

SUBJECT: Requiring studies, authorizing permits related to seawater desalination

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Keffer, Ashby, D. Bonnen, Frank, Kacal, Larson, Nevárez,
Workman

0 nays

3 absent — Burns, T. King, Lucio

WITNESSES: For — Martha Landwehr, Texas Chemical Council; Bill Norris, Texas Desal Association; Kyle Frazier, Texas Desalination Association; (*Registered, but did not testify*: Ellen Joyce, Central Texas Water Coalition; Todd Votteler, Guadalupe-Blanco River Authority; Bill Oswald, Koch Companies; Mindy Ellmer, Poseidon Water; Hope Wells, San Antonio Water System; Trace Finley, Seven Seas Water; Nelson Salinas, Texas Association of Business; John Dahill, Texas Conference of Urban Counties; Monty Wynn, Texas Municipal League; John W. Fainter Jr., the Association of Electric Companies of Texas, Inc.)

Against — (*Registered, but did not testify*: Michele Gangnes, League of Independent Voters of Texas)

On — Steve Box, Environmental Stewardship; Ken Kramer, Sierra Club - Lone Star Chapter; Charles Maguire, Texas Commission on Environmental Quality; (*Registered, but did not testify*: Linda Brookins, Ron Ellis, and David Galindo, Texas Commission on Environmental Quality)

BACKGROUND: Under Utilities Code, sec. 31.003, by January 15 of each odd-numbered year, the Public Utility Commission (PUC) is required to report to the Legislature on the scope of competition in electric markets and the effect competition and industry restructuring has had on customers in both competitive and noncompetitive markets.

Under Water Code, sec. 27.021, the Texas Commission on Environmental Quality (TCEQ) may issue a permit to dispose of brine produced by a desalination operation or of drinking water treatment residuals in a Class I injection well if the applicant for the permit meets all the statutory and regulatory requirements for the issuance of a permit for a Class I injection well.

Texas Water Code, sec. 27.025, allows the TCEQ to issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals if TCEQ determines that the injection well and injection activities are more appropriately regulated under a general permit than under an individual permit.

DIGEST:

CSHB 4097 would require studies related to the desalination of seawater, including the adequacy of existing electric infrastructure to serve a seawater desalination project and the potential for a project to participate in demand response opportunities in ERCOT. The bill also would allow TCEQ to issue certain permits related to the desalination of seawater and the associated waste.

Studying existing transmission and distribution infrastructure. CSHB 4097 would require the PUC, in cooperation with transmission and distribution utilities and the ERCOT independent system operator, to study whether existing transmission and distribution planning processes would be sufficient to provide adequate infrastructure for seawater desalination projects.

If the PUC determined that statutory changes would be needed to ensure that adequate infrastructure was developed for those projects, the PUC would have to include recommendations in the scope of competition report.

Studying demand response potential. The PUC and ERCOT independent system operator would be required to study the potential for seawater desalination projects to participate in existing demand response

opportunities in the ERCOT market. To the extent feasible, the study would determine whether seawater desalination projects could participate in ERCOT-operated ancillary services markets or other competitively supplied demand response opportunities. The study also would have to determine the potential economic benefit of a seawater desalination project reducing its demand during peak pricing periods. The PUC would have to include the results of the study in the scope of competition report.

Permit for desalination of seawater for industrial purposes. CSHB 4097 would allow the TCEQ to issue a permit authorizing 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.

TCEQ would be required to evaluate whether a proposed diversion was consistent with environmental flow standards and could include any provision in a permit necessary to comply.

A permit application must be submitted as required by TCEQ rule. A permit would not require public notice and would not be subject to a contested case hearing.

Discharge permits for industrial seawater desalination facilities. CSHB 4097 would allow TCEQ to issue to an industrial seawater desalination facility a permit for the discharge of water treatment residuals from the desalination of seawater into the Gulf of Mexico.

Before issuing a discharge permit, TCEQ would have to evaluate the discharge for compliance with the state water quality standards and applicable federal law.

Injection wells. CSHB 4097 would amend Texas Water Code, sec. 27.021 and sec. 27.025 by providing for the use of injection wells for the disposal of waste produced by the desalination of seawater for industrial purposes.

Effective date. This bill would take immediate effect if finally passed by

a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 4097 would streamline and expedite the permitting process for seawater desalination to serve as a water supply for industrial purposes. The coastal areas of the state have experienced tremendous industrial growth causing strain on an already limited water supply. CSHB 4097 would take a common-sense approach to setting up a regulatory framework to ensure seawater desalination projects for industrial purposes could move forward.

**OPPONENTS
SAY:**

CSHB 4097 could damage the state's bays and estuaries and marine resources by exempting water rights diversions for desalination for industrial purposes from adequate environmental review and from hearings, even when located in bays and estuaries or in other sensitive coastal areas. The bill would rely on compliance with environmental flow standards in an attempt to minimize adverse impacts, but those flow standards do not establish protections applicable to these types of activities.