

**SUBJECT:** Determining proportion of pollution-control equipment exempt from taxation

**COMMITTEE:** Ways and Means — committee substitute recommended

**VOTE:** 8 ayes — Oliveira, McCall, Hartnett, Bonnen, Y. Davis, Heflin, Keffer, Ritter

0 nays

3 absent — Craddick, Hilbert, Ramsay

**WITNESSES:** For — Bill Allaway, Texas Taxpayers and Research Association; Ron Dipprey, Texas Chemical Council and Dow Chemical Co.; Donald Lee, Texas Conference of Urban Counties

Against — None

**BACKGROUND:** In 1993, voters amended the Texas Constitution to allow the Legislature to exempt from property taxes all or part of capital expenditures for pollution-control equipment and property (Art. 8, sec. 1-1). Tax Code, sec. 11.31 exempts equipment used, constructed, acquired, or installed wholly or partly to meet or exceed federal, state, or local requirements for preventing, monitoring, controlling, or reducing air, water, or land pollution.

The Texas Natural Resource Conservation Commission (TNRCC) determines whether and to what extent such equipment and property is exempt, including what proportion, if any, of the equipment or property is not used for pollution control. Motor vehicles and property used for residential, recreational, park, and scenic purposes are ineligible for the exemption, as are equipment and property that was subject to a tax abatement agreement executed before January 1, 1994.

**DIGEST:** CSHB 3121 would set procedures for TNRCC to follow in determining eligibility of equipment and property for the pollution-control tax exemption. It would require TNRCC to adopt rules that:

- ! established specific standards for considering applications for determining eligibility;
- ! were specific enough to ensure that determinations were equal and uniform; and
- ! allowed determinations to distinguish the proportion of the property used for pollution control from the proportion used to produce goods or services.

The TNRCC executive director could not determine that property was pollution-control property unless the property met the standards established by TNRCC rules.

The executive director would have to mail written determinations to an applicant and to the chief appraiser of the county where the property was located. Determinations would have to indicate what proportion of the equipment or property was used for pollution control. An applicant and an appraiser would have 20 days from receipt of a determination to appeal to TNRCC. The commission would have to consider the appeal at its next regularly scheduled meeting and allow testimony from the appellant. The commissioners could deny appeals and affirm determinations or remand them to the director, who would have to notify both parties in writing of any new determination, after which the same appeals process would apply. Such a proceeding would not be a contested case for purposes of Government Code, chapter 2001, subject to judicial review.

Applicants would have to submit copies of determinations to appraisers as to what proportions of their facilities, devices, or methods were deemed to be pollution controls. Appraisers would have to accept final determinations as conclusive evidence.

This bill would take effect September 1, 2001.

SUPPORTERS  
SAY:

CSHB 3121 would represent a compromise among regulators, industry, and taxing entities that would provide much-needed clarification on how to evaluate whether and to what extent equipment and property were eligible for the pollution-control tax exemption.

This exemption was created to encourage business and industry to remain in Texas while complying with the federal Clean Air Act. As technology has advanced, companies have installed more efficient equipment that, while not totally devoted to pollution control, significantly reduces emissions or other types of pollution. Over time, it has become less clear how to categorize such equipment for tax-exemption purposes.

TNRCC has granted partial exemptions under informal guidelines that it developed but does not have to follow. Some companies have sought full exemptions based on the percentage of emissions reduced or the degree of mitigation improvement, rather than on capital cost. They argue that new equipment that is 90 percent less polluting should receive a 90 percent exemption, or a 100 percent exemption if it does not pollute at all. This has led to confusion as to what standards to apply, because these circumstances were not anticipated when the Constitution was amended. It also has raised concerns among appraisers about tax-base erosion. In some cases, especially in heavily industrialized and large urban counties, these decisions can affect hundreds of millions of dollars' worth of property-tax valuations and millions of dollars in tax liability.

Businesses should not be taxed on purchases they were required by law to make. This is true of any size company, and the exemption would benefit small businesses as well. In fact, the exemption could mean more to smaller businesses, because they might not be in a position to seek tax abatements or other incentives.

CSHB 3121 would provide a more efficient mechanism to determine the eligibility of equipment and property that has both pollution-control and commercial production characteristics. Requiring TNRCC to set binding rules for its determinations, as it does for its other regulatory functions, would lead to fairer, more accurate, and more predictable determinations. The commission recently approved cost-formula guidelines that would fulfill the bill's requirements for uniform and equal partial determinations. The appellate procedure required by this bill also would bring chief appraisers into the process formally for the first time and would give them meaningful input.

OPPONENTS  
SAY:

CSHB 3121 would get the procedure backward for determining what proportion of new equipment should get a tax break for pollution control. Chief appraisers are the experts trained to determine how property is used for tax purposes. Of necessity, appraisers have much more familiarity and experience than TNRCC with how property and equipment are being used in the appraisers' districts. They should be making the exemption decisions on a case-by-case basis, with technical input from TNRCC if necessary, not the other way around. A few officials at a high-profile state agency inherently are more susceptible to political pressure than are local tax officials, who deal with challenges to their decisions on a regular basis.

OTHER  
OPPONENTS  
SAY:

CSHB 3121 should require the value of pollution-control equipment to be included in facilities' taxable values. The existing tax exemption has been a boon to big business at the expense of the environment and taxpayers. Texas is one of the most polluted states in the nation, with several major cities that fail to meet federal air-quality standards. The Legislature has created a perpetual and constantly expanding tax break that is moving beyond the original intent to include standard equipment that generates profit. Giving polluters tax breaks for not breaking the law sends the wrong message and penalizes the wrong people. Controlling pollution is another cost of doing business that should not be passed on to taxpayers who are not responsible for it.

NOTES:

HB 3121 as filed would have instructed TNRCC to set standards that would ensure that property used to produce goods or services was not tax-exempt, whereas the substitute would require proportional determinations. The original bill would have required chief appraisers to challenge determinations under the Administrative Procedures Act rather than appeal to TNRCC. Also, the original bill did not require TNRCC's executive director to mail determinations to appraisers.