

## **BILL ANALYSIS**

Senate Research Center

S.B. 1387  
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Natural Resources  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, there is no regulatory framework in Texas for the non-commercial sequestration of carbon dioxide and entities wanting to capture and sequester carbon dioxide for long-term storage are left without clear legal guidelines by which to operate. Under the new administration in Washington, D.C., the adoption of federal mandates to regulate carbon dioxide as a pollutant is more likely than ever. Texas operators may very well be required to capture and sequester carbon dioxide under these new rules as early as 2011.

As proposed, S.B. 1387 provides needed state-level regulatory framework for non-commercial sequestration of carbon dioxide. S.B. 1387 provides that the Texas Commission on Environmental Quality (TCEQ) has jurisdiction over the injection of anthropogenic carbon dioxide but the Railroad Commission of Texas retains jurisdiction over carbon dioxide injection into a reservoir that is initially productive of oil, gas, or geothermal resources. This bill enhances coordination between the railroad commission and TCEQ to ensure that the regulation of carbon dioxide sequestration in Texas is economical and environmentally sound. S.B. 1387 also requires that rules adopted by the railroad commission be consistent with and not more stringent than rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage or anthropogenic carbon dioxide.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Section 27.022, Water Code) and SECTION 3 (Sections 27.045 and 27.048, Water Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 3 (Sections 27.046 and 27.048, Water Code), SECTION 7 (Section 91.801, Natural Resources), and SECTION 8 (Section 120.004, Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 27.002, Water Code, by adding Subdivisions (19)-(25), to define "anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well" (anthropogenic well), "enhanced recovery operation," "geologic storage," "geologic storage facility," "oil or gas," and "reservoir."

SECTION 2. Amends Subchapter B, Chapter 27, Water Code, by amending Section 27.022 and adding Section 27.0221, as follows:

Sec. 27.022. New heading: JURISDICTION OVER ANTHROPOGENIC CARBON DIOXIDE INJECTION. (a) Creates this subsection from existing text. Provides that the Texas Commission on Environmental Quality (TCEQ) has jurisdiction over the injection of anthropogenic carbon dioxide except as provided by Subchapter C-1.

(b) Requires TCEQ to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this section. Deletes existing text providing that TCEQ has jurisdiction over the injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a zone that is below the base of usable quality water and that is not

productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

Sec. 27.0221. LETTER FROM RAILROAD COMMISSION. (a) Requires a person making application to TCEQ for a permit to drill and operate an anthropogenic well or operate a geologic storage facility to submit with the application a letter from the railroad commission concluding that drilling or using the anthropogenic well and injecting anthropogenic carbon dioxide into the subsurface stratum will not endanger or injure any known oil or gas reservoir.

(b) Prohibits TCEQ, in a hearing on an application for a permit under this section, from proceeding to hearing on any issues other than preliminary matters such as notice until the letter required from the railroad commission under Subsection (a) is provided to TCEQ.

(c) Requires TCEQ to find that there will be no impairment of oil or gas mineral rights if the railroad commission has issued a letter under Subsection (a) that concludes that drilling and using the anthropogenic well will not endanger or injure any known oil or gas reservoir.

SECTION 3. Amends Chapter 27, Water Code, by adding Subchapter C-1, as follows:

#### SUBCHAPTER C-1. INJECTION AND GEOLOGIC STORAGE OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 27.041. JURISDICTION. (a) Provides that the railroad commission has jurisdiction over injection of anthropogenic carbon dioxide into a reservoir that is initially productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir. Requires that any well initially completed under the jurisdiction of the railroad commission remain under the jurisdiction of the railroad commission, notwithstanding the well's subsequent use for the injection of anthropogenic carbon dioxide.

(b) Provides that this subchapter does not apply to the injection of fluid through the use of a Class II injection well as defined by 40 C.F.R. Section 144.6(b) for the sole purpose of the enhanced recovery of oil or gas.

Sec. 27.042. PERMIT FROM RAILROAD COMMISSION. Prohibits a person from beginning drilling or operating an anthropogenic well or constructing or operating a geologic storage facility regulated under this subchapter without first obtaining a permit from the railroad commission.

Sec. 27.043. INFORMATION REQUIRED OF APPLICANT. Requires the railroad commission to require an applicant to provide any information the railroad commission considers necessary to discharge its duties under this subchapter.

Sec. 27.044. FEES. (a) Authorizes the railroad commission to impose fees to cover the cost of permitting, monitoring, and inspecting anthropogenic wells and geologic storage facilities and enforcing this subchapter and rules adopted by the railroad commission under this subchapter.

(b) Requires that fees collected by the railroad commission under this section be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 120.003, Natural Resources Code.

Sec. 27.045. LETTER FROM EXECUTIVE DIRECTOR. (a) Requires that an application to the railroad commission for a permit under this subchapter include a letter from the executive director of TCEQ (executive director) stating that drilling and operating the anthropogenic well or operating the geologic storage facility will not endanger any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

(b) Requires the executive director, to make the determination required by Subsection (a), to review certain information.

(c) Requires TCEQ to adopt rules to implement and administer this section.

Sec. 27.046. RULES. Requires the railroad commission to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this subchapter, including rules for the injection and geologic storage of anthropogenic carbon dioxide, including certain activities; the enforcement of this subchapter and rules adopted by the railroad commission under this subchapter; and the collection and administration of fees imposed under Section 27.044 and penalties imposed for a violation of this subchapter or rules adopted by the railroad commission under this subchapter.

Sec. 27.047. CONSISTENCY WITH AND IMPLEMENTATION OF FEDERAL REQUIREMENTS. (a) Requires that rules adopted by the railroad commission under this subchapter be consistent with and not more stringent than rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage or anthropogenic carbon dioxide.

(b) Authorizes TCEQ and the railroad commission, if rules or regulations adopted to govern the injection and geologic storage of anthropogenic carbon dioxide under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) allow the state to seek primary enforcement authority under the underground injection control program, to seek primacy to administer and enforce the program subject to the jurisdiction of each agency under state law.

Sec. 27.048. MEMORANDUM OF UNDERSTANDING. Requires TCEQ and the railroad commission by rule to amend as necessary the memorandum of understanding recorded in 16 T.A.C. Section 3.30 or to enter into a new memorandum of understanding as necessary to comply with the provisions of this subchapter.

Sec. 27.049. FINANCIAL RESPONSIBILITY. Requires a person to whom a permit is issued under this subchapter to provide to the railroad commission annually evidence of financial responsibility that is satisfactory to the railroad commission.

SECTION 4. Amends Section 27.051, Water Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the railroad commission to grant an application for a permit under Subchapter C (Oil and Gas Waste; Injection Wells) in whole or part and to issue the permit if it finds certain information, including that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 (Financial Responsibility), rather than by Section 27.073 of this code.

(b-1) Authorizes the railroad commission to issue a permit under Subchapter C-1 if it finds that the injection and geologic storage of anthropogenic carbon dioxide will not endanger or injure any oil, gas, or other mineral formation; with proper safeguards, both groundwater and surface fresh water can be adequately protected from pollution; the injection of anthropogenic carbon dioxide will not endanger human health and safety; and the applicant for the permit meets all of the statutory and regulatory requirements for the issuance of the permit.

SECTION 5. Amends Sections 27.071 and 27.072, Water Code, as follows:

Sec. 27.071. POWER TO ENTER PROPERTY. Authorizes members and employees of TCEQ and the railroad commission to enter public and private property to inspect and investigate conditions relating to certain wells to include an anthropogenic well, or geologic storage activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of TCEQ or railroad commission.

Sec. 27.072. POWER TO EXAMINE RECORDS. Makes conforming changes.

SECTION 6. Amends Sections 27.073(a) and (b), Water Code, as follows:

(a) Authorizes a person to whom an injection well or anthropogenic well permit is issued to be required by TCEQ or the railroad commission to maintain a performance bond or other form of financial security to ensure that an abandoned injection well is properly plugged or funds are available for plugging, postinjection site care, and closure of an anthropogenic well. Makes nonsubstantive changes.

(b) Provides that each state agency is authorized to receive funds as the beneficiary of a financial responsibility mechanism established under this section for the proper plugging of an injection well or proper management of an anthropogenic well or geologic storage facility.

SECTION 7. Amends Chapter 91, Natural Resources Code, by adding Subchapter R, as follows:

#### SUBCHAPTER R. CONVERSION OF PURPOSE OF WELLS

Sec. 91.801. CONVERSION OF WELL TO NEW OR ADDITIONAL PURPOSE. (a) Requires the railroad commission to adopt rules allowing a person to obtain an injection well permit for multiple purposes and an operator of a well authorized by a permit issued by the railroad commission to convert the well from its authorized purpose to a new or additional purpose.

(b) Provides that if a well is converted to or authorized as an anthropogenic well as defined by Section 27.002, Water Code, Subchapter C-1, Chapter 27, Water Code, applies to the well.

SECTION 8. Amends Subtitle D, Title 3, Natural Resources Code, by adding Chapter 120, as follows:

#### CHAPTER 120. OWNERSHIP AND STEWARDSHIP OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 120.001. DEFINITIONS. Defines "anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well," "geologic storage facility," "commission," and "storage operator."

Sec. 120.002. OWNERSHIP OF ANTHROPOGENIC CARBON DIOXIDE. (a) Provides that unless otherwise expressly provided by a contract, bill of sale, mortgage, deed of trust, or other legally binding document or by other law, anthropogenic carbon dioxide stored in a geologic storage facility is considered to be the personal property of the storage operator or the storage operator's heirs, successors, or assigns.

(b) Provides that absent a final judgment of wilful abandonment rendered by a court or a regulatory determination of closure or abandonment, anthropogenic carbon dioxide stored in a geologic storage facility is not considered to be the property of the owner of the surface or mineral estate in the land in which the anthropogenic carbon dioxide is stored or of a person claiming under the owner of the surface or mineral estate.

(c) Authorizes the owner, as designated by Subsection (a) or (b), of the anthropogenic carbon dioxide stored in a geologic storage facility, or the owner's heirs, successors, or assigns, to produce, take, or reduce to possession anthropogenic carbon dioxide stored in a geologic storage facility.

Sec. 120.003. ANTHROPOGENIC CARBON DIOXIDE STORAGE TRUST FUND. (a) Creates the anthropogenic carbon dioxide storage trust fund (fund) as a special fund in the state treasury.

(b) Provides that the fund is an interest-bearing fund and requires that interest earned on money in the fund be deposited to the credit of the fund.

(c) Requires that fees collected by the railroad commission under Subchapter C-1, Chapter 27, Water Code, and penalties imposed for violations of that subchapter or rules adopted under that subchapter be deposited to the credit of the fund.

(d) Authorizes the fund to be used by the railroad commission only for certain activities.

Sec. 120.004. EXTRACTION OF STORED ANTHROPOGENIC CARBON DIOXIDE.

(a) Requires the railroad commission to adopt rules allowing anthropogenic carbon dioxide stored in a geologic storage facility to be extracted for a commercial or industrial use.

(b) Provides that the railroad commission has jurisdiction over the extraction of anthropogenic carbon dioxide stored in a geologic storage facility.

SECTION 9. (a) Defines "anthropogenic carbon dioxide," "geologic storage," and "geologic storage facility."

(b) Requires the Commissioner of the General Land Office, not later than December 1, 2010, to file with the legislature a report on a recommended framework for managing activities related to geologic storage on state-owned land. Sets forth the requirements of the report.

(c) Requires the Commissioner of the General Land Office, in preparing the report under Subsection (b) of this section, to coordinate with the Bureau of Economic Geology of The University of Texas at Austin, the railroad commission, TCEQ, and the heads of other appropriate agencies.

(d) Provides that this section expires December 31, 2010.

SECTION 10. (a) Requires TCEQ and the railroad commission, not later than January 1 of every odd-numbered year, to issue a joint report to the legislature providing an assessment of the permitting process for anthropogenic wells and geologic storage facilities and the status of compliance with any federal rules regulating the injection and storage of anthropogenic carbon dioxide.

(b) Sets forth the requirements of the report.

(c) Provides that this section expires January 1, 2019.

SECTION 11. Repealer: Section 27.038 (Jurisdiction over Carbon Dioxide Injection), Water Code.

SECTION 12. (a) Requires the railroad commission, not later than January 1, 2010, to adopt rules under Section 27.046, Water Code, as added by this Act.

(b) Requires TCEQ and the railroad commission to adopt rules under Section 27.048, Water Code, as added by this Act, as soon as practicable after the effective date of this Act.

(c) Requires the railroad commission to adopt rules under Sections 91.801 and 120.004, Natural Resources Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 13. Effective date: September 1, 2009.