

## BILL ANALYSIS

Senate Research Center

H.B. 720  
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Water & Rural Affairs  
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Engrossed

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

H.B. 720 amends current law relating to appropriations of water for recharge of aquifers and use in aquifer storage and recovery projects.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Sections 11.157 and 11.158, Water Code), and SECTION 3 (Section 27.203, Water Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 11.023(a) and (d), Water Code, as follows:

(a) Authorizes state water, to the extent that state water has not been set aside by the Texas Commission on Environmental Quality (TCEQ) under Section 11.1471(a)(2) (relating to requiring TCEQ by rule to establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs) to meet downstream instream flow needs or freshwater inflow needs, to be appropriated, stored, or diverted for:

(1)–(6) makes no changes to these subdivisions;

(7)–(8) makes nonsubstantive changes to these subdivisions; and

(9) recharge into an aquifer underlying this state other than an aquifer described under Subsection (c) through surface infiltration or an aquifer recharge project as defined by Section 27.201.

(d) Provides that, when it is put or allowed to sink into the ground, water appropriated under Subsections (a)(9) and (c) (relating to authorizing unappropriated storm water and floodwater to be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays Counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use) loses its character and classification as state water, storm water, or floodwater and is considered percolating groundwater, rather than providing that, when it is put or allowed to sink into the ground, water appropriated under Subsection (c) of this section (Purposes For Which Water May Be Appropriated) loses its character and classification as storm water or floodwater and is considered percolating groundwater.

SECTION 2. Amends Subchapter D, Chapter 11, Water Code, by adding Sections 11.157 and 11.158, as follows:

Sec. 11.157. WATER FOR USE AS AQUIFER RECHARGE OR IN AN AQUIFER STORAGE AND RECOVERY PROJECT. (a) Authorizes unappropriated water,

including storm water and floodwater, to be appropriated for recharge into an aquifer underlying this state, including an aquifer recharge project as defined by Section 27.201. Authorizes water appropriated for diversion and a beneficial use to be stored in an aquifer storage and recovery project, as defined by Section 27.151 (Definitions), before the water is recovered for that beneficial use.

(b) Authorizes TCEQ to authorize the appropriation of water under Subsection (a) if TCEQ determines that:

(1) the water is not needed under Section 11.147 (Environmental Flow Standards and Set-Asides) or 11.1471(a)(2), as applicable, to meet downstream instream flow needs or freshwater inflow needs;

(2) the appropriation will accomplish a purpose established by Section 11.023; and

(3) the application for the water right or amendment to the water right complies with Subsection (c).

(c) Provides that a water right or an amendment to a water right authorizing a new appropriation of water for use under Subsection (a):

(1) is required to comply with the requirements of Section 11.134 (Action or Application);

(2) is required to include any special conditions TCEQ considers necessary to implement this section; and

(3) is authorized to be for water that is not continuously available.

(d) 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 this section, 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. Prohibits TCEQ from authorizing a new appropriation of water that would result in a violation of a treaty or court decision.

(e) Provides that an application for a water right or an amendment to a water right under this section is subject to the motion and hearing requirements of this subchapter (Permits to Use State Water).

(f) Requires TCEQ, not later than the 180th day after the date TCEQ determines that a water right or an amendment to a water right under this section is administratively complete, to complete a technical review of the application.

(g) Requires TCEQ to adopt rules providing for the considerations for determining the frequency that the water must be available before it may be appropriated.

Sec. 11.158. AMENDMENT TO CONVERT USE FROM RESERVOIR STORAGE TO AQUIFER STORAGE AND RECOVERY. (a) Defines "aquifer storage and recovery project" for purposes of this section.

(b) 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 aquifer storage and recovery project authorized under Section 27.153 (Authorization For

Use of Class V Injection Wells) for later retrieval and use as authorized by the original water right.

(c) Authorizes an application for an amendment to a water right described by Subsection (b) to request an increase in the amount of water that is authorized to 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.

(d) 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.

(e) Provides that an application for an amendment to a water right described by Subsection (b) is exempt from any notice and hearing requirements of a statute, TCEQ rule, or permit condition and may not be 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.

(f) Provides that an application for an amendment to a water right described by Subsection (c) or (d) is subject to the notice and hearing requirements of this chapter (Water Rights).

(g) Requires TCEQ, if TCEQ grants an application for an amendment to a water right described by Subsection (c) or (d), to include in the amendment any special conditions TCEQ considers necessary to:

(1) protect existing water rights; and

(2) comply with any applicable requirements established under Section 11.147 (Effects of Permits on Bays and Estuaries and Instream Uses) or 11.1471.

(h) Authorizes TCEQ to adopt rules providing an expedited procedure for acting on an application for an amendment to a water right described by Subsection (b) and the procedures to file and act on an application for an amendment to a water right described by Subsection (c) or (d).

SECTION 3. Amends Chapter 27, Water Code, by adding Subchapter H, as follows:

#### SUBCHAPTER H. AQUIFER RECHARGE PROJECTS

Sec. 27.201. DEFINITIONS. Defines "aquifer recharge project," "native groundwater," "project operator," and "recharge injection well" for purposes of this subchapter.

Sec. 27.202 JURISDICTION. Provides that TCEQ has exclusive jurisdiction over the regulation and permitting of recharge injection wells.

Sec. 27.203. AUTHORIZATION FOR USE OF CLASS V INJECTION WELLS. (a) Authorizes TCEQ to authorize the use of a Class V injection well as a recharge 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 established by the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.);

(2) the effect of the aquifer recharge project on existing water wells; and

(3) 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 to render the groundwater suitable for beneficial use.

(c) 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 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.

Sec. 27.204. TECHNICAL STANDARDS. (a) Requires TCEQ to adopt technical standards governing the approval of the use of a Class V injection well as a recharge injection well.

(b) 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.

Sec. 27.205. REPORTING OF INJECTION VOLUMES. (a) Requires a project operator to install a meter on each recharge injection well associated with the aquifer recharge project.

(b) Requires each calendar year, the project operator to provide to TCEQ a written or electronic report showing for the preceding calendar year the volume of water injected for recharge.

Sec. 27.206. 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 as part of the aquifer recharge project; and

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

Sec. 27.207. OTHER LAWS NOT AFFECTED. (a) Provides that this subchapter does not affect the ability to regulate an aquifer recharge project 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.

(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) and (d);

(2) injection wells that transect or terminate in certain portions of the Edwards Aquifer under Section 27.0516 (Permit For Injection Wells That Transact or Terminate in Portion of Edwards Aquifer Within External Boundaries of Barton Springs-Edwards Aquifer Conservation District); or

(3) aquifer storage and recovery projects under Section 11.155 (Aquifer Storage and Recovery Reports) or Subchapter G (Aquifer Storage and Recovery Projects) of this chapter (Injection Wells).

SECTION 4. Requires TCEQ, not later than June 1, 2020, to adopt rules to implement Sections 11.157 and 11.158, Water Code, as added by this Act, and Subchapter H, Chapter 27, Water Code, as added by this Act.

SECTION 5. Effective date: upon passage or September 1, 2019.