

- SUBJECT:** Amending water rights for aquifer storage and recovery projects
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 11 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King, Lucio, Nevárez, Price, Workman
- 0 nays
- WITNESSES:** For — Heather Harward, Texas Water Supply Partners; (*Registered, but did not testify*: Larijai Francis and Tom Tagliabue, City of Corpus Christi, Corpus Christi Aquifer Storage and Recovery Conservation District; Shauna Fitzsimmons, Prairielands GCD; Hope Wells, San Antonio Water System; Stephen Minick, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Billy Howe, Texas Farm Bureau; Wiley Cloud, Texas Onsite Wastewater Association; Perry Fowler, Texas Water Infrastructure Network (TXWIN); Robert Turner, West Texas Ground Water Management Alliance; Randy Chelette; Ron Suchecki)
- Against — Myron Hess, National Wildlife Federation; Ken Kramer, Sierra Club - Lone Star Chapter
- On — L'Oreal Stepney, TCEQ; (*Registered, but did not testify*: Charles Maguire, TCEQ)
- BACKGROUND:** Water Code, sec. 27.151 defines "aquifer storage and recovery project" as a project involving injection of water into a geologic formation for later recovery and use. Sec. 11.1471 requires the Texas Commission on Environmental Quality (TCEQ) to adopt appropriate environmental flow standards for each river basin in the state that are adequate to support the ecological environment. Some observers have suggested that barriers to permits allowing the use of water for aquifer storage and recovery projects be removed so additional water could be used in such projects.
- DIGEST:** HB 3991 would authorize the Texas Commission on Environmental Quality (TCEQ) to issue new rights to divert or use state water, or amend

existing water rights, for use in an aquifer storage and recovery project.

New water rights for excess flows. HB 3991 would allow an aquifer storage and recovery (ASR) project to use water derived from multiple sources, including a new appropriation of water.

A water right or an amendment to a water right for a new appropriation of water to use in an ASR project would have to include any special conditions TCEQ considered necessary. The water right could be for water that was not continuously available and could allow the diversion and use of excess flows from a stream that would otherwise flow into the Gulf of Mexico. The bill would prohibit a water right from negatively affecting existing water rights in the same river basin or applicable environmental flow standards.

Before approving an application for a water right for a new appropriation of water in the Rio Grande basin for an ASR project, TCEQ would have to consider the water accounting requirements for any international water sharing treaty. TCEQ could not approve a new appropriation of water that would violate a treaty or court decision.

Amendments to existing water rights. The holder of a water right for storage in a reservoir that had not been constructed could file an application to amend the water right for storage in an aquifer as part of an ASR project.

An application for converted water use could request an increase in the amount of water that could be diverted on the basis of an evaporation credit. This credit would take into account the amount of water that would have evaporated if the reservoir had been constructed.

The bill would exempt an application from notice and hearing requirements and could not be referred to the State Office of Administrative Hearings if it did not request an increase in the amount of water diverted or a change in the diversion point. An application that did request these changes would be subject to notice and hearing

requirements.

If TCEQ granted an application to convert water use, the commission would have to include in the amendment any special conditions necessary to protect existing water rights and comply with any applicable environmental flow standards.

Expedited application procedures. TCEQ could adopt rules providing an expedited procedure to act on an application for a water right or an application to amend a water right.

Effective date. HB 3991 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.