

BILL ANALYSIS

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C.S.S.B. 1738
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Seawater desalination in Texas has long been considered a strategy for the distant future. Population growth and ongoing drought has accelerated the need for implementation of seawater desalination on a regional basis to help meet current and future water supply needs. However, significant legal and regulatory barriers hinder the implementation of this vital resource in a timely manner.

Regional water planning approaches in Texas typically assume each project will have a single sponsor and customer base. Desalinated seawater, on the other hand, may be most beneficial if it can serve multiple users in multiple regional planning regions. Unfortunately, opportunities to consider such an integrated water supply approach along the state's coastal bend have been overshadowed by regional planning approaches that focus on inland areas.

The Water Code lacks guidance that can spur development of seawater desalination and help integrate that resource into the state's water portfolio. This legislation will enable regulatory authorities to develop regional integration approaches for large-scale seawater desalination in order to maximize benefits and reduce costs.

Specifically, S.B. 1738 includes a preamble reflecting legislative intent to encourage seawater desalination, and translates that intent into the section of the Water Code dealing with regional water planning. More important, the bill recognizes seawater as a separate and distinct source of water supply. The new Chapter 14, Water Code, recognizes that seawater is distinct from surface water (Chapter 11 (Water Rights), Water Code) and groundwater (Chapter 36 (Groundwater Conservation Districts), Water Code) and adds guidance and scaffolding for the use and development of water from the Gulf of Mexico. In particular, the legislation directs TCEQ to develop permitting requirements for large-scale seawater desalination projects.

This legislation also recognizes the vital role of the General Land Office as custodian of off-shore lands inundated by the Gulf of Mexico and recognizes the importance of integrating water and power supply needs to reduce cost and maximize benefits to the state, while providing guidance on regional development of seawater projects.

While the importance of public private partnerships is widely recognized, private entities will not bring funding to pay for the planning of regional seawater desalination projects, nor will they invest in large-scale seawater desalination projects without clarification of the legal and regulatory framework regarding such projects. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1738 amends current law relating to the diversion and use of marine seawater, including the development of marine seawater desalination projects, integrated marine seawater desalination and power projects, and facilities for the storage, conveyance, and delivery of desalinated marine seawater.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 8 (Section 341.03595, 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 to 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 to expedite the development of marine seawater from the Gulf of Mexico and add this new source of water to this state's existing surface water and groundwater resources in order to bring into balance the supply of and demand for water in 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 the state. Provides that the legislature recognizes the importance of providing for this state's current and future water needs at all times, including during severe droughts.

(c) Provides that, in this state, marine seawater is a potential new source of public drinking water. Provides that this state has access to over 600 quadrillion gallons of marine seawater from the Gulf of Mexico. Provides that the purpose of this Act is to streamline the process and reduce the cost and regulation of marine seawater desalination.

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

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

SECTION 2. Amends Section 11.002, Water Code, to define "marine seawater."

SECTION 3. Amends Section 11.121, Water Code, to add Section 11.1423 as an exception to Section 11.121, Water Code. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter D, Chapter 11, Water Code, by adding Section 11.1423, as follows:

Sec. 11.1423. PERMIT EXEMPTION FOR USE BY WATER SUPPLY ENTITY OF MARINE SEAWATER. (a) Defines "water supply entity."

(b) Authorizes a water supply entity to, without obtaining a permit, divert marine seawater from the Gulf of Mexico at one or more points of diversion located at least three miles from the coast of this state and use the seawater diverted for any beneficial purpose.

(c) Requires the water supply entity to give notice to the Texas Natural Resource Conservation Commission (TNRCC) of the proposed diversion before an entity first diverts seawater under Subsection (b).

(d) Requires a water supply entity to treat marine seawater so that it meets the water quality level of the receiving stream before the entity may put the water into

a stream under an authorization granted under Section 11.042 (Delivering Water Down Banks and Beds).

(e) Provides that this section does not prohibit a water supply entity from conveying water under this section in any other manner authorized by law, including through the use of facilities owned or operated by the state if authorized by the state.

SECTION 5. Amends Section 16.053(e), Water Code, to require each regional water planning group to submit to the Texas Water Development Board (TWDB) a regional water plan that includes but is not limited to certain considerations, including consideration of the opportunities for and the benefits of developing large-scale desalination facilities for marine seawater, as defined by Section 18.001, that serve local or regional entities.

SECTION 6. Amends Subtitle C, Title 2, Water Code, by adding Chapter 18, as follows:

CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS AND INTEGRATED MARINE SEAWATER DESALINATION AND POWER PROJECTS

Sec. 18.001. DEFINITIONS. Defines "board," "commission," "land office," "marine seawater," "political subdivision," and "project."

Sec. 18.002. POWERS AND DUTIES OF BOARD. (a) Provides that the Texas Water Development Board (TWDB) has general jurisdiction over the provision of state financial assistance of projects.

(b) Authorizes TWDB to provide financial assistance for all or part of a project from any source of funding that may be available for TWDB for that purpose, including:

(1) the state water implementation fund for Texas, in accordance with Subchapter G (State Water Implementation Fund for Texas), Chapter 15; and

(2) the state water implementation revenue fund for Texas, in accordance with Subchapter H (State Water Implementation Revenue Fund for Texas), Chapter 15.

(c) Requires TWDB to pursue all available alternatives in order to provide the necessary financial assistance if TWDB determines that a project for which financial assistance from TWDB is sought should be developed.

Sec. 18.003. POWERS AND DUTIES OF COMMISSION. (a) Provides that the Texas Commission on Environmental Quality (TCEQ) has general jurisdiction over the permitting of projects.

(b) Requires TCEQ to consult with the General Land Office (GLO), the School Land Board, TWDB, the Texas Parks and Wildlife Department (TPWD), the Public Utility Commission of Texas (PUC), or Electric Reliability Council of Texas (ERCOT) over any aspects of a project that also falls within the general jurisdiction of that agency or entity.

(c) Requires TCEQ to provide notice and an opportunity for the submission of written comment, but provides that TCEQ is not required to provide an opportunity for a contested case hearing, regarding TCEQ actions relating to a permit for a project.

Sec. 18.004. POWERS AND DUTIES OF POLITICAL SUBDIVISIONS. (a) Authorizes a political subdivision to own all or any interest in a project and sell water produced or power generated by a project.

(b) Authorizes a political subdivision, without obtaining a water right from TCEQ, to:

(1) divert marine seawater from the Gulf of Mexico at one or more points of diversion located at least three miles from the coast of this state;

(2) desalinate marine seawater;

(3) use diverted marine seawater for power plant cooling or any other beneficial use before desalinating the marine seawater;

(4) use desalinated marine seawater in this state for any beneficial purpose; and

(5) return unconsumed marine seawater or concentrated saline water resulting from the process for desalinating marine seawater to the Gulf of Mexico at one or more points of return.

(c) Provides that this subsection applies only to a project to which Subsection (b) applies. Prohibits TCEQ from limiting:

(1) the number of points of diversion or the rate of diversion of marine seawater; or

(2) the number of points of return or return or the rate of return of unconsumed marine seawater or concentrated saline water resulting from the process for desalinating marine seawater.

(d) Requires a political subdivision to obtain the approval of GLO of the location of the points of intake or return and plans and specifications for the facility if the facility will be located on state land before beginning construction of an intake or return facility for a project. Provides that the process for obtaining the approval of GLO is not subject to the requirements relating to a contested case hearing under any statute or rule, including this chapter, another chapter of this code, Chapter 33 (Management of Coastal Public Land), Natural Resources Code, or Subchapters C-G, Chapter 2001 (Administrative Procedure), Government Code.

(e) Requires the political subdivision to give notice to TCEQ of the proposed diversion before a political subdivision first diverts marine seawater under Subsection (b).

(f) Authorizes a political subdivision to assign the rights granted by this section to the owner or operator of a project.

Sec. 18.005. EXPEDITED PROCESSING OF AND ACTION ON APPLICATIONS.

(a) Provides that this section applies to each application or request for a permit or other authorization, contract, lease, easement, or grant of interest in property submitted to a state or local governmental entity for a project, including an application submitted to:

(1) TCEQ for a permit or authorization under Chapter 26 (Water Quality Control), Water Code, or Chapter 382 (Clean Air Act), Health and Safety Code; or

(2) the School Land Board to acquire rights in coastal public land under Chapter 33, Natural Resources Code.

(b) Requires a governmental entity to which an application or request is submitted to expedite and streamline to the extent possible the processing of an action on the application or request.

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

SECTION 7. Amends Section 341.001, Health and Safety Code, by adding Subdivisions (2-a) and (4-a), to define "desalination facility" and "marine seawater."

SECTION 8. Amends Subchapter C, Chapter 341, Health and Safety Code, by adding Section 341.03595, as follows:

Sec. 341.03595. DESALINATION OF WATER FOR DRINKING WATER.

(a) Provides that this section applies only to a desalination facility that is intended to produce 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 the Texas Natural Resource Conservation Commission (TNRCC) 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 unless TNRCC approves in writing the plans and specifications for the facility.

(d) 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 TNRCC approves in writing a report containing one or more of the following:

(1) a computer model acceptable to TNRCC;

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

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

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

(e) Prohibits a person, if a full-scale verification protocol report is approved, from sending water to a public water distribution system without a full-scale verification study completed after construction and approved by TNRCC.

(f) Requires TNRCC to review the report and issue an exception response letter that may contain conditions for approval not later than the 100th day after the date TNRCC receives the report for a proposed desalination facility.

(g) Requires TNRCC to review the plans and specifications and issue a response letter that may contain conditions for approval not later than the 60th day after the date TNRCC receives the plans and specifications for a proposed desalination facility.

(h) Provides that a person violates this section if the person fails to meet a condition for approval in a letter issued to the person under Subsection (f) or (g).

SECTION 9. Repealer: Section 16.060 (Desalination Studies and Research), Water Code.

SECTION 10. Effective date: upon passage or September 1, 2015.