

BILL ANALYSIS

C.S.H.B. 3431
By: Strama
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When an oil field reaches the tertiary stage of its productive life, more oil can be recovered by pumping carbon dioxide into injection wells, in a process known as enhanced oil recovery (EOR). Currently, producers in west Texas mostly use carbon dioxide that is mined from natural deposits in Colorado and imported by pipeline. Very little oil is produced from EOR in east Texas. CSHB 3431 offers tax incentives to EOR projects that use anthropogenic (or man-made) carbon dioxide, and to producers of anthropogenic carbon dioxide that capture the gas for use in EOR and for sequestration. CSHB 3431 will boost Texas' economy in an environmentally sound way by helping to develop the growing carbon capture and storage industry while encouraging more enhanced oil recovery.

Section 11.31(a), Tax Code, provides that a person is entitled to an exemption from taxation of property that is used to control pollution. Section 11.31(b) defines "facility, device, or method for the control of air, water, or land pollution," as:

land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

CSHB 3431 would extend that property tax abatement to property that is used to capture carbon dioxide from an anthropogenic source that is geologically sequestered.

CSHB 3431 confers a 50% break on the recovered oil tax rate, as defined in Section 202.054, Tax Code, for oil that is recovered using anthropogenic carbon dioxide. The bill also defines the process of geologic sequestration by which an oil field operator can certify an enhanced oil recovery project that uses and sequesters anthropogenic carbon dioxide, and is therefore eligible for the tax rate reduction.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller, the Railroad Commission of Texas, and the Texas Commission on Environmental Quality in SECTION 2 of this bill.

ANALYSIS

SECTION 1. Amends Section 11.31(b) of the Tax Code by including property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source that is used in an enhanced recovery project for which a producer of oil receives a severance tax exemption under Section 202.0545, or that is geologically sequestered. The exemption applies to the property whether or not carbon dioxide is considered a pollutant.

SECTION 2. Amends Subchapter B, Chapter 202 of the Tax Code by adding Section 202.0545 to read as follows:

Sec. 202.0545. TAX EXEMPTION FOR ENHANCED RECOVERY PROJECTS USING ANTHROPOGENIC CARBON DIOXIDE.

- (a) Provides the producer of oil recovered through an enhanced oil recovery project that qualifies under Section 202.054 for the recovered oil tax rate provided by Section 202.052(b) is entitled to an additional 50 percent reduction in that tax rate if in the recovery of oil the enhanced oil recovery project uses carbon dioxide that:
- (1) is captured from an anthropogenic source;
 - (2) would otherwise be released into the atmosphere as industrial emission;
 - (3) is measurable at the source of capture; and
 - (4) is sequestered in one or more geological formation following the enhanced oil recovery process;
- (b) If a portion of the carbon dioxide used in the project does not satisfy the criteria of Subsection (a) because it is not anthropogenic, the tax reduction provided by Subsection (a) is reduced to reflect the proportion of carbon dioxide that satisfies the criteria of Subsection (a).
- (c) To qualify for the tax rate reduction the operator must apply to the comptroller for the reduction and include any information and documentation that the comptroller may require.
- (d) To qualify for the tax rate reduction the operator must apply for a certification from:
- (1) the Railroad Commission of Texas, if carbon dioxide used in the project is to be sequestered in a reservoir productive of oil or natural gas;
 - (2) The Texas Commission on Environmental Quality, if carbon dioxide used in the project is to be sequestered in a geological formation other than a reservoir productive of oil or natural gas; or
 - (3) both the Railroad Commission of Texas and the Texas Commission on Environmental Quality if both Subdivisions (1) and (2) apply.
- (e) An agency to which an operator applies for a certification under Subsection (d) may issue the certification only if the agency finds that, based on substantial evidence, there is a reasonable expectation that:
- (1) the operator's planned sequestration program will assure that at least 99% of the carbon dioxide sequestered as required by Subsection (a) (4) will remain sequestered for at least 1,000 years; and
 - (2) the operator's planned sequestration program will include appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.
- (f) The tax rate reduction does not apply if the operator's sequestration program or the operator's monitoring and verification measures differ substantially from the planned program described by Subsection (e), and the operator shall refund the difference between the amount of the tax paid under this Section and the amount that would have been imposed in the absence of this Section.
- (g) The comptroller shall approve the application if the operator submits the certification required by Subsection (d) and if the comptroller determines that the oil is otherwise eligible under this section.
- (h) If, before the comptroller approves an application for the tax rate reduction under this section, the tax imposed by this chapter is paid at the rate provided by Section 202.052 (a) or (b) on oil that qualifies under this section, the producer or producers of the oil are entitled to a credit against taxes imposed by this chapter in an amount equal to the difference between the tax paid on the oil and tax due on the oil after the rate reduction under this section is applied. The credit is allowed to each producer according to the producer's proportionate share in the oil. To receive a credit, one or more of the producers of the oil must apply to the comptroller for the credit not later than the first anniversary of the date the oil is produced.
- (i) The comptroller may enact rules and establish procedures to implement and administer and administer this section.
- (j) The Railroad Commission of Texas may enact rules and establish procedures to implement and administer this section.
- (k) The Texas Commission on Environmental Quality may enact rules and establish procedures to implement and administer this section.

SECTION 3. Stipulates that this Act:

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(a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Section 1 of this Act takes effect January 1, 2008.

EFFECTIVE DATE

SECTION 3 stipulates two effective dates:

(a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Section 1 of this Act takes effect January 1, 2008.

COMPARISON OF ORIGINAL TO SUBSTITUTE

HB 3431 was filed as a non-legislative council draft. CSHB 3431 is a legislative draft of the bill, and has several technical changes. The caption is amended by removing the words "capture" and "geologic sequestration" and adding "the recovery of oil". The only substantive change is the addition of items (1), (2), and (3) under section 202.0545(d) noting that in order to qualify for the tax rate reduction the operator must apply for a certification from either the Railroad Commission of Texas or the Texas Commission on Environmental Quality, depending on certain conditions being met.