

SUBJECT: Duties and deadlines of certain entities studying environmental flows

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Ritter, Callegari, Corte, Creighton, Frost, T. King, Lucio,  
D. Miller, Smithee

0 nays

2 absent — Laubenberg, Martinez Fischer

SENATE VOTE: On final passage, May 4 — 31-0

WITNESSES: No public hearing

BACKGROUND: Surface water belongs to the state, which grants rights to use it through permits from the Texas Commission on Environmental Quality (TCEQ). Cities, individuals, and river authorities may apply for water rights permits. TCEQ requires that surface water be used for a “beneficial purpose.” To obtain a permit, an applicant must show that there is a source of unappropriated water available. Water permits do not guarantee that water will be available, only that the holder has a right to available water. The principle of “prior appropriation” gives priority to those whose water rights have greater seniority.

In 1997, the 75th Legislature enacted SB 1 by Brown, which established the Texas Water Trust. Donation into the trust allows private water rights to be left in the state’s rivers and used for the benefit of the environment.

In 2001, the 77th Legislature enacted SB 2 by Brown. Among its provisions, the bill established an instream flow program under which state environmental agencies would collaborate to study river and stream flow conditions necessary to support a sound ecological environment.

On October 28, 2005, Gov. Rick Perry signed executive order RP-50, which created the Environmental Flows Advisory Committee to examine how best to protect instream flows and freshwater inflows. The committee

conducted public hearings and issued its recommendations to the Legislature in December 2006.

In 2007, the 80th Legislature created an administrative process to determine the environmental flow needs in Texas' rivers, bays, and estuaries and required TCEQ to adopt rules to provide environmental flow standards, including set-asides in basins where unappropriated water was available. The environmental flows advisory group was created to examine the balance between the water needs of Texas' population and the protection of environmental flows of the state's river, bay, and estuary systems. Over the interim, through studies and public hearings, the advisory group considered the ecological concerns of river, bay, and estuary systems as they relate to the administration, enforcement, and allocation of water rights in the state, and worked to encourage voluntary conversion of water rights for environmental flow protection. The environmental flows advisory group consists of nine members:

- three members of the Senate appointed by the lieutenant governor;
- three members of the House of Representatives appointed by the speaker of the House;
- one member of TCEQ appointed by the governor;
- one member of the Texas Water Development Board (TWDB) appointed by the governor; and
- one member of the Texas Parks and Wildlife Department (TPWD) appointed by the governor.

The senator and House member with the most seniority serves as co-presiding officers.

**DIGEST:**

SB 2317 would amend the Water Code to require that the lieutenant governor to appoint a member of the Senate and the speaker of the House to appoint a member of the House of Representatives to serve as co-presiding officers of the environmental flows advisory group, rather than the most senior appointed members serving in those roles.

The advisory group could submit comments regarding environmental flows to the TWDB, TCEQ, or TPWD at any time. The bill also would require that members of the science advisory committee and bay and basin stakeholder committees be appointed by TWDB and that conflicts of

interest be considered. TWDB would be required to consult with the advisory group, TCEQ, and TPWD when carrying out its duties.

SB 2317 would provide the following revised schedule for developing environmental flow recommendations:

For the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay: The bay and basin expert science team would submit their environmental flow regime recommendations to the bay and basin stakeholders committee, TWDB, the advisory group, TCEQ, and TPWD by March 1, 2010, but the TWDB could extend this deadline for good cause. If appropriate, the TWDB would submit comments to the TCEQ on the environmental flow analysis and the environmental flow regime recommendations within six months. The bay and basin stakeholders committee would submit comments on the bay and basin expert science team's environmental flow regime recommendations by September 1, 2010. TCEQ would adopt environmental flow standards by September 1, 2011.

For the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays: The TWDB would appoint the bay and basin stakeholders committee by November 1, 2009. The bay and basin stakeholders committee would establish a bay and basin expert science team by March 1, 2010. The bay and basin expert science team would submit their environmental flow regime recommendations to the bay and basin stakeholders committee, TWDB, the advisory group, TCEQ, and TPWD by July 1, 2011, but the TWDB could extend this deadline for good cause. If appropriate, the TWDB would submit comments to the TCEQ on the environmental flow analysis and the environmental flow regime recommendations within six months. The bay and basin stakeholders committee would submit comments on the bay and basin expert science team's environmental flow regime recommendations by February 1, 2012. TCEQ would adopt environmental flow standards by February 1, 2013.

For the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting

of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system: The TWDB would appoint the bay and basin stakeholders committee by November 1, 2010. The bay and basin stakeholders committee would establish a bay and basin expert science team by March 1, 2011. The bay and basin expert science team would submit their environmental flow regime recommendations to the bay and basin stakeholders committee, TWDB, the advisory group, TCEQ, and TPWD by July 1, 2012, but the TWDB could extend this deadline for good cause. If appropriate, the TWDB would submit comments to the TCEQ on the environmental flow analysis and the environmental flow regime recommendations within six months. The bay and basin stakeholder committee would submit comments on the bay and basin expert science team's environmental flow regime recommendations by February 1, 2013. TCEQ would adopt environmental flow standards by February 1, 2014.

The bill would take effect September 1, 2009.