

## **BILL ANALYSIS**

H.B. 228  
By: Larson  
Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note a need to remove permitting barriers for aquifer storage and recovery projects and to provide for additional water to be used in such projects. H.B. 228 seeks to address these issues by setting out provisions relating to appropriations of water for use in aquifer storage and recovery projects.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

H.B. 228 amends the Water Code to authorize an aquifer storage and recovery project to involve the use of water derived from multiple sources, including a new appropriation of water. The bill requires a water right or an amendment to a water right authorizing a new appropriation of water for use in an aquifer storage and recovery project to include any special conditions the Texas Commission on Environmental Quality (TCEQ) considers necessary to implement provisions relating to projects for the storage of appropriated water in aquifers, authorizes the right or amendment to be for water that is not continuously available, authorizes the right or amendment to authorize the diversion and use of excess flows in a watercourse or stream that would otherwise flow into the Gulf of Mexico, and prohibits the right or amendment from interfering with or negatively affecting existing water rights in the same river basin as the diversion point for the new appropriation or interfering with or negatively affecting applicable environmental flow standards. The bill requires TCEQ, before approving an application for a water right or an amendment to a water right for a new appropriation of water in the Rio Grande basin for an aquifer storage and recovery project, to consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande basin and the effect of the project on the allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The bill prohibits TCEQ from authorizing a new appropriation of water that would result in a violation of a treaty or court decision. The bill authorizes TCEQ to adopt rules providing an expedited procedure for acting on an application for a water right or an amendment to a water right under provisions relating to projects for the storage of appropriated water in aquifers.

H.B. 228 authorizes a holder of a water right authorizing an appropriation of water for storage in a storage reservoir that has not been constructed to file an application for an amendment to the water right to change the use or purpose for which the appropriation is to be made to storage in

an aquifer as part of an aquifer storage and recovery project. The bill authorizes the application to request an increase in the amount of water that may be diverted or the rate of diversion on the basis of an evaporation credit that takes into account the amount of water that would have evaporated if the storage reservoir had been constructed. The bill exempts the application from any notice and hearing requirements of a statute, TCEQ rule, or permit condition and prohibits the application from being referred to the State Office of Administrative Hearings for a contested case hearing if the application does not request an increase in the amount of water that may be diverted or the rate of diversion or does not request a change in the diversion point. The bill subjects the application to the notice and hearing requirements of water rights provisions if the application requests an increase in the amount of water that may be diverted or the rate of diversion, including an increase on the basis of an evaporation credit, or requests a change in the diversion point. The bill requires TCEQ, if TCEQ grants an application subject to notice and hearing requirements, to include in the amendment any special conditions TCEQ considers necessary to protect existing water rights and comply with any applicable environmental flow standards. The bill authorizes TCEQ to adopt rules providing an expedited procedure for acting on an application for an amendment to a water right under these provisions of the bill.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, December 1, 2017.