

## **BILL ANALYSIS**

Senate Research Center  
81R27630 JE-D

H.B. 3119  
By: Alvarado et al. (Jackson, Mike)  
Finance  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas is home to the metropolitan area with the highest ozone levels in the United States, and more than half of Texas residents live in areas with ozone levels above federal standards. Sole reliance on fining heavy emitters has not had the desired effect in reducing emissions of major-source air pollutants. Rather than continue to penalize business with fines for emitting air contaminants, Texas should offer incentives to encourage businesses to monitor their own emissions if the state seeks to be more successful in reducing harmful pollution. Certain airborne toxins have no federally enforced levels, rendering a legislative focus on compliance ineffective. Policy should focus instead on information gathering. However, because air quality monitoring is not mandated by state or federal law, policy makers must rely on self-reported industry estimates. Facility-installed monitoring devices represent one of the most important tools that state and federal agencies can use to understand which chemicals most impact Texas' air quality and at what levels. Any alternate strategy should be enacted to reduce emissions and improve air quality by providing significant tax incentives to major sources of air contaminants.

H.B. 3119 amends current law relating to the creation of a pilot program to provide certain taxable entities with a franchise tax credit for the acquisition and installation of certain air quality monitoring devices to monitor the emission of air contaminants.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 171.907, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter U, as follows:

#### **SUBCHAPTER U. PILOT PROGRAM: TAX CREDIT FOR ACQUISITION AND INSTALLATION OF CERTAIN AIR QUALITY MONITORING DEVICES**

Sec. 171.901. DEFINITIONS. Defines "air quality monitoring device," "commission," "executive director," "major source," and "nonattainment area."

Sec. 171.902. FRANCHISE TAX CREDIT PILOT PROGRAM FOR CERTAIN TAXABLE ENTITIES. Requires the comptroller of public accounts (comptroller) to develop and implement a pilot program to provide a qualified taxable entity with a franchise tax credit for the acquisition and installation of certain air quality monitoring devices to monitor the emission of air contaminants and evaluate the feasibility of extending the program and expanding it to apply statewide.

Sec. 171.903. ENTITLEMENT TO CREDIT. Entitles a taxable entity to a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.904. QUALIFICATION. (a) Provides that a taxable entity qualifies for a credit under this subchapter if the taxable entity maintains monitoring of the emission of air contaminants from a major source that is located in the nonattainment area; maintains records that are required to include the date, time, and findings of the measuring and monitoring of the emissions; and provides the Texas Commission on Environmental

Quality (TCEQ) a copy of the records on the measuring and monitoring of the emissions periodically as required by TCEQ.

- (b) Requires the taxable entity to maintain records of air quality monitoring data on-site for review by TCEQ, including data on each hazardous air pollutant listed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) that is applicable to the major source; each air contaminant that the owner or operator has reason to believe may be emitted from the major source; and any other air contaminant that the executive director of TCEQ (executive director) requests that the owner or operator monitor.

Sec. 171.905. AMOUNT; LIMITATIONS. (a) Provides that the amount of a credit under this subchapter is equal to: on the first two reports for which the taxable entity may claim the credit, 35 percent of the total cost of acquiring and installing the air quality monitoring devices and on the next three reports on which the taxable entity may claim the credit, 10 percent of the total cost of acquiring and installing the air quality monitoring devices.

- (b) Requires that the taxable entity claim the credit on consecutive reports.
- (c) Prohibits the total credit claimed under this subchapter for a report from exceeding the amount of franchise tax due after any other applicable credits.
- (d) Prohibits a taxable entity from conveying, assigning, or transferring a credit under this subchapter to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

Sec. 171.906. APPLICATION FOR CREDIT. Requires a taxable entity to apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed. Requires the taxable entity to file with the report a certification from TCEQ confirming that the taxable entity provided TCEQ a copy of the records on the measuring and monitoring of the emissions as required by Section 171.904(a).

Sec. 171.907. RULES. Requires the comptroller to adopt rules necessary to implement this subchapter.

Sec. 171.908. EVALUATION OF PILOT PROGRAM. Requires the comptroller to evaluate the effectiveness of the pilot program established under this subchapter and report the results of the evaluation to the legislature not later than February 1, 2013. Requires that the report include:

- (1) the number of taxable entities claiming the credit under this subchapter;
- (2) the total amount of credits claimed under this subchapter;
- (3) the comptroller's recommendations regarding the extension of the air quality monitoring device tax credit program and the expansion of the program statewide and methods to enhance the effectiveness, simplicity, or any other aspect of the program; and
- (4) any other information the comptroller considers meaningful and appropriate.

Sec. 171.909. TERMINATION OF PILOT PROGRAM; EXPIRATION OF SUBCHAPTER. (a) Provides that the pilot program terminates and this subchapter expires December 31, 2012.

- (b) Provides that the expiration of this subchapter does not affect a credit that was established under this subchapter before the date this subchapter expires. Authorizes a taxable entity that has any unused credits established under this subchapter to continue to apply those credits on or with each consecutive report until the date the credit would have expired under this subchapter had this

subchapter not expired, and this subchapter is continued in effect for the purposes of determining the amount of the credit the taxable entity is authorized to claim and the manner in which the taxable entity is authorized to claim the credit.

SECTION 2. Provides that this Act applies to a report originally due on or after the effective date of this Act.

SECTION 3. Effective date: January 1, 2010.