

SUBJECT: Exempting certain landfill-generated gas operations from ad valorem tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hildebrand, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For — John Brunswick, National Association of Property Tax Association; Luke Morrow, Morrow Renewables; Marty Ryan, Montauk Energy; Stephen Smith, Dallas Clean Energy Commas Bluff, LLC; Amy Stowe Brunswick & Associates; Evan Williams, Cambrian Energy & Dallas Clean Energy; (*Registered, but did not testify*: Steve Carr, Republic Services; Chris Macomb, Waste Management of Texas, Inc.; Stephen M. Ick, Texas Association of Business; Tom Tagliabue, City of Corpus Christi)

Against — Rodrigo Carrion; David Hodgkin's, Tax Exemption School Coalition; Donald Lee, Texas Conference of Urban Counties; Bennett Sandlin, Texas Municipal League; Robin Schneider, Texas Campaign for the Environment; (*Registered, but did not testify*: Brad Dominguez, Tax Exemption School Coalition; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court; Jim Robinson, Texas Association of Appraisal Districts Legislative Committee; Terry Simpson, San Patricio County)

On — Donna Huff, Texas Commission on Environmental Quality; (*Registered, but did not testify*: Tim Wooten, Comptroller)

BACKGROUND: Landfill waste produces significant amounts of landfill gas, mostly methane. This gas is created when organic waste in a municipal solid waste landfill decomposes. Because methane is a greenhouse gas and could cause fire and explosions, federal and state laws require operators of large landfills to install pollution control equipment to collect and destroy the landfill gas produced, typically through flaring.

There are currently 32 landfill-gas-to-energy projects operating in Texas

that capture the gas that would otherwise be flared and convert it to some form of fuel or electricity. Of those projects, five have the capability to produce pipeline quality renewable gas.

DIGEST: CSHB 1736 would provide a temporary ad valorem tax exemption on property used for pollution control for certain landfill-generated gas conversion facilities capable of producing pipeline quality gas, expiring December 31, 2015.

This bill would take effect on January 1, 2014.

SUPPORTERS SAY: CSHB 1736 would help address some of the economic challenges facing the five facilities in Texas with projects in place to convert landfill generated methane into renewable natural gas. These landfill-generated gas operations capture the methane and convert it into a more environmentally friendly form of fuel. Without these projects, the gas otherwise would be flared, producing on-site emissions and wasting a valuable energy source.

In addition to eliminating on-site emissions and capturing an otherwise wasted fuel source, the projects also would reduce the fire risk and extend the life of the landfills by 10 years or more by compressing the solid waste they contain in an effort to extract the gas. Despite their environmental benefits, these projects have not proven to be economically viable due to the heavy capital investment required, causing some projects to have to pull out all together. CSHB 1736 would allow a temporary ad valorem tax exemption for landfill-generated gas conversion facilities in Texas that are capable of producing pipeline quality gas. Without this exemption these facilities may not be able to continue operation.

While there is concern that these facilities are trying to double-recover costs for equipment, they have never been able to benefit from the existing tax exemptions. The current laws that provide tax exemptions for property used for pollution control do not contemplate the unique nature of these projects. Other facilities that are able to benefit from the existing exemption for pollution control equipment actually generate their own pollution and then seek to control it, while these projects help to control pollution that is already occurring naturally at landfill sites. This bill would provide temporary tax relief while Texas updated the process for applying for an exemption.

The committee substitute would narrow the exemption to only the five existing projects and would Sunset the exemption in 2015. By narrowing the scope of the bill, the potential fiscal impact to local governmental entities would be minimal. While some suggest trying to achieve the tax exemption through a local option that would be a cumbersome process that could cost more than the exemption would be worth.

OPPONENTS
SAY:

CHB 1736 would allow certain landfill generated gas facilities to double-recover expenses for pollution control equipment through an additional tax exemption. State and federal law mandate that pollution control equipment be attached to facilities that could produce pollution, including landfills. Pollution control equipment is costly, resulting in a significant increase in taxable real property for those facilities.

In an agreement to ease that tax burden, Proposition 2 amended the Constitution in 1993 to allow a tax exemption for the value of the mandatory pollution control equipment. However, Prop. 2 specified that the exemption would not be 100 percent if the equipment produced a marketable product to be sold for a profit. The value of the goods sold had to be deducted from the exemption. CSHB 1736 would by-pass Prop 2 by allowing these certain landfill-generated gas operations to get the 100 percent exemption for the pollution control equipment without having to deduct the profitable methane byproduct. These projects cannot compete against other forms of natural gas in the marketplace and are looking for special treatment.

The state should not provide tax breaks to projects that capture landfill gas for a profit because they often result in practices that create even more pollution, especially in the short run. Instead of diverting organic material into compost, these landfills benefit from putting as much organic material as possible into landfills and recirculating the liquid created in landfills to speed up the decay of organic material, creating more landfill gas and more pollution. Landfill gas includes the highly flammable and powerful greenhouse gas methane, as well as other components that can emit dangerous toxins when burned off to get a pipeline quality methane byproduct. While landfill gas may be a valuable fuel source, there are negative environmental consequences to incentivizing its increased production.

OTHER
OPPONENTS

While limited to one year, exempting landfill-generated gas conversion facilities from ad valorem taxation would result in reduced taxable

SAY: property values and the related costs to local governmental entities and the Foundation School Fund would be increased.

The committee substitute made an effort to narrow the exemption to just a few projects that would be in existence at the time of enactment, but more facilities could come online within the timeframe specified in the bill. A local option that would let the cities and counties negotiate the exemption would be more appropriate. Productive property using pollution control equipment has never been exempt from taxation without the local option.

NOTES: According to the fiscal note, the one-year tax exemption created by the CHB 1736 would reduce taxable property values, and related costs to the Foundation School Fund would be increased through the operation of school finance formulas.