

BILL ANALYSIS

C.S.H.B. 4097
By: Hunter
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4097 amends the Water Code to authorize the Texas Commission on Environmental Quality (TCEQ) to issue a permit 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. The bill requires a permit application to be submitted as required by TCEQ rule. The bill establishes that TCEQ is not required to make a finding of water availability for an application. The bill requires TCEQ to evaluate whether any proposed diversion is consistent with any applicable environmental flow standards and authorizes TCEQ to include any provision in a permit that TCEQ considers necessary to comply with the environment flow standards. The bill establishes that a permit does not require public notice and is not subject to a contested case hearing.

C.S.H.B. 4097 sets out provisions relating to permits authorizing discharges from seawater desalination facilities applicable only to a facility that generates water treatment residuals from the desalination of seawater for use as part of an industrial process. The bill authorizes TCEQ 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. The bill requires TCEQ, before issuing a permit, 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 TCEQ, the requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law. The bill authorizes TCEQ to issue individual permits or a general permit. The bill requires TCEQ to establish procedures for the review of an application that at a minimum comply with statutory environmental permitting procedure requirements if TCEQ elects to issue individual permits and requires TCEQ to comply with the requirements relating to a general permit for the discharge of waste into or adjacent to waters in Texas if TCEQ elects to issue a general permit under these provisions of the bill.

C.S.H.B. 4097 authorizes a permit for the disposal of brine produced by a desalination operation or of drinking water treatment residuals in a Class I injection well to authorize the disposal of water treatment residuals produced by desalination of seawater. The bill authorizes a general permit for the use of a Class I injection well for the injection of nonhazardous brine from a desalination operation or of nonhazardous drinking water treatment residuals to authorize an injection well for the disposal of concentrate produced by the desalination of seawater. The bill requires the general permit to include any requirements necessary to maintain delegation of the federal underground injection control program administered by TCEQ.

C.S.H.B. 4097 amends the Utilities Code to require 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. The bill requires the PUC to include recommendations in the PUC's scope of competition report if the PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for projects of that kind. The bill requires the 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. The bill requires the study, to the extent feasible, to 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. The bill requires the study also to determine the potential economic benefit to a seawater desalination project if the project is able to reduce its demand during peak pricing periods. The bill requires the PUC to include the results of the study in the PUC's scope of competition report.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4097 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0331 to read as follows:

Sec. 341.0331. DESALINATION FOR NONPOTABLE USE. (a) This section applies only to the desalination of seawater under a permit issued under Section 26.0272, Water Code.

(b) The commission shall adopt rules that allow desalinated seawater to be used for nonpotable uses. The rules must specify that:

(1) the quality of water produced by seawater desalination does not have to meet the criteria prescribed by the sanitary standards for drinking water adopted by the commission;

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(2) a public drinking water supply may not be connected to any alternative source unless the connection is designed to ensure against a backflow or siphonage of water into the drinking water supply; and
(3) equipment used to desalinate seawater for nonpotable uses may not subsequently be used to produce water for human consumption.

SECTION 2. Section 39.203, Utilities Code, is amended.

SECTION 3. Subchapter Z, Chapter 39, Utilities Code, is amended.

SECTION 4. Subchapter D, Chapter 11, Water Code, is amended.

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

Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM SEAWATER DESALINATION FACILITIES. (a) This section applies only to a facility that generates waste from the desalination of seawater for use as part of an industrial process.

(b) The commission may issue a permit for the discharge of waste or pollutants from the desalination of seawater into the portion of the Gulf of Mexico inside the territorial limits of the state.

(c) Before issuing a permit under this section, the commission must evaluate the discharge of waste or pollutants from the desalination of seawater into the Gulf of Mexico for compliance with the state water quality standards adopted by the commission, the requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law.

(d) The commission may issue individual permits or a general permit under this section. If the commission elects to issue individual permits under this section, the commission must establish procedures for the review of an application that, at a minimum, comply with the requirements of Subchapter M, Chapter 5. If the

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.0272 to read as follows:

Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM SEAWATER DESALINATION FACILITIES. (a) 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) The commission may 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) Before issuing a permit under this section, the commission must 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 the commission, the requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law.

(d) The commission may issue individual permits or a general permit under this section. If the commission elects to issue individual permits under this section, the commission must establish procedures for the review of an application that, at a minimum, comply with the requirements of Subchapter M, Chapter 5. If the

commission elects to issue a general permit under this section, the commission must comply with the requirements of Section 26.040.

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

(a-1) A permit issued under this section may authorize the disposal of brine produced by the desalination of seawater.

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

(a-1) A general permit issued under this section may authorize an injection well for the disposal of brine produced by the desalination of seawater.

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

commission elects to issue a general permit under this section, the commission must comply with the requirements of Section 26.040.

SECTION 5. Section 27.021, Water Code, is amended by adding Subsection (a-1) to read as follows:

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

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

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

SECTION 7. Same as introduced version.