

BILL ANALYSIS

Senate Research Center
84R18019 SLB-F

C.S.S.B. 1903
By: Perry
Agriculture, Water & Rural Affairs
4/14/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1903 creates a regulatory framework for aquifer storage and recovery projects that clarifies that an amendment to a water right permit is not required to obtain an aquifer storage and recovery permit, grants the Texas Commission on Environmental Quality exclusive jurisdiction to regulate aquifer storage and recovery projects, and clarifies that an aquifer storage and recovery project does not have to obtain a permit from a local groundwater conservation district as long as native groundwater is not being produced. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1903 amends current law relating to the storage and recovery of water in aquifers, authorizes fees and surcharges, and adds provisions subject to a criminal penalty.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 2 (Sections 27.153 and 27.154, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 11.153(a), (b), and (c), Water Code, as follows:

(a) Defines "aquifer storage and recovery project." Deletes existing text requiring the Texas Natural Resource Conservation Commission (TNRCC) to investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use.

(b) Authorizes 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 to undertake an aquifer storage and recovery project without obtaining any additional authorization under this chapter for the project. Requires a person described by this subsection undertaking an aquifer storage and recovery project to:

(1) obtain any required authorizations under Subchapter G, Chapter 27, and Subchapter N, Chapter 36; and

(2) comply with the terms of the applicable water right. Deletes existing text requiring that a permit described by Subsection (a) be for only the duration of the pilot project to provide TNRCC and the Texas Water Development Board (TWDB) further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.

(c) Provides that this section does not preclude TNRCC from considering an aquifer storage and recovery project to be a component of a project permitted under this chapter

that is not required to be based on the continuous availability of historic, normal stream flow. Deletes existing text authorizing a permit holder to file an appropriate application for a permit or permit amendment at the conclusion of a pilot project. Deletes existing text requiring TNRCC, after considering the success of the project and the criteria set out in Section 11.154 (Permits to Store Appropriated Water in Aquifers), to determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.

SECTION 2. Amends Chapter 27, Water Code, by adding Subchapter G, as follows:

SUBCHAPTER G. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 27.151. DEFINITIONS. Defines "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," "native groundwater," and "project operator."

Sec. 27.152. JURISDICTION. Provides that the Texas Commission on Environmental Quality (TCEQ) has exclusive jurisdiction over the regulation and permitting of ASR injection wells.

Sec. 27.153. AUTHORIZATION FOR USE OF CLASS V INJECTION WELLS. (a) Authorizes TCEQ to authorize the use of a Class V injection well as an ASR injection well:

- (1) by rule;
- (2) under an individual permit; or
- (3) under a general permit.

(b) Requires TCEQ, in adopting a rule or issuing a permit under this section, to consider:

(1) whether the injection of water will comply with the standards set forth under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.);

(2) the extent to which the cumulative volume of water injected for storage in the receiving geologic formation can be successfully recovered from the geologic formation for beneficial use, taking into account that injected water may be commingled to some degree with native groundwater;

(3) the effect of the aquifer storage and recovery project on existing water wells; and

(4) whether the introduction of water into the receiving geologic formation will alter the physical, chemical, or biological quality of the native groundwater to a degree that would:

(A) render the groundwater produced from the receiving geologic formation harmful or detrimental to people, animals, vegetation, or property; or

(B) require an unreasonably higher level of treatment of the groundwater produced from the receiving geologic formation than is necessary for the native groundwater in order to render the groundwater suitable for beneficial use.

(c) Requires that all wells associated with a single aquifer storage and recovery project be located within a continuous perimeter boundary of one parcel of land,

or two or more adjacent parcels of land under common ownership, lease, joint operating agreement, or contract.

(d) Requires TCEQ by rule to provide for public notice and comment on a proposed general permit authorized under this section. Requires TCEQ to require an applicant for an individual permit authorized under this section to provide notice of the application by first class mail to any groundwater conservation district in which the wells associated with the aquifer storage and recovery project will be located and by publishing notice in a newspaper of general circulation in the county in which the wells will be located.

Sec. 27.154. TECHNICAL STANDARDS. (a) Requires TCEQ to adopt technical standards governing the approval of the use of a Class V injection well as an ASR injection well.

(b) Provides that this subsection applies only to an aquifer storage and recovery project proposed to be located in a groundwater conservation district or other special-purpose district with the authority to regulate the withdrawal of groundwater. Requires TCEQ, except as otherwise provided by this section, to limit the volume of water that may be recovered by an aquifer storage and recovery project to an amount that does not exceed the amount of water injected under the project. Requires TCEQ to impose additional restrictions on the amount of water that may be recovered to account for the loss if TCEQ determines that the proposed injection of water into a geologic formation will result in a loss of injected water or native water from the formation. Prohibits TCEQ from denying a permit based on a determination that a loss described by this subsection will occur. Prohibits a limitation imposed under this subsection from prohibiting the production of native groundwater by an aquifer storage and recovery project if the production complies with Subchapter N, Chapter 36.

(c) Requires TCEQ by rule to prescribe construction and completion standards and metering and reporting requirements for ASR injection wells and ASR recovery wells, including for an ASR injection well that also serves as an ASR recovery well.

(d) Prohibits TCEQ from adopting or enforcing groundwater quality protection standards for the quality of water injected into an ASR injection well that are more stringent than applicable federal standards.

Sec. 27.155. REPORTING OF INJECTION AND RECOVERY VOLUMES. (a) Requires a project operator to install a meter on each ASR injection well and ASR recovery well associated with the aquifer storage and recovery project.

(b) Requires the project operator to provide to TCEQ each calendar month a written or electronic report showing for the preceding calendar month the volume of water injected for storage and recovered for beneficial use.

Sec. 27.156. REPORTING OF WATER QUALITY DATA. Requires a project operator to:

(1) perform water quality testing annually on water to be injected into a geologic formation and water recovered from a geologic formation as part of the aquifer storage and recovery project; and

(2) provide the results of the testing described by Subdivision (1) in written or electronic form to TCEQ.

Sec. 27.157. OTHER LAWS NOT AFFECTED. (a) Provides that this subchapter does not affect the ability to regulate an aquifer storage and recovery project as authorized under:

- (1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;
- (2) Chapter 8801 (Harris-Galveston Subsidence District), Special District Local Laws Code, for the Harris-Galveston Subsidence District;
- (3) Chapter 8834 (Fort Bend Subsidence District), Special District Local Laws Code, for the Fort Bend Subsidence District;
- (4) Chapter 8802 (Barton Springs-Edwards Aquifer Conservation District), Special District Local Laws Code, for the Barton Springs-Edwards Aquifer Conservation District; or
- (5) Chapter 8811 (Corpus Christi Aquifer Storage and Recovery Conservation District), Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

(b) Provides that this subchapter does not affect the authority of TCEQ regarding:

- (1) recharge projects in certain portions of the Edwards underground reservoir under Sections 11.023(c) (relating to unappropriated storm water and floodwater) and (d) (relating to water appropriated under Subsection (c) of this section); or
- (2) injection wells that transect or terminate in certain portions of the Edwards Aquifer under Section 27.0516 (Permits for Injection Wells that Transect or Terminate in Portion of Edwards Aquifer within External Boundaries of Barton Springs-Edwards Aquifer Conservation District).

SECTION 3. Amends Chapter 36, Water Code, by adding Subchapter N, as follows:

SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 36.451. DEFINITIONS. Defines "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator."

Sec. 36.452. APPLICABILITY TO RECOVER WELLS THAT ALSO FUNCTION AS INJECTION WELLS. Provides that, notwithstanding Section 27.152, this subchapter applies to an ASR recovery well that also functions as an ASR injection well.

Sec. 36.453. REGISTRATION AND REPORTING OF WELLS. (a) Requires a project operator to:

- (1) register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with any district in which the wells are located;
- (2) each calendar month by the deadline established by TNRCC for reporting to TNRCC, provide the district with a copy of the written or electronic report required to be provided to TNRCC under Section 27.155; and
- (3) annually by the deadline established by TNRCC for reporting to TNRCC, provide the district with a copy of the written or electronic report required to be provided to TNRCC under Section 27.156.

(b) Requires the project operator to report to the district the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection (a)(2) if an aquifer storage

and recovery project recovers an amount of groundwater that exceeds the volume authorized by TNRCC to be recovered under the project.

Sec. 36.454. PERMITTING, SPACING, AND PRODUCTION REQUIREMENTS. (a) Prohibits a district, except as provided by Subsection (b), from requiring a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by TNRCC.

(b) Provides that the ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the district if the amount of groundwater recovered from the wells exceeds the volume authorized by TNRCC to be recovered under the project. Provides that the requirements of the district apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by TNRCC to be recovered.

(c) Prohibits a project operator from recovering groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by TNRCC to be recovered under the project unless the project operator complies with the applicable requirements of a district as described by this section.

Sec. 36.455. FEES AND SURCHARGES. (a) Prohibits a district from assessing a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by TNRCC to be recovered.

(b) Authorizes a district to assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the district assesses such a fee for other wells registered with the district.

Sec. 36.456. DESIRED FUTURE CONDITIONS. Authorizes a district to consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.

Sec. 36.457. OTHER LAWS NOT AFFECTED. Provides that this subchapter does not affect the ability to regulate groundwater as authorized under:

- (1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;
- (2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District;
- (3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District;
- (4) Chapter 8802, Special District Local Laws Code, for the Barton Springs-Edwards Aquifer Conservation District; or
- (5) Chapter 8811, Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

SECTION 4. Repealer: Sections 11.153(d) (relating to TNRCC permitting for storage of appropriated water in aquifers) and (e) (relating to a TWDB study regarding pilot projects), Water Code;

Repealer: Section 11.154 (Permits to Store Appropriated Water in Aquifers), Water Code.

Repealer: Section 11.155 (Aquifer Storage Pilot Project Reports), Water Code.

SECTION 5. Requires TCEQ to adopt rules to implement Section 11.153, Water Code, as amended by this Act, and Subchapter G, Chapter 27, Water Code, as added by this Act, not later than May 1, 2016.

SECTION 6. Effective date: upon passage or September 1, 2015.