

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5.24.19

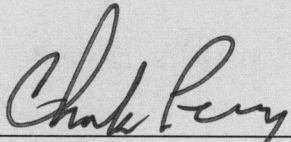
Date

Honorable Dan Patrick
President of the Senate

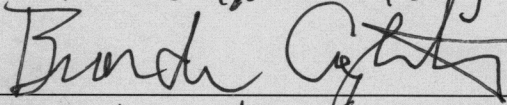
Honorable Dennis Bonnen
Speaker of the House of Representatives

Sirs:

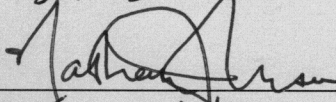
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 722 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



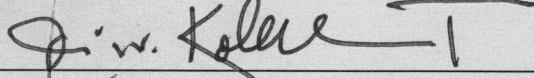
Sen. Charles Perry



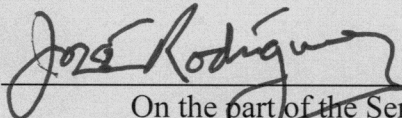
Sen. Brandon Creighton



Sen. Nathan Johnson

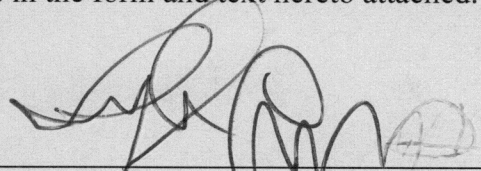


Sen. Lois Kolkhorst

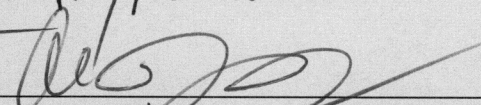


On the part of the Senate

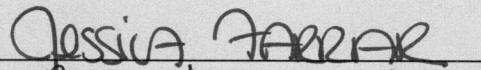
Sen. José Rodríguez



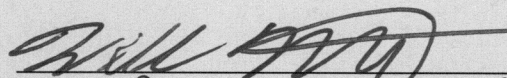
Rep. Lyle Larson



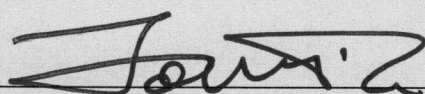
Rep. Alex Dominguez



Rep. Jessica Farrar



Rep. Will Metcalf



On the part of the House

Rep. Four Price

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 722

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the development of brackish groundwater.

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

4 SECTION 1. Subchapter D, Chapter 36, Water Code, is amended
5 by adding Section 36.1015 to read as follows:

6 Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER
7 PRODUCTION ZONES. (a) In this section:

8 (1) "Designated brackish groundwater production zone"
9 means an aquifer, subdivision of an aquifer, or geologic stratum
10 designated under Section 16.060(b)(5).

11 (2) "Development board" means the Texas Water
12 Development Board.

13 (3) "Gulf Coast Aquifer" means the system of
14 hydrogeologic units that run along the Gulf Coast from the Sabine
15 River to the Rio Grande, including:

16 (A) the Catahoula confining system, including
17 the Frio Formation, the Anahuac Formation, and the Catahoula Tuff
18 or Sandstone;

19 (B) the Jasper Aquifer, including the Oakville
20 Sandstone and Fleming Formation;

21 (C) the Burkeville confining system separating
22 the Jasper Aquifer from the Evangeline Aquifer;

23 (D) the Evangeline Aquifer, including the Goliad
24 Sand; and

1 (E) the Chicot Aquifer, including the Willis
2 Sand, the Bentley Formation, the Montgomery Formation, the Beaumont
3 Clay, and alluvial deposits at the surface.

4 (b) The requirements of this section do not apply to a
5 district that:

6 (1) overlies the Dockum Aquifer; and

7 (2) includes wholly or partly 10 or more counties.

8 (c) A district located over any part of a designated
9 brackish groundwater production zone may adopt rules to govern the
10 issuance of permits under this section for the completion and
11 operation of a well for the withdrawal of brackish groundwater from
12 a designated brackish groundwater production zone and shall adopt
13 rules described by this subsection if the district receives a
14 petition from a person with a legally defined interest in
15 groundwater in the district. The district must adopt the rules not
16 later than the 180th day after the date the district receives the
17 petition. Rules adopted under this subsection apply only to a
18 permit for a project described by Subsection (d).

19 (d) A person may obtain a permit under rules adopted under
20 this section for projects including:

21 (1) a municipal project designed to treat brackish
22 groundwater to drinking water standards for the purpose of
23 providing a public source of drinking water; and

24 (2) an electric generation project to treat brackish
25 groundwater to water quality standards sufficient for the project
26 needs.

27 (e) The rules adopted under this section must:

1 (1) provide for processing an application for a
2 brackish groundwater production zone operating permit in the same
3 manner as an application for an operating permit for a fresh
4 groundwater well, except as provided by this section;

5 (2) allow withdrawals and rates of withdrawal of
6 brackish groundwater from a designated brackish groundwater
7 production zone not to exceed and consistent with the withdrawal
8 amounts identified in Section 16.060(e);

9 (3) provide for a minimum term of 30 years for a permit
10 issued for a well that produces brackish groundwater from a
11 designated brackish groundwater production zone;

12 (4) require implementation of a monitoring system
13 recommended by the development board to monitor water levels and
14 water quality in the same or an adjacent aquifer, subdivision of an
15 aquifer, or geologic stratum in which the designated brackish
16 groundwater production zone is located;

17 (5) for a project located in a designated brackish
18 groundwater production zone in the Gulf Coast Aquifer, require
19 reasonable monitoring by the district of land elevations to
20 determine if production from the project is causing or is likely to
21 cause subsidence during the permit term;

22 (6) require from the holder of a permit issued under
23 rules adopted under this section annual reports that must include:

24 (A) the amount of brackish groundwater
25 withdrawn;

26 (B) the average monthly water quality of the
27 brackish groundwater withdrawn and in the monitoring wells; and

1 (C) aquifer levels in both the designated
2 brackish groundwater production zone and in any aquifer,
3 subdivision of an aquifer, or geologic stratum for which the permit
4 requires monitoring;

5 (7) provide greater access to brackish groundwater by
6 simplifying procedure, avoiding delay in permitting, saving
7 expense for the permit seeker, and providing flexibility to permit
8 applicants and the district;

9 (8) be consistent with and not impair property rights
10 described by Sections 36.002(a) and (b); and

11 (9) specify all additional information that must be
12 included in an application.

13 (f) Additional information required under Subsection (e)(9)
14 must be reasonably related to an issue the district is authorized to
15 consider.

16 (g) An application for a brackish groundwater production
17 zone operating permit must include:

18 (1) the proposed well field design compared to the
19 designated brackish groundwater production zone;

20 (2) the requested maximum groundwater withdrawal rate
21 for the proposed project;

22 (3) the number and location of monitoring wells needed
23 to determine the effects of the proposed project on water levels and
24 water quality in the same or an adjacent aquifer, subdivision of an
25 aquifer, or geologic stratum in which the designated brackish
26 groundwater production zone is located; and

27 (4) a report that includes:

1 (A) a simulation of the projected effects of the
2 proposed production on water levels and water quality in the same or
3 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
4 in which the designated brackish groundwater production zone is
5 located;

6 (B) a description of the model used for the
7 simulation described by Paragraph (A); and

8 (C) sufficient information for a technical
9 reviewer to understand the parameters and assumptions used in the
10 model described by Paragraph (B).

11 (h) The district shall submit the application to the
12 development board and the development board shall conduct a
13 technical review of the application. The development board shall
14 submit a report of the review of the application that includes:

15 (1) findings regarding the compatibility of the
16 proposed well field design with the designated brackish groundwater
17 production zone; and

18 (2) recommendations for the monitoring system
19 described by Subsection (e)(4).

20 (i) The district may not schedule a hearing on the
21 application until the district receives the report from the
22 development board described by Subsection (h).

23 (j) The district shall provide the reports required under
24 Subsection (e)(6) to the development board. Not later than the
25 120th day after the date the development board receives a request
26 from the district, the development board shall investigate and
27 issue a report on whether brackish groundwater production under the

1 project that is the subject of the report from the designated
2 brackish groundwater production zone is projected to cause:

3 (1) significant aquifer level declines in the same or
4 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
5 that were not anticipated by the development board in the
6 designation of the zone;

7 (2) negative effects on quality of water in an
8 aquifer, subdivision of an aquifer, or geologic stratum; or

9 (3) for a project located in a designated brackish
10 groundwater production zone in the Gulf Coast Aquifer, subsidence
11 during the permit term.

12 (k) After receiving from the development board a report
13 issued under Subsection (j) and after notice and hearing subject to
14 Subchapter M, the district may:

15 (1) amend the applicable permit to establish a
16 production limit necessary to mitigate any negative effects
17 identified by the report;

18 (2) approve a mitigation plan that alleviates any
19 negative effects identified by the report; or

20 (3) both amend the permit to establish a production
21 limit and approve a mitigation plan.

22 (1) Rules adopted under this section must provide that the
23 production authorized from a designated brackish groundwater
24 production zone is in addition to the amount of managed available
25 groundwater provided under Section 36.108. To the extent possible,
26 a district shall issue permits up to the point that the total volume
27 of exempt and permitted groundwater production in a designated

1 brackish groundwater production zone equals the amount of brackish
2 groundwater that may be produced annually to achieve the
3 groundwater availability described by the development board in its
4 designation of the brackish groundwater production zone under
5 Section 16.060(e).

6 (m) A district may not adopt rules limiting access to the
7 production of groundwater within a designated brackish groundwater
8 production zone to only those projects described by Subsection (d).

9 (n) The district may grant or deny an application to extend
10 a term under this section only using rules that were in effect at
11 the time the application was submitted.

12 (o) An application for a permit under this section is
13 governed solely by district rules consistent with this section.

14 SECTION 2. The Texas Water Development Board is required to
15 implement a provision of this Act only if the legislature
16 appropriates money specifically for that purpose. If the
17 legislature does not appropriate money specifically for that
18 purpose, the board may, but is not required to, implement a
19 provision of this Act using other appropriations available for that
20 purpose.

21 SECTION 3. This Act takes effect September 1, 2019.

House Bill 722
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1015, relating to rules adopted by certain groundwater conservation districts governing the issuance of permits in brackish groundwater production zones.

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2019.

SENATE VERSION (IE)

SECTION 1. Substantially the same as House version, except adds Subsection (b) as follows:

(b) The requirements of this section do not apply to:
(1) a district overlying the Dockum Aquifer; or
(2) a district located in a county that:
(A) overlies the Capitan Reef Complex;
(B) is bordered by the Pecos River; and
(C) is more than 4,500 acres in area. [FA1]

SECTION 2. The Texas Water Development Board is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the board may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 3. Same as House version.

CONFERENCE

SECTION 1. Same as Senate version, except as follows:

(b) The requirements of this section do not apply to a district that:
(1) overlies the Dockum Aquifer; and
(2) includes wholly or partly 10 or more counties.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 25, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
 Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB722 by Larson (Relating to the development of brackish groundwater.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB722, Conference Committee Report: a negative impact of (\$224,860) through the biennium ending August 31, 2021.

The Texas Water Development Board is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the agency may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2020 | (\$126,433) |
| 2021 | (\$98,427) |
| 2022 | (\$98,427) |
| 2023 | (\$98,427) |
| 2024 | (\$98,427) |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from <i>General Revenue Fund</i> 1 | Change in Number of State Employees from FY 2019 |
|-------------|--|---|
| 2020 | (\$126,433) | 1.0 |
| 2021 | (\$98,427) | 1.0 |
| 2022 | (\$98,427) | 1.0 |
| 2023 | (\$98,427) | 1.0 |
| 2024 | (\$98,427) | 1.0 |

Fiscal Analysis

The bill would amend the Texas Water Code to authorize a Groundwater Conservation District (GCD) located over any part of a designated brackish groundwater production zone to adopt rules to permit the withdrawal of brackish groundwater in a designated brackish groundwater production zone. Permits may be issued either for a municipal project to treat brackish groundwater to drinking water standards or for an electric generation project. The bill would require Texas Water Development Board (TWDB) to review and comment on permit applications and to make recommendations. The bill would require TWDB to report on the impacts of brackish groundwater production in designated zones at the request of GCDs. The bill would also require TWDB to receive and review annual brackish groundwater production reports from GCDs.

Methodology

According to TWDB, the bill would require the agency to review applications and reports and to produce responsive reports for 31 brackish groundwater production zones. It is assumed that these brackish groundwater production zones would initiate the rule adoption process proposed by the bill in a staggered manner over several years. In order to accomplish the level of work this would likely create, TWDB indicates that it would need 1.0 Geoscientist IV (salary \$72,789) to conduct reviews of permit applications and annual reports and to prepare reports on findings for groundwater conservation districts. Salary, benefits, and other costs associated with this FTE would be \$126,433 in fiscal year 2020, and \$98,427 each subsequent year.

Local Government Impact

According to Clearwater Underground Water Conservation District, and Southeast Texas and Bluebonnet Groundwater Conservation Districts, no significant fiscal impact to their local entities is anticipated.

Rusk County Groundwater Conservation District anticipates some fiscal impact to their district, however that amount would depend on the number of lawsuits filed against the District. Rusk County GCD also estimates fiscal impact due to additional operational and procedural costs associated with provisions of the bill.

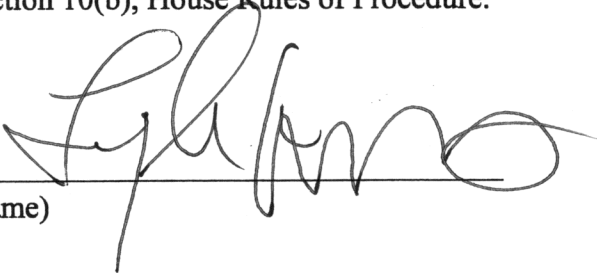
Source Agencies: 580 Water Development Board, 304 Comptroller of Public Accounts

LBB Staff: WP, PBO, SZ, MW, AF, PM, JGa

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under House Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not subject to a point of order under Rule 13.

I certify that a copy of the conference committee report on HB 722 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.



(name)

5.25.14

(date)