

## **BILL ANALYSIS**

Senate Research Center  
88R19745 ANG-F

C.S.S.B. 1186  
By: Hughes  
Natural Resources & Economic Development  
4/6/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Deep brine aquifers in Texas contain substantial lithium deposits, but an incomplete regulatory framework surrounding the brine mining industry presently inhibits the investment required to extract it. The intent of S.B. 1186 is to clarify and complete the Railroad Commission of Texas's jurisdiction over brine mining, to enable this new industry to locate and flourish in Texas.

Under current law, the Railroad Commission of Texas has jurisdiction over brine mining. But to date, the only brine mining in Texas has involved injecting fluid to dissolve subsurface salt formations, then extracting the salts from the resulting artificial brines. The Railroad Commission has obtained delegation of Class III injection well authority from the Environmental Protection Agency (EPA) for such operations. It is therefore authorized to issue permits for those brine mining injection wells.

The EPA regulates the mining of lithium from naturally occurring brines differently from how it regulates mining artificially created brines. The EPA requires wells that re-inject naturally-occurring brines into the aquifer from which they were produced after the extraction of minerals to be permitted as Class V injection wells. While the Railroad Commission has jurisdiction over this type of brine mining under state law, it has not yet obtained delegation of the Class V injection well authority from the EPA required to permit the re-injection of naturally occurring brines into the aquifers from which they were produced after the extraction of minerals.

This bill would add a definition of "brine mining" to the section of the Water Code presently granting the Railroad Commission jurisdiction over brine mining to clarify its jurisdiction over both types of brine mining under state law. The bill would also instruct the Railroad Commission to seek delegation of EPA authority for Class V injection wells designed to inject spent brine into the same formation from which it was withdrawn after the extraction of minerals. Additionally, the bill would clarify that the Railroad Commission's jurisdiction over brine mining includes the authority to regulate brine production wells and brine injection wells. The bill would not disturb the Railroad Commission's existing authority over Class III brine mining injection wells or any existing permits for such operations.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1186 amends current law relating to the regulation by the Railroad Commission of Texas of brine mining.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 1 (Section 27.036, Water Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is rescinded in SECTION 2 (Section 27.036, Water Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 27.036, Water Code, as added by Chapter 921 (H.B. 1867), Acts of the 69th Legislature, Regular Session, 1985, as follows:

Sec. 27.036. JURISDICTION OVER BRINE MINING. (a) Defines "brine mining" and "Class V brine injection well."

(b) Provides that the Railroad Commission of Texas (RRC) has jurisdiction over brine mining and is authorized to issue permits for brine production wells and injection wells used for brine mining.

(c) Redesignates existing Subsection (b) as Subsection (c).

(d) Redesignates existing Subsection (c) as Subsection (d)

(e) Redesignates existing Subsection (d) as Subsection (e). Provides that an injection well for brine mining of brine extracted by the solution of a subsurface salt formation, for purposes of regulation by RRC, is designated as a Class III well under the underground injection control program administered by RRC.

(f) Provides that a Class V brine injection well, for purposes of regulation by RRC, is designated as a Class V well under the underground injection control program administered by RRC.

(g) Requires RRC to seek primacy to administer and enforce the program to enforce the program for Class V brine injection wells in this state if rules or regulations adopted to govern Class V brine injection wells under federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) or another federal statute allow this state to seek primary enforcement authority under the underground injection control program.

(h) Prohibits a person from beginning to drill a Class V brine injection well unless that person has a valid permit for the well issued by RRC under Chapter 27 (Injection Wells), on delegation to RRC of primary enforcement authority in this state over Class V brine injection wells.

Deletes existing text providing that this section takes effect September 1, 1985. Deletes existing text providing that this section does not invalidate any permit for an injection well used for brine mining that was issued by the Texas Water Commission (commission) before the effective date of this section. Deletes existing text requiring RRC to issue a substitute permit under the name and authority of RRC to each person who on the effective date of this section holds a valid permit issued by the commission for an injection well used for brine mining within 90 days after the effective date of the section. Deletes existing text requiring that application for injection well permits covering brine mining submitted to the commission before the effective date of this section for which permits have not been issued by the commission to be transmitted to RRC.

SECTION 2. Repealer: Section 27.036 (Jurisdiction Over Brine Mining), Water Code, as added by Chapter 795 (S.B. 249), Acts of the 69th Legislature, Regular Session, 1985.

SECTION 3. Effective date: upon passage or September 1, 2023.