

House Bill 655
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(a) In this section, "aquifer storage and recovery project" has the meaning assigned by Section 27.151 [The commission shall 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 demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use].

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

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

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

(c) This section does not preclude the commission from considering an aquifer storage and recovery project to be a component of a project permitted under this chapter that is not required to be based on the continuous availability of historic, normal stream flow [At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the

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SECTION 1. Same as House version.

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~~commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer].~~

No equivalent provision

SECTION 2. Chapter 27, Water Code, is amended by adding Subchapter G to read as follows:
SUBCHAPTER G. AQUIFER STORAGE AND RECOVERY PROJECTS
Sec. 27.151. DEFINITIONS. In this subchapter:

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SECTION __. Section 11.155, Water Code, is amended to read as follows:
Sec. 11.155. AQUIFER STORAGE AND RECOVERY [PILOT PROJECT] REPORTS. ~~[(a) On completion of each pilot project, the board and the commission jointly shall:~~
~~[(1) prepare a report evaluating the success of the project; and~~
~~[(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.~~
~~[(b)]~~ The board shall make ~~[other]~~ studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine 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
(2) ~~[(3)]~~ other areas of the state in priority to be determined by the board's ranking of where the greatest need exists. [FA1]

SECTION 2. Chapter 27, Water Code, is amended by adding Subchapter G to read as follows:
SUBCHAPTER G. AQUIFER STORAGE AND RECOVERY PROJECTS
Sec. 27.151. Same as House version.

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(1) "Aquifer storage and recovery project" means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

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

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

(4) "Native groundwater" means the groundwater naturally occurring in a geologic formation.

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

Sec. 27.152. JURISDICTION. The commission has exclusive jurisdiction over the regulation and permitting of ASR injection wells.

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

(1) by rule;

(2) under an individual permit; or

(3) under a general permit.

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

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

(2) the extent to which the cumulative volume of water injected for storage in the receiving geologic formation can be successfully recovered from the geologic formation for

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beneficial use, taking into account that injected water may be commingled to some degree with native groundwater;

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

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

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

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

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

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

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

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injection well.

(b) This subsection applies only to an aquifer storage and recovery project proposed to be located in a groundwater conservation district or other special-purpose district with the authority to regulate the withdrawal of groundwater. Except as otherwise provided by this section, the commission shall limit the volume of water that may be recovered by an aquifer storage and recovery project to an amount that does not exceed the amount of water injected under the project. If the commission determines that the proposed injection of water into a geologic formation will result in a loss of injected water or native groundwater, the commission shall impose additional restrictions on the amount of water that may be recovered to account for the loss. The commission may not deny a permit based on a determination that a loss described by this subsection will occur. A limitation imposed under this subsection may not prohibit the production of native groundwater by an aquifer storage and recovery project if the production complies with Subchapter N, Chapter 36.

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

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

Sec. 27.155. REPORTING OF INJECTION AND RECOVERY VOLUMES. (a) A project operator shall install a meter on each ASR injection well and ASR recovery well associated with the aquifer storage and recovery project.

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

(1) injected for storage; and

(2) recovered for beneficial use.

Sec. 27.156. REPORTING OF WATER QUALITY DATA.

A project operator shall:

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

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

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

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

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

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

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

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

(b) This subchapter does not affect the authority of the commission regarding:

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

(2) injection wells that transect or terminate in certain

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portions of the Edwards Aquifer under Section 27.0516.

SECTION 3. 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, "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator" have the meanings assigned by Section 27.151.

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

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

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

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

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

(b) If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the commission to be recovered under the project, the project

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

SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

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operator shall report to the district the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection (a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Sections 11.153(d) and (e);
- (2) Section 11.154; and
- (3) Section 11.155.

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Sec. 36.456. Same as House version.

Sec. 36.457. Same as House version.

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

- (1) Sections 11.153(d) and (e); and
- (2) Section 11.154. [FA1]

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

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

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SECTION 5. Same as House version.

SECTION 6. Same as House version.

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