

By: Smith

H.B. No. 2746

A BILL TO BE ENTITLED

AN ACT

relating to the treatment for ad valorem tax purposes of pollution control property.

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

SECTION 1. Section 11.31, Tax Code, is amended by amending Subsections (a), (b), (c), (d), (g), (k), and (m) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a) A person is entitled to an exemption from taxation of all ~~[or part]~~ of the 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, subject to Section 23.27. 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. 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:

(1) "Facility [~~,"facility]~~, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or

1 improvement of that property, that is used, constructed, acquired,
2 or installed wholly or partly to meet or exceed rules or regulations
3 adopted by any environmental protection agency of the United
4 States, this state, or a political subdivision of this state for the
5 prevention, monitoring, control, or reduction of air, water, or
6 land pollution.

7 (2) "Pollution control" or a similar term includes the
8 prevention, monitoring, or reduction of pollution.

9 (b-1) This section does not apply to a motor vehicle.

10 (b-2) The circumstances in which property is considered to
11 be used, constructed, acquired, or installed wholly or partly to
12 meet or exceed rules or regulations described by Subsection (b)
13 include circumstances in which:

14 (1) the property is used as part of a voluntary project
15 or otherwise to meet or exceed a goal, target, or general standard
16 set by a rule or regulation described by that subsection; or

17 (2) the property is used to meet or exceed a rule or
18 regulation described by that subsection that has been adopted but
19 does not apply to the property because of:

20 (A) the date the property is installed;

21 (B) the manner in which the property is used; or

22 (C) the fact that the installation of the
23 property reduces or prevents pollution in a manner that prevents
24 the rule or regulation from applying to the property.

25 (b-3) For property to qualify for an exemption from taxation
26 under this section, the control of air, water, or land pollution
27 resulting from the use of the property must result from the use of

1 the property by the person seeking the exemption and not from the
2 characteristics of the goods produced or services provided by the
3 person or the use of those goods or services by another person.

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

8 (1) the anticipated environmental benefits from the
9 installation of the facility, device, or method for the control of
10 air, water, or land pollution;

11 (2) the estimated cost of the pollution control
12 facility, device, or method; and

13 (3) the purpose of the installation of such facility,
14 device, or method~~[, and the proportion of the installation that is~~
15 ~~pollution control property].~~

16 ~~[If the installation includes property that is not used~~
17 ~~wholly for the control of air, water, or land pollution, the person~~
18 ~~seeking the exemption shall also present such financial or other~~
19 ~~data as the executive director requires by rule for the~~
20 ~~determination of the proportion of the installation that is~~
21 ~~pollution control property.]~~

22 (d) Following submission of the information required by
23 Subsection (c), the executive director of the Texas Commission on
24 Environmental Quality shall determine if the facility, device, or
25 method is used wholly or partly as a facility, device, or method for
26 the control of air, water, or land pollution. As soon as
27 practicable, the executive director shall send notice by regular

1 mail or by electronic means to the chief appraiser of the appraisal
2 district for the county in which the property is located that the
3 person has applied for a determination under this subsection. The
4 executive director shall issue a letter to the person stating the
5 executive director's determination of whether the facility,
6 device, or method is used wholly or partly to control pollution
7 ~~[and, if applicable, the proportion of the property that is~~
8 ~~pollution control property]~~. The executive director shall send a
9 copy of the letter by regular mail or by electronic means to the
10 chief appraiser of the appraisal district for the county in which
11 the property is located.

12 (g) The commission shall adopt rules to implement this
13 section. Rules adopted under this section must:

14 (1) establish specific standards for considering
15 applications for determinations, including standards for
16 determining whether a facility or device is used as a facility,
17 device, or method for the control of air, water, or land pollution;
18 and

19 (2) be sufficiently specific to ensure that
20 determinations are equal and uniform~~, and~~

21 ~~[(3) allow for determinations that distinguish the~~
22 ~~proportion of property that is used to control, monitor, prevent,~~
23 ~~or reduce pollution from the proportion of property that is used to~~
24 ~~produce goods or services].~~

25 (k) The Texas Commission on Environmental Quality shall
26 adopt rules establishing a nonexclusive list of facilities,
27 devices, or methods that qualify as facilities, devices, or methods

1 for the control of air, water, or land pollution, which must
2 include:

- 3 (1) coal cleaning or refining facilities;
- 4 (2) atmospheric or pressurized and bubbling or
5 circulating fluidized bed combustion systems and gasification
6 fluidized bed combustion combined cycle systems;
- 7 (3) ultra-supercritical pulverized coal boilers;
- 8 (4) flue gas recirculation components;
- 9 (5) syngas purification systems and gas-cleanup
10 units;
- 11 (6) enhanced heat recovery systems;
- 12 (7) exhaust heat recovery boilers;
- 13 (8) heat recovery steam generators;
- 14 (9) superheaters and evaporators;
- 15 (10) [~~enhanced~~] steam turbine systems enhanced to
16 accommodate steam from heat recovery systems;
- 17 (11) methanation;
- 18 (12) coal combustion or gasification byproduct and
19 coproduct handling, storage, or treatment facilities;
- 20 (13) biomass cofiring storage, distribution, and
21 firing systems;
- 22 (14) coal cleaning or drying processes, such as coal
23 drying/moisture reduction, air jigging, precombustion
24 decarbonization, and coal flow balancing technology;
- 25 (15) oxy-fuel combustion technology, amine or chilled
26 ammonia scrubbing, fuel or emission conversion through the use of
27 catalysts, enhanced scrubbing technology, modified combustion

1 technology such as chemical looping, and cryogenic technology;

2 (16) so long as [~~if~~] the United States Environmental
3 Protection Agency regulates [~~adopts a final rule or regulation~~
4 ~~regulating~~] carbon dioxide as a pollutant or if any other
5 environmental protection agency of the United States, this state,
6 or a political subdivision of this state adopts a final rule or
7 regulation regulating carbon dioxide for that purpose, property
8 that is used, constructed, acquired, or installed wholly or partly
9 to:

10 (A) capture and sequester in this state carbon
11 dioxide from an anthropogenic source in this state; or

12 (B) [~~that is~~] geologically sequester carbon
13 dioxide captured from an anthropogenic source [~~sequestered in this~~
14 ~~state~~]; and

15 (17) fuel cells generating electricity using hydrogen
16 derived from coal, biomass, petroleum coke, or solid waste[~~, and~~

17 [~~(18) any other equipment designed to prevent,~~
18 ~~capture, abate, or monitor nitrogen oxides, volatile organic~~
19 ~~compounds, particulate matter, mercury, carbon monoxide, or any~~
20 ~~criteria pollutant~~].

21 (m) Notwithstanding the other provisions of this section,
22 if the executive director of the Texas Commission on Environmental
23 Quality confirms that the facility, device, or method for the
24 control of air, water, or land pollution described in an
25 application for an exemption under this section is a facility,
26 device, or method included on the list adopted under Subsection
27 (k), the executive director [~~of the Texas Commission on~~

1 ~~Environmental Quality~~], not later than the 30th day after the date
2 of receipt of the information required by Subsections (c)(2) and
3 (3) and without regard to whether the information required by
4 Subsection (c)(1) has been submitted, shall determine that the
5 facility, device, or method described in the application is used
6 wholly or partly as a facility, device, or method for the control of
7 air, water, or land pollution and shall take the actions that are
8 required by Subsection (d) to be taken in a case in which [~~the~~
9 ~~event~~] such a determination is made.

10 SECTION 2. Subchapter B, Chapter 23, Tax Code, is amended by
11 adding Section 23.27 to read as follows:

12 Sec. 23.27. APPRAISAL OF PROPERTY AT FACILITY WHERE
13 POLLUTION CONTROL PROPERTY IS INSTALLED. If the executive director
14 of the Texas Commission on Environmental Quality determines under
15 Section 11.31 that property is used wholly or partly to control
16 pollution, the chief appraiser:

17 (1) may evaluate whether the pollution control
18 property facilitates an increase in production of goods at the
19 facility or the sale of a marketable product at a profit in the
20 ordinary course of business of the facility; and

21 (2) may take any additional income resulting from the
22 facilitation by the pollution control property of the increase in
23 production or the sale of a marketable product described by
24 Subdivision (1) into account if the chief appraiser uses the income
25 method of appraisal to determine the market value of the facility.

26 SECTION 3. Not later than December 31, 2015, the Texas
27 Commission on Environmental Quality shall adopt rules as necessary

1 to implement the changes in law made to Section 11.31, Tax Code, by
2 this Act.

3 SECTION 4. Sections 11.31(b) and (m), Tax Code, as amended
4 by this Act, and Sections 11.31(b-1), (b-2), (b-3), and 23.27, Tax
5 Code, as added by this Act, are intended to clarify rather than
6 change existing law.

7 SECTION 5. Sections 11.31(a), (c), (d), (g), and (k), Tax
8 Code, as amended by this Act, apply only to ad valorem taxes imposed
9 for a tax year beginning on or after January 1, 2016.

10 SECTION 6. (a) Except as provided by Subsection (b) of this
11 section:

12 (1) this Act takes effect immediately if it receives a
13 vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution; and

15 (2) if this Act does not receive the vote necessary for
16 immediate effect, this Act takes effect September 1, 2015.

17 (b) Sections 11.31(a), (c), (d), (g), and (k), Tax Code, as
18 amended by this Act, take effect January 1, 2016.