



# Water Issues for 83<sup>rd</sup> Texas Legislature

**Austin Bar Association  
Environmental Law Section  
April 4, 2013**

Presented by:

Ty Embrey

*tembrey@lglawfirm.com*

*(512) 322-5829*

*816 Congress Avenue  
Suite 1900*

*Austin, Texas 78701*

*(512) 322-5800*

*(512) 472-0532 Fax*

*www.lglawfirm.com*

## Bill Filing Statistics

- 5779 House Bills and Senate Bills filed as of April 4.
- Filing deadline for bills of general applicability was Friday, March 8.
- 5796 HBs and SBs filed in 2011.
- 7419 HBs and SBs filed in 2009.

## HB 4 (Ritter) / SB 4 (Fraser) – State Water Implementation Fund for Texas

- Creates the State Water Implementation Fund for Texas (SWIFT).
- TWDB may use money in the SWIFT to provide financing for projects included within the State Water Plan, including conservation, reuse, and (in HB 4) education projects.
- Establishes an advisory committee for the SWIFT comprised of members appointed by Speaker, Lt. Governor, and Governor to submit recommendations to the TWDB regarding the use of money in the SWIFT.
- Requires prioritization of projects by RWPGs and TWDB.
- SWIFT funds consist of money transferred to fund, proceeds from any tax or fee dedicated to fund, and interest earned on balance in fund.

## House Bill 11 (Ritter) – Transfer of \$2 Billion from Economic Stabilization Fund

- Appropriates \$2 billion from the Economic Stabilization Fund (Rainy Day Fund) to the State Comptroller to deposit that amount to the State Water Implementation Fund for Texas (SWIFT) as money available for use by the TWDB for the purposes of the SWIFT.
- If the SWIFT is not created by the Legislature, the same amount will be transferred to the to the TWDB for the purposes of TWDB Fund II.

## SB 22 (Fraser) – Administration of TWDB

- Major changes to the governance of the TWDB.
- 3 TWDB Members instead of current 6 Members.
- A person may not serve more than two 6 year terms.
- Each Board Member is required to serve on a full-time basis.
- Governor required to appoint 3 Board Members by 9/1/13.
- Appropriates \$2 Billion from the Rainy Day Fund to the credit of the SWIFT.

## SB 235 (Fraser) – Creation of Regional Water Authorities for Water Infrastructure Projects

- Allows two or more governmental entities to submit a petition to the TCEQ requesting the creation of a regional water authority.
- After notice and public meeting, TCEQ can issue an order creating RWA.
- Can finance water projects, including dams, desalination facilities, reservoir, or treatment fac.
- No ad valorem taxing authority / bonding authority based on revenues.

## HB 2082 (Ritter) / SB 957 (Fraser) – Contested Case Hearings

- Would replace the contested case hearings process for certain types of permits with a notice and comment-type process.
- Applicable to:
  - wastewater discharge permits
  - Class 1 injection well permits
  - air permits

## HB 1600 (Cook) / SB 206 (Nichols) – PUC Sunset

- Second round for PUC Sunset legislation.
- Would continue the PUC until 2023.
- Would transfer the water and wastewater utility CCN and ratemaking functions from the TCEQ to the PUC.
- Gives Office of Public Utility Counsel authority to intervene in water rate cases on behalf of residential and small commercial customers.
- Establishes classifications for Investor Owned Utilities based on number of connections.



## HB 1307 (Geren) / SB 567 (Nichols/Watson)

- Would transfer the water and wastewater utility CCN and ratemaking functions from the TCEQ to the PUC.
- Gives Office of Public Utility Counsel authority to intervene in water rate cases on behalf of residential and small commercial customers.
- Establishes classifications for Investor Owned Utilities (IOUs) based on number of connections.

## HB 2362 (Keffer) / SB 1092 (Birdwell) – Audit and Review of River Authorities

- River authorities are added to the list of entities that are part of the audit plan for the State Auditor.
- Legislative Budget Board may periodically review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of a river authority.

## SB 448 (Fraser) – Audit of LCRA and BRA

- State Auditor required to conduct comprehensive financially related audits of LCRA and BRA.
- Report from State Auditor is due by December 31, 2015.

## HB 635 (Howard) – Sunset Review of LCRA

- Would place LCRA under the Texas Sunset Act.
- Sunset review process would occur over the next two years leading into the 84<sup>th</sup> Legislature.
- LCRA would be responsible for the costs of the Sunset Advisory Commission to review the authority.

## HB 2334 (Callegari) – Brackish Groundwater

- Amends Chapters 11 and 36 of the Water Code.
- Defines “brackish water” and “marine water”
- “Brackish water” means water that contains a total dissolved solids concentration of more than 1,000 milligrams per liter.
- “Marine water” means water that contains TDS concentration of more than 10,000 milligrams per liter and is derived from Gulf of Mexico or adjacent bay, estuary, or arm of Gulf.

## HB 2334 (Callegari) – Brackish Groundwater

- Creates exemption for brackish or marine water from permitting requirements under Chapter 11, Water Code.
- Establishes that interbasin transfer requirements are not applicable to a proposed transfer from one river basin to another river basin of brackish or marine water.
- Adds the definition of “brackish groundwater” to Chapter 36 of the Water Code.
- Provides that the provisions of Chapter 36 are not applicable to wells used to withdraw brackish groundwater.

## HB 1796 (Isaac) – Well Permit Terms

- Adds language to Chapter 36, Water Code to establish that a GCD shall renew a well permit renewal without a hearing if the renewal application is for:
  - same point of groundwater withdrawal
  - place of use of groundwater
  - purpose of use of groundwater
- Similar language regarding no hearings for well permit amendment applications that does not change:
  - point of withdrawal of groundwater
  - place or purpose of use of the groundwater
  - rate or amount of groundwater withdrawal
- GCD can amend operating permits for changing aquifer conditions or DFCs but the amendment may not change the rate or amount of withdrawal by > 5%

## SB 272 (Seliger) – Reporting of Groundwater Production

- Establishes that groundwater conservation districts (GCDs) are required to keep and may require records of the production of groundwater within their boundaries.
- GCDs shall provide the groundwater production reports annually to the TWDB.



## **SB 1297 – Online Message Boards / Texas Open Meetings Act (Watson)**

- Would enable members of a governmental body to communicate or exchange information about public business or public policy over which the governmental body has supervision or control without having to post notice under the TOMA.



## HB 1749 (Perry) / SB 984 (Ellis) – Meeting of Governmental Body by Videoconference

- Amends the Texas Open Meetings Act to enable governmental bodies that extend into 3 or more counties to hold a meeting by videoconference if the member presiding over the meeting is physically present at the meeting location that is open to the public.

## HB 1339 (Ritter) / SB 293 (Williams) – Meetings by Teleconf. or Videoconf.

- Amends Texas Open Meetings Act to allow water districts to hold meetings by telephone or video conf. call if certain conditions are met.
- Defines “water districts” as a river authority, GCD, WCID, or other district created under Sect. 52, Art. III or Sect. 16, Art. XVI of Tex. Const.
- Only applies to a water district whose territory includes land in three or more counties.
- Special called meeting and immediate action required.

## SB 1169 (Hegar) – Water Conservation

- Places the Water Conservation Advisory Council under the Texas Sunset Act.
- Provides more specificity for the report the WCAC provides the legislative leadership to include statutory, budgetary, and policy recommendations to improve water conservation and management.
- Retail public utilities that receive TWDB financial assistance must use portion of funds on mitigating water losses.

## HB 824 (Callegari) / SB 584 (Hegar) – Exemption from Reporting for Accidental Discharges

- Provides an exemption for reporting requirements to the TCEQ for an accidental discharge or spill if the spill is 1,500 gallons or less from a wastewater treatment facility or collection facility that is controlled or removed before the waste or other substance enters water in the state.

## HB 2452 – Watermaster for Brazos River (Bonnen)

- TCEQ is required to create a water division for the entire Brazos River basin.
- Require the TCEQ Executive Director to appoint a water master for the entire Brazos River Basin.

## HB 2616 (Johnson) – Authority of TCEQ to Establish Restrictions - Water Use during Drought

- Would require the TCEQ to establish, by rule, uniform stages of drought response, including measures to be implemented during each stage.

## Questions?

- Any questions?
- Thank you.