

By: Guillen

H.B. No. 2545

A BILL TO BE ENTITLED

AN ACT

relating to franchise tax, oil production tax, and gas production tax incentives for certain desalination facility operations.

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

SECTION 1. Section 171.1011, Tax Code, is amended by adding Subsection (g-9) to read as follows:

(g-9) A taxable entity that is a permit holder shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), any amount received by the entity from the sale of minerals or materials extracted from water by the desalination facility during the desalination process. In this subsection, "desalination facility" and "permit holder" have the meanings assigned by Section 171.621. This subsection expires December 31, 2024.

SECTION 2. Chapter 171, Tax Code, is amended by adding Subchapter L-1 to read as follows:

SUBCHAPTER L-1. TAX CREDIT FOR OPERATION OF DESALINATION FACILITY

Sec. 171.621. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Desalination facility" means a facility that:

(A) treats source water under the jurisdiction of the commission or the Railroad Commission of Texas that has a high total dissolved solids concentration, such as water produced in oil

1 or gas drilling, completion, flowback, or production, to produce
2 fresh water of usable quality for public, agricultural, industrial,
3 environmental, and other beneficial uses; and

4 (B) begins initial operations on or after January
5 1, 2020.

6 (3) "Permit holder" means a person who operates a
7 desalination facility and has all state and federal permits
8 necessary to operate the facility.

9 Sec. 171.622. ELIGIBILITY FOR CREDIT. A permit holder that
10 is a taxable entity and that produces fresh water of usable quality
11 at a desalination facility is eligible for a credit in the amount
12 and under the conditions and limitations provided by this
13 subchapter against the tax imposed under this chapter.

14 Sec. 171.623. AMOUNT OF CREDIT; LIMITATIONS. (a) Except as
15 provided by Subsection (d), the total amount of the credit under
16 this subchapter for the period on which a report is based is equal
17 to:

18 (1) 50 cents for each 1,000 gallons of source water
19 treated by the permit holder during the period on which the report
20 is based if:

21 (A) the source water has a total dissolved solids
22 concentration of more than 5,000 milligrams per liter; and

23 (B) the resulting fresh water is put to
24 beneficial use in this state;

25 (2) \$1 for each 1,000 gallons of source water treated
26 by the permit holder during the period on which the report is based
27 if:

1 (A) at least 50 percent of the source water has a
2 total dissolved solids concentration of more than 30,000 milligrams
3 per liter; and

4 (B) the resulting fresh water is put to
5 beneficial use in this state;

6 (3) \$5 for each 1,000 gallons of source water treated
7 by the permit holder during the period on which the report is based
8 if:

9 (A) at least 50 percent of the source water has a
10 total dissolved solids concentration of more than 50,000 milligrams
11 per liter; and

12 (B) the resulting fresh water is put to
13 beneficial use in this state; and

14 (4) \$17 for each 1,000 gallons of source water treated
15 by the permit holder during the period on which the report is based
16 if:

17 (A) at least 50 percent of the source water has a
18 total dissolved solids concentration of more than 90,000 milligrams
19 per liter; and

20 (B) the resulting fresh water is put to
21 beneficial use in this state.

22 (b) The permit holder may treat source water with differing
23 total dissolved solids concentrations during the period on which
24 the report is based. The permit holder is entitled to prorate the
25 credit by the duration of processing time associated with each
26 concentration during the period.

27 (c) Treated water may be counted only once in determining

1 the amount of the credit. Only one permit holder may claim a credit
2 for the same treated water.

3 (d) The total credit claimed for a report, including the
4 amount of any carryforward under Section 171.624, may not exceed
5 the amount of franchise tax due for the report after all other
6 applicable tax credits.

7 Sec. 171.624. CARRYFORWARD. (a) If a permit holder is
8 eligible for a credit that exceeds the limitation under Section
9 171.623(d), the permit holder may carry the unused credit forward
10 for not more than five consecutive reports.

11 (b) A carryforward is considered the remaining portion of a
12 credit that cannot be claimed in the current year because of the
13 limitation under Section 171.623(d). A carryforward is added to
14 the next year's installment of the credit in determining the
15 limitation for that year. A credit carryforward from a previous
16 report is considered to be used before the current year
17 installment.

18 Sec. 171.625. APPLICATION. (a) A permit holder must apply
19 for a credit under this subchapter on or with the report for the
20 period for which the credit is claimed.

21 (b) A permit holder shall file with a report on which the
22 credit is claimed a copy of each relevant certificate issued by the
23 commission under Section 171.626 and any other information required
24 by the comptroller to sufficiently demonstrate that the permit
25 holder is eligible for the credit and the amount of the credit.

26 (c) The burden of establishing eligibility for and the
27 amount of the credit is on the permit holder.

1 Sec. 171.626. MONTHLY STATEMENT; CERTIFICATION. (a) To be
2 eligible for a credit under this subchapter, a permit holder must
3 submit to the commission monthly statements that include, for the
4 preceding month:

5 (1) the metered volume in gallons of source water
6 treated by the permit holder;

7 (2) the total dissolved solids concentration of the
8 source water, distinguished according to the concentrations
9 described by Section 171.623(a);

10 (3) the duration of processing time associated with
11 each concentration described by Section 171.623(a); and

12 (4) the total dissolved solids concentration of the
13 resulting fresh water.

14 (b) To be eligible for the credit under this subchapter, the
15 permit holder must apply to the commission for certification that:

16 (1) the permit holder has, during the reporting
17 period, treated source water in an amount and with a total dissolved
18 solids concentration that qualify for a credit under Section
19 171.623; and

20 (2) the resulting fresh water was put to beneficial
21 use in this state.

22 (c) The permit holder shall include with the certificate
23 application any information the commission determines is necessary
24 to certify eligibility for the credit and the amount of the credit,
25 including information sufficient to demonstrate that:

26 (1) the permit holder has all state and federal
27 permits necessary to operate the desalination facility; and

1 (2) the resulting fresh water was put to beneficial
2 use in this state.

3 (d) If the permit holder provides sufficient information
4 under this section, the commission shall issue a certificate of
5 eligibility to the permit holder.

6 (e) The commission shall immediately notify the comptroller
7 in writing if the commission:

8 (1) determines that a permit holder that previously
9 received a certificate under this section was not eligible for the
10 certified credit or is no longer eligible for the certified credit;
11 or

12 (2) takes any action or discovers any information that
13 affects the eligibility of the permit holder for a credit.

14 Sec. 171.627. SALE OR ASSIGNMENT OF CREDIT; USE OF SOLD OR
15 ASSIGNED CREDIT. (a) A permit holder that earns a credit under
16 this subchapter may sell or assign all or part of the credit, and
17 any entity to which all or part of the credit is sold or assigned may
18 sell or assign all or part of the credit to another entity. There is
19 no limit on the total number of transactions for the sale or
20 assignment of all or part of the total credit authorized under this
21 subchapter; however, collectively all transferred and retained
22 credits claimed for a period are subject to the maximum total
23 limitations provided by Subsection (b) and Section 171.623(d).

24 (b) Notwithstanding any other provision of this subchapter,
25 an entity to which a credit or part of a credit was sold or assigned
26 may apply all or part of that credit against the tax imposed by this
27 chapter or against the tax imposed by Chapter 201 or 202. The total

1 credit claimed against the tax imposed by Chapter 201 or 202 may not
2 exceed the amount of tax due for a report after all other applicable
3 tax credits, but the entity may carry any unused credit forward
4 until the credit is used.

5 (c) An entity that sells or assigns a credit under this
6 section and the entity to which the credit is sold or assigned shall
7 jointly submit written notice of the sale or assignment to the
8 comptroller on a form promulgated by the comptroller not later than
9 the 30th day after the date of the sale or assignment. The notice
10 must include:

11 (1) the date of the sale or assignment;
12 (2) the amount of the credit sold or assigned;
13 (3) the names and federal tax identification numbers
14 of the entity that sold or assigned the credit or part of the credit
15 and the entity to which the credit or part of the credit was sold or
16 assigned;

17 (4) the amount of the credit owned by the selling or
18 assigning entity before the sale or assignment, and the amount the
19 selling or assigning entity retained, if any, after the sale or
20 assignment; and

21 (5) for the entity to which the credit or part of the
22 credit was sold or assigned, each type of tax liability against
23 which the entity intends to apply all or part of the credit, and the
24 amount or percentage that the entity intends to apply against each
25 type.

26 (d) The sale or assignment of a credit in accordance with
27 this section does not extend the period for which a credit may be

1 carried forward and does not increase the total amount of the credit
2 that may be claimed.

3 (e) Notwithstanding the requirements of this subchapter, a
4 credit earned or purchased by, or assigned to, a partnership,
5 limited liability company, S corporation, or other pass-through
6 entity may be allocated to the partners, members, or shareholders
7 of that entity and claimed under this subchapter or Chapter 201 or
8 202 in accordance with the provisions of any agreement among the
9 partners, members, or shareholders and without regard to the
10 ownership interest of the partners, members, or shareholders in the
11 desalination facility operated by the permit holder who earned the
12 credit, provided that the entity that claims the credit must be
13 subject to the tax imposed under this chapter or Chapter 201 or 202.

14 Sec. 171.628. RULES. The comptroller and commission shall
15 adopt rules necessary to implement this subchapter.

16 Sec. 171.629. EXPIRATION. (a) This subchapter expires
17 December 31, 2024.

18 (b) The expiration of this subchapter does not affect the
19 carryforward of a credit under Section 171.624 or those credits for
20 which a taxable entity is eligible after the date this subchapter
21 expires based on source water treated before the date this
22 subchapter expires.

23 SECTION 3. (a) Subject to Subsection (b) of this section,
24 this Act applies only to a report originally due on or after the
25 effective date of this Act.

26 (b) A taxable entity may exclude amounts from its total
27 revenue as provided by Section 171.1011(g-9), Tax Code, as added by

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1 this Act, only on a report originally due on or after January 1,
2 2021, and before January 1, 2025.

3 SECTION 4. This Act takes effect January 1, 2021.