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

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The commission by rule shall allow the use of an existing permit for appropriated water that authorizes a consumptive use for a project to demonstrate the feasibility of an aquifer storage and recovery project.

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

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

(d) The commission shall [only] issue a final order granting a permit or amendment to a permit authorizing the storage of appropriated water using an aquifer storage and recovery project [in aquifers for subsequent beneficial use] where the aquifer storage and recovery project is [completed pilot projects or historically demonstrated projects have been] shown to be feasible under the criteria provided in Sections 11.154(c) and (d).
SECTION 4. Section 11.154, Water Code, is amended to read as follows:

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

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

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

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

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

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

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

(b) If the application is for a permit or permit amendment to store appropriated water in a groundwater reservoir or a subdivision of a groundwater reservoir, as defined by Chapter 36, that is under the jurisdiction of a groundwater conservation district, the application must include:

(1) a map or plat showing the injection facility and the aquifer in which the water will be stored; and

(2) the information required for an application for a permit or permit amendment to appropriate state water.
the applicant shall:

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

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

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

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

(2) the commission shall require that the applicant notify the commission when the applicant has registered the permit with the district as required by Subdivision (1)(B) [any agreement the applicant reaches with a district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment].
permit or an amendment to an existing permit authorizing the
storage of appropriated water in an aquifer storage and recovery
project, the [from an applicant with a completed pilot or
historically demonstrated project, the commission shall evaluate
the success of the project for purposes of issuing a final order
granting a permit or permit amendment authorizing the storage of
appropriated water incident to a beneficial use. The] commission
shall consider whether:

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

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

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

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

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

(d) In making its evaluation under Subsection (c), the
commission may consider all relevant facts, including:
1 (1) the location and depth of the target aquifer in which the stored water is located;
2 (2) the nature and extent of the surface development and activity above the stored water;
3 (3) the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;
4 (4) the existence of a groundwater [an underground water] conservation district or other governmental entity with jurisdiction over the production of water from the target aquifer [storing the water] and the district's ability to adopt rules to protect [stored] water stored in the aquifer storage and recovery project; and
5 (5) the existence of any other political subdivision or state agency authorized to regulate the drilling of wells into or the production of water from the target aquifer.
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7 (e) A permit or a permit amendment that authorizes the storage of [to store] appropriated water in a groundwater reservoir or subdivision, as defined by Chapter 36, shall provide as a condition to the permit or permit amendment that the permit holder shall:
8 (1) register the permit holder's injection and recovery wells that are used in connection with an aquifer storage and recovery project with a groundwater conservation district that has jurisdiction over the reservoir or subdivision, if any; and
9 (2) comply with the reporting requirements established under Subchapter N, Chapter 36 [each calendar month,
provide the district, if any, with a written report showing for the
previous calendar month:

(A) the amount of water injected for storage,

and

(B) the amount of water recaptured for use.

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

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

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

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

(1) the aquifers described in Section 11.153(a);
(2) areas designated by the commission as "priority
groundwater management areas" under Section 35.008; and
(3) other areas of the state in a priority to be
determined by the board's ranking of where the greatest need
exists.]

SECTION 7. Section 26.001, Water Code, is amended by adding
Subdivisions (27) and (28) to read as follows:

(27) "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 for beneficial use from that well or another well.

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

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

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

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

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

(2) discharge reclaimed water contributed to a reuse water system at any outfall for which a discharge from the reuse water system is authorized in any permit issued for any wastewater treatment facility.
treatment facility operated by the agency; or

(3) inject the reclaimed water for storage in an aquifer storage and recovery project.

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

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

(1) the duration of the permit;

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

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

(4) the character and quality of waste that may be discharged under the permit; \[and\]

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

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

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

SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 36.451. DEFINITIONS. In this subchapter:

(1) "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.

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

Sec. 36.452. AQUIFER STORAGE AND RECOVERY PROJECT WELLS.

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

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

1. permitting by a district; or
2. rules adopted by a district relating to spacing, setback, or production limits.

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

(b) The registration application shall include:

1. the longitude and latitude coordinates of the well;
2. the depth at which the deepest point of the well is located and the aquifer, groundwater reservoir, or aquifer subdivision into which the well penetrates;
3. a designation of the well as a well for injection, recovery, or injection and recovery;
4. a copy of the commission's Class V injection well authorization, if applicable;
5. a copy of an authorization, if required, to use the surface and subsurface of the property to construct and operate an
aquifer storage and recovery project, including a deed, lease, or easement;

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

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

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

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

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

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

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

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

(c) Nothing in this subchapter may be construed as authorizing the production of groundwater from an aquifer, groundwater reservoir, or subdivision of an aquifer within the jurisdiction of a district without a permit issued under this
chapter.
(d) In considering an application for a permit for production from a highly productive aquifer, as determined by district rule, for purposes of storing the water produced in an aquifer storage and recovery project, a district shall consider:

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

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

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

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

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

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

(c) A person operating an aquifer storage and recovery project shall file an annual report with the district in which each well associated with the project is located. The report must contain the following information:
(1) the cumulative amount of water in storage in the project; and
(2) a map showing the areal extent of the underground movement of the stored water as of the end of the year in which the report is prepared.
(d) The report required by Subsection (c) must be filed not later than January 20 of each year.
(e) If water is injected into a well for storage in one district and later recovered from a well located in a different district, the reports required under this section shall be provided to each district in which a well associated with the project is located.

Sec. 36.456. FEES. (a) Except as provided by Subsections (b) and (c), a district may not assess against an aquifer storage and recovery project a fee, assessment, or tax.
(b) A district may require:
   (1) the payment of a fee of $100 for each well related to an aquifer storage and recovery project that is registered as provided by Section 36.453, payable at the time the well is registered with the district, except as provided by Subsection (c); and
   (2) the payment of an annual fee not to exceed $5 per acre-foot of water injected in an aquifer storage and recovery project during the preceding year, which must be submitted with the annual report required under Section 36.455(c).
(c) The fees collected by a district:
   (1) under Subsection (b)(1) may not exceed $10,000 for
a single aquifer storage and recovery project and may only be used
to compensate the district for the cost of conducting field
inspections to verify:

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

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

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

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

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

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

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

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

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

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

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

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

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