

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3526 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

A. Witt
Averitt

[Signature]
Hegar

Hinojosa

[Signature]
Lucio

On the part of the Senate
Seliger

[Signature]
Callegari

[Signature]
Creighton

[Signature]
King

[Signature]
Lucio

[Signature]
Ritter

On the part of the House
Ritter

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3526

A BILL TO BE ENTITLED

AN ACT

relating to the management of the water resources of the state by the Texas Water Development Board, Texas Commission on Environmental Quality, and related entities; providing penalties.

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

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

SECTION 1.01. 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 1.02. 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

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

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

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

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

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

27 (d) Not later than the 180th day after the date rules are

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

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

7 ARTICLE 2. TEXAS WATER DEVELOPMENT BOARD SURVEYS FOR WATER

8 INFRASTRUCTURE FINANCING

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

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

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

18 Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION.

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

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

25 (2) the availability of revenue to the political
26 subdivision or water supply corporation from all sources for any
27 necessary repayment of the cost of the project, including all

1 interest;

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

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

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

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

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

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

23 (2) facilities for the transmission and treatment of
24 water; and

25 (3) treatment works as defined by Section 17.001 [~~of~~
26 ~~this code~~].

27 (b) The board may not use the state participation account of

1 the development fund to finance a project recommended through the
2 state and regional water planning processes under Sections 16.051
3 and 16.053 if the applicant has failed to satisfactorily complete a
4 request by the executive administrator or a regional planning group
5 for information relevant to the project, including a water
6 infrastructure financing survey under Section 16.053(q).

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

10 SECTION 3.01. Section 11.002(19), Water Code, is amended to
11 read as follows:

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

14 SECTION 3.02. Subsections (e) and (j), Section 11.0236,
15 Water Code, are amended to read as follows:

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

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

27 SECTION 3.03. The heading to Section 11.02361, Water Code,

1 is amended to read as follows:

2 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE
3 ~~[ADVISORY]~~ COMMITTEE.

4 SECTION 3.04. Section 11.02361, Water Code, is amended by
5 amending Subsections (a), (b), (c), (d), (e), (f), and (g) and
6 adding Subsection (b-1) to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 3.05. Section 11.02362, Water Code, is amended by

1 amending Subsections (c), (d), (e), (f), (g), (k), (n), (o), (p),
2 and (q) and adding Subsections (d-1), (f-1), (i-1), and (q-1) to
3 read as follows:

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

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

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

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

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

27 (5) if appropriate, the board shall submit to the

1 commission its comments on the environmental flow analyses and
2 environmental flow regime recommendations submitted by the basin
3 and bay expert science team not later than six months after the date
4 of receipt of the analyses and recommendations as provided by
5 Subsection (q); and

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

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

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

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

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

27 (4) the basin and bay area stakeholders committee

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

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

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

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

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

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

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

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

22 (4) the basin and bay area stakeholders committee
23 shall submit to the board, the advisory group, the commission, and
24 the Parks and Wildlife Department its comments on and
25 recommendations regarding the basin and bay expert science team's
26 recommended environmental flow regime not later than February 1,
27 2013;

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

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

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

1 needs can be met by a voluntary consensus-building process.

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

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

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

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

20 (i) agricultural irrigation;

21 (ii) free-range livestock; and

22 (iii) concentrated animal feeding
23 operation;

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

26 (C) municipalities;

27 (D) soil and water conservation districts;

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

3 (i) refining;
4 (ii) chemical manufacturing;
5 (iii) electricity generation; and
6 (iv) production of paper products or
7 timber;

8 (F) commercial fishermen;

9 (G) public interest groups;

10 (H) regional water planning groups;

11 (I) groundwater conservation districts;

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

14 (K) environmental interests.

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

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

27 (i-1) In appointing a member to a basin and bay expert

1 science team, the basin and bay area stakeholders committee shall
2 ensure that the appointee is not disqualified from service on the
3 team under provisions of state law that apply to such appointees,
4 including provisions regarding conflicts of interest.

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

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

25 (o) Each basin and bay area stakeholders committee shall
26 review the environmental flow analyses and environmental flow
27 regime recommendations submitted by the committee's basin and bay

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

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

1 must:

2 (1) establish a periodic review of the basin and bay
3 environmental flow analyses and environmental flow regime
4 recommendations, environmental flow standards, and strategies, to
5 occur at least once every 10 years;

6 (2) prescribe specific monitoring, studies, and
7 activities; and

8 (3) establish a schedule for continuing the validation
9 or refinement of the basin and bay environmental flow analyses and
10 environmental flow regime recommendations, the environmental flow
11 standards adopted by the commission, and the strategies to achieve
12 those standards.

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

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

27 SECTION 3.06. Subsection (b), Section 11.1471, Water Code,

1 is amended to read as follows:

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

5 (1) the definition of the geographical extent of the
6 river basin and bay system adopted by the advisory group under
7 Section 11.02362(a) and the definition and designation of the river
8 basin by the board under Section 16.051(c);

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

13 (3) the environmental flow analyses and the
14 recommended environmental flow regime developed by the applicable
15 basin and bay expert science team under Section 11.02362(m);

16 (4) the recommendations developed by the applicable
17 basin and bay area stakeholders committee under Section 11.02362(o)
18 regarding environmental flow standards and strategies to meet the
19 flow standards;

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

22 (6) the specific characteristics of the river basin
23 and bay system;

24 (7) economic factors;

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

27 (9) all reasonably available scientific information,

1 including any scientific information provided by the science
2 [~~advisory~~] committee; and

3 (10) any other appropriate information.

4 SECTION 3.07. Section 11.1491(a), Water Code, is amended to
5 read as follows:

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

21 SECTION 3.08. Section 15.4063, Water Code, is amended to
22 read as follows:

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

25 (1) to compensate the members of the Texas
26 environmental flows science [~~advisory~~] committee established under
27 Section 11.02361 for attendance and participation at meetings of

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

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

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

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

24 SECTION 3.09. The changes in law made by this article to
25 Sections 11.02361 and 11.02362, Water Code, in the appointment and
26 qualifications of members of the Texas environmental flows science
27 committee, a basin and bay area stakeholders committee, and a basin

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

7 SECTION 3.10. This article takes effect September 1, 2009.

8 ARTICLE 4. STATE WATER PLAN

9 SECTION 4.01. Subsection (a), Section 16.051, Water Code,
10 is amended to read as follows:

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

22 SECTION 4.02. Subsection (e), Section 16.053, Water Code,
23 is amended to read as follows:

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

26 (1) is consistent with the guidance principles for the
27 state water plan adopted by the development board under Section

1 16.051(d);

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

5 (3) identifies:

6 (A) each source of water supply in the regional
7 water planning area, including information supplied by the
8 executive administrator on the amount of managed available
9 groundwater in accordance with the guidelines provided by the
10 development board under Subsections (d) and (f);

11 (B) factors specific to each source of water
12 supply to be considered in determining whether to initiate a
13 drought response;

14 (C) actions to be taken as part of the response;
15 and

16 (D) existing major water infrastructure
17 facilities that may be used for interconnections in the event of an
18 emergency shortage of water;

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

21 (5) includes but is not limited to consideration of
22 the following:

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

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

27 (C) all potentially feasible water management

1 strategies, including but not limited to improved conservation,
2 reuse, and management of existing water supplies, conjunctive use,
3 acquisition of available existing water supplies, and development
4 of new water supplies;

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

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

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

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

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

19 (I) emergency transfer of water under Section
20 11.139, including information on the part of each permit, certified
21 filing, or certificate of adjudication for nonmunicipal use in the
22 region that may be transferred without causing unreasonable damage
23 to the property of the nonmunicipal water rights holder; and

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

26 (6) identifies river and stream segments of unique
27 ecological value and sites of unique value for the construction of

1 reservoirs that the regional water planning group recommends for
2 protection under Section 16.051;

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

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

9 SECTION 4.03. Subsection (e), Section 16.053, Water Code,
10 as amended by this article, applies only to regional water plans
11 required to be submitted to the Texas Water Development Board
12 beginning with the plan required to be submitted by January 5, 2016.

13 ARTICLE 5. STATE PARTICIPATION ACCOUNT

14 SECTION 5.01. Section 16.131, Water Code, is amended to
15 read as follows:

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

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

21 (A) [~~1~~] reservoirs and storm water retention
22 basins for water supply, flood protection, and groundwater
23 recharge;

24 (B) [~~2~~] facilities for the transmission and
25 treatment of water; and

26 (C) [~~3~~] treatment works as defined by Section
27 17.001 of this code; and

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

4 SECTION 5.02. Section 16.135, Water Code, is amended to
5 read as follows:

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

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

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

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

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

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

22 SECTION 5.03. This article takes effect September 1, 2009.

23 ARTICLE 6. GRANTS BY THE TEXAS WATER DEVELOPMENT BOARD FOR WATER
24 AND WASTEWATER SYSTEM IMPROVEMENTS IN ECONOMICALLY DISTRESSED
25 AREAS

26 SECTION 6.01. Subsections (b) and (c), Section 17.933,
27 Water Code, are amended to read as follows:

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

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

26 SECTION 6.02. This article does not make an appropriation.
27 A provision in this article that creates a new governmental

1 program, creates a new entitlement, or imposes a new duty on a
2 governmental entity is not mandatory during a fiscal period for
3 which the legislature has not made a specific appropriation to
4 implement the provision.

5 SECTION 6.03. This article takes effect September 1, 2009.

6 ARTICLE 7. CLIMATE VARIABILITY ADVISORY COMMITTEE

7 SECTION 7.01. (a) The executive administrator of the Texas
8 Water Development Board shall appoint an advisory committee to
9 assist the board in incorporating the potential effects of climate
10 variability into the 2012 state water plan. The advisory committee
11 shall consist of experts from any field who have experience in the
12 process of creating a regional water plan.

13 (b) The advisory committee shall:

- 14 (1) assess past and predicted variations in climate;
15 (2) assess the potential effects of climate
16 variability on:
17 (A) groundwater resources;
18 (B) surface water resources; and
19 (C) water demand;
20 (3) review case studies of major water providers that
21 include quantitative sensitivity analyses for water demand and
22 supply under a range of climate variation scenarios;
23 (4) review and analyze information regarding natural
24 climate variability to determine whether an area of this state is
25 experiencing a new drought of record;
26 (5) assess existing global climate models to determine
27 whether the models may be helpful in water planning on a regional or

1 local level;

2 (6) make recommendations for improving the collection
3 of general information regarding:

4 (A) groundwater resources;

5 (B) surface water resources;

6 (C) evapotranspiration; and

7 (D) water use; and

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

12 (A) desalination technology;

13 (B) water reuse technology; and

14 (C) other emerging technologies.

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

18 (1) the Texas Water Development Board;

19 (2) the governor; and

20 (3) the relevant committees of the senate and house of
21 representatives.

22 (d) The advisory committee is abolished and this article
23 expires January 1, 2013.

24 ARTICLE 8. RAINWATER HARVESTING AND WATER CONSERVATION

25 INITIATIVES

26 SECTION 8.01. Subchapter A, Chapter 59, Finance Code, is
27 amended by adding Section 59.012 to read as follows:

1 Sec. 59.012. LOANS FOR DEVELOPMENTS THAT USE HARVESTED
2 RAINWATER. Financial institutions may consider making loans for
3 developments that will use harvested rainwater as the sole source
4 of water supply.

5 SECTION 8.02. Section 447.004, Government Code, is amended
6 by amending Subsection (c-1) and adding Subsection (c-3) to read as
7 follows:

8 (c-1) The procedural standards adopted under this section
9 must require that:

10 (1) on-site reclaimed system technologies, including
11 rainwater harvesting, condensate collection, or cooling tower blow
12 down, or a combination of those system technologies, for nonpotable
13 indoor use and landscape watering be incorporated into the design
14 and construction of:

15 (A) [~~1~~] each new state building with a roof
16 measuring at least 10,000 square feet; and

17 (B) [~~2~~] any other new state building for which
18 the incorporation of such systems is feasible;

19 (2) rainwater harvesting system technology for
20 nonpotable indoor use and landscape watering be incorporated into
21 the design and construction of each new state building with a roof
22 measuring at least 10,000 square feet that is located in an area of
23 this state in which the average annual rainfall is at least 20
24 inches; and

25 (3) at least 25 percent of the roof area of a building
26 described by Subdivision (2) be used for rainwater collection.

27 (c-3) The procedural standards required by Subsections

1 (c-1)(2) and (3) apply to a building described by Subsection
2 (c-1)(2) unless Subsection (c-2) applies or the state agency or
3 institution of higher education constructing the building provides
4 the state energy conservation office evidence that the amount of
5 rainwater that will be harvested from one or more existing
6 buildings at the same location is equivalent to the amount of
7 rainwater that could have been harvested from the new building had
8 rainwater harvesting system technology been incorporated into its
9 design and construction.

10 SECTION 8.03. Section 341.042(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) The commission by rule shall provide that if a structure
13 is connected to a public water supply system and has a rainwater
14 harvesting system, ~~[for indoor use]~~

15 ~~[(1)]~~ the structure must have appropriate
16 cross-connection safeguards ~~[, and~~

17 ~~[(2) the rainwater harvesting system may be used only~~
18 ~~for nonpotable indoor purposes].~~

19 SECTION 8.04. Chapter 580, Local Government Code, is
20 amended by adding Section 580.004 to read as follows:

21 Sec. 580.004. RAINWATER HARVESTING. (a) Each municipality
22 and county is encouraged to promote rainwater harvesting at
23 residential, commercial, and industrial facilities through
24 incentives such as the provision at a discount of rain barrels or
25 rebates for water storage facilities.

26 (b) Each municipality or county that has adopted impervious
27 cover or density restrictions shall consider the use in a

1 development of harvested rainwater as an on-site water supply
2 source in determining whether to grant the development a credit
3 against or exemption from the restrictions.

4 (c) The Texas Water Development Board shall ensure that
5 training on rainwater harvesting is available for the members of
6 the permitting staffs of municipalities and counties at least
7 quarterly. Members of the permitting staffs of counties and
8 municipalities are encouraged to receive the training. The Texas
9 Water Development Board may provide the training by seminars or by
10 videotape or functionally similar and widely available media
11 without cost.

12 (d) A municipality or county may not deny a building permit
13 solely because the facility will implement rainwater harvesting.

14 (e) Each school district is encouraged to implement
15 rainwater harvesting at facilities of the district.

16 SECTION 8.05. Section 202.007(d), Property Code, is amended
17 to read as follows:

18 (d) This section does not:

19 (1) restrict a property owners' association from
20 regulating the requirements, including size, type, shielding, and
21 materials, for or the location of a composting device [~~rain~~
22 ~~barrel, rain harvesting device, or any other appurtenance~~] if the
23 restriction does not prohibit the economic installation of the
24 device [~~or appurtenance~~] on the property owner's property where
25 there is reasonably sufficient area to install the device [~~or~~
26 ~~appurtenance~~];

27 (2) require a property owners' association to permit a

1 device [~~or appurtenance~~] described by Subdivision (1) to be
2 installed in or on property:

3 (A) owned by the property owners' association;

4 (B) owned in common by the members of the
5 property owners' association; or

6 (C) in an area other than the fenced yard or patio
7 of a property owner;

8 (3) prohibit a property owners' association from
9 regulating the installation of efficient irrigation systems,
10 including establishing visibility limitations for aesthetic
11 purposes;

12 (4) prohibit a property owners' association from
13 regulating the installation or use of gravel, rocks, or cacti; [~~or~~]

14 (5) restrict a property owners' association from
15 regulating yard and landscape maintenance if the restrictions or
16 requirements do not restrict or prohibit turf or landscaping design
17 that promotes water conservation; or

18 (6) require a property owners' association to permit a
19 rain barrel or rainwater harvesting system to be installed in or on
20 property if:

21 (A) the property is:

22 (i) owned by the property owners'
23 association;

24 (ii) owned in common by the members of the
25 property owners' association; or

26 (iii) located between the front of the
27 property owner's home and the adjacent street; or

- 1 (B) the barrel or system:
2 (i) is of a color other than:
3 (a) the original manufacturer's
4 color; or
5 (b) a color consistent with the color
6 scheme of the property owner's home; or
7 (ii) displays any language or other content
8 that is not typically displayed by such a barrel or system as it is
9 manufactured.

10 SECTION 8.06. Section 1.003, Water Code, is amended to read
11 as follows:

12 Sec. 1.003. PUBLIC POLICY. It is the public policy of the
13 state to provide for the conservation and development of the
14 state's natural resources, including:

15 (1) the control, storage, preservation, and
16 distribution of the state's storm and floodwaters and the waters of
17 its rivers and streams for irrigation, power, and other useful
18 purposes;

19 (2) the reclamation and irrigation of the state's
20 arid, semiarid, and other land needing irrigation;

21 (3) the reclamation and drainage of the state's
22 overflowed land and other land needing drainage;

23 (4) the conservation and development of its forest,
24 water, and hydroelectric power;

25 (5) the navigation of the state's inland and coastal
26 waters;

27 (6) the maintenance of a proper ecological environment

1 of the bays and estuaries of Texas and the health of related living
2 marine resources; ~~and~~

3 (7) the voluntary stewardship of public and private
4 lands to benefit waters of the state; and

5 (8) the promotion of rainwater harvesting for potable
6 and nonpotable purposes at public and private facilities in this
7 state, including residential, commercial, and industrial
8 buildings.

9 SECTION 8.07. Section 16.0121, Water Code, is amended by
10 amending Subsection (b) and adding Subsection (g) to read as
11 follows:

12 (b) Except as provided by Subsection (g) [Every five years],
13 a retail public utility providing potable water shall perform and
14 file with the board, every five years, a water audit computing the
15 utility's most recent annual system water loss.

16 (g) A retail public utility shall perform and file with the
17 board a water loss audit annually if the utility is receiving any
18 financial assistance from the board.

19 SECTION 8.08. If the 81st Legislature makes an
20 appropriation to the Texas Water Development Board to provide
21 matching grants to political subdivisions of this state for
22 rainwater harvesting demonstration projects, the board shall, not
23 later than December 1, 2010, provide a report to the lieutenant
24 governor and the speaker of the house of representatives regarding
25 the projects for which the board has provided grants, including:

26 (1) a description of each project; and

27 (2) the amount of the grant provided for each project.

1 SECTION 8.09. This article does not make an appropriation.
2 A provision of this article that creates a new governmental
3 program, creates a new entitlement, or imposes a new duty on a
4 governmental entity is not mandatory during a fiscal period for
5 which the legislature has not made a specific appropriation to
6 implement the provision.

7 SECTION 8.10. This article takes effect September 1, 2009.

8 ARTICLE 9. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR
9 WATER OR SEWER SERVICES

10 SECTION 9.01. Section 13.245, Water Code, is amended by
11 amending Subsection (b) and adding Subsections (c-1) and (c-2) to
12 read as follows:

13 (b) Except as provided by Subsections [~~Subsection~~] (c),
14 (c-1), and (c-2), the commission may not grant to a retail public
15 utility a certificate of public convenience and necessity for a
16 service area within the boundaries or extraterritorial
17 jurisdiction of a municipality without the consent of the
18 municipality. The municipality may not unreasonably withhold the
19 consent. As a condition of the consent, a municipality may require
20 that all water and sewer facilities be designed and constructed in
21 accordance with the municipality's standards for facilities.

22 (c-1) The commission may grant a certificate to a retail
23 public utility for a service area within the boundaries or
24 extraterritorial jurisdiction of a municipality before the 180th
25 day after the municipality receives the retail public utility's
26 application if:

27 (1) the municipality has not entered into a binding

1 commitment to serve the area that is the subject of the application
2 on or before the 180th day after the date a formal request for
3 service is made on the same or substantially similar terms as
4 provided by the retail public utility's application, including a
5 capital improvements plan as required by Section 13.244(d)(3); or
6 (2) the municipality has refused to provide the
7 service applied for as evidenced by a formal vote of the
8 municipality's governing body or by an official notification from
9 the municipality.

10 (c-2) The commission must include as a condition of a
11 certificate of convenience and necessity granted under Subsection
12 (c-1) that the authorized water and sewer facilities be designed
13 and constructed in accordance with the municipality's standards for
14 water and sewer facilities.

15 SECTION 9.02. Sections 13.2451(a) and (b), Water Code, are
16 amended to read as follows:

17 (a) Except as provided by Subsection (b), if [~~if~~] a
18 municipality extends its extraterritorial jurisdiction to include
19 an area certificated to a retail public utility, the retail public
20 utility may continue and extend service in its area of public
21 convenience and necessity under the rights granted by its
22 certificate and this chapter.

23 (b) The commission may not extend a municipality's
24 certificate of public convenience and necessity beyond its
25 extraterritorial jurisdiction if a landowner elects to exclude some
26 or all of the landowner's property within a proposed service area in
27 accordance with Section 13.246(h). This subsection does not apply

1 to a transfer of a certificate as approved by the commission [A
2 ~~municipality that seeks to extend a certificate of public~~
3 ~~convenience and necessity beyond the municipality's~~
4 ~~extraterritorial jurisdiction must ensure that the municipality~~
5 ~~complies with Section 13.241 in relation to the area covered by the~~
6 ~~portion of the certificate that extends beyond the municipality's~~
7 ~~extraterritorial jurisdiction].~~

8 SECTION 9.03. Sections 13.246(a) and (h), Water Code, are
9 amended to read as follows:

10 (a) If an application for a certificate of public
11 convenience and necessity or for an amendment to a certificate is
12 filed, the commission shall cause notice of the application to be
13 given to affected parties and to each county and groundwater
14 conservation district that is wholly or partly included in the area
15 proposed to be certified. If [~~if~~] requested, the commission shall
16 fix a time and place for a hearing and give notice of the hearing.
17 Any person affected by the application may intervene at the
18 hearing.

19 (h) Except as provided by Subsection (i), a landowner who
20 owns a tract of land that is at least 25 acres and that is wholly or
21 partially located within the proposed service area may elect to
22 exclude some or all of the landowner's property from the proposed
23 service area by providing written notice to the commission before
24 the 30th day after the date the landowner receives notice of a new
25 application for a certificate of public convenience and necessity
26 or for an amendment to an existing certificate of public
27 convenience and necessity. The landowner's election is effective

1 without a further hearing or other process by the commission. If a
2 landowner makes an election under this subsection, the application
3 shall be modified so that the electing landowner's property is not
4 included in the proposed service area. An applicant for a
5 certificate of public convenience and necessity that has land
6 removed from its proposed certificated service area because of a
7 landowner's election under this subsection may not be required to
8 provide service to the removed land for any reason, including the
9 violation of law or commission rules by the water or sewer system of
10 another person.

11 SECTION 9.04. Section 13.254, Water Code, is amended by
12 amending Subsections (a-1) and (a-3) and adding Subsection (h) to
13 read as follows:

14 (a-1) As an alternative to decertification under Subsection
15 (a), the owner of a tract of land that is at least 50 acres and that
16 is not in a platted subdivision actually receiving water or sewer
17 service may petition the commission under this subsection for
18 expedited release of the area from a certificate of public
19 convenience and necessity so that the area may receive service from
20 another retail public utility. The fact that a certificate holder
21 is a borrower under a federal loan program is not a bar to a request
22 under this subsection for the release of the petitioner's land and
23 the receipt of services from an alternative provider. On the day
24 the petitioner submits the petition to the commission, the [The]
25 petitioner shall send [~~deliver~~], via certified mail, a copy of the
26 petition to the certificate holder, who may submit information to
27 the commission to controvert information submitted by the

1 petitioner. The petitioner must demonstrate that:

2 (1) a written request for service, other than a
3 request for standard residential or commercial service, has been
4 submitted to the certificate holder, identifying:

5 (A) the area for which service is sought;

6 (B) the timeframe within which service is needed
7 for current and projected service demands in the area;

8 (C) the level and manner of service needed for
9 current and projected service demands in the area;

10 (D) the approximate cost for the alternative
11 service provider to provide the service at the same level and manner
12 that is requested from the certificate holder;

13 (E) the flow and pressure requirements and
14 specific infrastructure needs, including line size and system
15 capacity for the required level of fire protection requested; and

16 (F) [~~D~~] any additional information requested
17 by the certificate holder that is reasonably related to
18 determination of the capacity or cost for providing the service;

19 (2) the certificate holder has been allowed at least
20 90 calendar days to review and respond to the written request and
21 the information it contains;

22 (3) the certificate holder:

23 (A) has refused to provide the service;

24 (B) is not capable of providing the service on a
25 continuous and adequate basis within the timeframe, at the level,
26 at the approximate cost that the alternative provider is capable of
27 providing for a comparable level of service, or in the manner

1 reasonably needed or requested by current and projected service
2 demands in the area; or

3 (C) conditions the provision of service on the
4 payment of costs not properly allocable directly to the
5 petitioner's service request, as determined by the commission; and

6 (4) the alternate retail public utility from which the
7 petitioner will be requesting service possesses the financial,
8 managerial, and technical capability to provide [~~is capable of~~
9 ~~providing~~] continuous and adequate service within the timeframe, at
10 the level, at the cost, and in the manner reasonably needed or
11 requested by current and projected service demands in the area.

12 (a-3) Within 60 [~~90~~] calendar days from the date the
13 commission determines the petition filed pursuant to Subsection
14 (a-1) to be administratively complete, the commission shall grant
15 the petition unless the commission makes an express finding that
16 the petitioner failed to satisfy the elements required in
17 Subsection (a-1) and supports its finding with separate findings
18 and conclusions for each element based solely on the information
19 provided by the petitioner and the certificate holder. The
20 commission may grant or deny a petition subject to terms and
21 conditions specifically related to the service request of the
22 petitioner and all relevant information submitted by the petitioner
23 and the certificate holder. In addition, the commission may
24 require an award of compensation as otherwise provided by this
25 section. If the certificate holder has never made service
26 available through planning, design, construction of facilities, or
27 contractual obligations to serve the area the petitioner seeks to

1 have released, the commission is not required to find that the
2 proposed alternative provider is capable of providing better
3 service than the certificate holder, but only that the proposed
4 alternative provider is capable of providing the requested service.

5 (h) A certificate holder that has land removed from its
6 certificated service area in accordance with this section may not
7 be required, after the land is removed, to provide service to the
8 removed land for any reason, including the violation of law or
9 commission rules by a water or sewer system of another person.

10 SECTION 9.05. The changes made by this article to Sections
11 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

12 (1) a retail public utility's application for a
13 certificate of public convenience and necessity for a service area
14 in the extraterritorial jurisdiction of a municipality that is made
15 on or after the effective date of this article;

16 (2) an extension of a municipality's certificate of
17 public convenience and necessity for a service area in the
18 extraterritorial jurisdiction of the municipality on or after the
19 effective date of this article; and

20 (3) a petition to release an area from a certificate of
21 public convenience and necessity that is made on or after the
22 effective date of this article.

23 ARTICLE 10. REGULATION OF DAM SAFETY, WATER UTILITIES, CERTAIN
24 LICENSEES AND REGISTRANTS, AND WATER DISTRICTS BY TEXAS COMMISSION
25 ON ENVIRONMENTAL QUALITY

26 SECTION 10.01. Sections 11.0842(a) and (b), Water Code, are
27 amended to read as follows:

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

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

21 SECTION 10.02. Section 12.052, Water Code, is amended by
22 amending Subsections (a), (c), and (e) and adding Subsections
23 (a-1), (a-2), (g), and (h) to read as follows:

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

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

5 (a-2) In determining the frequency with which dams located
6 in this state are inspected, the commission shall give preference
7 to inspecting dams that pose a high or significant hazard as defined
8 by commission rule.

9 (c) If the owner of a dam that is required to be constructed,
10 reconstructed, maintained, operated, repaired, or removed in order
11 to comply with the rules and orders promulgated under [~~Subsection~~
12 ~~(a) of~~] this section wilfully fails or refuses to comply within the
13 30-day period following the date of the commission's final,
14 nonappealable order to do so or if a person wilfully fails to comply
15 with any rule or other order issued by the commission under this
16 section within the 30-day period following the effective date of
17 the order, the person [~~he~~] is liable for [~~to~~] a penalty of not more
18 than \$10,000 [~~\$5,000~~] a day for each day the person [~~he~~] continues
19 to violate this section. The state may recover the penalty by suit
20 brought for that purpose in the district court of Travis County.

21 (e) If the commission issues an emergency order under
22 authority of this section without notice to the dam owner, the
23 commission shall fix a time and place for a hearing which shall be
24 held as soon as practicable to affirm, modify, or set aside the
25 emergency order. The notice does not have to comply with Chapter
26 2001, Government Code. If the nature of the commission's action
27 requires further proceedings, those proceedings shall be conducted

1 as appropriate under Chapter 2001, Government Code [~~the~~
2 ~~Administrative Procedure and Texas Register Act, as amended~~
3 ~~(Article 6252-13a, Vernon's Texas Civil Statutes)~~].

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

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

12 SECTION 10.03. Section 13.043(h), Water Code, is amended to
13 read as follows:

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

19 SECTION 10.04. Sections 13.187(f), (i), (j), (k), (l), (n),
20 and (o), Water Code, are amended to read as follows:

21 (f) The regulatory authority may set the matter for hearing
22 on its own motion at any time within 120 days after the effective
23 date of the rate change. [~~If more than half of the ratepayers of the~~
24 ~~utility receive service in a county with a population of more than~~
25 ~~2.5 million, the hearing must be held at a location in that county.]~~

26 (i) The regulatory authority or the executive director,
27 pending final action in a rate proceeding, may order the utility to

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

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

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

- 19 (1) 90 days by a local regulatory authority; or
20 (2) 250 [~~150~~] days by the commission or executive
21 director.

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

26 (n) For good cause shown, the regulatory authority or the
27 executive director may at any time during the proceeding require

1 the utility to refund money collected under a proposed rate before
2 the rate was suspended or an interim rate was established to the
3 extent the proposed rate exceeds the existing rate or the interim
4 rate.

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

11 SECTION 10.05. 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 sewer
15 service without a certificate of public convenience and necessity
16 if the municipality has given notice under Section 13.255 [~~of this~~
17 ~~code~~] that it intends to provide retail water or sewer service to an
18 area or if the utility or water supply corporation has less than 15
19 potential connections and is not within the certificated area of
20 another retail public utility.

21 SECTION 10.06. 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 and
25 customers to be served by those retail public utilities, when
26 approved by the commission or the executive director after public
27 notice [~~and hearing~~], are valid and enforceable and are

1 incorporated into the appropriate areas of public convenience and
2 necessity.

3 SECTION 10.07. Sections 37.006(f) and (g), Water Code, are
4 amended to read as follows:

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

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

16 SECTION 10.08. Section 49.321, Water Code, is amended to
17 read as follows:

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

22 SECTION 10.09. Section 49.324, Water Code, is amended to
23 read as follows:

24 Sec. 49.324. ORDER OF DISSOLUTION. The commission or the
25 executive director may enter an order dissolving the district [~~at~~
26 ~~the conclusion of the hearing~~] if the commission or executive
27 director [~~it~~] finds that the district has performed none of the

1 functions for which it was created for a period of five consecutive
2 years [~~before the day of the proceeding~~] and that the district has
3 no outstanding bonded indebtedness.

4 SECTION 10.10. Section 49.326(a), Water Code, is amended to
5 read as follows:

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

9 SECTION 10.11. Section 54.030(b), Water Code, is amended to
10 read as follows:

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

21 SECTION 10.12. Section 54.032, Water Code, is amended to
22 read as follows:

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

27 (b) The notice shall be published once a week for two

1 consecutive weeks [~~with the first publication to be made not less~~
2 ~~than 14 full days before the time set for the hearing~~].

3 (c) The notice shall:

4 (1) [~~state the time and place of the hearing,~~
5 [~~2~~] set out the resolution adopted by the district
6 in full; and

7 (2) [~~3~~] notify all interested persons how they may
8 offer comments [~~to appear and offer testimony~~] for or against the
9 proposal contained in the resolution.

10 SECTION 10.13. Section 54.033, Water Code, is amended to
11 read as follows:

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

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

26 (c) The findings of the commission or the executive director
27 entered under this section shall be subject to appeal or review

1 within 30 days after entry of the order [~~of the commission~~] granting
2 or denying the conversion.

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

6 SECTION 10.14. Sections 49.322 and 54.031, Water Code, are
7 repealed.

8 SECTION 10.15. (a) The changes in law made by this Act to
9 Sections 11.0842 and 12.052, Water Code, apply only to a violation
10 that occurs on or after the effective date of this Act. For
11 purposes of this section, a violation occurs before the effective
12 date of this Act if any element of the violation occurs before that
13 date.

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

18 SECTION 10.16. The changes in law made by Section 13.187,
19 Water Code, as amended by this Act, apply only to a rate application
20 or appeal filed with the Texas Commission on Environmental Quality
21 on or after the effective date of this Act. A rate application or
22 appeal filed with the commission before the effective date of this
23 Act is governed by the law as it existed immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.

26 ARTICLE 11. EFFECTIVE DATE

27 SECTION 11.01. Except as otherwise provided by this Act:

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

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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

ARTICLE 1. Same as Senate version.

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

SECTION 1.01. Same as House version.

SECTION 1.01. Same as House version.

(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 1.02. Same as House version.

SECTION 1.02. 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

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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.

No equivalent provision.

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

ARTICLE 2. Same as Senate version.

No equivalent provision.

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 16.053(q).

SECTION 2.01. Same as Senate version.

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:

SECTION 2.02. Same as Senate version.

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- (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).

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,

SECTION 2.03. Same as Senate version.

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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 CERTAIN ENTITIES CREATED TO STUDY AND PROVIDE ADVICE REGARDING ENVIRONMENTAL FLOWS

ARTICLE 3. Same as Senate version.

No equivalent provision.

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

(19) "Science [~~advisory~~] committee" means the Texas

SECTION 3.01. Same as Senate version.

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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.

SECTION 3.02. Same as Senate version.

No equivalent provision.

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

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

SECTION 3.03. Same as Senate version.

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

SECTION 3.04. Same as Senate version.

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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 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:

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- (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
 - (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

SECTION 3.05. Same as Senate version.

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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;

(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

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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 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,

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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 (e)(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 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

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~~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 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;

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(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 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

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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, 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;

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- (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 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

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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 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-~~

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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 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

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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 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

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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.

No equivalent provision.

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 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

SECTION 3.06. Same as Senate version.

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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 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

SECTION 3.07. Same as Senate version.

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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 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

SECTION 3.08. Same as Senate version.

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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 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

SECTION 3.09. Same as Senate version.

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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.

SECTION 3.10. Same as Senate version.

ARTICLE 4. STATE WATER PLAN

ARTICLE 4. Same as Senate version.

No equivalent provision.

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

SECTION 4.01. Same as Senate version.

(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

SECTION 4.02. Same as Senate version.

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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);

(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

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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, 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

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(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 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.

SECTION 4.03. Same as Senate version.

No equivalent provision.

ARTICLE __. STATE PARTICIPATION ACCOUNT.

ARTICLE 5. Same as Senate version.

No equivalent provision.

SECTION __.01. Section 16.131, Water Code, is amended to read as follows:
Sec. 16.131. AUTHORIZED PROJECTS. The board

SECTION 5.01. Same as Senate version.

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may use the state participation account of the development fund;

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

(A) [(+)] 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;

SECTION 5.02. Same as Senate version.

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

SECTION 5.03. Same as Senate version.

No equivalent provision.

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

ARTICLE 6. Same as Senate version.

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 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~~

SECTION 6.01. Same as Senate version.

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~~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].~~

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

SECTION 6.02. Same as Senate version, except refers to this "Article" rather than this "Act."

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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 article takes effect September 1, 2009.

SECTION 6.03. Same as Senate version.

No equivalent provision.

No equivalent provision.

ARTICLE 7. CLIMATE VARIABILITY ADVISORY COMMITTEE

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.

SECTION 7.01. Same as Senate version.

(b) The advisory committee shall:

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

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- (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 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.

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~~No equivalent provision.~~

~~No equivalent provision.~~

ARTICLE 8. RAINWATER HARVESTING AND
WATER CONSERVATION INITIATIVES

~~No equivalent provision.~~

~~No equivalent provision.~~

SECTION 8.01. Subchapter A, Chapter 59, Finance Code, is amended by adding Section 59.012 to read as follows:

Sec. 59.012. LOANS FOR DEVELOPMENTS THAT USE HARVESTED RAINWATER. Financial institutions may consider making loans for developments that will use harvested rainwater as the sole source of water supply.

~~No equivalent provision.~~

~~No equivalent provision.~~

SECTION 8.02. Section 447.004, Government Code, is amended by amending Subsection (c-1) and adding Subsection (c-3) to read as follows:

(c-1) The procedural standards adopted under this section must require that:

(1) on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for nonpotable indoor use and landscape watering be incorporated into the design and construction of:

(A) ~~(+)~~ each new state building with a roof measuring at least 10,000 square feet; and

(B) ~~(2)~~ any other new state building for which the incorporation of such systems is feasible;

(2) rainwater harvesting system technology for

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nonpotable indoor use and landscape watering be incorporated into the design and construction of each new state building with a roof measuring at least 10,000 square feet that is located in an area of this state in which the average annual rainfall is at least 20 inches; and (3) at least 25 percent of the roof area of a building described by Subdivision (2) be used for rainwater collection.

(c-3) The procedural standards required by Subsections (c-1)(2) and (3) apply to a building described by Subsection (c-1)(2) unless Subsection (c-2) applies or the state agency or institution of higher education constructing the building provides the state energy conservation office evidence that the amount of rainwater that will be harvested from one or more existing buildings at the same location is equivalent to the amount of rainwater that could have been harvested from the new building had rainwater harvesting system technology been incorporated into its design and construction.

No equivalent provision.

No equivalent provision.

SECTION 8.03. Section 341.042(b), Health and Safety Code, is amended to read as follows:

(b) The commission by rule shall provide that if a structure is connected to a public water supply system and has a rainwater harvesting system, ~~[for indoor use:~~ [(4)] the structure must have appropriate cross-connection safeguards~~;~~ and

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~~[(2) the rainwater harvesting system may be used only for nonpotable indoor purposes].~~

No equivalent provision.

No equivalent provision.

SECTION 8.04. Chapter 580, Local Government Code, is amended by adding Section 580.004 to read as follows:

Sec. 580.004. RAINWATER HARVESTING. (a) Each municipality and county is encouraged to promote rainwater harvesting at residential, commercial, and industrial facilities through incentives such as the provision at a discount of rain barrels or rebates for water storage facilities.

(b) Each municipality or county that has adopted impervious cover or density restrictions shall consider the use in a development of harvested rainwater as an on-site water supply source in determining whether to grant the development a credit against or exemption from the restrictions.

(c) The Texas Water Development Board shall ensure that training on rainwater harvesting is available for the members of the permitting staffs of municipalities and counties at least quarterly. Members of the permitting staffs of counties and municipalities are encouraged to receive the training. The Texas Water Development Board may provide the training by seminars or by videotape or functionally similar and widely available media without cost.

(d) A municipality or county may not deny a building

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No equivalent provision.

No equivalent provision.

permit solely because the facility will implement rainwater harvesting.

(e) Each school district is encouraged to implement rainwater harvesting at facilities of the district.

SECTION 8.05. Section 202.007(d), Property Code, is amended to read as follows:

(d) This section does not:

(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device [~~rain barrel, rain harvesting device, or any other appurtenance~~] if the restriction does not prohibit the economic installation of the device [~~or appurtenance~~] on the property owner's property where there is reasonably sufficient area to install the device [~~or appurtenance~~];

(2) require a property owners' association to permit a device [~~or appurtenance~~] described by Subdivision (1) to be installed in or on property:

(A) owned by the property owners' association;

(B) owned in common by the members of the property owners' association; or

(C) in an area other than the fenced yard or patio of a property owner;

(3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic

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purposes;
(4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti; [øø]
(5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;
or
(6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:
(A) the property is:
(i) owned by the property owners' association;
(ii) owned in common by the members of the property owners' association; or
(iii) located between the front of the property owner's home and the adjacent street; or
(B) the barrel or system:
(i) is of a color other than:
(a) the original manufacturer's color; or
(b) a color consistent with the color scheme of the property owner's home; or
(ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured.

No equivalent provision.

No equivalent provision.

SECTION 8.06. Section 1.003, Water Code, is amended

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to read as follows:

Sec. 1.003. PUBLIC POLICY. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

- (1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;
- (2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of the state's overflowed land and other land needing drainage;
- (4) the conservation and development of its forest, water, and hydroelectric power;
- (5) the navigation of the state's inland and coastal waters;
- (6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources; ~~and~~
- (7) the voluntary stewardship of public and private lands to benefit waters of the state; and
- (8) the promotion of rainwater harvesting for potable and nonpotable purposes at public and private facilities in this state, including residential, commercial, and industrial buildings.

No equivalent provision.

No equivalent provision.

SECTION 8.07. Section 16.0121, Water Code, is amended by amending Subsection (b) and adding

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Subsection (g) to read as follows:

(b) Except as provided by Subsection (g) [Every five years], a retail public utility providing potable water shall perform and file with the board, every five years, a water audit computing the utility's most recent annual system water loss.

(g) A retail public utility shall perform and file with the board a water loss audit annually if the utility is receiving any financial assistance from the board.

No equivalent provision.

No equivalent provision.

SECTION 8.08. If the 81st Legislature makes an appropriation to the Texas Water Development Board to provide matching grants to political subdivisions of this state for rainwater harvesting demonstration projects, the board shall, not later than December 1, 2010, provide a report to the lieutenant governor and the speaker of the house of representatives regarding the projects for which the board has provided grants, including:

- (1) a description of each project; and
- (2) the amount of the grant provided for each project.

No equivalent provision.

No equivalent provision.

SECTION 8.09. This Act does not make an appropriation. A provision of 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

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No equivalent provision.

No equivalent provision.

implement the provision.

SECTION 8.10. This Act takes effect September 1, 2009.

No equivalent provision.

No equivalent provision.

ARTICLE 9. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER OR SEWER SERVICES

No equivalent provision.

No equivalent provision.

SECTION 9.01. Section 13.245, Water Code, is amended by amending Subsection (b) and adding Subsections (c-1) and (c-2) to read as follows:

(b) Except as provided by Subsections [Subsection] (c), (c-1), and (c-2), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c-1) The commission may grant a certificate to a retail public utility for a service area within the boundaries or extraterritorial jurisdiction of a municipality before the 180th day after the municipality receives the retail public

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utility's application if:

(1) the municipality has not entered into a binding commitment to serve the area that is the subject of the application on or before the 180th day after the date a formal request for service is made on the same or substantially similar terms as provided by the retail public utility's application, including a capital improvements plan as required by Section 13.244(d)(3);

or

(2) the municipality has refused to provide the service applied for as evidenced by a formal vote of the municipality's governing body or by an official notification from the municipality.

(c-2) The commission must include as a condition of a certificate of convenience and necessity granted under Subsection (c-1) that the authorized water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

No equivalent provision.

No equivalent provision.

SECTION 9.02. Sections 13.2451(a) and (b), Water Code, are amended to read as follows:

(a) Except as provided by Subsection (b), if [H] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

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(b) The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if a landowner elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission [A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction].

No equivalent provision.

No equivalent provision.

SECTION 9.03. Sections 13.246(a) and (h), Water Code, are amended to read as follows:

(a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the commission shall cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. If [,-if] requested, the commission shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(h) Except as provided by Subsection (i), a landowner

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who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

No equivalent provision.

No equivalent provision.

SECTION 9.04. Section 13.254, Water Code, is amended by amending Subsections (a-1) and (a-3) and adding Subsection (h) to read as follows:

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually

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receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the [The] petitioner shall send [deliver], via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

- (1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:
 - (A) the area for which service is sought;
 - (B) the timeframe within which service is needed for current and projected service demands in the area;
 - (C) the level and manner of service needed for current and projected service demands in the area;
 - (D) the approximate cost for the alternative service provider to provide the service at the same level and manner that is requested from the certificate holder;
 - (E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

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(E) [(D)] any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide ~~[is capable of providing]~~ continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-3) Within 60 [90] calendar days from the date the commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the

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commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section. If the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(h) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

No equivalent provision.

No equivalent provision.

SECTION 9.05. The changes made by this article to

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Sections 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

- (1) a retail public utility's application for a certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of a municipality that is made on or after the effective date of this Act;
- (2) an extension of a municipality's certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of the municipality on or after the effective date of this Act; and
- (3) a petition to release an area from a certificate of public convenience and necessity that is made on or after the effective date of this Act.

No equivalent provision.

No equivalent provision.

ARTICLE 10. REGULATION OF DAM SAFETY, WATER UTILITIES, CERTAIN LICENSES AND REGISTRANTS, AND WATER DISTRICTS BY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

SECTION 10.01 Same as Senate version.

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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 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

SECTION 10.02. Same as Senate version.

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operation and maintenance plan to comply with the rules and orders promulgated under this section.

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

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further proceedings, those proceedings shall be conducted as appropriate under Chapter 2001, Government Code [the Administrative Procedure and 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).

SECTION 10.03 Same as Senate version.

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

SECTION 10.04 Same as Senate version.

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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 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.

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(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 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.

No equivalent provision.

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

SECTION 10.05. Same as Senate version.

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area of another retail public utility.

No equivalent provision.

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.

SECTION 10.06. Same as Senate version.

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

SECTION 10.07. Same as Senate version.

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registration.

No equivalent provision.

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

SECTION 10.08. Same as Senate version.

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.

No equivalent provision.

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

SECTION 10.09. Same as Senate version.

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.

No equivalent provision.

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

SECTION 10.10. Same as Senate version.

(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.

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~~No equivalent provision.~~

SECTION __. Section 54.030(b), Water Code, is 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.

SECTION 10.11. Same as Senate version.

~~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;~~

SECTION 10.12. Same as Senate version.

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

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

SECTION 10.13. Same as Senate version.

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[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 counties in which the district is located.

No equivalent provision.

SECTION __. Sections 49.322 and 54.031, Water Code, are repealed.

SECTION 10.14. Same as Senate version.

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.

SECTION 10.15. Same as Senate version.

(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

SECTION 10.16. Same as Senate version.

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continued in effect for that purpose.

~~No equivalent provision.~~

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.

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.

ARTICLE 11. Same as Senate version.

SECTION 11.01. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

Revision 1

May 31, 2009

**TO: Honorable David Dewhurst, Lieutenant Governor, Senate
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 management of the water resources of the state by the Texas Water Development Board, Texas Commission on Environmental Quality, and related entities; providing penalties.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3526, Conference Committee Report: a negative impact of (\$1,000,000) 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	(\$500,000)
2011	(\$500,000)
2012	(\$1,266,667)
2013	(\$1,339,700)
2014	(\$1,338,025)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2010	(\$500,000)
2011	(\$500,000)
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.

The bill would require new state buildings with roof areas of 10,000 square feet or more in areas of the state that receive at least 28 inches of rain per year to incorporate rainwater harvesting systems in their design, or provide evidence that existing buildings can provide equivalent amounts of rainwater, and it

would require that at least 25 percent of the building's roof be used for rainwater collection. The bill would also encourage municipalities and counties to provide incentives to promote rainwater harvesting. The bill would require the Texas Water Development Board (TWDB) to ensure that training on rainwater harvesting is available for permitting staff of municipalities and counties at least quarterly. In areas located wholly or partly in a priority groundwater management area and those counties and municipalities with populations of 100,000 or more, the bill would require staff to receive the training at least once every five years. The bill would allow for the training to be provided via videotape or other media. The bill would also require the TWDB to provide to the lieutenant governor, and speaker of the house, by December 1, 2010, a report describing rainwater harvesting demonstration projects for which TWDB has provided grants for rainwater harvesting, if the agency would receive an appropriation from the Legislature for such projects. The bill would require a retail public utility to perform a water loss audit annually and file it with TWDB if the utility is receiving any financial assistance from TWDB.

The bill would require that notice for an application to the Texas Commission on Environmental Quality (TCEQ) to obtain or amend a certificate of convenience (CCN) and necessity to provide water or sewer service given to each county and groundwater conservation district that is wholly or partially included in the proposed area. The bill would take effect on September 1, 2009 and apply only to an application for a CCN or an amendment to a CCN filed on or after the effective date of the bill.

The bill 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.

It is estimated that any administrative costs associated with implementing the rainwater harvesting provisions of the bill could be absorbed using existing state agency resources. Regarding the requirement that state buildings with roof areas exceeding 10,000 square feet or more to employ rainwater harvesting over at least 25 percent of the roof area, the cost would depend upon the size of a building and each building's unique design features. The General Land Office and Veterans' Land Board reports that the bill would result in increased construction costs of \$135,000 for an average new Veterans' Home with a roof area of 80,000 square feet. Because the total cost of such a building is reportedly \$12.5 million and because of cost volatility in construction costs, and because a portion of the additional costs could be recouped through lower water bills, this estimate assumes that the additional cost would not be significant to total cost of a new state building.

Regarding the rainwater harvesting demonstration matching grants program referenced in the bill, this estimate assumes that the Legislature would appropriate \$500,000 in each fiscal year out of the General Revenue Fund for the 2010-11 biennium. Based on information received by the TWDB, this could support two demonstration projects per year ranging in size from 30,000 to 175,000 gallons of storage. If the Legislature would not provide an appropriation for this purpose, then the bill would not

result in significant fiscal impact to the state.

The bill would encourage municipalities and counties to provide rebate incentives or discounts for rain barrels or water storage tanks to promote rainwater harvesting at residential, commercial, and industrial facilities. Members of a local permitting staff in an area designated by the Texas Commission on Environmental Quality with a population of more than 100,000 would be required to attend a training seminar provided by TWDB at least once every five years. However, since the training would likely be available via videotape, the fiscal impact to local entities to implement these provisions of the bill is not anticipated to be significant.

The bill's provisions relating to CCNs are not expected to result in significant fiscal implications.

Local Government Impact

The bill would encourage municipalities and counties to provide rebate incentives or discounts for rain barrels or water storage tanks to promote rainwater harvesting at residential, commercial, and industrial facilities. Members of a local permitting staff in an area designated by the Texas Commission on Environmental Quality with a population of more than 100,000 would be required to attend a training seminar provided by TWDB at least once every five years. However, since the training would likely be available via videotape, the fiscal impact to local entities to implement these provisions of the bill is not anticipated to be significant.

Some local governments could be awarded grants from the TWDB, if the demonstration matching grants receive funding by the Legislature.

The bill would require each retail public utility providing potable water to perform a system water loss audit every five years, except during the term of any loan or grant agreement with TWDB, the utility must perform the audit annually. According to TWDB, the costs to a retail public utility for staff time to complete an annual water loss audit range from less than \$1,000 to \$20,000 depending on the size of the utility and their records system. Some local governments could be awarded grants from the TWDB, if the demonstration matching grants receive funding by the Legislature.

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Source Agencies: 580 Water Development Board

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 31, 2009

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
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 management of the water resources of the state by the Texas Water Development Board, Texas Commission on Environmental Quality, and related entities; providing penalties.), **Conference Committee Report**

The fiscal implications of the bill cannot be determined at this time

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies:

LBB Staff: JOB, SD