

1-1 By: Hinojosa S.B. No. 1738
1-2 (In the Senate - Filed March 13, 2015; March 24, 2015, read
1-3 first time and referred to Committee on Agriculture, Water, and
1-4 Rural Affairs; April 22, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 April 22, 2015, sent 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 COMMITTEE SUBSTITUTE FOR S.B. No. 1738 By: Hinojosa

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the diversion and use of marine seawater, including the
1-20 development of marine seawater desalination projects, integrated
1-21 marine seawater desalination and power projects, and facilities for
1-22 the storage, conveyance, and delivery of desalinated marine
1-23 seawater.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. (a) With this state facing an ongoing drought,
1-26 continuing population growth, and the need to remain economically
1-27 competitive, every effort must be made to secure and develop
1-28 plentiful and cost-effective water supplies to meet the
1-29 ever-increasing demand for water. The purpose of this Act is to
1-30 expedite the development of marine seawater from the Gulf of Mexico
1-31 and add this new source of water to this state's existing surface
1-32 water and groundwater resources in order to bring into balance the
1-33 supply of and demand for water in this state.

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

1-40 (c) In this state, marine seawater is a potential new source
1-41 of public drinking water. This state has access to over 600
1-42 quadrillion gallons of marine seawater from the Gulf of Mexico. The
1-43 purpose of this Act is to streamline the process for and reduce the
1-44 cost and regulation of marine seawater desalination.

1-45 (d) The legislature finds that marine seawater desalination
1-46 projects should be cost-effectively and timely developed,
1-47 concurrently with other water planning solutions, to help this
1-48 state meet its current and future firm water needs.

1-49 (e) The legislature finds that it is necessary and
1-50 appropriate to grant certain rights or authority and provide for
1-51 expedited and streamlined permitting for marine seawater
1-52 desalination projects and integrated marine seawater desalination
1-53 and power projects in order to avoid unnecessary costs, delays, and
1-54 uncertainty and thereby help justify the investment of significant
1-55 resources of this state in the development of such projects.

1-56 SECTION 2. Section 11.002, Water Code, is amended by adding
1-57 Subdivision (22) to read as follows:

1-58 (22) "Marine seawater" has the meaning assigned by
1-59 Section 18.001.

1-60 SECTION 3. Section 11.121, Water Code, is amended to read as

2-1 follows:

2-2 Sec. 11.121. PERMIT REQUIRED. Except as provided in
2-3 Sections 11.142, 11.1421, [and] 11.1422, and 11.1423 [~~of this~~
2-4 ~~code~~], no person may appropriate any state water or begin
2-5 construction of any work designed for the storage, taking, or
2-6 diversion of water without first obtaining a permit from the
2-7 commission to make the appropriation.

2-8 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended
2-9 by adding Section 11.1423 to read as follows:

2-10 Sec. 11.1423. PERMIT EXEMPTION FOR USE BY WATER SUPPLY
2-11 ENTITY OF MARINE SEAWATER. (a) In this section, "water supply
2-12 entity" includes:

2-13 (1) a retail public utility as defined by Section
2-14 13.002;

2-15 (2) a wholesale water supplier; or
2-16 (3) an irrigation district operating under Chapter 58.

2-17 (b) Without obtaining a permit, a water supply entity may
2-18 divert marine seawater from the Gulf of Mexico at one or more points
2-19 of diversion located at least three miles from the coast of this
2-20 state and use the seawater diverted for any beneficial purpose.

2-21 (c) Before a water supply entity first diverts marine
2-22 seawater under Subsection (b), the entity must give notice to the
2-23 commission of the proposed diversion.

2-24 (d) A water supply entity must treat marine seawater so that
2-25 it meets the water quality level of the receiving stream before the
2-26 entity may put the water into a stream under an authorization
2-27 granted under Section 11.042.

2-28 (e) This section does not prohibit a water supply entity
2-29 from conveying water under this section in any other manner
2-30 authorized by law, including through the use of facilities owned or
2-31 operated by the state if authorized by the state.

2-32 SECTION 5. Section 16.053(e), Water Code, is amended to
2-33 read as follows:

2-34 (e) Each regional water planning group shall submit to the
2-35 development board a regional water plan that:

2-36 (1) is consistent with the guidance principles for the
2-37 state water plan adopted by the development board under Section
2-38 16.051(d);

2-39 (2) provides information based on data provided or
2-40 approved by the development board in a format consistent with the
2-41 guidelines provided by the development board under Subsection (d);

2-42 (2-a) is consistent with the desired future conditions
2-43 adopted under Section 36.108 for the relevant aquifers located in
2-44 the regional water planning area as of the date the board most
2-45 recently adopted a state water plan under Section 16.051 or, at the
2-46 option of the regional water planning group, established subsequent
2-47 to the adoption of the most recent plan;

2-48 (3) identifies:

2-49 (A) each source of water supply in the regional
2-50 water planning area, including information supplied by the
2-51 executive administrator on the amount of modeled available
2-52 groundwater in accordance with the guidelines provided by the
2-53 development board under Subsections (d) and (f);

2-54 (B) factors specific to each source of water
2-55 supply to be considered in determining whether to initiate a
2-56 drought response;

2-57 (C) actions to be taken as part of the response;
2-58 and

2-59 (D) existing major water infrastructure
2-60 facilities that may be used for interconnections in the event of an
2-61 emergency shortage of water;

2-62 (4) has specific provisions for water management
2-63 strategies to be used during a drought of record;

2-64 (5) includes but is not limited to consideration of
2-65 the following:

2-66 (A) any existing water or drought planning
2-67 efforts addressing all or a portion of the region;

2-68 (B) approved groundwater conservation district
2-69 management plans and other plans submitted under Section 16.054;

3-1 (C) all potentially feasible water management
3-2 strategies, including but not limited to improved conservation,
3-3 reuse, and management of existing water supplies, conjunctive use,
3-4 acquisition of available existing water supplies, and development
3-5 of new water supplies;

3-6 (D) protection of existing water rights in the
3-7 region;

3-8 (E) opportunities for and the benefits of
3-9 developing regional water supply facilities or providing regional
3-10 management of water supply facilities;

3-11 (F) appropriate provision for environmental
3-12 water needs and for the effect of upstream development on the bays,
3-13 estuaries, and arms of the Gulf of Mexico and the effect of plans on
3-14 navigation;

3-15 (G) provisions in Section 11.085(k)(1) if
3-16 interbasin transfers are contemplated;

3-17 (H) voluntary transfer of water within the region
3-18 using, but not limited to, regional water banks, sales, leases,
3-19 options, subordination agreements, and financing agreements; [and]

3-20 (I) emergency transfer of water under Section
3-21 11.139, including information on the part of each permit, certified
3-22 filing, or certificate of adjudication for nonmunicipal use in the
3-23 region that may be transferred without causing unreasonable damage
3-24 to the property of the nonmunicipal water rights holder; and

3-25 (J) opportunities for and the benefits of
3-26 developing large-scale desalination facilities for marine
3-27 seawater, as defined by Section 18.001, that serve local or
3-28 regional entities;

3-29 (6) identifies river and stream segments of unique
3-30 ecological value and sites of unique value for the construction of
3-31 reservoirs that the regional water planning group recommends for
3-32 protection under Section 16.051;

3-33 (7) assesses the impact of the plan on unique river and
3-34 stream segments identified in Subdivision (6) if the regional water
3-35 planning group or the legislature determines that a site of unique
3-36 ecological value exists;

3-37 (8) describes the impact of proposed water projects on
3-38 water quality; and

3-39 (9) includes information on:

3-40 (A) projected water use and conservation in the
3-41 regional water planning area; and

3-42 (B) the implementation of state and regional
3-43 water plan projects, including water conservation strategies,
3-44 necessary to meet the state's projected water demands.

3-45 SECTION 6. Subtitle C, Title 2, Water Code, is amended by
3-46 adding Chapter 18 to read as follows:

3-47 CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS AND INTEGRATED

3-48 MARINE SEAWATER DESALINATION AND POWER PROJECTS

3-49 Sec. 18.001. DEFINITIONS. In this chapter:

3-50 (1) "Board" means the Texas Water Development Board.

3-51 (2) "Commission" means the Texas Commission on
3-52 Environmental Quality.

3-53 (3) "Land office" means the General Land Office.

3-54 (4) "Marine seawater" means water that is derived from
3-55 the Gulf of Mexico.

3-56 (5) "Political subdivision" means a municipality,
3-57 county, or other body politic or corporate of this state, including
3-58 a district or authority created under Section 52, Article III, or
3-59 Section 59, Article XVI, Texas Constitution.

3-60 (6) "Project" means:

3-61 (A) a marine seawater desalination project;

3-62 (B) an integrated marine seawater desalination
3-63 and power project; or

3-64 (C) a facility for the storage, conveyance, and
3-65 delivery of desalinated marine seawater.

3-66 Sec. 18.002. POWERS AND DUTIES OF BOARD. (a) The board has
3-67 general jurisdiction over the provision of state financial
3-68 assistance for projects.

3-69 (b) The board may provide financial assistance for all or

4-1 part of a project from any source of funding that may be available
4-2 to the board for that purpose, including:
4-3 (1) the state water implementation fund for Texas, in
4-4 accordance with Subchapter G, Chapter 15; and
4-5 (2) the state water implementation revenue fund for
4-6 Texas, in accordance with Subchapter H, Chapter 15.
4-7 (c) If the board determines that a project for which
4-8 financial assistance from the board is sought should be developed,
4-9 the board shall pursue all available alternatives in order to
4-10 provide the necessary financial assistance.
4-11 Sec. 18.003. POWERS AND DUTIES OF COMMISSION. (a) The
4-12 commission has general jurisdiction over the permitting of
4-13 projects.
4-14 (b) The commission shall consult with the land office,
4-15 School Land Board, board, Parks and Wildlife Department, Public
4-16 Utility Commission of Texas, or Electric Reliability Council of
4-17 Texas over any aspect of a project that also falls within the
4-18 general jurisdiction of that agency or entity.
4-19 (c) The commission shall provide notice and an opportunity
4-20 for the submission of written comment, but is not required to
4-21 provide an opportunity for a contested case hearing, regarding
4-22 commission actions relating to a permit for a project.
4-23 Sec. 18.004. POWERS AND DUTIES OF POLITICAL SUBDIVISIONS.
4-24 (a) A political subdivision may:
4-25 (1) own all or any interest in a project; and
4-26 (2) sell water produced or power generated by a
4-27 project.
4-28 (b) Without obtaining a water right from the commission, a
4-29 political subdivision may:
4-30 (1) divert marine seawater from the Gulf of Mexico at
4-31 one or more points of diversion located at least three miles from
4-32 the coast of this state;
4-33 (2) desalinate marine seawater;
4-34 (3) use diverted marine seawater for power plant
4-35 cooling or any other beneficial use before desalinating the marine
4-36 seawater;
4-37 (4) use desalinated marine seawater in this state for
4-38 any beneficial purpose; and
4-39 (5) return unconsumed marine seawater or concentrated
4-40 saline water resulting from the process for desalinating marine
4-41 seawater to the Gulf of Mexico at one or more points of return.
4-42 (c) This subsection applies only to a project to which
4-43 Subsection (b) applies. The commission may not limit:
4-44 (1) the number of points of diversion or the rate of
4-45 diversion of marine seawater; or
4-46 (2) the number of points of return or the rate of
4-47 return of unconsumed marine seawater or concentrated saline water
4-48 resulting from the process for desalinating marine seawater.
4-49 (d) Before beginning construction of an intake or return
4-50 facility for a project, a political subdivision must obtain the
4-51 approval of the land office of the location of the point of intake
4-52 or return and the plans and specifications for the facility if the
4-53 facility will be located on state land. The process for obtaining
4-54 the approval of the land office is not subject to the requirements
4-55 relating to a contested case hearing under any statute or rule,
4-56 including this chapter, another chapter of this code, Chapter 33,
4-57 Natural Resources Code, or Subchapters C-G, Chapter 2001,
4-58 Government Code.
4-59 (e) Before a political subdivision first diverts marine
4-60 seawater under Subsection (b), the political subdivision must give
4-61 notice to the commission of the proposed diversion.
4-62 (f) A political subdivision may assign the rights granted by
4-63 this section to the owner or operator of a project.
4-64 Sec. 18.005. EXPEDITED PROCESSING OF AND ACTION ON
4-65 APPLICATIONS. (a) This section applies to each application or
4-66 request for a permit or other authorization, contract, lease,
4-67 easement, or grant of an interest in property submitted to a state
4-68 or local governmental entity for a project, including an
4-69 application submitted to:

5-1 (1) the commission for a permit or authorization under
 5-2 Chapter 26 of this code or Chapter 382, Health and Safety Code; or
 5-3 (2) the School Land Board to acquire rights in coastal
 5-4 public land under Chapter 33, Natural Resources Code.

5-5 (b) A governmental entity to which an application or request
 5-6 is submitted shall expedite and streamline to the extent possible
 5-7 the processing of and action on the application or request.

5-8 (c) A governmental entity's processing of and action on an
 5-9 application or request submitted to the governmental entity is not
 5-10 subject to the requirements relating to a contested case hearing
 5-11 under any statute or rule, including this chapter, another chapter
 5-12 of this code, Chapter 33, Natural Resources Code, or Subchapters
 5-13 C-G, Chapter 2001, Government Code.

5-14 SECTION 7. Section 341.001, Health and Safety Code, is
 5-15 amended by adding Subdivisions (2-a) and (4-a) to read as follows:

5-16 (2-a) "Desalination facility" means a facility used for
 5-17 the treatment of marine seawater to remove dissolved mineral salts
 5-18 and other dissolved solids.

5-19 (4-a) "Marine seawater" has the meaning assigned by
 5-20 Section 18.001, Water Code.

5-21 SECTION 8. Subchapter C, Chapter 341, Health and Safety
 5-22 Code, is amended by adding Section 341.03595 to read as follows:

5-23 Sec. 341.03595. DESALINATION OF WATER FOR DRINKING WATER.

5-24 (a) This section applies only to a desalination facility that is
 5-25 intended to produce water for the public drinking water supply.
 5-26 This section does not apply to a desalination facility used to
 5-27 produce nonpotable water.

5-28 (b) The commission shall adopt rules to:

5-29 (1) allow water treated by a desalination facility to
 5-30 be used as public drinking water; and

5-31 (2) ensure that water treated by a desalination
 5-32 facility meets the requirements of Section 341.031 and rules
 5-33 adopted under that section.

5-34 (c) A person may not begin construction of a desalination
 5-35 facility unless the commission approves in writing the plans and
 5-36 specifications for the facility.

5-37 (d) A person may not begin construction of a desalination
 5-38 facility that treats marine seawater for the purpose of removing
 5-39 primary or secondary drinking water contaminants unless the
 5-40 commission approves in writing a report containing one or more of
 5-41 the following:

5-42 (1) a computer model acceptable to the commission;

5-43 (2) a pilot study with a minimum 40-day run duration
 5-44 without treatment intervention to meet federal and state safe
 5-45 drinking water standards;

5-46 (3) information from a similar system installed at
 5-47 another desalination facility that treats source water of a similar
 5-48 or lower quality; or

5-49 (4) a full-scale verification protocol with a minimum
 5-50 40-day run duration without treatment intervention to meet federal
 5-51 and state safe drinking water standards.

5-52 (e) If a full-scale verification protocol report is
 5-53 approved, a person may not send water to a public water distribution
 5-54 system without a full-scale verification study:

5-55 (1) completed after construction; and

5-56 (2) approved by the commission.

5-57 (f) Not later than the 100th day after the date the
 5-58 commission receives the report for a proposed desalination
 5-59 facility, the commission shall review the report and issue an
 5-60 exception response letter that may contain conditions for approval.

5-61 (g) Not later than the 60th day after the date the
 5-62 commission receives the plans and specifications for a proposed
 5-63 desalination facility, the commission shall review the plans and
 5-64 specifications and issue a response letter that may contain
 5-65 conditions for approval.

5-66 (h) A person violates this section if the person fails to
 5-67 meet a condition for approval in a letter issued to the person under
 5-68 Subsection (f) or (g).

5-69 SECTION 9. Section 16.060, Water Code, is repealed.

6-1 SECTION 10. This Act takes effect immediately if it
6-2 receives a vote of two-thirds of all the members elected to each
6-3 house, as provided by Section 39, Article III, Texas Constitution.
6-4 If this Act does not receive the vote necessary for immediate
6-5 effect, this Act takes effect September 1, 2015.

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