

1-1 By: Larson (Senate Sponsor - Perry) H.B. No. 720
 1-2 (In the Senate - Received from the House May 1, 2019;
 1-3 May 10, 2019, read first time and referred to Committee on Water &
 1-4 Rural Affairs; May 15, 2019, reported favorably by the following
 1-5 vote: Yeas 6, Nays 1; May 15, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to appropriations of water for recharge of aquifers and
 1-18 use in aquifer storage and recovery projects.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Sections 11.023(a) and (d), Water Code, are
 1-21 amended to read as follows:

1-22 (a) To the extent that state water has not been set aside by
 1-23 the commission under Section 11.1471(a)(2) to meet downstream
 1-24 instream flow needs or freshwater inflow needs, state water may be
 1-25 appropriated, stored, or diverted for:

1-26 (1) domestic and municipal uses, including water for
 1-27 sustaining human life and the life of domestic animals;

1-28 (2) agricultural uses and industrial uses, meaning
 1-29 processes designed to convert materials of a lower order of value
 1-30 into forms having greater usability and commercial value, including
 1-31 the development of power by means other than hydroelectric;

1-32 (3) mining and recovery of minerals;

1-33 (4) hydroelectric power;

1-34 (5) navigation;

1-35 (6) recreation and pleasure;

1-36 (7) public parks; ~~and~~

1-37 (8) game preserves; and

1-38 (9) recharge into an aquifer underlying this state
 1-39 other than an aquifer described under Subsection (c) through
 1-40 surface infiltration or an aquifer recharge project as defined by
 1-41 Section 27.201.

1-42 (d) When it is put or allowed to sink into the ground, water
 1-43 appropriated under Subsections (a)(9) and [Subsection] (c) [of
 1-44 this section] loses its character and classification as state
 1-45 water, storm water, or floodwater and is considered percolating
 1-46 groundwater.

1-47 SECTION 2. Subchapter D, Chapter 11, Water Code, is amended
 1-48 by adding Sections 11.157 and 11.158 to read as follows:

1-49 Sec. 11.157. WATER FOR USE AS AQUIFER RECHARGE OR IN AN
 1-50 AQUIFER STORAGE AND RECOVERY PROJECT. (a) Unappropriated water,
 1-51 including storm water and floodwater, may be appropriated for
 1-52 recharge into an aquifer underlying this state, including an
 1-53 aquifer recharge project as defined by Section 27.201. Water
 1-54 appropriated for diversion and a beneficial use may be stored in an
 1-55 aquifer storage and recovery project, as defined by Section 27.151,
 1-56 before the water is recovered for that beneficial use.

1-57 (b) The commission may authorize the appropriation of water
 1-58 under Subsection (a) if the commission determines that:

1-59 (1) the water is not needed under Section 11.147 or
 1-60 11.1471(a)(2), as applicable, to meet downstream instream flow
 1-61 needs or freshwater inflow needs;

2-1 (2) the appropriation will accomplish a purpose
 2-2 established by Section 11.023; and

2-3 (3) the application for the water right or amendment
 2-4 to the water right complies with Subsection (c).

2-5 (c) A water right or an amendment to a water right
 2-6 authorizing a new appropriation of water for use under Subsection
 2-7 (a):

2-8 (1) must comply with the requirements of Section
 2-9 11.134;

2-10 (2) must include any special conditions the commission
 2-11 considers necessary to implement this section; and

2-12 (3) may be for water that is not continuously
 2-13 available.

2-14 (d) Before approving an application for a water right or an
 2-15 amendment to a water right for a new appropriation of water in the
 2-16 Rio Grande basin under this section, the commission shall consider
 2-17 the water accounting requirements for any international water
 2-18 sharing treaty, minutes, and agreement applicable to the Rio Grande
 2-19 basin and the effect of the project on the allocation of water by
 2-20 the Rio Grande watermaster in the middle and lower Rio Grande. The
 2-21 commission may not authorize a new appropriation of water that
 2-22 would result in a violation of a treaty or court decision.

2-23 (e) An application for a water right or an amendment to a
 2-24 water right under this section is subject to the motion and hearing
 2-25 requirements of this subchapter.

2-26 (f) Not later than the 180th day after the date the
 2-27 commission determines that a water right or an amendment to a water
 2-28 right under this section is administratively complete, the
 2-29 commission shall complete a technical review of the application.

2-30 (g) The commission shall adopt rules providing for the
 2-31 considerations for determining the frequency that the water must be
 2-32 available before it may be appropriated.

2-33 Sec. 11.158. AMENDMENT TO CONVERT USE FROM RESERVOIR
 2-34 STORAGE TO AQUIFER STORAGE AND RECOVERY. (a) In this section,
 2-35 "aquifer storage and recovery project" has the meaning assigned by
 2-36 Section 27.151.

2-37 (b) A holder of a water right that authorizes the storage of
 2-38 water for a beneficial use in a reservoir that has not been
 2-39 constructed may file an application to amend the water right to
 2-40 remove the authorization for storage in a reservoir provided that
 2-41 the water diverted under the right will be stored in an aquifer
 2-42 storage and recovery project authorized under Section 27.153 for
 2-43 later retrieval and use as authorized by the original water right.

2-44 (c) An application for an amendment to a water right
 2-45 described by Subsection (b) may request an increase in the amount of
 2-46 water that may be diverted or the rate of diversion on the basis of
 2-47 an evaporation credit that takes into account the amount of water
 2-48 that would have evaporated if the storage reservoir had been
 2-49 constructed.

2-50 (d) A holder of a water right authorizing an appropriation
 2-51 of water for storage in a storage reservoir that has lost storage
 2-52 because of sedimentation, as determined by a survey performed by
 2-53 the board, may file an application for an amendment to the water
 2-54 right to change the use or purpose for which the appropriation is to
 2-55 be made from storage by diversion to storage as part of an aquifer
 2-56 storage and recovery project for later retrieval and use as
 2-57 authorized by the original water right in an amount equal to all or
 2-58 part of the amount of water yield lost to sedimentation.

2-59 (e) An application for an amendment to a water right
 2-60 described by Subsection (b) is exempt from any notice and hearing
 2-61 requirements of a statute, commission rule, or permit condition and
 2-62 may not be referred to the State Office of Administrative Hearings
 2-63 for a contested case hearing if the requested change will not cause
 2-64 a negative effect on other water rights holders or the environment
 2-65 that is greater than the effect that the original permit would have
 2-66 had were the permit rights exercised to the full extent of the
 2-67 original permit.

2-68 (f) An application for an amendment to a water right
 2-69 described by Subsection (c) or (d) is subject to the notice and

3-1 hearing requirements of this chapter.

3-2 (g) If the commission grants an application for an amendment
 3-3 to a water right described by Subsection (c) or (d), the commission
 3-4 shall include in the amendment any special conditions the
 3-5 commission considers necessary to:

3-6 (1) protect existing water rights; and

3-7 (2) comply with any applicable requirements
 3-8 established under Section 11.147 or 11.1471.

3-9 (h) The commission may adopt rules providing an expedited
 3-10 procedure for acting on an application for an amendment to a water
 3-11 right described by Subsection (b) and the procedures to file and act
 3-12 on an application for an amendment to a water right described by
 3-13 Subsection (c) or (d).

3-14 SECTION 3. Chapter 27, Water Code, is amended by adding
 3-15 Subchapter H to read as follows:

3-16 SUBCHAPTER H. AQUIFER RECHARGE PROJECTS

3-17 Sec. 27.201. DEFINITIONS. In this subchapter:

3-18 (1) "Aquifer recharge project" means a project
 3-19 involving the intentional recharge of an aquifer by means of an
 3-20 injection well authorized under this chapter or other means of
 3-21 infiltration, including actions designed to:

3-22 (A) reduce declines in the water level of the
 3-23 aquifer;

3-24 (B) supplement the quantity of groundwater
 3-25 available;

3-26 (C) improve water quality in an aquifer;

3-27 (D) improve spring flows and other interactions
 3-28 between groundwater and surface water; or

3-29 (E) mitigate subsidence.

3-30 (2) "Native groundwater" means the groundwater
 3-31 naturally occurring in a geologic formation.

3-32 (3) "Project operator" means a person holding an
 3-33 authorization under this subchapter to undertake an aquifer
 3-34 recharge project.

3-35 (4) "Recharge injection well" means a Class V
 3-36 injection well used for the injection of water into a geologic
 3-37 formation for an aquifer recharge project, including an improved
 3-38 sinkhole or cave connected to an aquifer.

3-39 Sec. 27.202. JURISDICTION. The commission has exclusive
 3-40 jurisdiction over the regulation and permitting of recharge
 3-41 injection wells.

3-42 Sec. 27.203. AUTHORIZATION FOR USE OF CLASS V INJECTION
 3-43 WELLS. (a) The commission may authorize the use of a Class V
 3-44 injection well as a recharge injection well:

3-45 (1) by rule;

3-46 (2) under an individual permit; or

3-47 (3) under a general permit.

3-48 (b) In adopting a rule or issuing a permit under this
 3-49 section, the commission shall consider:

3-50 (1) whether the injection of water will comply with
 3-51 the standards established by the federal Safe Drinking Water Act
 3-52 (42 U.S.C. Section 300f et seq.);

3-53 (2) the effect of the aquifer recharge project on
 3-54 existing water wells; and

3-55 (3) whether the introduction of water into the
 3-56 receiving geologic formation will alter the physical, chemical, or
 3-57 biological quality of the native groundwater to a degree that
 3-58 would:

3-59 (A) render the groundwater produced from the
 3-60 receiving geologic formation harmful or detrimental to people,
 3-61 animals, vegetation, or property; or

3-62 (B) require an unreasonably higher level of
 3-63 treatment of the groundwater produced from the receiving geologic
 3-64 formation than is necessary for the native groundwater to render
 3-65 the groundwater suitable for beneficial use.

3-66 (c) The commission by rule shall provide for public notice
 3-67 and comment on a proposed general permit authorized under this
 3-68 section. The commission shall require an applicant for an
 3-69 individual permit authorized under this section to provide notice

4-1 of the application by first class mail to any groundwater
4-2 conservation district in which the wells associated with the
4-3 aquifer recharge project will be located and by publishing notice
4-4 in a newspaper of general circulation in the county in which the
4-5 wells will be located.

4-6 Sec. 27.204. TECHNICAL STANDARDS. (a) The commission shall
4-7 adopt technical standards governing the approval of the use of a
4-8 Class V injection well as a recharge injection well.

4-9 (b) The commission may not adopt or enforce groundwater
4-10 quality protection standards for the quality of water injected into
4-11 a recharge injection well that are more stringent than applicable
4-12 federal standards.

4-13 Sec. 27.205. REPORTING OF INJECTION VOLUMES. (a) A project
4-14 operator shall install a meter on each recharge injection well
4-15 associated with the aquifer recharge project.

4-16 (b) Each calendar year, the project operator shall provide
4-17 to the commission a written or electronic report showing for the
4-18 preceding calendar year the volume of water injected for recharge.

4-19 Sec. 27.206. REPORTING OF WATER QUALITY DATA. A project
4-20 operator shall:

4-21 (1) perform water quality testing annually on water to
4-22 be injected into a geologic formation as part of the aquifer
4-23 recharge project; and

4-24 (2) provide the results of the testing described by
4-25 Subdivision (1) in written or electronic form to the commission.

4-26 Sec. 27.207. OTHER LAWS NOT AFFECTED. (a) This subchapter
4-27 does not affect the ability to regulate an aquifer recharge project
4-28 as authorized under:

4-29 (1) Chapter 626, Acts of the 73rd Legislature, Regular
4-30 Session, 1993, for the Edwards Aquifer Authority;

4-31 (2) Chapter 8801, Special District Local Laws Code,
4-32 for the Harris-Galveston Subsidence District;

4-33 (3) Chapter 8834, Special District Local Laws Code,
4-34 for the Fort Bend Subsidence District;

4-35 (4) Chapter 8802, Special District Local Laws Code,
4-36 for the Barton Springs-Edwards Aquifer Conservation District; or

4-37 (5) Chapter 8811, Special District Local Laws Code,
4-38 for the Corpus Christi Aquifer Storage and Recovery Conservation
4-39 District.

4-40 (b) This subchapter does not affect the authority of the
4-41 commission regarding:

4-42 (1) recharge projects in certain portions of the
4-43 Edwards underground reservoir under Sections 11.023(c) and (d);

4-44 (2) injection wells that transect or terminate in
4-45 certain portions of the Edwards Aquifer under Section 27.0516; or

4-46 (3) aquifer storage and recovery projects under
4-47 Section 11.155 or Subchapter G of this chapter.

4-48 SECTION 4. Not later than June 1, 2020, the Texas Commission
4-49 on Environmental Quality shall adopt rules to implement Sections
4-50 11.157 and 11.158, Water Code, as added by this Act, and Subchapter
4-51 H, Chapter 27, Water Code, as added by this Act.

4-52 SECTION 5. This Act takes effect immediately if it receives
4-53 a vote of two-thirds of all the members elected to each house, as
4-54 provided by Section 39, Article III, Texas Constitution. If this
4-55 Act does not receive the vote necessary for immediate effect, this
4-56 Act takes effect September 1, 2019.

4-57 * * * * *