

BILL ANALYSIS

Senate Research Center

H.B. 1284
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Class VI underground injection control (UIC) wells are authorized under the federal Safe Drinking Water Act and used to inject anthropogenic (man-made) carbon dioxide (CO₂) into deep rock formations for geologic sequestration and storage. Owners and operators of Class VI wells must first obtain a permit from the United States Environmental Protection Agency (EPA) in order to inject and store anthropogenic CO₂, unless EPA has delegated permitting jurisdiction, known as primacy, to a state to issue such permits.

Texas has primacy over the permitting of Class I-V UIC wells, and that permitting authority is currently divided between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), depending on well classification (RRC permits Class II wells and TCEQ permits Class I, III, IV and V wells). Texas does not have primacy over Class VI UIC wells.

Current state statute splits jurisdiction over Class VI wells in Texas between RRC and TCEQ, depending on the type of project for which the well is being used to inject and store CO₂. This split jurisdiction makes it cumbersome for Texas to apply to EPA for primacy of the Class VI UIC well program.

H.B. 1284 consolidates the jurisdiction over onshore and offshore Class VI UIC wells solely under RRC in order for the state to more easily apply for and obtain primacy of this permitting program from EPA.

H.B. 1284 clarifies that the RRC may not issue a Class VI well permit for a previously authorized Class I well and requires an applicant for a Class VI well permit to obtain a letter of determination from TCEQ concluding that the Class VI well will not interfere with any previously authorized or existing Class I wells.

H.B. 1284 amends current law relating to the regulation of the injection and geologic storage of carbon dioxide in this state.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is transferred to the Railroad Commission of Texas in SECTION 2 (Section 382.502, Health and Safety Code) and SECTION 3 (Section 382.506, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is rescinded in SECTION 6 (Section 202.0545, Tax Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 12 (Section 27.047, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 382.501, Health and Safety Code, by adding Subdivisions (5) and (6) to define "offshore" and "railroad commission" for Subchapter K (Offshore Geologic Storage of Carbon Dioxide).

SECTION 2. Amends Section 382.502, Health and Safety Code, as follows:

Sec. 382.502. New heading: RULES; ENFORCEMENT. (a) Authorizes the Railroad Commission of Texas (RRC), rather than the Texas Commission on Environmental Quality (TCEQ), by rule to adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) Makes a conforming change to this subsection.

(c) Provides that Subchapter F (Civil and Criminal Remedies), Chapter 27 (Injection Wells), Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by RRC under this section in the same manner as Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by RRC under Chapter 27, Water Code.

(d) Requires that a penalty collected under this section be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 121.003 (Anthropogenic Carbon Dioxide Storage Trust Fund), Natural Resources Code.

SECTION 3. Amends Section 382.506, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Makes a conforming change to this subsection.

(b) Requires the Bureau of Economic Geology at The University of Texas at Austin (bureau) to review any measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository performed by another person at the direction of the state, rather than to perform the measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository.

(e) Authorizes the School Land Board to use revenue from the fee authorized by Section 382.505 (Acceptance of Carbon Dioxide for Storage; Fees and Carbon Credits) to contract with the bureau to perform the functions described by Section 382.506 (Measuring, Monitoring, and Verification; Role of Bureau).

SECTION 4. Amends Section 382.509, Health and Safety Code, as follows:

Sec. 382.509. RATES FOR TRANSPORTATION. Makes a conforming change to this section.

SECTION 5. Amends Section 121.003, Natural Resources Code, by amending Subsections (c) and (d) and adding Subsection (c-1), as follows:

(c) Requires that certain funds, including funds received by RRC from financial responsibility mechanisms under Section 27.073 (Financial Responsibility), Water Code, be deposited to the credit of the anthropogenic carbon dioxide storage trust fund. Makes a nonsubstantive change.

(c-1) Requires that penalties imposed for violations of RRC rules adopted under Section 382.502, Health and Safety Code, be deposited to the credit of the anthropogenic carbon dioxide storage trust fund.

(d) Authorizes the anthropogenic carbon dioxide storage trust fund to be used by RRC only for certain uses, including for permitting geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

SECTION 6. Amends Sections 202.0545(c), (d), (f), and (h), Tax Code, as follows:

(c) Requires the operator of an enhanced oil recovery project, to qualify for the tax rate reduction under Section 202.0545 (Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide), to:

- (1) makes no changes to this subdivision; and
- (2) apply for a certification from RRC.

Deletes existing text requiring the operator to apply for a certification from RRC if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir, from TCEQ, if carbon dioxide used in the project is to be sequestered in a geological formation other than an oil or natural gas reservoir, or from both RRC and TCEQ if certain paragraphs apply.

(d) Authorizes RRC to issue a certification under Subsection (c)(2) only if it finds substantial evidence of certain criteria. Deletes existing text authorizing an agency to which an operator applies for a certification under Subsection (c)(2) to issue the certification only if the agency finds substantial evidence of certain criteria.

(f) Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to approve the application if the operator submits the certification required by Subsection (c)(2), rather than the certification or certifications required by Subsection (c)(2), and if the comptroller determines that the oil is otherwise eligible under this section.

(h) Deletes existing text authorizing TCEQ to adopt rules and establish procedures to implement and administer this section. Makes nonsubstantive changes.

SECTION 7. Amends Subchapter C-1, Chapter 27, Water Code, by adding Section 27.040 to define "offshore" for Subchapter C-1 (Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

SECTION 8. Amends Sections 27.041(a) and (c), Water Code, as follows:

(a) Provides that RRC has jurisdiction over the onshore and offshore injection and geologic storage of carbon dioxide in this state. Deletes existing text providing that, except as provided by Subsection (b) (relating to RRC's jurisdiction over geologic storage and associated injection of anthropogenic carbon dioxide, subject to review of the legislature), RRC 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.

(c) Makes a conforming change to this subsection.

SECTION 9. Amends Section 27.043, Water Code, as follows:

Sec. 27.043. PERMIT FROM RAILROAD COMMISSION. (a) Creates this subsection from existing text and makes no further changes.

(b) Prohibits RRC from issuing a permit under Subchapter C-1 for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.

SECTION 10. Amends the heading to Section 27.046, Water Code, to read as follows:

Sec. 27.046. LETTER OF DETERMINATION FROM RAILROAD COMMISSION.

SECTION 11. Amends Subchapter C-1, Chapter 27, Water Code, by adding Section 27.0461, as follows:

Sec. 27.0461. LETTER OF DETERMINATION FROM COMMISSION. Requires a person making an application to RRC for a permit under Subchapter C-1 to submit with the application a letter of determination from TCEQ concluding that drilling and operating an anthropogenic carbon dioxide injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ.

SECTION 12. Amends Section 27.047, Water Code, as follows:

Sec. 27.047. RULES. Requires RRC to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under Subchapter C-1, including rules for:

(1) and (2) makes no changes to these subdivisions; and

(3) the collection and administration of:

(A) and (B) makes nonsubstantive changes to these paragraphs; and

(C) funds received from financial responsibility mechanisms under Section 27.073.

SECTION 13. Amends Section 27.048(b), Water Code, to require RRC to seek primacy to administer and enforce the underground injection control program for the geologic storage and associated injection of anthropogenic carbon dioxide in this state, including onshore and offshore geologic storage and associated injection 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 program.

Deletes existing text providing 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, RRC is required to seek primacy to administer and enforce the program subject to the jurisdiction granted under this subchapter, and this state is required to 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.

SECTION 14. Amends Section 27.073(b-1), Water Code, to require that the funds that RRC is authorized to receive as the beneficiary of a financial responsibility mechanism established under this chapter for the proper management of an anthropogenic carbon dioxide injection well or geologic storage facility be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code.

SECTION 15. Repealer: Section 27.022 (Jurisdiction Over Carbon Dioxide Injection), Water Code.

Repealer: Section 27.041(b) (relating to RRC's jurisdiction over geologic storage and associated injection of anthropogenic carbon dioxide, subject to review of the legislature), Water Code.

SECTION 16. Effective date: upon passage or September 1, 2021.