

## **BILL ANALYSIS**

C.S.H.B. 720  
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Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that the flood flows resulting from periodic flood events are a valuable resource that could be captured and stored for later use. Concerns have been raised regarding the lack of development in the state of aquifer storage and recovery projects and aquifer recharge projects, which provide for the retention of water but do not fall victim to substantial evaporation unlike some reservoirs. C.S.H.B. 720 seeks to address this issue by making it easier to capture and store this valuable resource and by providing for certain aquifer recharge projects involving the intentional recharge of an aquifer by means of an authorized injection well.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 2 and 3 of this bill.

### **ANALYSIS**

C.S.H.B. 720 amends the Water Code to provide for the appropriation, storage, and diversion of state water for recharge into certain aquifers through surface infiltration or an applicable aquifer recharge project. The bill establishes that such appropriated water, when it is put or allowed to sink into the ground, loses its character and classification as state water and is considered percolating groundwater.

C.S.H.B. 720 authorizes unappropriated water, including storm water and floodwater, to be appropriated for recharge into an aquifer underlying Texas, including an applicable aquifer recharge project. The bill authorizes water appropriated for diversion and a beneficial use to be stored in an aquifer storage and recovery project before the water is recovered for that beneficial use. The bill authorizes the Texas Commission on Environmental Quality (TCEQ) to authorize the appropriation of water for aquifer recharge if TCEQ determines the following:

- the water is not needed under certain applicable provisions to meet downstream instream flow needs or freshwater inflow needs;
- the appropriation will accomplish a statutorily prescribed purpose; and
- the application for the water right or amendment to the water right complies with certain bill provisions.

C.S.H.B. 720 requires a water right or an amendment to a water right authorizing a new appropriation of water for use under the immediately preceding provisions to comply with certain statutory requirements regarding TCEQ action on an application, requires the right or

amendment to include any special conditions TCEQ considers necessary to implement the bill's provisions relating to water for use as aquifer recharge or in an aquifer storage and recovery project, and authorizes the right or amendment to be for water that is not continuously available.

C.S.H.B. 720 requires TCEQ, before approving an application for a water right or an amendment to a water right for a new appropriation of water in the Rio Grande basin under the bill's provisions relating to water for use as aquifer recharge or in an aquifer storage and recovery project, to consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande basin and the effect of the project on the allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The bill prohibits TCEQ from authorizing a new appropriation of water that would result in a violation of a treaty or court decision. The bill subjects an application for a water right or an amendment to a water right under such provisions to the motion and hearing requirements for permits to use state water. The bill requires TCEQ to complete a technical review of an application not later than the 180th day after the date TCEQ determines that a water right or an amendment to a water right under such provisions is administratively complete. The bill requires TCEQ to adopt rules providing for the considerations for determining the frequency that the water must be available before it may be appropriated.

C.S.H.B. 720 authorizes a holder of a water right that authorizes the storage of water for a beneficial use in a reservoir that has not been constructed to file an application to amend the water right to remove the authorization for storage in a reservoir provided that the water diverted under the right will be stored in an applicable authorized aquifer storage and recovery project for later retrieval and use as authorized by the original water right. The bill exempts the application from any notice and hearing requirements of a statute, TCEQ rule, or permit condition and prohibits the application from being referred to the State Office of Administrative Hearings for a contested case hearing if the requested change will not cause a negative effect on other water rights holders or the environment that is greater than the effect that the original permit would have had were the permit rights exercised to the full extent of the original permit. The bill authorizes the application to request an increase in the amount of water that may be diverted or the rate of diversion on the basis of an evaporation credit that takes into account the amount of water that would have evaporated if the storage reservoir had been constructed, subjects such a requesting application to specified notice and hearing requirements, and provides for the inclusion in the amendment of special conditions TCEQ considers necessary for certain purposes.

C.S.H.B. 720 authorizes a holder of a water right authorizing an appropriation of water for storage in a storage reservoir that has lost storage because of sedimentation, as determined by a survey performed by the Texas Water Development Board, to file an application for an amendment to the water right to change the use or purpose for which the appropriation is to be made from storage by diversion to storage as part of an aquifer storage and recovery project for later retrieval and use as authorized by the original water right in an amount equal to all or part of the amount of water yield lost to sedimentation. The bill subjects such an application to specified notice and hearing requirements and provides for the inclusion in the amendment of special conditions TCEQ considers necessary for certain purposes.

C.S.H.B. 720 authorizes TCEQ to adopt rules providing an expedited procedure for acting on, and the procedures for filing and acting on, certain applications for an amendment to a water right, as applicable, under the bill's provisions relating to amendments to convert use from reservoir storage to aquifer storage and recovery.

C.S.H.B. 720 amends the Injection Well Act to set out provisions regarding aquifer recharge projects. The bill grants TCEQ exclusive jurisdiction over the regulation and permitting of recharge injection wells. The bill defines, among other terms, "recharge injection well" as a Class V injection well used for the injection of water into a geologic formation for an aquifer recharge project, including an improved sinkhole or cave connected to an aquifer, and "aquifer

recharge project" as a project involving the intentional recharge of an aquifer by means of an injection well authorized under the act or other means of infiltration.

C.S.H.B. 720 authorizes TCEQ to authorize the use of a Class V injection well as a recharge injection well by rule, under an individual permit, or under a general permit. The bill requires TCEQ to make certain specified considerations in adopting such a rule or issuing such a permit. The bill requires TCEQ by rule to provide for public notice and comment on a proposed general permit. The bill requires TCEQ to require an applicant for an individual permit to provide notice of the application by first class mail to any groundwater conservation district in which the wells associated with the aquifer recharge project will be located and by publishing notice in a newspaper of general circulation in the county in which the wells will be located.

C.S.H.B. 720 requires TCEQ to adopt technical standards governing the approval of the use of a Class V injection well as a recharge injection well. The bill prohibits TCEQ from adopting or enforcing groundwater quality protection standards for the quality of water injected into a recharge injection well that are more stringent than applicable federal standards.

C.S.H.B. 720 requires a project operator to install a meter on each recharge injection well associated with the aquifer recharge project and provide each calendar year to TCEQ a written or electronic report showing for the preceding calendar year the volume of water injected for recharge. The bill requires a project operator to perform water quality testing annually on water to be injected into a geologic formation as part of the aquifer recharge project and provide the results of the testing in written or electronic form to TCEQ.

C.S.H.B. 720 establishes that its provisions relating to such aquifer recharge projects do not affect the ability to regulate an aquifer storage and recovery project as authorized for a certain specified authority and certain specified districts and do not affect the authority of TCEQ regarding certain recharge projects, certain injection wells, or certain aquifer storage and recovery projects.

C.S.H.B. 720 requires TCEQ to adopt rules not later than June 1, 2020, to implement specified bill provisions relating to:

- water for use as aquifer recharge or in an aquifer storage and recovery project;
- amendments to convert use from reservoir storage to aquifer storage and recovery; and
- aquifer recharge projects under the Injection Well Act.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 720 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions that provide for the appropriation, storage, and diversion of state water for recharge into certain aquifers through surface infiltration or an applicable aquifer recharge project.

The substitute, generally, changes the manner by which it provides for and implements provisions relating to the use of water in an aquifer storage and recovery project by providing for those provisions in new statutory provisions rather than amending existing statutory provisions relating to projects for the storage of appropriated water in aquifers and by including in the new statutory provisions the use of water for aquifer recharge. The substitute, with respect to that

change:

- does not include the amendatory provision authorizing a water right holder or a person who has contracted for the use of water under a contract that does not prohibit the use of the water in an aquifer storage and recovery project, who may undertake an aquifer storage and recovery project without obtaining any additional applicable authorization for the project, to subsequently retrieve and use the water under the existing water right without obtaining any such additional authorization;
- includes a provision authorizing unappropriated water to be appropriated for recharge into an aquifer underlying Texas, authorizing water appropriated for diversion and a beneficial use to be stored in an aquifer storage and recovery project before the water is recovered for that beneficial use, and authorizing TCEQ to authorize the appropriation of water for aquifer recharge if TCEQ makes certain determinations; and
- differs in other related details.

The substitute makes changes to applicable bill provisions with respect to:

- provisions relating to the amendment of a water right to convert the use of water from reservoir storage to aquifer storage and recovery;
- authorizations for holders of a water right to file an application for an amendment to the water right; and
- certain notice and hearing requirements for an application for an amendment to a water right.

The substitute adds a subchapter to the Injection Well Act providing for aquifer recharge projects that involve the intentional recharge of an aquifer by means of an authorized injection well or other means of infiltration.

The substitute includes a procedural provision requiring TCEQ to adopt applicable rules not later than June 1, 2020.