

By: Hinojosa

S.B. No. 1738

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the development and production of marine seawater  
3 desalination, integrated marine seawater desalination, and  
4 facilities for the storage, conveyance, and delivery of desalinated  
5 marine seawater.

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 the conservation or development of other surface water  
13 efforts; however, its purpose is to more fully explore and expedite  
14 the development of all water resources in order to balance the  
15 state's supply and demand for water, one of the most precious  
16 resources of 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 the  
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 (b) In Texas, marine seawater is a potential new source of  
24 public drinking water. This state has access to over 600

1 quadrillion gallons of marine seawater from the Gulf of Mexico. The  
2 purpose of this Act is to streamline the process and reduce the cost  
3 and regulation of marine seawater desalination.

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

8 (d) The legislature finds that it is necessary and  
9 appropriate to grant certain rights or authority and provide for  
10 expedited and streamlined permitting for large-scale marine  
11 seawater desalination projects and integrated marine seawater  
12 desalination and power projects, to avoid unnecessary costs, delays  
13 and uncertainty and thereby help justify the investment of  
14 significant resources of the state in the development of such  
15 projects.

16 SECTION 2. 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 11.1423 [~~of this~~  
20 ~~code~~], no person may appropriate any state water or begin  
21 construction of any work designed for the storage, taking, or  
22 diversion of water without first obtaining a permit from the  
23 commission to make the appropriation.

24 SECTION 3. Section [11.1311](#), Water Code, is amended by  
25 amending Subsection (b) and adding Subsection (b-1) to read as  
26 follows:

27 (b) The board may transfer interests in a permit issued

1 under Subsection (a) [~~this section~~] to a municipality, river  
2 authority, other political subdivision, or water supply  
3 corporation organized under Chapter 67 as otherwise provided by  
4 law.

5 (b-1) In this subsection, "marine seawater" has the meaning  
6 assigned by Section 11.1423. On submission of an application to the  
7 commission, the commission shall issue without a hearing a permit  
8 to use the bed and banks of any flowing natural stream in the state  
9 to convey marine seawater. The commission shall adopt rules to  
10 implement a procedure for application for a permit to convey marine  
11 seawater consistent with this subsection. A flowing natural stream  
12 does not include impounded water. The commission shall provide  
13 notice and an opportunity for hearing for an application for a  
14 permit to convey marine seawater into or through a lake, reservoir,  
15 or other impoundment.

16 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended  
17 by adding Section 11.1423 to read as follows:

18 Sec. 11.1423. PERMIT EXEMPTION FOR USE BY WATER SUPPLY  
19 ENTITY OF MARINE SEAWATER. (a) In this section:

20 (1) "Marine seawater" means water that contains a  
21 total dissolved solids concentration based on a yearly average of  
22 samples taken at the water source of more than 10,000 milligrams per  
23 liter that is derived from the Gulf of Mexico or an adjacent bay,  
24 estuary, or arm of the Gulf of Mexico.

25 (2) "Water supply entity" includes:

26 (A) a retail public utility as defined by Section  
27 [13.002](#);

1                   (B) a wholesale water supplier; or

2                   (C) an irrigation district operating under  
3 Chapter 58.

4           (b) Without obtaining a permit, a water supply entity may  
5 use for any beneficial purpose state water that consists of marine  
6 seawater.

7           (c) A water supply entity must treat marine seawater so that  
8 it meets the water quality level of the receiving stream before the  
9 entity may put the water into a stream under an authorization  
10 granted under Section 11.042.

11           (d) This section does not prohibit a water supply entity  
12 from conveying water under this section in any other manner  
13 authorized by law, including through the use of facilities owned or  
14 operated by the state if authorized by the state.

15           SECTION 5. Section 16.053(e)(5), Water Code, is amended by  
16 adding Subsection (J) as follows:

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

20           SECTION 6. Section 16.060, Water Code, is repealed.

21           SECTION 7. Subtitle C, Title 2, Water Code, is amended by  
22 adding Chapter 14 to read as follows:

23           CHAPTER 14. MARINE SEAWATER DESALINATION PROJECTS AND INTEGRATED

24                   MARINE SEAWATER DESALINATION AND POWER PROJECTS

25                           SUBCHAPTER A. GENERAL PROVISIONS

26           Sec. 14.001. DEFINITIONS. In this chapter:

27                   (1) "Board" means the Texas Water Development Board.

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

3           (3) "ERCOT" means the Electric Reliability Council of  
4 Texas.

5           (4) "GLO" means the General Land Office.

6           (5) "Political subdivision" means a city or county or  
7 other body politic or corporate of the state, including any  
8 district or authority created under Article III, Section 52, or  
9 Article XVI, Section 59, of the Texas Constitution.

10          (6) "Project" means any project to produce water  
11 supplies from marine seawater desalination, any integrated marine  
12 seawater desalination and power project, and any facilities for the  
13 storage, conveyance, and delivery of water.

14          (7) "PUC" means the Public Utility Commission.

15          (8) "School Land Board" means the Texas School Land  
16 Board.

17          (9) "TPWD" means the Texas Parks and Wildlife  
18 Department.

19                           SUBCHAPTER B. POWERS AND DUTIES

20          Sec. 14.021 POWERS AND DUTIES OF THE BOARD. The commission  
21 has general jurisdiction over the state financial assistance of  
22 projects to produce water supplies from marine seawater  
23 desalination, integrated marine seawater desalination and power  
24 projects, and facilities for the storage, conveyance, and delivery  
25 of water.

26          Sec. 14.022 POWERS AND DUTIES OF THE COMMISSION. (a) The  
27 commission has general jurisdiction over the permitting of projects

1 to produce water supplies from marine seawater desalination,  
2 integrated marine seawater desalination and power projects, and  
3 facilities for the storage, conveyance, and delivery of water.

4 (b) The commission shall consult with the GLO, the School  
5 Land Board, the board, the TPWD, the PUC, and ERCOT, over all  
6 aspects of any project or facilities within the scope of subsection  
7 (a) that also fall within the general jurisdiction of each of those  
8 agencies.

9 Sec. 14.023 POWERS OF CERTAIN POLITICAL SUBDIVISIONS. A  
10 political subdivision that has a defined territory extending to the  
11 Gulf of Mexico may own all or any interest in a project or  
12 facilities within the scope of subsection (a) of section 14.021,  
13 and may sell water produced and power generated from such project.

14 SUBCHAPTER C. RIGHTS AND AUTHORIZATIONS

15 Sec. 14.031 GRANT OF WATER RIGHT TO CERTAIN POLITICAL  
16 SUBDIVISIONS. (a) The political subdivision is hereby granted the  
17 right to divert marine seawater from the Gulf of Mexico at one or  
18 more points of diversion along the Texas coast, to desalinate such  
19 water and supply and use the desalinated water within the state for  
20 all beneficial uses, and to return the concentrated saline water  
21 resulting from the desalination process to the Gulf of Mexico at one  
22 or more points of return.

23 (b) The political subdivision is also granted the right to  
24 use marine seawater diverted from the Gulf of Mexico via a  
25 desalination project's intake facilities for power plant cooling or  
26 any other beneficial use before the marine seawater is desalinated,  
27 and then to either desalinate the unconsumed marine seawater or

1 return the unconsumed marine seawater to the Gulf of Mexico via the  
2 project's return facilities.

3 (c) There are no limitations on the number of points of  
4 diversion or the rate of diversion at any point of diversion. There  
5 are no limitations on the number of points of return or the rate of  
6 return.

7 (d) The political subdivision may assign the rights granted  
8 to it under this section to any project to produce water supplies  
9 from marine seawater desalination or any integrated marine seawater  
10 desalination and power project, or to the owner(s) or operator(s)  
11 of such project.

12 Sec. 14.032 APPROVALS OF GLO AND SCHOOL LAND BOARD  
13 REQUIRED. Before construction of any intake or return facilities  
14 may commence, the political subdivision first must obtain the GLO's  
15 and the School Land Board's approvals of the locations of the points  
16 of intake and return and plans and specifications for facilities  
17 located on state lands. The GLO's and School Land Board's review  
18 and approval processes are not subject to the requirements relating  
19 to a contested case hearing under any statute or rule including,  
20 without limitation, the provisions of this chapter or other chapter  
21 of the Water Code, Chapter 33, Natural Resources Code, or  
22 Subchapters C-G, Chapter 2001, Government Code.

23 SUBCHAPTER D. EXPEDITED AND STREAMLINED PERMITTING

24 Sec. 14.041 DIRECTION TO PERMITTING AUTHORITIES (a) This  
25 section applies to all applications for permits or other  
26 authorizations, and all applications or requests for contracts,  
27 leases, easements, or grants of interests in property, needed from

1 any state or local governmental authority for any project and  
2 facilities within the scope of subsection (a) of section 14.021.  
3 Such applications and requests include, but are not limited to, all  
4 applications to the TCEQ for permits or authorizations to discharge  
5 under Chapter 26, Water Code, all applications to the TCEQ for  
6 permits or authorizations under the Texas Clean Air Act, Chapter  
7 382, Health and Safety Code, and all applications to the School Land  
8 Board to acquire rights in coastal public land under Chapter 33,  
9 Natural Resources Code.

10 (b) All governmental authorities are directed to expedite  
11 and streamline to the extent possible the processing of and action  
12 on all applications and requests.

13 (c) A governmental authority's processing of and action on  
14 any application for a permit or other authorization or any  
15 application or request for a contract, lease, easement, or grant of  
16 interest in property shall not be subject to the requirements  
17 relating to a contested case hearing under any statute or rule  
18 including, without limitation, the provisions of this chapter or  
19 other chapter of the Water Code, Chapter 33, Natural Resources  
20 Code, or Subchapters C-G, Chapter 2001, Government Code.

21 SECTION 8. Section 341.001, Health and Safety Code, is  
22 amended by adding Subdivisions (1-a) and (2-a) to read as follows:

23 (1-a) "Desalination facility" means a facility  
24 used for the treatment of brackish water or marine seawater to  
25 remove dissolved mineral salts and other dissolved solids; and

26 (2-a) "Marine seawater" means water that  
27 contains a total dissolved solids concentration based on a yearly



1 average of samples taken at the water source of more than 10,000  
2 milligrams per liter that is derived from the Gulf of Mexico or an  
3 adjacent bay, estuary, or arm of the Gulf of Mexico.

4 SECTION 9. Subchapter C, Chapter 341, Health and Safety  
5 Code, is amended by adding Section 341.0359 to read as follows:

6 Sec. 341.0359. DESALINATION OF WATER FOR DRINKING WATER.

7 (a) This section applies only to a desalination facility that is  
8 intended to produce water for the public drinking water supply.  
9 This section does not apply to a desalination facility used to  
10 produce nonpotable water.

11 (b) The commission shall adopt rules to:

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

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

17 (c) A person may not begin construction of a desalination  
18 facility unless the commission approves in writing the plans and  
19 specifications for the facility.

20 (d) A person may not begin construction of a desalination  
21 facility that treats marine seawater for the purpose of removing  
22 primary or secondary drinking water contaminants unless the  
23 commission approves in writing a report containing:

24 (1) a computer model acceptable to the commission;

25 (2) a pilot study with a minimum 40-day run duration  
26 without treatment intervention to meet federal and state safe  
27 drinking water standards;

1           (3) data from a similar system installed at another  
2 desalination facility that treats source water of a similar or  
3 lower quality; or

4           (4) a full-scale verification protocol with a minimum  
5 40-day run duration without treatment intervention to meet federal  
6 and state safe drinking water standards.

7           (e) If a full-scale verification protocol report is  
8 approved, a person may not send water to a public water distribution  
9 system without a full-scale verification study:

10           (1) completed after construction; and

11           (2) approved by the commission.

12           (f) Not later than the 100th day after the date the  
13 commission receives the report for a proposed desalination  
14 facility, the commission shall review the report and issue an  
15 exception response letter that may contain conditions for approval.

16           (g) Not later than the 60th day after the date the  
17 commission receives the plans and specifications for a proposed  
18 desalination facility, the commission shall review the plans and  
19 specifications and issue a response letter that may contain  
20 conditions for approval.

21           (h) A person violates this section if the person fails to  
22 meet a condition for approval in a letter issued to the person under  
23 Subsection (f) or (g).

24           SECTION 10. EFFECTIVE DATE OF THIS ACT. This Act takes  
25 effect immediately if it receives a vote of two-thirds of all the  
26 members elected to each house, as provided by Section 39, Article  
27 III, Texas Constitution. If this Act does not receive the vote

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1 necessary for immediate effect, this Act takes effect September 1,  
2 2015.