

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Hunter, Lozano, Lucio III, Guillen,  
Herrero, et al.

H.B. No. 4097

A BILL TO BE ENTITLED

AN ACT

relating to seawater desalination projects.

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

SECTION 1. Section 39.203, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i) The commission, in cooperation with transmission and distribution utilities and the ERCOT independent system operator, shall study whether existing transmission and distribution planning processes are sufficient to provide adequate infrastructure for seawater desalination projects. If the commission determines that statutory changes are needed to ensure that adequate infrastructure is developed for projects of that kind, the commission shall include recommendations in the report required by Section 31.003.

SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9055 to read as follows:

Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF SEAWATER DESALINATION PROJECTS. The commission and the ERCOT independent system operator shall study the potential opportunities and barriers for customer loads, including seawater desalination projects, to participate in existing demand response opportunities in the ERCOT market. To the extent feasible, the study shall determine whether the operational characteristics of seawater desalination projects enable projects of that kind to

1 participate in ERCOT-operated ancillary services markets or other  
2 competitively supplied demand response opportunities. The study  
3 shall also determine the potential economic benefit to a seawater  
4 desalination project if the project is able to reduce its demand  
5 during peak pricing periods. The commission shall include the  
6 results of the study in the report required by Section 31.003.

7 SECTION 3. Subchapter D, Chapter 11, Water Code, is amended  
8 by adding Section 11.1405 to read as follows:

9 Sec. 11.1405. PERMIT FOR DESALINATION OF SEAWATER FOR USE  
10 FOR INDUSTRIAL PURPOSES. (a) The commission may issue a permit to  
11 authorize a diversion of state water from the Gulf of Mexico or a  
12 bay or arm of the Gulf of Mexico for desalination and use for  
13 industrial purposes.

14 (b) A permit application under this section must be  
15 submitted as required by commission rule.

16 (c) The commission is not required to make a finding of  
17 water availability for an application under this section.

18 (d) The commission shall evaluate whether any proposed  
19 diversion under this section is consistent with any applicable  
20 environmental flow standards established under Section 11.1471.

21 (e) The commission may include any provision in a permit  
22 issued under this section that the commission considers necessary  
23 to comply with the environment flow standards established under  
24 Section 11.1471.

25 (f) A permit issued under this section does not require  
26 public notice and is not subject to a contested case hearing.

27 SECTION 4. Subchapter B, Chapter 26, Water Code, is amended

1 by adding Section 26.0272 to read as follows:

2 Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM SEAWATER  
3 DESALINATION FACILITIES. (a) This section applies only to a  
4 facility that generates water treatment residuals from the  
5 desalination of seawater for use as part of an industrial process.

6 (b) The commission may issue a permit for the discharge of  
7 water treatment residuals from the desalination of seawater into  
8 the portion of the Gulf of Mexico inside the territorial limits of  
9 the state.

10 (c) Before issuing a permit under this section, the  
11 commission must evaluate the discharge of water treatment residuals  
12 from the desalination of seawater into the Gulf of Mexico for  
13 compliance with the state water quality standards adopted by the  
14 commission, the requirements of the Texas Pollutant Discharge  
15 Elimination System program, and applicable federal law.

16 (d) The commission may issue individual permits or a general  
17 permit under this section. If the commission elects to issue  
18 individual permits under this section, the commission must  
19 establish procedures for the review of an application that, at a  
20 minimum, comply with the requirements of Subchapter M, Chapter 5.  
21 If the commission elects to issue a general permit under this  
22 section, the commission must comply with the requirements of  
23 Section 26.040.

24 SECTION 5. Section 27.021, Water Code, is amended by adding  
25 Subsection (a-1) to read as follows:

26 (a-1) A permit issued under this section may authorize the  
27 disposal of water treatment residuals produced by the desalination

1 of seawater.

2 SECTION 6. Section 27.025, Water Code, is amended by adding  
3 Subsection (a-1) to read as follows:

4 (a-1) A general permit issued under this section may  
5 authorize an injection well for the disposal of concentrate  
6 produced by the desalination of seawater. The general permit must  
7 include any requirements necessary to maintain delegation of the  
8 federal underground injection control program administered by the  
9 commission.

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

ADOPTED

MAY 23 2015

*Atay Spaw*  
Secretary of the Senate

*Hunter, et al.*

By: *Kolkhorst* ←

H.B. No. 4097

Substitute the follow

o. 4097:

By: *[Signature]*

C.S. H.B. No. 4097

A BILL TO BE ENTITLED

AN ACT

relating to seawater desalination projects.

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

SECTION 1. Section 39.203, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i) The commission, in cooperation with transmission and distribution utilities and the ERCOT independent system operator, shall study whether existing transmission and distribution planning processes are sufficient to provide adequate infrastructure for seawater desalination projects. If the commission determines that statutory changes are needed to ensure that adequate infrastructure is developed for projects of that kind, the commission shall include recommendations in the report required by Section 31.003.

SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9055 to read as follows:

Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF SEAWATER DESALINATION PROJECTS. The commission and the ERCOT independent system operator shall study the potential for seawater desalination projects to participate in existing demand response opportunities in the ERCOT market. To the extent feasible, the study shall determine whether the operational characteristics of seawater desalination projects enable projects of that kind to participate in ERCOT-operated ancillary services markets or other

1 competitively supplied demand response opportunities. The study  
2 shall also determine the potential economic benefit to a seawater  
3 desalination project if the project is able to reduce its demand  
4 during peak pricing periods. The commission shall include the  
5 results of the study in the report required by Section 31.003.

6 SECTION 3. Section 11.121, Water Code, is amended to read as  
7 follows:

8 Sec. 11.121. PERMIT REQUIRED. Except as provided in  
9 Sections 11.1405, 11.142, 11.1421, and 11.1422 [~~of this code~~], no  
10 person may appropriate any state water or begin construction of any  
11 work designed for the storage, taking, or diversion of water  
12 without first obtaining a permit from the commission to make the  
13 appropriation.

14 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended  
15 by adding Section 11.1405 to read as follows:

16 Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR  
17 INDUSTRIAL PURPOSES. (a) The commission may issue a permit under  
18 this section to authorize a diversion of state water from the Gulf  
19 of Mexico or a bay or arm of the Gulf of Mexico for desalination and  
20 use for industrial purposes if:

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

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

26 (b) A person may divert state water from the Gulf of Mexico  
27 or a bay or arm of the Gulf of Mexico for desalination and use for

1 industrial purposes without obtaining a permit if Subsection (a)  
2 does not apply.

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

20 (d) A permit application under this section must be  
21 submitted as required by commission rule.

22 (e) The commission is not required to make a finding of  
23 water availability for an application under this section.

24 (f) The commission shall evaluate whether any proposed  
25 diversion under this section is consistent with any applicable  
26 environmental flow standards established under Section 11.1471.

27 (g) The commission may include any provision in a permit

1 issued under this section that the commission considers necessary  
2 to comply with the environmental flow standards established under  
3 Section 11.1471.

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

10 SECTION 5. Subchapter B, Chapter 26, Water Code, is amended  
11 by adding Section 26.0272 to read as follows:

12 Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM CERTAIN  
13 SEAWATER DESALINATION FACILITIES. (a) This section applies only to  
14 a facility that generates water treatment residuals from the  
15 desalination of seawater solely for use as part of an industrial  
16 process.

17 (b) The commission may issue a permit for the discharge of  
18 water treatment residuals from the desalination of seawater into  
19 the portion of the Gulf of Mexico inside the territorial limits of  
20 the state.

21 (c) Before issuing a permit under this section, the  
22 commission must evaluate the discharge of water treatment residuals  
23 from the desalination of seawater into the Gulf of Mexico for  
24 compliance with the state water quality standards adopted by the  
25 commission, the requirements of the Texas Pollutant Discharge  
26 Elimination System program, and applicable federal law.

27 (d) The commission may issue individual permits or a general



1 permit under this section. If the commission elects to issue  
2 individual permits under this section, the commission must  
3 establish procedures for the review of an application that, at a  
4 minimum, comply with the requirements of Subchapter M, Chapter 5.  
5 If the commission elects to issue a general permit under this  
6 section, the commission must comply with the requirements of  
7 Section 26.040.

8 SECTION 6. Section 27.021, Water Code, is amended by adding  
9 Subsection (a-1) to read as follows:

10 (a-1) A permit issued under this section may authorize the  
11 disposal of water treatment residuals produced by the desalination  
12 of seawater.

13 SECTION 7. Section 27.025, Water Code, is amended by adding  
14 Subsection (a-1) to read as follows:

15 (a-1) A general permit issued under this section may  
16 authorize an injection well for the disposal of concentrate  
17 produced by the desalination of seawater. The general permit must  
18 include any requirements necessary to maintain delegation of the  
19 federal underground injection control program administered by the  
20 commission.

21 SECTION 8. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2015.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 23, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4097** by Hunter (Relating to seawater desalination projects.), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would require the Public Utilities Commission (PUC) to conduct studies with the Electric Reliability Council of Texas (ERCOT) related to seawater desalination projects. If PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for such projects, the PUC is required to include recommendations in a report required in Utilities Code, Section 31.003. PUC and the ERCOT independent system operator would also be required to study the potential opportunities and barriers for customer loads, including seawater desalination projects to participate in existing demand response opportunities in the ERCOT market.

The bill would authorize the Texas Commission on Environmental Quality (TCEQ) to issue a permit to divert state water from the Gulf of Mexico if the diversion meets certain conditions. The bill would also require TCEQ to adopt rules providing for an expedited procedure for such permits and provide for a contested case hearing opportunity relating to such applications. The bill would authorize TCEQ to issue permits for the discharge of water treatment residuals from the desalination of water into the Gulf of Mexico if the discharge meets certain conditions, including meeting requirements of the Texas Pollutant Discharge Elimination Program (NPDES) and would have to comply with Water Code, Chapter 5, Subchapter M requirements. Such permits could be issued as individual or general permits.

The bill would authorize TCEQ to issue an individual Class I injection well permit or general permit authorizing the disposal of brine produced by the desalination of seawater.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, it would take effect September 1, 2015.

Any costs incurred by the TCEQ and PUC in implementing the provisions of the bill are expected to be absorbed using existing resources.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 582 Commission on Environmental Quality

**LBB Staff:** UP, SD, SZ, TL

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 19, 2015

**TO:** Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** HB4097 by Hunter (relating to seawater desalination projects.), Committee Report 2nd House, Substituted

**No significant fiscal implication to the State is anticipated.**

The bill would require the Public Utilities Commission (PUC) to conduct studies with the Electric Reliability Council of Texas (ERCOT) related to seawater desalination projects. If PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for such projects, the PUC is required to include recommendations in a report required in Utilities Code, Section 31.003. PUC and the ERCOT independent system operator would also be required to study the potential opportunities and barriers for customer loads, including seawater desalination projects to participate in existing demand response opportunities in the ERCOT market.

The bill would authorize the Texas Commission on Environmental Quality (TCEQ) to issue a permit to divert state water from the Gulf of Mexico if the diversion meets certain conditions. The bill would also require TCEQ to adopt rules providing for an expedited procedure for such permits and provide for a contested case hearing opportunity relating to such applications. The bill would authorize TCEQ to issue permits for the discharge of water treatment residuals from the desalination of water into the Gulf of Mexico if the discharge meets certain conditions, including meeting requirements of the Texas Pollutant Discharge Elimination Program (NPDES) and would have to comply with Water Code, Chapter 5, Subchapter M requirements. Such permits could be issued as individual or general permits.

The bill would authorize TCEQ to issue an individual Class I injection well permit or general permit authorizing the disposal of brine produced by the desalination of seawater.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, it would take effect September 1, 2015.

Any costs incurred by the TCEQ and PUC in implementing the provisions of the bill are expected to be absorbed using existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, TL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 15, 2015**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Agriculture, Water & Rural Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4097** by Hunter (Relating to seawater desalination projects.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would require the Public Utilities Commission (PUC) to conduct studies with the Electric Reliability Council of Texas (ERCOT) related to seawater desalination projects. If PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for such projects, the PUC is required to include recommendations in a report required in Utilities Code, Section 31.003. PUC and the ERCOT independent system operator would also be required to study the potential opportunities and barriers for customer loads, including seawater desalination projects to participate in existing demand response opportunities in the ERCOT market.

The bill would authorize the Texas Commission on Environmental Quality (TCEQ) to issue a permit to discharge waste from a desalination facility into the Gulf of Mexico evaluate compliance with developed environmental flow standards. The bill would also authorize TCEQ to evaluate compliance with water quality standards, requirements of the Texas Pollutant Discharge Elimination System (TPDES) program, and applicable federal law in issuing such a permit; indicate permits may be individual permits complying with Texas Water Code Subchapter M, Chapter 5 (Environmental Permitting Procedures) or general permits in accordance with Water Code Section 26.040 (General Permits).

The bill would authorize TCEQ to issue an individual Class I injection well permit or general permit authorizing the disposal of brine produced by the desalination of seawater.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, it would take effect September 1, 2015.

Any costs incurred by the TCEQ and PUC in implementing the provisions of the bill are expected to be absorbed using existing resources.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, TL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 28, 2015**

**TO:** Honorable Jim Keffer, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4097** by Hunter (relating to seawater desalination projects.), **Committee Report 1st House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would require the Public Utilities Commission (PUC) to conduct studies with the Electric Reliability Council of Texas (ERCOT) related to seawater desalination projects. If PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for such projects, the PUC is required to include recommendations in a report required in Utilities Code, Section 31.003. PUC and the ERCOT independent system operator would also be required to study the potential for seawater desalination projects to participate in existing demand response opportunities in the ERCOT market.

The bill would authorize the Texas Commission on Environmental Quality (TCEQ) to issue a permit to discharge waste from a desalination facility into the Gulf of Mexico evaluate compliance with developed environmental flow standards. The bill would also authorize TCEQ to evaluate compliance with water quality standards, requirements of the Texas Pollutant Discharge Elimination System (TPDES) program, and applicable federal law in issuing such a permit; indicate permits may be individual permits complying with Texas Water Code Subchapter M, Chapter 5 (Environmental Permitting Procedures) or general permits in accordance with Water Code Section 26.040 (General Permits).

The bill would authorize TCEQ to issue an individual Class I injection well permit or general permit authorizing the disposal of brine produced by the desalination of seawater.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, it would take effect September 1, 2015.

Any costs incurred by the TCEQ and PUC in implementing the provisions of the bill are expected to be absorbed using existing resources.



**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, TL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 21, 2015**

**TO:** Honorable Jim Keffer, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** HB4097 by Hunter (Relating to seawater desalination projects.), **As Introduced**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would require the Texas Commission on Environmental Quality (TCEQ) to adopt new rules that allow desalinated seawater to be used for nonpotable uses. The rules would specify the quality of the desalinated seawater not be required to meet drinking water standards, that a public drinking water supply may not be connected to any alternative source unless backflow prevent is provided, and equipment used to desalinate seawater may not subsequently be used for potable water production.

The bill would require the Public Utilities Commission (PUC) to conduct studies with the Electric Reliability Council of Texas (ERCOT) related to seawater desalination projects.

The bill would require that a water right permit be obtained for desalination of seawater for industrial use. Such permits would not require a finding of water availability, would need to be consistent with the TCEQ's adopted environmental flow standards, and would not require public notice or be subject to a contested case hearing.

The bill would authorize TCEQ to issue a permit to discharge waste from a desalination facility into the Gulf of Mexico; evaluate compliance with developed water quality standards, requirements of the Texas Pollutant Discharge Elimination System (TPDES) program, and applicable federal law in issuing such a permit; indicate permits may be individual permits complying with Texas Water Code Subchapter M, Chapter 5 (Environmental Permitting Procedures) or general permits in accordance with Water Code Section 26.040 (General Permits).

The bill would authorize TCEQ to issue an individual Class I injection well permit or general permit authorizing the disposal of brine produced by the desalination of seawater.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, it would take effect September 1, 2015.

Any costs incurred by the TCEQ and PUC in implementing the provisions of the bill are expected to be absorbed using existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, TL