

BILL ANALYSIS

C.S.H.B. 1712
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the Texas Constitution authorizes property tax exemptions for pollution control equipment, but that current enabling law was written before the development of certain subsea well containment equipment and the enactment of federal subsea pollution control rules. There are also concerns that the law may not cover equipment held by an entity that has shared ownership, allowing access to the equipment for multiple parties. Interested parties contend that establishing property and sales tax exemptions for property used in connection with an offshore spill response containment system may entice a consortium created by certain offshore drilling companies to locate its equipment and operations in Texas. C.S.H.B. 1712 seeks to bring jobs to Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1712 amends the Tax Code to entitle a person who is an entity formed primarily for the purpose of designing, developing, modifying, enhancing, assembling, operating, deploying, and maintaining an offshore spill response containment system to an exemption from taxation of the personal property the person owns or leases that is used, constructed, acquired, stored, or installed in Texas after January 1, 2013, solely as part of an offshore spill response containment system, or that is used solely for the development, improvement, storage, deployment, repair, maintenance, or testing of such a system. The bill requires the system, in order to qualify for the exemption, to be stored while not in use in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico. The bill establishes that such property that is not used for any other purpose is considered to be property used wholly as an integral part of mobile or marine drilling equipment designed for offshore drilling of oil or gas wells. The bill prohibits a person from qualifying for the exemption by providing services to or for an offshore spill response containment system that the person does not own or lease. The bill adds the exemption to the tax exemptions that need not be claimed in subsequent years once allowed and, except as otherwise provided, that are applicable to the property until it changes ownership or the person's qualification for the exemption changes.

C.S.H.B. 1712 exempts from the sales and use tax the sale, lease, rental, storage, use, or other consumption by an applicable entity of offshore spill response containment property used solely for the purposes described by the bill and also exempts from the tax a service performed exclusively on offshore spill response containment property.

C.S.H.B. 1712 establishes that the personal property and sales and use tax exemptions do not apply to an item used, wholly or partly, for the exploration for or production of oil, gas, sulfur, or other minerals, including the equipment, piping, casing, and other components of an oil or gas well. The bill establishes that the offshore capture of fugitive oil, gas, sulfur, or other minerals

that is entirely incidental to the item's temporary use as an offshore spill response containment system is not considered to be production of those substances.

C.S.H.B. 1712 defines "offshore spill response containment system" as a marine or mobile containment system that is designed and used or intended to be used solely to implement a response plan that meets or exceeds rules or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision thereof for the control, reduction, or monitoring of air, water, or land pollution in the event of a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas; that has a design capability to respond to a blowout or loss of control of such an offshore well drilled or used for the exploration for or production of oil or gas that is drilled in more than 5,000 feet of water; that is used or intended to be used solely to respond to a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas without regard to the depth of the water in which the well is drilled; and that, except for any monitoring function for which the system may be used, is used or intended to be used as a temporary measure to address fugitive oil, gas, sulfur, or other minerals after a leak has occurred and is not used or intended to be used after the leak has been contained as a continuing means of producing those or other minerals.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1712 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 11.31, Tax Code, is amended by amending Subsections (a), (b), (c), (d), and (m) and adding Subsections (o) and (p) to read as follows:

(a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution, except as provided in Subsection (o). Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.

(b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision, but see SECTION 1 below.

January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution and includes property described in Subsection (o). In this section, "pollution control property" includes property described in Subsection (o). This section does not apply to a motor vehicle.

(c) In applying for an exemption under this section, a person seeking the exemption shall present in a permit application or permit exemption request to the executive director of the Texas Commission on Environmental Quality information detailing:

- (1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;
- (2) the estimated cost of the pollution control facility, device, or method; and
- (3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control.

If the installation includes property that is not used wholly for the control of air, water, or land pollution or described in Subsection (o), the person seeking the exemption shall also present such financial or other data as the executive director requires by rule for the determination of the proportion of the installation that is pollution control.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Commission on Environmental Quality shall determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. As soon as practicable, the executive director shall send notice by regular mail or by electronic means to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a determination under this

subsection. The executive director shall issue a letter to the person stating the executive director's determination of whether the facility, device, or method is used wholly or partly to control pollution or as property described in Subsection (o) and, if applicable, the proportion of the property that is pollution control property. The executive director shall send a copy of the letter by regular mail or by electronic means to the chief appraiser of the appraisal district for the county in which the property is located.

(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k) or property described in Subsection (o), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

(o) Notwithstanding any other provision in this section, a person is entitled to an exemption from taxation of all or part of real and personal property that the person owns or leases and that is used, constructed, acquired, stored, or installed primarily as part of an offshore spill response containment system. For purposes of this section, property described in this subsection shall be treated as used wholly as a facility, device, or method for the control of air, water, or land pollution.

(p) In Subsection (o):

(1) "Offshore spill response containment system" means:

(A) a containment system:

(i) for a response plan to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political

subdivision of this state for the control, reduction, or monitoring of air, water, or land pollution in the event of a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil, gas, sulphur or other minerals; and

(ii) having a design capability to respond to a blowout or loss of control of such an offshore well drilled in more than 5,000 feet of water; and

(B) real and personal property used for the development, improvement, storage, deployment, repair, maintenance, or testing of such containment system.

(2) "Environmental protection agency of the United States" includes:

(A) the United States Department of the Interior and agencies, bureaus, or other entities established in the United States Department of the Interior, including the Bureau of Safety and Environmental Enforcement and the Bureau of Ocean Energy Management; and

(B) any other department, agency, bureau, or entity of the United States that prescribes rules or regulations described by Subsection (p)(1)(A)(i).

(3) "Rules or regulations adopted by any environmental protection agency of the United States" include Title 30, Code of Federal Regulations, Part 254, and any corresponding provision or provisions of succeeding, similar, substitute, proposed, or final federal regulations.

No equivalent provision, but see SECTION 1 above.

SECTION 1. Section 11.271, Tax Code, is amended to read as follows:

Sec. 11.271. OFFSHORE DRILLING EQUIPMENT NOT IN USE. (a) In this section:

(1) "Environmental protection agency of the United States" includes:

(A) the United States Department of the Interior and any agency, bureau, or other entity established in that department, including the Bureau of Safety and Environmental Enforcement and the Bureau of Ocean Energy Management, Regulation and Enforcement; and

(B) any other department, agency, bureau, or entity of the United States that prescribes rules or regulations described by Subdivision (2)(A).

(2) "Offshore spill response containment system" means a marine or mobile

containment system that:

(A) is designed and used or intended to be used solely to implement a response plan that meets or exceeds rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the control, reduction, or monitoring of air, water, or land pollution in the event of a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas;

(B) has a design capability to respond to a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas that is drilled in more than 5,000 feet of water;

(C) is used or intended to be used solely to respond to a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas without regard to the depth of the water in which the well is drilled; and

(D) except for any monitoring function for which the system may be used, is used or intended to be used as a temporary measure to address fugitive oil, gas, sulfur, or other minerals after a leak has occurred and is not used or intended to be used after the leak has been contained as a continuing means of producing oil, gas, sulfur, or other minerals.

(3) "Rules or regulations adopted by any environmental protection agency of the United States" includes 30 C.F.R. Part 254 and any corresponding provision or provisions of succeeding, similar, substitute, proposed, or final federal regulations.

(b) An owner or lessee of a marine or mobile drilling unit designed for offshore drilling of oil or gas wells is entitled to an exemption from taxation of the drilling unit if the drilling unit:

(1) is being stored in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico;

(2) is not being stored for the sole purpose of repair or maintenance; and

(3) is not being used to drill a well at the location at which it is being stored.

(c) A person is entitled to an exemption from taxation of the personal property the person owns or leases that is used, constructed, acquired, stored, or installed solely as part of an offshore spill response

containment system, or that is used solely for the development, improvement, storage, deployment, repair, maintenance, or testing of such a system, if the system is being stored while not in use in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico. Property described by this subsection and not used for any other purpose is considered to be property used wholly as an integral part of mobile or marine drilling equipment designed for offshore drilling of oil or gas wells.

(d) Subsection (c) does not apply to personal property used, wholly or partly, for the exploration for or production of oil, gas, sulfur, or other minerals, including the equipment, piping, casing, and other components of an oil or gas well. For purposes of this subsection, the offshore capture of fugitive oil, gas, sulfur, or other minerals that is entirely incidental to the property's temporary use as an offshore spill response containment system is not considered to be production of those substances.

(e) Subsection (c) does not apply to personal property that was used, constructed, acquired, stored, or installed in this state on or before January 1, 2013.

(f) To qualify for an exemption under Subsection (c), the person owning or leasing the property must be an entity formed primarily for the purpose of designing, developing, modifying, enhancing, assembling, operating, deploying, and maintaining an offshore spill response containment system. A person may not qualify for the exemption by providing services to or for an offshore spill response containment system that the person does not own or lease.

No equivalent provision.

SECTION 2. Section 11.43(c), Tax Code, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.131, 11.17, 11.18, 11.182, 11.1827, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), (j), or (j-1), 11.231, 11.254, 11.271, 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption

SECTION 2. Chapter 151, Tax Code, is amended by adding Section 151.356 to read as follows:

Sec. 151.356 OFFSHORE SPILL RESPONSE AND WELL CONTAINMENT PROPERTY.

(a) A person described in Section 11.31(o), Tax Code, is entitled to an exemption from the taxes imposed by this chapter for the purchase, sale, lease, rental, storage, use or consumption of property described in Section 11.31(o), Tax Code.

(b) A service performed on property described in Section 11.31(o), Tax Code, is exempted from the taxes imposed by this chapter.

No equivalent provision.

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changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

SECTION 3. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.356 to read as follows:

Sec. 151.356. OFFSHORE SPILL RESPONSE CONTAINMENT PROPERTY. (a) In this section, "offshore spill response containment property" means

tangible personal property:

(1) described by Section 11.271(c);

(2) owned or leased by an entity described by Section 11.271(f); and

(3) used or intended to be used solely in an offshore spill response containment system as defined by Section 11.271(a).

(b) This section does not apply to an item used, wholly or partly, for the exploration for or production of oil, gas, sulfur, or other minerals, including the equipment, piping, casing, and other components of an oil or gas well. For purposes of this subsection, the offshore capture of fugitive oil, gas, sulfur, or other minerals that is entirely incidental to the item's temporary use as an offshore spill response containment system is not considered to be production of those substances.

(c) The sale, lease, rental, storage, use, or other consumption by an entity described by Section 11.271(f) of offshore spill response containment property used solely for the purposes described by Section 11.271(c) and this section is exempted from the taxes imposed by this chapter.

(d) A service performed exclusively on offshore spill response containment property is exempted from the taxes imposed by this chapter.

SECTION 4. Section 11.271, Tax Code, as amended by this Act, applies only to an ad valorem tax year that begins on or after the effective date of this Act.

SECTION 5. Section 151.356, Tax Code, as added by this Act, does not affect tax

liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 6. Same as introduced version.