

By: Rodriguez

H.B. No. 1992

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for certain investments made in relation to certain renewable energy generation projects.

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

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

SUBCHAPTER V. TAX CREDIT FOR INVESTMENTS IN CERTAIN RENEWABLE ENERGY GENERATION PROJECTS

Sec. 171.901. DEFINITIONS. In this subchapter:

(1) "Renewable energy generation project" means the construction of a facility or the purchase and installation of equipment in this state that will use a renewable energy technology to generate electricity to:

(A) replace a substantial part of an existing use of petroleum or natural gas, or electricity generated by a nonrenewable energy technology;

(B) provide the initial use of energy in a situation in which petroleum or natural gas, or electricity generated by a nonrenewable energy technology, would otherwise have been used; or

(C) generate electricity to replace an existing source of electricity generated by a nonrenewable energy technology or to provide a new source of electricity for sale by or for use in a trade or business.

1 (2) "Renewable energy technology" has the meaning
2 assigned by Section 39.904(d), Utilities Code.

3 Sec. 171.902. ENTITLEMENT TO CREDIT. A taxable entity is
4 entitled to a credit in the amount and under the conditions and
5 limitations provided by this subchapter against the tax imposed
6 under this chapter.

7 Sec. 171.903. QUALIFICATION. (a) Except as provided by
8 Section 171.906, a taxable entity qualifies for a credit under this
9 subchapter only if the taxable entity:

10 (1) submits to the comptroller an application for
11 preliminary certification of a renewable energy generation project
12 in this state that the taxable entity owns or has contracted to
13 purchase before the taxable entity financially commits to start the
14 project;

15 (2) receives a preliminary certification from the
16 comptroller that the taxable entity appears to be eligible for the
17 credit;

18 (3) begins work on the project not later than the third
19 anniversary of the date the taxable entity receives the preliminary
20 certification; and

21 (4) receives a final certification from the
22 comptroller after the project is completed that the taxable entity
23 is eligible for the credit.

24 (b) Notwithstanding Subsection (a), a taxable entity that
25 financially commits to start a renewable energy generation project
26 may submit to the comptroller a request for a waiver from the
27 requirement that the application for preliminary certification be

1 submitted before the taxable entity financially commits to the
2 project. The request must state the reasons why the taxable entity
3 did not submit the application before financially committing to the
4 project. The taxable entity must submit the request and an
5 application for preliminary certification of the project to the
6 comptroller not later than the 90th day after the project's start
7 date. The comptroller may approve a waiver request only on good
8 cause shown.

9 Sec. 171.904. AMOUNT; LIMITATIONS. (a) The amount of a
10 credit under this subchapter is equal to 50 percent of the cost of
11 the renewable energy project after deducting any federal or state
12 grant or other state or federal tax credit relating to the project.

13 (b) Except as provided by Subsection (c), a taxable entity
14 must claim a credit under this subchapter in five installments that
15 are as equal as possible over five consecutive reports beginning
16 with the report based on the period during which the taxable entity
17 receives final certification for the renewable energy generation
18 project to which the credit relates.

19 (c) A taxable entity may claim the entire amount of the
20 credit on the report based on the period during which the taxable
21 entity receives final certification for the renewable energy
22 generation project to which the credit relates if the amount of the
23 cost determined under Subsection (a) does not exceed \$20,000.

24 (d) The total credit claimed under this subchapter for a
25 report may not exceed the amount of franchise tax due after any
26 other applicable credits.

27 Sec. 171.905. CARRYFORWARD. (a) If a taxable entity is

1 eligible for a credit that exceeds the limitation under Section
2 171.904(d), the taxable entity may carry the unused credit forward
3 for not more than eight consecutive reports.

4 (b) A carryforward is considered the remaining portion of a
5 credit that cannot be claimed in the current year because of the
6 limitation under Section 171.904(d). A carryforward is added to
7 the next year's credit in determining whether the limitation is met
8 for that year. A credit carryforward from a previous report is
9 considered to be used before the current year credit.

10 Sec. 171.906. SALE OF TAX CREDIT. (a) An entity that is not
11 a taxable entity accrues a credit under this subchapter if the
12 entity complies with the requirements of Section 171.903.

13 (b) An entity that accrues a credit under this section may
14 sell the rights to the credit to one or more taxable entities. The
15 entity and the taxable entity must submit a joint application to the
16 comptroller for approval of the sale.

17 (c) A taxable entity must purchase the rights to the credit
18 with a lump-sum cash payment that is at least equal to the credit's
19 net present value at the time the comptroller received the joint
20 application for approval of the sale. Not later than January 1 each
21 year, the comptroller shall prescribe the net present value of
22 credits for that taxable year and shall publish that value in the
23 Texas Register.

24 (d) An entity that sells the rights to an accrued credit to
25 more than one taxable entity may divide those rights in any manner
26 the entity believes is appropriate provided that:

27 (1) the entity sells the rights to the entire credit;

1 and

2 (2) the entity receives total compensation for that
3 credit that is at least equal to the appropriate amount required by
4 Subsection (c).

5 Sec. 171.907. CERTIFICATION OF ELIGIBILITY. (a) For the
6 initial and each succeeding report on which a credit is claimed
7 under this subchapter, the taxable entity must file with its
8 report, on a form prescribed by the comptroller, information that
9 sufficiently demonstrates that the taxable entity is eligible for
10 the credit. If the taxable entity purchases the rights to a credit
11 under Section 171.906, the taxable entity must also file
12 information that sufficiently demonstrates that the entity that
13 sold the credit was eligible to accrue the credit.

14 (b) The burden of establishing eligibility for, entitlement
15 to, and the value of the credit is on the taxable entity.

16 Sec. 171.908. ASSIGNMENT PROHIBITED. A taxable entity may
17 not convey, assign, or transfer the credit allowed under this
18 subchapter to another entity unless all of the assets of the taxable
19 entity are conveyed, assigned, or transferred.

20 Sec. 171.909. RULES. The comptroller shall adopt rules
21 necessary to implement this subchapter.

22 SECTION 2. This Act applies only to a report originally due
23 on or after the effective date of this Act.

24 SECTION 3. This Act takes effect January 1, 2010.