

SUBJECT: Applying uniform standards to applications for pollution control tax breaks

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Oliveira, Otto, Bohac, Hartnett, C. Howard, P. King, Paxton, Peña, Taylor, Villarreal

0 nays

1 absent — Hilderbran

WITNESSES: For — Donald Lee, Texas Conference of Urban Counties; Cyrus Reed, Lone Star Chapter, Sierra Club; (*Registered, but did not testify*, Jim Allison, County Judges & Commissioners Association of Texas; Don Allred, Oldham County; Michael Amezquita, Texas Association of Appraisal Districts, TAAD; Shanna Igo, Texas Municipal League; Tom Keyes, Commissioners Court of Gaines County; Dick Lavine, Center for Public Policy Priorities; Mark Mendez, Tarrant County; Terry Simpson, San Patricio County; Andy Wilson, Public Citizen Foundation, Inc.)

Against — George Christian, Texas Taxpayers and Research Association; Rick Fine; (*Registered, but did not testify*: Ramon Alvarez, Environmental Defense Fund; Jay Dauenhauer, Clean Coal Technology Foundation of Texas; Tricia Davis, American Royalty Council; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil; Steve Hazlewood, Dow; Brett Kerr, Calpine Corp.; John Marlow, American Insurance Association; Warren Mayberry, DuPont; Julie W. Moore, Occidental Petroleum; Steve Perry, Chevron USA; Ben Sebree, Texas Oil and Gas Association; Mark Walker, NRG Texas LLC)

On — Hayden Childs, Legislative Budget Board; Minor Hibbs, TCEQ Chief Engineer's Office; James LeBas, Association of Electric Companies of Texas

BACKGROUND: Tax Code, sec. 11.31 allows companies to subtract the value of any pollution control property from their overall taxable property value. Any facility, device, or method used for the control of air, water, or land pollution may be exempted. Property owners may submit applications to

the Texas Commission on Environmental Quality (TCEQ) detailing the value of any pollution control property they may have.

TCEQ is required to adopt rules under Tax Code, sec. 11.31(g) that must:

- establish specific standards for considering applications for determinations;
- be sufficiently specific to ensure that determinations are equal and uniform; and
- allow for determinations that distinguish the proportion of property used to control, monitor, prevent, or reduce pollution from the proportion of property used to produce goods or services.

TCEQ issues a letter of determination that contains information on the proportion of property approved for tax exemption.

TCEQ maintains a nonexclusive list of facilities, devices, or methods that are eligible for the tax exemption. This list must include:

- coal cleaning or refining facilities,
- certain fluidized bed combustion systems,
- ultra-supercritical pulverized coal boilers,
- flue gas recirculation components,
- syngas purification systems and gas-cleanup units,
- enhanced heat recovery systems,
- exhaust heat recovery boilers,
- heat recovery steam generators,
- superheaters and evaporators,
- enhanced steam turbine systems,
- methanation,
- clean coal byproducts or co-product handling treatment facilities,
- biomass cofiring storage, distribution, and firing systems,
- coal cleaning or drying processes,
- oxy-fuel combustion technology,
- carbon dioxide capture technology,
- fuel cells that generate energy used hydrogen derived from coal, biomass, petroleum coke or solid waste, and
- any other equipment designed to control pollution.

DIGEST:

CSHB 3206 would state that standards and methods for making determinations on pollution control property tax exemptions established in TCEQ rules adopted under Tax Code, sec. 11.31 (g) would apply uniformly to all such applications for determination submitted to TCEQ. This would include applications relating to facilities, devices, or methods of pollution control included on the nonexclusive list adopted by the TCEQ.

CSHB 3206 would require TCEQ to establish a permanent advisory committee to advise the commission on making determinations on pollution control property tax exemptions. The committee would consist of representatives of industry, appraisal districts, taxing units, environmental groups, and those with substantial technical expertise in pollution control technology and environmental engineering.

The bill would take effect September 1, 2009, and would apply only to determinations after that date. The bill would only apply to taxes imposed a year after the effective date. TCEQ would have to appoint a pollution control tax advisory committee as soon as possible after the effective date.

SUPPORTERS
SAY:

CSHB 3206 would apply uniform standards to all applications for pollution control tax exemption determinations from TCEQ. TCEQ's current process of making determinations has come under scrutiny by county tax appraisers, local governments, and environmental groups. In a controversial move, TCEQ ruled that all heat recovery steam generators would be granted a 100 percent exemption. TCEQ also ruled that enhanced steam turbine systems would not be eligible for any amount of tax exemption. The bill would direct TCEQ to establish uniform standards at the advice of an advisory committee consisting of a diverse group of stakeholders. The bill would implement a recommendation of the LBB staff in the 2009 *Texas State Government Efficiency and Effectiveness* report.

CSHB 3206 would mitigate the loss in property tax revenue local governments are experiencing as a result of the excessive tax breaks being given to the oil and gas industry. The comptroller's estimate, which does not take into account the program's expansion in 2007, was that the cost of the school property tax exemption for pollution control equipment would grow from a loss of \$92.0 million out of \$7.4 billion in taxable value lost in 2007 to \$157.9 million out of \$11.9 billion in taxable value lost in 2012. The state must use taxpayer dollars to close this growing gap. The bill

would allow TCEQ to use a more reasonable determination formula that would not local property tax revenue as severely.

The bill would not apply to companies that already had received a approval letters from TCEQ. The bill would state expressly that the new uniform application criteria would be applied only to applications received after the effective date of the bill. Furthermore, it is feasible that companies who would have received a 100 percent tax exemption for their property in the past would continue to qualify for a sizable tax break under the bill.

**OPPONENTS
SAY:**

Heat recovery steam generators are an environmentally friendly technology and should continue to be eligible for a 100 percent determination through TCEQ's pollution control tax exemption. These generators reduce the release into the air of dangerous nitrous oxides that harm human health. The bill likely would reduce the amount of tax breaks companies could receive for heat recovery steam generators, discouraging businesses from adopting environmentally friendly technologies.

NOTES:

The fiscal impact to the state would depend on TCEQ's determination of the portion of the property that is pollution control and how it would affect school tax revenues.