

1-1 By: Perry S.B. No. 1903
 1-2 (In the Senate - Filed March 13, 2015; March 25, 2015, read
 1-3 first time and referred to Committee on Agriculture, Water, and
 1-4 Rural Affairs; April 16, 2015, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
 1-6 April 16, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1903 By: Perry

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the storage and recovery of water in aquifers;
 1-20 authorizing fees and surcharges; adding provisions subject to a
 1-21 criminal penalty.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Sections 11.153(a), (b), and (c), Water Code,
 1-24 are amended to read as follows:

1-25 (a) In this section, "aquifer storage and recovery project"
 1-26 has the meaning assigned by Section 27.151 ~~[The commission shall~~
 1-27 ~~investigate the feasibility of storing appropriated water in~~
 1-28 ~~various types of aquifers around the state by encouraging the~~
 1-29 ~~issuance of temporary or term permits for demonstration projects~~
 1-30 ~~for the storage of appropriated water for subsequent retrieval and~~
 1-31 ~~beneficial use].~~

1-32 (b) A water right holder or a person who has contracted for
 1-33 the use of water under a contract that does not prohibit the use of
 1-34 the water in an aquifer storage and recovery project may undertake
 1-35 an aquifer storage and recovery project without obtaining any
 1-36 additional authorization under this chapter for the project. A
 1-37 person described by this subsection undertaking an aquifer storage
 1-38 and recovery project must:

1-39 (1) obtain any required authorizations under
 1-40 Subchapter G, Chapter 27, and Subchapter N, Chapter 36; and

1-41 (2) comply with the terms of the applicable water
 1-42 right ~~[A permit described by Subsection (a) must be for only the~~
 1-43 ~~duration of the pilot project to provide the commission and the~~
 1-44 ~~board further opportunity to evaluate the storage of appropriated~~
 1-45 ~~water in aquifers for subsequent retrieval and beneficial use].~~

1-46 (c) This section does not preclude the commission from
 1-47 considering an aquifer storage and recovery project to be a
 1-48 component of a project permitted under this chapter that is not
 1-49 required to be based on the continuous availability of historic,
 1-50 normal stream flow ~~[At the conclusion of a pilot project, a permit~~
 1-51 ~~holder may file an appropriate application for a permit or permit~~
 1-52 ~~amendment. After considering the success of the project and the~~
 1-53 ~~criteria set out in Section 11.154, the commission shall determine~~
 1-54 ~~whether to issue a permit or permit amendment authorizing the~~
 1-55 ~~continued storage of appropriated water in the aquifer].~~

1-56 SECTION 2. Chapter 27, Water Code, is amended by adding
 1-57 Subchapter G to read as follows:

1-58 SUBCHAPTER G. AQUIFER STORAGE AND RECOVERY PROJECTS

1-59 Sec. 27.151. DEFINITIONS. In this subchapter:

1-60 (1) "Aquifer storage and recovery project" means a

2-1 project involving the injection of water into a geologic formation
2-2 for the purpose of subsequent recovery and beneficial use by the
2-3 project operator.

2-4 (2) "ASR injection well" means a Class V injection
2-5 well used for the injection of water into a geologic formation as
2-6 part of an aquifer storage and recovery project.

2-7 (3) "ASR recovery well" means a well used for the
2-8 recovery of water from a geologic formation as part of an aquifer
2-9 storage and recovery project.

2-10 (4) "Native groundwater" means the groundwater
2-11 naturally occurring in a geologic formation.

2-12 (5) "Project operator" means a person holding an
2-13 authorization under this subchapter to undertake an aquifer storage
2-14 and recovery project.

2-15 Sec. 27.152. JURISDICTION. The commission has exclusive
2-16 jurisdiction over the regulation and permitting of ASR injection
2-17 wells.

2-18 Sec. 27.153. AUTHORIZATION FOR USE OF CLASS V INJECTION
2-19 WELLS. (a) The commission may authorize the use of a Class V
2-20 injection well as an ASR injection well:

2-21 (1) by rule;

2-22 (2) under an individual permit; or

2-23 (3) under a general permit.

2-24 (b) In adopting a rule or issuing a permit under this
2-25 section, the commission shall consider:

2-26 (1) whether the injection of water will comply with
2-27 the standards set forth under the federal Safe Drinking Water Act
2-28 (42 U.S.C. Section 300f et seq.);

2-29 (2) the extent to which the cumulative volume of water
2-30 injected for storage in the receiving geologic formation can be
2-31 successfully recovered from the geologic formation for beneficial
2-32 use, taking into account that injected water may be commingled to
2-33 some degree with native groundwater;

2-34 (3) the effect of the aquifer storage and recovery
2-35 project on existing water wells; and

2-36 (4) whether the introduction of water into the
2-37 receiving geologic formation will alter the physical, chemical, or
2-38 biological quality of the native groundwater to a degree that
2-39 would:

2-40 (A) render the groundwater produced from the
2-41 receiving geologic formation harmful or detrimental to people,
2-42 animals, vegetation, or property; or

2-43 (B) require an unreasonably higher level of
2-44 treatment of the groundwater produced from the receiving geologic
2-45 formation than is necessary for the native groundwater in order to
2-46 render the groundwater suitable for beneficial use.

2-47 (c) All wells associated with a single aquifer storage and
2-48 recovery project must be located within a continuous perimeter
2-49 boundary of one parcel of land, or two or more adjacent parcels of
2-50 land under common ownership, lease, joint operating agreement, or
2-51 contract.

2-52 (d) The commission by rule shall provide for public notice
2-53 and comment on a proposed general permit authorized under this
2-54 section. The commission shall require an applicant for an
2-55 individual permit authorized under this section to provide notice
2-56 of the application by first class mail to any groundwater
2-57 conservation district in which the wells associated with the
2-58 aquifer storage and recovery project will be located and by
2-59 publishing notice in a newspaper of general circulation in the
2-60 county in which the wells will be located.

2-61 Sec. 27.154. TECHNICAL STANDARDS. (a) The commission
2-62 shall adopt technical standards governing the approval of the use
2-63 of a Class V injection well as an ASR injection well.

2-64 (b) This subsection applies only to an aquifer storage and
2-65 recovery project proposed to be located in a groundwater
2-66 conservation district or other special-purpose district with the
2-67 authority to regulate the withdrawal of groundwater. Except as
2-68 otherwise provided by this section, the commission shall limit the
2-69 volume of water that may be recovered by an aquifer storage and

3-1 recovery project to an amount that does not exceed the amount of
 3-2 water injected under the project. If the commission determines
 3-3 that the proposed injection of water into a geologic formation will
 3-4 result in a loss of injected water or native groundwater, the
 3-5 commission shall impose additional restrictions on the amount of
 3-6 water that may be recovered to account for the loss. The commission
 3-7 may not deny a permit based on a determination that a loss described
 3-8 by this subsection will occur. A limitation imposed under this
 3-9 subsection may not prohibit the production of native groundwater by
 3-10 an aquifer storage and recovery project if the production complies
 3-11 with Subchapter N, Chapter 36.

3-12 (c) The commission by rule shall prescribe construction and
 3-13 completion standards and metering and reporting requirements for
 3-14 ASR injection wells and ASR recovery wells, including for an ASR
 3-15 injection well that also serves as an ASR recovery well.

3-16 (d) The commission may not adopt or enforce groundwater
 3-17 quality protection standards for the quality of water injected into
 3-18 an ASR injection well that are more stringent than applicable
 3-19 federal standards.

3-20 Sec. 27.155. REPORTING OF INJECTION AND RECOVERY VOLUMES.

3-21 (a) A project operator shall install a meter on each ASR injection
 3-22 well and ASR recovery well associated with the aquifer storage and
 3-23 recovery project.

3-24 (b) Each calendar month, the project operator shall provide
 3-25 to the commission a written or electronic report showing for the
 3-26 preceding calendar month the volume of water:

3-27 (1) injected for storage; and

3-28 (2) recovered for beneficial use.

3-29 Sec. 27.156. REPORTING OF WATER QUALITY DATA. A project
 3-30 operator shall:

3-31 (1) perform water quality testing annually on water to
 3-32 be injected into a geologic formation and water recovered from a
 3-33 geologic formation as part of the aquifer storage and recovery
 3-34 project; and

3-35 (2) provide the results of the testing described by
 3-36 Subdivision (1) in written or electronic form to the commission.

3-37 Sec. 27.157. OTHER LAWS NOT AFFECTED. (a) This subchapter
 3-38 does not affect the ability to regulate an aquifer storage and
 3-39 recovery project as authorized under:

3-40 (1) Chapter 626, Acts of the 73rd Legislature, Regular
 3-41 Session, 1993, for the Edwards Aquifer Authority;

3-42 (2) Chapter 8801, Special District Local Laws Code,
 3-43 for the Harris-Galveston Subsidence District;

3-44 (3) Chapter 8834, Special District Local Laws Code,
 3-45 for the Fort Bend Subsidence District;

3-46 (4) Chapter 8802, Special District Local Laws Code,
 3-47 for the Barton Springs-Edwards Aquifer Conservation District; or

3-48 (5) Chapter 8811, Special District Local Laws Code,
 3-49 for the Corpus Christi Aquifer Storage and Recovery Conservation
 3-50 District.

3-51 (b) This subchapter does not affect the authority of the
 3-52 commission regarding:

3-53 (1) recharge projects in certain portions of the
 3-54 Edwards underground reservoir under Sections 11.023(c) and (d); or

3-55 (2) injection wells that transect or terminate in
 3-56 certain portions of the Edwards Aquifer under Section 27.0516.

3-57 SECTION 3. Chapter 36, Water Code, is amended by adding
 3-58 Subchapter N to read as follows:

3-59 SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

3-60 Sec. 36.451. DEFINITIONS. In this subchapter, "aquifer
 3-61 storage and recovery project," "ASR injection well," "ASR recovery
 3-62 well," and "project operator" have the meanings assigned by Section
 3-63 27.151.

3-64 Sec. 36.452. APPLICABILITY TO RECOVERY WELLS THAT ALSO
 3-65 FUNCTION AS INJECTION WELLS. Notwithstanding Section 27.152, this
 3-66 subchapter applies to an ASR recovery well that also functions as an
 3-67 ASR injection well.

3-68 Sec. 36.453. REGISTRATION AND REPORTING OF WELLS. (a) A
 3-69 project operator shall:

4-1 (1) register the ASR injection wells and ASR recovery
4-2 wells associated with the aquifer storage and recovery project with
4-3 any district in which the wells are located;

4-4 (2) each calendar month by the deadline established by
4-5 the commission for reporting to the commission, provide the
4-6 district with a copy of the written or electronic report required to
4-7 be provided to the commission under Section 27.155; and

4-8 (3) annually by the deadline established by the
4-9 commission for reporting to the commission, provide the district
4-10 with a copy of the written or electronic report required to be
4-11 provided to the commission under Section 27.156.

4-12 (b) If an aquifer storage and recovery project recovers an
4-13 amount of groundwater that exceeds the volume authorized by the
4-14 commission to be recovered under the project, the project operator
4-15 shall report to the district the volume of groundwater recovered
4-16 that exceeds the volume authorized to be recovered in addition to
4-17 providing the report required by Subsection (a)(2).

4-18 Sec. 36.454. PERMITTING, SPACING, AND PRODUCTION
4-19 REQUIREMENTS. (a) Except as provided by Subsection (b), a
4-20 district may not require a permit for the drilling, equipping,
4-21 operation, or completion of an ASR injection well or an ASR recovery
4-22 well that is authorized by the commission.

4-23 (b) The ASR recovery wells that are associated with an
4-24 aquifer storage and recovery project are subject to the permitting,
4-25 spacing, and production requirements of the district if the amount
4-26 of groundwater recovered from the wells exceeds the volume
4-27 authorized by the commission to be recovered under the project. The
4-28 requirements of the district apply only to the portion of the volume
4-29 of groundwater recovered from the ASR recovery wells that exceeds
4-30 the volume authorized by the commission to be recovered.

4-31 (c) A project operator may not recover groundwater by an
4-32 aquifer storage and recovery project in an amount that exceeds the
4-33 volume authorized by the commission to be recovered under the
4-34 project unless the project operator complies with the applicable
4-35 requirements of a district as described by this section.

4-36 Sec. 36.455. FEES AND SURCHARGES. (a) A district may not
4-37 assess a production fee or a transportation or export fee or
4-38 surcharge for groundwater recovered from an ASR recovery well,
4-39 except to the extent that the amount of groundwater recovered under
4-40 the aquifer storage and recovery project exceeds the volume
4-41 authorized by the commission to be recovered.

4-42 (b) A district may assess a well registration fee or other
4-43 administrative fee for an ASR recovery well in the same manner that
4-44 the district assesses such a fee for other wells registered with the
4-45 district.

4-46 Sec. 36.456. DESIRED FUTURE CONDITIONS. A district may
4-47 consider hydrogeologic conditions related to the injection and
4-48 recovery of groundwater as part of an aquifer storage and recovery
4-49 project in the planning for and monitoring of the achievement of a
4-50 desired future condition for the aquifer in which the wells
4-51 associated with the project are located.

4-52 Sec. 36.457. OTHER LAWS NOT AFFECTED. This subchapter does
4-53 not affect the ability to regulate groundwater as authorized under:

4-54 (1) Chapter 626, Acts of the 73rd Legislature, Regular
4-55 Session, 1993, for the Edwards Aquifer Authority;

4-56 (2) Chapter 8801, Special District Local Laws Code,
4-57 for the Harris-Galveston Subsidence District;

4-58 (3) Chapter 8834, Special District Local Laws Code,
4-59 for the Fort Bend Subsidence District;

4-60 (4) Chapter 8802, Special District Local Laws Code,
4-61 for the Barton Springs-Edwards Aquifer Conservation District; or

4-62 (5) Chapter 8811, Special District Local Laws Code,
4-63 for the Corpus Christi Aquifer Storage and Recovery Conservation
4-64 District.

4-65 SECTION 4. The following sections of the Water Code are
4-66 repealed:

4-67 (1) Sections 11.153(d) and (e);

4-68 (2) Section 11.154; and

4-69 (3) Section 11.155.

5-1 SECTION 5. Not later than May 1, 2016, the Texas Commission
5-2 on Environmental Quality shall adopt rules to implement Section
5-3 11.153, Water Code, as amended by this Act, and Subchapter G,
5-4 Chapter 27, Water Code, as added by this Act.

5-5 SECTION 6. This Act takes effect immediately if it receives
5-6 a vote of two-thirds of all the members elected to each house, as
5-7 provided by Section 39, Article III, Texas Constitution. If this
5-8 Act does not receive the vote necessary for immediate effect, this
5-9 Act takes effect September 1, 2015.

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