

BILL ANALYSIS

C.S.H.B. 4087
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that when the legislature created a set of incentives to foster carbon capture, utilization, and storage projects, there was an understanding that such a project would qualify under the pollution control property tax exemption program because it would exceed environmental rules relating to carbon emissions as soon as the U.S. Environmental Protection Agency (EPA) regulated carbon as a pollutant under the federal Clean Air Act. However, the parties assert that a recent case at the Texas Commission on Environmental Quality (TCEQ) raised the question whether the EPA's regulation of carbon as a pollutant is clear enough to recognize the eligibility of such equipment for the pollution control property tax exemption. There is also uncertainty regarding how TCEQ will handle its technical review of what will be a first-of-its-kind consideration of such equipment in the program and concern regarding the possibility that TCEQ will generate a decision effecting a smaller exemption percentage than was assumed would originally apply. C.S.H.B. 4087 seeks to address this ambiguity and uncertainty.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4087 amends the Tax Code to clarify, for purposes of determining the eligibility of certain forms of pollution control property for a pollution control property tax exemption, that property used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in Texas that is geologically sequestered in Texas is included in the nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution established by the Texas Commission on Environmental Quality (TCEQ) for such purpose so long as the U.S. Environmental Protection Agency (EPA) regulates carbon dioxide as a pollutant or if any other environmental protection agency of the United States, Texas, or a political subdivision of Texas adopts a final rule or regulation regulating carbon dioxide for that purpose, rather than conditioning the inclusion of such property on that list on the EPA's adoption of a final rule or regulation so regulating carbon dioxide. The bill also clarifies that the TCEQ executive director's determination that a facility, device, or method described in an application for a pollution control property tax exemption is used wholly or partly for the control of air, water, or land pollution on the basis of such property's inclusion on the list is conditioned on the executive director's confirmation that the facility, device, or method is included in the list.

C.S.H.B. 4087, effective January 1, 2016, requires the TCEQ executive director, if the executive director confirms that the facility, device, or method for the control of air, water, or land pollution described in an application for a pollution control property tax exemption is a facility, device, or method that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in Texas that is geologically sequestered in Texas and is part of an advanced clean energy project and determines that an established market for the sale of carbon dioxide captured from an anthropogenic source for use in enhanced oil recovery does not exist in the county in which the project is located, to determine that the facility, device, or method described in the application is used wholly as a pollution control facility, device, or method and, in the event such a determination is made, to notify the chief appraiser of the appraisal district in which the property is located of the application for such a determination and of the executive director's subsequent determination. The bill specifies that such a determination by the executive director and subsequent actions concerning the pollution control property apply to property taxes imposed for a tax year beginning on or after January 1, 2016.

C.S.H.B. 4087 clarifies that a determination by the TCEQ executive director that a facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution following submission of the information required to be included in an application for a pollution control property tax exemption or a determination by the executive director that a facility, device, or method described in an application is used wholly or partly for that purpose because the executive director has confirmed that the facility, device, or method is included on TCEQ's list of facilities, devices, or methods for the control of air, water, or land pollution does not limit the chief appraiser's authority to evaluate whether the facility, device, or method also facilitates an increase in the production of goods at the facility at which the facility, device, or method is installed or the sale of a marketable product at a profit in the ordinary course of business of the facility and to take any resulting income into account if the chief appraiser uses the income method of appraisal to determine the facility's market value.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4087 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 11.31, Tax Code, is amended by amending Subsection (k)(16) and (m) and adding Subsections (m-1) and (m-2) to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 11.31, Tax Code, is amended by amending Subsections (k) and (m) and adding Subsections (m-1) and (m-2) to read as follows:

(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

- (1) coal cleaning or refining facilities;
- (2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification

fluidized bed combustion combined cycle systems;

(3) ultra-supercritical pulverized coal boilers;

(4) flue gas recirculation components;

(5) syngas purification systems and gas-cleanup units;

(6) enhanced heat recovery systems;

(7) exhaust heat recovery boilers;

(8) heat recovery steam generators;

(9) superheaters and evaporators;

(10) enhanced steam turbine systems;

(11) methanation;

(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;

(13) biomass cofiring storage, distribution, and firing systems;

(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;

(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;

(16) ~~if~~ the United States Environmental Protection Agency continues to regulate ~~[adopts a final rule or regulation regulating]~~ carbon dioxide as a pollutant or if any other applicable environmental rule so regulates carbon dioxide, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;

(16) so long as ~~[if]~~ the United States Environmental Protection Agency regulates ~~[adopts a final rule or regulation regulating]~~ carbon dioxide as a pollutant or if any other environmental protection agency of the United States, this state, or a political subdivision of this state adopts a final rule or regulation regulating carbon dioxide for that purpose, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;

(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and

(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(m) Notwithstanding the other provisions of this section, if the executive director of the Texas Commission on Environmental Quality confirms that the facility, device, or

(m) Notwithstanding the other provisions of this section, if the executive director of the Texas Commission on Environmental Quality confirms that the facility, device, or

method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director ~~[of the Texas Commission on Environmental Quality]~~, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

(m-1) Notwithstanding Section 11.31(g-1), if the executive director confirms that the property described in an application is a facility, device, or method referenced in Subsection (k)(16) and is part of an advanced clean energy project as defined by Section 382.003 (1-a), Health and Safety Code, the executive director shall determine that it is used wholly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d).

(m-2) If the executive director confirms under Subsection (m) or determines under Subsection (d) that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution, it shall not limit the authority of the chief appraiser under Chapter 23 to:

method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director ~~[of the Texas Commission on Environmental Quality]~~, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

(m-1) Notwithstanding Subsections (g-1) and (m), if the executive director of the Texas Commission on Environmental Quality confirms that the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method described by Subsection (k)(16) and is part of an advanced clean energy project as defined by Section 382.003, Health and Safety Code, and determines that an established market for the sale of carbon dioxide captured from an anthropogenic source for use in enhanced oil recovery does not exist in the county in which the project is located, the executive director shall determine that the facility, device, or method described in the application is used wholly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

(m-2) A determination by the executive director of the Texas Commission on Environmental Quality under Subsection (d) that a facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution or a determination by the executive director of the commission under Subsection (m) that a facility, device, or method described in an application is used wholly or partly for that purpose because the

(1) evaluate whether the facility, device or method also facilitates an increase in the production of goods at the facility at which the facility, device, or method is installed or the sale of a marketable product at a profit in the ordinary course of business of the facility; and
(2) take any resulting income into account if the chief appraiser uses the income method of appraisal to determine the market value of the facility.

SECTION 2. This Act is intended to clarify rather than change existing law, except 11.31 (m-1), as added by this act, which applies only to ad valorem taxes imposed for a tax year beginning on or after January 1, 2016.

No equivalent provision, *(But see SECTION 2 above.)*

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

(b) Section **11.31(m-2)**, Tax Code, as added by this Act, takes effect January 1, 2016.

executive director has confirmed that the facility, device, or method is included on the list adopted under Subsection (k) does not limit the authority of the chief appraiser under Chapter 23 to:

(1) evaluate whether the facility, device, or method also facilitates an increase in the production of goods at the facility at which the facility, device, or method is installed or the sale of a marketable product at a profit in the ordinary course of business of the facility; and
(2) take any resulting income into account if the chief appraiser uses the income method of appraisal to determine the market value of the facility.

SECTION 2. Sections 11.31(k) and (m), Tax Code, as amended by this Act, and Section 11.31(m-2), Tax Code, as added by this Act, are intended to clarify rather than change existing law.

SECTION 3. Section 11.31(m-1), Tax Code, as added by this Act, applies only to ad valorem taxes imposed for a tax year beginning on or after January 1, 2016.

SECTION 4. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and
(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

(b) Section **11.31(m-1)**, Tax Code, as added by this Act, takes effect January 1, 2016.