A BILL TO BE ENTITLED

AN ACT

relating to the appropriation and regulation of State water for beneficial use, including underground storage or recharge of State water in aquifers, other than that portion of Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays Counties.

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

SECTION 1. Findings and Declaration of State Policy.

(i) The Legislature finds that the underground storage or recharge of State water in aquifers constitutes a beneficial use of State water. The Legislature further finds that the use of aquifers for storage or recharge of State water (a) will (1) enhance the conservation and protection of appropriated State water by minimizing evaporation and seepage losses, (2) reduce the incidental environmental impacts associated with the construction of alternative conventional water storage facilities such as above ground reservoirs, and (3) through artificial recharge of State water enhance and protect groundwater resources, and (b) is a necessary use of State water incident to maximizing the conservation beneficial use of such water.

(ii) The Legislation finds the that the storage or recharge of State water in aquifers will not affect property rights, including the ownership and rights of owners of land and his lessees and assigns in underground water subject to the right of
capture, which rights are hereby recognized.

(iii) The Legislature finds that the storage or recharge of State water in aquifers will not affect the authority or jurisdiction of Underground Conservation Districts.

(iv) The Legislature finds that the use of aquifers as storage facilities for State water may relieve a portion of the economic burden upon taxpayers and utility ratepayers commonly associated with the construction of alternative conventional water storage facilities.

Thus, the Legislature finds that the use of aquifers for storage or recharge of appropriated State water complies with the State of Texas to protect and conserve State water, and to enhance and maximize its beneficial use, mandated by the Conservation Amendment (Tex. Const. Art XVI, ss59).

SECTION 2. Amending Language. In keeping with the "Findings and Declaration of State Policy" in Section 1 of this Act, Section 11.023, Water Code, is amended to add the following sections, which read as follows:

(i) State water may be appropriated for beneficial use for recharge, or any other beneficial use and incidental to such use may be stored in aquifers of the State for later retrieval for beneficial use on the surface.

(ii) Notwithstanding the authority granted in paragraph (i) of this Section, authorization to appropriate State water for recharge or injection into that portion of the Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays Counties is subject to the provisions of Section 11.023(c)-(d) of this Code.
(iii) The storage of State Water granted in paragraph (i) of this Section will only be authorized if it can be established by substantive evidence accompanying an application filed to appropriate State water for such purpose, or in a contested hearing by expert testimony, that an unreasonable loss State water will not occur and that the stored water can be withdrawn at a later time for application to any beneficial use authorized by statute.

(iv) State water stored underground in aquifers pursuant to paragraph (i) of this section shall retain its character as State water, and remain subject (a) to the terms and conditions imposed by any permit, or amendment to any permit, authorizing such underground storage or recharge issued by the Commission, and (b) to the ongoing supervision of the Commission and any rules promulgated by the Commission within its jurisdiction. Although retaining its character as State water, any State water stored in or recharged to an aquifers pursuant to this section which becomes commingled with native groundwater may be subject to capture by the owner of real property overlying the commingled water. Provided, further, that the potential loss of water, which may occur through the exercise of the right of capture by a landowner overlying the aquifer used for storage or recharge of State water, shall be deemed to be a beneficial use of State water, subject only to the prohibitions of Chapter 11 of this Code against waste.

(v) Any person desiring to store or recharge State water in an aquifer for subsequent retrieval must so state in the
application to appropriate State water, or in any request for an amendment to an existing appropriation, filed with the Commission.

(vi) In determining whether to grant a request to allow the underground storage of appropriated State water in an aquifer, the commission shall consider whether the storage of State water in the aquifer designed to receive it will cause any alteration of the physical, chemical, or biological quality of native groundwater that would make subsequently water produced from the formation harmful, detrimental or injurious, (a) to humans, animal life, vegetation, or property, or (b) to public health, safety or welfare; or that impairs the usefulness for public enjoyment of the water to be produced from the formation for any lawful and reasonable purpose for which native quality groundwater in the formation could have been used by providing no more than the same degree of treatment.

(vii) As part of the application process to appropriate State water, or amend an existing appropriation, to authorize the underground storage of appropriated State surface water in an aquifer, said application shall be evaluated as a Class V Well permit application also; provided, however, that such consideration shall be consolidated into the water rights permitting process and that no separate hearing or notice shall be required for the Class V Injection Well authorization.

(vii) In addition to the notice requirements of Chapter 11 of this Code, any person desiring to store or recharge State water in or an "Underground Water Reservoir" as that term is
defined in Chapter 52 of this Code, pursuant to this Act shall
provide copies of any required Notice to any Underground Water
Conservation District with jurisdiction over said "underground
water reservoir."

SECTION 3. Applicability of the Act. This Act applies to
an application filed on or after the Effective Date of this Act
for a permit or an amendment to a permit to appropriate State
water, which contemplates the recharge or underground storage of
State water in an aquifer other than the portion of the Edwards
Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays
Counties. This Act has no effect on any existing permit issued
by the Commission, or any application for a permit or a amendment
to a permit which contemplates the recharge or underground
storage of State water that was determined to be administratively
complete by the Commission on or before the Effective Date of
this Act.

SECTION 4. Declaration of an Emergency. The importance of
this legislation and the crowded condition of the calendars in
both houses create an emergency and an imperative public
necessity that the constitutional rule requiring bills to be read
on several days in each house be suspended, and this rule is
hereby suspended, and that this Act take effect and be in force
from and after its passage, and it is so enacted.
JOINT AUTHOR AUTHORIZATION

As primary author of HB 1989 I hereby authorize the following joint author(s):

[Signature of primary author]

[Date: 3-28-95]

<table>
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SEND COPIES TO:
Debbie Irvine (Legislative Council)
Legislative Reference Library
House Journal
A BILL TO BE ENTITLED

AN ACT

relating to the underground storage of appropriated water incidental to a beneficial use.

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

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated
water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Houston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and
(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must:

(1) be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use; and

(2) expire on or before June 1, 1999.

(c) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by
C.S.H.B. No. 1989

Chapter 52, that is under the jurisdiction of an underground water conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each underground water conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with the districts that have jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district; and

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(2) the commission shall require as a condition of the permit or permit amendment that the applicant reach an agreement with each district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to
determine the occurrence, quantity, quality, and availability of
other aquifers in which water may be stored and subsequently
retrieved for beneficial use. The board shall undertake the
studies, investigations, and surveys in the following order of
priority:

(1) the aquifers identified in Section 11.153(a);
(2) areas designated by the commission as "critical
areas" under Section 52.053; and
(3) other areas of the state in a priority to be
determined by the board's ranking of where the greatest need
exists.

(c) Not later than January 1 of each odd-numbered year, the
board shall prepare and provide to the legislature a report that
includes at least the following information:

(1) the progress of the pilot projects authorized
under this subchapter and of any related project;
(2) the results of the board's studies of the other
aquifers of the state during the preceding biennium; and
(3) the anticipated appropriation from general
revenues necessary to investigate other state aquifers during the
upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies
only to an application made on or after the effective date of this
Act for a permit or a permit amendment for a pilot project to
appropriate water and to store appropriated water in an aquifer
identified in this Act.
(b) A permit issued by the commission authorizing the
storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
COMMITTEE REPORT

The Honorable Pete Laney
Speaker of the House of Representatives

Sir:

We, your COMMITTEE ON NATURAL RESOURCES
to whom was referred H.B. 1989 have had the same under consideration and beg to report
back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(✓) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(✓) yes ( ) no A fiscal note was requested.
( ) yes (✓) no A criminal justice policy impact statement was requested.
( ) yes (✓) no An equalized educational funding impact statement was requested.
( ) yes (✓) no An actuarial analysis was requested.
( ) yes (✓) no A water development policy impact statement was requested.

(✓) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

The measure was reported from Committee by the following vote:

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Total 7 aye

0 nay

0 present, not voting

2 absent

[Signature]
CHAIRMAN
BIL ANALYSIS

Natural Resources Committee
C.S.H.B. 1989
By: Rodriguez
4-10-95
Committee Report (Substituted)

BACKGROUND
Presently, state law allows "state water" to be appropriated, stored or diverted for any "beneficial use" as mandated by the Texas Water Code, Section 11.023(b). This Section outlines the purposes for which water may be appropriated and used. This broad authorization becomes limited if the proposed use of the State water is to "recharge" the portions of the Edwards Aquifer under Kinney, Uvalde, Medina, Bexar, Comal, and Hays Counties as cited in the Texas Water Code, Section 11.023(c)-(d). In that case, the statute sets out certain requirements.

Development of new municipal water storage facilities can be achieved in an aquifer much faster than a conventional surface reservoir, which today is estimated to take approximately 20 years. Additionally, the use of aquifers for purposes of storing or recharging State water is in accordance with the State of Texas' initiative to comply with the mandate of the Texas Conservation Amendment (Tex. Const. Art XVI, §59), which constitutes protecting and conserving State water and enhancing and maximizing its beneficial use.

PURPOSE
The purpose of this Bill is clarify the present ability, under Texas law (1) to put State water to beneficial use, and incident to such purpose store the water in an aquifer, or (2) to use such State water to recharge an aquifer other than those portions of the Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal, and Hays Counties.

This Bill does not seek to diminish the effectiveness of current State environmental law, nor does it seek to diminish the authority of underground water districts or the rights of landowners to capture water for beneficial use. Under this new legislation, all existing regulatory protection will remain in place in addition to requiring a permit from the Texas Natural Resource Conservation Commission (TNRCC) for the purpose of appropriating State water for either putting State water to beneficial use (the storing of State water in an aquifer) or for using State water for the recharging of an aquifer other than those portions of the Edwards Aquifer mentioned previously. Also, this Bill will not change existing law with regard to the Edwards Aquifer.

RULEMAKING AUTHORITY
It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS
Section 1. Legislative findings relating to the storage of State water.

Section 2. Amends Subchapter D, Chapter 11, Water Code, by adding Sections 11.153, 11.154, and 11.155, which provide as follows:

Sec. 11.153.: Provides that the Texas Natural Resource Conservation Commission (TNRCC) will encourage, by temporary or term permitting, pilot projects on storing appropriated water in certain aquifers; provides that the Texas Water Development Board (TWDB) shall participate and may authorize certain money for such projects.

Sec. 11.154.: Provides permitting procedures for permits under Section 11.153.

Sec. 11.155.: Provides that the TNRCC and the TWDB shall prepare pilot project reports and distribute them to the governor, lieutenant governor, and speaker of the house of
representatives; provides that the TWDB shall make studies, investigations, and surveys of other
aquifers in which other water may be stored and retrieved for beneficial use; prioritizes such
studies, investigations, and surveys; provides that, not later than January 1 of each odd-numbered
year, the TWDB shall provide the legislature with a report including information on the progress
of pilot and related projects, the results of studies, and the anticipated appropriation from general
revenues necessary to investigate other state aquifers during the upcoming biennium.

Section 3. Provides that the change in law made by this Act applies to new applications only
and does not affect permits already issued by the TNRCC, or applications determined to be
administratively complete before the effective date.

Section 4. Emergency clause and effective date.

COMPARISON OF ORIGINAL TO SUBSTITUTE
The Original provided for statewide Aquifer storage and recovery projects and authorized the use
of state water for recharge. It also gave the TNRCC authority to issue final permits or amend
existing permits. The Substitute does not expressly authorize the use of state water for recharge,
but does provide for encouragement of pilot projects on aquifer storage and recovery though
temporary and term permitting. The Substitute limits these projects to aquifers in specified
counties. The Substitute does not contain guidance criteria for issuance of final permits for
storage of water.

SUMMARY OF COMMITTEE ACTION
H.B.1989 was considered by the committee in a public hearing on March 27, 1995. The
committee considered a complete substitute for the bill. No action was taken on the substitute.
The following persons testified in favor of the bill:
Mr. Ed McCarthy, representing Bexar Medina Atascosa Counties WCID and Bexar
Metropolitan Water District;
Mr. David J. Davenport, Canyon Regional Water Authority, representing himself;
Mr. Louis T. Rosenberg, representing himself, Bexar Metropolitan Water District, and
Canyon Regional Water Authority;
Mr. John Wendele, General Manager of and representing UGRA;
Mr. Paul B. Thornhill, representing himself.

The following persons testified against the bill:
Mr. Keith Pate, representing Evergreen Underground Water Conservation District;
Mr. Scott Holland, Irion County Water Conservation District, representing himself;
Mr. Allan J. Lange, representing Lipan-Kickapoo Water Conservation District.

The following persons testified on the bill:
Mr. Randy Williams, representing Texas Water Development Board;
Mr. C.E. Williams, representing Panhandle Ground Water Conservation District;
Mr. Richard Bowers, General Manager of and representing North Plains Ground Water
Conservation District No.2;
Mr. Lee Arrington, representing South Plains Underground Water Conservation District.

The bill was referred to the Subcommittee on H.B.1989, a subcommittee consisting of
Representatives King, Yost, and Walker, Chair.

H.B.1989 was considered by the Subcommittee on H.B.1989 in a public hearing on April 3,
1995. The subcommittee considered a complete substitute for the bill. No action was taken on
the substitute.

The following persons testified in favor of the bill:
Mr. Ed McCarthy, representing BMA and Bexar Met. Water Districts;
Mr. John W. Ward III, President of the Board of and representing BMA Water District;
Mr. Louis T. Rosenberg, representing himself and Bexar Metropolitan Water District;
Mr. David Davenport, Canyon Regional Water Authority, representing himself;
Representative Ciro Rodriguez.

The following persons testified against the bill:
Mr. Allan J. Lange, representing Lipan-Kickapoo Water Conservation District;
Mr. Keith Pate, representing Evergreen Underground Water Conservation District;
Mr. Lee Arrington, representing South Plains Underground Water Conservation District.

The following person testified on the bill:
Mr. Paul D. Thornhill, CH2M Hill, representing himself;
Dr. Tommy Knowles, representing Texas Water Development Board;
Ms. Luana Buckner, representing herself and Medina County Underground Water District;
Mr. Richard Bowers, representing North Plains Ground Water Conservation District No.2.

The bill was left pending.

After being recalled from subcommittee, the bill was considered by the committee in a public hearing on April 10, 1995. The committee considered a complete substitute for the bill. The substitute was adopted without objection.
No testimony was received.
The bill was reported favorably as substituted, with the recommendation that it do pass and be printed and be sent to the Committee on Local and Consent Calendars, by a record vote of 7 ayes, 0 nays, 0 pnv, 2 absent.
TO:  Honorable David Counts, Chair  
    Committee on Natural Resources  
    House of Representatives  
    Austin, Texas  

IN RE: Committee Substitute for House Bill No. 1989

FROM: John Keel, Director

In response to your request for a Fiscal Note on House Bill No. 1989 (relating to the underground storage of appropriated water incidental to a beneficial use) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JK, DF
TO: Honorable David Counts, Chair  
Committee on Natural Resources  
House of Representatives  
Austin, Texas

IN RE: House Bill No. 1989  
By: Rodriguez

FROM: John Keel, Director

In response to your request for a Fiscal Note on House Bill No. 1989 (Relating to the appropriation and regulation of State water for beneficial use, including underground storage or recharge of State water in aquifers, other than that portion of Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays Counties.) this office has determined the following:

The bill would authorize the appropriation of state water for groundwater recharge and storage in underground aquifers for subsequent withdrawal and use. The bill would also consolidate the permit process for an injection well required for the recharge with the water right permit for use of state water.

The implementation of the bill would require the amendment of Texas Natural Resource Conservation (TNRCC) regulations related to water rights permit applications and the development of procedures for the consolidated permit processing authorized by the bill. The actual increase in workload and costs are not expected to be significant.

No significant fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source: Natural Resource Conservation Commission  
LBB Staff: JK, JB, DF
A BILL TO BE ENTITLED

AN ACT

relating to the underground storage of appropriated water incidental to a beneficial use.

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

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated
water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and
(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must:

(1) be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use; and

(2) expire on or before June 1, 1999.

(c) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each underground water conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with the districts that have jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district; and

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(2) the commission shall require as a condition of the permit or permit amendment that the applicant reach an agreement with each district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to
determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers identified in Section 11.153(a);

(2) areas designated by the commission as "critical areas" under Section 52.053; and

(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

(1) the progress of the pilot projects authorized under this subchapter and of any related project;

(2) the results of the board's studies of the other aquifers of the state during the preceding biennium; and

(3) the anticipated appropriation from general revenues necessary to investigate other state aquifers during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.

(b) A permit issued by the commission authorizing the
storage of appropriated water in an aquifer incident to a
beneficial use before the effective date of this Act or an
application for a permit or permit amendment to appropriate water
that includes authorization to store appropriated water in an
underground structure filed before the effective date of this Act
is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the
crowded condition of the calendars in both houses create an
emergency and an imperative public necessity that the
constitutional rule requiring bills to be read on three several
days in each house be suspended, and this rule is hereby suspended,
and that this Act take effect and be in force from and after its
passage, and it is so enacted.
By Rodriguez, Thompson, Lewis of Orange, Longoria

H.B. No. 1989

A BILL TO BE ENTITLED

AN ACT

relating to the underground storage of appropriated water incidental to a beneficial use.

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

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated
H.B. No. 1989

1 water may reduce a portion of the economic burden on taxpayers and
2 utility ratepayers associated with the construction of conventional
3 water storage facilities;
4 (7) the successful storage of appropriated water
5 underground has been demonstrated in Kerr County by the Upper
6 Guadalupe River Authority in the Hosston-Sligo Aquifer; and
7 (8) the Texas Natural Resource Conservation Commission
8 and the Texas Water Development Board are encouraged to evaluate
9 additional aquifers within the state to identify the potential for
10 storage of appropriated water underground to maximize and enhance
11 the future availability and beneficial use of the water resources
12 of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended
by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED
WATER IN AQUIFERS. (a) The commission shall investigate the
feasibility of storing appropriated water in various types of
aquifers around the state by encouraging the issuance of temporary
or term permits for pilot demonstration projects for the storage of
appropriated water for subsequent retrieval and beneficial use in
the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose
Limestone aquifers in Bexar County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood,
Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie
County; and
(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must:

(1) be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use; and

(2) expire on or before June 1, 1999.

(c) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each underground water conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with the districts that have jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district; and

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(2) the commission shall require as a condition of the permit or permit amendment that the applicant reach an agreement with each district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to
determine the occurrence, quantity, quality, and availability of
other aquifers in which water may be stored and subsequently
retrieved for beneficial use. The board shall undertake the
studies, investigations, and surveys in the following order of
priority:
(1) the aquifers identified in Section 11.153(a);
(2) areas designated by the commission as "critical
areas" under Section 52.053; and
(3) other areas of the state in a priority to be
determined by the board's ranking of where the greatest need
exists.
(c) Not later than January 1 of each odd-numbered year, the
board shall prepare and provide to the legislature a report that
includes at least the following information:
(1) the progress of the pilot projects authorized
under this subchapter and of any related project;
(2) the results of the board's studies of the other
aquifers of the state during the preceding biennium; and
(3) the anticipated appropriation from general
revenues necessary to investigate other state aquifers during the
upcoming biennium.
SECTION 3. (a) The change in law made by this Act applies
only to an application made on or after the effective date of this
Act for a permit or a permit amendment for a pilot project to
appropriate water and to store appropriated water in an aquifer
identified in this Act.
(b) A permit issued by the commission authorizing the
storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
A BILL TO BE ENTITLED
AN ACT
relating to the underground storage of appropriated water incidental to a beneficial use.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. The legislature finds that:
(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;
(2) the use of aquifers for storage of appropriated water:
(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;
(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and
(C) enhances and protects groundwater resources;
(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;
(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;
(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;
(6) the use of aquifers for storage of appropriated water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;
(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and
(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.
SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:
Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:
(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;
(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood, Rains, and Van Zandt counties;
(3) the Hickory and Ellenberger aquifers in Gillespie County; and
(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.
(b) A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.
(c) At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the
criteria set out in Section 11.154, the commission shall determine
whether to issue a permit or permit amendment authorizing the
continued storage of appropriated water in the aquifer.
(d) A final order granting a permit or amendment to a permit
authorizing the storage of appropriated water in aquifers for
subsequent beneficial use, other than for the pilot projects
authorized by this section, may not be issued before June 1, 1999.
(e) The board shall participate in the study of the pilot
projects authorized by Subsection (a). The pilot projects are
eligible for grants from the water loan assistance fund established
by Section 15.101. The board may authorize use of money from the
research and planning fund established by Section 15.402 to
participate in the study of pilot projects.
Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN
AQUIFERS. (a) An application filed with the commission to
undertake a pilot project under Section 11.153 must include:
(1) the information required for an application for a
permit or permit amendment to appropriate state water;
(2) all information required for an application for a
permit for a Class V injection well without requiring a separate
hearing or notice; and
(3) a map or plat showing the injection facility and
the aquifer in which the water will be stored.
(b) If the application is for a permit or permit amendment
to store appropriated water in an underground water reservoir or a
subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water
conservation district:
(1) the applicant shall:
(A) provide a copy of the application to each
underground water conservation district that has jurisdiction over
the reservoir or subdivision;
(B) cooperate with the districts that have
jurisdiction over the reservoir or subdivision to ensure compliance
with the rules of each district;
(C) cooperate with each district that has
jurisdiction over the reservoir or subdivision to develop rules
regarding the injection, storage, and withdrawal of appropriated
water stored in the aquifer; and
(D) comply with the rules governing the
injection, storage, or withdrawal of appropriated water stored in
the reservoir or subdivision that are adopted by a district that
has jurisdiction over the reservoir or subdivision; and
(2) the commission shall require that any agreement
the applicant reaches with a district that has jurisdiction over
the reservoir or subdivision regarding the terms for the injection,
storage, and withdrawal of appropriated water be included as a
condition of the permit or permit amendment.
In completion of a pilot project and receipt of an
appropriate application for a permit or amendment to an existing
permit, the commission shall evaluate the success of the pilot
project for purposes of issuing a final order granting a permit or
permit amendment authorizing the storage of appropriated water
incident to a beneficial use. The commission shall consider
whether:
(1) the introduction of water into the aquifer will
alter the physical, chemical, or biological quality of native
groundwater to a degree that the introduction would:
(A) render groundwater produced from the aquifer
harmful or detrimental to people, animals, vegetation, or property;
or
(B) require treatment of the groundwater to a
greater extent than the native groundwater requires before being
applied to that beneficial use;
(2) the water stored in the receiving aquifer can be
successfully harvested from the aquifer for beneficial use; and
(3) the permit holder has provided evidence that
reasonable diligence will be used to protect the water stored in
the receiving aquifer from unauthorized withdrawals to the extent
necessary to maximize the permit holder's ability to retrieve and
beneficially use the stored water without experiencing unreasonable loss of appropriated water.

(3) In making its evaluation under Subsection (c), the commission may consider all relevant facts, including:

(1) the location and depth of the aquifer in which the stored water is located;
(2) the nature and extent of the surface development and activity above the stored water;
(3) the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;
(4) the existence of an underground water conservation district with jurisdiction over the aquifer storing the water and the district's ability to adopt rules to protect stored water; and
(5) the existence of any other political subdivision or state agency authorized to regulate the drilling of wells.

(e) A permit to store appropriated water in an underground water reservoir or subdivision, as defined by Chapter 52, shall provide as a condition to the permit that the permit holder shall:

(1) register the permit holder's injection and recovery wells with an underground water conservation district that has jurisdiction over the reservoir or subdivision, if any; and
(2) each calendar month, provide to the district, if any, with a written report showing for the previous calendar month:

(A) the amount of water injected for storage;
and
(B) the amount of water recaptured for use.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission jointly shall:

(1) prepare a report evaluating the success of the project; and
(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers identified in Section 11.153(a);
(2) areas designated by the commission as "critical areas" under Section 52.053; and
(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

(1) the progress of the pilot projects authorized under this subchapter and of any related project;
(2) the results of the board's studies of the other aquifers of the state during the preceding biennium; and
(3) the anticipated appropriation from general revenues necessary to investigate other aquifers in the state during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.
(b) A permit issued by the commission authorizing the storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the
crowded condition of the calendars in both houses create an
emergency and an imperative public necessity that the
constitutional rule requiring bills to be read on three several
days in each house be suspended, and this rule is hereby suspended,
and that this Act take effect and be in force from and after its
passage, and it is so enacted.

* * * * *
We, your Committee on NATURAL RESOURCES, to which was referred the attached measure, have on 14/95 had the same under consideration and I am instructed to report it back with the recommendation(s) that it:

( ) do pass as substituted, and be printed

( ) the caption remained the same as original measure

( ) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

( ) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested.  ( ) yes ( ) no

A revised fiscal note was requested.  ( ) yes ( ) no

An actuarial analysis was requested.  ( ) yes ( ) no

Considered by subcommittee.  ( ) yes ( ) no

The measure was reported from Committee by the following vote:

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S260 Considered in public hearing
S270 Testimony taken

COMMITTEE ACTION

[Signatures of Committee Clerk and Chairman]
BILL ANALYSIS

Senate Research Center

By: Rodriguez (Sponsor)
Natural Resources
05-03-95
Engrossed

BACKGROUND

Presently, state law allows state water to be appropriated, stored, or diverted for any beneficial use as mandated by the Texas Water Code, Section 11.023(b), which outlines the purposes for which water may be appropriated and used. This broad authorization becomes limited if the proposed use of the state water is to recharge the portions of the Edwards Aquifer under Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties as cited in Sections 11.023(c) and (d), Water Code.

PURPOSE

As proposed, H.B. 1989 provides for the underground storage of appropriated water incidental to a beneficial use.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings in relation to underground storage of appropriated water incidental to a beneficial use.

SECTION 2. Amends Chapter 11D, Water Code, by adding Sections 11.153, 11.154, and 11.155, as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) Requires the Natural Resource Conservation Commission (commission) to investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in certain aquifers.

(b) Sets forth requirements for a permit described by Subsection (a).

(c) Requires the Texas Water Development Board (board) to participate in the study of the pilot projects authorized by Subsection (a). Provides that the pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. Authorizes the board to authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) Sets forth provisions required to be included in an application filed with the commission to undertake a pilot project under Section 11.153.

(b)(1) Sets forth requirements for an applicant applying for a permit or permit amendment to store appropriated water in an underground reservoir or a subdivision of an underground water reservoir that is under the jurisdiction of an underground water conservation district (permit).

(2) Requires the commission to require as a condition of the permit that the
applicant reach an agreement with each district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) Requires the board and the commission, on completion of each pilot project, to jointly prepare a report evaluating the success of the project; and provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) Requires the board to make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. Sets forth the order of priority in which the board is required to undertake the studies, investigations, and surveys.

(c) Sets forth information for a report the board is required, no later than January 1 of each odd-numbered year, to prepare and provide to the legislature.

SECTION 3. Makes application of this Act prospective.

SECTION 4 Emergency clause.
   Effective date: upon passage.
BILL ANALYSIS

Senate Research Center

C.S.H.B. 1989
By: Rodriguez (Madla)
Natural Resources
5-9-95
Senate Committee Report (Substituted)

BACKGROUND

Presently, state law allows state water to be appropriated, stored, or diverted for any beneficial use as mandated by the Texas Water Code, Section 11.023(b), which outlines the purposes for which water may be appropriated and used. This broad authorization becomes limited if the proposed use of the state water is to recharge the portions of the Edwards Aquifer under Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties as cited in Sections 11.023(c) and (d), Water Code.

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(b) Sets forth requirements for a permit described by Subsection (a).

(c) Authorizes a permit holder, at the conclusion of a pilot project, to file an appropriate application for a permit or a permit amendment. Requires the commission, after considering the success of a project, to determine whether to issue a permit or permit amendment authorizing the continued storage of the appropriated water in the aquifer.

(d) Prohibits a final order granting a permit or permit amendment authorizing the storage of appropriated water for subsequent beneficial use, other than for pilot projects, from being issued before June 1, 1999.

(e) Requires the Texas Water Development Board (board) to participate in the study of the pilot projects authorized by Subsection (a). Provides that the pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. Authorizes the board to authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.
Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) Sets forth provisions required to be included in an application filed with the commission to undertake a pilot project under Section 11.153.

(b)(1) Sets forth requirements for an applicant applying for a permit or permit amendment to store appropriated water in an underground reservoir or a subdivision of an underground water reservoir that is under the jurisdiction of an underground water conservation district (permit).

(2) Requires the commission to require that any agreement the applicant reaches with the district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) Requires the commission, on completion of a pilot project and receipt of an appropriate permit or permit amendment application, to evaluate the success of the pilot project. Sets forth the issues the commission must consider for the purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use.

(d) Sets forth the relevant facts the commission may consider in making its evaluation.

(e) Requires a permit to store appropriated water in an underground water reservoir or subdivision to provide as a condition of the permit that the permit holder register specific kinds of wells and provide reports to districts.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) Requires the board and the commission, on completion of each pilot project, to jointly prepare a report evaluating the success of the project; and provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) Requires the board to make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. Sets forth the order of priority in which the board is required to undertake the studies, investigations, and surveys.

(c) Sets forth information for a report the board is required, no later than January 1 of each odd-numbered year, to prepare and provide to the legislature.

SECTION 3. Makes application of this Act prospective.

SECTION 4 Emergency clause.
Effective date: upon passage.
TO: Honorable David Counts, Chair
   Committee on Natural Resources
   House of Representatives
   Austin, Texas

FROM: John Keel, Director

IN RE: Committee Substitute for House Bill No. 1989

In response to your request for a Fiscal Note on House Bill No. 1989 (relating to the underground storage of appropriated water incidental to a beneficial use) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JK, DF
TO:  Honorable David Counts, Chair  
Committee on Natural Resources  
House of Representatives  
Austin, Texas  

IN RE: Committee Substitute  
for House Bill No. 1989  

FROM: John Keel, Director  

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Source: LBB Staff: JK, DF
TO: Honorable David Counts, Chair  
Committee on Natural Resources  
House of Representatives  
Austin, Texas

IN RE: House Bill No. 1989  
By: Rodriguez

FROM: John Keel, Director

In response to your request for a Fiscal Note on House Bill No. 1989 (Relating to the appropriation and regulation of State water for beneficial use, including underground storage or recharge of State water in aquifers, other than that portion of Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays Counties.) this office has determined the following:

The bill would authorize the appropriation of state water for groundwater recharge and storage in underground aquifers for subsequent withdrawal and use. The bill would also consolidate the permit process for an injection well required for the recharge with the water right permit for use of state water.

The implementation of the bill would require the amendment of Texas Natural Resource Conservation (TNRCC) regulations related to water rights permit applications and the development of procedures for the consolidated permit processing authorized by the bill. The actual increase in workload and costs are not expected to be significant.

No significant fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source: Natural Resource Conservation Commission  
LBB Staff: JK, JB, DF
**COMMITTEE: Natural Resources**

**BILL: HB 1989**

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# # # PART OF # # #

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END OF FORM ===============
By

A BILL TO BE ENTITLED

AN ACT

relating to the underground storage of appropriated water
incidental to a beneficial use.

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

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water,
incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated water...
water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and
(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.

(c) At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.

(d) A final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use, other than for the pilot projects authorized by this section, may not be issued before June 1, 1999.

(e) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate state water;
(2) all information required for an application for a
permit for a Class V injection well without requiring a separate
hearing or notice; and

(3) a map or plat showing the injection facility and
the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment
to store appropriated water in an underground water reservoir or a
subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water
conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each
underground water conservation district that has jurisdiction over
the reservoir or subdivision;

(B) cooperate with the districts that have jurisdic-
tion over the reservoir or subdivision to ensure compliance
with the rules of each district;

(C) cooperate with each district that has jurisdic-
tion over the reservoir or subdivision to develop rules
regarding the injection, storage, and withdrawal of appropriated
water stored in the aquifer; and

(D) comply with the rules governing the
injection, storage, or withdrawal of appropriated water stored in
the reservoir or subdivision that are adopted by a district that
has jurisdiction over the reservoir or subdivision; and

(2) the commission shall require that any agreement
the applicant reaches with a district that has jurisdiction over
the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) On completion of a pilot project and receipt of an appropriate application for a permit or an amendment to an existing permit, the commission shall evaluate the success of the pilot project for purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use. The commission shall consider whether:

(1) the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that the introduction would:

(A) render groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property; or

(B) require treatment of the groundwater to a greater extent than the native groundwater requires before being applied to that beneficial use;

(2) the water stored in the receiving aquifer can be successfully harvested from the aquifer for beneficial use; and

(3) the permit holder has provided evidence that reasonable diligence will be used to protect the water stored in the receiving aquifer from unauthorized withdrawals to the extent necessary to maximize the permit holder's ability to retrieve and beneficially use the stored water without experiencing unreasonable loss of appropriated water.
(d) In making its evaluation under Subsection (c), the commission may consider all relevant facts, including:

(1) the location and depth of the aquifer in which the stored water is located;

(2) the nature and extent of the surface development and activity above the stored water;

(3) the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;

(4) the existence of an underground water conservation district with jurisdiction over the aquifer storing the water and the district's ability to adopt rules to protect stored water; and

(5) the existence of any other political subdivision or state agency authorized to regulate the drilling of wells.

(e) A permit to store appropriated water in an underground water reservoir or subdivision, as defined by Chapter 52, shall provide as a condition to the permit that the permit holder shall:

(1) register the permit holder's injection and recovery wells with an underground water conservation district that has jurisdiction over the reservoir or subdivision, if any; and

(2) each calendar month, provide the district, if any, with a written report showing for the previous calendar month:

(A) the amount of water injected for storage; and

(B) the amount of water recaptured for use.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission
jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers identified in Section 11.153(a);

(2) areas designated by the commission as "critical areas" under Section 52.053; and

(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

(1) the progress of the pilot projects authorized under this subchapter and of any related project;

(2) the results of the board's studies of the other aquifers of the state during the preceding biennium; and

(3) the anticipated appropriation from general revenues necessary to investigate other aquifers in the state
during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.

(b) A permit issued by the commission authorizing the storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
Amend C.S.H.B. 1989 in Section 2 of the bill by striking proposed Section 11.153(a)(2), Water Code, and substituting:

"(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;".
SENATE AMENDMENTS
2nd Printing

By Rodriguez, Thompson, Lewis of Orange, Longoria

H.B. No. 1989

A BILL TO BE ENTITLED
AN ACT
relating to the underground storage of appropriated water incidental to a beneficial use.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. The legislature finds that:
(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;
(2) the use of aquifers for storage of appropriated water:
(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;
(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and
(C) enhances and protects groundwater resources;
(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;
(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;
(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;
(6) the use of aquifers for storage of appropriated
H.B. No. 1989

water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and
H.B. No. 1989

(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must:

(1) be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use; and

(2) expire on or before June 1, 1999.

(c) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each underground water conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with the districts that have jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district; and

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(2) the commission shall require as a condition of the permit or permit amendment that the applicant reach an agreement with each district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to
determine the occurrence, quantity, quality, and availability of
other aquifers in which water may be stored and subsequently
retrieved for beneficial use. The board shall undertake the
studies, investigations, and surveys in the following order of
priority:

(1) the aquifers identified in Section 11.153(a);
(2) areas designated by the commission as "critical
areas" under Section 52.053; and
(3) other areas of the state in a priority to be
determined by the board's ranking of where the greatest need
exists.

(c) Not later than January 1 of each odd-numbered year, the
board shall prepare and provide to the legislature a report that
includes at least the following information:

(1) the progress of the pilot projects authorized
under this subchapter and of any related project;
(2) the results of the board's studies of the other
aquifers of the state during the preceding biennium; and
(3) the anticipated appropriation from general
revenues necessary to investigate other state aquifers during the
upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies
only to an application made on or after the effective date of this
Act for a permit or a permit amendment for a pilot project to
appropriate water and to store appropriated water in an aquifer
identified in this Act.

(b) A permit issued by the commission authorizing the
No. 1989

storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
A BILL TO BE ENTITLED
AN ACT
relating to the underground storage of appropriated water incidental to a beneficial use.

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

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated water
water may reduce a portion of the economic burden on taxpayers and
utility ratepayers associated with the construction of conventional
water storage facilities;

(7) the successful storage of appropriated water
underground has been demonstrated in Kerr County by the Upper
Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission
and the Texas Water Development Board are encouraged to evaluate
additional aquifers within the state to identify the potential for
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the future availability and beneficial use of the water resources
of the state.

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by adding Sections 11.153, 11.154, and 11.155 to read as follows:

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WATER IN AQUIFERS. (a) The commission shall investigate the
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aquifers around the state by encouraging the issuance of temporary
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the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose
Limestone aquifers in Bexar County and Medina County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood,
Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie
County; and
(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.

(c) At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.

(d) A final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use, other than for the pilot projects authorized by this section, may not be issued before June 1, 1999.

(e) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate state water;
(2) all information required for an application for a
permit for a Class V injection well without requiring a separate
hearing or notice; and

(3) a map or plat showing the injection facility and
the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment
to store appropriated water in an underground water reservoir or a
subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water
conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each
underground water conservation district that has jurisdiction over
the reservoir or subdivision;

(B) cooperate with the districts that have
jurisdiction over the reservoir or subdivision to ensure compliance
with the rules of each district;

(C) cooperate with each district that has
jurisdiction over the reservoir or subdivision to develop rules
regarding the injection, storage, and withdrawal of appropriated
water stored in the aquifer; and

(D) comply with the rules governing the
injection, storage, or withdrawal of appropriated water stored in
the reservoir or subdivision that are adopted by a district that
has jurisdiction over the reservoir or subdivision; and

(2) the commission shall require that any agreement
the applicant reaches with a district that has jurisdiction over
the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) On completion of a pilot project and receipt of an appropriate application for a permit or an amendment to an existing permit, the commission shall evaluate the success of the pilot project for purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use. The commission shall consider whether:

(1) the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that the introduction would:

(A) render groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property; or

(B) require treatment of the groundwater to a greater extent than the native groundwater requires before being applied to that beneficial use;

(2) the water stored in the receiving aquifer can be successfully harvested from the aquifer for beneficial use; and

(3) the permit holder has provided evidence that reasonable diligence will be used to protect the water stored in the receiving aquifer from unauthorized withdrawals to the extent necessary to maximize the permit holder's ability to retrieve and beneficially use the stored water without experiencing unreasonable loss of appropriated water.
(d) In making its evaluation under Subsection (c), the commission may consider all relevant facts, including:

1. the location and depth of the aquifer in which the stored water is located;

2. the nature and extent of the surface development and activity above the stored water;

3. the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;

4. the existence of an underground water conservation district with jurisdiction over the aquifer storing the water and the district's ability to adopt rules to protect stored water; and

5. the existence of any other political subdivision or state agency authorized to regulate the drilling of wells.

(e) A permit to store appropriated water in an underground water reservoir or subdivision, as defined by Chapter 52, shall provide as a condition to the permit that the permit holder shall:

1. register the permit holder's injection and recovery wells with an underground water conservation district that has jurisdiction over the reservoir or subdivision, if any; and

2. each calendar month, provide the district, if any, with a written report showing for the previous calendar month:

   (A) the amount of water injected for storage;

   and

   (B) the amount of water recaptured for use.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission
jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers identified in Section 11.153(a);

(2) areas designated by the commission as "critical areas" under Section 52.053; and

(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

(1) the progress of the pilot projects authorized under this subchapter and of any related project;

(2) the results of the board's studies of the other aquifers of the state during the preceding biennium; and

(3) the anticipated appropriation from general revenues necessary to investigate other aquifers in the state
during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.

(b) A permit issued by the commission authorizing the storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
FLOOR AMENDMENT NO. 1

Amend C.S.H.B. 1989 in Section 2 of the bill by striking proposed Section 11.153(a)(2), Water Code, and substituting:

"(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;"
TO: Honorable Bill Sims, Chair  
Committee on Natural Resources  
Senate  
Austin, Texas

IN RE: Committee Substitute  
for House Bill No. 1989  
By: Rodriguez, et al.

FROM: John Keel, Director

In response to your request for a Fiscal Note on House Bill No. 1989 (Relating to the underground storage of appropriated water incidental to a beneficial use.) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JK, DF
TO: Honorable David Counts, Chair  
Committee on Natural Resources  
House of Representatives  
Austin, Texas

IN RE: Committee Substitute  
for House Bill No. 1989

FROM: John Keel, Director

In response to your request for a Fiscal Note on House Bill No. 1989 (relating to the underground storage of appropriated water incidental to a beneficial use) this office has determined the following:

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Source: LBB Staff: JK, DF
TO: Honorable David Counts, Chair
   Committee on Natural Resources
   House of Representatives
   Austin, Texas

IN RE: House Bill No. 1989
   By: Rodriguez

FROM: John Keel, Director

In response to your request for a Fiscal Note on House Bill No. 1989 (Relating to the appropriation and regulation of State water for beneficial use, including underground storage or recharge of State water in aquifers, other than that portion of Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays Counties.) this office has determined the following:

The bill would authorize the appropriation of state water for groundwater recharge and storage in underground aquifers for subsequent withdrawal and use. The bill would also consolidate the permit process for an injection well required for the recharge with the water right permit for use of state water.

The implementation of the bill would require the amendment of Texas Natural Resource Conservation (TNRCC) regulations related to water rights permit applications and the development of procedures for the consolidated permit processing authorized by the bill. The actual increase in workload and costs are not expected to be significant.

No significant fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source: Natural Resource Conservation Commission
LBB Staff: JK, JB, DF
AN ACT
relating to the underground storage of appropriated water
incidental to a beneficial use.

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

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water,
incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated
water:

(A) enhances the conservation and protection of
appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts
associated with the construction of conventional water storage
facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water
maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers
recognizes existing property rights, including the rights of a
landowner in groundwater;

(5) the storage of appropriated water in aquifers
recognizes the authority and jurisdiction of an underground water
conservation district;

(6) the use of aquifers for storage of appropriated
water:
water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;

(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and
H.B. No. 1989

(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.

(c) At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.

(d) A final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use, other than for the pilot projects authorized by this section, may not be issued before June 1, 1999.

(e) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate state water;
(2) all information required for an application for a
permit for a Class V injection well without requiring a separate
hearing or notice; and

(3) a map or plat showing the injection facility and
the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment
to store appropriated water in an underground water reservoir or a
subdivision of an underground water reservoir, as defined by
Chapter 52, that is under the jurisdiction of an underground water
conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each
underground water conservation district that has jurisdiction over
the reservoir or subdivision;

(B) cooperate with the districts that have
jurisdiction over the reservoir or subdivision to ensure compliance
with the rules of each district;

(C) cooperate with each district that has
jurisdiction over the reservoir or subdivision to develop rules
regarding the injection, storage, and withdrawal of appropriated
water stored in the aquifer; and

(D) comply with the rules governing the
injection, storage, or withdrawal of appropriated water stored in
the reservoir or subdivision that are adopted by a district that
has jurisdiction over the reservoir or subdivision; and

(2) the commission shall require that any agreement
the applicant reaches with a district that has jurisdiction over
the reservoir or subdivision regarding the terms for the injection,
storage, and withdrawal of appropriated water be included as a
condition of the permit or permit amendment.

(c) On completion of a pilot project and receipt of an
appropriate application for a permit or an amendment to an existing
permit, the commission shall evaluate the success of the pilot
project for purposes of issuing a final order granting a permit or
permit amendment authorizing the storage of appropriated water
incident to a beneficial use. The commission shall consider
whether:

(1) the introduction of water into the aquifer will
alter the physical, chemical, or biological quality of native
groundwater to a degree that the introduction would:

(A) render groundwater produced from the aquifer
harmful or detrimental to people, animals, vegetation, or property;
or

(B) require treatment of the groundwater to a
greater extent than the native groundwater requires before being
applied to that beneficial use;

(2) the water stored in the receiving aquifer can be
successfully harvested from the aquifer for beneficial use; and

(3) the permit holder has provided evidence that
reasonable diligence will be used to protect the water stored in
the receiving aquifer from unauthorized withdrawals to the extent
necessary to maximize the permit holder's ability to retrieve and
beneficially use the stored water without experiencing unreasonable
loss of appropriated water.
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(d) In making its evaluation under Subsection (c), the commission may consider all relevant facts, including:

(1) the location and depth of the aquifer in which the stored water is located;

(2) the nature and extent of the surface development and activity above the stored water;

(3) the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;

(4) the existence of an underground water conservation district with jurisdiction over the aquifer storing the water and the district's ability to adopt rules to protect stored water; and

(5) the existence of any other political subdivision or state agency authorized to regulate the drilling of wells.

(e) A permit to store appropriated water in an underground water reservoir or subdivision, as defined by Chapter 52, shall provide as a condition to the permit that the permit holder shall:

(1) register the permit holder's injection and recovery wells with an underground water conservation district that has jurisdiction over the reservoir or subdivision, if any; and

(2) each calendar month, provide the district, if any, with a written report showing for the previous calendar month:

(A) the amount of water injected for storage; and

(B) the amount of water recaptured for use.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission
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(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

1. the aquifers identified in Section 11.153(a);
2. areas designated by the commission as "critical areas" under Section 52.053; and
3. other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

1. the progress of the pilot projects authorized under this subchapter and of any related project;
2. the results of the board's studies of the other aquifers of the state during the preceding biennium; and
3. the anticipated appropriation from general revenues necessary to investigate other aquifers in the state.
during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.

(b) A permit issued by the commission authorizing the storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
H.B. No. 1989

President of the Senate

Speaker of the House

I certify that H.B. No. 1989 was passed by the House on April 28, 1995, by the following vote: Yeas 136, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1989 on May 18, 1995, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1989 was passed by the Senate, with amendments, on May 15, 1995, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _______________________

Date

________________________

Governor
President of the Senate

I certify that H.B. No. 1989 was passed by the House on April 28, 1995, by the following vote:

Yea\s 136, Nays 0, 2 present, not voting (3)

and that the House concurred in Senate amendments to H.B. No. 1989 on May 18, 1995, by the following vote:

Yea\s 144, Nays 0, 1 present, not voting (6)

Speaker of the House

Chief Clerk of the House

**** Preparation: CT31;

I certify that H.B. No. 1989 was passed by the Senate, with amendments, on May 15, 1995, by the following vote: Yeas 31, Nays 0 (3)

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT32;
BILL ANALYSIS

Senate Research Center

H.B. 1989
By: Rodriguez (Madia)
Natural Resources
6-21-95
Enrolled

BACKGROUND

Presently, state law allows state water to be appropriated, stored, or diverted for any beneficial use as mandated by the Texas Water Code, Section 11.023(b), which outlines the purposes for which water may be appropriated and used. This broad authorization becomes limited if the proposed use of the state water is to recharge the portions of the Edwards Aquifer under Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties as cited in Sections 11.023(c) and (d), Water Code.

PURPOSE

As enrolled, H.B. 1989 provides for the underground storage of appropriated water incidental to a beneficial use.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings in relation to underground storage of appropriated water incidental to a beneficial use.

SECTION 2. Amends Chapter 11D, Water Code, by adding Sections 11.153, 11.154, and 11.155, as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) Requires the Natural Resource Conservation Commission (commission) to investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in certain aquifers.

(b) Sets forth requirements for a permit described by Subsection (a).

(c) Authorizes a permit holder, at the conclusion of a pilot project, to file an appropriate application for a permit or a permit amendment. Requires the commission, after considering the success of a project, to determine whether to issue a permit or permit amendment authorizing the continued storage of the appropriated water in the aquifer.

(d) Prohibits a final order granting a permit or permit amendment authorizing the storage of appropriated water for subsequent beneficial use, other than for pilot projects, from being issued before June 1, 1999.

(e) Requires the Texas Water Development Board (board) to participate in the study of the pilot projects authorized by Subsection (a). Provides that the pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. Authorizes the board to authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.
Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) Sets forth provisions required to be included in an application filed with the commission to undertake a pilot project under Section 11.153.

(b)(1) Sets forth requirements for an applicant applying for a permit or permit amendment to store appropriated water in an underground reservoir or a subdivision of an underground water reservoir that is under the jurisdiction of an underground water conservation district (permit).

(2) Requires the commission to require that any agreement the applicant reaches with the district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) Requires the commission, on completion of a pilot project and receipt of an appropriate permit or permit amendment application, to evaluate the success of the pilot project. Sets forth the issues the commission must consider for the purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use.

(d) Sets forth the relevant facts the commission may consider in making its evaluation.

(e) Requires a permit to store appropriated water in an underground water reservoir or subdivision to provide as a condition of the permit that the permit holder register specific kinds of wells and provide reports to districts.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) Requires the board and the commission, on completion of each pilot project, to jointly prepare a report evaluating the success of the project; and provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) Requires the board to make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. Sets forth the order of priority in which the board is required to undertake the studies, investigations, and surveys.

(c) Sets forth information for a report the board is required, no later than January 1 of each odd-numbered year, to prepare and provide to the legislature.

SECTION 3. Makes application of this Act prospective.

SECTION 4 Emergency clause.
Effective date: upon passage.
Relating to other appropriation and regulation of State water for beneficial use, including underground storage or recharge of State water in aquifers, other than that portion of Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal and Hays Counties.

MAR 02 1995 Filed with the Chief Clerk
MAR 6 1995 Read first time and referred to Committee on [NATURAL RESOURCES]

4-10-95 Reported favorably (as amended) (as submitted)

APR 25 1995 Sent to Committee on (Gazetteer) (Local & Consent Calendars)

APR 28 1995 Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of ___ yeas, ___ nays, ___ present, not voting)

APR 28 1995 Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of ___ yeas, ___ nays, ___ present, not voting

APR 28 1995 Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of ___ yeas, ___ nays, ___ present, not voting)

APR 28 1995 Engrossed

MAY 01 1995 Sent to Senate

OTHER HOUSE ACTION:

MAY 01 1995 Received from the House
MAY 02 1995 Read and referred to Committee on [NATURAL RESOURCES]

MAY 02 1995 Reported favorably

MAY 08 1995 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

MAY 08 1995 Ordered not printed

MAY 08 1995 Laid before the Senate

MAY 15 1995 Senate and Constitutional Rules to permit consideration suspended by (unanimous consent) ___ yeas, ___ nays

MAY 15 1995 Read second time, amended, and passed to third reading by (unanimous consent) (a vote of ___ yeas, ___ nays)

MAY 15 1995 Senate and Constitutional 3 Day Rules suspended by a vote of ___ yeas, ___ nays

MAY 15 1995 Read third time, and passed by (a vote of ___ yeas, ___ nays)

5-15-95 Returned to the House

OTHER SENATE ACTION:

[Signature] CHIEF CLERK OF THE HOUSE

[Signature] SECRETARY OF THE SENATE
May 15, 1995

Returned from the Senate (as substituted)
(with amendments)

May 18, 1995

House concurred in Senate amendments by a (non-record vote)
(record vote of 44 yeas, 0 nays, 1 present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of ______ yeas, ______ nays, ______ present, not voting)

House conferees appointed: ________________________, Chair;

____________________________________________________

Senate granted House request. Senate conferees appointed: ________________________, Chair;

____________________________________________________

Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of ______ yeas, ______ nays, ______ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of ______ yeas, ______ nays)