

BILL ANALYSIS

Senate Research Center

H.B. 2031
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Agriculture, Water & Rural Affairs
5/15/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2031 amends the Water Code to require a water supply entity, which includes a retail public utility, a wholesale water supplier, or an irrigation district, to obtain a permit to divert and use state water that consists of marine seawater if the point of diversion is located less than three miles from any point located on the coast of Texas or if the seawater contains a total dissolved solids concentration based on a yearly average of samples taken at the water source of less than 20,000 milligrams per liter. The bill authorizes a water supply entity to divert and use state water that consists of marine seawater without obtaining a permit in cases where a permit is not required. The bill authorizes a water supply entity to use applicable marine seawater for any beneficial purpose if the seawater is treated in accordance with rules adopted by the Texas Commission on Environmental Quality (TCEQ) before it is used. The bill authorizes such rules to impose different treatment requirements based on the purpose for which the seawater is to be used but requires the rules to require that the seawater be treated in accordance with specified statutory provisions based on whether the water is to be used as public drinking water, whether the bed and banks of a flowing natural stream in Texas or a lake, reservoir, or other impoundment in Texas are to be used to convey the water, or whether the water is to be discharged into a flowing natural stream in Texas or a lake, reservoir, or other impoundment in Texas. The bill requires TCEQ to adopt rules providing an expedited procedure for acting on an application for a permit and requires the rules to provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding TCEQ actions relating to a permit. The bill prohibits the point of diversion of marine seawater from being in a bay or estuary. The bill requires TCEQ to adopt rules prescribing the number of points.

H.B. 2031 amends current law relating to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater, and adds provisions subject to a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 10 (Sections 18.004, and 18.005, Water Code) and SECTION 12 (Section 341.0316, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Provides that with this state facing an ongoing drought, continuing population growth, and the need to remain economically competitive, every effort must be made to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. Provides that the purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state.

(b) Provides that currently, the projected long-term water needs of this state far exceed the firm supplies that are available and that can reasonably be made available from freshwater sources within this state. Provides that the legislature recognizes the importance of providing for this state's current and future water needs at all times,

including, consistent with reasonable drought contingency measures, during severe droughts.

(c) Provides that in this state, marine seawater is a potential new source of water for drinking and other beneficial uses. Provides that this state has access to vast quantities of marine seawater from the Gulf of Mexico. Provides that the purpose of this Act is to streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination.

(d) Provides that the legislature finds that marine seawater desalination facilities should be cost-effectively and timely developed, concurrently with other water planning solutions, to help this state meet its current and future water needs.

(e) Provides that the legislature finds that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections, in order to avoid unnecessary costs, delays, and uncertainty and thereby help justify the investment of significant resources in the development of such facilities.

SECTION 2. Amends Section 5.509(a), Water Code, to authorize the Texas Commission on Environmental Quality (TCEQ) to issue an emergency or temporary order relating to the discharge of waste or pollutants into or adjacent to water in the state if the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Chapter 18 (Marine Seawater Desalination Projects) or 26 (Water Quality Control), as applicable, to effectuate the policy and purposes of that chapter. Makes no further change to this subsection.

SECTION 3. Amends Section 5.551, Water Code, by adding Subsection (a-1), as follows:

(a-1) Provides that this subchapter, notwithstanding Section 18.002 (Relationship to Other Laws), does not apply to a permit issued under Section 18.005(c)(2) if the point of discharge is not located within three miles of any point located on the coast of this state.

SECTION 4. Amends Section 7.302(a), Water Code, as follows:

(a) Provides that this section applies to a permit or exemption issued by TCEQ under:

(1) Section 18.005 (Discharge of Treated Marine Seawater or Waste Resulting from Desalination of Marine Seawater) of this code;

(2)-(6) Creates these subdivisions from existing text and renumbers them appropriately.

SECTION 5. Amends Section 11.0237(b), Water Code, to provide that this section does not alter TCEQ's obligations under certain sections, including Section 18.004 (Bed and Banks Authorization).

SECTION 6. Amends Section 11.082, Water Code, by adding Subsection (a-1), as follows:

(a-1) Provides that, notwithstanding Section 18.002, this section does not apply to a violation of:

(1) Section 18.003 (Diversions of Marine Seawater) or a permit issued under that section; or

(2) Section 18.004 or an authorization granted under that section.

SECTION 7. Amends Section 11.0842, Water Code, by adding Subsection (a-1), as follows:

(a-1) Provides that, notwithstanding Section 18.002, this section does not apply to a violation of:

(1) Section 18.003 or a permit issued under that section; or

(2) Section 18.004 or an authorization granted under that section.

SECTION 8. Amends Section 11.121, Water Code, to create an exception under Section 18.003 and make nonsubstantive changes.

SECTION 9. Amends Section 16.053(e), Water Code, as follows:

(e) Requires each regional water planning group to submit to the Texas Water Development Board a regional water plan that:

(1)-(4) Makes no change to these subdivisions;

(5) includes but is not limited to consideration of the following:

(A)-(I) Makes no change to these paragraphs;

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

(6)-(9) Makes no change to these subdivisions.

SECTION 10. Amends Subtitle C, Title 2, Water Code, by adding Chapter 18, as follows:

CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

Sec. 18.001. DEFINITIONS. Defines "commission," "marine seawater," and "project" in this chapter.

Sec. 18.002. RELATIONSHIP TO OTHER LAWS. (a) Provides that, except as provided by Subsection (b) or as otherwise provided by law:

(1) Chapter 11 (Water Rights) applies to a permit or authorization under Section 18.003 or 18.004 in the same manner as that chapter applies to a permit or authorization under that chapter; and

(2) Chapter 26 applies to a permit under Section 18.005 in the same manner as that chapter applies to a permit under that chapter.

(b) Provides that, in the event of a conflict between this chapter and Chapter 11 or 26, this chapter controls.

(c) Provides that this chapter is intended to provide an alternative procedure for obtaining an authorization to divert and use state water that consists of marine seawater or to discharge treated marine seawater or waste resulting from the desalination of treated marine seawater under the circumstances provided by this chapter. Provides that this chapter does not affect the authority of a person to:

(1) divert and use state water that consists of marine seawater in accordance with the procedures provided by Chapter 11, including the authority to divert marine seawater from a point of diversion located in a bay or estuary; or

(2) discharge treated marine seawater or waste resulting from the desalination of treated marine seawater in accordance with the procedures provided by Chapter 26, including the authority to discharge waste resulting from the desalination of marine seawater into a bay or estuary.

Sec. 18.003. DIVERSIONS OF MARINE SEAWATER. (a) Requires a person to obtain a permit to divert and use state water that consists of marine seawater 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) Authorizes a person to divert and use state water that consists of marine seawater without obtaining a permit if Subsection (a) does not apply.

(c) Requires a person who diverts and uses state water that consists of marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) to 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 TCEQ. Prohibits a person from beginning construction of a facility for the diversion of marine seawater without obtaining a permit until the person has provided data to TCEQ 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. Provides that a person who has begun construction of a facility for the diversion of marine seawater 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) Authorizes a person to use marine seawater diverted under a permit required by Subsection (a) or as authorized by Subsection (b) for any beneficial purpose, but only if the seawater is treated in accordance with rules adopted by TCEQ before it is used. Authorizes rules adopted under this subsection to impose different treatment requirements based on the purpose for which the seawater is to be used.

(e) Requires TCEQ to adopt rules providing an expedited procedure for acting on an application for a permit required by Subsection (a). Requires that the rules provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding TCEQ actions relating to an application for a permit.

(f) Prohibits a person from diverting marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) from a point of diversion located in a bay or estuary.

(g) Requires that an application for a permit required by Subsection (a) address the points from which, and the rate at which, the facility the applicant proposes to construct will divert marine seawater.

(h) Requires TCEQ by rule to prescribe reasonable measures to minimize impingement and entrainment.

(i) Requires the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) jointly to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater, taking into account the need to protect marine organisms. Requires TPWD and GLO, not later than September 1, 2018, to submit a report on the results of the study to TCEQ. Requires that the report include recommended diversion zones for designation by TCEQ and recommendations for the number of points from which, and the rate at which, a facility may divert marine seawater. Requires TCEQ, not

later than September 1, 2020, to designate appropriate diversion zones by rule. Authorizes a diversion zone to be contiguous to, be the same as, or overlap a discharge zone. Requires that the point or points from which a facility may divert marine seawater be located in a diversion zone designated by TCEQ under rules adopted under this subsection if:

(1) the facility is authorized by a permit as required by Subsection (a) issued after the rules are adopted; or

(2) the facility is exempt under Subsection (b) from the requirement of a permit and construction of the facility begins after the rules are adopted.

(j) Requires a person, until TCEQ adopts rules under Subsection (i), to consult TPWD and GLO regarding the point or points from which a facility the person proposes to construct may divert marine seawater before submitting an application for a permit for the facility if Subsection (a) applies or before beginning construction of the facility if Subsection (b) applies.

Sec. 18.004. BED AND BANKS AUTHORIZATION. (a) Authorizes a person, with prior authorization granted under rules prescribed by TCEQ, to use the bed and banks of any flowing natural stream in this state or a lake, reservoir, or other impoundment in this state to convey marine seawater that has been treated so as to meet standards that are at least as stringent as the water quality standards applicable to the receiving stream or impoundment adopted by TCEQ.

(b) Requires TCEQ to provide for notice and an opportunity for the submission of written comment but prohibits TCEQ from providing an opportunity for a contested case hearing regarding TCEQ actions relating to an application for an authorization under this section to use the bed and banks of a flowing natural stream to convey treated marine seawater. Requires TCEQ to provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding TCEQ actions relating to an application for an authorization under this section to use a lake, reservoir, or other impoundment to convey treated marine seawater.

(c) Prohibits a person from discharging treated marine seawater into a flowing natural stream in this state or a lake, reservoir, or other impoundment in this state for the purpose of conveyance of the water under an authorization granted under this section unless the person holds a permit issued under Section 18.005 authorizing the discharge.

(d) Provides that treated marine seawater that is conveyed under an authorization granted under this section may be used only by the person to whom the authorization is granted.

(e) Provides that Section 11.042(c) (requiring a person who wishes to convey and subsequently divert water in a watercourse or stream to obtain the prior approval of TNRC through a bed and banks authorization) applies to an authorization granted under this section in the same manner as that subsection applies to an authorization granted under Section 11.042 (Delivering Water Down Banks and Beds).

(f) Provides that this section does not prohibit a person from conveying treated marine seawater in any other manner authorized by law.

Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) Defines "permit," "person," "to discharge," "waste," and "water" in this section to have the meanings assigned by Section 26.001.

(b) Provides that Section 26.011 (In General) applies to discharges governed by this section in the same manner as that section applies to discharges governed by Chapter 26.

(c) Requires a person to obtain a permit to discharge:

(1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or

(2) waste resulting from the desalination of treated marine seawater into the Gulf of Mexico.

(d) Requires a person to:

(1) treat marine seawater so as to meet standards that are at least as stringent as the water quality standards adopted by TCEQ applicable to the receiving stream or impoundment before discharging the seawater under this section; and

(2) comply with all applicable state and federal requirements when discharging waste resulting from the desalination of marine seawater into the Gulf of Mexico.

(e) Requires TCEQ by rule to provide an expedited procedure for acting on an application for a permit under this section. Requires that the rules provide for:

(1) notice, an opportunity for the submission of written comment, and an opportunity to request a public meeting and may authorize a contested case hearing regarding TCEQ actions relating to an application for a permit described by Subsection (c)(1);

(2) notice, an opportunity for the submission of written comment, an opportunity to request a public meeting, and an opportunity for a contested case hearing regarding TCEQ actions relating to an application for a permit described by Subsection (c)(2) if the point of discharge is located within three miles of any point located on the coast of this state; and

(3) notice and an opportunity for the submission of written comment regarding TCEQ actions relating to an application for a permit described by Subsection (c)(2) if Subdivision (2) of this subsection does not apply.

(f) Prohibits a person from discharging waste resulting from the desalination of marine seawater into a bay or estuary under a permit issued under Subsection (c)(2).

(g) Requires TPWD and GLO jointly to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the discharge of waste resulting from the desalination of marine seawater, taking into account the need to protect marine organisms. Requires TPWD and GLO, not later than September 1, 2018, to submit a report on the results of the study to TCEQ. Requires that the report include recommended discharge zones for designation by TCEQ. Requires TCEQ, not later than September 1, 2020, to designate appropriate discharge zones by rule. Requires that the point at which a facility may discharge waste resulting from the desalination of marine seawater be located in a discharge zone designated by TCEQ under rules adopted under this subsection if the facility is authorized by a permit issued under Subsection (c)(2) after the rules are adopted.

(h) Requires a person, until TCEQ adopts rules under Subsection (g), to consult TPWD and GLO regarding the point at which the facility the person proposes to construct may discharge waste resulting from the desalination of marine seawater

before submitting an application for a permit under Subsection (c)(2) for the facility.

SECTION 11. Amends Section 26.0291(a), Water Code, to provide that an annual water quality fee is imposed on each wastewater discharge permit holder, including the holder of a permit issued under Section 18.005, for each wastewater discharge permit held. Makes no further change to this subsection.

SECTION 12. Amends Subchapter C, Chapter 341, Health and Safety Code, by adding Section 341.0316, as follows:

Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING WATER. (a) Provides that this section applies only to a desalination facility that is intended to treat marine seawater for the purpose of producing water for the public drinking water supply. Provides that this section does not apply to a desalination facility used to produce nonpotable water.

(b) Requires TCEQ to adopt rules to:

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

(2) ensure that water treated by a desalination facility meets the requirements of Section 341.031 (Public Drinking Water) and rules adopted under that section.

(c) Prohibits a person from beginning construction of a desalination facility that treats marine seawater for the purpose of removing primary or secondary drinking water contaminants unless TCEQ approves the construction of the facility.

SECTION 13. Repealer: Section 16.060 (Desalination Studies and Research), Water Code.

SECTION 14. Effective date: upon passage or September 1, 2015.