

**House Bill 3526**  
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No equivalent provision.

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

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

(b) The board shall adopt rules specifying the manner in which any additional state revolving fund hereafter established by the board, or 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 [~~political subdivisions~~] for public works. Such rules shall require financial assistance to be provided for the purpose or purposes and on the terms authorized by the federal legislation or federal agency program under which the additional state revolving fund was established or the capitalization grant was awarded.

SECTION 1.01. Same as House version.

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

Sec. 15.6055. RULEMAKING AUTHORITY FOR SPECIAL FEDERAL CAPITALIZATION GRANTS.

(a) The board may adopt rules specifying the manner in

SECTION 1.02. Same as House version.

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

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

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

(2) adopt the necessary rules at the meeting.

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

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

(e) This section expires September 1, 2011.

SECTION 3.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

**No equivalent provision.**

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**ARTICLE 4. EFFECTIVE DATE**

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

- (1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and
- (2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

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

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

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16.053(q).

No equivalent provision.

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

Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION. (a) In acting on an application for financial assistance, the board shall consider:

- (1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;
- (2) the availability of revenue to the political subdivision or water supply corporation from all sources for any necessary repayment of the cost of the project, including all interest;
- (3) the relationship of the project to overall statewide needs; and
- (4) any other factors that the board considers relevant.

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

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No equivalent provision.

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

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

- (1) reservoirs and storm water retention basins for water supply, flood protection, and groundwater recharge;
- (2) facilities for the transmission and treatment of water; and
- (3) treatment works as defined by Section 17.001 [~~of this code~~].

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

No equivalent provision.

ARTICLE 3. COMPOSITION, DUTIES, RECOMMENDATIONS, AND EXPENSES OF

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CERTAIN ENTITIES CREATED TO STUDY AND  
PROVIDE ADVICE REGARDING  
ENVIRONMENTAL FLOWS

No equivalent provision.

SECTION 3.\_\_. Section 11.002(19), Water Code, is amended to read as follows:  
(19) "Science [~~advisory~~] committee" means the Texas environmental flows science [~~advisory~~] committee.

No equivalent provision.

SECTION 3.01. Subsections (e) and (j), Section 11.0236, Water Code, are amended to read as follows:  
(e) The lieutenant governor shall designate an appointed senator [with the most seniority] and the speaker of the house of representatives shall designate an [the] appointed house member to [with the most seniority] serve together as co-presiding officers of the advisory group.  
(j) The advisory group may adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362. The advisory group may submit comments regarding environmental flows to the board, the commission, or the Parks and Wildlife Department at any time.

No equivalent provision.

SECTION 3.\_\_. The heading to Section 11.02361,

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Water Code, is amended to read as follows:  
Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS  
SCIENCE [~~ADVISORY~~] COMMITTEE.

No equivalent provision.

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

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

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

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

(c) Members of the science [~~advisory~~] committee serve five-year terms expiring March 1. A vacancy on the

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science [~~advisory~~] committee is filled by appointment by the board [~~co-presiding officers of the advisory group~~] for the unexpired term.

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

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

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

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

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

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

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

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

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



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

(g) The science [~~advisory~~] committee is abolished on the date the advisory group is abolished under Section 11.0236(m).

No equivalent provision.

SECTION 3.03. Section 11.02362, Water Code, is amended by amending Subsections (c), (d), (e), (f), (g), (k), (n), (o), (p), and (q) and adding Subsections (d-1), (f-1), (i-1), and (q-1) to read as follows:

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

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

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

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

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

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

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

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

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

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

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit

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them to the basin and bay area stakeholders committee, the board, the advisory group, the commission, and the Parks and Wildlife Department not later than July 1, 2011, except that at the request of the basin and bay area stakeholders committee for good cause shown, the board may extend the deadline provided by this subdivision;  
(4) the basin and bay area stakeholders committee shall submit to the board, the advisory group, the commission, and the Parks and Wildlife Department its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than February 1, 2012;  
(5) if appropriate, the board shall submit to the commission its comments on the environmental flow analyses and environmental flow regime recommendations submitted by the basin and bay expert science team not later than six months after the date of receipt of the analyses and recommendations as provided by Subsection (q); and  
(6) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2013 [2008, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2009. The advisory group shall establish a schedule for the performance of the tasks listed in Subsections (c)(2) through (5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow

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~~standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the advisory group with regard to the schedule applicable to that river basin and bay system. The advisory group shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule].~~

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

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

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

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the board, the advisory group, the commission, and the Parks and Wildlife Department not later than July 1, 2012, except that at the request of the basin and bay area

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stakeholders committee for good cause shown, the board may extend the deadline provided by this subdivision;

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

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

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

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the board [~~advisory group~~] shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The board [~~advisory group~~] shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the advisory group [~~board~~], and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The board [~~advisory~~

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~~group~~] may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the board ~~[advisory group]~~ has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

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

- (1) reflect a fair and equitable balance of interest groups concerned with the particular river basin and bay system for which the committee is established; and
- (2) be representative of appropriate stakeholders,

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including the following if they have a presence in the particular river basin and bay system for which the committee is established:

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

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

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

(C) municipalities;

(D) soil and water conservation districts;

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

- (i) refining;
- (ii) chemical manufacturing;
- (iii) electricity generation; and
- (iv) production of paper products or timber;

(F) commercial fishermen;

(G) public interest groups;

(H) regional water planning groups;

(I) groundwater conservation districts;

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

(K) environmental interests.

(f-1) In appointing a member to a basin and bay area stakeholders committee, the board shall ensure that the

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appointee is not disqualified from service on the committee under provisions of state law that apply to such appointees, including provisions regarding conflicts of interest.

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

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

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



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recommendations.

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

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. For the Rio Grande, the basin and bay area stakeholders committee shall also consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The Rio Grande basin and bay expert science team may not recommend any environmental flow regime that would result in a

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violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission, the board, ~~and to~~ the advisory group, and the Parks and Wildlife Department in accordance with the applicable schedule specified by or established under Subsection (c), (d), ~~(d-1)~~, or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

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

- (1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;
- (2) prescribe specific monitoring, studies, and activities; and
- (3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow

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

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

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

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

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

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

No equivalent provision.

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

- (2) the schedule established by the ~~board~~ [advisory group] under Section 11.02362(d) or (e) for the adoption of environmental flow standards for the river basin and bay system, if applicable;
- (3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);
- (4) the recommendations developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o) regarding environmental flow standards and strategies to meet the flow standards;
- (5) any comments submitted by the ~~board~~ [advisory group] to the commission under Section 11.02362(q);
- (6) the specific characteristics of the river basin and bay system;
- (7) economic factors;
- (8) the human and other competing water needs in the river basin and bay system;
- (9) all reasonably available scientific information, including any scientific information provided by the science [advisory] committee; and
- (10) any other appropriate information.

No equivalent provision.

SECTION 3.\_\_. Section 11.1491(a), Water Code, is

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amended to read as follows:

(a) The Parks and Wildlife Department and the commission shall have joint responsibility to review the studies prepared under Section 16.058, to determine inflow conditions necessary for the bays and estuaries, and to provide information necessary for water resources management. Each agency shall designate an employee to share equally in the oversight of the program. Other responsibilities shall be divided between the Parks and Wildlife Department and the commission to maximize present in-house capabilities of personnel and to minimize costs to the state. Each agency shall have reasonable access to all information produced by the other agency. Publication of reports completed under this section shall be submitted for comment to the commission, the Parks and Wildlife Department, the advisory group, the science [advisory] committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

No equivalent provision.

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

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

(1) to compensate the members of the Texas environmental flows science [advisory] committee established under Section 11.02361 for attendance and

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

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

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

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

No equivalent provision.

SECTION 3.06. The changes in law made by this article

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to Sections 11.02361 and 11.02362, Water Code, in the appointment and qualifications of members of the Texas environmental flows science committee, a basin and bay area stakeholders committee, and a basin and bay expert science team do not affect the entitlement of a member serving on a committee or team immediately before the effective date of this article to continue to serve and function as a member of the committee or team for the remainder of the member's term. Those changes in law apply only to a member appointed on or after the effective date of this article.

No equivalent provision.

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

No equivalent provision.

SECTION \_\_. Sections 11.0842(a) and (b), Water Code, are amended to read as follows:

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

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river basin.

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

No equivalent provision.

SECTION \_\_. Section 12.052, Water Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (g) and (h) to read as follows:

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

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

(a-2) In determining the frequency with which dams



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located in this state are inspected, the commission shall give preference to inspecting dams that are classified as posing a high or significant hazard as defined by commission rule.

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

(e) If the commission issues an emergency order under authority of this section without notice to the dam owner, the commission shall fix a time and place for a hearing which shall be held as soon as practicable to affirm, modify, or set aside the emergency order. The notice does not have to comply with Chapter 2001, Government Code. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted as appropriate under Chapter 2001, Government Code [~~the Administrative Procedure and~~

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~~Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes)].~~

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

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

No equivalent provision.

SECTION \_\_. Section 13.043(h), Water Code, is amended to read as follows:

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

No equivalent provision.

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

(f) The regulatory authority may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change. [If more than half of the ratepayers of the utility receive service in a county with a population of more than 2.5 million, the

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~~hearing must be held at a location in that county.]~~

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

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

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

(1) 90 days by a local regulatory authority; or

(2) 250 ~~[150]~~ days by the commission or executive director.

(l) At any time during the pendency of the rate proceeding the regulatory authority or the executive director may fix interim rates to remain in effect until a

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final determination is made on the proposed rate.

(n) For good cause shown, the regulatory authority or the executive director may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

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

SECTION \_\_. Section 13.242(c), Water Code, is amended to read as follows:

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

No equivalent provision.

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No equivalent provision.

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SECTION \_\_. Section 13.248, Water Code, is amended to read as follows:

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

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No equivalent provision.

SECTION \_\_. Sections 37.006(f) and (g), Water Code, are amended to read as follows:

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

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

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No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

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SECTION \_\_. Section 49.321, Water Code, is amended to read as follows:

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

SECTION \_\_. Section 49.324, Water Code, is amended to read as follows:

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

SECTION \_\_. Section 49.326(a), Water Code, is amended to read as follows:

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

SECTION \_\_. Section 54.030(b), Water Code, is

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amended to read as follows:

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

No equivalent provision.

SECTION \_\_. Section 54.032, Water Code, is amended to read as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE.

(a) Notice of the conversion ~~[hearing]~~ shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

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

(c) The notice shall:

(1) ~~[state the time and place of the hearing;~~

~~(2)]~~ set out the resolution adopted by the district in full; and

~~(2) [(3)]~~ notify all interested persons how they may offer

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comments ~~[to appear and offer testimony]~~ for or against the proposal contained in the resolution.

No equivalent provision.

SECTION \_\_. Section 54.033, Water Code, is amended to read as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If ~~[After a hearing, if]~~ the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director ~~[it]~~ shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

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

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

(d) A copy of the ~~[commission]~~ order converting a district shall be filed in the deed records of the county or



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counties in which the district is located.

No equivalent provision.

SECTION \_\_. Sections 49.322 and 54.031, Water Code, are repealed.

No equivalent provision.

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

(b) A violation that occurs before the effective date of this Act is governed by the law in effect on the date of the violation, and the former law is continued in effect for that purpose.

No equivalent provision.

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

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The following rows were presented as identical to the engrossed version of Senate Bill 1406, relating to the consideration of the effects of climate variability on water supplies in regional and state water plans.

No equivalent provision.

SECTION \_\_. Subsection (a), Section 16.051, Water Code, is amended to read as follows:

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

No equivalent provision.

SECTION \_\_. Subsection (e), Section 16.053, Water Code, is amended to read as follows:

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

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

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- (2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);
- (3) identifies:
  - (A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of managed available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);
  - (B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;
  - (C) actions to be taken as part of the response; and
  - (D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;
- (4) has specific provisions for water management strategies to be used during a drought of record;
- (5) includes but is not limited to consideration of the following:
  - (A) any existing water or drought planning efforts addressing all or a portion of the region;
  - (B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;
  - (C) all potentially feasible water management strategies, including but not limited to improved conservation,

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reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

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

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

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

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

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

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

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

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

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16.051;  
(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and  
(8) describes the impact of proposed water projects on water quality.

No equivalent provision.

SECTION \_\_. Subsection (e), Section 16.053, Water Code, as amended by this Act, applies only to regional water plans required to be submitted to the Texas Water Development Board beginning with the plan required to be submitted by January 5, 2016.

The following rows were presented as Senate Bill 2283, relating to the use of the state participation account of the Texas Water Development Fund.

No equivalent provision.

ARTICLE \_\_. STATE PARTICIPATION ACCOUNT.

No equivalent provision.

SECTION \_\_.01. Section 16.131, Water Code, is amended to read as follows:  
Sec. 16.131. AUTHORIZED PROJECTS. The board may use the state participation account of the development fund:

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

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

(B) ~~(2)~~ facilities for the transmission and treatment of water; and

(C) ~~(3)~~ treatment works as defined by Section 17.001 of this code; and

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

No equivalent provision.

SECTION \_\_.02. Section 16.135, Water Code, is amended to read as follows:

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

(1) it is reasonable to expect that the state will recover its investment in the facility;

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

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

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

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

No equivalent provision.

SECTION \_\_.03. This article takes effect September 1, 2009.

The following rows were presented as the engrossed version of Senate Bill 2284, relating to the issuance of grants by the Texas Water Development Board for water and wastewater system improvements in economically distressed areas.

No equivalent provision.

ARTICLE \_\_. GRANTS BY THE TEXAS WATER DEVELOPMENT BOARD FOR WATER AND WASTEWATER SYSTEM IMPROVEMENTS IN ECONOMICALLY DISTRESSED AREAS.

No equivalent provision.

SECTION \_\_.01. Subsections (b) and (c), Section 17.933, Water Code, are amended to read as follows:

(b) In providing financial assistance to an applicant under this subchapter, the board may not provide to the

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applicant financial assistance in the form of a grant ~~[for which repayment is not required]~~ in an amount that exceeds 50 percent of the total cost of a proposed project ~~[amount of the financial assistance plus interest on any amount that must be repaid,]~~ unless the Texas Department of State Health Services issues a determination ~~[finding]~~ that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board and the applicant shall provide to the Texas Department of State Health Services information necessary to make a determination, and the board and the Texas Department of State Health Services may enter into necessary memoranda of understanding to carry out this subsection.

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



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No equivalent provision.

SECTION \_\_.02. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

No equivalent provision.

SECTION \_\_.03. This Act takes effect September 1, 2009.

The following row was presented as identical to the engrossed version of Senate Bill 1405, relating to the establishment of an advisory committee to assist the Texas Water Development Board in incorporating the potential effects of climate variability into the state water plan.

No equivalent provision.

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

(b) The advisory committee shall:

(1) assess past and predicted variations in climate;

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- (2) assess the potential effects of climate variability on:
  - (A) groundwater resources;
  - (B) surface water resources; and
  - (C) water demand;
- (3) review case studies of major water providers that include quantitative sensitivity analyses for water demand and supply under a range of climate variation scenarios;
- (4) review and analyze information regarding natural climate variability to determine whether an area of this state is experiencing a new drought of record;
- (5) assess existing global climate models to determine whether the models may be helpful in water planning on a regional or local level;
- (6) make recommendations for improving the collection of general information regarding:
  - (A) groundwater resources;
  - (B) surface water resources;
  - (C) evapotranspiration; and
  - (D) water use; and
- (7) make recommendations for the use of innovative water technologies that will help mitigate water supply issues, in addition to those water supply issues that would be experienced in a drought of record, including:
  - (A) desalination technology;
  - (B) water reuse technology; and
  - (C) other emerging technologies.
- (c) Not later than December 1 of each even-numbered year, the advisory committee shall submit its findings

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and recommendations to:

- (1) the Texas Water Development Board;
- (2) the governor; and
- (3) the relevant committees of the senate and house of representatives.
- (d) The advisory committee is abolished and this Act expires January 1, 2013.