

- SUBJECT:** Making the tax exemption on landfill gas conversion facilities permanent
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 10 ayes — Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray
- 1 nay — D. Bonnen
- WITNESSES:** For — Marty Ryan, Montauk Energy; Luke Morrow, Morrow Renewables; Kory Ryan; Evan Williams; (*Registered, but did not testify:* Eddie Solis, City of Arlington)
- Against — Donald Lee, Texas Conference of Urban Counties
- On — Cyrus Reed, Sierra Club Lone Star Chapter
- BACKGROUND:** In 2013, the 83rd Legislature enacted HB 1897 by Eiland, which created a property tax exemption for landfill-generated gas conversion facilities. This exemption is set to expire December 31, 2015 and applied only to the five projects in progress at the time of the bill’s enactment. Specifically, for tax years 2014 and 2015, the bill exempted real and personal property located on or near a landfill and used to collect, compress, transport, process, and deliver gas generated by the landfill.
- DIGEST:** HB 994 would make permanent the property tax exemption on landfill-generated gas conversion facilities and allow the exemption to be applied to projects begun after January 1, 2014.
- This bill would take effect January 1, 2016, and would apply only to property taxes imposed during tax years beginning on or after that date.
- SUPPORTERS SAY:** HB 994 would provide critical support to an industry that brings many economic and environmental benefits both to localities and to the state as a whole.

Environmental impact. Federal and state regulations require large landfills to dispose of methane gas. Without landfill gas conversion facilities, the best available control technology for methane is to burn it, which results in various emissions that are harmful to public health and the environment.

However, landfill gas conversion facilities are economically vulnerable industries because they have fixed costs but highly variable revenue. Revenues depend on a variety of factors outside their control, including drought conditions and natural gas prices. This, combined with the enormous capital investment required means that every cost cut greatly increases the survivability of a project.

Property taxes represent one fixed cost that could make some projects unsustainable. Therefore, the Legislature should make permanent the tax exemption, allowing more of these facilities to be built.

Additionally, landfill gas conversion facilities can extend the life of landfills by up to 10 years, minimizing environmental degradation and the need to dedicate additional land to holding solid waste.

Economic impact. Landfill gas conversion facilities have the advantage of taking something harmful and polluting (methane gas) and turning it into a usable commodity. This creates jobs and millions of dollars of economic activity and tax revenue that offsets any revenue local taxing districts may not be able to collect because of the initial exemption.

Local taxing districts would not be adversely affected because they would receive tax revenue throughout the life cycle of a conversion facility — from economic activity sparked by construction to the jobs brought to the area. One project brought in an extra \$3 million in revenue for the city from natural gas royalties alone. If the Legislature allowed these exemptions to end, it would add costs to the projects, potentially shuttering an otherwise profitable and desirable industry.

This bill would not subvert the intent or success of the current tax

exemption scheme. These emissions are naturally occurring byproducts of the landfill itself. Landfill gas conversion facilities are operating as renewable energy producers, converting this byproduct into natural gas.

Additionally, because of the massive capital costs involved in constructing a facility, it is not reasonable to expect that a private operator would transfer the title to a landfill to obtain the exemption.

Many other states provide property tax exemptions for these facilities. Texas should recognize the environmental and economic benefits and make the property tax exemption on landfill gas conversion facilities permanent.

OPPONENTS
SAY:

HB 994 unnecessarily would set a dangerous precedent that could lead to the exemption from taxation of billions of dollars of property used by various businesses to clean up pollution caused by other businesses.

Environmental impact. Any environmental benefits attributed to this bill are predicated on the ability of a tax exemption to stimulate the construction of additional facilities that otherwise would not be built. However, because these businesses are for-profit entities that should be able to sustain themselves, there is no evidence to support this projection. This bill would extend an unnecessary incentive, decreasing revenues to local taxing districts with no corresponding reward. School districts also would be affected because they would not be held harmless for any part of this revenue loss.

Economic impact. This bill would subvert the original intention of the creation of these sorts of tax incentives. They originally were intended as a means of reducing the regulatory burden. For instance, if a company was required to conduct environmental impact mitigation, the tax exemption would apply to equipment purchased to fulfill that requirement so as not to make the regulation excessively burdensome. Historically, the law has treated pollution control equipment and equipment used in economic production differently. The bill would break this dichotomy, setting a dangerous precedent.

Specifically, this bill would apply a tax exemption to a business in its primary line of work. While the industry may provide some social good, not all industries that have positive effects on the environment should receive tax benefits. This bill would create a precedent for granting tax exemptions to for-profit pollution control businesses merely because of the positive impact they have. This could lead to the exemption of billions of dollars of other property used in businesses, such as recycling and oil and gas spill cleanup crews.

In addition, these exemptions already are available to landfill gas conversion facility owners. To be eligible for the exemption, the owner merely would need to transfer to the landfill the title to the facility and go through an application process with the Texas Commission on Environmental Quality.

In short, this bill would be a means of getting around a process and precedent that has worked for decades. The Legislature should not subvert that success to support an industry that would exist without the exemptions.

NOTES:

The Legislative Budget Board's fiscal note indicates that there would be no significant impact to general revenue-related funds. The fiscal note also estimates that there would be a slight decrease in revenue to some cities, counties, and other special taxing districts.

The Senate companion bill, SB 1069 by West, was referred to the Senate Finance Committee on March 16.