federal legislation or federal agency program under which
12 the additional state revolving fund was established or the special
13 capitalization grant was awarded.

14 (b) If the board determines that it is necessary to adopt
15 rules to comply with the terms of a special capitalization grant or
16 other source of federal funding, and that the procedures prescribed
17 by Subchapter B, Chapter 2001, Government Code, for adopting rules
18 do not allow for the adoption of the rules in a sufficiently prompt
19 manner, the procedures prescribed by that subchapter do not apply
20 to the adoption of the rules. In that case, the board shall:

21 (1) post notice of a meeting to adopt rules not later
22 than 72 hours before the time the meeting is scheduled; and

23 (2) adopt the necessary rules at the meeting.

24 (c) The board shall file a rule adopted in the manner
25 authorized by Subsection (b) and the board's written determinations
26 made under that subsection in the office of the secretary of state
27 for publication in the Texas Register in the manner prescribed by

1 Chapter 2002, Government Code.

2 (d) Not later than the 180th day after the date rules are
3 adopted under Subsection (b), the board may readopt or amend the
4 rules in accordance with the procedures prescribed by Subchapter B,
5 Chapter 2001, Government Code. If the board does not readopt or
6 amend the rules in that manner, the rules expire on the 180th day
7 after the date the rules were adopted under Subsection (b).

8 (e) This section expires September 1, 2011.

9 ARTICLE 2. TEXAS WATER DEVELOPMENT BOARD SURVEYS FOR WATER
10 INFRASTRUCTURE FINANCING

11 SECTION 2.01. Section 15.975, Water Code, is amended by
12 adding Subsection (d) to read as follows:

13 (d) The board may not approve an application if the
14 applicant has failed to satisfactorily complete a request by the
15 executive administrator or a regional planning group for
16 information relevant to the project, including a water
17 infrastructure financing survey under Section 16.053(q).

18 SECTION 2.02. Section 15.912, Water Code, is amended to
19 read as follows:

20 Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION.

21 (a) In acting on an application for financial assistance, the
22 board shall consider:

23 (1) the needs of the area to be served by the project
24 and the benefit of the project to the area in relation to the needs
25 of other areas requiring state assistance in any manner and the
26 benefits of those projects to the other areas;

27 (2) the availability of revenue to the political

1 subdivision or water supply corporation from all sources for any
2 necessary repayment of the cost of the project, including all
3 interest;

4 (3) the relationship of the project to overall
5 statewide needs; and

6 (4) any other factors that the board considers
7 relevant.

8 (b) The board may not accept an application for a loan or
9 grant of financial assistance from the fund for a project
10 recommended through the state and regional water planning processes
11 under Sections 16.051 and 16.053 if the applicant has failed to
12 satisfactorily complete a request by the executive administrator or
13 a regional planning group for information relevant to the project,
14 including a water infrastructure financing survey under Section
15 16.053(q).

16 SECTION 2.03. Section 16.131, Water Code, is amended to
17 read as follows:

18 Sec. 16.131. AUTHORIZED PROJECTS. (a) The board may use
19 the state participation account of the development fund to
20 encourage optimum regional development of projects including the
21 design, acquisition, lease, construction, reconstruction,
22 development, or enlargement in whole or part of:

23 (1) reservoirs and storm water retention basins for
24 water supply, flood protection, and groundwater recharge;

25 (2) facilities for the transmission and treatment of
26 water; and

27 (3) treatment works as defined by Section 17.001 [~~of~~]

1 ~~this code~~].

2 (b) The board may not use the state participation account of
3 the development fund to finance a project recommended through the
4 state and regional water planning processes under Sections 16.051
5 and 16.053 if the applicant has failed to satisfactorily complete a
6 request by the executive administrator or a regional planning group
7 for information relevant to the project, including a water
8 infrastructure financing survey under Section 16.053(q).

9 ARTICLE 3. COMPOSITION, DUTIES, RECOMMENDATIONS, AND EXPENSES OF
10 CERTAIN ENTITIES CREATED TO STUDY AND PROVIDE ADVICE REGARDING
11 ENVIRONMENTAL FLOWS

12 SECTION 3.01. Subsections (e) and (j), Section 11.0236,
13 Water Code, are amended to read as follows:

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

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

25 SECTION 3.02. Section 11.02361, Water Code, is amended by
26 amending Subsections (a), (b), (c), and (f) and adding Subsection
27 (b-1) to read as follows:

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

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

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

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

21 (f) To assist the board [~~advisory group~~] to assess the
22 extent to which the recommendations of the science advisory
23 committee are considered and implemented, the commission and [~~]~~
24 the Parks and Wildlife Department [~~, and the board~~] shall provide
25 written reports to the board and the advisory group, at intervals
26 determined by the board [~~advisory group~~], 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 SECTION 3.03. Section 11.02362, Water Code, is amended by
5 amending Subsections (c), (d), (e), (f), (g), (n), (o), (p), and (q)
6 and adding Subsections (d-1), (f-1), (i-1), and (q-1) to read as
7 follows:

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

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

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

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

25 (4) the basin and bay area stakeholders committee
26 shall submit to the board, the advisory group, the commission, and
27 the Parks and Wildlife Department its comments on and

1 recommendations regarding the basin and bay expert science team's
2 recommended environmental flow regime not later than September 1,
3 2010 [~~2009~~]; [~~and~~]

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

10 (6) the commission shall adopt the environmental flow
11 standards as provided by Section 11.1471 not later than September
12 1, 2011 [~~2010~~].

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

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

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

23 (3) the basin and bay expert science team shall
24 finalize environmental flow regime recommendations and submit them
25 to the basin and bay area stakeholders committee, the board, the
26 advisory group, the commission, and the Parks and Wildlife
27 Department not later than July 1, 2011, except that at the request

1 of the basin and bay area stakeholders committee for good cause
2 shown, the board may extend the deadline provided by this
3 subdivision;

4 (4) the basin and bay area stakeholders committee
5 shall submit to the board, the advisory group, the commission, and
6 the Parks and Wildlife Department its comments on and
7 recommendations regarding the basin and bay expert science team's
8 recommended environmental flow regime not later than February 1,
9 2012;

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

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

1 ~~Subsection (b)(2) or (3) shall make recommendations to the advisory~~
2 ~~group with regard to the schedule applicable to that river basin and~~
3 ~~bay system. The advisory group shall consider the recommendations~~
4 ~~of the basin and bay area stakeholders committee and basin and bay~~
5 ~~expert science team as well as coordinate with, and give~~
6 ~~appropriate consideration to the recommendations of, the~~
7 ~~commission, the Parks and Wildlife Department, and the board in~~
8 ~~establishing the schedule].~~

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

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

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

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

26 (4) the basin and bay area stakeholders committee
27 shall submit to the board, the advisory group, the commission, and

1 the Parks and Wildlife Department its comments on and
2 recommendations regarding the basin and bay expert science team's
3 recommended environmental flow regime not later than February 1,
4 2013;

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

11 (6) the commission shall adopt the environmental flow
12 standards as provided by Section 11.1471 not later than February 1,
13 2014.

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

1 board [~~advisory group~~] has not yet established a schedule for the
2 development of environmental flow regime recommendations and the
3 adoption of environmental flow standards, an effort to develop
4 information on environmental flow needs and ways in which those
5 needs can be met by a voluntary consensus-building process.

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

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

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

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

- 24 (i) agricultural irrigation;
25 (ii) free-range livestock; and
26 (iii) concentrated animal feeding
27 operation;

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

19 (f-1) In appointing a member to a basin and bay area
20 stakeholders committee, the board shall ensure that the appointee
21 is not disqualified from service on the committee under provisions
22 of state law that apply to such appointees, including provisions
23 regarding conflicts of interest.

24 (g) Members of a basin and bay area stakeholders committee
25 serve five-year terms expiring March 1. On the expiration of a
26 member's term, the board shall make an appointment to the committee
27 in accordance with Subsections (f) and (f-1). If a vacancy occurs

1 on a committee, the remaining members of the committee by majority
2 vote shall appoint a member to serve the remainder of the unexpired
3 term.

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

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

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

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

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

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

27 (2) prescribe specific monitoring, studies, and

1 activities; and

2 (3) establish a schedule for continuing the validation
3 or refinement of the basin and bay environmental flow analyses and
4 environmental flow regime recommendations, the environmental flow
5 standards adopted by the commission, and the strategies to achieve
6 those standards.

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

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

21 SECTION 3.04. Subsection (b), Section 11.1471, Water Code,
22 is amended to read as follows:

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

26 (1) the definition of the geographical extent of the
27 river basin and bay system adopted by the advisory group under

1 Section 11.02362(a) and the definition and designation of the river
2 basin by the board under Section 16.051(c);

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

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

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

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

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

18 (7) economic factors;

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

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

24 (10) any other appropriate information.

25 SECTION 3.05. Section 15.4063, Water Code, is amended to
26 read as follows:

27 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may

1 authorize the use of money in the research and planning fund:

2 (1) to compensate the members of the Texas
3 environmental flows science advisory committee established under
4 Section 11.02361 for attendance and participation at meetings of
5 the committee and for transportation, meals, lodging, or other
6 travel expenses other than out-of-state travel expenses associated
7 with attendance at those meetings as provided by the General
8 Appropriations Act;

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

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

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

1 SECTION 3.06. The changes in law made by this article to
2 Sections 11.02361 and 11.02362, Water Code, in the appointment and
3 qualifications of members of the Texas environmental flows science
4 advisory committee, a basin and bay area stakeholders committee,
5 and a basin and bay expert science team do not affect the
6 entitlement of a member serving on a committee or team immediately
7 before the effective date of this article to continue to serve and
8 function as a member of the committee or team for the remainder of
9 the member's term. Those changes in law apply only to a member
10 appointed on or after the effective date of this article.

11 SECTION 3.07. This article takes effect September 1, 2009.

12 ARTICLE 4. EFFECTIVE DATE

13 SECTION 4.01. Except as otherwise provided by this Act:

14 (1) this Act takes effect immediately if it receives a
15 vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution; and

17 (2) if this Act does not receive the vote necessary for
18 immediate effect, this Act takes effect September 1, 2009.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 27 2009

By: 


Secretary of the Senate

1 Amend C.S.H.B. No. 3526 (senate committee report) as
2 follows:

3 (1) Add the following SECTIONS to ARTICLE 3 of the bill,
4 appropriately numbered, and renumber the subsequent SECTIONS of
5 ARTICLE 3 of the bill accordingly:

6 SECTION 3.__. Section 11.002(19), Water Code, is amended
7 to read as follows:

8 (19) "Science [~~advisory~~] committee" means the Texas
9 environmental flows science [~~advisory~~] committee.

10 SECTION 3.__. The heading to Section 11.02361, Water Code,
11 is amended to read as follows:

12 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE
13 [~~ADVISORY~~] COMMITTEE.

14 (2) In the recital to SECTION 3.02 of the bill (page 3,
15 line 7), strike "and (f)" and substitute "(d), (e), (f), and
16 (g)".

17 (3) In SECTION 3.02 of the bill, in amended Section
18 11.02361(a), Water Code (page 3, line 9), strike "advisory" and
19 substitute "[~~advisory~~]".

20 (4) In SECTION 3.02 of the bill, in amended Section
21 11.02361(b), Water Code (page 3, line 14), strike "advisory" and
22 substitute "[~~advisory~~]".

23 (5) In SECTION 3.02 of the bill, in added Section
24 11.02361(b-1), Water Code (page 3, line 21), strike "advisory".

25 (6) In SECTION 3.02 of the bill, in amended Section
26 11.02361(c), Water Code (page 3, line 25), strike "advisory" and
27 substitute "[~~advisory~~]".

28 (7) In SECTION 3.02 of the bill, in amended Section
29 11.02361(c), Water Code (page 3, line 26), strike "advisory" and

9.146.87 SMH

1 substitute "[~~advisory~~]".

2 (8) In SECTION 3.02 of the bill (page 3, lines 29-38),
3 strike amended Section 11.02361(f), Water Code, and substitute
4 the following:

5 (d) Chapter 2110, Government Code, does not apply to the
6 size, composition, or duration of the science [~~advisory~~]
7 committee.

8 (e) The science [~~advisory~~] committee shall:

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

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

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

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

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

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

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

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

31 (g) The science [~~advisory~~] committee is abolished on the

9.146.87 SMH

1 date the advisory group is abolished under Section 11.0236(m).

2 (9) In the recital to SECTION 3.03 of the bill, between
3 "(g)," and "(n)" (page 3, line 40), insert "(k),".

4 (10) In SECTION 3.03 of the bill, in amended Section
5 11.02362, Water Code, between added Subsection (i-1) and amended
6 Subsection (n) of the section (page 6, between lines 25 and 26),
7 insert the following:

8 (k) The science [~~advisory~~] committee shall appoint one of
9 its members to serve as a liaison to each basin and bay expert
10 science team to facilitate coordination and consistency in
11 environmental flow activities throughout the state. The
12 commission, the Parks and Wildlife Department, and the board
13 shall provide technical assistance to each basin and bay expert
14 science team, including information about the studies conducted
15 under Sections 16.058 and 16.059, and may serve as nonvoting
16 members of the basin and bay expert science team to facilitate
17 the development of environmental flow regime recommendations.

18 (11) In SECTION 3.03 of the bill, in amended Section
19 11.02362(q), Water Code (page 7, line 11), strike "advisory" and
20 substitute "[~~advisory~~]".

21 (12) In SECTION 3.04 of the bill, in amended Section
22 11.1471(b)(9), Water Code (page 7, line 52), strike "advisory"
23 and substitute "[~~advisory~~]".

24 (13) Add the following SECTION to ARTICLE 3 of the bill,
25 appropriately numbered, and renumber the subsequent SECTIONS of
26 ARTICLE 3 of the bill accordingly:

27 SECTION 3.__. Section 11.1491(a), Water Code, is amended
28 to read as follows:

29 (a) The Parks and Wildlife Department and the commission
30 shall have joint responsibility to review the studies prepared
31 under Section 16.058, to determine inflow conditions necessary

1 for the bays and estuaries, and to provide information necessary
2 for water resources management. Each agency shall designate an
3 employee to share equally in the oversight of the
4 program. Other responsibilities shall be divided between the
5 Parks and Wildlife Department and the commission to maximize
6 present in-house capabilities of personnel and to minimize costs
7 to the state. Each agency shall have reasonable access to all
8 information produced by the other agency. Publication of
9 reports completed under this section shall be submitted for
10 comment to the commission, the Parks and Wildlife Department,
11 the advisory group, the science [~~advisory~~] committee, and any
12 applicable basin and bay area stakeholders committee and basin
13 and bay expert science team.

14 (14) In SECTION 3.05 of the bill, in amended Section
15 15.4063(1), Water Code (page 7, line 59), strike "advisory" and
16 substitute "[~~advisory~~]".


17 (15) In SECTION 3.05 of the bill, in amended Section
18 15.4063(2), Water Code (page 7, line 68), strike "advisory" and
19 substitute "[~~advisory~~]".

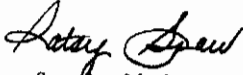
20 (16) IN SECTION 3.06 of the bill (page 8, line 18), strike
21 "advisory".

ADOPTED

FLOOR AMENDMENT NO. 2

MAY 27 2009

BY: 


Secretary of the Senate

1 Amend H.B. 3526 (senate committee report) by adding the
2 following appropriately numbered SECTIONS of the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. Sections 11.0842(a) and (b), Water Code, are
5 amended to read as follows:

6 (a) If a person violates this chapter, a rule or order
7 adopted under this chapter, Section 12.052, or Section 16.236,
8 or a permit, certified filing, or certificate of adjudication
9 issued under this chapter, the commission may assess an
10 administrative penalty against that person as provided by this
11 section. The commission may assess an administrative penalty
12 for a violation relating to a water division or a river basin or
13 segment of a river basin regardless of whether a watermaster has
14 been appointed for the water division or river basin or segment
15 of the river basin.

16 (b) The penalty may be in an amount not to exceed \$5,000
17 for each day the person is in violation of this chapter, a [the]
18 rule or order adopted under this chapter, or a [the] permit,
19 certified filing, or certificate of adjudication issued under
20 this chapter. The penalty may be in an amount not to exceed
21 \$10,000 for each day the person is in violation of a rule or
22 order adopted under Section 12.052. The penalty may be in an
23 amount not to exceed \$1,000 for each day the person is in
24 violation of a [the] rule or order adopted under Section 16.236
25 [~~of this code~~]. Each day a violation continues may be
26 considered a separate violation for purposes of penalty
27 assessment.

28 SECTION _____. Section 12.052, Water Code, is amended by
29 amending Subsections (a), (c), and (e) and adding Subsections

1 (g) and (h) to read as follows:

2 (a) The commission shall make and enforce rules and orders
3 and shall perform all other acts necessary to provide for the
4 safe construction, maintenance, operation, repair, and removal
5 of dams located in this state.

6 (a-1) In order to maintain the structural integrity of
7 dams located in this state, the commission may require the owner
8 or owners of a dam to develop and implement an operation and
9 maintenance plan to comply with the rules and orders promulgated
10 under this section.

11 (a-2) In determining the frequency with which dams
12 located in this state are inspected, the commission shall give
13 preference to inspecting dams that are classified as posing a
14 high or significant hazard as defined by commission rule.

15 (c) If the owner of a dam that is required to be
16 constructed, reconstructed, maintained, operated, repaired, or
17 removed in order to comply with the rules and orders promulgated
18 under [~~Subsection (a) of~~] this section wilfully fails or refuses
19 to comply within the 30-day period following the date of the
20 commission's final, nonappealable order to do so or if a person
21 wilfully fails to comply with any rule or other order issued by
22 the commission under this section within the 30-day period
23 following the effective date of the order, the person [~~he~~] is
24 liable for [~~to~~] a penalty of not more than \$10,000 [~~\$5,000~~] a
25 day for each day the person [~~he~~] continues to violate this
26 section. The state may recover the penalty by suit brought for
27 that purpose in the district court of Travis County.

28 (e) If the commission issues an emergency order under
29 authority of this section without notice to the dam owner, the
30 commission shall fix a time and place for a hearing which shall

1 be held as soon as practicable to affirm, modify, or set aside
2 the emergency order. The notice does not have to comply with
3 Chapter 2001, Government Code. If the nature of the
4 commission's action requires further proceedings, those
5 proceedings shall be conducted as appropriate under Chapter
6 2001, Government Code [~~the Administrative Procedure and Texas~~
7 ~~Register Act, as amended (Article 6252-13a, Vernon's Texas Civil~~
8 ~~Statutes)~~].

9 (g) The commission may assess an administrative penalty as
10 provided by Section 11.0842 against a person who violates a rule
11 or order adopted under this section.

12 (h) This section does not affect the right of any private
13 corporation, individual, or political subdivision that has a
14 justiciable interest in pursuing any available common law remedy
15 to enforce a right or to prevent or seek redress or compensation
16 for the violation of a right or otherwise redress an injury.

17 SECTION ____ . Section 13.043(h), Water Code, is amended to
18 read as follows:

19 (h) The commission or executive director may [~~on a~~
20 ~~motion by the executive director or by the appellant under~~
21 ~~Subsection (a), (b), or (f) of this section,~~] establish interim
22 rates to be in effect until a final decision is made in an
23 appeal filed under Subsection (a), (b), or (f).

24 SECTION ____ . Sections 13.187(f), (i), (j), (k), (l), (n),
25 and (o), Water Code, are amended to read as follows:

26 (f) The regulatory authority may set the matter for
27 hearing on its own motion at any time within 120 days after the
28 effective date of the rate change. [~~If more than half of the~~
29 ~~ratepayers of the utility receive service in a county with a~~
30 ~~population of more than 2.5 million, the hearing must be held at~~
31 ~~a location in that county.]~~

1 (i) The regulatory authority or the executive director,
2 pending final action in a rate proceeding, may order the utility
3 to deposit all or part of the rate increase received or to be
4 received into an escrow account with a financial institution
5 approved by the regulatory authority. Unless otherwise agreed
6 to by the parties to the rate proceeding, the utility shall
7 refund or credit against future bills all sums collected during
8 the pendency of the rate proceeding in excess of the rate
9 finally ordered plus interest as determined by the regulatory
10 authority.

11 (j) For good cause shown, the regulatory authority or the
12 executive director may authorize the release of funds to the
13 utility from the escrow account during the pendency of the
14 proceeding.

15 (k) If the regulatory authority receives at least the
16 number of complaints from ratepayers required for the regulatory
17 authority to set a hearing under Subsection (e), the regulatory
18 authority or the executive director may, pending the hearing and
19 a decision, suspend the date the rate change would otherwise be
20 effective. Except as provided by Subsection (d-1), the proposed
21 rate may not be suspended for longer than:

- 22 (1) 90 days by a local regulatory authority; or
- 23 (2) 250 [~~150~~] days by the commission or executive
24 director.

25 (l) At any time during the pendency of the rate proceeding
26 the regulatory authority or the executive director may fix
27 interim rates to remain in effect until a final determination is
28 made on the proposed rate.

29 (n) For good cause shown, the regulatory authority or the
30 executive director may at any time during the proceeding require
31 the utility to refund money collected under a proposed rate

1 before the rate was suspended or an interim rate was established
2 to the extent the proposed rate exceeds the existing rate or the
3 interim rate.

4 (o) If a regulatory authority other than the commission or
5 the executive director establishes interim rates or an escrow
6 account, the regulatory authority must make a final
7 determination on the rates not later than the first anniversary
8 of the effective date of the interim rates or escrowed rates or
9 the rates are automatically approved as requested by the
10 utility.

11 SECTION _____. Section 13.242(c), Water Code, is amended to
12 read as follows:

13 (c) The commission may by rule allow a municipality or
14 utility or water supply corporation to render retail water or
15 sewer service without a certificate of public convenience and
16 necessity if the municipality has given notice under Section
17 13.255 [~~of this code~~] that it intends to provide retail water or
18 sewer service to an area or if the utility or water supply
19 corporation has less than 15 potential connections and is not
20 within the certificated area of another retail public utility.

21 SECTION _____. Section 13.248, Water Code, is amended to
22 read as follows:

23 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
24 between retail public utilities designating areas to be served
25 and customers to be served by those retail public utilities,
26 when approved by the commission or the executive director after
27 public notice [~~and hearing~~], are valid and enforceable and are
28 incorporated into the appropriate areas of public convenience
29 and necessity.

30 SECTION _____. Sections 37.006(f) and (g), Water Code, are
31 amended to read as follows:

1 (f) A person whose license or registration has been
2 expired for 60 [~~30~~] days or less may apply for renewal of the
3 license or registration by paying to the commission a renewal
4 fee in an amount prescribed by commission rule not to exceed 1-
5 1/2 times the normally required renewal fee.

6 (g) A person whose license or registration has been
7 expired for more than 60 [~~30~~] days may not renew the license or
8 registration. The person may obtain a new license or
9 registration by complying with the requirements and procedures,
10 including the examination requirements, for obtaining an
11 original license or registration.

12 SECTION _____. Section 49.321, Water Code, is amended to
13 read as follows:

14 Sec. 49.321. DISSOLUTION AUTHORITY. After notice [~~and~~
15 ~~hearing~~], the commission or executive director may dissolve any
16 district that is inactive for a period of five consecutive years
17 and has no outstanding bonded indebtedness.

18 SECTION _____. Section 49.324, Water Code, is amended to
19 read as follows:

20 Sec. 49.324. ORDER OF DISSOLUTION. The commission or the
21 executive director may enter an order dissolving the district
22 [~~at the conclusion of the hearing~~] if the commission or
23 executive director [~~it~~] finds that the district has performed
24 none of the functions for which it was created for a period of
25 five consecutive years [~~before the day of the proceeding~~] and
26 that the district has no outstanding bonded indebtedness.

27 SECTION _____. Section 49.326(a), Water Code, is amended to
28 read as follows:

29 (a) Appeals from an [~~a commission~~] order dissolving a
30 district shall be filed and heard in the district court of any
31 of the counties in which the land is located.

1 SECTION ____ . Section 54.030(b), Water Code, is amended to
2 read as follows:

3 (b) The governing body of a district which desires to
4 convert into a district operating under this chapter shall adopt
5 and enter in the minutes of the governing body a resolution
6 declaring that in its judgment, conversion into a municipal
7 utility district operating under this chapter and under Article
8 XVI, Section 59, of the Texas Constitution, would serve the best
9 interest of the district and would be a benefit to the land and
10 property included in the district. The resolution shall also
11 request that the commission approve [~~to hold a hearing on the~~
12 ~~question of~~] the conversion of the district.

13 SECTION ____ . Section 54.032, Water Code, is amended to
14 read as follows:

15 Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice
16 of the conversion [~~hearing~~] shall be given by publishing notice
17 in a newspaper with general circulation in the county or
18 counties in which the district is located.

19 (b) The notice shall be published once a week for two
20 consecutive weeks [~~with the first publication to be made not~~
21 ~~less than 14 full days before the time set for the hearing~~].

22 (c) The notice shall:

23 (1) [~~state the time and place of the hearing,~~
24 [~~2~~] set out the resolution adopted by the district
25 in full; and

26 (2) [~~3~~] notify all interested persons how they may
27 offer comments [~~to appear and offer testimony~~] for or against
28 the proposal contained in the resolution.

29 SECTION ____ . Section 54.033, Water Code, is amended to
30 read as follows:

31 Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If

1 ~~[After a hearing, if]~~ the commission or the executive director
2 finds that conversion of the district into one operating under
3 this chapter would serve the best interest of the district and
4 would be a benefit to the land and property included in the
5 district, the commission or executive director [~~it~~] shall enter
6 an order making this finding and the district shall become a
7 district operating under this chapter and no confirmation
8 election shall be required.

9 (b) If the commission or the executive director finds that
10 the conversion of the district would not serve the best interest
11 of the district and would not be a benefit to the land and
12 property included in the district, the commission or executive
13 director [~~it~~] shall enter an order against conversion of the
14 district into one operating under this chapter.

15 (c) The findings of the commission or the executive
16 director entered under this section shall be subject to appeal
17 or review within 30 days after entry of the order [~~of the~~
18 ~~commission~~] granting or denying the conversion.

19 (d) A copy of the [~~commission~~] order converting a district
20 shall be filed in the deed records of the county or counties in
21 which the district is located.

22 SECTION _____. Sections 49.322 and 54.031, Water Code, are
23 repealed.

24 SECTION _____. (a) The changes in law made by this Act to
25 Sections 11.0842 and 12.052, Water Code, apply only to a
26 violation that occurs on or after the effective date of this
27 Act. For purposes of this section, a violation occurs before
28 the effective date of this Act if any element of the violation
29 occurs before that date.

30 (b) A violation that occurs before the effective date of
31 this Act is governed by the law in effect on the date of the

1 violation, and the former law is continued in effect for that
2 purpose.

3 SECTION _____. The changes in law made by Section 13.187,
4 Water Code, as amended by this Act, apply only to a rate
5 application or appeal filed with the Texas Commission on
6 Environmental Quality on or after the effective date of this
7 Act. A rate application or appeal filed with the commission
8 before the effective date of this Act is governed by the law as
9 it existed immediately before the effective date of this Act,
10 and that law is continued in effect for that purpose.

ADOPTED

MAY 27 2009

Atay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO.

3

BY

Lucio

1 Amend C.S.H.B. 3526 (senate committee report) at ARTICLE 4
2 (page 8, line 26) by inserting the following new ARTICLE 4 and
3 renumbering the subsequent articles accordingly:

4 ARTICLE 4. STATE PARTICIPATION ACCOUNT.

5 SECTION 4.01. Section 16.131, Water Code, is amended to
6 read as follows:

7 Sec. 16.131. AUTHORIZED PROJECTS. The board may use the
8 state participation account of the development fund:

9 (1) to encourage optimum regional development of
10 projects including the design, acquisition, lease, construction,
11 reconstruction, development, or enlargement in whole or part of:

12 (A) [~~+1~~] reservoirs and storm water retention
13 basins for water supply, flood protection, and groundwater
14 recharge;

15 (B) [~~+2~~] facilities for the transmission and
16 treatment of water; and

17 (C) [~~+3~~] treatment works as defined by Section
18 17.001 of this code; and

19 (2) to acquire water rights or existing public water
20 systems to encourage optimum regional development of desalination
21 projects.

22 SECTION 4.02. Section 16.135, Water Code, is amended to
23 read as follows:

24 Sec. 16.135. BOARD FINDINGS. Before the board may acquire
25 a facility or interest in a facility, the board shall find
26 affirmatively that:

27 (1) it is reasonable to expect that the state will

1 recover its investment in the facility;

2 (2) the cost of the facility exceeds the current
3 financing capabilities of the area involved, and the optimum
4 regional development of the facility cannot be reasonably
5 financed by local interests without state participation;

6 (3) the public interest will be served by acquisition
7 of the facility; ~~and~~

8 (4) the facility to be constructed or reconstructed
9 contemplates the optimum regional development which is reasonably
10 required under all existing circumstances of the site; and

11 (5) if appropriate, the facility to be acquired encourages
12 optimum regional development of a desalination project.

13 SECTION 4.03. This article takes effect September 1, 2009.

ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. _____

4

Leta Spaw
Secretary of the Senate

By _____

Lucio

1 Amend C.S.H.B. 3526 (senate committee printing) at ARTICLE 4
2 (page 8, line 26) by inserting the following new ARTICLE 4 and
3 renumbering the subsequent articles accordingly:

4 ARTICLE 4. GRANTS BY THE TEXAS WATER DEVELOPMENT BOARD
5 FOR WATER AND WASTEWATER SYSTEM IMPROVEMENTS
6 IN ECONOMICALLY DISTRESSED AREAS.

7 SECTION 4.01. Subsections (b) and (c), Section 17.933,
8 Water Code, are amended to read as follows:

9 (b) In providing financial assistance to an applicant under
10 this subchapter, the board may not provide to the applicant
11 financial assistance in the form of a grant [~~for which repayment~~
12 ~~is not required~~] in an amount that exceeds 50 percent of the
13 total cost of a proposed project [~~amount of the financial~~
14 ~~assistance plus interest on any amount that must be repaid,~~]
15 unless the Texas Department of State Health Services issues a
16 determination [~~finding~~] that a nuisance dangerous to the public
17 health and safety exists resulting from water supply and
18 sanitation problems in the area to be served by the proposed
19 project. The board and the applicant shall provide to the Texas
20 Department of State Health Services information necessary to make
21 a determination, and the board and the Texas Department of State
22 Health Services may enter into necessary memoranda of
23 understanding to carry out this subsection.

24 (c) In providing financial assistance under this
25 subchapter, the board may combine a grant made under this
26 subchapter with a loan from any other source, including another
27 program administered by the board [~~The total amount of financial~~
28 ~~assistance provided by the board to political subdivisions under~~
29 ~~this subchapter from state issued bonds for which repayment is~~
30 ~~not required may not exceed at any time 90 percent of the total~~
31 ~~principal amount of issued and unissued bonds authorized under~~
32 ~~Article III of the Texas Constitution, for purposes of this~~
33 ~~subchapter plus outstanding interest on those bonds].~~

34 SECTION 4.02. This Act does not make an appropriation. A
35 provision in this Act that creates a new governmental program,
36 creates a new entitlement, or imposes a new duty on a
37 governmental entity is not mandatory during a fiscal period for
38 which the legislature has not made a specific appropriation to
39 implement the provision.

40 SECTION 4.03. This Act takes effect September 1, 2009.

FLOOR AMENDMENT NO. 5

ADOPTED

MAY 27 2009

BY: Elit Shopshire

Atax Drew
Secretary of the Senate

1 Amend C.S.H.B. No. 3526 (committee printing) by
2 adding the following appropriately numbered SECTION to the bill
3 and renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION ____ (a) The executive administrator of the Texas
5 Water Development Board shall appoint an advisory committee to
6 assist the board in incorporating the potential effects of
7 climate variability into the 2012 state water plan. The
8 advisory committee shall consist of experts from any field who
9 have experience in the process of creating a regional water
10 plan.

11 (b) The advisory committee shall:

12 (1) assess past and predicted variations in climate;

13 (2) assess the potential effects of climate
14 variability on:

15 (A) groundwater resources;

16 (B) surface water resources; and

17 (C) water demand;

18 (3) review case studies of major water providers that
19 include quantitative sensitivity analyses for water demand and
20 supply under a range of climate variation scenarios;

21 (4) review and analyze information regarding natural
22 climate variability to determine whether an area of this state
23 is experiencing a new drought of record;

24 (5) assess existing global climate models to
25 determine whether the models may be helpful in water planning on
26 a regional or local level;

27 (6) make recommendations for improving the collection
28 of general information regarding:

29 (A) groundwater resources;

1 (B) surface water resources;

2 (C) evapotranspiration; and

3 (D) water use; and

4 (7) make recommendations for the use of innovative
5 water technologies that will help mitigate water supply issues,
6 in addition to those water supply issues that would be
7 experienced in a drought of record, including:

8 (A) desalination technology;

9 (B) water reuse technology; and

10 (C) other emerging technologies.

11 (c) Not later than December 1 of each even-numbered year,
12 the advisory committee shall submit its findings and
13 recommendations to:

14 (1) the Texas Water Development Board;

15 (2) the governor; and

16 (3) the relevant committees of the senate and house
17 of representatives.

18 (d) The advisory committee is abolished and this Act
19 expires January 1, 2013.

ADOPTED

FLOOR AMENDMENT NO. 6

MAY 27 2009

BY:

Elit Shopleigh

Antony Spaw
Secretary of the Senate

1 Amend C.S.H.B. No. 3526 (senate committee printing) by
2 adding the following appropriately numbered SECTION to the bill
3 and renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. Subsection (a), Section 16.051, Water Code, is
5 amended to read as follows:

6 (a) Not later than January 5, 2012 [~~2002~~], and before the
7 end of each successive five-year period after that date, the
8 board shall prepare, develop, formulate, and adopt a
9 comprehensive state water plan that incorporates the regional
10 water plans approved under Section 16.053. The state water plan
11 shall provide for the orderly development, management, and
12 conservation of water resources and preparation for and response
13 to drought conditions and the effects of climate variability, in
14 order that sufficient water will be available at a reasonable
15 cost to ensure public health, safety, and welfare; further
16 economic development; and protect the agricultural and natural
17 resources of the entire state.

18 SECTION _____. Subsection (e), Section 16.053, Water Code,
19 is amended to read as follows:

20 (e) Each regional water planning group shall submit to the
21 development board a regional water plan that:

22 (1) is consistent with the guidance principles for
23 the state water plan adopted by the development board under
24 Section 16.051(d);

25 (2) provides information based on data provided or
26 approved by the development board in a format consistent with
27 the guidelines provided by the development board under
28 Subsection (d);

29 (3) identifies:

1 (A) each source of water supply in the regional
2 water planning area, including information supplied by the
3 executive administrator on the amount of managed available
4 groundwater in accordance with the guidelines provided by the
5 development board under Subsections (d) and (f);

6 (B) factors specific to each source of water
7 supply to be considered in determining whether to initiate a
8 drought response;

9 (C) actions to be taken as part of the response;
10 and

11 (D) existing major water infrastructure
12 facilities that may be used for interconnections in the event of
13 an emergency shortage of water;

14 (4) has specific provisions for water management
15 strategies to be used during a drought of record;

16 (5) includes but is not limited to consideration of
17 the following:

18 (A) any existing water or drought planning
19 efforts addressing all or a portion of the region;

20 (B) approved groundwater conservation district
21 management plans and other plans submitted under Section 16.054;

22 (C) all potentially feasible water management
23 strategies, including but not limited to improved conservation,
24 reuse, and management of existing water supplies, conjunctive
25 use, acquisition of available existing water supplies, and
26 development of new water supplies;

27 (D) protection of existing water rights in the
28 region;

29 (E) opportunities for and the benefits of
30 developing regional water supply facilities or providing
31 regional management of water supply facilities;

1 (F) appropriate provision for environmental
2 water needs and for the effect of upstream development on the
3 bays, estuaries, and arms of the Gulf of Mexico and the effect
4 of plans on navigation;

5 (G) provisions in Section 11.085(k)(1) if
6 interbasin transfers are contemplated;

7 (H) voluntary transfer of water within the
8 region using, but not limited to, regional water banks, sales,
9 leases, options, subordination agreements, and financing
10 agreements; ~~and~~

11 (I) emergency transfer of water under Section
12 11.139, including information on the part of each permit,
13 certified filing, or certificate of adjudication for
14 nonmunicipal use in the region that may be transferred without
15 causing unreasonable damage to the property of the nonmunicipal
16 water rights holder; and

17 (J) the effects of climate variability on the
18 water supply in the regional water planning area;

19 (6) identifies river and stream segments of unique
20 ecological value and sites of unique value for the construction
21 of reservoirs that the regional water planning group recommends
22 for protection under Section 16.051;

23 (7) assesses the impact of the plan on unique river
24 and stream segments identified in Subdivision (6) if the
25 regional water planning group or the legislature determines that
26 a site of unique ecological value exists; and

27 (8) describes the impact of proposed water projects
28 on water quality.

29 SECTION ____ Subsection (e), Section 16.053, Water Code,
30 as amended by this Act, applies only to regional water plans
31 required to be submitted to the Texas Water Development Board

1 beginning with the plan required to be submitted by January 5,
2 2016.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3526 by Callegari (Relating to the powers and duties of the Texas Water Development Board and related entities, including the funding of projects by the board and the composition, duties, recommendations, and expenses of entities created to study and provide advice regarding environmental flows.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3526, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	(\$1,266,667)
2013	(\$1,339,700)
2014	(\$1,338,025)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2010	\$0
2011	\$0
2012	(\$1,266,667)
2013	(\$1,339,700)
2014	(\$1,338,025)

Fiscal Analysis

The bill would amend the Water Code to require the Water Development Board (TWDB) to adopt rules specifying the manner in which any capitalization grant under the State Water Pollution Control Revolving Fund, the Safe Drinking Water Revolving Fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant. The bill would also authorize TWDB to expeditiously adopt rules to comply with the terms of a special capitalization grant or other source of federal funding.

The bill would authorize TWDB to not approve an application recommended through the state and regional water planning process for funding from the Water Infrastructure Fund, the Disadvantaged

Rural Community and Wastewater Financial Assistance Fund, and the State Participation Account if an applicant has failed to complete a request for information relevant to the project, including a water infrastructure financing survey.

The bill would rename the Texas Environmental Flows Science Advisory Committee the Texas Environmental Flows Science Committee and the Science Advisory Committee the Science Committee and require TWDB to appoint members of these committees and the Basin and Bay Area Stakeholders Committee.

The bill would require the State Water Plan and the Regional Water Plans to consider the effects of climate variability. This section of the bill would apply to the State Water Plan which must be completed by 2012 and to Regional Water Plans which must be completed by 2016.

The bill would create an advisory committee to assist TWDB in incorporating the potential effects of climate variability into the 2012 State Water Plan. The committee would assess past and predicted variations in climate; assess the potential effects of climate variability; review case studies of major water providers that include quantitative sensitivity analyses for water demand and supply under a range of climate variation scenarios; review and analyze information regarding natural climate variability; assess existing global climate models; make recommendations for improving the collection of general information; and make recommendations for the use of innovative water technologies. The bill would require the advisory committee to submit its findings and recommendations not later than December 1 of each even-numbered year.

The bill would make the acquisition of water rights or existing public water systems to encourage optimum regional development of desalination projects an allowable use of the State Participation Account. The bill would also require TWDB to consider when acquiring a facility, or interest in a facility, whether the facility would encourage optimum regional development of a desalination project.

The bill would amend the Water Code to remove the requirement that the total amount of financial assistance provided by TWDB for the Economically Distressed Areas Program (EDAP) from state-issued bonds, for which repayment is not required, may not exceed 90 percent of the total principal amount of issued and unissued bonds authorized for this program, plus outstanding interest on those bonds.

The bill would allow the Texas Commission on Environmental Quality (TCEQ) to assess Dam Safety administrative penalties up to \$10,000 per day. The bill also would allow the agency to regulate the operations of the dams in the state.

The bill would make changes to the rate hearing process TCEQ administers for water and sewer utilities and provisions relating to interim rates. The bill would also provide TCEQ with the authority to allow a municipality or utility or water supply corporation to render sewer service without a certificate of public convenience and necessity provided the municipality provides specific notice of its intent to provide sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certified area of another retail utility.

The bill would extend the grace period for renewing expired occupational licenses and registrations from 30 to 60 days and repeal the current limit on renewal fees for expired licenses. The bill would also allow the Executive Director of TCEQ to dissolve any water district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness or that has performed none of the functions for which it was created.

The section of the bill relating to the appointment of the advisory committees would take effect September 1, 2009; all other parts of the bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house; otherwise it would take effect September 1, 2009.

Methodology

TWDB has been authorized to issue \$500 million in GO bonds for EDAP. The bill would authorize TWDB to issue the full amount as grants, whereas current statute requires a maximum of 90 percent of

bond proceeds to provide grants. Therefore, this bill would give TWDB the statutory authority to issue an additional \$50 million in GO bonds for grants under EDAP, in lieu of self supporting loans. TWDB reports that \$34 million has already been provided as loans for EDAP projects, but the remaining \$16 million could be provided as grants.

TWDB reports that the additional \$16 million in grants for EDAP projects would be awarded in fiscal year 2012. As a result, TWDB would have the following debt service requirements for this \$16 million in GO bonds: \$0 in fiscal years 2010 and 2011; \$1,266,667 in fiscal year 2012; \$1,339,700 in fiscal year 2013; and \$1,338,025 in fiscal year 2014. Since the awards would be grants instead of loans, this debt service would require General Revenue funds, whereas the debt service for the loans under the current statute would have been paid by loan repayments.

Based on the LBB's analysis of TWDB and TCEQ, all duties and responsibilities associated with implementing the provisions of the bill, not related to the issuance of GO bonds for EDAP grants, could be accomplished by utilizing existing resources. Further, this analysis assumes that any revenues resulting from changes relating to administrative penalties would not be significant.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 580 Water Development Board

LBB Staff: JOB, SD, ZS, AH, SZ

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3526 by Callegari (Relating to the powers and duties of the Texas Water Development Board and related entities, including the funding of projects by the board and the composition, duties, recommendations, and expenses of entities created to study and provide advice regarding environmental flows.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Water Code to require the Water Development Board (TWDB) to adopt rules specifying the manner in which any capitalization grant under the State Water Pollution Control Revolving Fund, the Safe Drinking Water Revolving Fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant. The bill would also authorize TWDB to expeditiously adopt rules to comply with the terms of a special capitalization grant or other source of federal funding.

The bill would authorize TWDB to not approve an application recommended through the state and regional water planning process for funding from the Water Infrastructure Fund, the Disadvantaged Rural Community and Wastewater Financial Assistance Fund, and the State Participation Account if an applicant has failed to complete a request for information relevant to the project, including a water infrastructure financing survey.

The bill would require TWDB to appoint members of the Environmental Flows Advisory Committee, the Science Advisory Committee, and the Basin and Bay Area Stakeholders Committee. The bill would require TWDB to establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards for certain river basin and bay systems or river basins.

TWDB indicates that any costs associated with the bill could be absorbed within the agency's existing resources.

The section of the bill relating to the advisory committees would take effect September 1, 2009; all other parts of the bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house; otherwise it would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 580 Water Development Board

LBB Staff: JOB, SZ, AH, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3526 by Callegari (Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.),
As Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Water Code to require the Water Development Board (TWDB) to adopt rules specifying the manner in which any capitalization grant under the State Water Pollution Control Revolving Fund, the Safe Drinking Water Revolving Fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant. The bill would also authorize TWDB to expeditiously adopt rules to comply with the terms of a special capitalization grant or other source of federal funding.

TWDB indicates that any costs associated with the bill could be absorbed within the agency's existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house; otherwise it would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 580 Water Development Board

LBB Staff: JOB, SZ, AH, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 30, 2009

TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3526 by Callegari (Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Water Code to require the Water Development Board (TWDB) to adopt rules specifying the manner in which any capitalization grant under the State Water Pollution Control Revolving Fund, the Safe Drinking Water Revolving Fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant. The bill would also authorize TWDB to expeditiously adopt rules to comply with the terms of a special capitalization grant or other source of federal funding.

TWDB indicates that any costs associated with the bill could be absorbed within the agency's existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house; otherwise it would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 580 Water Development Board

LBB Staff: JOB, SZ, AH, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 6, 2009

TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3526 by Callegari (Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.),
As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Water Code to require the Water Development Board (TWDB) to adopt rules specifying the manner in which any capitalization grant under the State Water Pollution Control Revolving Fund, the Safe Drinking Water Revolving Fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant. The bill would also authorize TWDB to expeditiously adopt rules to comply with the terms of a capitalization grant or other source of federal funding.

TWDB indicates that any costs associated with the bill could be absorbed within the agency's existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house; otherwise it would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 580 Water Development Board

LBB Staff: JOB, AH, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

WATER DEVELOPMENT POLICY IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

April 27, 2009

TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3526** by Callegari (Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.), **Committee Report 1st House, Substituted**

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TPWD) and the Texas Commission on Environmental Quality (TCEQ) has determined that:

"No Water Development Policy Impact Statement will be prepared for this bill under the provisions of *Texas Constitution*, Article 16, Section 59(d) as this bill does not create a conservation and reclamation district."

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality

LBB Staff: JOB, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

WATER DEVELOPMENT POLICY IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

April 6, 2009

TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3526** by Callegari (Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.),
As Introduced

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TPWD) and the Texas Commission on Environmental Quality (TCEQ) has determined that:

"No Water Development Policy Impact Statement will be prepared for this bill under the provisions of *Texas Constitution*, Article 16, Section 59(d) as this bill does not create a conservation and reclamation district."

Source Agencies: 582 Commission on Environmental Quality, 580 Water Development Board

LBB Staff: JOB, KK

