

1-1 By: Hunter, et al. (Senate Sponsor - Kolkhorst) H.B. No. 4097
 1-2 (In the Senate - Received from the House May 12, 2015;
 1-3 May 14, 2015, read first time and referred to Committee on
 1-4 Agriculture, Water, and Rural Affairs; May 20, 2015, reported
 1-5 adversely, with favorable Committee Substitute by the following
 1-6 vote: Yeas 6, Nays 0; May 20, 2015, sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | | | X | |
| 1-13 | X | | | |
| 1-14 | X | | | |
| 1-15 | X | | | |

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 4097 By: Kolkhorst

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to seawater desalination projects.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 SECTION 1. Section 39.203, Utilities Code, is amended by
 1-22 adding Subsection (i) to read as follows:
 1-23 (i) The commission, in cooperation with transmission and
 1-24 distribution utilities and the ERCOT independent system operator,
 1-25 shall study whether existing transmission and distribution
 1-26 planning processes are sufficient to provide adequate
 1-27 infrastructure for seawater desalination projects. If the
 1-28 commission determines that statutory changes are needed to ensure
 1-29 that adequate infrastructure is developed for projects of that
 1-30 kind, the commission shall include recommendations in the report
 1-31 required by Section 31.003.
 1-32 SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is
 1-33 amended by adding Section 39.9055 to read as follows:
 1-34 Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF
 1-35 SEAWATER DESALINATION PROJECTS. The commission and the ERCOT
 1-36 independent system operator shall study the potential for seawater
 1-37 desalination projects to participate in existing demand response
 1-38 opportunities in the ERCOT market. To the extent feasible, the
 1-39 study shall determine whether the operational characteristics of
 1-40 seawater desalination projects enable projects of that kind to
 1-41 participate in ERCOT-operated ancillary services markets or other
 1-42 competitively supplied demand response opportunities. The study
 1-43 shall also determine the potential economic benefit to a seawater
 1-44 desalination project if the project is able to reduce its demand
 1-45 during peak pricing periods. The commission shall include the
 1-46 results of the study in the report required by Section 31.003.
 1-47 SECTION 3. Section 11.121, Water Code, is amended to read as
 1-48 follows:
 1-49 Sec. 11.121. PERMIT REQUIRED. Except as provided in
 1-50 Sections 11.1405, 11.142, 11.1421, and 11.1422 [of this code], no
 1-51 person may appropriate any state water or begin construction of any
 1-52 work designed for the storage, taking, or diversion of water
 1-53 without first obtaining a permit from the commission to make the
 1-54 appropriation.
 1-55 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended
 1-56 by adding Section 11.1405 to read as follows:
 1-57 Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR
 1-58 INDUSTRIAL PURPOSES. (a) The commission may issue a permit under
 1-59 this section to authorize a diversion of state water from the Gulf
 1-60 of Mexico or a bay or arm of the Gulf of Mexico for desalination and

2-1 use for industrial purposes if:

2-2 (1) the point of diversion is located less than three
 2-3 miles seaward of any point located on the coast of this state; or

2-4 (2) the seawater contains a total dissolved solids
 2-5 concentration based on a yearly average of samples taken monthly at
 2-6 the water source of less than 20,000 milligrams per liter.

2-7 (b) A person may divert state water from the Gulf of Mexico
 2-8 or a bay or arm of the Gulf of Mexico for desalination and use for
 2-9 industrial purposes without obtaining a permit if Subsection (a)
 2-10 does not apply.

2-11 (c) A person who diverts and uses state water that consists
 2-12 of marine seawater under a permit issued under Subsection (a) or as
 2-13 authorized by Subsection (b) must determine the total dissolved
 2-14 solids concentration of the seawater at the water source by monthly
 2-15 sampling and analysis and provide the data collected to the
 2-16 commission. A person may not begin construction of a facility for
 2-17 the diversion of marine seawater for the purposes provided by this
 2-18 section without obtaining a permit until the person has provided
 2-19 data to the commission based on the analysis of samples taken at the
 2-20 water source over a period of at least one year demonstrating that
 2-21 Subsection (a)(2) does not apply. A person who has begun
 2-22 construction of a facility for the diversion of marine seawater for
 2-23 the purposes provided by this section without obtaining a permit
 2-24 because the person has demonstrated that Subsection (a)(2) does not
 2-25 apply is not required to obtain a permit for the facility if the
 2-26 total dissolved solids concentration of the seawater at the water
 2-27 source subsequently changes so that Subsection (a)(2) applies.

2-28 (d) A permit application under this section must be
 2-29 submitted as required by commission rule.

2-30 (e) The commission is not required to make a finding of
 2-31 water availability for an application under this section.

2-32 (f) The commission shall evaluate whether any proposed
 2-33 diversion under this section is consistent with any applicable
 2-34 environmental flow standards established under Section 11.1471.

2-35 (g) The commission may include any provision in a permit
 2-36 issued under this section that the commission considers necessary
 2-37 to comply with the environmental flow standards established under
 2-38 Section 11.1471.

2-39 (h) The commission shall adopt rules providing an expedited
 2-40 procedure for acting on an application for a permit under
 2-41 Subsection (a). The rules must provide for notice, an opportunity
 2-42 for the submission of written comment, and an opportunity for a
 2-43 contested case hearing regarding commission actions relating to an
 2-44 application for a permit.

2-45 SECTION 5. Subchapter B, Chapter 26, Water Code, is amended
 2-46 by adding Section 26.0272 to read as follows:

2-47 Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM CERTAIN
 2-48 SEAWATER DESALINATION FACILITIES. (a) This section applies only to
 2-49 a facility that generates water treatment residuals from the
 2-50 desalination of seawater solely for use as part of an industrial
 2-51 process.

2-52 (b) The commission may issue a permit for the discharge of
 2-53 water treatment residuals from the desalination of seawater into
 2-54 the portion of the Gulf of Mexico inside the territorial limits of
 2-55 the state.

2-56 (c) Before issuing a permit under this section, the
 2-57 commission must evaluate the discharge of water treatment residuals
 2-58 from the desalination of seawater into the Gulf of Mexico for
 2-59 compliance with the state water quality standards adopted by the
 2-60 commission, the requirements of the Texas Pollutant Discharge
 2-61 Elimination System program, and applicable federal law.

2-62 (d) The commission may issue individual permits or a general
 2-63 permit under this section. If the commission elects to issue
 2-64 individual permits under this section, the commission must
 2-65 establish procedures for the review of an application that, at a
 2-66 minimum, comply with the requirements of Subchapter M, Chapter 5.
 2-67 If the commission elects to issue a general permit under this
 2-68 section, the commission must comply with the requirements of
 2-69 Section 26.040.

3-1 SECTION 6. Section 27.021, Water Code, is amended by adding
3-2 Subsection (a-1) to read as follows:

3-3 (a-1) A permit issued under this section may authorize the
3-4 disposal of water treatment residuals produced by the desalination
3-5 of seawater.

3-6 SECTION 7. Section 27.025, Water Code, is amended by adding
3-7 Subsection (a-1) to read as follows:

3-8 (a-1) A general permit issued under this section may
3-9 authorize an injection well for the disposal of concentrate
3-10 produced by the desalination of seawater. The general permit must
3-11 include any requirements necessary to maintain delegation of the
3-12 federal underground injection control program administered by the
3-13 commission.

3-14 SECTION 8. This Act takes effect immediately if it receives
3-15 a vote of two-thirds of all the members elected to each house, as
3-16 provided by Section 39, Article III, Texas Constitution. If this
3-17 Act does not receive the vote necessary for immediate effect, this
3-18 Act takes effect September 1, 2015.

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