

Regular Session, 2001

SENATE BILL NO. 1

BY SENATOR CAIN AND REPRESENTATIVE DAMICO

WATER/WATERWAYS. Creates a public policy for groundwater conservation to insure the protection of the state's fresh water aquifers in order that the state will have a sufficient supply of clean drinking water for residents and enough irrigation water for agriculture. (gov sig) (2/3-CA7s2.1(A))

1 AN ACT

2 To enact Chapter 4-A of Title 30 of the Louisiana Revised Statutes of 1950,
3 to be comprised of R.S. 30:2090.1 through 2090.13, relative to the state
4 groundwater conservation policy; to create the Louisiana Groundwater
5 Stewardship and Conservation Board; to provide for the powers, duties,
6 functions, and responsibilities of the board; to authorize the board to
7 grant permits for certain groundwater wells, and provide exemptions
8 from such permits; to authorize the board to impose fines for permit
9 violations; to provide incentives to convert from groundwater to surface
10 water or other means; and to provide for related matters;

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 4-A of Title 30 of the Louisiana Revised Statutes of
13 1950, comprised of R.S. 30:2090.1 through 2090.13, is hereby enacted to read
14 as follows:

15 CHAPTER 4-A. GROUNDWATER STEWARDSHIP AND
16 CONSERVATION ACT

1 **Chapter 4-A is all proposed new law.**

2 §2090.1. Legislative findings and purpose

3 **R.S. 30:2090.1 is all proposed new law.**

4 Most Louisiana residents rely on groundwater from fresh water
5 aquifers for personal consumption and for growing crops for nutrition.
6 The public policy of the state, as contained in Article IX, Section 1 of
7 the Louisiana Constitution, states that water is a natural resource which
8 must "be protected, conserved, and replenished insofar as possible and
9 consistent with the health, safety, and welfare of the people." A
10 statewide policy is necessary to protect, conserve, and allow for
11 replenishment of fresh water aquifers in the state which is consistent
12 with the health, safety, and welfare of its citizens.

13 §2090.2. Definitions

14 **R.S. 30:2090.2 is all proposed new law.**

15 As used in this Chapter, the following terms shall have the
16 following meanings:

17 (1) "Agriculture" means the commercial production or
18 processing of any crop, livestock, poultry, aquacultural product, flora
19 cultural product, silvicultural product, or viticultural product.

20 (2) "Beneficial use" means the use of water in such quantity as
21 is economical and efficient and which use is for a purpose and in a
22 manner which is reasonable, not wasteful, and is compatible with the
23 public interest.

24 (3) "Black water" means waste water which contains toilet waste
25 which has been produced by a municipality, subdivision, or other
26 source.

27 (4) "Board" means the Louisiana Groundwater Stewardship and

1 Conservation Board.

2 (5) "Domestic use" means the use of water for ordinary
3 household purposes, including human consumption, washing, the
4 watering of domestic livestock, poultry, and animals, and the watering
5 of home gardens for consumption by the household.

6 (6) "Fresh water aquifer" means a permeable, water-bearing
7 stratum of rock, sand, or gravel.

8 (7) "Grey water" means all waste water, except toilet waste,
9 which has been produced by a municipality, subdivision, or other
10 source.

11 (8) "Groundwater" means water beneath the surface of the
12 ground held in a fresh water aquifer;

13 (9) "Person" means any natural person, corporation, partnership,
14 firm, association, or other legal entity.

15 (10) "Water year" means the twelve-month period beginning
16 January first and ending the next December thirty-first.

17 (11) "Well" means any hole dug, drilled, or otherwise
18 constructed in the ground, for the purpose of withdrawing groundwater.

19 §2090.3. Groundwater policy and priorities

20 **R.S. 30:2090.3 is all proposed new law.**

21 A. Drinking water from fresh water aquifers is one of
22 Louisiana's most valuable natural resources and is to be conserved.

23 B. The water policy of the state shall be implemented by the
24 board pursuant to this Chapter based on the following priorities, where
25 reasonable, for the use of groundwater:

26 (1) First priority is use for personal consumption for drinking
27 and domestic use.

1 (2) Second priority is use for agricultural purposes and the
2 production of food.

3 (3) Third priority is for industrial use.

4 §2090.4. Board; creation; membership; terms; compensation;
5 jurisdiction

6 **R.S. 30:2090.4 is all proposed new law.**

7 A. The Louisiana Groundwater Stewardship and Conservation
8 Board is hereby created within the office of the governor. The board
9 shall be composed of nine members appointed as follows:

10 (1) The governor, or his designee, shall be an ex officio full
11 voting member of the board.

12 (2) One member of the Public Service Commission selected by
13 the commission, or his designee, or a person appointed by the Public
14 Service Commission to serve on the board, or his designee.

15 (3) One member appointed by the secretary of the Department
16 of Transportation and Development from the engineering staff in the
17 office of public works and intermodal transportation, public works and
18 water resources division.

19 (4) One member who is a geologist appointed by the director of
20 the Louisiana Geological Survey at Louisiana State University.

21 (5) One member who is a farmer actively engaged in farming
22 and whose primary source of income is from such farming activity shall
23 be appointed by the board of directors of the Louisiana Farm Bureau.

24 (6) One member appointed by the board of directors of the
25 Louisiana Association of Business and Industry.

26 (7) One member appointed by the chancellor of the Louisiana
27 State University Agricultural Center.

1 (8) One member appointed by the environmental subcommittee
2 of The League of Women Voter's of Louisiana.

3 (9) The president of the parish governing authority in which the
4 plant is to be cited or a water well is to be drilled shall be an ex officio
5 full voting member of the board.

6 B. (1) Except as provided in this Section, the terms of the board
7 members who are not ex officio members of the board shall be four
8 years. The designee of the governor shall serve a term concurrent with
9 that of the governor making the appointment.

10 (2) At its initial meeting, the board shall determine by a majority
11 vote from those members appointed pursuant to Paragraphs (A)(2)
12 through (A)(8), four members to serve initial terms of two years.
13 Thereafter, each member shall be appointed for a term of four years.

14 (3) All appointments to the board, except for ex officio
15 members, shall be subject to Senate confirmation.

16 C. A vacancy in the membership of the board shall be filled for
17 the unexpired term in the same manner as the original appointment. No
18 member shall serve more than two consecutive full terms except that
19 each member shall serve until his successor has been appointed and
20 begins serving. If a vacancy occurs and a successor is not appointed
21 within sixty days of the vacancy, the governor shall appoint a successor
22 to the board for the unexpired term.

23 D. The board shall be domiciled in Baton Rouge, but may hold
24 public meetings elsewhere in the state. Five members shall constitute
25 a quorum for the transaction of any and all business at any regular or
26 special meeting of the board.

27 E. The board shall elect a chairman from among its membership

1 who shall serve a term of two years. The board may elect other officers
2 as it deems necessary from among its membership.

3 F. Members of the board shall receive no compensation for
4 serving on the board. However, except for the governor, each member
5 shall be reimbursed for vouchered travel, lodging, and other expenses
6 for attendance at board meetings at the rate established by the division
7 of administration for state employees.

8 §2090.5. Powers, duties, and functions of the board

9 **R.S. 30:2090.5 is all proposed new law.**

10 A. The Louisiana Groundwater Stewardship and Conservation
11 Board shall administer and enforce the provisions of this Chapter and
12 shall promulgate such rules or regulations necessary to implement the
13 provisions of this Chapter pursuant to the Administrative Procedure
14 Act. The board shall perform the following activities:

15 (1) Establish rules and regulations for groundwater use, water
16 well spacing, and issuance of permits for groundwater wells.

17 (2) Conduct all hearings consistent with the open meetings law.

18 (3) Establish time periods for making application to the board
19 for citing permits, drilling permits, and for notification of all interested
20 parties of board decisions.

21 (4) Establish a schedule for assessment of civil penalties by the
22 board for permit violations or failure of a permit holder to comply with
23 permit requirements.

24 (5) Take testimony under oath from any person appearing before
25 the board at any hearing, investigation, or proceeding before the board.

26 B. The board may request assistance from the Department of
27 Transportation and Development, the Department of Environmental

1 Quality, the Department of Health and Hospitals, and such other state
2 agencies, boards, commissions, or departments as may be necessary to
3 obtain data and such other information as may be necessary to assist the
4 board in implementing the provisions of this Chapter. Each state
5 agency, board, commission, or department shall provide such assistance
6 as requested by the board.

7 C. (1) The board shall classify groundwater wells into three
8 categories based on usage according to rules and regulations adopted
9 by the board. The categories for classifying groundwater wells shall be
10 as follows:

11 (a) Domestic use.

12 (b) Agricultural use.

13 (c) Industrial use.

14 (2) Any permit issued by the board shall stipulate the category
15 for which it is issued and a permit issued for a particular category of
16 well shall not be used for another category of well without board
17 approval.

18 (3) If two or more applications are filed which appear to conflict
19 with one another, the board shall give preference to the applicant in the
20 higher priority as listed in R.S. 30:2090.3(B).

21 §2090.6. Limitations to powers of board

22 **R.S. 30:2090.6 is all proposed new law.**

23 A. There shall be no reduction or limitation of the withdrawal
24 of groundwater from existing wells for a well which is exempt from
25 this Chapter pursuant to R.S. 30:2090.7(A).

26 B. There shall be no regulation of the withdrawal of
27 groundwater from individual household wells used exclusively for

1 domestic use.

2 C. There shall be no regulation of the withdrawal of
3 groundwater from a water well which is operated as part of a public
4 water system to provide potable water and which is subject to
5 inspection and regulation by the state through the office of public
6 health pursuant to Part I of Chapter 1 of Title 40.

7 D. There shall be no regulation of withdrawal of groundwater
8 from proposed wells which have a maximum potential flow rate of less
9 than one million gallons per day.

10 E. There shall be no regulation of the withdrawal of
11 groundwater from proposed wells which will produce a yearly average
12 of less than one million gallons per day, with the average being
13 calculated on the basis of the water year.

14 F. A person seeking to drill multiple water wells in order to
15 provide groundwater for a single industrial enterprise, a single business
16 enterprise, or for a single farm, shall consider those multiple wells as
17 one well for purposes of making calculations pursuant to Subsection
18 (D) and (E) of this Section.

19 §2090.7. Existing wells; grandfathered

20 **R.S. 30:2090.7 is all proposed new law.**

21 A. All wells which have been registered pursuant to R.S.
22 38:3094(A)(1) and (2) and are in use on August 15, 2001, shall not be
23 subject to the Chapter and shall not be required to obtain a permit for
24 groundwater use.

25 B. The board shall verify each well registered pursuant to R.S.
26 38:3094(A)(1) or (2) and each verified well shall be considered by the
27 board as having a permit issued pursuant to this Chapter.

1 C. No well registered pursuant to R.S. 38:3094(A)(1) or (2) shall
2 produce water in excess of the amount reported prior to August 15,
3 2001 unless a permit is issued by the board under this Chapter for such
4 excess production.

5 D. No person, except persons engaged in the business of selling
6 or furnishing bottled water from wells located in this state, who has a
7 well exempt under the provisions of this Section shall sell or transfer
8 water to another person.

9 E. No person, except persons who withdraw groundwater as part
10 of public water system to and which is subject to provide potable water
11 inspection and regulation by the state through the office of public
12 health pursuant to Part I of Chapter 1 of Title 40, having a well subject
13 to the provisions of this Section shall transport water to a point outside
14 the parish from which the water is extracted unless approved by the
15 board.

16 §2090.8. Replacement wells

17 **R.S. 30:2090.8 is all proposed new law.**

18 A. The owner of an existing water well on which a permit is
19 issued by the board may construct or drill a replacement water well
20 provided the owner converts the existing well to a nonregulated use or
21 plugs the existing well in a manner prescribed by the board
22 immediately after completion of construction or drilling of the
23 replacement well and the replacement well becomes operational.

24 B. To transfer the permit for an existing well to the replacement
25 well under this Section, the owner of the existing well shall submit to
26 the board a notice of construction of the replacement well stating the
27 location and ownership interests of the existing well and the

1 replacement well and such other information as the board may require.

2 §2090.9. New well applications and permits

3 **R.S. 30:2090.9 is all proposed new law.**

4 A. Except as provided in R.S. 30:2090.7, no person shall drill a
5 groundwater well and no person shall extract one million gallons of
6 water, or more, per day from any freshwater aquifer unless drilled or
7 extracted pursuant to a permit issued under this Chapter.

8 B. No application to drill a groundwater well or extract water
9 from a freshwater aquifer shall be issued by the board except as
10 provided in this Section. Each application to drill a well or extract
11 water under this Chapter shall be filed with the board on such form as
12 may be approved by the board. Each application shall contain the
13 following information and such other information as the board deems
14 necessary:

15 (1) The projected well capacity, the maximum amount of
16 groundwater to be extracted from each well per day and the maximum
17 amount of water to be extracted from each well per water year.

18 (2) An affidavit from the applicant stating that the applicant is
19 unable to use an alternative source of water, including surface water or
20 grey water, that the applicant is unable to use air or some other element
21 in lieu of its intended use of the groundwater, and that the reasons why
22 alternative water sources cannot be used by the applicant.

23 C. (1) The board shall hold a public hearing on each application
24 within sixty days after the filing of a completed application with the
25 board.

26 (2) Notice of the public hearing on an application filed with the
27 board shall be published over the Internet, in the official journal of the

1 state, and in the official journal of the parish in which the well is
2 located or will be drilled. In addition, notice of such public hearing
3 shall be forwarded by certified mail, return receipt requested, to the
4 parish governing authority of the parish in which the well is located or
5 is to be drilled.

6 D. Prior to issuance of any permit to drill a water well under this
7 Chapter, the board shall consider the spacing and location of the new
8 well to existing wells and the effect of depletion of the aquifer, in
9 operability, or other detrimental effects such existing wells.

10 E. Upon completion of the hearing, the board shall issue a
11 written report summarizing the pertinent facts in each application
12 before the board, the determination of the board as to each application,
13 the ruling of the board on each application, and the reasons in support
14 of such ruling. Such information shall be made available to the public
15 and shall be available on the Internet through a site maintained by the
16 board or other appropriate state agency. As to any application filed
17 under this Section, the board shall do one of the following:

18 (1) Grant the permit to drill a well or extract water from the
19 aquifer.

20 (2) Deny the permit to drill a well or extract water from the
21 aquifer.

22 (3) Grant a conditional permit to drill a well or extract water
23 from the aquifer subject to such reductions or conditions as may be
24 imposed by the board. Failure of an applicant to comply with a
25 reduction or condition imposed by the board within the time period
26 prescribed by the board shall revoke the conditional permit.

27 F. An application by a person seeking a permit to drill or

1 maintain multiple water wells in order to provide groundwater for a
2 single industrial enterprise, a single business enterprise, or for a single
3 farm, shall be considered an application for one well for purposes of
4 this Section, however, the application filed under this Section shall
5 include the total number of wells to be drilled or maintained by the
6 applicant.

7 §2090.10. Groundwater well permits

8 **R.S. 30:2090.10 is all proposed new law.**

9 A. Every permit granted by the board for a groundwater well
10 permit shall be for a beneficial use only.

11 B. Every holder of a permit to drill a groundwater well or to
12 extract groundwater shall be limited in the withdrawal of groundwater
13 under their permit to the quantity of water prescribed in the permit.
14 Each holder of a permit issued by the board shall cause a device,
15 prescribed by the board, to be attached at each permitted well in order
16 to monitor the daily and annual withdrawal of water from that well.
17 The Louisiana Geological Survey shall be responsible for monitoring
18 and collecting such data from each well and report such findings, on a
19 periodic basis, to the board.

20 §2090.11. Permit cancellation; penalties imposed

21 **R.S. 30:2090.11 is all proposed new law.**

22 A. The board may cancel any permit issued under this Chapter
23 if it is determined that water from the permitted well is being used for
24 a purpose other than the purpose stated in the permit or that water is
25 being extracted from the aquifer by the permitted well in amounts
26 greater than the amount authorized under the permit.

27 B. Any holder of a permit shall apply to the board seeking a

1 change in the use of water obtained under their permit and the board
2 may grant such a change in use to the holder of the permit as long as
3 such change is not inconsistent with the provisions of this Chapter.

4 C. A groundwater permit issued under this Chapter may be
5 canceled by the board for the following reasons:

6 (1) Nonuse or failure of the holder of the permit to use the water
7 for a reasonable beneficial use with a reasonable period of time
8 following issuance of such permit by the board unless the nonuse or
9 failure to use for a beneficial use is due to the implementation of water
10 conservation measures, crop rotation, conversion to surface water
11 sources, or climatic conditions.

12 (2) Failure by the holder of the permit to report water usage as
13 required under this Chapter for two consecutive years.

14 D. The board may assess a civil fine in accordance with a
15 schedule of fines adopted by the board for any violation of this Chapter
16 and in addition to imposition of such civil fine the board may order the
17 closure of the well.

18 §2090.12. Water transfer and transportation; prohibited

19 **R.S. 30:2090.12 is all proposed new law.**

20 A. No groundwater shall be sold or transferred except as
21 provided in this Section.

22 B. Except as provided in Subsections (C) and (D) of this
23 Section, groundwater obtained under a permit issued by the board shall
24 only be used on the property, realty, or place of use described in the
25 groundwater permit.

26 C. The board, under emergency situations determined by the
27 board, may authorize the use of water on property, realty or place other

1 than that described in the groundwater permit for a period of time to be
2 determined by the board.

3 D. The provisions of this Chapter shall not be construed to
4 prohibit any individual, person, partnership, corporation, or other entity
5 from engaging in the business of selling or furnishing bottled water
6 from wells which are located in this state or which is inspected by the
7 office of public health pursuant to Part 1 of Chapter 1 of Title 40.

8 E. Any holder of a groundwater permit who acquires or leases
9 additional property or realty contiguous to the property for which a
10 permit is granted shall be entitled to an amended groundwater permit
11 encompassing such additional property or realty.

12 F. Each groundwater permit is a real right which attaches to and
13 runs with the property on which the well is drilled. No holder of a
14 groundwater permit shall convey or otherwise market or transfer the
15 ability to mine or use the groundwater separate and apart from the
16 property, realty, or place described in the groundwater permit.

17 G. The authority to mine and use groundwater shall be an
18 incident of surface ownership of the property or realty and, upon notice
19 to the board, shall be transferred to the person acquiring the ownership
20 of such property or realty.

21 §2090.13. Water conservation; incentives

22 **R.S. 30:2090.13 is all proposed new law.**

23 A. The legislature shall develop, implement, and enact tax
24 incentives, credits, or rebates to be granted current industrial or
25 agricultural users of groundwater who reduce their use of groundwater
26 by twenty percent from the previous year through the use of any one of
27 the following:

- 1 (1) The use of surface water.
- 2 (2) The use of grey water.
- 3 (3) The use of air.
- 4 (4) The use of black water or solid waste or any other matter
5 which can be substituted for groundwater.
- 6 (5) The use of water conservation plan employing generally
7 accepted water conservation practices approved by the board.

8 B. Each industrial or agricultural user of groundwater shall
9 submit documentation to the board who shall then determine whether
10 a twenty percent reduction has occurred in order for the user to
11 participate in the tax incentive, credit, or rebate authorized in this
12 Section.

13 Section 2. This Act shall become effective upon signature by the
14 governor or, if not signed by the governor, upon expiration of the time for bills
15 to become law without signature by the governor, as provided by Article III,
16 Section 18 of the Constitution of Louisiana. If vetoed by the governor and
17 subsequently approved by the legislature, this Act shall become effective on
18 the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Present law provides only for the registration of water wells which retrieve water from the states fresh water aquifers. The registration of these wells is filed with DOTD.

Proposed law establishes a groundwater policy for the state based on the following priorities:

- (1) First priority is for drinking.
- (2) Second priority is for agriculture
- (3) Third priority is for industry

Proposed law creates the Louisiana Groundwater Stewardship and Conservation Board within the office of the governor to oversee and provide for the protection, conservation, and management of the state's fresh water aquifers. Provides that the board be composed of the following nine members:

- (1) The governor, or his designee.
- (2) One member of the Public Service Commission, or a designee.
- (3) One engineer appointed by the secretary of the DOTD from the division that currently handles well registration.
- (4) A geologist appointed by the director of the Louisiana Geological Survey.
- (5) One farmer actively engaged in farming whose primary income is from farming and who is appointed by the board of directors of the Louisiana Farm Bureau.
- (6) One member appointed by the board of directors of the Louisiana Association of Business and Industry.
- (7) One member appointed by the chancellor of the LSU Ag. Center.
- (8) One member appointed by the environmental subcommittee of The League of Women Voter's of Louisiana.
- (9) The president of the parish governing authority in which the plant is to be cited or a water well is to be drilled.

Provides that certain members serve a four-year staggered term of office. Prohibits board members from receiving compensation for serving on the board but allows for reimbursement of certain expenses.

Proposed law authorizes the board to do the following:

- (1) Establish regulations for groundwater use, water well spacing and obtaining permits.
- (2) Issue permits after board conducts public hearings.
- (3) Assess civil penalties for permit violations.

Proposed law provides no staff for the board but does authorize the board to use other state agencies, including DEQ, DOTD and DHH, to collect data and such other information as may be necessary to assist the board.

Requires that the board classify groundwater wells into the following three categories based on usage:

- (a) Domestic use.
- (b) Agricultural use.
- (c) Industrial use.

Proposed law prohibits the board from regulating the following:

- (1) Existing wells which are already registered with DOTD.
- (2) Individual household wells used exclusively for domestic use.
- (3) Water wells which are operated as part of a public water system that are regulated by DHH.
- (4) Wells with a maximum potential flow rate of less than 1,000,000 gallons per day.
- (5) Wells which produce no more than a yearly average of less than 1,000,000 gallons of water per day.

Proposed law prohibits the sale of water except:

- (1) The sale of bottled water.
- (2) Water sold by a public water system that is currently regulated by DHH.
- (3) Where the board grants approval for a person to sell water.

Also prohibits transportation of water from such wells to a point outside the parish from which the water is extracted unless approved by the board.

Proposed law requires that the board issue a written report summarizing the pertinent facts in each application, the board's determination and ruling on each application, and the reasons thereof. Requires that the board either grant, deny or modify an application for a groundwater permit.

Proposed law provides that a groundwater permit is a real right which attaches to and runs with the property on which the well is drilled. Prohibits any holder of a groundwater permit from transferring the permit apart from the land. Provides for the transfer of a permit to a replacement well.

Proposed law authorizes the legislature to develop, implement, and enact tax incentives, credits, or rebates to be granted current industrial or agricultural users of groundwater who reduce their use of groundwater by 20%.

Effective upon signature by the governor or upon lapse of time for gubernatorial action.

(Adds R.S. 30:2090.1 - 2090.13)