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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. \_\_\_\_\_

BY: Lucia IR

1 Amend C.S.H.B. No. 2031 (house committee printing) by  
2 striking all below the enacting clause and substituting the  
3 following:

4 SECTION 1. (a) With this state facing an ongoing drought,  
5 continuing population growth, and the need to remain economically  
6 competitive, every effort must be made to secure and develop  
7 plentiful and cost-effective water supplies to meet the  
8 ever-increasing demand for water. The purpose of this Act is not to  
9 hinder efforts to conserve or develop other surface water supplies  
10 but rather to more fully explore and expedite the development of all  
11 this state's water resources in order to balance this state's supply  
12 and demand for water, which is one of the most precious resources of  
13 this state.

14 (b) Currently, the projected long-term water needs of this  
15 state far exceed the firm supplies that are available and that can  
16 reasonably be made available from freshwater sources within this  
17 state. The legislature recognizes the importance of providing for  
18 this state's current and future water needs at all times,  
19 including, consistent with reasonable drought contingency  
20 measures, during severe droughts.

21 (c) In this state, marine seawater is a potential new source  
22 of water for drinking and other beneficial uses. This state has  
23 access to vast quantities of marine seawater from the Gulf of  
24 Mexico. The purpose of this Act is to streamline the regulatory  
25 process for and reduce the time required for and cost of marine  
26 seawater desalination.

27 (d) The legislature finds that marine seawater desalination  
28 facilities should be cost-effectively and timely developed,  
29 concurrently with other water planning solutions, to help this

1 state meet its current and future water needs.

2 (e) The legislature finds that it is necessary and  
3 appropriate to grant authority and provide for expedited and  
4 streamlined authorization for marine seawater desalination  
5 facilities, consistent with appropriate environmental and water  
6 right protections, in order to avoid unnecessary costs, delays, and  
7 uncertainty and thereby help justify the investment of significant  
8 resources in the development of such facilities.

9 SECTION 2. Section 5.509(a), Water Code, is amended to read  
10 as follows:

11 (a) The commission may issue an emergency or temporary order  
12 relating to the discharge of waste or pollutants into or adjacent to  
13 water in the state if:

14 (1) the order is necessary to enable action to be taken  
15 more expeditiously than is otherwise provided by Chapter 18 or 26,  
16 as applicable, to effectuate the policy and purposes of that  
17 chapter; and

18 (2) the commission finds that:

19 (A) the discharge is unavoidable to:

20 (i) prevent loss of life, serious injury,  
21 or severe property damage;

22 (ii) prevent severe economic loss or  
23 ameliorate serious drought conditions, to the extent consistent  
24 with the requirements for United States Environmental Protection  
25 Agency authorization of a state permit program; or

26 (iii) make necessary and unforeseen repairs  
27 to a facility;

28 (B) there is no feasible alternative to the  
29 proposed discharge;

30 (C) the discharge will not cause significant  
31 hazard to human life and health, unreasonable damage to the

1 property of persons other than the applicant, or unreasonable  
2 economic loss to persons other than the applicant; and

3 (D) the discharge will not present a significant  
4 hazard to the uses that will be made of the receiving water after  
5 the discharge.

6 SECTION 3. Section 5.551, Water Code, is amended by adding  
7 Subsection (a-1) to read as follows:

8 (a-1) Notwithstanding Section 18.002, this subchapter does  
9 not apply to a permit issued under Section 18.005(c)(2) if the point  
10 of discharge is not located within three miles of any point located  
11 on the coast of this state.

12 SECTION 4. Section 7.302(a), Water Code, is amended to read  
13 as follows:

14 (a) This section applies to a permit or exemption issued by  
15 the commission under:

16 (1) Section 18.005 of this code;

17 (2) Chapter 26, 27, 28, or 31 of this code;

18 (3) [~~2~~] Subchapter C or R, Chapter 361, Health and  
19 Safety Code;

20 (4) [~~3~~] Subchapter D, Chapter 366, Health and Safety  
21 Code;

22 (5) [~~4~~] Chapter 382, Health and Safety Code; or

23 (6) [~~5~~] a rule adopted under any of those  
24 provisions.

25 SECTION 5. Section 11.0237(b), Water Code, is amended to  
26 read as follows:

27 (b) This section does not alter the commission's  
28 obligations under Section 11.042(a-1), (b), or (c), 11.046(b),  
29 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,  
30 11.150, 11.152, 16.058, [~~or~~] 16.059, or 18.004.

31 SECTION 6. Section 11.082, Water Code, is amended by adding

1 Subsection (a-1) to read as follows:

2 (a-1) Notwithstanding Section 18.002, this section does not  
3 apply to a violation of:

4 (1) Section 18.003 or a permit issued under that  
5 section; or

6 (2) Section 18.004 or an authorization granted under  
7 that section.

8 SECTION 7. Section 11.0842, Water Code, is amended by  
9 adding Subsection (a-1) to read as follows:

10 (a-1) Notwithstanding Section 18.002, this section does not  
11 apply to a violation of:

12 (1) Section 18.003 or a permit issued under that  
13 section; or

14 (2) Section 18.004 or an authorization granted under  
15 that section.

16 SECTION 8. Section 11.121, Water Code, is amended to read as  
17 follows:

18 Sec. 11.121. PERMIT REQUIRED. Except as provided in  
19 Sections 11.142, 11.1421, ~~[and] 11.1422,~~ and 18.003 ~~[of this code],~~  
20 no person may appropriate any state water or begin construction of  
21 any work designed for the storage, taking, or diversion of water  
22 without first obtaining a permit from the commission to make the  
23 appropriation.

24 SECTION 9. Section 16.053(e), Water Code, is amended to  
25 read as follows:

26 (e) Each regional water planning group shall submit to the  
27 development board a regional water plan that:

28 (1) is consistent with the guidance principles for the  
29 state water plan adopted by the development board under Section  
30 16.051(d);

31 (2) provides information based on data provided or

1 approved by the development board in a format consistent with the  
2 guidelines provided by the development board under Subsection (d);

3 (2-a) is consistent with the desired future conditions  
4 adopted under Section 36.108 for the relevant aquifers located in  
5 the regional water planning area as of the date the board most  
6 recently adopted a state water plan under Section 16.051 or, at the  
7 option of the regional water planning group, established subsequent  
8 to the adoption of the most recent plan;

9 (3) identifies:

10 (A) each source of water supply in the regional  
11 water planning area, including information supplied by the  
12 executive administrator on the amount of modeled available  
13 groundwater in accordance with the guidelines provided by the  
14 development board under Subsections (d) and (f);

15 (B) factors specific to each source of water  
16 supply to be considered in determining whether to initiate a  
17 drought response;

18 (C) actions to be taken as part of the response;  
19 and

20 (D) existing major water infrastructure  
21 facilities that may be used for interconnections in the event of an  
22 emergency shortage of water;

23 (4) has specific provisions for water management  
24 strategies to be used during a drought of record;

25 (5) includes but is not limited to consideration of  
26 the following:

27 (A) any existing water or drought planning  
28 efforts addressing all or a portion of the region;

29 (B) approved groundwater conservation district  
30 management plans and other plans submitted under Section 16.054;

31 (C) all potentially feasible water management

1 strategies, including but not limited to improved conservation,  
2 reuse, and management of existing water supplies, conjunctive use,  
3 acquisition of available existing water supplies, and development  
4 of new water supplies;

5 (D) protection of existing water rights in the  
6 region;

7 (E) opportunities for and the benefits of  
8 developing regional water supply facilities or providing regional  
9 management of water supply facilities;

10 (F) appropriate provision for environmental  
11 water needs and for the effect of upstream development on the bays,  
12 estuaries, and arms of the Gulf of Mexico and the effect of plans on  
13 navigation;

14 (G) provisions in Section 11.085(k)(1) if  
15 interbasin transfers are contemplated;

16 (H) voluntary transfer of water within the region  
17 using, but not limited to, regional water banks, sales, leases,  
18 options, subordination agreements, and financing agreements; ~~and~~

19 (I) emergency transfer of water under Section  
20 11.139, including information on the part of each permit, certified  
21 filing, or certificate of adjudication for nonmunicipal use in the  
22 region that may be transferred without causing unreasonable damage  
23 to the property of the nonmunicipal water rights holder; and

24 (J) opportunities for and the benefits of  
25 developing large-scale desalination facilities for marine seawater  
26 that serve local or regional entities;

27 (6) identifies river and stream segments of unique  
28 ecological value and sites of unique value for the construction of  
29 reservoirs that the regional water planning group recommends for  
30 protection under Section 16.051;

31 (7) assesses the impact of the plan on unique river and

1 stream segments identified in Subdivision (6) if the regional water  
2 planning group or the legislature determines that a site of unique  
3 ecological value exists;

4 (8) describes the impact of proposed water projects on  
5 water quality; and

6 (9) includes information on:

7 (A) projected water use and conservation in the  
8 regional water planning area; and

9 (B) the implementation of state and regional  
10 water plan projects, including water conservation strategies,  
11 necessary to meet the state's projected water demands.

12 SECTION 10. Subtitle C, Title 2, Water Code, is amended by  
13 adding Chapter 18 to read as follows:

14 CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

15 Sec. 18.001. DEFINITIONS. In this chapter:

16 (1) "Commission" means the Texas Commission on  
17 Environmental Quality.

18 (2) "Marine seawater" means water that is derived from  
19 the Gulf of Mexico.

20 (3) "Project" means:

21 (A) a marine seawater desalination project; or

22 (B) a facility for the storage, conveyance, and  
23 delivery of desalinated marine seawater.

24 Sec. 18.002. RELATIONSHIP TO OTHER LAWS. (a) Except as  
25 provided by Subsection (b) or as otherwise provided by law:

26 (1) Chapter 11 applies to a permit or authorization  
27 under Section 18.003 or 18.004 in the same manner as that chapter  
28 applies to a permit or authorization under that chapter; and

29 (2) Chapter 26 applies to a permit under Section  
30 18.005 in the same manner as that chapter applies to a permit under  
31 that chapter.

1 (b) In the event of a conflict between this chapter and  
2 Chapter 11 or 26, this chapter controls.

3 Sec. 18.003. DIVERSIONS OF MARINE SEAWATER. (a) A person  
4 must obtain a permit to divert and use state water that consists of  
5 marine seawater if:

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

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

11 (b) A person may divert and use state water that consists of  
12 marine seawater without obtaining a permit if Subsection (a) does  
13 not apply.

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

30 (d) A person may use marine seawater diverted under a permit  
31 required by Subsection (a) or as authorized by Subsection (b) for



1 any beneficial purpose, but only if the seawater is treated in  
2 accordance with rules adopted by the commission before it is used.  
3 Rules adopted under this subsection may impose different treatment  
4 requirements based on the purpose for which the seawater is to be  
5 used.

6 (e) The commission shall adopt rules providing an expedited  
7 procedure for acting on an application for a permit required by  
8 Subsection (a). The rules must provide for notice, an opportunity  
9 for the submission of written comment, and an opportunity for a  
10 contested case hearing regarding commission actions relating to an  
11 application for a permit.

12 (f) The point of diversion of marine seawater may not be in a  
13 bay or estuary.

14 (g) An application for a permit required by Subsection (a)  
15 must address the points from which, and the rate at which, the  
16 facility the applicant proposes to construct will divert marine  
17 seawater.

18 (h) The commission by rule shall prescribe reasonable  
19 measures to minimize impingement and entrainment.

20 (i) The Parks and Wildlife Department and the General Land  
21 Office jointly shall conduct a study to identify zones in the Gulf  
22 of Mexico that are appropriate for the diversion of marine  
23 seawater, taking into account the need to protect marine organisms.  
24 Not later than September 1, 2018, the Parks and Wildlife Department  
25 and the General Land Office shall submit a report on the results of  
26 the study to the commission. The report must include recommended  
27 diversion zones for designation by the commission and  
28 recommendations for the number of points from which, and the rate at  
29 which, a facility may divert marine seawater. Not later than  
30 September 1, 2020, the commission by rule shall designate  
31 appropriate diversion zones. A diversion zone may be contiguous

1 to, be the same as, or overlap a discharge zone. The point or points  
2 from which a facility may divert marine seawater must be located in  
3 a diversion zone designated by the commission under rules adopted  
4 under this subsection if:

5 (1) the facility is authorized by a permit as required  
6 by Subsection (a) issued after the rules are adopted; or

7 (2) the facility is exempt under Subsection (b) from  
8 the requirement of a permit and construction of the facility begins  
9 after the rules are adopted.

10 (j) Until the commission adopts rules under Subsection (i),  
11 a person must consult the Parks and Wildlife Department and the  
12 General Land Office regarding the point or points from which a  
13 facility the person proposes to construct may divert marine  
14 seawater before submitting an application for a permit for the  
15 facility if Subsection (a) applies or before beginning construction  
16 of the facility if Subsection (b) applies.

17 Sec. 18.004. BED AND BANKS AUTHORIZATION. (a) With prior  
18 authorization granted under rules prescribed by the commission, a  
19 person may use the bed and banks of any flowing natural stream in  
20 this state or a lake, reservoir, or other impoundment in this state  
21 to convey marine seawater that has been treated so as to meet  
22 standards that are at least as stringent as the water quality  
23 standards applicable to the receiving stream or impoundment adopted  
24 by the commission.

25 (b) The commission shall provide for notice and an  
26 opportunity for the submission of written comment but may not  
27 provide an opportunity for a contested case hearing regarding  
28 commission actions relating to an application for an authorization  
29 under this section to use the bed and banks of a flowing natural  
30 stream to convey treated marine seawater. The commission shall  
31 provide for notice, an opportunity for the submission of written

1 comment, and an opportunity for a contested case hearing regarding  
2 commission actions relating to an application for an authorization  
3 under this section to use a lake, reservoir, or other impoundment to  
4 convey treated marine seawater.

5 (c) A person may not discharge treated marine seawater into  
6 a flowing natural stream in this state or a lake, reservoir, or  
7 other impoundment in this state for the purpose of conveyance of the  
8 water under an authorization granted under this section unless the  
9 person holds a permit issued under Section 18.005 authorizing the  
10 discharge.

11 (d) Treated marine seawater that is conveyed under an  
12 authorization granted under this section may be used only by the  
13 person to whom the authorization is granted.

14 (e) Section 11.042(c) applies to an authorization granted  
15 under this section in the same manner as that subsection applies to  
16 an authorization granted under Section 11.042.

17 (f) This section does not prohibit a person from conveying  
18 treated marine seawater in any other manner authorized by law.

19 Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE  
20 RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this  
21 section, "permit," "person," "to discharge," "waste," and "water"  
22 have the meanings assigned by Section 26.001.

23 (b) Section 26.011 applies to discharges governed by this  
24 section in the same manner as that section applies to discharges  
25 governed by Chapter 26.

26 (c) A person must obtain a permit to discharge:

27 (1) treated marine seawater into a natural stream in  
28 this state or a lake, reservoir, or other impoundment in this state;  
29 or

30 (2) waste resulting from the desalination of treated  
31 marine seawater into the Gulf of Mexico.

1           (d) A person shall:

2                   (1) treat marine seawater so as to meet standards that  
3 are at least as stringent as the water quality standards adopted by  
4 the commission applicable to the receiving stream or impoundment  
5 before discharging the seawater under this section; and

6                   (2) comply with all applicable state and federal  
7 requirements when discharging waste resulting from the  
8 desalination of marine seawater into the Gulf of Mexico.

9           (e) The commission by rule shall provide an expedited  
10 procedure for acting on an application for a permit under this  
11 section. The rules must provide for:

12                   (1) notice, an opportunity for the submission of  
13 written comment, and an opportunity to request a public meeting and  
14 may authorize a contested case hearing regarding commission actions  
15 relating to an application for a permit described by Subsection  
16 (c)(1);

17                   (2) notice, an opportunity for the submission of  
18 written comment, an opportunity to request a public meeting, and an  
19 opportunity for a contested case hearing regarding commission  
20 actions relating to an application for a permit described by  
21 Subsection (c)(2) if the point of discharge is located within three  
22 miles of any point located on the coast of this state; and

23                   (3) notice and an opportunity for the submission of  
24 written comment regarding commission actions relating to an  
25 application for a permit described by Subsection (c)(2) if  
26 Subdivision (2) of this subsection does not apply.

27           (f) A person may not discharge waste resulting from the  
28 desalination of marine seawater into a bay or estuary.

29           (g) The Parks and Wildlife Department and the General Land  
30 Office jointly shall conduct a study to identify zones in the Gulf  
31 of Mexico that are appropriate for the discharge of waste resulting

1 from the desalination of marine seawater, taking into account the  
2 need to protect marine organisms. Not later than September 1, 2018,  
3 the Parks and Wildlife Department and the General Land Office shall  
4 submit a report on the results of the study to the commission. The  
5 report must include recommended discharge zones for designation by  
6 the commission. Not later than September 1, 2020, the commission by  
7 rule shall designate appropriate discharge zones. The point at  
8 which a facility may discharge waste resulting from the  
9 desalination of marine seawater must be located in a discharge zone  
10 designated by the commission under rules adopted under this  
11 subsection if the facility is authorized by a permit issued under  
12 Subsection (c)(2) after the rules are adopted.

13 (h) Until the commission adopts rules under Subsection (g),  
14 a person must consult the Parks and Wildlife Department and the  
15 General Land Office regarding the point at which the facility the  
16 person proposes to construct may discharge waste resulting from the  
17 desalination of marine seawater before submitting an application  
18 for a permit under Subsection (c)(2) for the facility.

19 SECTION 11. Section 26.0291(a), Water Code, is amended to  
20 read as follows:

21 (a) An annual water quality fee is imposed on:

22 (1) each wastewater discharge permit holder,  
23 including the holder of a permit issued under Section 18.005, for  
24 each wastewater discharge permit held; and

25 (2) each user of water in proportion to the user's  
26 water right, through permit or contract, as reflected in the  
27 commission's records, provided that the commission by rule shall  
28 ensure that no fee shall be assessed for the portion of a municipal  
29 or industrial water right directly associated with a facility or  
30 operation for which a fee is assessed under Subdivision (1) of this  
31 subsection.

1 SECTION 12. Subchapter C, Chapter 341, Health and Safety  
2 Code, is amended by adding Section 341.0316 to read as follows:

3 Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING  
4 WATER. (a) This section applies only to a desalination facility  
5 that is intended to treat marine seawater for the purpose of  
6 producing water for the public drinking water supply. This section  
7 does not apply to a desalination facility used to produce  
8 nonpotable water.

9 (b) The commission shall adopt rules to:

10 (1) allow water treated by a desalination facility to  
11 be used as public drinking water; and

12 (2) ensure that water treated by a desalination  
13 facility meets the requirements of Section 341.031 and rules  
14 adopted under that section.

15 (c) A person may not begin construction of a desalination  
16 facility that treats marine seawater for the purpose of removing  
17 primary or secondary drinking water contaminants unless the  
18 commission approves the construction of the facility.

19 SECTION 13. Section 16.060, Water Code, is repealed.

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