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H.B. No. 2031

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the diversion, treatment, and use of marine seawater
3 and the discharge of treated marine seawater and waste resulting
4 from the desalination of marine seawater; adding provisions subject
5 to a criminal penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

24 (c) In this state, marine seawater is a potential new source

1 of water for drinking and other beneficial uses. This state has
2 access to vast quantities of marine seawater from the Gulf of
3 Mexico. The purpose of this Act is to streamline the regulatory
4 process for and reduce the time required for and cost of marine
5 seawater desalination.

6 (d) The legislature finds that marine seawater desalination
7 facilities should be cost-effectively and timely developed,
8 concurrently with other water planning solutions, to help this
9 state meet its current and future water needs.

10 (e) The legislature finds that it is necessary and
11 appropriate to grant authority and provide for expedited and
12 streamlined authorization for marine seawater desalination
13 facilities, consistent with appropriate environmental and water
14 right protections, in order to avoid unnecessary costs, delays, and
15 uncertainty and thereby help justify the investment of significant
16 resources in the development of such facilities.

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

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

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

26 (2) the commission finds that:

27 (A) the discharge is unavoidable to:

1 (i) prevent loss of life, serious injury,
2 or severe property damage;

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

7 (iii) make necessary and unforeseen repairs
8 to a facility;

9 (B) there is no feasible alternative to the
10 proposed discharge;

11 (C) the discharge will not cause significant
12 hazard to human life and health, unreasonable damage to the
13 property of persons other than the applicant, or unreasonable
14 economic loss to persons other than the applicant; and

15 (D) the discharge will not present a significant
16 hazard to the uses that will be made of the receiving water after
17 the discharge.

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

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

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

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

- 1 (1) Section 18.005 of this code;
- 2 (2) Chapter 26, 27, 28, or 31 of this code;
- 3 (3) [~~(2)~~] Subchapter C or R, Chapter 361, Health and
- 4 Safety Code;
- 5 (4) [~~(3)~~] Subchapter D, Chapter 366, Health and Safety
- 6 Code;
- 7 (5) [~~(4)~~] Chapter 382, Health and Safety Code; or
- 8 (6) [~~(5)~~] a rule adopted under any of those
- 9 provisions.

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

12 (b) This section does not alter the commission's
13 obligations under Section 11.042(a-1), (b), or (c), 11.046(b),
14 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
15 11.150, 11.152, 16.058, [~~or~~] 16.059, or 18.004.

16 SECTION 6. Section 11.082, Water Code, is amended by adding
17 Subsection (a-1) to read as follows:

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

20 (1) Section 18.003 or a permit issued under that
21 section; or

22 (2) Section 18.004 or an authorization granted under
23 that section.

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

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

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

3 (2) Section 18.004 or an authorization granted under
4 that section.

5 SECTION 8. Section 11.121, Water Code, is amended to read as
6 follows:

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

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

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

17 (1) is consistent with the guidance principles for the
18 state water plan adopted by the development board under Section
19 16.051(d);

20 (2) provides information based on data provided or
21 approved by the development board in a format consistent with the
22 guidelines provided by the development board under Subsection (d);

23 (2-a) is consistent with the desired future conditions
24 adopted under Section 36.108 for the relevant aquifers located in
25 the regional water planning area as of the date the board most
26 recently adopted a state water plan under Section 16.051 or, at the
27 option of the regional water planning group, established subsequent

1 to the adoption of the most recent plan;

2 (3) identifies:

3 (A) each source of water supply in the regional
4 water planning area, including information supplied by the
5 executive administrator on the amount of modeled available
6 groundwater in accordance with the guidelines provided by the
7 development board under Subsections (d) and (f);

8 (B) factors specific to each source of water
9 supply to be considered in determining whether to initiate a
10 drought response;

11 (C) actions to be taken as part of the response;
12 and

13 (D) existing major water infrastructure
14 facilities that may be used for interconnections in the event of an
15 emergency shortage of water;

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

18 (5) includes but is not limited to consideration of
19 the following:

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

22 (B) approved groundwater conservation district
23 management plans and other plans submitted under Section [16.054](#);

24 (C) all potentially feasible water management
25 strategies, including but not limited to improved conservation,
26 reuse, and management of existing water supplies, conjunctive use,
27 acquisition of available existing water supplies, and development

1 of new water supplies;

2 (D) protection of existing water rights in the
3 region;

4 (E) opportunities for and the benefits of
5 developing regional water supply facilities or providing regional
6 management of water supply facilities;

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

11 (G) provisions in Section 11.085(k)(1) if
12 interbasin transfers are contemplated;

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

16 (I) emergency transfer of water under Section
17 11.139, including information on the part of each permit, certified
18 filing, or certificate of adjudication for nonmunicipal use in the
19 region that may be transferred without causing unreasonable damage
20 to the property of the nonmunicipal water rights holder; and

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

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

1 (7) assesses the impact of the plan on unique river and
2 stream segments identified in Subdivision (6) if the regional water
3 planning group or the legislature determines that a site of unique
4 ecological value exists;

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

7 (9) includes information on:

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

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

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

15 CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

16 Sec. 18.001. DEFINITIONS. In this chapter:

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

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

21 (3) "Project" means:

22 (A) a marine seawater desalination project; or

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

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

27 (1) Chapter 11 applies to a permit or authorization

1 under Section 18.003 or 18.004 in the same manner as that chapter
2 applies to a permit or authorization under that chapter; and

3 (2) Chapter 26 applies to a permit under Section
4 18.005 in the same manner as that chapter applies to a permit under
5 that chapter.

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

8 (c) This chapter is intended to provide an alternative
9 procedure for obtaining an authorization to divert and use state
10 water that consists of marine seawater or to discharge treated
11 marine seawater or waste resulting from the desalination of treated
12 marine seawater under the circumstances provided by this chapter.
13 This chapter does not affect the authority of a person to:

14 (1) divert and use state water that consists of marine
15 seawater in accordance with the procedures provided by Chapter 11,
16 including the authority to divert marine seawater from a point of
17 diversion located in a bay or estuary; or

18 (2) discharge treated marine seawater or waste
19 resulting from the desalination of treated marine seawater in
20 accordance with the procedures provided by Chapter 26, including
21 the authority to discharge waste resulting from the desalination of
22 marine seawater into a bay or estuary.

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

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

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

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

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

23 (d) A person may use marine seawater diverted under a permit
24 required by Subsection (a) or as authorized by Subsection (b) for
25 any beneficial purpose, but only if the seawater is treated in
26 accordance with rules adopted by the commission before it is used.
27 Rules adopted under this subsection may impose different treatment

1 requirements based on the purpose for which the seawater is to be
2 used.

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

9 (f) A person may not divert marine seawater under a permit
10 required by Subsection (a) or as authorized by Subsection (b) from a
11 point of diversion located in a bay or estuary.

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

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

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

1 September 1, 2020, the commission by rule shall designate
2 appropriate diversion zones. A diversion zone may be contiguous
3 to, be the same as, or overlap a discharge zone. The point or points
4 from which a facility may divert marine seawater must be located in
5 a diversion zone designated by the commission under rules adopted
6 under this subsection if:

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

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

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

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

27 (b) The commission shall provide for notice and an

1 opportunity for the submission of written comment but may not
2 provide an opportunity for a contested case hearing regarding
3 commission actions relating to an application for an authorization
4 under this section to use the bed and banks of a flowing natural
5 stream to convey treated marine seawater. The commission shall
6 provide for notice, an opportunity for the submission of written
7 comment, and an opportunity for a contested case hearing regarding
8 commission actions relating to an application for an authorization
9 under this section to use a lake, reservoir, or other impoundment to
10 convey treated marine seawater.

11 (c) A person may not discharge treated marine seawater into
12 a flowing natural stream in this state or a lake, reservoir, or
13 other impoundment in this state for the purpose of conveyance of the
14 water under an authorization granted under this section unless the
15 person holds a permit issued under Section 18.005 authorizing the
16 discharge.

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

20 (e) Section 11.042(c) applies to an authorization granted
21 under this section in the same manner as that subsection applies to
22 an authorization granted under Section 11.042.

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

25 Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE
26 RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this
27 section, "permit," "person," "to discharge," "waste," and "water"

1 have the meanings assigned by Section 26.001.

2 (b) Section 26.011 applies to discharges governed by this
3 section in the same manner as that section applies to discharges
4 governed by Chapter 26.

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

6 (1) treated marine seawater into a natural stream in
7 this state or a lake, reservoir, or other impoundment in this state;
8 or

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

11 (d) A person shall:

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

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

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

22 (1) notice, an opportunity for the submission of
23 written comment, and an opportunity to request a public meeting and
24 may authorize a contested case hearing regarding commission actions
25 relating to an application for a permit described by Subsection
26 (c)(1);

27 (2) notice, an opportunity for the submission of

1 written comment, an opportunity to request a public meeting, and an
2 opportunity for a contested case hearing regarding commission
3 actions relating to an application for a permit described by
4 Subsection (c)(2) if the point of discharge is located within three
5 miles of any point located on the coast of this state; and

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

10 (f) A person may not discharge waste resulting from the
11 desalination of marine seawater into a bay or estuary under a permit
12 issued under Subsection (c)(2).

13 (g) The Parks and Wildlife Department and the General Land
14 Office jointly shall conduct a study to identify zones in the Gulf
15 of Mexico that are appropriate for the discharge of waste resulting
16 from the desalination of marine seawater, taking into account the
17 need to protect marine organisms. Not later than September 1, 2018,
18 the Parks and Wildlife Department and the General Land Office shall
19 submit a report on the results of the study to the commission. The
20 report must include recommended discharge zones for designation by
21 the commission. Not later than September 1, 2020, the commission by
22 rule shall designate appropriate discharge zones. The point at
23 which a facility may discharge waste resulting from the
24 desalination of marine seawater must be located in a discharge zone
25 designated by the commission under rules adopted under this
26 subsection if the facility is authorized by a permit issued under
27 Subsection (c)(2) after the rules are adopted.

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

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

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

10 (1) each wastewater discharge permit holder,
11 including the holder of a permit issued under Section 18.005, for
12 each wastewater discharge permit held; and

13 (2) each user of water in proportion to the user's
14 water right, through permit or contract, as reflected in the
15 commission's records, provided that the commission by rule shall
16 ensure that no fee shall be assessed for the portion of a municipal
17 or industrial water right directly associated with a facility or
18 operation for which a fee is assessed under Subdivision (1) of this
19 subsection.

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

22 Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING
23 WATER. (a) This section applies only to a desalination facility
24 that is intended to treat marine seawater for the purpose of
25 producing water for the public drinking water supply. This section
26 does not apply to a desalination facility used to produce
27 nonpotable water.

1 (b) The commission shall adopt rules to:

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

4 (2) ensure that water treated by a desalination
5 facility meets the requirements of Section 341.031 and rules
6 adopted under that section.

7 (c) A person may not begin construction of a desalination
8 facility that treats marine seawater for the purpose of removing
9 primary or secondary drinking water contaminants unless the
10 commission approves the construction of the facility.

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

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