

BILL ANALYSIS

Senate Research Center

S.B. 1387
By: Seliger
Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no regulatory framework in Texas for the non-commercial sequestration of carbon dioxide and entities wanting to capture and sequester carbon dioxide for long-term storage are left without clear legal guidelines by which to operate. Under the new administration in Washington, D.C., the adoption of federal mandates to regulate carbon dioxide as a pollutant is more likely than ever. Texas operators may very well be required to capture and sequester carbon dioxide under these new rules as early as 2011.

S.B. 1387 amends current law relating to the implementation of projects involving the capture, injection, sequestration, or geologic storage of carbon dioxide.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Sections 27.046 and 27.049, Water Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 2 (Sections 27.047, 27.048, and 27.049, Water Code), SECTION 6 (Section 91.801, Natural Resources Code), and SECTION 7 (Section 120.004, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 27.002, Water Code, by adding Subdivisions (19)-(25), to define "anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well" (anthropogenic well), "enhanced recovery operation," "geologic storage," "geologic storage facility," "oil or gas," and "reservoir."

SECTION 2. Amends Chapter 27, Water Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 27.041. JURISDICTION. (a) Provides that except as provided by Subsection (b), the Railroad Commission of Texas (railroad commission) has jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir.

(b) Provides that the jurisdiction of the railroad commission over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a saline formation described by Subsection (a) is subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 10, S.B. No. 1387, Acts of the 81st Legislature, Regular Session, 2009.

(c) Provides that except as provided by Subsection (b), the railroad commission has jurisdiction over a well used for the purpose provided by Subsection (a) regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and is converted to the purpose provided by Subsection (a).

Sec. 27.042. **APPLICABILITY.** Provides that this subchapter does not apply to the injection of fluid through the use of a Class II injection well as defined by 40 C.F.R. Section 144.6(b) for the primary purpose of enhanced recovery operations.

Sec. 27.043. **PERMIT FROM RAILROAD COMMISSION.** Prohibits a person from beginning drilling or operating an anthropogenic well for geologic storage or constructing or operating a geologic storage facility regulated under this subchapter without first obtaining the necessary permits from the railroad commission.

Sec. 27.044. **INFORMATION REQUIRED OF APPLICANT.** Requires the railroad commission to require an applicant to provide any information the railroad commission considers necessary to discharge its duties under this subchapter.

Sec. 27.045. **FEES.** (a) Authorizes the railroad commission to impose fees to cover the cost of permitting, monitoring, and inspecting anthropogenic wells for geologic storage and geologic storage facilities and enforcing and implementing this subchapter and rules adopted by the railroad commission under this subchapter.

(b) Requires that fees collected by the railroad commission under this section be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 120.003, Natural Resources Code.

Sec. 27.046. **LETTER FROM EXECUTIVE DIRECTOR.** (a) Prohibits the railroad commission from issuing a permit under rules adopted under this subchapter until the applicant for the permit provides to the railroad commission a letter from the executive director of the Texas Commission on Environmental Quality (TCEQ) stating that drilling and operating the anthropogenic well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

(b) Requires the executive director of TCEQ, to make the determination required by Subsection (a), to review certain information.

(c) Requires TCEQ to adopt rules to implement and administer this section.

Sec. 27.047. **RULES.** Requires the railroad commission to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this subchapter, including rules for the geologic storage and associated injection of anthropogenic carbon dioxide, including certain activities; the enforcement of this subchapter and rules adopted by the railroad commission under this subchapter; and the collection and administration of fees imposed under Section 27.045 and penalties imposed for a violation of this subchapter or rules adopted by the railroad commission under this subchapter.

Sec. 27.048. **CONSISTENCY WITH AND IMPLEMENTATION OF FEDERAL REQUIREMENTS.** (a) Requires that rules adopted by the railroad commission under this subchapter be consistent with applicable rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage or anthropogenic carbon dioxide.

(b) Provides that if rules or regulations adopted to govern the geologic storage and associated injection of anthropogenic carbon dioxide under the 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:

(1) the railroad commission shall seek primacy to administer and enforce the program subject to the jurisdiction granted under this subchapter; and

(2) this state shall seek primacy to administer and enforce the program for the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a saline formation.

Sec. 27.049. MEMORANDUM OF UNDERSTANDING. Requires TCEQ and the railroad commission, as necessary to comply with this subchapter, by rule to amend the memorandum of understanding recorded in 16 T.A.C. Section 3.30 or enter into a new memorandum of understanding.

Sec. 27.050. FINANCIAL RESPONSIBILITY. (a) Requires a person to whom a permit is issued under this subchapter to provide to the railroad commission annually evidence of financial responsibility that is satisfactory to the railroad commission.

(b) Requires the railroad commission, in determining whether the person is financially responsible, to rely on certain information.

SECTION 3. Amends Section 27.051, Water Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the railroad commission to grant an application for a permit under Subchapter C (Oil and Gas Waste; Injection Wells) in whole or part and to issue the permit if it finds certain information, including that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 (Financial Responsibility), rather than by Section 27.073 of this code.

(b-1) Authorizes the railroad commission to issue a permit under Subchapter C-1 if it finds that the injection and geologic storage of anthropogenic carbon dioxide will not endanger or injure any oil, gas, or other mineral formation; that, with proper safeguards, both ground and surface fresh water can be adequately protected from carbon dioxide migration or displaced formation fluids; that the injection of anthropogenic carbon dioxide will not endanger or injure human health and safety; that the reservoir into which the anthropogenic carbon dioxide is injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic carbon dioxide from the reservoir; and that the applicant for the permit meets all of the other statutory and regulatory requirements for the issuance of the permit.

SECTION 4. Amends Sections 27.071 and 27.072, Water Code, as follows:

Sec. 27.071. POWER TO ENTER PROPERTY. Authorizes members and employees of TCEQ and the railroad commission to enter public and private property to inspect and investigate conditions relating to certain wells or geologic storage activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of TCEQ or the railroad commission.

Sec. 27.072. POWER TO EXAMINE RECORDS. Makes conforming changes.

SECTION 5. Amends Sections 27.073, Water Code, by amending Subsection (a) and adding Subsection (b-1), as follows:

(a) Authorizes a person to whom an injection well permit is issued to be required by TCEQ or the railroad commission to maintain a performance bond or other form of financial security to ensure that an abandoned injection well is properly plugged or funds are available for plugging, postinjection site care, and closure of an anthropogenic well subject to Subchapter C-1. Makes nonsubstantive changes.

(b-1) Provides that the railroad commission is authorized to receive funds as the beneficiary of a financial responsibility mechanism established under this chapter for the proper management of an anthropogenic well or geologic storage facility.

SECTION 6. Amends Chapter 91, Natural Resources Code, by adding Subchapter R, as follows:

SUBCHAPTER R. AUTHORIZATION FOR MULTIPLE OR ALTERNATIVE USES OF
WELLS

Sec. 91.801. RULES AUTHORIZING MULTIPLE OR ALTERNATIVE USES OF WELLS. Requires the railroad commission to adopt rules allowing a person to obtain a permit for a well from the railroad commission that authorizes the well to be used for multiple purposes and an operator of a well authorized by a permit issued by the railroad commission to convert the well from its authorized purpose to a new or additional purpose.

Sec. 91.802. LAW APPLICABLE TO GEOLOGIC STORAGE FACILITIES AND ASSOCIATED INJECTION WELLS. (a) Defines "anthropogenic carbon dioxide injection well."

(b) Provides that if a well is authorized as or converted to an anthropogenic well for geologic storage, Subchapter C-1, Chapter 27, Water Code, applies to the well.

(c) Provides that a conversion of an anthropogenic well from use for enhanced recovery operations to use for geologic storage is not considered to be a change in the purpose of the well.

SECTION 7. Amends Subtitle D, Title 3, Natural Resources Code, by adding Chapter 120, as follows:

CHAPTER 120. OWNERSHIP AND STEWARDSHIP OF ANTHROPOGENIC
CARBON DIOXIDE

Sec. 120.001. DEFINITIONS. Defines "anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well," "geologic storage facility," "commission," and "storage operator."

Sec. 120.002. OWNERSHIP OF ANTHROPOGENIC CARBON DIOXIDE. (a) Provides that this section does not apply to anthropogenic carbon dioxide injected for the primary purpose of enhanced recovery operations.

(b) Provides that unless otherwise expressly provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, anthropogenic carbon dioxide stored in a geologic storage facility is considered to be the property of the storage operator or the storage operator's heirs, successors, or assigns.

(c) Provides that absent a final judgment of wilful abandonment rendered by a court or a regulatory determination of closure or abandonment, anthropogenic carbon dioxide stored in a geologic storage facility is not considered to be the property of the owner of the surface or mineral estate in the land in which the anthropogenic carbon dioxide is stored or of a person claiming under the owner of the surface or mineral estate.

(d) Authorizes the owner, as designated by Subsection (b) or (c), of the anthropogenic carbon dioxide stored in a geologic storage facility, or the owner's heirs, successors, or assigns, to produce, take, extract, or otherwise possess anthropogenic carbon dioxide stored in the facility.

Sec. 120.003. ANTHROPOGENIC CARBON DIOXIDE STORAGE TRUST FUND. (a) Creates the anthropogenic carbon dioxide storage trust fund (fund) as a special fund in the state treasury.

(b) Provides that the fund is an interest-bearing fund and requires that interest earned on money in the fund be deposited to the credit of the fund.

(c) Requires that fees collected by the railroad commission under Subchapter C-1, Chapter 27, Water Code, and penalties imposed for violations of that subchapter or rules adopted under that subchapter be deposited to the credit of the fund.

(d) Authorizes the fund to be used by the railroad commission only for certain activities.

Sec. 120.004. EXTRACTION OF STORED ANTHROPOGENIC CARBON DIOXIDE.

(a) Requires the railroad commission to adopt rules allowing anthropogenic carbon dioxide stored in a geologic storage facility to be extracted for a commercial or industrial use.

(b) Provides that the railroad commission has jurisdiction over the extraction of anthropogenic carbon dioxide stored in a geologic storage facility.

SECTION 8. Repealer: Section 27.038 (Jurisdiction over Carbon Dioxide Injection), Water Code.

SECTION 9. (a) Defines "anthropogenic carbon dioxide," "geologic storage," "geologic storage facility," and "state-owned land."

(b) Requires the commissioner of the General Land Office, not later than December 1, 2010, to prepare and file with the legislature a preliminary report on a recommended framework for managing activities related to geologic storage on state-owned land. Sets forth the requirements of the report.

(c) Requires the commissioner of the General Land Office, in preparing the preliminary report under Subsection (b) of this section, to coordinate with the Bureau of Economic Geology of The University of Texas at Austin, the railroad commission, TCEQ, and the heads of other appropriate agencies.

(d) Provides that this section expires December 31, 2010.

SECTION 10. (a) Defines "anthropogenic carbon dioxide," "geologic storage," and "geologic storage facility."

(b) Requires TCEQ and the railroad commission, not later than December 1, 2010, in consultation with the Bureau of Economic Geology of The University of Texas at Austin, to prepare and file with the legislature a joint preliminary report that performs certain actions.

(c) Sets forth the requirements of the preliminary report.

(d) Provides that this section expires December 31, 2010.

SECTION 11. (a) Requires TCEQ to adopt rules under Section 27.046, Water Code, as added by this Act, as soon as practicable after the effective date of this Act.

(b) Requires the railroad commission, not later than March 1, 2010, to adopt rules under Section 27.047, Water Code, as added by this Act, for the geologic storage and associated injection of carbon dioxide in connection with enhanced recovery operations, excluding enhanced recovery operations for which there is reasonable expectation of more than insignificant future production volumes or rates as a result of the injection of anthropogenic carbon dioxide, and operating pressures are not higher than reasonably necessary to produce the production volumes or rates described by this subsection.

(c) Requires the railroad commission, not later than September 1, 2010, to adopt rules under Section 27.047, Water Code, as added by this Act, for the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources.

(d) Requires TCEQ and the railroad commission to adopt rules under Section 27.049, Water Code, as added by this Act, as soon as practicable after the effective date of this Act.

(e) Requires the railroad commission to adopt rules under Sections 91.801 and 120.004, Natural Resources Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 12. Provides that this Act does not make an appropriation. Provides that a provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 13. Effective date: September 1, 2009.