

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 4097
By: Hunter et al. (Kolkhorst)
Agriculture, Water & Rural Affairs
5/18/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that while the state's population is projected to increase in the next several decades, the state's water supply is projected to decrease over such time and that it is likely that recent drought conditions will continue in the near future. The parties suggest that seawater desalination could help ensure a future reliable water supply for the state's residents and businesses. C.S.H.B. 4097 seeks to encourage the development of seawater desalination.

C.S.H.B. 4097 amends current law relating to seawater desalination projects.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 4 (Section 11.1405, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 39.203, Utilities Code, by adding Subsection (i), as follows:

(i) Requires the Public Utility Commission of Texas (PUC), in cooperation with transmission and distribution utilities and the ERCOT independent system operator, to study whether existing transmission and distribution planning processes are sufficient to provide adequate infrastructure for seawater desalination projects. Requires PUC to include recommendations in the report required by Section 31.003 (Report on Scope of Competition), Utilities Code, if PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for projects of that kind.

SECTION 2. Amends Subchapter Z, Chapter 39, Utilities Code, by adding Section 39.9055, as follows:

Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF SEAWATER DESALINATION PROJECTS. Requires PUC and the ERCOT independent system operator to study the potential for seawater desalination projects to participate in existing demand response opportunities in the ERCOT market. Requires that the study, to the extent feasible, determine whether the operational characteristics of seawater desalination projects enable projects of that kind to participate in ERCOT-operated ancillary services markets or other competitively supplied demand response opportunities. Requires that the study also determine the potential economic benefit to a seawater desalination project if the project is able to reduce its demand during peak pricing periods. Requires PUC to include the results of the study in the report required by Section 31.003.

SECTION 3. Amends Section 11.121, Water Code, to add a reference to Section 11.1405, Water Code, and makes a nonsubstantive change.

SECTION 4. Amends Subchapter D, Chapter 11, Water Code, by adding Section 11.1405, as follows:

Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR INDUSTRIAL PURPOSES. (a) Authorizes TNRCC to issue a permit under this section to authorize a diversion of state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes if:

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

(b) Authorizes a person to divert state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes without obtaining a permit if Subsection (a) does not apply.

(c) Requires a person who diverts and uses state water that consists of marine seawater under a permit issued under Subsection (a) or as authorized by Subsection (b) to determine the total dissolved solids concentration of the seawater at the water source by monthly sampling and analysis and to provide the data collected to TNRCC. Prohibits a person from beginning construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit until the person has provided data to TNRCC based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. Provides that a person who has begun construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

(d) Requires that a permit application under this section be submitted as required by TNRCC rule.

(e) Provides that TNRCC is not required to make a finding of water availability for an application under this section.

(f) Requires TNRCC to evaluate whether any proposed diversion under this section is consistent with any applicable environmental flow standards established under Section 11.1471 (Environmental Flow Standards and Set-Asides).

(g) Authorizes TNRCC to include any provision in a permit issued under this section that TNRCC considers necessary to comply with the environment flow standards established under Section 11.1471.

(h) Requires TNRCC to adopt rules providing an expedited procedure for acting on an application for a permit under Subsection (a). Requires that the rules provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding TNRCC actions relating to an application for a permit.

SECTION 5. Amends Subchapter B, Chapter 26, Water Code, by adding Section 26.0272, as follows:

Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM SEAWATER DESALINATION FACILITIES. (a) Provides that this section applies only to a facility

that generates water treatment residuals from the desalination of seawater for use as part of an industrial process.

(b) Authorizes TNRCC to issue a permit for the discharge of water treatment residuals from the desalination of seawater into the portion of the Gulf of Mexico inside the territorial limits of the state.

(c) Requires TNRCC, before issuing a permit under this section, to evaluate the discharge of water treatment residuals from the desalination of seawater into the Gulf of Mexico for compliance with the state water quality standards adopted by TNRCC, the requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law.

(d) Authorizes TNRCC to issue individual permits or a general permit under this section. Requires TNRCC to establish procedures for the review of an application that, at a minimum, comply with the requirements of Subchapter M (Environmental Permitting Procedures), Chapter 5, Water Code, if TNRCC elects to issue individual permits under this section. Requires TNRCC to comply with the requirements of Section 26.040 (General Permits), Water Code, if TNRCC elects to issue a general permit under this section.

SECTION 6. Amends Section 27.021, Water Code, by adding Subsection (a-1), to authorize a permit issued under this section to authorize the disposal of water treatment residuals produced by the desalination of seawater.

SECTION 7. Amends Section 27.025, Water Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes a general permit issued under this section to authorize an injection well for the disposal of concentrate produced by the desalination of seawater. Requires that the general permit include any requirements necessary to maintain delegation of the federal underground injection control program administered by the Texas Commission on Environmental Quality.

SECTION 8. Effective date: upon passage or September 1, 2015.