

AN ACT

relating to regulating the waters of the state, including the spacing and production of groundwater and the control of instream flows.

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

SECTION 1. Section 36.116, Water Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.

(e) In regulating the production of groundwater under Subsection (a)(2), a district:

(1) shall select a method that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district; and

(2) may limit the amount of water produced based on

1 contiguous surface acreage.

2 SECTION 2. Subchapter B, Chapter 11, Water Code, is amended  
3 by adding Sections 11.0235, 11.0236, and 11.0237 to read as  
4 follows:

5 Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.

6 (a) The waters of the state are held in trust for the public, and  
7 the right to use state water may be appropriated only as expressly  
8 authorized by law.

9 (b) Maintaining the biological soundness of the state's  
10 rivers, lakes, bays, and estuaries is of great importance to the  
11 public's economic health and general well-being.

12 (c) The legislature has expressly required the commission  
13 while balancing all other interests to consider and provide for the  
14 freshwater inflows necessary to maintain the viability of the  
15 state's bay and estuary systems in the commission's regular  
16 granting of permits for the use of state waters.

17 (d) The legislature has not expressly authorized granting  
18 water rights exclusively for:

19 (1) instream flows dedicated to environmental needs or  
20 inflows to the state's bay and estuary systems; or

21 (2) other similar beneficial uses.

22 (e) The fact that greater pressures and demands are being  
23 placed on the water resources of the state makes it of paramount  
24 importance to reexamine the process for ensuring that these  
25 important priorities are effectively addressed in clear  
26 delegations of authority to the commission.

27 Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL

1 FLOWS. (a) In recognition of the importance that the ecological  
2 soundness of our riverine, bay, and estuary systems and riparian  
3 lands has on the economy, health, and well-being of the state there  
4 is created the Study Commission on Water for Environmental Flows.

5 (b) The study commission is composed of 15 members as  
6 follows:

7 (1) two members appointed by the governor;

8 (2) five members appointed by the lieutenant governor;

9 (3) five members appointed by the speaker of the house  
10 of representatives;

11 (4) the presiding officer of the commission or the  
12 presiding officer's designee;

13 (5) the chairman of the board or the chairman's  
14 designee; and

15 (6) the presiding officer of the Parks and Wildlife  
16 Commission or the presiding officer's designee.

17 (c) Of the members appointed under Subsection (b)(2):

18 (1) one member must represent a river authority or  
19 municipal water supply agency or authority;

20 (2) one member must represent an entity that is  
21 distinguished by its efforts in resource protection; and

22 (3) three members must be members of the senate.

23 (d) Of the members appointed under Subsection (b)(3):

24 (1) one member must represent a river authority or  
25 municipal water supply agency or authority;

26 (2) one member must represent an entity that is  
27 distinguished by its efforts in resource protection; and

1           (3) three members must be members of the house of  
2 representatives.

3           (e) Each appointed member of the study commission serves at  
4 the will of the person who appointed the member.

5           (f) The appointed senator with the most seniority and the  
6 appointed house member with the most seniority serve together as  
7 co-presiding officers of the study commission.

8           (g) A member of the study commission is not entitled to  
9 receive compensation for service on the study commission but is  
10 entitled to reimbursement of the travel expenses incurred by the  
11 member while conducting the business of the study commission, as  
12 provided by the General Appropriations Act.

13           (h) The study commission may accept gifts and grants from  
14 any source to be used to carry out a function of the study  
15 commission.

16           (i) The commission shall provide staff support for the study  
17 commission.

18           (j) The study commission shall conduct public hearings and  
19 study public policy implications for balancing the demands on the  
20 water resources of the state resulting from a growing population  
21 with the requirements of the riverine, bay, and estuary systems  
22 including granting permits for instream flows dedicated to  
23 environmental needs or bay and estuary inflows, use of the Texas  
24 Water Trust, and any other issues that the study commission  
25 determines have importance and relevance to the protection of  
26 environmental flows. In evaluating the options for providing  
27 adequate environmental flows, the study commission shall take

1 notice of the strong public policy imperative that exists in this  
2 state recognizing that environmental flows are important to the  
3 biological health of our parks, game preserves, and bay and estuary  
4 systems and are high priorities in the permitting process. The  
5 study commission shall specifically address ways that the  
6 ecological soundness of these systems will be ensured in the water  
7 allocation process.

8 (k) The study commission:

9 (1) shall appoint an advisory scientific committee  
10 that will:

11 (A) serve as impartial scientific advisors and  
12 reviewers for the study commission; and

13 (B) have a membership of no fewer than five and no  
14 more than nine total members chosen by the study commission to  
15 represent a variety of areas of relevant technical expertise;

16 (2) may appoint additional advisory committees to  
17 assist the study commission; and

18 (3) may draft proposed legislation to modify existing  
19 water rights permitting statutes.

20 (1) Not later than December 1, 2004, the study commission  
21 shall issue a report summarizing:

22 (1) any hearings conducted by the study commission;

23 (2) any studies conducted by the study commission;

24 (3) any legislation proposed by the study commission;

25 and

26 (4) any other findings and recommendations of the  
27 study commission.

1        (m) The study commission shall promptly deliver copies of  
2 the report to the governor, lieutenant governor, and speaker of the  
3 house of representatives.

4        (n) The study commission shall adopt rules to administer  
5 this section.

6        (o) The study commission is abolished and this section  
7 expires September 1, 2005.

8        Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO  
9 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The  
10 commission may not issue a new permit for instream flows dedicated  
11 to environmental needs or bay and estuary inflows. This section  
12 does not prohibit the commission from issuing an amendment to an  
13 existing permit or certificate of adjudication to change the use to  
14 or add a use for instream flows dedicated to environmental needs or  
15 bay and estuary inflows.

16        (b) This section does not alter the commission's  
17 obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F),  
18 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

19        (c) This section expires September 1, 2005.

20        SECTION 3. Subsections (d) and (e), Section 11.147, Water  
21 Code, are amended to read as follows:

22        (d) In its consideration of an application to store, take,  
23 or divert water, the commission shall include in the permit, to the  
24 extent practicable when considering all public interests, those  
25 conditions considered by the commission necessary to maintain  
26 [~~consider the effect, if any, of the issuance of the permit on~~  
27 existing instream uses and water quality of the stream or river to

. 1 which the application applies.

2 (e) The commission shall include in the permit, to the  
3 extent practicable when considering all public interests, those  
4 conditions considered by the commission necessary to maintain [~~also~~  
5 ~~consider the effect, if any, of the issuance of the permit on~~] fish  
6 and wildlife habitats.

7 SECTION 4. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect September 1, 2003.

David Newkirk  
President of the Senate

Jim Cusick  
Speaker of the House

I hereby certify that S.B. No. 1639 passed the Senate on May 1, 2003, by the following vote: Yeas 31, Nays 0; May 29, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 30, 2003, House granted request of the Senate; June 1, 2003, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0. \_\_\_\_\_

Patricia Spaw  
Secretary of the Senate

I hereby certify that S.B. No. 1639 passed the House, with amendments, on May 23, 2003, by the following vote: Yeas 145, Nays 0, two present not voting; May 30, 2003, House granted request of the Senate for appointment of Conference Committee; June 1, 2003, House adopted Conference Committee Report by the following vote: Yeas 131, Nays 8, two present not voting. \_\_\_\_\_

Robert Haney  
Chief Clerk of the House

Approved:

20 JUN 03

Date

Rick Perry  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
8:30 PM O'CLOCK

JUN 20 2003  
Leann Shea  
Secretary of State