

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3526
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted by the 111th United States Congress and signed into law by the President on February 17, 2009. The ARRA provides appropriations to states for job preservation and creation, infrastructure investment, unemployment assistance and state and local fiscal stabilization. The ARRA also includes appropriations to the Environmental Protection Agency for capitalization grants for states to finance high priority infrastructure projects needed to ensure clean water and safe drinking water under the state revolving fund programs financed by capitalization grants under the federal Water Pollution Control Act and Safe Drinking Water Act.

As a result of ARRA, the State of Texas will receive an estimated \$179.1 million in an additional capitalization grant for the state's clean water state revolving fund (CWSRF) and \$160.7 million in an additional capitalization grant for the state's drinking water state revolving fund (DWSRF). The ARRA requires that funds for both CWSRF and DWSRF be reallocated to other states if projects are not under contract or construction by February 2010. Also, states are required to "give preference to activities that can be started and completed expeditiously" with a goal of 50 percent within 120 days of enactment.

This bill authorizes the Texas Water Development Board to change the board's rules for administering the CWSRF and DWSRF in a manner that any special federal capitalization grant received as a result of federal economic recovery legislation would require the rules to be changed to prevent reallocation of the funds to other states.

C.S.H.B. 3526 amends current law relating to the powers and duties of the Texas Water Development Board (TWDB) and related entities, including the funding of projects by TWDB and the composition, duties, recommendations, and expenses of entities created to study and provide advice regarding environmental flows.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Water Development Board (TWDB) is modified in SECTION 1.01 (Section 15.605, Water Code) of this bill.

Rulemaking authority is expressly granted to TWDB in SECTION 1.02 (Section 15.6055, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends Section 15.604(b), Water Code, to require the Texas Water Development Board (TWDB) to adopt rules specifying the manner in which any additional state revolving fund hereafter established by TWDB, or any capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund, is authorized to be used to provide financial assistance to an eligible applicant, rather than political subdivisions, for public works. Requires that such rules 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. Amends Subchapter J, Chapter 15, Water Code, by adding Section 15.6055, as follows:

Sec. 15.6055. RULEMAKING AUTHORITY FOR SPECIAL FEDERAL CAPITALIZATION GRANTS. (a) Authorizes TWDB to adopt rules specifying the manner in 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 is authorized to be used to provide financial assistance to an eligible applicant for public works. Requires that the rules 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) Provides that if TWDB 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 (Rulemaking), Chapter 2001 (Administrative Procedure), 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. Requires TWDB, in that case, to post notice of a meeting to adopt rules not later than 72 hours before the time the meeting is scheduled and adopt the necessary rules at the meeting.

(c) Requires TWDB to 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 (Texas Register and Administrative Code), Government Code.

(d) Authorizes TWDB, not later than the 180th day after the date rules are adopted under Subsection (b), to readopt or amend the rules in accordance with the procedures prescribed by Subchapter B, Chapter 2001, Government Code. Provides that if TWDB 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) Provides that this section expires September 1, 2011.

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

SECTION 2.01. Amends Section 15.975, Water Code, by adding Subsection (d), as follows:

(d) Prohibits TWDB from approving 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) (relating to the implementation of water management strategies and projects).

SECTION 2.02. Amends Section 15.912, Water Code, as follows:

Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION. (a) Creates this subsection from existing text.

(b) Prohibits TWDB from accepting 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 (State Water Plan: Drought,

Conservation, Development, and Management; Effect of Plan) and 16.053 (Regional Water Plans) 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 2.03. Amends Section 16.131, Water Code, as follows:

Sec. 16.131. AUTHORIZED PROJECTS. (a) Creates this subsection from existing text. Makes a nonsubstantive change.

(b) Prohibits TWDB from using 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).

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

SECTION 3.01. Amends Subsections (e) and (j), Section 11.0236, Water Code, as follows:

(e) Requires the lieutenant governor to designate an appointed senator, rather than an appointed senator with the most seniority, and the speaker of the house of representatives to designate an appointed house member, rather than the appointed house member with the most seniority, to serve together as co-presiding officers of the Texas environmental flows advisory group (advisory group).

(j) Authorizes the advisory group to submit comments regarding environmental flows to TWDB, the Texas Natural Resources Conservation Commission (TNRCC), or the Texas Parks and Wildlife Department (TPWD) at any time.

SECTION 3.02. Amends Section 11.02361, Water Code, by amending Subsections (a), (b), (c), and (f) and adding Subsection (b-1), as follows:

(a) Provides that the Texas environmental flows science advisory committee (science advisory committee) consists of at least five but not more than nine members appointed by TWDB, rather than the advisory group.

(b) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, to 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) Requires TWDB, in making an appointment under this section, to ensure that the appointee to the science advisory committee is not disqualified from service on the science advisory committee under provisions of state law that apply to such appointees, including provisions regarding conflicts of interest.

(c) Provides that a vacancy on the science advisory committee is filled by appointment by TWDB, rather than co-presiding officers of the advisory group, for the unexpired term.

(f) Requires TNRCC and TPWD, to assist TWDB, rather than requiring TNRCC, TPWD, and TWDB, to assist the advisory group, to assess the extent to which the recommendations of the science advisory committee are considered and implemented, to provide written reports to TWDB and the advisory group, at intervals determined by

TWDB, rather than the advisory group, that describe the actions taken by each agency in response to each recommendation, and for each recommendation not implemented, the reason it was not implemented.

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

(c) Provides that for the river basin and bay systems listed in Subsection (b)(1) (relating to developing environmental flow regime recommendations and adopting environmental flow standards for a certain river basin and bay system):

(1) TWDB, after consulting with the advisory group, TNRCC, and TPWD, is required to appoint the basin and bay area stakeholders committee (committee) not later than November 1, 2007;

(2) the committee is required to establish a basin and bay expert science team not later than March 1, 2008;

(3) the basin and bay expert science team is required to finalize environmental flow regime recommendations and submit them to the committee, TWDB, the advisory group, TNRCC, and TPWD not later than March 1, 2010, rather than 2009, except that at the request of the committee for good cause shown, TWDB, rather than advisory group, is authorized to extend the deadline provided by this subdivision;

(4) the committee is required to submit to TWDB, the advisory group, TNRCC, and TPWD its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2010, rather than 2009;

(5) if appropriate, TWDB is required to submit to TNRCC 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) (relating to requiring the advisory group to review the environmental flow analyses and recommendations submitted by each basin and bay expert science team); and

(6) TNRCC is required to adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2011, rather than 2010. Makes nonsubstantive changes.

(d) Provides that for the river basin and bay systems listed in Subsection (b)(2) (relating to developing environmental flow regime recommendations and adopting environmental flow standards for a certain river basin and bay system):

(1) TWDB, after consulting with the advisory group, TNRCC, and TPWD, is required to appoint the basin and bay area stakeholders committee, rather than committees for the river basin and bay systems listed in Subsection (b)(2), not later than November 1, 2009, rather than September, 1, 2009;

(2) the committee is required to establish a basin and bay expert science team not later than March 1, 2010;

(3) the basin and bay expert science team is required to finalize environmental flow regime recommendations and submit them to the committee, TWDB, the advisory group, TNRCC, and TPWD not later than July 1, 2011, except that at the request of the basin and bay area stakeholders committee for good cause shown, TWDB is authorized to extend the deadline provided by this subdivision;

(4) the committee is required to submit to TWDB, the advisory group, TNRCC, and TPWD 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, TWDB is required to submit to TNRCC 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) TNRCC is required to adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2013, rather than February 1, 2008. Deletes existing text relating to the appointment and duties of the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) (relating to developing environmental flow regime recommendations and adopting environmental flow standards for for a certain river basin and bay system).

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

(1) TWDB, after consulting with the advisory group, TNRCC, and TPWD, is required to appoint the basin and bay area stakeholders committee not later than November 1, 2010;

(2) the committee is required to establish a basin and bay expert science team not later than March 1, 2011;

(3) the basin and bay expert science team is required to finalize environmental flow regime recommendations and submit them to the committee, TWDB, the advisory group, TNRCC, and TPWD not later than July 1, 2012, except that at the request of the committee for good cause shown, TWDB is authorized to extend the deadline provided by this subdivision;

(4) the committee is required to submit to TWDB, the advisory group, TNRCC, and TPWD its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than February 1, 2013;

(5) if appropriate, TWDB is required to submit to TNRCC 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 TNRCC is required to adopt the environmental flow standards as provided by Section 11.1471 not later than February 1, 2014.

(e) Requires TWDB, rather than the advisory group, 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), to establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. Requires TWDB to develop the schedule in consultation with TNRCC, TPWD, the advisory group, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. Authorizes TWDB to, 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. Provides that this subsection does not prohibit, in a river basin and bay system for which TWDB has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop

information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process. Makes conforming changes.

(f) Requires TWDB, after consulting with the advisory group, TNRCC, and TPWD, to 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).

(f-1) Requires TWDB, in appointing a member to a basin and bay area stakeholders committee, to 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) Requires TWDB, on the expiration of a member's term, to make an appointment to the committee in accordance with Subsections (f) and (f-1).

(i-1) Requires the committee, in appointing a member to a basin and bay expert science team, to 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.

(n) Requires each basin and bay expert science team to submit its environmental flow analyses and environmental flow regime recommendations to the pertinent committee, TWDB, the advisory group, TNRCC, and TPWD in accordance with the applicable schedule specified by or established under Subsection (c), (d), (d-1), or (e). Makes a conforming and nonsubstantive change.

(o) Makes conforming changes.

(p) Makes a conforming change.

(q) Makes conforming changes.

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

SECTION 3.04. Amends Subsection (b), Section 11.1471, Water Code, to make conforming changes.

SECTION 3.05. Amends Section 15.4063, Water Code, as follows:

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. Authorizes TWDB to authorize the use of money in the research and planning fund to be used for certain purposes, including to compensate the members of the 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. Makes a conforming change.

SECTION 3.06. Provides that 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 science advisory committee, a basin and bay area stakeholders committee, and a basin and bay expert science team do not affect the entitlement of a member serving on a committee or team immediately before the effective date of this article to continue to serve and function as a member of the committee or team for the remainder of the member's term. Provides that those changes in law apply only to a member appointed on or after the effective date of this article.

SECTION 3.07. Effective date, this article: September 1, 2009.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date, except as otherwise provided by this Act: upon passage or September 1, 2009.