

NTGCD Legislative Update – June 27, 2019

SB 1010 (Perry) – “Similar Rules” – This bill will require a GCD to adopt similar rules to other GCDs that overlie a “common aquifer” and are located within the same GMA. A GCD may make a rule that is not similar to other GCDs if the GCD is authorized by its enabling act to do so or provides an explanation in the GCD’s management plan to support its reasoning for the rule.

Status: SB 1010 did not pass. SB 1010 was voted out of full Senate but was left pending by the House Natural Resources Committee.

HB 2125 (Burns) – GCD Attorney’s Fees. The bill would change current Texas law to give a state district court judge the discretion to award attorney’s fees to only a GCD. Currently, a GCD is entitled to a mandatory award of attorney’s fees if a GCD wins in state district court.

Status: HB 2125 did not pass. HB 2125 received a committee hearing on April 2 in the House Natural Resources Committee but the bill was left pending.

SB 851 (Perry) – “Loser Pays” Attorney’s Fees. The bill would amend Texas law to allow a state district court judge to award reasonable and necessary attorney’s fees to the prevailing party (not limited to GCDs). The bill provides that the judge may not award more than \$250,000 in attorney’s fees.

Status: SB 851 did not pass. SB 851 was approved by the Senate but did not receive a hearing in House Natural Resources Committee.

SB 2027 (Perry) – Judicial Standard of Review – SB 2027 would change the judicial standard of review in an appeal of a GCD decision or action. SB 2027 would change the current judicial standard of review from “substantial evidence” (very deferential to the GCD) to “trial de novo” standard which would essentially allow a state district court judge to make a decision with no deference to a GCD.

Status: SB 2027 did not pass. SB 2027 received a hearing in Senate Water and Rural Affairs Committee on April 16 but Chairman Perry announced that he was not planning to move the bill forward and plans to have an interim committee study on the subject.

HB 722 (Larson) - Brackish Groundwater – HB 722 is the omnibus brackish groundwater bill that establishes how GCDs may manage and permit through rules the groundwater that is developed in a “brackish groundwater production zones” identified by TWDB. HB 722 also contains provisions that require a GCD to develop and adopt rules for groundwater production from a production zone if the GCD receives a petition from a person with a legally defined interest

Status: HB 722 was passed by the Legislature and signed into law by Governor Abbott on June 14. The provisions of HB 722 are effective on September 1, 2019.

HB 726 (Larson) – Omnibus Groundwater - HB 726 is the omnibus groundwater bill that covers multiple areas of groundwater law. HB 726 makes numerous revisions and clarifications to Chapter 36 of the Water Code, including providing limitations on permitting moratoriums established by a GCD and clarifying that a permittee is subject to the GCD rules in place when a permit application is filed.

Status: HB 726 did not pass. The bill was voted out of full House on April 16 but did not receive a hearing in the Senate Water and Rural Affairs Committee.

HB 724 (Larson) Authorization of Discharge of Brackish Groundwater – HB 724 would require the TCEQ to authorize the discharge of treated brackish groundwater and subsequent diversion and reuse.

Status: HB 724 did not pass. While HB 724 was voted out of the full House on April 24 but HB 724 was never referred to a committee in the Senate.

HB 720 (Larson) – Aquifer Storage and Recovery (ASR) and Aquifer Recharge Projects – HB 720 would make numerous revisions to how ASR projects are permitted at the TCEQ and would amend the Water Code to address how aquifer recharge projects are treated under Texas law.

Status: HB 720 was passed by the Texas Legislature and signed by Governor Abbott on June 10, 2019. The provisions of HB 720 became effective immediately on June 10.

HB 721 (Larson) – Aquifer Storage and Recovery (ASR) and Aquifer Recharge Studies - HB 721 would require TWDB and other specific stakeholders to study ASR projects identified in the state water plan or identified by “interested persons”. The results of these studies are to be reported to Regional Water Planning Groups. HB 721 also requires TWDB to conduct a statewide survey to identify the most favorable areas for ASR and prepare a report to detail the survey’s findings. TWDB must submit the report to the Governor, Lieutenant Governor, and Speaker of the House of Representatives by December 15, 2020.

Status: HB 721 was passed by the Texas Legislature and signed by Governor Abbott on June 14, 2019. The provisions of HB 721 became effective immediately on June 14.

HB 1066 (Ashby) - Extensions of Groundwater Transfer Permits – A TWCA Consensus bill, HB 1066 amends Section 36.122 of the Water Code to require a GCD to extend the term of a permit to transfer groundwater out of the GCD in consistency with Section 36.1145 which addresses the renewal of operating permits. The extended term of a groundwater transfer permit may be no shorter than the term of its related operating permit. HB 1066 also requires GCDs to use rules in effect at the time of the application’s submission in granting or denying the permit extension.

Status: HB 1066 was passed by the Legislature and was signed by Governor Abbott on May 21. The provisions of HB 1066 are effective September 1, 2019.

HB 2122 (Harris) – Regulation of Groundwater Production by Retail Public Utilities – HB 2122 would amend Chapter 36 to establish a process for GCDs who regulate groundwater production based on tract size or acreage to give retail public utilities credit for a utility’s service area if certain conditions are met. The Texas Farm Bureau supported HB 2122.

Status: HB 2122 did not pass. HB 2122 was left pending by the House Natural Resources Committee.

SB 2026 (Perry) – Senate Companion to HB 2122 mentioned above.

Status: SB 2026 did not pass. SB 2026 was passed by the full Senate but did not receive a hearing in the House Natural Resources Committee.

HB 2249 (Lucio) – Regulation of Groundwater Production by Retail Public Utilities – HB 2249 would amend Section 36.116 of the Water Code regarding a GCD’s considerations when ruling on a permit application by a retail public utility. HB 2249 would change the current, permissive authority to mandatory requirement when a GCD is considering the service area of a retail public utility. The Texas Rural Water Association supported HB 2249.

Status: HB 2249 did not pass. HB 2249 was left pending by the House Natural Resources Committee.

HB 2123 (Harris) – Petition for GCD Rulemaking – HB 2123 would add language to Chapter 36 to specifically provide a process for a person with groundwater ownership and rights within a GCD to be able to petition the GCD to adopt or modify a GCD’s rule.

Status: HB 2123 did not pass. HB 2123 was passed by the House Natural Resources Committee but was not placed on the House Calendar.