

House Bill 4097
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

SENATE VERSION (CS)

SECTION 1. Same as House version.

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

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No equivalent provision.

SECTION 3. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1405 to read as follows:
Sec. 11.1405. PERMIT FOR DESALINATION OF SEAWATER FOR USE FOR INDUSTRIAL PURPOSES.
(a) The commission may issue a permit to authorize a diversion of state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes.

SECTION 3. Section 11.121, Water Code, is amended to read as follows:
Sec. 11.121. PERMIT REQUIRED. Except as provided in Sections 11.1405, 11.142, 11.1421, and 11.1422 [~~of this code~~], no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.

SECTION 4. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1405 to read as follows:
Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR INDUSTRIAL PURPOSES.
(a) The commission may issue a permit under this section to authorize a diversion of state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes if:
(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or
(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.
(b) A person may divert state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes without obtaining a permit if Subsection (a) does not apply.
(c) A person who diverts and uses state water that consists of marine seawater under a permit issued under Subsection (a) or

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

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

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

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

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

as authorized by Subsection (b) must determine the total dissolved solids concentration of the seawater at the water source by monthly sampling and analysis and provide the data collected to the commission. A person may not begin construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit until the person has provided data to the commission based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. A person who has begun construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

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

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

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

(g) The commission may include any provision in a permit issued under this section that the commission considers necessary to comply with the environmental flow standards established under Section 11.1471.

(h) The commission shall adopt rules providing an expedited procedure for acting on an application for a permit under Subsection (a). The rules must provide for notice, an

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SECTION 4. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.0272 to read as follows:

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

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

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

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

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opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit.

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

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

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

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

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

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

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

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

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

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

SENATE VERSION (CS)

SECTION 6. Same as House version.

SECTION 7. Same as House version.

SECTION 8. Same as House version.

CONFERENCE