

1-1 By: Lucio III, et al. (Senate Sponsor - Hinojosa) H.B. No. 2031
 1-2 (In the Senate - Received from the House May 4, 2015;
 1-3 May 4, 2015, read first time and referred to Committee on
 1-4 Agriculture, Water, and Rural Affairs; May 19, 2015, reported
 1-5 favorably by the following vote: Yeas 6, Nays 0; May 19, 2015, sent
 1-6 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 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to the diversion, treatment, and use of marine seawater
 1-19 and the discharge of treated marine seawater and waste resulting
 1-20 from the desalination of marine seawater; adding provisions subject
 1-21 to a criminal penalty.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. (a) With this state facing an ongoing drought,
 1-24 continuing population growth, and the need to remain economically
 1-25 competitive, every effort must be made to secure and develop
 1-26 plentiful and cost-effective water supplies to meet the
 1-27 ever-increasing demand for water. The purpose of this Act is not to
 1-28 hinder efforts to conserve or develop other surface water supplies
 1-29 but rather to more fully explore and expedite the development of all
 1-30 this state's water resources in order to balance this state's supply
 1-31 and demand for water, which is one of the most precious resources of
 1-32 this state.

1-33 (b) Currently, the projected long-term water needs of this
 1-34 state far exceed the firm supplies that are available and that can
 1-35 reasonably be made available from freshwater sources within this
 1-36 state. The legislature recognizes the importance of providing for
 1-37 this state's current and future water needs at all times,
 1-38 including, consistent with reasonable drought contingency
 1-39 measures, during severe droughts.

1-40 (c) In this state, marine seawater is a potential new source
 1-41 of water for drinking and other beneficial uses. This state has
 1-42 access to vast quantities of marine seawater from the Gulf of
 1-43 Mexico. The purpose of this Act is to streamline the regulatory
 1-44 process for and reduce the time required for and cost of marine
 1-45 seawater desalination.

1-46 (d) The legislature finds that marine seawater desalination
 1-47 facilities should be cost-effectively and timely developed,
 1-48 concurrently with other water planning solutions, to help this
 1-49 state meet its current and future water needs.

1-50 (e) The legislature finds that it is necessary and
 1-51 appropriate to grant authority and provide for expedited and
 1-52 streamlined authorization for marine seawater desalination
 1-53 facilities, consistent with appropriate environmental and water
 1-54 right protections, in order to avoid unnecessary costs, delays, and
 1-55 uncertainty and thereby help justify the investment of significant
 1-56 resources in the development of such facilities.

1-57 SECTION 2. Section 5.509(a), Water Code, is amended to read
 1-58 as follows:

1-59 (a) The commission may issue an emergency or temporary order
 1-60 relating to the discharge of waste or pollutants into or adjacent to
 1-61 water in the state if:

2-1 (1) the order is necessary to enable action to be taken
2-2 more expeditiously than is otherwise provided by Chapter 18 or 26,
2-3 as applicable, to effectuate the policy and purposes of that
2-4 chapter; and

2-5 (2) the commission finds that:
2-6 (A) the discharge is unavoidable to:
2-7 (i) prevent loss of life, serious injury,
2-8 or severe property damage;

2-9 (ii) prevent severe economic loss or
2-10 ameliorate serious drought conditions, to the extent consistent
2-11 with the requirements for United States Environmental Protection
2-12 Agency authorization of a state permit program; or

2-13 (iii) make necessary and unforeseen repairs
2-14 to a facility;

2-15 (B) there is no feasible alternative to the
2-16 proposed discharge;

2-17 (C) the discharge will not cause significant
2-18 hazard to human life and health, unreasonable damage to the
2-19 property of persons other than the applicant, or unreasonable
2-20 economic loss to persons other than the applicant; and

2-21 (D) the discharge will not present a significant
2-22 hazard to the uses that will be made of the receiving water after
2-23 the discharge.

2-24 SECTION 3. Section 5.551, Water Code, is amended by adding
2-25 Subsection (a-1) to read as follows:

2-26 (a-1) Notwithstanding Section 18.002, this subchapter does
2-27 not apply to a permit issued under Section 18.005(c)(2) if the point
2-28 of discharge is not located within three miles of any point located
2-29 on the coast of this state.

2-30 SECTION 4. Section 7.302(a), Water Code, is amended to read
2-31 as follows:

2-32 (a) This section applies to a permit or exemption issued by
2-33 the commission under:

2-34 (1) Section 18.005 of this code;

2-35 (2) Chapter 26, 27, 28, or 31 of this code;

2-36 ~~(3) [2] Subchapter C or R, Chapter 361, Health and~~
2-37 ~~Safety Code;~~ (4) ~~[3] Subchapter D, Chapter 366, Health and Safety~~

2-38 ~~Code;~~ (5) ~~[4] Chapter 382, Health and Safety Code; or~~
2-39 (6) ~~[5] a rule adopted under any of those~~

2-40 provisions.
2-41
2-42
2-43 SECTION 5. Section 11.0237(b), Water Code, is amended to
2-44 read as follows:

2-45 (b) This section does not alter the commission's
2-46 obligations under Section 11.042(a-1), (b), or (c), 11.046(b),
2-47 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
2-48 11.150, 11.152, 16.058, ~~or~~ 16.059, or 18.004.

2-49 SECTION 6. Section 11.082, Water Code, is amended by adding
2-50 Subsection (a-1) to read as follows:

2-51 (a-1) Notwithstanding Section 18.002, this section does not
2-52 apply to a violation of:

2-53 (1) Section 18.003 or a permit issued under that
2-54 section; or

2-55 (2) Section 18.004 or an authorization granted under
2-56 that section.

2-57 SECTION 7. Section 11.0842, Water Code, is amended by
2-58 adding Subsection (a-1) to read as follows:

2-59 (a-1) Notwithstanding Section 18.002, this section does not
2-60 apply to a violation of:

2-61 (1) Section 18.003 or a permit issued under that
2-62 section; or

2-63 (2) Section 18.004 or an authorization granted under
2-64 that section.

2-65 SECTION 8. Section 11.121, Water Code, is amended to read as
2-66 follows:

2-67 Sec. 11.121. PERMIT REQUIRED. Except as provided in
2-68 Sections 11.142, 11.1421, ~~and~~ 11.1422, and 18.003 ~~[of this code],~~
2-69 no person may appropriate any state water or begin construction of

3-1 any work designed for the storage, taking, or diversion of water
 3-2 without first obtaining a permit from the commission to make the
 3-3 appropriation.

3-4 SECTION 9. Section 16.053(e), Water Code, is amended to
 3-5 read as follows:

3-6 (e) Each regional water planning group shall submit to the
 3-7 development board a regional water plan that:

3-8 (1) is consistent with the guidance principles for the
 3-9 state water plan adopted by the development board under Section
 3-10 16.051(d);

3-11 (2) provides information based on data provided or
 3-12 approved by the development board in a format consistent with the
 3-13 guidelines provided by the development board under Subsection (d);

3-14 (2-a) is consistent with the desired future conditions
 3-15 adopted under Section 36.108 for the relevant aquifers located in
 3-16 the regional water planning area as of the date the board most
 3-17 recently adopted a state water plan under Section 16.051 or, at the
 3-18 option of the regional water planning group, established subsequent
 3-19 to the adoption of the most recent plan;

3-20 (3) identifies:

3-21 (A) each source of water supply in the regional
 3-22 water planning area, including information supplied by the
 3-23 executive administrator on the amount of modeled available
 3-24 groundwater in accordance with the guidelines provided by the
 3-25 development board under Subsections (d) and (f);

3-26 (B) factors specific to each source of water
 3-27 supply to be considered in determining whether to initiate a
 3-28 drought response;

3-29 (C) actions to be taken as part of the response;
 3-30 and

3-31 (D) existing major water infrastructure
 3-32 facilities that may be used for interconnections in the event of an
 3-33 emergency shortage of water;

3-34 (4) has specific provisions for water management
 3-35 strategies to be used during a drought of record;

3-36 (5) includes but is not limited to consideration of
 3-37 the following:

3-38 (A) any existing water or drought planning
 3-39 efforts addressing all or a portion of the region;

3-40 (B) approved groundwater conservation district
 3-41 management plans and other plans submitted under Section 16.054;

3-42 (C) all potentially feasible water management
 3-43 strategies, including but not limited to improved conservation,
 3-44 reuse, and management of existing water supplies, conjunctive use,
 3-45 acquisition of available existing water supplies, and development
 3-46 of new water supplies;

3-47 (D) protection of existing water rights in the
 3-48 region;

3-49 (E) opportunities for and the benefits of
 3-50 developing regional water supply facilities or providing regional
 3-51 management of water supply facilities;

3-52 (F) appropriate provision for environmental
 3-53 water needs and for the effect of upstream development on the bays,
 3-54 estuaries, and arms of the Gulf of Mexico and the effect of plans on
 3-55 navigation;

3-56 (G) provisions in Section 11.085(k)(1) if
 3-57 interbasin transfers are contemplated;

3-58 (H) voluntary transfer of water within the region
 3-59 using, but not limited to, regional water banks, sales, leases,
 3-60 options, subordination agreements, and financing agreements; ~~and~~

3-61 (I) emergency transfer of water under Section
 3-62 11.139, including information on the part of each permit, certified
 3-63 filing, or certificate of adjudication for nonmunicipal use in the
 3-64 region that may be transferred without causing unreasonable damage
 3-65 to the property of the nonmunicipal water rights holder; and

3-66 (J) opportunities for and the benefits of
 3-67 developing large-scale desalination facilities for marine seawater
 3-68 that serve local or regional entities;

3-69 (6) identifies river and stream segments of unique

4-1 ecological value and sites of unique value for the construction of
4-2 reservoirs that the regional water planning group recommends for
4-3 protection under Section 16.051;

4-4 (7) assesses the impact of the plan on unique river and
4-5 stream segments identified in Subdivision (6) if the regional water
4-6 planning group or the legislature determines that a site of unique
4-7 ecological value exists;

4-8 (8) describes the impact of proposed water projects on
4-9 water quality; and

4-10 (9) includes information on:

4-11 (A) projected water use and conservation in the
4-12 regional water planning area; and

4-13 (B) the implementation of state and regional
4-14 water plan projects, including water conservation strategies,
4-15 necessary to meet the state's projected water demands.

4-16 SECTION 10. Subtitle C, Title 2, Water Code, is amended by
4-17 adding Chapter 18 to read as follows:

4-18 CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

4-19 Sec. 18.001. DEFINITIONS. In this chapter:

4-20 (1) "Commission" means the Texas Commission on
4-21 Environmental Quality.

4-22 (2) "Marine seawater" means water that is derived from
4-23 the Gulf of Mexico.

4-24 (3) "Project" means:

4-25 (A) a marine seawater desalination project; or

4-26 (B) a facility for the storage, conveyance, and
4-27 delivery of desalinated marine seawater.

4-28 Sec. 18.002. RELATIONSHIP TO OTHER LAWS. (a) Except as
4-29 provided by Subsection (b) or as otherwise provided by law:

4-30 (1) Chapter 11 applies to a permit or authorization
4-31 under Section 18.003 or 18.004 in the same manner as that chapter
4-32 applies to a permit or authorization under that chapter; and

4-33 (2) Chapter 26 applies to a permit under Section
4-34 18.005 in the same manner as that chapter applies to a permit under
4-35 that chapter.

4-36 (b) In the event of a conflict between this chapter and
4-37 Chapter 11 or 26, this chapter controls.

4-38 (c) This chapter is intended to provide an alternative
4-39 procedure for obtaining an authorization to divert and use state
4-40 water that consists of marine seawater or to discharge treated
4-41 marine seawater or waste resulting from the desalination of treated
4-42 marine seawater under the circumstances provided by this chapter.
4-43 This chapter does not affect the authority of a person to:

4-44 (1) divert and use state water that consists of marine
4-45 seawater in accordance with the procedures provided by Chapter 11,
4-46 including the authority to divert marine seawater from a point of
4-47 diversion located in a bay or estuary; or

4-48 (2) discharge treated marine seawater or waste
4-49 resulting from the desalination of treated marine seawater in
4-50 accordance with the procedures provided by Chapter 26, including
4-51 the authority to discharge waste resulting from the desalination of
4-52 marine seawater into a bay or estuary.

4-53 Sec. 18.003. DIVERSIONS OF MARINE SEAWATER. (a) A person
4-54 must obtain a permit to divert and use state water that consists of
4-55 marine seawater if:

4-56 (1) the point of diversion is located less than three
4-57 miles seaward of any point located on the coast of this state; or

4-58 (2) the seawater contains a total dissolved solids
4-59 concentration based on a yearly average of samples taken monthly at
4-60 the water source of less than 20,000 milligrams per liter.

4-61 (b) A person may divert and use state water that consists of
4-62 marine seawater without obtaining a permit if Subsection (a) does
4-63 not apply.

4-64 (c) A person who diverts and uses state water that consists
4-65 of marine seawater under a permit required by Subsection (a) or as
4-66 authorized by Subsection (b) must determine the total dissolved
4-67 solids concentration of the seawater at the water source by monthly
4-68 sampling and analysis and provide the data collected to the
4-69 commission. A person may not begin construction of a facility for

5-1 the diversion of marine seawater without obtaining a permit until
 5-2 the person has provided data to the commission based on the analysis
 5-3 of samples taken at the water source over a period of at least one
 5-4 year demonstrating that Subsection (a)(2) does not apply. A person
 5-5 who has begun construction of a facility for the diversion of marine
 5-6 seawater without obtaining a permit because the person has
 5-7 demonstrated that Subsection (a)(2) does not apply is not required
 5-8 to obtain a permit for the facility if the total dissolved solids
 5-9 concentration of the seawater at the water source subsequently
 5-10 changes so that Subsection (a)(2) applies.

5-11 (d) A person may use marine seawater diverted under a permit
 5-12 required by Subsection (a) or as authorized by Subsection (b) for
 5-13 any beneficial purpose, but only if the seawater is treated in
 5-14 accordance with rules adopted by the commission before it is used.
 5-15 Rules adopted under this subsection may impose different treatment
 5-16 requirements based on the purpose for which the seawater is to be
 5-17 used.

5-18 (e) The commission shall adopt rules providing an expedited
 5-19 procedure for acting on an application for a permit required by
 5-20 Subsection (a). The rules must provide for notice, an opportunity
 5-21 for the submission of written comment, and an opportunity for a
 5-22 contested case hearing regarding commission actions relating to an
 5-23 application for a permit.

5-24 (f) A person may not divert marine seawater under a permit
 5-25 required by Subsection (a) or as authorized by Subsection (b) from a
 5-26 point of diversion located in a bay or estuary.

5-27 (g) An application for a permit required by Subsection (a)
 5-28 must address the points from which, and the rate at which, the
 5-29 facility the applicant proposes to construct will divert marine
 5-30 seawater.

5-31 (h) The commission by rule shall prescribe reasonable
 5-32 measures to minimize impingement and entrainment.

5-33 (i) The Parks and Wildlife Department and the General Land
 5-34 Office jointly shall conduct a study to identify zones in the Gulf
 5-35 of Mexico that are appropriate for the diversion of marine
 5-36 seawater, taking into account the need to protect marine organisms.
 5-37 Not later than September 1, 2018, the Parks and Wildlife Department
 5-38 and the General Land Office shall submit a report on the results of
 5-39 the study to the commission. The report must include recommended
 5-40 diversion zones for designation by the commission and
 5-41 recommendations for the number of points from which, and the rate at
 5-42 which, a facility may divert marine seawater. Not later than
 5-43 September 1, 2020, the commission by rule shall designate
 5-44 appropriate diversion zones. A diversion zone may be contiguous
 5-45 to, be the same as, or overlap a discharge zone. The point or points
 5-46 from which a facility may divert marine seawater must be located in
 5-47 a diversion zone designated by the commission under rules adopted
 5-48 under this subsection if:

5-49 (1) the facility is authorized by a permit as required
 5-50 by Subsection (a) issued after the rules are adopted; or

5-51 (2) the facility is exempt under Subsection (b) from
 5-52 the requirement of a permit and construction of the facility begins
 5-53 after the rules are adopted.

5-54 (j) Until the commission adopts rules under Subsection (i),
 5-55 a person must consult the Parks and Wildlife Department and the
 5-56 General Land Office regarding the point or points from which a
 5-57 facility the person proposes to construct may divert marine
 5-58 seawater before submitting an application for a permit for the
 5-59 facility if Subsection (a) applies or before beginning construction
 5-60 of the facility if Subsection (b) applies.

5-61 Sec. 18.004. BED AND BANKS AUTHORIZATION. (a) With prior
 5-62 authorization granted under rules prescribed by the commission, a
 5-63 person may use the bed and banks of any flowing natural stream in
 5-64 this state or a lake, reservoir, or other impoundment in this state
 5-65 to convey marine seawater that has been treated so as to meet
 5-66 standards that are at least as stringent as the water quality
 5-67 standards applicable to the receiving stream or impoundment adopted
 5-68 by the commission.

5-69 (b) The commission shall provide for notice and an

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

6-11 (c) A person may not discharge treated marine seawater into
 6-12 a flowing natural stream in this state or a lake, reservoir, or
 6-13 other impoundment in this state for the purpose of conveyance of the
 6-14 water under an authorization granted under this section unless the
 6-15 person holds a permit issued under Section 18.005 authorizing the
 6-16 discharge.

6-17 (d) Treated marine seawater that is conveyed under an
 6-18 authorization granted under this section may be used only by the
 6-19 person to whom the authorization is granted.

6-20 (e) Section 11.042(c) applies to an authorization granted
 6-21 under this section in the same manner as that subsection applies to
 6-22 an authorization granted under Section 11.042.

6-23 (f) This section does not prohibit a person from conveying
 6-24 treated marine seawater in any other manner authorized by law.

6-25 Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE
 6-26 RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this
 6-27 section, "permit," "person," "to discharge," "waste," and "water"
 6-28 have the meanings assigned by Section 26.001.

6-29 (b) Section 26.011 applies to discharges governed by this
 6-30 section in the same manner as that section applies to discharges
 6-31 governed by Chapter 26.

6-32 (c) A person must obtain a permit to discharge:

6-33 (1) treated marine seawater into a natural stream in
 6-34 this state or a lake, reservoir, or other impoundment in this state;
 6-35 or

6-36 (2) waste resulting from the desalination of treated
 6-37 marine seawater into the Gulf of Mexico.

6-38 (d) A person shall:

6-39 (1) treat marine seawater so as to meet standards that
 6-40 are at least as stringent as the water quality standards adopted by
 6-41 the commission applicable to the receiving stream or impoundment
 6-42 before discharging the seawater under this section; and

6-43 (2) comply with all applicable state and federal
 6-44 requirements when discharging waste resulting from the
 6-45 desalination of marine seawater into the Gulf of Mexico.

6-46 (e) The commission by rule shall provide an expedited
 6-47 procedure for acting on an application for a permit under this
 6-48 section. The rules must provide for:

6-49 (1) notice, an opportunity for the submission of
 6-50 written comment, and an opportunity to request a public meeting and
 6-51 may authorize a contested case hearing regarding commission actions
 6-52 relating to an application for a permit described by Subsection
 6-53 (c)(1);

6-54 (2) notice, an opportunity for the submission of
 6-55 written comment, an opportunity to request a public meeting, and an
 6-56 opportunity for a contested case hearing regarding commission
 6-57 actions relating to an application for a permit described by
 6-58 Subsection (c)(2) if the point of discharge is located within three
 6-59 miles of any point located on the coast of this state; and

6-60 (3) notice and an opportunity for the submission of
 6-61 written comment regarding commission actions relating to an
 6-62 application for a permit described by Subsection (c)(2) if
 6-63 Subdivision (2) of this subsection does not apply.

6-64 (f) A person may not discharge waste resulting from the
 6-65 desalination of marine seawater into a bay or estuary under a permit
 6-66 issued under Subsection (c)(2).

6-67 (g) The Parks and Wildlife Department and the General Land
 6-68 Office jointly shall conduct a study to identify zones in the Gulf
 6-69 of Mexico that are appropriate for the discharge of waste resulting

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

7-13 (h) Until the commission adopts rules under Subsection (g),
7-14 a person must consult the Parks and Wildlife Department and the
7-15 General Land Office regarding the point at which the facility the
7-16 person proposes to construct may discharge waste resulting from the
7-17 desalination of marine seawater before submitting an application
7-18 for a permit under Subsection (c)(2) for the facility.

7-19 SECTION 11. Section 26.0291(a), Water Code, is amended to
7-20 read as follows:

7-21 (a) An annual water quality fee is imposed on:
7-22 (1) each wastewater discharge permit holder,
7-23 including the holder of a permit issued under Section 18.005, for
7-24 each wastewater discharge permit held; and

7-25 (2) each user of water in proportion to the user's
7-26 water right, through permit or contract, as reflected in the
7-27 commission's records, provided that the commission by rule shall
7-28 ensure that no fee shall be assessed for the portion of a municipal
7-29 or industrial water right directly associated with a facility or
7-30 operation for which a fee is assessed under Subdivision (1) of this
7-31 subsection.

7-32 SECTION 12. Subchapter C, Chapter 341, Health and Safety
7-33 Code, is amended by adding Section 341.0316 to read as follows:

7-34 Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING
7-35 WATER. (a) This section applies only to a desalination facility
7-36 that is intended to treat marine seawater for the purpose of
7-37 producing water for the public drinking water supply. This section
7-38 does not apply to a desalination facility used to produce
7-39 nonpotable water.

7-40 (b) The commission shall adopt rules to:

7-41 (1) allow water treated by a desalination facility to
7-42 be used as public drinking water; and

7-43 (2) ensure that water treated by a desalination
7-44 facility meets the requirements of Section 341.031 and rules
7-45 adopted under that section.

7-46 (c) A person may not begin construction of a desalination
7-47 facility that treats marine seawater for the purpose of removing
7-48 primary or secondary drinking water contaminants unless the
7-49 commission approves the construction of the facility.

7-50 SECTION 13. Section 16.060, Water Code, is repealed.

7-51 SECTION 14. This Act takes effect immediately if it
7-52 receives a vote of two-thirds of all the members elected to each
7-53 house, as provided by Section 39, Article III, Texas Constitution.
7-54 If this Act does not receive the vote necessary for immediate
7-55 effect, this Act takes effect September 1, 2015.

7-56 * * * * *