

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.

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 treats source water that has a high total dissolved solids concentration, such as water produced in oil or gas drilling, completion, flowback, or production, to produce fresh water of usable quality for public, agricultural, industrial,

1 environmental, and other beneficial uses.

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

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

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

14 (1) \$1 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) the source water has a total dissolved solids
18 concentration of more than 3,000 milligrams per liter; and

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

21 (2) \$5 for each 1,000 gallons of source water treated
22 by the permit holder during the period on which the report is based
23 if:

24 (A) at least 50 percent of the source water has a
25 total dissolved solids concentration of more than 70,000 milligrams
26 per liter; and

27 (B) the resulting fresh water is put to

1 beneficial use in this state; and

2 (3) \$17 for each 1,000 gallons of source water treated
3 by the permit holder during the period on which the report is based
4 if:

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

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

10 (b) The permit holder may treat source water with differing
11 total dissolved solids concentrations during the period on which
12 the report is based. The permit holder is entitled to prorate the
13 credit by the duration of processing time associated with each
14 concentration during the period.

15 (c) Treated water may be counted only once in determining
16 the amount of the credit. Only one permit holder may claim a credit
17 for the same treated water.

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

22 Sec. 171.624. CARRYFORWARD. (a) If a permit holder is
23 eligible for a credit that exceeds the limitation under Section
24 171.623(d), the permit holder may carry the unused credit forward
25 for not more than five consecutive reports.

26 (b) A carryforward is considered the remaining portion of a
27 credit that cannot be claimed in the current year because of the

1 limitation under Section 171.623(d). A carryforward is added to
2 the next year's installment of the credit in determining the
3 limitation for that year. A credit carryforward from a previous
4 report is considered to be used before the current year
5 installment.

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

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

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

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

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

22 (2) the total dissolved solids concentration of the
23 source water, distinguished according to the concentrations
24 described by Section 171.623(a);

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

27 (4) the total dissolved solids concentration of the

1 resulting fresh water.

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

4 (1) the permit holder has, during the reporting
5 period, treated source water in an amount and with a total dissolved
6 solids concentration that qualify for a credit under Section
7 171.623; and

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

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

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

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

18 (d) If the permit holder provides sufficient information
19 under this section, the commission shall issue a certificate of
20 eligibility to the permit holder.

21 (e) The commission shall immediately notify the comptroller
22 in writing if the commission:

23 (1) determines that a permit holder that previously
24 received a certificate under this section was not eligible for the
25 certified credit or is no longer eligible for the certified credit;
26 or

27 (2) takes any action or discovers any information that

1 affects the eligibility of the permit holder for a credit.

2 Sec. 171.627. SALE OR ASSIGNMENT OF CREDIT; USE OF SOLD OR
3 ASSIGNED CREDIT. (a) A permit holder that earns a credit under
4 this subchapter may sell or assign all or part of the credit, and
5 any entity to which all or part of the credit is sold or assigned may
6 sell or assign all or part of the credit to another entity. There is
7 no limit on the total number of transactions for the sale or
8 assignment of all or part of the total credit authorized under this
9 subchapter; however, collectively all transferred and retained
10 credits claimed for a period are subject to the maximum total
11 limitations provided by Subsection (b) and Section 171.623(d).

12 (b) Notwithstanding any other provision of this subchapter,
13 an entity to which a credit or part of a credit was sold or assigned
14 may apply all or part of that credit against the tax imposed by this
15 chapter or against the tax imposed by Chapter 201 or 202. The total
16 credit claimed against the tax imposed by Chapter 201 or 202 may not
17 exceed the amount of tax due for a report after all other applicable
18 tax credits, but the entity may carry any unused credit forward
19 until the credit is used.

20 (c) An entity that sells or assigns a credit under this
21 section and the entity to which the credit is sold or assigned shall
22 jointly submit written notice of the sale or assignment to the
23 comptroller on a form promulgated by the comptroller not later than
24 the 30th day after the date of the sale or assignment. The notice
25 must include:

26 (1) the date of the sale or assignment;

27 (2) the amount of the credit sold or assigned;

1 (3) the names and federal tax identification numbers
2 of the entity that sold or assigned the credit or part of the credit
3 and the entity to which the credit or part of the credit was sold or
4 assigned;

5 (4) the amount of the credit owned by the selling or
6 assigning entity before the sale or assignment, and the amount the
7 selling or assigning entity retained, if any, after the sale or
8 assignment; and

9 (5) for the entity to which the credit or part of the
10 credit was sold or assigned, each type of tax liability against
11 which the entity intends to apply all or part of the credit, and the
12 amount or percentage that the entity intends to apply against each
13 type.

14 (d) The sale or assignment of a credit in accordance with
15 this section does not extend the period for which a credit may be
16 carried forward and does not increase the total amount of the credit
17 that may be claimed.

18 (e) Notwithstanding the requirements of this subchapter, a
19 credit earned or purchased by, or assigned to, a partnership,
20 limited liability company, S corporation, or other pass-through
21 entity may be allocated to the partners, members, or shareholders
22 of that entity and claimed under this subchapter or Chapter 201 or
23 202 in accordance with the provisions of any agreement among the
24 partners, members, or shareholders and without regard to the
25 ownership interest of the partners, members, or shareholders in the
26 desalination facility operated by the permit holder who earned the
27 credit, provided that the entity that claims the credit must be

1 subject to the tax imposed under this chapter or Chapter 201 or 202.

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

4 SECTION 3. This Act applies only to a report originally due
5 on or after January 1, 2020.

6 SECTION 4. This Act takes effect January 1, 2020.