

SENATE AMENDMENTS

2nd Printing

By: Smith, Guillen, Kleinschmidt, et al.

H.B. No. 1079

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the procedural requirements for action by the Texas
3 Commission on Environmental Quality on applications for production
4 area authorizations.

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

6 SECTION 1. Sections 27.0513(a), (c), (d), (e), and (f),
7 Water Code, are amended to read as follows:

8 (a) The commission may issue a permit pursuant to Section
9 27.011 that authorizes the construction and operation of two or
10 more similar injection wells within a specified area for mining of
11 uranium. An application for a new permit issued pursuant to Section
12 27.011, a major amendment of such a permit, or a renewal of such a
13 permit for mining of uranium is subject to the public notice
14 requirements and opportunity for contested case hearing provided
15 under Section 27.018. A new, amended, or renewal area permit must
16 incorporate a table of pre-mining low and high values representing
17 the range of groundwater quality within the area of review, as
18 provided by commission rule, for each water quality parameter used
19 to measure groundwater restoration in a commission-required
20 restoration table. The values in the area permit range table must
21 be established from all available wells within the area of review,
22 including those in the existing or proposed area permit boundary
23 and existing or proposed production area. Wells used for this
24 purpose are limited to those that have documented completion depths

1 and screened intervals that correspond to a uranium production zone
2 aquifer identified within an area permit boundary.

3 (c) The commission may issue a holder of a permit issued
4 pursuant to Section 27.011 for mining of uranium an authorization
5 that allows the permit holder to conduct mining and restoration
6 activities in production zones within the boundary established in
7 the permit. The commission by rule shall establish application
8 requirements, technical requirements, including the methods for
9 determining restoration table values, and procedural requirements
10 for any authorization. If a restoration table value for a proposed
11 authorization exceeds the range listed in the area permit range
12 table, such that it falls above the upper limit of the range, the
13 value within the area permit range table must be used or a major
14 amendment to the area permit range table must be made, subject to a
15 contested case hearing or the hearing requirements of Chapter 2001,
16 Government Code.

17 (d) Notwithstanding Sections 5.551, 5.556, 27.011, and
18 27.018, an application for an authorization [~~submitted after~~
19 ~~September 1, 2007,~~] is an uncontested matter not subject to a
20 contested case hearing or the hearing requirements of Chapter 2001,
21 Government Code, if:

22 (1) the authorization is located within a permit that
23 incorporates a range of groundwater quality restoration values used
24 to measure groundwater restoration by the commission;

25 (2) the application includes groundwater quality
26 restoration values within the range established in Subdivision (1);

27 and

1 (3) the authorization is located within a permit that
2 incorporates groundwater monitoring characteristics of the
3 monitoring wells for the application required by commission rule
4 ~~[unless the authorization seeks any of the following:~~

5 ~~[(1) an amendment to a restoration table value;~~

6 ~~[(2) the initial establishment of monitoring wells for~~
7 ~~any area covered by the authorization, including the location,~~
8 ~~number, depth, spacing, and design of the monitoring wells, unless~~
9 ~~the executive director uses the recommendation of an independent~~
10 ~~third-party expert chosen by the commission; or~~

11 ~~[(3) an amendment to the type or amount of bond~~
12 ~~required for groundwater restoration or by Section 27.073 to assure~~
13 ~~that there are sufficient funds available to the state for~~
14 ~~groundwater restoration or the plugging of abandoned wells in the~~
15 ~~area by a third-party contractor].~~

16 (e) The range of restoration values in the range table used
17 for Subsection (d) must be established from all available well
18 sample data collected in the area of review ~~[The executive director~~
19 ~~may use an independent third-party expert if:~~

20 ~~[(1) the expert meets the qualifications set by~~
21 ~~commission rules for such experts;~~

22 ~~[(2) the applicant for the authorization agrees to pay~~
23 ~~the costs for the work of the expert; and~~

24 ~~[(3) the applicant for the authorization is not~~
25 ~~involved in the selection of the expert or the direction of the work~~
26 ~~of the expert].~~

27 (f) As an alternative to Subsection (d), the first

1 application for an authorization issued under Subsection (c)
2 located within a permit issued under Subsection (a) is subject to
3 the requirements of Chapter 2001, Government Code, relating to
4 opportunities for contested case hearings. The first application
5 must contain the provisions listed in Subsections (d)(1)-(3). If a
6 first authorization has previously been issued within a permit,
7 that authorization is effective for the purposes of this
8 subsection. A subsequent application for an authorization located
9 within the same permit boundary is not subject to a contested case
10 hearing or the hearing requirements of Chapter 2001, Government
11 Code, unless the subsequent application would authorize the
12 following:

13 (1) the use of groundwater from an aquifer outside the
14 production zone aquifer for supplemental production water that was
15 not previously approved in the permit;

16 (2) expansion of the permit boundary; or

17 (3) application monitoring well locations that exceed
18 well spacing requirements or reduce the number of wells required by
19 commission rule [An application seeking approval under Subsections
20 (d)(1)-(3) is subject to the public notice and contested hearing
21 requirements provided in Section 27.018].

22 SECTION 2. The change in law made by this Act applies only
23 to an application for an authorization or a new, amended, or renewal
24 permit that is submitted to the Texas Commission on Environmental
25 Quality on or after the effective date of this Act. An application
26 that was submitted to the commission before the effective date of
27 this Act is governed by the law in effect at the time the

1 application was submitted, and the former law is continued in
2 effect for that purpose.

3 SECTION 3. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2013.

ADOPTED

MAY 20 2013

Henry E. Searles
Secretary

By: Nancock .B. No. _____

Substitute the following for ____ .B. No. ____:

By: Craig Estes C.S. H.B. No. 1079

A BILL TO BE ENTITLED

AN ACT

1 relating to procedural requirements for action by the Texas
2 Commission on Environmental Quality on applications for
3 production area authorizations.
4

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

6 SECTION 1. Sections 27.0513, Water Code, is amended by
7 amending Subsections (a), (c), (d), (e), and (f) and adding
8 Subsection (g) to read as follows:

9 (a) The commission may issue a permit pursuant to Section
10 27.011 that authorizes the construction and operation of two or
11 more similar injection wells within a specified area for mining
12 of uranium. An application for a new permit issued pursuant to
13 Section 27.011, a major amendment of such a permit, or a renewal
14 of such a permit for mining of uranium is subject to the public
15 notice requirements and opportunity for contested case hearing
16 provided under Section 27.018. A new, amended, or renewed
17 permit must incorporate a table of pre-mining low and high
18 values representing the range of groundwater quality within the
19 permit boundary and area of review, as provided by commission
20 rule, for each water quality parameter used to measure
21 groundwater restoration in a commission-required restoration
22 table. The values in the permit range table must be established
23 from pre-mining baseline wells and all available wells within
24 the area of review, including those in the existing or proposed

1 permit boundary and any existing or proposed production areas.
2 Wells used for that purpose are limited to those that have
3 documented completion depths and screened intervals that
4 correspond to a uranium production zone aquifer identified
5 within the permit boundary.

6 (c) The commission may issue a holder of a permit issued
7 pursuant to Section 27.011 for mining of uranium an
8 authorization that allows the permit holder to conduct mining
9 and restoration activities in production zones within the
10 boundary established in the permit. The commission by rule
11 shall establish application requirements, technical
12 requirements, including the methods for determining restoration
13 table values, and procedural requirements for any authorization.
14 If a restoration table value for a proposed or amended
15 authorization exceeds the range listed in the permit range table
16 such that it falls above the upper limit of the range, the value
17 within the permit range table must be used or a major amendment
18 to the permit range table must be obtained, subject to an
19 opportunity for a contested case hearing or the hearing
20 requirements of Chapter 2001, Government Code.

21 (d) Notwithstanding Sections 5.551, 5.556, 27.011, and
22 27.018, an application for an authorization [~~submitted after~~
23 ~~September 1, 2007,~~] is an uncontested matter not subject to a
24 contested case hearing or the hearing requirements of Chapter
25 2001, Government Code, if:

26 (1) the authorization is for a production zone
27 located within the boundary of a permit that incorporates a

1 range table of groundwater quality restoration values used to
2 measure groundwater restoration by the commission;

3 (2) the application includes groundwater quality
4 restoration values falling at or below the upper limit of the
5 range established in Subdivision (1); and

6 (3) the authorization is for a production zone
7 located within the boundary of a permit that incorporates
8 groundwater baseline characteristics of the wells for the
9 application required by commission rule [~~unless the~~
10 ~~authorization seeks any of the following:~~

11 ~~[(1) an amendment to a restoration table value;~~

12 ~~[(2) the initial establishment of monitoring wells~~
13 ~~for any area covered by the authorization, including the~~
14 ~~location, number, depth, spacing, and design of the monitoring~~
15 ~~wells, unless the executive director uses the recommendation of~~
16 ~~an independent third-party expert chosen by the commission; or~~

17 ~~[(3) an amendment to the type or amount of bond~~
18 ~~required for groundwater restoration or by Section 27.073 to~~
19 ~~assure that there are sufficient funds available to the state~~
20 ~~for groundwater restoration or the plugging of abandoned wells~~
21 ~~in the area by a third-party contractor].~~

22 (e) The range of restoration values in the range table
23 used for Subsection (d) must be established from baseline wells
24 and all available well sample data collected in the permit
25 boundary and within one-quarter mile of the boundary of the
26 production zone [~~The executive director may use an independent~~
27 ~~third-party expert if:~~

1 ~~[(1) the expert meets the qualifications set by~~
2 ~~commission rules for such experts;~~

3 ~~[(2) the applicant for the authorization agrees to~~
4 ~~pay the costs for the work of the expert; and~~

5 ~~[(3) the applicant for the authorization is not~~
6 ~~involved in the selection of the expert or the direction of the~~
7 ~~work of the expert].~~

8 (f) As an alternative to Subsection (d), the first
9 application for an authorization issued under Subsection (c) for
10 a production zone located within the boundary of a permit issued
11 under Subsection (a) is subject to the requirements of Chapter
12 2001, Government Code, relating to an opportunity for a
13 contested case hearing. The first authorization application must
14 contain the following provisions:

15 (1) a baseline water quality table with a range of
16 groundwater quality restoration values used to measure
17 groundwater restoration by the commission that complies with the
18 same range requirements as a permit described by Subsection (a);

19 (2) groundwater quality restoration values falling at
20 or below the upper limit of the range established in Subdivision
21 (1); and

22 (3) groundwater baseline characteristics of the wells
23 for the application required by commission rule.

24 (g) If a first authorization has previously been issued for
25 a production zone located within the boundary of a permit, that
26 authorization is effective for the purposes of this subsection.

27 A subsequent authorization application for a production zone

1 that is located within the same permit boundary as a production
2 zone for which an authorization was issued under Subsection (f)
3 is not subject to an opportunity for a contested case hearing or
4 the hearing requirements of Chapter 2001, Government Code,
5 unless the subsequent application would authorize the following:

6 (1) the use of groundwater from a well that was not
7 previously approved in the permit for supplemental production
8 water;

9 (2) expansion of the permit boundary; or

10 (3) application monitoring well locations that exceed
11 well spacing requirements or reduce the number of wells required
12 by commission rule [~~An application seeking approval under~~
13 Subsections (d)(1)-(3) is subject to the public notice and
14 contested hearing requirements provided in Section 27.018].

15 SECTION 2. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas
18 Constitution. If this Act does not receive the vote necessary
19 for immediate effect, this Act takes effect September 1, 2013.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 21, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1079 by Smith (Relating to procedural requirements for action by the Texas Commission on Environmental Quality on applications for production area authorizations.), **As Passed 2nd House**

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|---|
| No significant fiscal implication to the State is anticipated. |
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The bill would amend Water Code provisions regarding production area authorizations for Class III injection wells. The bill would make fewer applications for production area authorizations subject to contested case hearing requirements, and it would remove requirements for public notice. The bill would also remove provisions in the Water Code for the Executive Director of the Texas Commission on Environmental Quality (TCEQ) to use of a third party expert for recommendations in production area authorizations.

The bill would provide that a new, amended or renewal area permit must have a table of pre-mining low and high values representing the range of groundwater quality within the area of review for each water quality parameter used to measure groundwater restoration in a commission-required restoration table. The TCEQ would be required to use all available wells to establish the table. The bill would provide that if a restoration table value for a production area authorization exceeds the range listed in the area permit table, the value within the area permit range table must be used or a major amendment to alter the range is required; such major amendments would be subject to a contested case hearing. The bill would provide for specific exemption for certain authorizations to be considered uncontested matters, not subject to a contested case hearing.

The bill's provisions would apply to applications for production area authorizations submitted on or after the effective date of the bill (immediately upon receiving two-thirds vote of both Houses or on September 1, 2013).

The bill would require the TCEQ to engage in rulemaking and result in certain other administrative duties. However, due to the low number of contested case hearings regarding production area authorizations, any costs to the agency as a result of the bill's passage are expected to be minimal.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, SD, SZ, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 15, 2013

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1079 by Smith (Relating to procedural requirements for action by the Texas Commission on Environmental Quality on applications for production area authorizations.), **Committee Report 2nd House, Substituted**

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| <p>No significant fiscal implication to the State is anticipated.</p> |
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The bill would amend Water Code provisions regarding production area authorizations for Class III injection wells. The bill would make fewer applications for production area authorizations subject to contested case hearing requirements, and it would remove requirements for public notice. The bill would also remove provisions in the Water Code for the Executive Director of the Texas Commission on Environmental Quality (TCEQ) to use of a third party expert for recommendations in production area authorizations.

The bill would provide that a new, amended or renewal area permit must have a table of pre-mining low and high values representing the range of groundwater quality within the area of review for each water quality parameter used to measure groundwater restoration in a commission-required restoration table. The TCEQ would be required to use all available wells to establish the table. The bill would provide that if a restoration table value for a production area authorization exceeds the range listed in the area permit table, the value within the area permit range table must be used or a major amendment to alter the range is required; such major amendments would be subject to a contested case hearing. The bill would provide for specific exemption for certain authorizations to be considered uncontested matters, not subject to a contested case hearing.

The bill's provisions would apply to applications for production area authorizations submitted on or after the effective date of the bill (immediately upon receiving two-thirds vote of both Houses or on September 1, 2013).

The bill would require the TCEQ to engage in rulemaking and result in certain other administrative duties. However, due to the low number of contested case hearings regarding production area authorizations, any costs to the agency as a result of the bill's passage are expected to be minimal.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, SZ, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 13, 2013

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1079 by Smith (Relating to the procedural requirements for action by the Texas Commission on Environmental Quality on applications for production area authorizations.), **As Engrossed**

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| <p>No significant fiscal implication to the State is anticipated.</p> |
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The bill would amend Water Code provisions regarding production area authorizations for Class III injection wells. The bill would make fewer applications for production area authorizations subject to contested case hearing requirements, and it would remove requirements for public notice. The bill would also remove provisions in the Water Code for the Executive Director of the Texas Commission on Environmental Quality (TCEQ) to use of a third party expert for recommendations in production area authorizations.

The bill would provide that a new, amended or renewal area permit must have a table of pre-mining low and high values representing the range of groundwater quality within the area of review for each water quality parameter used to measure groundwater restoration in a commission-required restoration table. The TCEQ would be required to use all available wells to establish the table. The bill would provide that if a restoration table value for a production area authorization exceeds the range listed in the area permit table, the value within the area permit range table must be used or a major amendment to alter the range is required; such major amendments would be subject to a contested case hearing. The bill would provide for specific exemption for certain authorizations to be considered uncontested matters, not subject to a contested case hearing.

The bill's provisions would apply to applications for production area authorizations submitted on or after the effective date of the bill (immediately upon receiving two-thirds vote of both Houses or on September 1, 2013).

The bill would require the TCEQ to engage in rulemaking and result in certain other administrative duties. However, due to the low number of contested case hearings regarding production area authorizations, any costs to the agency as a result of the bill's passage are expected to be minimal.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, SZ, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 8, 2013

TO: Honorable Allan Ritter, Chair, House Committee On Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1079 by Smith (Relating to the procedural requirements for action by the Texas Commission on Environmental Quality on applications for production area authorizations.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Water Code provisions regarding production area authorizations for Class III injection wells. The bill would make fewer applications for production area authorizations subject to contested case hearing requirements, and it would remove requirements for public notice. The bill would also remove provisions in the Water Code for the Executive Director of the Texas Commission on Environmental Quality (TCEQ) to use of a third party expert for recommendations in production area authorizations.

The bill would require the TCEQ to engage in rulemaking and result in certain other administrative duties. However, due to the low number of contested case hearings regarding production area authorizations, any costs to the agency as a result of the bill's passage are expected to be minimal.

Local Government Impact

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Source Agencies: 582 Commission on Environmental Quality

LBB Staff: UP, SZ, TL