

By: Ellis

S.B. No. 128

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for certain investments made in relation to sustainable commercial building projects.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. TAX CREDIT FOR INVESTMENTS IN SUSTAINABLE COMMERCIAL BUILDING PROJECTS

Sec. 171.901. DEFINITIONS. In this subchapter:

(1) "Commercial building" means a building that will be used in connection with a trade or business.

(2) "Commercial building project" means:

(A) the construction of a new commercial building;

(B) a renovation of an existing commercial building that:

(i) provides additional square footage;

(ii) changes the functional use of the building; or

(iii) begins not later than the 180th day after the date the ownership of the building changes; or

(C) a major renovation of at least 50 percent of the square footage of a commercial building that involves a change in at least three of the building's systems, including the

1 building's envelope, space conditioning, lighting, or water
2 heating and process.

3 (3) "Sustainable commercial building project" means a
4 commercial building project that is designed and implemented so
5 that the commercial building or the renovated portion of the
6 commercial building achieves certification under a
7 high-performance building standard that:

8 (A) is developed and revised through a
9 consensus-based process;

10 (B) provides minimum requirements for energy
11 use, natural resources use, and indoor air quality;

12 (C) requires substantiating documentation for
13 certification;

14 (D) employs third-party, postconstruction or
15 postrenovation review and verification for certification; and

16 (E) is determined by the state energy
17 conservation office to be nationally recognized in the building
18 industry.

19 Sec. 171.902. ENTITLEMENT TO CREDIT. A taxable entity is
20 entitled to a credit in the amount and under the conditions and
21 limitations provided by this subchapter against the tax imposed
22 under this chapter.

23 Sec. 171.903. QUALIFICATION. Except as provided by Section
24 171.905, a taxable entity qualifies for a credit under this
25 subchapter only if:

26 (1) the taxable entity completes a sustainable
27 commercial building project to construct or renovate a commercial

building in this state that the taxable entity owns or has
contracted to purchase; and

(2) the commercial building or the renovated portion
of the commercial building to which the credit relates receives the
appropriate certification before the original due date of the first
report on which the taxable entity may claim the credit under
Section 171.904(c) or (d).

Sec. 171.904. AMOUNT; LIMITATIONS. (a) The amount of a
credit under this subchapter is equal to 35 percent of an amount
equal to the sum of:

(1) \$10 per square foot for the first 10,000 square
feet added or affected by the sustainable commercial building
project;

(2) \$5 per square foot for the next 40,000 square feet
added or affected by the sustainable commercial building project;
and

(3) \$2 per square foot for any additional square feet
added or affected by the sustainable commercial building project.

(b) In determining the square footage that may be included
under Subsection (a), a taxable entity:

(1) may include:

(A) temperature-conditioned floor areas; and

(B) the ground-level footprint areas of parking
structures or parking structure elements of the building; and

(2) may not include:

(A) exterior square footage under overhangs,
awnings, or canopies; or

1 (B) walkways or unconditioned plaza areas
2 beneath a temperature-conditioned portion of the building.

3 (c) Except as provided by Subsection (d), a taxable entity
4 must claim a credit under this subchapter over five consecutive
5 reporting periods beginning with the report based on the period
6 during which the sustainable commercial building project to which
7 the credit relates was completed. The amount of the credit a
8 taxable entity may claim on a report is equal to:

9 (1) on the first two reports for which the taxable
10 entity may claim the credit, 35 percent of the total amount of the
11 credit; and

12 (2) on the last three reports on which the taxable
13 entity may claim the credit, 10 percent of the total amount of the
14 credit.

15 (d) A taxable entity may claim the entire amount of the
16 credit on the report based on the period during which the
17 sustainable commercial building project to which the credit relates
18 was completed if the sum of the amounts determined under
19 Subsections (a)(1)-(3) does not exceed \$20,000.

20 (e) The total credit claimed under this subchapter for a
21 report may not exceed the amount of franchise tax due after any
22 other applicable credits.

23 (f) A taxable entity may not carry any unused credit forward
24 to a subsequent report.

25 Sec. 171.905. SALE OF TAX CREDIT. (a) An entity that is not
26 a taxable entity accrues a credit under this subchapter if the
27 entity completes a sustainable commercial building project to

1 construct or renovate a commercial building in this state that the
2 entity owns or has contracted to purchase.

3 (b) An entity that accrues a credit under this section may
4 sell the rights to the credit to one or more taxable entities. A
5 taxable entity must purchase the rights with a lump-sum cash
6 payment after the date the entity accrues the credit but before the
7 original due date of the first report on which the taxable entity
8 may claim the credit under Section 171.904(c) or (d). The total
9 compensation an entity receives for the rights to a credit must be
10 at least equal to:

11 (1) 25.5 percent of the sum of the amounts determined
12 under Sections 171.904(a)(1)-(3) if the sum is equal to more than
13 \$20,000; or

14 (2) 30.5 percent of the sum of the amounts determined
15 under Sections 171.904(a)(1)-(3) if the sum is equal to not more
16 than \$20,000 and each taxable entity purchasing the rights intends
17 to claim the entire amount of the purchased credit on only one
18 report.

19 (c) An entity that sells the rights to an accrued credit to
20 more than one taxable entity may divide those rights in any manner
21 the entity believes is appropriate provided that:

22 (1) the entity sells the rights to the entire credit;
23 and

24 (2) the entity receives total compensation for that
25 credit that is at least equal to the appropriate amount required
26 under Subsection (b).

27 Sec. 171.906. CERTIFICATION OF ELIGIBILITY. (a) For the

1 initial and each succeeding report on which a credit is claimed
2 under this subchapter, the taxable entity must file with its
3 report, on a form prescribed by the comptroller, information that
4 sufficiently demonstrates that the taxable entity is eligible for
5 the credit. If the taxable entity purchases the rights to a credit
6 under Section 171.905, the taxable entity must also file
7 information that sufficiently demonstrates that the entity that
8 sold the credit was eligible for the credit.

9 (b) The burden of establishing eligibility for, entitlement
10 to, and the value of the credit is on the taxable entity.

11 Sec. 171.907. ASSIGNMENT PROHIBITED. A taxable entity may
12 not convey, assign, or transfer the credit allowed under this
13 subchapter to another entity unless all of the assets of the taxable
14 entity are conveyed, assigned, or transferred.

15 SECTION 2. This Act applies only to a report originally due
16 on or after the effective date of this Act.

17 SECTION 3. This Act takes effect January 1, 2010.