

## **BILL ANALYSIS**

Senate Research Center  
79R14877 JTS-F

H.B. 2651  
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Natural Resources  
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Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

In 2001, the Texas Commission on Environmental Quality (TCEQ) determined that subsurface drip dispersal systems would not be included in the Underground Injection Code (UIC) program due to the irrigation and beneficial reuse labels. In August 2003, the United States Environmental Protection Agency (EPA) defined any injection within a "formation" as an injection well. TCEQ determined that the root zone was not included as part of the formation.

However, the EPA has since stated that the root zone is, in fact, part of the formation. Therefore, these systems are required to meet the federal UIC rules for class V injection.

Subsurface drip dispersal systems reuse water for golf courses, park areas, neighborhood landscaping, school sports and playground facilities, and youth-league sports facilities. These commercial uses can help minimize total waste treatment costs by reducing the need for miles of interceptors or by producing income from the sale of reused water.

H.B. 2651 keeps subsurface drip dispersal systems from being placed under Underground Injection Code requirements. H.B. 2651 requires the TCEQ to create rules separate from the underground injection category and sets up a permitting system for subsurface drip dispersal systems.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 32.056, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle D, Title 2, Water Code, by adding Chapter 32, as follows:

#### CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. Authorizes this chapter to be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. Defines "commission," "commercial, industrial, or municipal waste," "department," "executive director," "fresh water," "pollution," "processed," and "subsurface area drip dispersal system."

Sec. 32.003. POLICY AND PURPOSE. Sets forth the policy of the state and the purpose of this chapter.

[Reserves Sections 32.004-32.050 for expansion.]

##### SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 32.051. PERMIT FROM COMMISSION. Prohibits a person from operating a subsurface area drip dispersal system without first obtaining a permit from the Texas Commission on Environmental Quality (TCEQ).

Sec. 32.052. APPLICATION FOR PERMIT. Requires TCEQ to prescribe forms for application for a permit and to make the forms available on request without charge.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. Requires an applicant to furnish any information the executive director of TCEQ (executive director) considers necessary to discharge the executive director's duties under this chapter and the rules of TCEQ.

Sec. 32.054. INSPECTION OF DISPERSION AREA. Requires the executive director, on receiving an application for a permit, to inspect the location of the proposed dispersion area to determine the local conditions and the probable effect of the subsurface area drip dispersal system.

Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. Requires the executive director to submit to the Department of State Health Services (DSHS) and to other persons designated by the commission copies of each permit application received in proper form. Authorizes a person to whom an application is submitted to make recommendations to TCEQ concerning any aspect of the application not later than the 30th day after the date the application is submitted.

Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) Provides that in this section, "local government" has the meaning assigned by Section 26.001.

(b) Authorizes TCEQ to hold a public hearing on a permit application for a subsurface area drip dispersal system upon determining that a hearing is necessary and in the public interest.

(c) Requires TCEQ to hold a public hearing on a permit application for a subsurface area drip dispersal system if a hearing is requested by a local government located in the county of the proposed disposal site or by an affected person.

(d) Requires TCEQ, by rule, to provide for giving notice of the opportunity to request a public hearing on a permit application. Requires the rules for notice to include provisions for giving notice to local governments and affected persons.

(e) Requires evidence to be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons, before TCEQ begins to hear the testimony in a contested case as defined by Chapter 2001 (Administrative Procedure), Government Code. Requires TCEQ or other party to the hearing, if mailed notice to an affected person is required, to place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. Requires the affidavit of a TCEQ employee responsible for the mailing of the notice, for the purposes of this subsection, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, to be prima facie evidence of proper mailing. Prohibits TCEQ from prohibiting with receipt of testimony in a contested case until the requirements of this subsection are complied with.

Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. Requires TCEQ to send copies of proposed rules under this chapter to DSHS and any other persons designated by TCEQ. Authorizes a person to whom the copies of proposed rules are sent to submit comments and recommendations to TCEQ and to have a reasonable time to do so as determined by TCEQ.

[Reserves Sections 32.058-32.100 for expansion.]

#### SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

Sec. 32.101. ISSUANCE OF PERMIT. (a) Authorizes TCEQ to grant an application for a permit for a subsurface area drip dispersal system in whole or part and to issue the permit upon determining specific findings.

(b) Requires TCEQ to impose terms and conditions in the permit reasonably necessary to protect fresh water from pollution.

(c) Requires TCEQ, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), to make specific considerations.

(d) Requires TCEQ to establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including other specific information. Sets forth requirements for the application and evidence. Requires TCEQ to consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. Requires TCEQ to deny the permit upon concluding that the applicant's compliance history is unacceptable.

Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) Requires TCEQ to send a copy of each permit issued under this chapter to DSHS.

(b) Requires a person receiving a permit for a subsurface area drip dispersal system to file a copy of the permit with the applicable local health authorities of the area in which the system is located, before beginning injection operations.

[Reserves Sections 32.103-32.150 for expansion.]

#### SUBCHAPTER D. GENERAL POWERS

Sec. 32.151. POWER TO ENTER PROPERTY. Authorizes a member or employee of TCEQ or an authorized agent or employee of a local government to enter public or private property to inspect and investigate conditions relating to a subsurface area drip dispersal system in connection with subsurface drip dispersal activities or to monitor compliance with a rule, permit, or order of the commission. Requires a member or employee acting under the authority of this section who enters an establishment on public or private property to observe the establishment's safety, internal security, and fire protection rules.

Sec. 32.152. POWER TO EXAMINE RECORDS. Authorizes a member or employee of the commission or an authorized agent or employee of a local government to examine and copy any record or memorandum of a business the member, employee, or agent is investigating as provided by Section 32.151 that relates to the operation of a subsurface area drip dispersal system or any other record TCEQ requires the business to maintain.

SECTION 2. Requires TCEQ to adopt rules and be prepared to accept applications for permits under Chapter 32, Water Code, as added by this Act, not later than July 31, 2006. Provides that a person is not required to hold a permit under Chapter 32, Water Code, as added by this Act, before November 1, 2006.

SECTION 3. Effective date: upon passage or September 1, 2005.