

By: Lucio III, Miller of Comal, Workman

H.B. No. 2031

Substitute the following for H.B. No. 2031:

By: Larson

C.S.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, including  
22 during severe droughts.

23 (c) In this state, marine seawater is a potential new source  
24 of water for drinking and other beneficial uses. This state has

1 access to vast quantities of marine seawater from the Gulf of  
2 Mexico. The purpose of this Act is to streamline the regulatory  
3 process for and reduce the time required for and cost of marine  
4 seawater desalination.

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

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

15 SECTION 2. Section 11.0237(b), Water Code, is amended to  
16 read as follows:

17 (b) This section does not alter the commission's  
18 obligations under Section 11.042(a-1), (a-2), (b), or (c),  
19 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471,  
20 11.1491, 11.150, 11.152, 16.058, or 16.059.

21 SECTION 3. Section 11.042, Water Code, is amended by adding  
22 Subsection (a-2) to read as follows:

23 (a-2) In this subsection, "water supply entity" has the  
24 meaning assigned by Section 11.156. With prior authorization  
25 granted under rules prescribed by the commission, a water supply  
26 entity may use the bed and banks of any flowing natural stream in  
27 this state or a lake, reservoir, or other impoundment in this state

1 to convey marine seawater that has been treated so as to meet  
2 standards that are at least as stringent as the water quality  
3 standards applicable to the receiving stream or impoundment adopted  
4 by the commission. The commission shall provide for notice and an  
5 opportunity for the submission of written comment but may not  
6 provide an opportunity for a public hearing regarding commission  
7 actions relating to an authorization under this subsection to use  
8 the bed and banks of a flowing natural stream to convey treated  
9 marine seawater. The commission shall provide for notice, an  
10 opportunity for the submission of written comment, and an  
11 opportunity for a contested case hearing regarding commission  
12 actions relating to an authorization under this subsection to use a  
13 lake, reservoir, or other impoundment to convey treated marine  
14 seawater. A water supply entity may not discharge treated marine  
15 seawater into a flowing natural stream in this state or a lake,  
16 reservoir, or other impoundment in this state for the purpose of  
17 conveyance of the water under an authorization granted under this  
18 subsection unless the entity holds a permit under Section 26.054  
19 authorizing the discharge. Treated marine seawater that is  
20 conveyed under an authorization granted under this subsection may  
21 be used only by the water supply entity to which the authorization  
22 is granted. This subsection does not prohibit a water supply entity  
23 from conveying treated marine seawater in any other manner  
24 authorized by law.

25 SECTION 4. Section [11.121](#), Water Code, is amended to read as  
26 follows:

27 Sec. 11.121. PERMIT REQUIRED. Except as provided in

1 Sections [11.142](#), [11.1421](#), [~~and~~] [11.1422](#), and [11.156](#) [~~of this code~~],  
2 no person may appropriate any state water or begin construction of  
3 any work designed for the storage, taking, or diversion of water  
4 without first obtaining a permit from the commission to make the  
5 appropriation.

6 SECTION 5. Subchapter D, Chapter 11, Water Code, is amended  
7 by adding Section 11.156 to read as follows:

8 Sec. 11.156. PERMIT OR PERMIT EXEMPTION FOR DIVERSION AND  
9 USE OF MARINE SEAWATER BY WATER SUPPLY ENTITY. (a) In this section,  
10 "water supply entity" includes:

11 (1) a retail public utility as defined by Section  
12 [13.002](#);

13 (2) a wholesale water supplier; or

14 (3) an irrigation district operating under Chapter 58.

15 (b) A water supply entity must obtain a permit to divert and  
16 use state water that consists of marine seawater if:

17 (1) the point of diversion is located less than six  
18 miles from any point located on the coast of this state; or

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

22 (c) A water supply entity may divert and use state water  
23 that consists of marine seawater without obtaining a permit if  
24 Subsection (b) does not apply.

25 (d) A water supply entity may use marine seawater diverted  
26 as authorized by a permit issued under Subsection (b), or as  
27 authorized by Subsection (c), for any beneficial purpose, but only

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

6 (1) Section 341.0316(b)(2), Health and Safety Code, if  
7 the water is to be used as public drinking water;

8 (2) Section 11.042(a-2) if the bed and banks of a  
9 flowing natural stream in this state or a lake, reservoir, or other  
10 impoundment in this state are to be used to convey the water; and

11 (3) Section 26.054(c)(1) if the water is to be  
12 discharged into a flowing natural stream in this state or a lake,  
13 reservoir, or other impoundment in this state.

14 (e) The commission shall adopt rules providing an expedited  
15 procedure for acting on an application for a permit under  
16 Subsection (b). The rules must provide for notice, an opportunity  
17 for the submission of written comment, and an opportunity for a  
18 contested case hearing regarding commission actions relating to a  
19 permit.

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

22 (g) The commission shall adopt rules prescribing the number  
23 of points from which, and the rate at which, a facility may divert  
24 marine seawater.

25 (h) The Parks and Wildlife Department and the General Land  
26 Office jointly shall conduct a study to identify zones in the Gulf  
27 of Mexico that are appropriate for the diversion of marine

1 seawater, taking into account the need to protect marine organisms,  
2 and shall recommend zones for designation by the commission. Not  
3 later than September 1, 2020, the commission shall adopt rules  
4 designating appropriate diversion zones. A diversion zone may be  
5 contiguous to or the same as or may overlap a discharge zone  
6 designated under Section 26.054. The point or points at which a  
7 facility may divert marine seawater must be located in a diversion  
8 zone designated by the commission under rules adopted under this  
9 subsection if:

10 (1) the facility is authorized by a permit issued  
11 under Subsection (b) after the rules are adopted; or

12 (2) the facility is exempt under Subsection (c) from  
13 the requirement of a permit and construction of the facility begins  
14 after the rules are adopted.

15 (i) Until the commission adopts rules under Subsection (h),  
16 a water supply entity must consult the Parks and Wildlife  
17 Department and the General Land Office regarding the point or  
18 points at which the facility the entity proposes to construct may  
19 divert marine seawater before submitting an application for a  
20 permit for the facility if Subsection (b) applies or before  
21 beginning construction of the facility if Subsection (c) applies.

22 SECTION 6. Section 16.053(e), Water Code, is amended to  
23 read as follows:

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

26 (1) is consistent with the guidance principles for the  
27 state water plan adopted by the development board under Section

1 16.051(d);

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

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

11 (3) identifies:

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

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

20 (C) actions to be taken as part of the response;  
21 and

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

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

27 (5) includes but is not limited to consideration of

1 the following:

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

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

6 (C) all potentially feasible water management  
7 strategies, including but not limited to improved conservation,  
8 reuse, and management of existing water supplies, conjunctive use,  
9 acquisition of available existing water supplies, and development  
10 of new water supplies;

11 (D) protection of existing water rights in the  
12 region;

13 (E) opportunities for and the benefits of  
14 developing regional water supply facilities or providing regional  
15 management of water supply facilities;

16 (F) appropriate provision for environmental  
17 water needs and for the effect of upstream development on the bays,  
18 estuaries, and arms of the Gulf of Mexico and the effect of plans on  
19 navigation;

20 (G) provisions in Section 11.085(k)(1) if  
21 interbasin transfers are contemplated;

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

25 (I) emergency transfer of water under Section  
26 11.139, including information on the part of each permit, certified  
27 filing, or certificate of adjudication for nonmunicipal use in the



1 region that may be transferred without causing unreasonable damage  
2 to the property of the nonmunicipal water rights holder; and

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

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

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

14 (8) describes the impact of proposed water projects on  
15 water quality; and

16 (9) includes information on:

17 (A) projected water use and conservation in the  
18 regional water planning area; and

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

22 SECTION 7. Subchapter B, Chapter 26, Water Code, is amended  
23 by adding Section 26.054 to read as follows:

24 Sec. 26.054. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE  
25 RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this  
26 section, "water supply entity" has the meaning assigned by Section  
27 11.156.

1 (b) A water supply entity must obtain a permit to discharge:

2 (1) marine seawater into a flowing natural stream in  
3 this state or a lake, reservoir, or other impoundment in this state;

4 or

5 (2) waste resulting from the desalination of marine  
6 seawater into the Gulf of Mexico.

7 (c) A water supply entity must:

8 (1) treat marine seawater so as to meet standards that  
9 are at least as stringent as the water quality standards applicable  
10 to the receiving stream or impoundment adopted by the commission  
11 before discharging the seawater under a permit described by  
12 Subsection (b)(1); and

13 (2) comply with all applicable state and federal  
14 requirements when discharging waste resulting from the  
15 desalination of marine seawater into the Gulf of Mexico under a  
16 permit described by Subsection (b)(2).

17 (d) The commission shall adopt rules providing an expedited  
18 procedure for acting on an application for a permit under  
19 Subsection (b). The rules must provide for:

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

24 (2) notice, an opportunity for the submission of  
25 written comment, an opportunity to request a public meeting, and an  
26 opportunity for a contested case hearing regarding commission  
27 actions relating to a permit described by Subsection (b)(2) if the

1 point of discharge is located within six miles of any point located  
2 on the coast of this state; and

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

7 (e) A water supply entity may not discharge waste resulting  
8 from the desalination of marine seawater into a bay or estuary.

9 (f) The Parks and Wildlife Department and the General Land  
10 Office jointly shall conduct a study to identify zones in the Gulf  
11 of Mexico that are appropriate for the discharge of waste resulting  
12 from the desalination of marine seawater, taking into account the  
13 need to protect marine organisms, and shall recommend zones for  
14 designation by the commission. Not later than September 1, 2020,  
15 the commission shall adopt rules designating appropriate discharge  
16 zones. The point at which a facility may discharge waste resulting  
17 from the desalination of marine seawater must be located in a  
18 discharge zone designated by the commission under rules adopted  
19 under this subsection if the facility is authorized by a permit  
20 issued under Subsection (b)(2) after the rules are adopted.

21 (g) Until the commission adopts rules under Subsection (f),  
22 a water supply entity must consult the Parks and Wildlife  
23 Department and the General Land Office regarding the point at which  
24 the facility the entity proposes to construct may discharge waste  
25 resulting from the desalination of marine seawater before  
26 submitting an application for a permit under Subsection (b)(2) for  
27 the facility.

1 SECTION 8. 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 9. Section 16.060, Water Code, is repealed.

20 SECTION 10. 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.