

BILL ANALYSIS

C.S.H.B. 2545
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that the increasing demand for water accompanying Texas' recent population growth, coupled with drought conditions, has compelled water planners to consider all potential sources of water in their planning efforts, including sources such as seawater, brackish groundwater, and water produced from oil and natural gas extraction activity. It has been further noted, however, that the high costs applicable to treating those potential sources continue to be an impediment to advancing water desalination in Texas. C.S.H.B. 2545, in an effort to provide a new source of water for beneficial use in Texas, seeks to incentivize water desalination by providing a franchise tax credit to desalination operators who treat source water that has a high total dissolved solids concentration.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts and the Texas Commission on Environmental Quality in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2545 amends the Tax Code to make a person who is a taxable entity holding a permit to operate a water desalination facility with all necessary state and federal permits that produces fresh water of usable quality at a desalination facility eligible for a franchise tax credit in a total amount equal to 50 cents, \$1, \$5, or \$17 for each 1,000 gallons of source water treated by the permit holder during the period on which the report is based, with the exact amount of the credit being based on the total dissolved solids concentrations in the treated water and contingent on the resulting fresh water being put to beneficial use in Texas. The bill authorizes the permit holder to treat source water with differing total dissolved solids concentrations during the period on which the report is based and entitles the permit holder to prorate the credit by the duration of processing time associated with each concentration during the period. The bill specifies that treated water may be counted only once in determining the amount of the credit and that only one permit holder may claim a credit for the same treated water. The bill limits the applicability of its provisions relating to the tax credit to a desalination facility that begins initial operations on or after January 1, 2020, and that treats water under the jurisdiction of the Texas Commission on Environmental Quality (TCEQ) or the Railroad Commission of Texas.

C.S.H.B. 2545 requires a permit holder to submit monthly statements to the Texas Commission on Environmental Quality and to apply for certain certification from TCEQ to be eligible to claim a credit and sets out related provisions. The bill provides a process for applying for the credit and prohibits the total credit claimed for a report, including the amount of any

carryforward, from exceeding the amount of franchise tax due for the report after all other applicable tax credits. The bill provides for the carryforward of any unused credit that exceeds that limitation for not more than five consecutive reports and for the sale or assignment of all or part of a credit. The bill sets out provisions relating to that sale or assignment and the use of a sold or assigned credit. The bill requires the comptroller of public accounts and TCEQ to adopt rules necessary to implement the bill's provisions relating to a tax credit for the operation of a desalination facility. The bill's provisions relating to such a tax credit expire December 31, 2024. The bill establishes that the expiration of those provisions does not affect a carryforward credit or those credits for which a taxable entity is eligible after the expiration of those provisions based on source water treated before the expiration date.

C.S.H.B. 2545 includes a temporary provision set to expire December 31, 2024, that requires a taxable entity that is a permit holder to exclude from its total revenue when determining its taxable margin any amount received from the sale of minerals or materials extracted from water by the desalination facility during the desalination process.

EFFECTIVE DATE

January 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2545 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the amounts of tax credits to which an eligible permit holder is entitled per 1,000 gallons of source water treated and certain characteristics of the source water impacting the amount of the tax credit.

The substitute includes a limitation on the applicability of its provisions relating to the tax credit to a desalination facility that begins initial operations on or after January 1, 2020, and that treats water under the jurisdiction of TCEQ or the RRC. The substitute clarifies that an entity to which its provisions apply is a taxable entity.

The substitute includes provisions making the bill's provisions temporary and set to expire December 31, 2024. The substitute includes a provision establishing that the expiration of provisions relating to the tax credit does not affect a carryforward credit or those credits for which a taxable entity is eligible after the expiration of those provisions based on source water treated before the expiration date.

The substitute changes the bill's effective date from January 1, 2020, to January 1, 2021.