

BILL ANALYSIS

Senate Research Center

S.B. 1738
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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.

As proposed, S.B. 1738 amends current law relating to the development and production of marine seawater desalination, integrated marine seawater desalination, 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 (TNRCC) in SECTION 3 (Section 11.1311, Water Code) and SECTION 9 (Section 341.0359, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(b) Provides that, in Texas, 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.

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

(d) 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 large-scale marine seawater desalination projects and integrated marine seawater desalination and power projects, to avoid unnecessary costs, delays and uncertainty and thereby help justify the investment of significant resources of the state in the development of such projects.

SECTION 2. Amends Section 11.121, Water Code, by adding Section 11.1423 as an exception to Section 11.121, Water Code. Makes nonsubstantive changes.

SECTION 3. Amends Section 11.1311, Water Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the Texas Water Development Board (TWDB) to transfer interests in a permit issued under Subsection (a) (relating to permitting for reservoir projects), rather than this section, to a municipality, river authority, other political subdivision, or water supply corporation organized under Chapter 67 (Nonprofit Water Supply or Sewer Service Corporations) as otherwise provided by law.

(b-1) Defines "marine seawater." Requires the Texas Natural Resource Conservation Commission (TNRCC) to issue without a hearing a permit to use the bed and banks of any flowing natural stream in the state to convey marine seawater on submission of an application to TNRCC. Requires TNRCC to adopt rules to implement a procedure for application for a permit to convey marine seawater consistent with this subsection. Provides that a flowing natural stream does not include impounded water. Requires TNRCC to provide notice and an opportunity for hearing for an application for a permit to convey marine seawater into or through a lake, reservoir, or other impoundment.

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 "marine seawater" and "water supply entity."

(b) Authorizes a water supply entity to use for any beneficial purpose state water that consists of marine seawater, without obtaining a permit.

(c) 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).

(d) 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)(5), Water Code, by adding Subsection (J), requiring each regional water planning group to submit to the TWDB a regional water plan that includes but is not limited to consideration of the opportunities for and the benefits of developing large-scale desalination facilities for marine seawater that serve local or regional entities.

SECTION 6. Repealer: Section 16.060 (Desalination Studies and Research), Water Code.

SECTION 7. Amends Subtitle C, Title 2, Water Code, by adding Chapter 14, as follows:

CHAPTER 14. MARINE SEAWATER DESALINATION PROJECTS AND INTEGRATED MARINE SEAWATER DESALINATION AND POWER PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 14.001. DEFINITIONS. Defines "board," "commission," "ERCOT," "GLO," "political subdivision," "project," "PUC," "School Land Board," and "TPWD."

SUBCHAPTER B. POWERS AND DUTIES

Sec. 14.021 POWERS AND DUTIES OF THE BOARD. Provides that the Texas Commission on Environmental Quality (TCEQ) has general jurisdiction over the state financial assistance of projects to produce water supplies from marine seawater desalination, integrated marine seawater desalination and power projects, and facilities for the storage, conveyance, and delivery of water.

Sec. 14.022 POWERS AND DUTIES OF THE COMMISSION. (a) Provides that TCEQ has general jurisdiction over the permitting of projects to produce water supplies from marine seawater desalination, integrated marine seawater desalination and power projects, and facilities for the storage, conveyance, and delivery of water.

(b) Requires TCEQ to consult with the GLO, the School Land Board, TWDB, the TPWD, the PUC, and ERCOT, over all aspects of any project or facilities within the scope of subsection (a) that also fall within the general jurisdiction of each of those agencies.

Sec. 14.023 POWERS OF CERTAIN POLITICAL SUBDIVISIONS. Authorizes a political subdivision that has a defined territory extending to the Gulf of Mexico to own all or any interest in a project or facilities within the scope of subsection (a) of section 14.021, and to sell water produced and power generated from such project.

SUBCHAPTER C. RIGHTS AND AUTHORIZATIONS

Sec. 14.031 GRANT OF WATER RIGHT TO CERTAIN POLITICAL SUBDIVISIONS. (a) Provides that the political subdivision is hereby granted the right to divert marine seawater from the Gulf of Mexico at one or more points of diversion along the Texas coast, to desalinate such water and supply and use the desalinated water within the state for all beneficial uses, and to return the concentrated saline water resulting from the desalination process to the Gulf of Mexico at one or more points of return.

(b) Provides that the political subdivision is also granted the right to use marine seawater diverted from the Gulf of Mexico via a desalination project's intake facilities for power plant cooling or any other beneficial use before the marine seawater is desalinated, and then to either desalinate the unconsumed marine seawater or return the unconsumed marine seawater to the Gulf of Mexico via the project's return facilities.

(c) Provides that there are no limitations on the number of points of diversion or the rate of diversion at any point of diversion. Provides that there are no limitations on the number of points of return or the rate of return.

(d) Authorizes the political subdivision to assign the rights granted to it under this section to any project to produce water supplies from marine seawater desalination or any integrated marine seawater desalination and power project, or to the owner(s) or operator(s) of such project.

Sec. 14.032 APPROVALS OF GLO AND SCHOOL LAND BOARD REQUIRED. Requires the political subdivision first to obtain the General Land Office's (GLO) and the School Land Board's approvals of the locations of the points of intake and return and plans and specifications for facilities located on state lands before construction of any intake or return facilities may commence. Provides that the GLO's and the School Land Board's review and approval processes are not subject to the requirements relating to a contested case hearing under any statute or rule including, without limitation, the provisions of this chapter or other chapter of the Water Code, Chapter 33 (Management of Coastal Public Land), Natural Resources Code, or Subchapters C-G, Chapter 2001 (Administrative Procedure), Government Code.

SUBCHAPTER D. EXPEDITED AND STREAMLINED PERMITTING

Sec. 14.041 DIRECTION TO PERMITTING AUTHORITIES. (a) Provides that this section applies to all applications for permits or other authorizations, and all applications or requests for contracts, leases, easements, or grants of interests in property, needed from any state or local governmental authority for any project and facilities within the scope of subsection (a) of section 14.021. Provides that such applications and requests include, but are not limited to, all applications to TCEQ for permits or authorizations to discharge under Chapter 26 (Water Quality Control), Water Code, all applications to TCEQ for permits or authorizations under the Texas Clean Air Act, Chapter 382 (Clean Air Act), Health and Safety Code, and all applications to the School Land Board to acquire rights in coastal public land under Chapter 33, Natural Resources Code.

(b) Provides that all governmental authorities are directed to expedite and streamline to the extent possible the processing of and action on all applications and requests.

(c) Prohibits a governmental authority's processing of and action on any application for a permit or other authorization or any application or request for a contract, lease, easement, or grant of interest in property from being subject to the requirements relating to a contested case hearing under any statute or rule including, without limitation, the provisions of this chapter or other chapter of the

Water Code, Chapter 33, Natural Resources Code, or Subchapters C-G, Chapter 2001, Government Code.

SECTION 8. Amends Section 341.001, Health and Safety Code, by adding Subdivisions (1-a) and (2-a), to define "desalination facility" and "marine seawater."

SECTION 9. Amends Subchapter C, Chapter 341, Health and Safety Code, by adding Section 341.0359, as follows:

Sec. 341.0359. 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 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:

(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) data 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 10. EFFECTIVE DATE OF THIS ACT. Effective date: upon passage or September 1, 2015.