

By: Crownover

H.B. No. 2669

Substitute the following for H.B. No. 2669:

By: Hancock

C.S.H.B. No. 2669

A BILL TO BE ENTITLED

AN ACT

relating to the implementation of projects involving the capture,
injection, sequestration, or geologic storage of carbon dioxide.

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

SECTION 1. Section 27.002, Water Code, is amended by adding
Subdivisions (19), (20), (21), (22), (23), (24), and (25) to read as
follows:

(19) "Anthropogenic carbon dioxide":

(A) means:

(i) carbon dioxide that would otherwise
have been released into the atmosphere that has been:

(a) stripped, segregated, or divided
from any other fluid stream; or

(b) captured from an emissions
source, including:

(1) an advanced clean energy
project as defined by Section 382.003, Health and Safety Code, or
another type of electric generation facility; or

(2) an industrial source of
emissions;

(ii) any incidental associated substance
derived from the source material for, or from the process of
capturing, carbon dioxide described by Subparagraph (i); and

(iii) any substance added to carbon dioxide

1 described by Subparagraph (i) to enable or improve the process of
2 injecting the carbon dioxide; and

3 (B) does not include naturally occurring carbon
4 dioxide that is recaptured, recycled, and reinjected as part of
5 enhanced recovery operations.

6 (20) "Anthropogenic carbon dioxide injection well"
7 means an injection well used to inject or transmit anthropogenic
8 carbon dioxide into a reservoir.

9 (21) "Enhanced recovery operation" means the use of
10 any process for the displacement of hydrocarbons from a reservoir
11 other than primary recovery and includes the use of any physical,
12 chemical, thermal, or biological process and any co-production
13 project.

14 (22) "Geologic storage" means the underground storage
15 of anthropogenic carbon dioxide in a reservoir.

16 (23) "Geologic storage facility" means the
17 underground reservoir, underground equipment, injection wells, and
18 surface buildings and equipment used or to be used for the geologic
19 storage of anthropogenic carbon dioxide and all surface and
20 subsurface rights and appurtenances necessary to the operation of a
21 facility for the geologic storage of anthropogenic carbon dioxide.
22 The term includes any reasonable and necessary areal buffer and
23 subsurface monitoring zones, pressure fronts, and other areas as
24 may be necessary for this state to receive delegation of any federal
25 underground injection control program relating to the storage of
26 carbon dioxide. The term does not include a pipeline used to
27 transport carbon dioxide from the facility at which the carbon

1 dioxide is captured to the geologic storage facility. The storage
2 of carbon dioxide incidental to or as part of enhanced recovery
3 operations does not in itself automatically render a facility a
4 geologic storage facility.

5 (24) "Oil or gas" means oil, natural gas, or gas
6 condensate.

7 (25) "Reservoir" means a natural or artificially
8 created subsurface sedimentary stratum, formation, aquifer,
9 cavity, void, or coal seam.

10 SECTION 2. Chapter 27, Water Code, is amended by adding
11 Subchapter C-1 to read as follows:

12 SUBCHAPTER C-1. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF
13 ANTHROPOGENIC CARBON DIOXIDE

14 Sec. 27.041. JURISDICTION. (a) Except as provided by
15 Subsection (b), the railroad commission has jurisdiction over the
16 geologic storage of carbon dioxide in, and the injection of carbon
17 dioxide into, a reservoir that is initially or may be productive of
18 oil, gas, or geothermal resources or a saline formation directly
19 above or below that reservoir.

20 (b) The jurisdiction of the railroad commission over the
21 geologic storage of carbon dioxide in, and the injection of carbon
22 dioxide into, a saline formation described by Subsection (a) of
23 this section is subject to the review of the legislature based on
24 the recommendations made in the preliminary report described by
25 Section 10 of the Act enacting this section.

26 (c) Except as provided by Subsection (b), the railroad
27 commission has jurisdiction over a well used for the purpose

1 provided by Subsection (a) regardless of whether the well was
2 initially completed for that purpose or was initially completed for
3 another purpose and is converted to the purpose provided by
4 Subsection (a).

5 Sec. 27.042. APPLICABILITY. This subchapter does not apply
6 to the injection of fluid through the use of a Class II injection
7 well as defined by 40 C.F.R. Section 144.6(b) for the primary
8 purpose of enhanced recovery operations.

9 Sec. 27.043. PERMIT FROM RAILROAD COMMISSION. A person may
10 not begin drilling or operating an anthropogenic carbon dioxide
11 injection well for geologic storage or constructing or operating a
12 geologic storage facility regulated under this subchapter without
13 first obtaining the necessary permits from the railroad commission.

14 Sec. 27.044. INFORMATION REQUIRED OF APPLICANT. The
15 railroad commission shall require an applicant to provide any
16 information the railroad commission considers necessary to
17 discharge its duties under this subchapter.

18 Sec. 27.045. FEES. (a) The railroad commission may impose
19 fees to cover the cost of:

20 (1) permitting, monitoring, and inspecting
21 anthropogenic carbon dioxide injection wells for geologic storage
22 and geologic storage facilities; and

23 (2) enforcing and implementing this subchapter and
24 rules adopted by the railroad commission under this subchapter.

25 (b) Fees collected by the railroad commission under this
26 section shall be deposited to the credit of the anthropogenic
27 carbon dioxide storage trust fund established under Section

1 120.003, Natural Resources Code.

2 Sec. 27.046. LETTER FROM EXECUTIVE DIRECTOR. (a) An
3 application to the railroad commission for a permit under rules
4 adopted under this subchapter must include a letter from the
5 executive director stating that drilling and operating the
6 anthropogenic carbon dioxide injection well for geologic storage or
7 operating the geologic storage facility will not injure any
8 freshwater strata in that area and that the formation or stratum to
9 be used for the geologic storage facility is not freshwater sand.

10 (b) To make the determination required by Subsection (a),
11 the executive director shall review:

- 12 (1) the area of review and corrective action plans;
13 (2) any subsurface monitoring plans required during
14 injection or post injection;
15 (3) any post-injection site care plans; and
16 (4) any other elements of the application reasonably
17 required in order for the executive director to make the
18 determination required by Subsection (a).

19 (c) The commission shall adopt rules to implement and
20 administer this section.

21 Sec. 27.047. RULES. The railroad commission shall adopt
22 rules and procedures reasonably required for the performance of its
23 powers, duties, and functions under this subchapter, including
24 rules for:

25 (1) the geologic storage and associated injection of
26 anthropogenic carbon dioxide, including:

- 27 (A) geologic site characterization;

1 (B) area of review and corrective action;

2 (C) well construction;

3 (D) operation;

4 (E) mechanical integrity testing;

5 (F) monitoring;

6 (G) well plugging;

7 (H) post-injection site care;

8 (I) site closure; and

9 (J) long-term stewardship;

10 (2) the enforcement of this subchapter and rules
11 adopted by the railroad commission under this subchapter; and

12 (3) the collection and administration of:

13 (A) fees imposed under Section 27.045; and

14 (B) penalties imposed for a violation of this
15 subchapter or rules adopted by the railroad commission under this
16 subchapter.

17 Sec. 27.048. CONSISTENCY WITH AND IMPLEMENTATION OF FEDERAL
18 REQUIREMENTS. (a) Rules adopted by the commission or the railroad
19 commission under this subchapter must be consistent with applicable
20 rules or regulations adopted by the United States Environmental
21 Protection Agency or another federal agency governing the injection
22 and geologic storage of anthropogenic carbon dioxide.

23 (b) If rules or regulations adopted to govern the geologic
24 storage and associated injection of anthropogenic carbon dioxide
25 under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et
26 seq.) or another federal statute allow this state to seek primary
27 enforcement authority under the underground injection control

1 program:

2 (1) the commission and the railroad commission shall
3 seek primacy to administer and enforce the program subject to the
4 jurisdiction granted under this subchapter; and

5 (2) this state shall seek primacy to administer and
6 enforce the program for the geologic storage of carbon dioxide in,
7 and the injection of carbon dioxide into, a saline formation.

8 Sec. 27.049. MEMORANDUM OF UNDERSTANDING. The commission
9 and the railroad commission, as necessary to comply with this
10 subchapter, by rule shall:

11 (1) amend the memorandum of understanding recorded in
12 16 T.A.C. Section 3.30; or

13 (2) enter into a new memorandum of understanding.

14 Sec. 27.050. FINANCIAL RESPONSIBILITY. (a) A person to
15 whom a permit is issued under this subchapter must provide to the
16 railroad commission annually evidence of financial responsibility
17 that is satisfactory to the railroad commission.

18 (b) In determining whether the person is financially
19 responsible, the railroad commission shall rely on:

20 (1) the person's most recent quarterly report filed
21 with the United States Securities and Exchange Commission under
22 Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C.
23 Section 78m or 78o(d)); or

24 (2) if the person is not required to file with the
25 United States Securities and Exchange Commission a report described
26 by Subdivision (1) of this subsection, the person's most recent
27 audited financial statement.

1 SECTION 3. Section 27.051, Water Code, is amended by
2 amending Subsection (b) and adding Subsection (b-1) to read as
3 follows:

4 (b) The railroad commission may grant an application for a
5 permit under Subchapter C in whole or part and may issue the permit
6 if it finds:

7 (1) that the use or installation of the injection well
8 is in the public interest;

9 (2) that the use or installation of the injection well
10 will not endanger or injure any oil, gas, or other mineral
11 formation;

12 (3) that, with proper safeguards, both ground and
13 surface fresh water can be adequately protected from pollution; and

14 (4) that the applicant has made a satisfactory showing
15 of financial responsibility if required by Section 27.073 [~~of this~~
16 ~~code~~].

17 (b-1) The railroad commission may issue a permit under
18 Subchapter C-1 if it finds:

19 (1) that the injection and geologic storage of
20 anthropogenic carbon dioxide will not endanger or injure any oil,
21 gas, or other mineral formation;

22 (2) that, with proper safeguards, both ground and
23 surface freshwater can be adequately protected from carbon dioxide
24 migration or displaced formation fluids;

25 (3) that the injection of anthropogenic carbon dioxide
26 will not endanger or injure human health and safety;

27 (4) that the reservoir into which the anthropogenic

1 carbon dioxide is injected is suitable for or capable of being made
2 suitable for protecting against the escape or migration of
3 anthropogenic carbon dioxide from the reservoir; and

4 (5) that the applicant for the permit meets all of the
5 other statutory and regulatory requirements for the issuance of the
6 permit.

7 SECTION 4. Sections 27.071 and 27.072, Water Code, are
8 amended to read as follows:

9 Sec. 27.071. POWER TO ENTER PROPERTY. Members of the
10 commission and the railroad commission and employees of the
11 commission and the railroad commission may enter public or private
12 property to inspect and investigate conditions relating to
13 injection well, monitoring well, disposal well, [~~or~~] production
14 well, or geologic storage activities within their respective
15 jurisdictions or to monitor compliance with a rule, permit, or
16 other order of the commission or railroad commission. Members or
17 employees acting under the authority of this section who enter an
18 establishment on public or private property shall observe the
19 establishment's safety, internal security, and fire protection
20 rules.

21 Sec. 27.072. POWER TO EXAMINE RECORDS. Members of the
22 commission and the railroad commission and employees of the
23 commission and railroad commission may examine and copy those
24 records or memoranda of a business they are investigating as
25 provided by Section 27.071 [~~of this code~~] that relate to the
26 operation of an injection well, monitoring well, disposal well,
27 [~~or~~] production well, or geologic storage facility, or any other

1 records required to be maintained by law.

2 SECTION 5. Section 27.073, Water Code, is amended by
3 amending Subsection (a) and adding Subsection (b-1) to read as
4 follows:

5 (a) A person to whom an injection well permit is issued may
6 be required by the commission or railroad commission to maintain a
7 performance bond or other form of financial security to ensure
8 that:

9 (1) an abandoned injection well is properly plugged;
10 or

11 (2) funds are available for plugging, post-injection
12 site care, and closure of an anthropogenic carbon dioxide injection
13 well subject to Subchapter C-1.

14 (b-1) The railroad commission is authorized to receive
15 funds as the beneficiary of a financial responsibility mechanism
16 established under this chapter for the proper management of an
17 anthropogenic carbon dioxide injection well or geologic storage
18 facility.

19 SECTION 6. Chapter 91, Natural Resources Code, is amended
20 by adding Subchapter R to read as follows:

21 SUBCHAPTER R. AUTHORIZATION FOR MULTIPLE OR ALTERNATIVE USES OF
22 WELLS

23 Sec. 91.801. RULES AUTHORIZING MULTIPLE OR ALTERNATIVE USES
24 OF WELLS. The commission shall adopt rules allowing:

25 (1) a person to obtain a permit for a well from the
26 commission that authorizes the well to be used for multiple
27 purposes; and

1 (a) This section does not apply to anthropogenic carbon dioxide
2 injected for the primary purpose of enhanced recovery operations.

3 (b) Unless otherwise expressly provided by a contract, bill
4 of sale, deed, mortgage, deed of trust, or other legally binding
5 document or by other law, anthropogenic carbon dioxide stored in a
6 geologic storage facility is considered to be the property of the
7 storage operator or the storage operator's heirs, successors, or
8 assigns.

9 (c) Absent a final judgment of wilful abandonment rendered
10 by a court or a regulatory determination of closure or abandonment,
11 anthropogenic carbon dioxide stored in a geologic storage facility
12 is not considered to be the property of the owner of the surface or
13 mineral estate in the land in which the anthropogenic carbon
14 dioxide is stored or of a person claiming under the owner of the
15 surface or mineral estate.

16 (d) The owner, as designated by Subsection (b) or (c), of
17 the anthropogenic carbon dioxide stored in a geologic storage
18 facility, or the owner's heirs, successors, or assigns, may
19 produce, take, extract, or otherwise possess anthropogenic carbon
20 dioxide stored in the facility.

21 Sec. 120.003. ANTHROPOGENIC CARBON DIOXIDE STORAGE TRUST
22 FUND. (a) The anthropogenic carbon dioxide storage trust fund is
23 created as a special fund in the state treasury.

24 (b) The anthropogenic carbon dioxide storage trust fund is
25 an interest-bearing fund. Interest earned on money in the fund
26 shall be deposited to the credit of the fund.

27 (c) Fees collected by the commission under Subchapter C-1,

1 Chapter 27, Water Code, and penalties imposed for violations of
2 that subchapter or rules adopted under that subchapter shall be
3 deposited to the credit of the anthropogenic carbon dioxide storage
4 trust fund.

5 (d) The anthropogenic carbon dioxide storage trust fund may
6 be used by the commission only for:

7 (1) inspecting, monitoring, investigating, recording,
8 and reporting on geologic storage facilities and associated
9 anthropogenic carbon dioxide injection wells;

10 (2) long-term monitoring of geologic storage
11 facilities and associated anthropogenic carbon dioxide injection
12 wells;

13 (3) remediation of mechanical problems associated
14 with geologic storage facilities and associated anthropogenic
15 carbon dioxide injection wells;

16 (4) repairing mechanical leaks at geologic storage
17 facilities;

18 (5) plugging abandoned anthropogenic carbon dioxide
19 injection wells used for geologic storage;

20 (6) training and technology transfer related to
21 anthropogenic carbon dioxide injection and geologic storage; and

22 (7) compliance and enforcement activities related to
23 geologic storage and associated anthropogenic carbon dioxide
24 injection wells.

25 Sec. 120.004. EXTRACTION OF STORED ANTHROPOGENIC CARBON
26 DIOXIDE. (a) The commission shall adopt rules allowing
27 anthropogenic carbon dioxide stored in a geologic storage facility

1 to be extracted for a commercial or industrial use.

2 (b) The commission has jurisdiction over the extraction of
3 anthropogenic carbon dioxide stored in a geologic storage facility.

4 SECTION 8. Section 27.038, Water Code, is repealed.

5 SECTION 9. (a) In this section:

6 (1) "Anthropogenic carbon dioxide," "geologic
7 storage," and "geologic storage facility" have the meanings
8 assigned by Section 27.002, Water Code, as amended by this Act.

9 (2) "State-owned land" includes state-owned submerged
10 land.

11 (b) Not later than December 1, 2010, the commissioner of the
12 General Land Office shall prepare and file with the legislature a
13 preliminary report on a recommended framework for managing
14 activities related to geologic storage on state-owned land. The
15 report shall include:

16 (1) recommended criteria for identifying candidate
17 geologic storage sites in each of the following types of onshore and
18 offshore geological settings:

19 (A) operating oil and gas fields;

20 (B) depleted oil and gas fields;

21 (C) unmineable coal seams;

22 (D) saline formations;

23 (E) geological systems that may be used as
24 engineered reservoirs to extract economical quantities of heat from
25 geothermal resources of low permeability or porosity;

26 (F) geological systems containing igneous
27 formations; and

1 (G) coalbeds being used for methane recovery;

2 (2) a proposed regulatory framework for leasing
3 state-owned land for geologic storage, including an assessment of
4 options to ensure that the state receives fair market value for
5 using state-owned property for geologic storage;

6 (3) a proposed procedure for:

7 (A) providing an opportunity for public review
8 of, and the presentation of comments by interested persons
9 regarding, any activities related to geologic storage on
10 state-owned land; and

11 (B) ensuring that the quality of the natural and
12 cultural resources of state-owned land overlying the site of a
13 geologic storage facility are protected from any geologic storage
14 activities at the site;

15 (4) a description of the status of leasehold or
16 mineral estate liability issues related to the geological
17 subsurface trespass of, or caused by, anthropogenic carbon dioxide
18 stored in state-owned land, including any relevant experience from
19 enhanced oil recovery using carbon dioxide on state-owned land;

20 (5) recommendations for additional legislation that
21 may be required to ensure that public land management and leasing
22 laws are adequate to accommodate geologic storage;

23 (6) an identification of the legal and regulatory
24 issues specific to geologic storage in cases in which title to the
25 mineral estate is held by the state but title to the surface estate
26 is not held by the state; and

27 (7) recommendations for additional legislation that

1 may be required to clarify the appropriate framework for issuing
2 rights-of-way for anthropogenic carbon dioxide pipelines on
3 state-owned land.

4 (c) In preparing the preliminary report under Subsection
5 (b) of this section, the commissioner of the General Land Office
6 shall coordinate with:

7 (1) the Bureau of Economic Geology of The University
8 of Texas at Austin;

9 (2) the Railroad Commission of Texas;

10 (3) the Texas Commission on Environmental Quality; and

11 (4) the heads of other appropriate agencies.

12 (d) This section expires December 31, 2010.

13 SECTION 10. (a) In this section, "anthropogenic carbon
14 dioxide," "geologic storage," and "geologic storage facility" have
15 the meanings assigned by Section 27.002, Water Code, as amended by
16 this Act.

17 (b) Not later than December 1, 2010, the Texas Commission on
18 Environmental Quality and the Railroad Commission of Texas, in
19 consultation with the Bureau of Economic Geology of The University
20 of Texas at Austin, shall prepare and file with the legislature a
21 joint preliminary report that:

22 (1) analyzes the requirements for the injection and
23 geologic storage of anthropogenic carbon dioxide into saline
24 formations that are not productive of oil, gas, or geothermal
25 resources;

26 (2) recommends a permitting process for anthropogenic
27 carbon dioxide injection wells and geologic storage facilities that

1 are used for the injection and storage of anthropogenic carbon
2 dioxide in saline formations not productive of oil, gas, or
3 geothermal resources;

4 (3) recommends the agency or agencies that should have
5 jurisdiction over permitting described by Subdivision (2) of this
6 subsection or any other permitting of geologic storage facilities
7 not subject to Subchapter C-1, Chapter 27, Water Code; and

8 (4) assesses the status of compliance with any federal
9 rules regulating the geologic storage and associated injection of
10 anthropogenic carbon dioxide.

11 (c) The preliminary report shall include:

12 (1) recommended criteria for identifying candidate
13 geologic storage sites in each of the following types of geological
14 settings:

15 (A) operating oil and gas fields;

16 (B) depleted oil and gas fields;

17 (C) unmineable coal seams;

18 (D) saline formations;

19 (E) geological systems that may be used as
20 engineered reservoirs to extract economical quantities of heat from
21 geothermal resources of low permeability or porosity;

22 (F) geological systems containing igneous
23 formations; and

24 (G) coalbeds being used for methane recovery;

25 (2) a proposed procedure for:

26 (A) providing an opportunity for public review
27 of, and the presentation of comments by interested persons

1 regarding, any activities related to geologic storage; and

2 (B) ensuring that the quality of the natural and
3 cultural resources of land overlying the site of a geologic storage
4 facility are protected from any geologic storage activities at the
5 site;

6 (3) a description of the status of leasehold or
7 mineral estate liability issues related to the geological
8 subsurface trespass of, or caused by, anthropogenic carbon dioxide
9 stored in private or state-owned land, including any relevant
10 experience from enhanced recovery operations using carbon dioxide;

11 (4) an analysis of and recommendations to address:

12 (A) the attributes of the subsurface area of
13 operations for geologic storage facilities; and

14 (B) the methods of financial assurance and the
15 allocation of long-term liability for the post-operational phases
16 of geologic storage projects;

17 (5) the status of any applications for permits that
18 have been received before the report is prepared;

19 (6) an update on the exchange of information between
20 the Texas Commission on Environmental Quality and the Railroad
21 Commission of Texas as required by the memorandum of understanding
22 described by Section 27.049, Water Code, as added by this Act, and
23 as required by Section 27.046, Water Code, as added by this Act;

24 (7) the status of any request for primary enforcement
25 authority for the underground injection and geologic storage of
26 anthropogenic carbon dioxide under the underground injection
27 control program; and

1 (8) any recommendations for additional legislation,
2 modifications to the memorandum of understanding, or new rules for
3 regulating geologic storage facilities and associated
4 anthropogenic carbon dioxide injection wells.

5 (d) This section expires December 31, 2010.

6 SECTION 11. (a) The Texas Commission on Environmental
7 Quality shall adopt rules under Section 27.046, Water Code, as
8 added by this Act, as soon as practicable after the effective date
9 of this Act.

10 (b) Not later than March 1, 2010, the Railroad Commission of
11 Texas shall adopt rules under Section 27.047, Water Code, as added
12 by this Act, for the geologic storage and associated injection of
13 carbon dioxide in connection with enhanced recovery operations,
14 excluding enhanced recovery operations for which:

15 (1) there is a reasonable expectation of more than
16 insignificant future production volumes or rates as a result of the
17 injection of anthropogenic carbon dioxide; and

18 (2) operating pressures are not higher than reasonably
19 necessary to produce the production volumes or rates described by
20 Subdivision (1) of this subsection.

21 (c) Not later than September 1, 2010, the Railroad
22 Commission of Texas shall adopt rules under Section 27.047, Water
23 Code, as added by this Act, for the geologic storage of carbon
24 dioxide in, and the injection of carbon dioxide into, a reservoir
25 that is initially or may be productive of oil, gas, or geothermal
26 resources.

27 (d) The Texas Commission on Environmental Quality and the

1 Railroad Commission of Texas shall adopt rules under Section
2 27.049, Water Code, as added by this Act, as soon as practicable
3 after the effective date of this Act.

4 (e) The Railroad Commission of Texas shall adopt rules under
5 Sections 91.801 and 120.004, Natural Resources Code, as added by
6 this Act, as soon as practicable after the effective date of this
7 Act.

8 SECTION 12. This Act takes effect September 1, 2009.