

By: Larson

H.B. No. 3013

A BILL TO BE ENTITLED

AN ACT

relating to the underground storage of water for later retrieval and beneficial use; authorizing the imposition of fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.002, Water Code, is amended by adding Subdivisions (21) and (22) to read as follows:

(21) "Aquifer storage and recovery project" means an undertaking to facilitate the injection of surface water, groundwater, or treated effluent into a suitable aquifer by means of a well for later retrieval and beneficial use from that well or another well.

(22) "Target aquifer" means an aquifer used in an aquifer storage and recovery project.

SECTION 2. The heading to Section 11.153, Water Code, is amended to read as follows:

Sec. 11.153. AQUIFER STORAGE AND RECOVERY PROJECTS [~~FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS~~].

SECTION 3. Sections 11.153(a), (b), (c), and (d), Water Code, are amended to read as follows:

(a) The commission shall expedite [~~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 aquifer [~~demonstration projects for the~~] storage and recovery projects [~~of appropriated water for subsequent~~

1 ~~retrieval and beneficial use].~~ The commission by rule shall allow
2 the use of an existing permit for appropriated water that
3 authorizes a consumptive use for a project to demonstrate the
4 feasibility of an aquifer storage and recovery project.

5 (b) A permit described by Subsection (a) must authorize the
6 use of a sufficient quantity of appropriated water to demonstrate
7 the feasibility of ~~[be for only the duration of]~~ the aquifer storage
8 and recovery ~~[pilot]~~ project for the duration of the project to
9 provide the commission ~~[and]~~ the ~~[board further]~~ opportunity to
10 evaluate the storage of appropriated water in the target aquifer
11 ~~[aquifers for subsequent retrieval and beneficial use].~~

12 (c) After ~~[At the conclusion of a pilot project,]~~ a permit
13 holder has completed the feasibility project described by
14 Subsection (a), the permit holder may file an appropriate
15 application for a permit or permit amendment to store appropriated
16 water in an aquifer storage and recovery project. After
17 considering the success of the project and the criteria set out in
18 Section 11.154, the commission shall determine whether to issue a
19 permit or permit amendment authorizing the continued storage of
20 appropriated water in the aquifer.

21 (d) The commission shall ~~[only]~~ issue a final order granting
22 a permit or amendment to a permit authorizing the storage of
23 appropriated water using an aquifer storage and recovery project
24 ~~[in aquifers for subsequent beneficial use]~~ where the aquifer
25 storage and recovery project is ~~[completed pilot projects or~~
26 ~~historically demonstrated projects have been]~~ shown to be feasible
27 under the criteria provided in Sections 11.154(c) and (d).

1 SECTION 4. Section 11.154, Water Code, is amended to read as
2 follows:

3 Sec. 11.154. PERMITS FOR AQUIFER STORAGE AND RECOVERY
4 PROJECTS [~~TO STORE APPROPRIATED WATER IN AQUIFERS~~]. (a) An
5 application filed with the commission [~~to undertake a project~~]
6 under Section 11.153 for a permit or a permit amendment to authorize
7 the storage of appropriated water in an aquifer storage and
8 recovery project must include:

9 (1) the information required for an application for a
10 permit or permit amendment to appropriate state water;

11 (2) all information required for an application for a
12 permit for a Class V injection well without requiring a separate
13 hearing or notice; and

14 (3) a map or plat showing the injection facility and
15 the aquifer in which the water will be stored.

16 (a-1) Subsection (a)(1) does not apply to an application
17 filed under this section if the application is for an amendment to
18 an existing permit and:

19 (1) the permit the applicant seeks to amend authorizes
20 a consumptive use of the appropriated water; and

21 (2) the requested amendment will not change the point
22 of diversion or the rate of diversion authorized under the permit
23 the applicant seeks to amend.

24 (b) If the application is for a permit or permit amendment
25 to store appropriated water in a groundwater reservoir or a
26 subdivision of a groundwater reservoir, as defined by Chapter 36,
27 that is under the jurisdiction of a groundwater conservation

1 district:

2 (1) the applicant shall:

3 (A) provide a copy of the application to each
4 groundwater conservation district that has jurisdiction over the
5 reservoir or subdivision;

6 (B) register the permit as provided by Subchapter
7 N, Chapter 36, [cooperate] with each district that has jurisdiction
8 over the reservoir or subdivision [~~to ensure compliance with the~~
9 ~~rules of each district]~~; and

10 (C) [~~cooperate with each district that has~~
11 ~~jurisdiction over the reservoir or subdivision to develop rules~~
12 ~~regarding the injection, storage, and withdrawal of appropriated~~
13 ~~water stored in the aquifer, and~~

14 [~~(D)~~] comply with the rules governing the
15 injection, storage, and withdrawal of appropriated water stored in
16 the reservoir or subdivision that are adopted by each district that
17 has jurisdiction over the reservoir or subdivision, including a
18 rule specifically relating to an aquifer storage and recovery
19 project; and

20 (2) the commission shall require that the applicant
21 notify the commission when the applicant has registered the permit
22 with the district as required by Subdivision (1)(B) [any agreement
23 ~~the applicant reaches with a district that has jurisdiction over~~
24 ~~the reservoir or subdivision regarding the terms for the injection,~~
25 ~~storage, and withdrawal of appropriated water be included as a~~
26 ~~condition of the permit or permit amendment]~~.

27 (c) Before issuing [~~On receipt of an application for]~~ a

1 permit or an amendment to an existing permit authorizing the
2 storage of appropriated water in an aquifer storage and recovery
3 project, the [~~from an applicant with a completed pilot or~~
4 ~~historically demonstrated project, the commission shall evaluate~~
5 ~~the success of the project for purposes of issuing a final order~~
6 ~~granting a permit or permit amendment authorizing the storage of~~
7 ~~appropriated water incident to a beneficial use. The]~~ commission
8 shall consider whether:

9 (1) the introduction of water into the target aquifer
10 will alter the physical, chemical, or biological quality of native
11 groundwater to a degree that the introduction would:

12 (A) render groundwater produced from the aquifer
13 harmful or detrimental to people, animals, vegetation, or property;
14 or

15 (B) require treatment of the groundwater to a
16 greater extent than the native groundwater requires before being
17 applied to that beneficial use;

18 (2) the water stored in the target [~~receiving~~] aquifer
19 can be successfully retrieved [~~harvested~~] from the aquifer for
20 beneficial use; and

21 (3) reasonable diligence will be used to protect the
22 water stored in the target [~~receiving~~] aquifer from unauthorized
23 withdrawals to the extent necessary to maximize the permit holder's
24 ability to retrieve and beneficially use the stored water without
25 experiencing unreasonable loss of appropriated water.

26 (d) In making its evaluation under Subsection (c), the
27 commission may consider all relevant facts, including:

1 (1) the location and depth of the target aquifer in
2 which the stored water is located;

3 (2) the nature and extent of the surface development
4 and activity above the stored water;

5 (3) the permit holder's ability to prevent
6 unauthorized withdrawals by contract or the exercise of the power
7 of eminent domain;

8 (4) the existence of a groundwater [~~an underground~~
9 ~~water~~] conservation district or other governmental entity with
10 jurisdiction over the production of water from the target aquifer
11 [~~storing the water~~] and the district's ability to adopt rules to
12 protect [~~stored~~] water stored in the aquifer storage and recovery
13 project; and

14 (5) the existence of any other political subdivision
15 or state agency authorized to regulate the drilling of wells into or
16 the production of water from the target aquifer.

17 (e) A permit or a permit amendment that authorizes the
18 storage of [~~to store~~] appropriated water in a groundwater reservoir
19 or subdivision, as defined by Chapter 36, shall provide as a
20 condition to the permit or permit amendment that the permit holder
21 shall:

22 (1) register the permit holder's injection and
23 recovery wells that are used in connection with an aquifer storage
24 and recovery project with a groundwater conservation district that
25 has jurisdiction over the reservoir or subdivision, if any; and

26 (2) comply with the reporting requirements
27 established under Subchapter N, Chapter 36 [~~each calendar month,~~

1 ~~provide the district, if any, with a written report showing for the~~
2 ~~previous calendar month:~~

3 ~~[(A) the amount of water injected for storage,~~
4 ~~and~~

5 ~~[(B) the amount of water recaptured for use].~~

6 SECTION 5. The heading to Section 11.155, Water Code, is
7 amended to read as follows:

8 Sec. 11.155. AQUIFER STORAGE AND RECOVERY [~~PILOT~~] PROJECT
9 REPORTS.

10 SECTION 6. Section 11.155(b), Water Code, is amended to
11 read as follows:

12 (b) The board, as part of the state and regional water
13 planning process, shall conduct [~~make—other~~] studies,
14 investigations, and surveys of the aquifers in the state, including
15 target aquifers, as it considers necessary to determine the
16 feasibility of recommending the occurrence, quantity, quality, and
17 availability of other aquifers in which water may be stored and
18 subsequently retrieved for beneficial use. [~~The board shall~~
19 ~~undertake the studies, investigations, and surveys in the following~~
20 ~~order of priority:~~

21 ~~[(1) the aquifers described in Section 11.153(a),~~

22 ~~[(2) areas designated by the commission as "priority~~
23 ~~groundwater management areas" under Section 35.008, and~~

24 ~~[(3) other areas of the state in a priority to be~~
25 ~~determined by the board's ranking of where the greatest need~~
26 ~~exists.]~~

27 SECTION 7. Section 26.001, Water Code, is amended by adding

1 Subdivisions (27) and (28) to read as follows:

2 (27) "Aquifer storage and recovery project" means an
3 undertaking to facilitate the injection of surface water,
4 groundwater, or treated effluent into a suitable aquifer by means
5 of a well for later retrieval for beneficial use from that well or
6 another well.

7 (28) "Target aquifer" means an aquifer used in an
8 aquifer storage and recovery project.

9 SECTION 8. Sections 26.0271(b) and (c), Water Code, are
10 amended to read as follows:

11 (b) In any permit or amendment to a permit issued under this
12 chapter, at the request of the applicant the commission may
13 authorize a wastewater treatment facility to contribute treated
14 domestic wastewater produced by the facility as reclaimed water to
15 a reuse water system, or for storage in an aquifer storage and
16 recovery project, if the commission has approved the use of
17 reclaimed water from the wastewater treatment facility.

18 (c) In any permit or amendment to a permit issued under this
19 chapter, at the request of the applicant the commission shall
20 authorize, subject to any required approval by the United States
21 Environmental Protection Agency, a wastewater treatment facility
22 to:

23 (1) contribute reclaimed water into a reuse water
24 system operated by the agency; ~~and~~

25 (2) discharge reclaimed water contributed to a reuse
26 water system at any outfall for which a discharge from the reuse
27 water system is authorized in any permit issued for any wastewater

1 treatment facility operated by the agency; or
2 (3) inject the reclaimed water for storage in an
3 aquifer storage and recovery project.

4 SECTION 9. Section 26.029(a), Water Code, is amended to
5 read as follows:

6 (a) In each permit, the commission shall prescribe the
7 conditions on which it is issued, including:

8 (1) the duration of the permit;

9 (2) the location of the point of discharge of the
10 waste;

11 (3) the maximum quantity of waste that may be
12 discharged under the permit at any time and from time to time;

13 (4) the character and quality of waste that may be
14 discharged under the permit; ~~and~~

15 (5) any monitoring and reporting requirements
16 prescribed by the commission for the permittee; and

17 (6) the target aquifer into which the treated effluent
18 may be injected as a contribution to an aquifer storage and recovery
19 project.

20 SECTION 10. Chapter 36, Water Code, is amended by adding
21 Subchapter N to read as follows:

22 SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

23 Sec. 36.451. DEFINITIONS. In this subchapter:

24 (1) "Aquifer storage and recovery project" means an
25 undertaking to facilitate the injection of surface water,
26 groundwater, or treated effluent into a suitable aquifer by means
27 of a well for later retrieval and beneficial use from that well or

1 another well.

2 (2) "Target aquifer" means an aquifer used in an
3 aquifer storage and recovery project.

4 Sec. 36.452. AQUIFER STORAGE AND RECOVERY PROJECT WELLS.

5 (a) A well that is constructed and operated as part of an aquifer
6 storage and recovery project is subject to the permitting
7 requirements established under Section 11.154.

8 (b) A well that is constructed and operated as part of an
9 aquifer storage and recovery project is not subject to:

10 (1) permitting by a district; or

11 (2) rules adopted by a district relating to spacing,
12 setback, or production limits.

13 Sec. 36.453. REGISTRATION OF WELLS. (a) A well that is
14 constructed and operated as part of an aquifer storage and recovery
15 project must be registered with the district.

16 (b) The registration application shall include:

17 (1) the longitude and latitude coordinates of the
18 well;

19 (2) the depth at which the deepest point of the well is
20 located and the aquifer, groundwater reservoir, or aquifer
21 subdivision into which the well penetrates;

22 (3) a designation of the well as a well for injection,
23 recovery, or injection and recovery;

24 (4) a copy of the commission's Class V injection well
25 authorization, if applicable;

26 (5) a copy of an authorization, if required, to use the
27 surface and subsurface of the property to construct and operate an

1 aquifer storage and recovery project, including a deed, lease, or
2 easement;

3 (6) evidence that each well associated with the
4 aquifer storage and recovery project is metered; and

5 (7) a copy of the following, as applicable:

6 (A) a permit authorizing the use of the water to
7 be injected into a storage well, if use of that water requires a
8 permit;

9 (B) a permit for use of unappropriated water from
10 the commission; or

11 (C) a production and operating permit issued by a
12 district other than the district in which the well is registered.

13 (c) A district shall register a well that is the subject of
14 an application that meets the requirements of Subsection (b).

15 Sec. 36.454. PROTECTION OF RIGHTS TO STORED WATER. (a)
16 Except as provided by Subsection (b), a district shall adopt rules
17 to protect water stored in an aquifer storage and recovery project
18 to the greatest extent practicable.

19 (b) The district is not required to adopt rules to prohibit
20 the withdrawal of water stored in an aquifer storage and recovery
21 project by the holder of a permit issued by a district from a well
22 located outside of the area described in the aquifer storage and
23 recovery project well registration.

24 (c) Nothing in this subchapter may be construed as
25 authorizing the production of groundwater from an aquifer,
26 groundwater reservoir, or subdivision of an aquifer within the
27 jurisdiction of a district without a permit issued under this

1 chapter.

2 (d) In considering an application for a permit for
3 production from a highly productive aquifer, as determined by
4 district rule, for purposes of storing the water produced in an
5 aquifer storage and recovery project, a district shall consider:

6 (1) the benefits of storing the water in the aquifer
7 storage and recovery project; and

8 (2) the ability of the more productive contributing
9 aquifer to recover and replace the water stored in the target
10 aquifer.

11 Sec. 36.455. REPORTS. (a) A person operating an aquifer
12 storage and recovery project shall meter the volume of water
13 injected and recovered from each well associated with the project
14 at the wellhead and file a monthly report with the district in which
15 each well is located. The report must contain the following
16 information:

17 (1) the amount of water injected for storage in each
18 well located in the district and the source of the injected water;
19 and

20 (2) the amount of water recovered from each well
21 located in the district.

22 (b) The report required by Subsection (a) must be filed not
23 later than the 20th day of each month.

24 (c) A person operating an aquifer storage and recovery
25 project shall file an annual report with the district in which each
26 well associated with the project is located. The report must
27 contain the following information:

1 (1) the cumulative amount of water in storage in the
2 project; and

3 (2) a map showing the areal extent of the underground
4 movement of the stored water as of the end of the year in which the
5 report is prepared.

6 (d) The report required by Subsection (c) must be filed not
7 later than January 20 of each year.

8 (e) If water is injected into a well for storage in one
9 district and later recovered from a well located in a different
10 district, the reports required under this section shall be provided
11 to each district in which a well associated with the project is
12 located.

13 Sec. 36.456. FEES. (a) Except as provided by Subsections
14 (b) and (c), a district may not assess against an aquifer storage
15 and recovery project a fee, assessment, or tax.

16 (b) A district may require:

17 (1) the payment of a fee of \$100 for each well related
18 to an aquifer storage and recovery project that is registered as
19 provided by Section 36.453, payable at the time the well is
20 registered with the district, except as provided by Subsection (c);
21 and

22 (2) the payment of an annual fee not to exceed \$5 per
23 acre-foot of water injected in an aquifer storage and recovery
24 project during the preceding year, which must be submitted with the
25 annual report required under Section 36.455(c).

26 (c) The fees collected by a district:

27 (1) under Subsection (b)(1) may not exceed \$10,000 for

1 a single aquifer storage and recovery project and may only be used
2 to compensate the district for the cost of conducting field
3 inspections to verify:

4 (A) the location of wells associated with an
5 aquifer storage and recovery project; and

6 (B) the installation of meters on each well
7 associated with an aquifer storage and recovery project; and

8 (2) under Subsection (b)(2) must be deposited into a
9 mitigation account and may be used by the district only to
10 compensate a person who meets the requirements prescribed by
11 Subsection (d).

12 (d) A district may pay money from a mitigation account to a
13 person in an amount equal to the costs incurred by the person to
14 repair, rehabilitate, or replace a well if the person presents
15 evidence to the district's board of directors that demonstrates to
16 a reasonable degree of certainty that the operation of the aquifer
17 storage and recovery project resulted in damage to the person's
18 well.

19 (e) A district's payment of money under Subsection (d) may
20 not be construed as an admission of liability by an aquifer storage
21 and recovery project.

22 Sec. 36.457. STORAGE AND RECOVERY. (a) Water in an aquifer
23 storage and recovery project may be stored in and recovered from
24 multiple aquifers, provided that the storage and recovery is
25 accomplished using injection and recovery wells completed in the
26 affected aquifer. Individual injection and recovery wells may be
27 completed only in a single aquifer to prevent cross-contamination

1 of aquifers.

2 (b) Water stored in an aquifer storage and recovery project
3 is not subject to production limits, cutbacks, or other action by
4 the district to reduce production.

5 Sec. 36.458. REGULATION BY DISTRICT. An aquifer storage
6 and recovery project, and the water stored in a project, is not
7 subject to any provision or requirement of this chapter related to
8 the desired future conditions or modeled available groundwater
9 adopted by the district or the applicable groundwater management
10 area.

11 Sec. 36.459. ADMINISTRATION. The executive administrator
12 shall develop for adoption by the Texas Water Development Board or
13 any successor agency model rules for the administration of aquifer
14 storage and recovery projects for groundwater districts not later
15 than December 31, 2013. The model rules, once adopted, are
16 applicable to all groundwater districts in the state and must be
17 adopted by each groundwater district on or before the 60th day
18 following the date of adoption by the Texas Water Development
19 Board.

20 Sec. 36.460. WASTEWATER USAGE. Under a permit issued under
21 Chapter 26, treated wastewater effluent may be stored in an aquifer
22 storage and recovery project.

23 Sec. 36.461. STATE FUNDING. An aquifer storage and
24 recovery project is eligible for state funding in the form of loans
25 and grants from any available fund or revenue source used to fund
26 projects included in the state water plan.

27 SECTION 11. Sections 11.153(e) and 11.155(a), Water Code,

1 are repealed.

2 SECTION 12. This Act takes effect September 1, 2013.