

AN ACT

relating to seawater desalination projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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 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

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

6 SECTION 3. Section 11.121, Water Code, is amended to read as
7 follows:

8 Sec. 11.121. PERMIT REQUIRED. Except as provided in
9 Sections 11.1405, 11.142, 11.1421, and 11.1422 [~~of this code~~], no
10 person may appropriate any state water or begin construction of any
11 work designed for the storage, taking, or diversion of water
12 without first obtaining a permit from the commission to make the
13 appropriation.

14 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended
15 by adding Section 11.1405 to read as follows:

16 Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR
17 INDUSTRIAL PURPOSES. (a) The commission may issue a permit under
18 this section to authorize a diversion of state water from the Gulf
19 of Mexico or a bay or arm of the Gulf of Mexico for desalination and
20 use for industrial purposes if:

21 (1) the point of diversion is located less than three
22 miles seaward of any point located on the coast of this state; or

23 (2) the seawater contains a total dissolved solids
24 concentration based on a yearly average of samples taken monthly at
25 the water source of less than 20,000 milligrams per liter.

26 (b) A person may divert state water from the Gulf of Mexico
27 or a bay or arm of the Gulf of Mexico for desalination and use for

1 industrial purposes without obtaining a permit if Subsection (a)
2 does not apply.

3 (c) A person who diverts and uses state water that consists
4 of marine seawater under a permit issued under Subsection (a) or as
5 authorized by Subsection (b) must determine the total dissolved
6 solids concentration of the seawater at the water source by monthly
7 sampling and analysis and provide the data collected to the
8 commission. A person may not begin construction of a facility for
9 the diversion of marine seawater for the purposes provided by this
10 section without obtaining a permit until the person has provided
11 data to the commission based on the analysis of samples taken at the
12 water source over a period of at least one year demonstrating that
13 Subsection (a)(2) does not apply. A person who has begun
14 construction of a facility for the diversion of marine seawater for
15 the purposes provided by this section without obtaining a permit
16 because the person has demonstrated that Subsection (a)(2) does not
17 apply is not required to obtain a permit for the facility if the
18 total dissolved solids concentration of the seawater at the water
19 source subsequently changes so that Subsection (a)(2) applies.

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

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

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

27 (g) The commission may include any provision in a permit

1 issued under this section that the commission considers necessary
2 to comply with the environmental flow standards established under
3 Section 11.1471.

4 (h) The commission shall adopt rules providing an expedited
5 procedure for acting on an application for a permit under
6 Subsection (a). The rules must provide for notice, an opportunity
7 for the submission of written comment, and an opportunity for a
8 contested case hearing regarding commission actions relating to an
9 application for a permit.

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

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

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

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

27 (d) The commission may issue individual permits or a general

1 permit under this section. If the commission elects to issue
2 individual permits under this section, the commission must
3 establish procedures for the review of an application that, at a
4 minimum, comply with the requirements of Subchapter M, Chapter 5.
5 If the commission elects to issue a general permit under this
6 section, the commission must comply with the requirements of
7 Section 26.040.

8 SECTION 6. Section 27.021, Water Code, is amended by adding
9 Subsection (a-1) to read as follows:

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

13 SECTION 7. Section 27.025, Water Code, is amended by adding
14 Subsection (a-1) to read as follows:

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

21 SECTION 8. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 4097 was passed by the House on May 11, 2015, by the following vote: Yeas 137, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4097 on May 26, 2015, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 4097 was passed by the Senate, with amendments, on May 23, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor