

By: Darby

H.B. No. 2621

A BILL TO BE ENTITLED

AN ACT

relating to state and local tax incentives for certain enhanced oil recovery projects.

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

SECTION 1. Subtitle B, Title 3, Natural Resources Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. ENHANCED OIL RECOVERY REINVESTMENT ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.0001. DEFINITIONS. In this chapter:

(1) "Active operation" means the start and continuation of an injection program for a tertiary recovery project to enhance the displacement process in a reservoir.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Common source of supply" means a common reservoir as defined by Section 86.002.

(4) "Enhanced recovery reinvestment zone" means an enhanced recovery reinvestment zone designated by the commission under Subchapter B.

(5) "Operator" means the person responsible for the actual physical operation of a tertiary recovery project.

(6) "Payout" means the point at which all costs of leasing, exploring, drilling, and operating have been recovered from production of the field as defined by contract.

1 (7) "Positive production response" means that the rate
2 of oil production from the wells affected by a tertiary recovery
3 project is greater than the rate that would have occurred without
4 the project.

5 (8) "Tertiary recovery method" means a tertiary
6 recovery method listed in the federal June 1979 energy regulations
7 referred to in Section 4993, Internal Revenue Code of 1986, or
8 approved by the United States secretary of the treasury for
9 purposes of administering Section 4993, Internal Revenue Code of
10 1986, immediately before that section was repealed.

11 (9) "Tertiary recovery project" means the use of any
12 process for the displacement of oil from the earth using a tertiary
13 recovery method, including the use of an immiscible, miscible,
14 chemical, thermal, or biological process.

15 SUBCHAPTER B. DESIGNATION OF ENHANCED RECOVERY REINVESTMENT ZONE

16 Sec. 93.0051. ELIGIBILITY OF AREA FOR DESIGNATION AS
17 REINVESTMENT ZONE. An area is eligible to be designated as an
18 enhanced recovery reinvestment zone if:

19 (1) the area comprises a single field:

20 (A) identified through geologic studies on file
21 with the Bureau of Economic Geology or the United States Department
22 of Energy; and

23 (B) that encompasses a Cenozoic Era common source
24 of supply;

25 (2) a person is ready to begin active operations of a
26 tertiary recovery project in the area;

27 (3) the single field is projected to have a positive

1 production response as the result of active operations of the
2 tertiary recovery project not later than the second anniversary of
3 the date the commission designates the area as an enhanced recovery
4 reinvestment zone; and

5 (4) the designation of the area will be reasonably
6 likely to encourage development or redevelopment and improvement of
7 property in the reinvestment zone.

8 Sec. 93.0052. APPLICATION FOR DESIGNATION OF REINVESTMENT
9 ZONE, OPERATOR OF RECORD, AND TERTIARY RECOVERY PROJECT. (a) A
10 person may file an application with the commission requesting the
11 commission to designate:

12 (1) an area that meets the eligibility requirements of
13 Section 93.0051 as an enhanced recovery reinvestment zone;

14 (2) the person as the operator of record of the
15 tertiary recovery project for the reinvestment zone; and

16 (3) the tertiary recovery project located in the
17 reinvestment zone and operated by the person as the tertiary
18 recovery project for the reinvestment zone.

19 (b) The person must submit the application on a form
20 prescribed by the commission. The person must submit with the
21 application any information required by the commission to assist
22 the commission in making each designation described by Subsection
23 (a).

24 (c) The commission by rule shall prescribe the form of the
25 application described by this section.

26 Sec. 93.0053. DESIGNATION OF REINVESTMENT ZONE, OPERATOR OF
27 RECORD, AND TERTIARY RECOVERY PROJECT. (a) The commission by order

1 may designate:

2 (1) an area as an enhanced recovery reinvestment zone

3 if:

4 (A) a person files an application under Section
5 93.0052; and

6 (B) the commission finds that the area meets the
7 eligibility requirements prescribed by Section 93.0051;

8 (2) the person that submitted the application as the
9 operator of record of the tertiary recovery project for the
10 reinvestment zone; and

11 (3) the tertiary recovery project located in the
12 reinvestment zone and operated by the person as the tertiary
13 recovery project for the reinvestment zone.

14 (b) An order designating an area as an enhanced recovery
15 reinvestment zone must:

16 (1) make each designation described by Subsection (a);

17 (2) describe the boundaries of the reinvestment zone
18 with sufficient definiteness to identify with ordinary and
19 reasonable certainty the area included in the reinvestment zone;

20 (3) contain findings that:

21 (A) the designation of the reinvestment zone will
22 be reasonably likely to encourage development or redevelopment and
23 improvement of property in the reinvestment zone; and

24 (B) the area meets the eligibility requirements
25 prescribed by Section 93.0051; and

26 (4) include any other information the commission
27 considers necessary to administer the designations made under this

1 section.

2 (c) The commission may not issue an order under this section
3 until the commission has conducted a public hearing on the
4 designations at which members of the public are given the
5 opportunity to be heard.

6 Sec. 93.0054. TRANSFER OF DESIGNATION AS OPERATOR OF
7 RECORD. (a) The designation of a person as an operator of record
8 under Section 93.0053 may be transferred to another person only if
9 the transfer is approved by written order of the commission.

10 (b) If the commission approves the transfer of a designation
11 under this section, the commission must by order designate the
12 person to which the designation is transferred as the operator of
13 record for the applicable enhanced recovery reinvestment zone.

14 Sec. 93.0055. CERTIFICATION OF DESIGNATIONS TO
15 COMPTROLLER. (a) The commission shall certify to the comptroller
16 each designation made by the commission under Sections 93.0053 and
17 93.0054.

18 (b) The commission must make each certification to the
19 comptroller in writing not later than the seventh day after the date
20 the commission issues the order making the designation.

21 Sec. 93.0056. CENTRAL REGISTRY OF DESIGNATIONS. The
22 commission shall maintain a central registry that includes for each
23 enhanced recovery reinvestment zone designated by the commission:

24 (1) the name of the reinvestment zone;

25 (2) the name of the operator of record for the
26 reinvestment zone;

27 (3) the name of the tertiary recovery project for the

1 reinvestment zone;

2 (4) each political subdivision that has adopted a tax
3 benefit under Subchapter C that may be claimed by the operator of
4 record in the reinvestment zone; and

5 (5) any other information the commission considers
6 relevant and important.

7 Sec. 93.0057. EXPIRATION OF DESIGNATIONS. (a) Except as
8 provided by Subsection (b), a designation made by the commission
9 under Section 93.0053 or 93.0054 related to an enhanced recovery
10 reinvestment zone expires on the earlier of:

11 (1) the 10th anniversary of the date the commission
12 adopts the order designating the reinvestment zone; or

13 (2) the date that payout occurs regarding the field
14 located in the reinvestment zone.

15 (b) A designation of an operator of record that is
16 transferred as authorized by Section 93.0054 expires on the date
17 the commission adopts the order approving the transfer.

18 Sec. 93.0058. DESIGNATIONS DO NOT CONSTITUTE UNITIZATION.
19 The commission's designation of an enhanced recovery reinvestment
20 zone, operator of record for the reinvestment zone, or tertiary
21 recovery project for the reinvestment zone do not constitute
22 unitization of the field located in the reinvestment zone.

23 Sec. 93.0059. COMMISSION RULES. The commission shall adopt
24 rules necessary to implement and administer this subchapter. The
25 commission shall notify the comptroller of any rules adopted under
26 this section.

27 SUBCHAPTER C. TAX TREATMENT IN ENHANCED RECOVERY REINVESTMENT ZONE

1 Sec. 93.0101. LIMITATION ON APPRAISED VALUE OF ELIGIBLE
2 PROPERTY INTEREST. (a) In this section:

3 (1) "Eligible property interest" means a property
4 interest for which a person is entitled to a limitation on appraised
5 value under Subsection (b).

6 (2) "Eligible real property" means oil in place that
7 is part of the common source of supply of a tertiary recovery
8 project designated by the commission under Subchapter B.

9 (3) "Hold-harmless appraised value" means the
10 appraised value of the undivided or fractional interest in oil in
11 place in an area on January 1 of the tax year in which the area is
12 designated by the commission as an enhanced recovery reinvestment
13 zone and that is owned on that date by the person designated by the
14 commission as the first operator of record for the reinvestment
15 zone.

16 (4) "Property interest" means a person's undivided or
17 fractional interest in eligible real property.

18 (b) A person is entitled to receive from a political
19 subdivision a limitation on the appraised value of a property
20 interest owned by a person if:

21 (1) the person is designated by the commission under
22 Section 93.0053 or 93.0054 as the operator of record for an enhanced
23 recovery reinvestment zone;

24 (2) the property interest is an interest in eligible
25 real property located in the reinvestment zone; and

26 (3) the limitation is adopted by the governing body of
27 the political subdivision in the manner provided by law for

1 official action by the governing body.

2 (c) The amount of the limitation on appraised value that a
3 person is entitled to receive under Subsection (b) for a tax year is
4 the amount by which the appraised value of the eligible property
5 interest exceeds the hold-harmless appraised value applicable to
6 the enhanced recovery reinvestment zone.

7 (d) A person who is entitled to receive a limitation on
8 appraised value from a political subdivision is entitled to receive
9 the limitation for each tax year:

10 (1) beginning on or after:

11 (A) the date the commission designates the
12 applicable enhanced recovery reinvestment zone; or

13 (B) a date agreed to by the person and the
14 political subdivision after the date the commission designates the
15 applicable reinvestment zone; and

16 (2) ending on December 31 of the tax year in which the
17 reinvestment zone expires.

18 (e) The governing body of a political subdivision that
19 adopts a limitation on appraised value may not repeal the adoption
20 of the limitation until the date the applicable enhanced recovery
21 reinvestment zone expires.

22 (f) The governing body of a political subdivision may
23 require a person to enter into a written agreement with the
24 political subdivision before the political subdivision adopts a
25 limitation on appraised value of the person's property interest.
26 The agreement may include:

27 (1) a requirement that the limitation is conditioned

1 on a positive production response from the applicable tertiary
2 recovery project at a certain rate or after a certain date; and

3 (2) any other provision agreed to regarding the
4 limitation that is not inconsistent with a provision of this
5 chapter or other law.

6 (g) Not later than the 15th day after the date the governing
7 body of a political subdivision adopts a limitation on appraised
8 value, the governing body must notify the comptroller and the chief
9 appraiser of each appraisal district established in a county in
10 which both the applicable enhanced recovery reinvestment zone and
11 the political subdivision are located of the governing body's
12 adoption of the limitation. The governing body must include with
13 the notification any written agreement entered into under
14 Subsection (f).

15 Sec. 93.0102. SALES AND USE TAXES REFUND. (a) On or after
16 the second anniversary of the date an enhanced recovery
17 reinvestment zone is designated by the commission under Section
18 93.0053, a person may apply for a refund of the taxes imposed by
19 Chapter 151, Tax Code, on the sale or use of a taxable item if:

20 (1) the taxable item was sold to or used by a person
21 designated by the commission under Section 93.0053 or 93.0054 as
22 the operator of record for the reinvestment zone;

23 (2) the person claiming the refund is the current
24 operator of record designated by the commission for the
25 reinvestment zone;

26 (3) the sale or use occurs on or after the date the
27 commission designates the reinvestment zone and before the second

1 anniversary of that date;

2 (4) the taxable item was directly used or consumed
3 exclusively in the active operation of the tertiary recovery
4 project located in the reinvestment zone; and

5 (5) there was a positive production response as the
6 result of active operations of the tertiary recovery project before
7 the second anniversary of the date the commission designates the
8 reinvestment zone.

9 (b) A person is eligible for a refund of the taxes imposed by
10 a political subdivision under Subtitle C, Title 3, Tax Code, on the
11 sale or use of a taxable item if:

12 (1) the person is eligible for a refund of state taxes
13 in relation to the taxable item under Subsection (a); and

14 (2) the governing body of the political subdivision
15 authorizes the person to receive refunds of the political
16 subdivision's taxes in the manner provided by law for official
17 action by the governing body not later than the 30th day after the
18 date the commission designates the applicable enhanced recovery
19 reinvestment zone.

20 (c) The governing body of a political subdivision that
21 authorizes a refund of sales and use taxes under Subsection (b) may
22 not repeal the authorization.

23 (d) Not later than the 15th day after the date the governing
24 body of a political subdivision authorizes a refund of sales and use
25 taxes under Subsection (b), the governing body must notify the
26 comptroller in writing of the authorization.

27 (e) A person must apply to the comptroller to receive a

1 refund of state taxes under Subsection (a).

2 (f) The comptroller may require a person or political
3 subdivision to provide any information necessary to administer this
4 section, including a monthly accounting of the sales and use taxes
5 paid by the person that are eligible for a refund under this section
6 and proof that there has been a positive production response as
7 required by this section.

8 Sec. 93.0103. SALES AND USE TAXES EXEMPTION. (a) The sale
9 or use of a taxable item is exempt from the taxes imposed by Chapter
10 151, Tax Code, if:

11 (1) the taxable item is sold to or used by a person
12 designated by the commission under Section 93.0053 or 93.0054 as
13 the operator of record for an enhanced recovery reinvestment zone;

14 (2) the sale or use occurs on or after the second
15 anniversary of the date the commission designates the reinvestment
16 zone and before the date the reinvestment zone expires;

17 (3) the taxable item will be directly used or consumed
18 exclusively in the active operation of the tertiary recovery
19 project located in the reinvestment zone; and

20 (4) there was a positive production response on
21 average during the preceding three months as the result of active
22 operations of the tertiary recovery project.

23 (b) The sale or use of a taxable item is exempt from the
24 taxes imposed by a political subdivision under Subtitle C, Title 3,
25 Tax Code, if:

26 (1) the taxable item is exempt from state taxation
27 under Subsection (a); and

1 (2) the governing body of the political subdivision
2 authorizes the exemption in the manner provided by law for official
3 action by the governing body not later than the 30th day after the
4 date the commission designates the applicable enhanced recovery
5 reinvestment zone.

6 (c) The governing body of a political subdivision that
7 authorizes an exemption of sales and use taxes under Subsection (b)
8 may not repeal the authorization until the date the applicable
9 enhanced recovery reinvestment zone expires.

10 (d) Not later than the 15th day after the date the governing
11 body of a political subdivision authorizes an exemption of sales
12 and use taxes under Subsection (b), the governing body must notify
13 the comptroller in writing of the authorization.

14 Sec. 93.0104. OIL PRODUCTION TAX. (a) In this section:

15 (1) "Hold-harmless production rate" means the average
16 monthly volume of oil produced from a tertiary recovery project for
17 the three calendar months preceding the second anniversary of the
18 date the commission designated the project under this chapter.

19 (2) "Incremental production" means the volume of oil
20 produced from a tertiary recovery project in excess of the
21 applicable hold-harmless production rate.

22 (b) The incremental production of oil from a tertiary
23 recovery project designated by the commission under this chapter is
24 exempt from the taxes imposed under Chapter 202, Tax Code.

25 (c) The exemption authorized by this section applies only to
26 oil produced from the tertiary recovery project:

27 (1) on or after the second anniversary of the date the

1 commission designates the tertiary recovery project; and

2 (2) not later than the date the enhanced recovery
3 reinvestment zone in which the tertiary recovery project is located
4 expires.

5 Sec. 93.0105. OTHER TAX BENEFITS. This subchapter does not
6 limit the eligibility of a person for any other available tax
7 benefit.

8 Sec. 93.0106. REINVESTMENT OF TAX BENEFITS. (a) An
9 operator of record that receives a tax benefit under this
10 subchapter must invest an amount equal to the total taxes saved as a
11 result of receiving the tax benefits under this subchapter on:

12 (1) the development and operation of the applicable
13 tertiary recovery project; or

14 (2) the administration of the tertiary recovery
15 project, including negotiation with mineral, royalty, or working
16 interest owners.

17 (b) The operator of record responsible for making the
18 investment required by this section must invest the required
19 amount:

20 (1) on or after the date the applicable tertiary
21 recovery project is designated by the commission; and

22 (2) not later than the date the designation of the
23 tertiary recovery project expires.

24 (c) An operator of record that receives a tax benefit under
25 this subchapter must maintain a complete record of the taxes for
26 which the person would have been liable if the person had not been
27 entitled to the tax benefit.

1 Sec. 93.0107. PROVISION OF INFORMATION TO COMPTROLLER. An
2 operator of record designated under Section 93.0053 or 93.0054 must
3 provide to the comptroller in the time and manner required by the
4 comptroller any information necessary for the comptroller to
5 implement and administer this subchapter.

6 Sec. 93.0108. COMPTROLLER RULES. (a) The comptroller
7 shall adopt rules necessary to implement and administer this
8 subchapter.

9 (b) An appraisal district must comply with the requirements
10 of a rule adopted by the comptroller under this section that applies
11 to a limitation on the appraised value of property interest
12 authorized by Section 93.0101.

13 SECTION 2. A person may not file an application with the
14 Railroad Commission of Texas under Section 93.0052, Natural
15 Resources Code, as added by this Act, before January 1, 2018.

16 SECTION 3. The Railroad Commission of Texas shall adopt
17 rules necessary to implement and administer Subchapter B, Chapter
18 93, Natural Resources Code, as added by this Act, as soon as
19 practicable after the effective date of this Act but not later than
20 January 1, 2018.

21 SECTION 4. The Railroad Commission of Texas shall prescribe
22 the application form required by Section 93.0052, Natural Resources
23 Code, as added by this Act, as soon as practicable after the
24 effective date of this Act but not later than January 1, 2018.

25 SECTION 5. The comptroller of public accounts shall adopt
26 rules necessary to implement and administer Subchapter C, Chapter
27 93, Natural Resources Code, as added by this Act, as soon as

1 practicable after the effective date of this Act but not later than
2 January 1, 2018.

3 SECTION 6. The changes in law made by this Act do not affect
4 tax liability related to an enhanced recovery reinvestment zone, as
5 defined by Section 93.0001, Natural Resources Code, as added by
6 this Act, that occurs before the date the zone is designated under
7 Section 93.0053, Natural Resources Code, as added by this Act. That
8 liability continues in effect as if this Act had not been enacted,
9 and the former law is continued in effect for the collection of
10 taxes due and for civil and criminal enforcement of the liability
11 for those taxes.

12 SECTION 7. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2017.