

BILL ANALYSIS

C.S.H.B. 1796
By: Chisum
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The impact of anthropogenic carbon dioxide emission on the environment has been debated for some time. While the debate is ongoing, it is becoming increasingly certain that federal regulation of carbon dioxide will be mandated in some form, with or without scientific consensus. Energy intensive industries in Texas supply much of the country's refined petroleum and chemical processing needs. However, abrupt federal restrictions on carbon dioxide emissions from these and other large sources of carbon dioxide, such as traditional electric power generation, could fundamentally destabilize the economy of Texas.

For these reasons, it is essential that Texas take a proactive posture on transitioning to a low-carbon economy in the near future. A portfolio of solutions will be necessary to achieve the desirable substantive reductions in carbon emissions. The unique and heavily researched geology of Texas makes it a world-class candidate for the storage of carbon dioxide in brine aquifers offshore along the Texas Gulf Coast. Carbon dioxide injection in the Texas Permian Basin by volume accounts for the vast majority of total carbon dioxide injection worldwide and the University of Texas Bureau of Economic Geology is a world-leader in carbon dioxide injection research. A carbon dioxide repository would allow Texas to safely and securely store large volumes of carbon dioxide from emission sources in Texas and other states for years to come.

C.S.H.B. 1796 authorizes the Texas Commission on Environmental Quality (TCEQ) by rule to adopt standards for the location, construction, maintenance and monitoring of a carbon dioxide repository and requires a study of state-owned offshore submerged land to identify potential locations for such a repository. C.S.H.B. 1796 provides for the lease of state-owned land for necessary infrastructure for the transportation and storage of carbon dioxide and also provides for the construction and operation of a carbon dioxide repository.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1, chapter 382, Health and Safety Code, Subchapter K, Section 382.502 (a), Section 382.505 (b), and 382.506 (a) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 382, Health and Safety Code, by adding Subchapter K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE.

Section 382.501 (DEFINITIONS) creates definitions for Subchapter K.

Section 382.502 (RULES) authorizes TCEQ to by rule adopt standards for the location, construction, maintenance and monitoring and operation of a carbon dioxide repository and also requires TCEQ to ensure such standards comply with federal requirements regarding carbon dioxide sequestration, if the U.S. Environmental Protection Agency issues such requirements.

Section 382.503 (STUDY; SELECTION OF LOCATION) requires the land commissioner to contract with the Bureau of Economic Geology at the University of Texas at Austin to conduct a

study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository and to recommend suitable sites to the School Land Board based on the findings of the study. Also requires the final determination of suitable locations for carbon dioxide storage be made by the School Land Board.

Section 382.504 (CONTRACT FOR NECESSARY INFRASTRUCTURE AND OPERATION) provides that once the repository location has been established, the School Land Board may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the repository and may contract for construction or operational services for the repository.

Section 382.505 (ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE; FEES AND CARBON CREDITS) authorizes the School Land Board (board) to accept carbon dioxide for storage once the repository is established and authorizes the board by rule to establish a fee for the storage of carbon dioxide in the repository. Section 382.505 also provides that a fee under this subsection may be established as a percentage of carbon credits associated with the storage if this state participates in a program that facilitates the trading of carbon credits.

Section 382.506 (MEASURING, MONITORING, AND VERIFICATION; ROLE OF BUREAU) provides that TCEQ by rule may establish standards for the measurement, monitoring and verification of the permanent storage status of the carbon dioxide in the repository. The section also requires the Bureau of Economic Geology at the University of Texas at Austin to perform, to serve as the scientific advisor for, and to provide the School Land Board data relating to the measurement, monitoring and verification of the permanent storage status of the carbon dioxide in the repository.

Section 382.507 (OWNERSHIP OF CARBON DIOXIDE) requires the School Land Board (board) to acquire title to carbon dioxide stored in the repository and establishes that the right, title and interest in carbon dioxide acquired under this section are the property of the permanent school fund and shall be administered and controlled by the board.

Section 382.508 (LIABILITY) provides that the transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide was stored. The section also provides that, on the date the permanent school fund acquires the right, title and interest in carbon dioxide under Section 382.507, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the repository.

Section 382.509 (RATES FOR TRANSPORTATION) prohibits TCEQ and the School Land Board from establishing or regulating the rates charged for the transportation of carbon dioxide to the repository.

Section 382.510 (ANNUAL REPORT) requires the land commissioner to annually issue a report regarding the repository, provides that the report may be submitted electronically by posting on the General Land Office's Internet website, and requires the report to include information regarding the total volume of carbon dioxide stored, the total volume of carbon dioxide received for storage during the year, and the volume of carbon dioxide received from each producer of carbon dioxide.

SECTION 2. Effective date.

EFFECTIVE DATE

September 1, 2009

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. C.S.H.B. 1796 differs from the original in Section 382.501 by adding the definitions of "Board" and "Land Commissioner" and renumbering the remaining definitions accordingly.

The substitute differs from the original in Section 382.502(a) by providing the commission by rule may, rather than shall, adopt standards for the location, construction, maintenance, monitoring and operation of a carbon dioxide repository.

The substitute differs from the original in Section 382.503 by removing "PILOT" from the heading. The substitute differs from the original in Section 382.503(a) by requiring the land commissioner to contract with the bureau to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository, rather than requiring the bureau, under the oversight of the commission, to conduct such a study. The substitute differs from the original in Section 382.503(b) by requiring the land commissioner to recommend suitable sites for carbon dioxide storage to the board based on the findings of the study. The substitute differs from the original by adding Section 382.503(c) to require the board to make the final determination of suitable locations for carbon dioxide storage. The original required the commission to use the results of the pilot study to select a location for the carbon dioxide repository.

The substitute differs from the original in Section 382.504(a) by providing that, once the location has been established for the carbon dioxide repository, the board, rather than the commission, may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the repository. The substitute differs from the original in Section 382.504(b) by providing that the board, rather than the commission, may contract for operational services for the repository. The original bill does not include language specifying for the lease of permanent school fund land.

The substitute differs from the original in Section 382.505(a) by providing that, once the carbon dioxide repository is established, the board, rather than the commission, may accept carbon dioxide for storage. The substitute differs from the original in Section 382.505(b) by providing that the board, rather than the commission, by rule may establish a fee for the storage of carbon dioxide in the carbon dioxide repository.

The substitute differs from the original in Section 382.506 by adding Subsection (d) to require the Bureau of Economic Geology at the University of Texas at Austin to provide the School Land Board data relating to the measurement, monitoring and verification of the permanent storage status of the carbon dioxide in the repository.

The substitute differs from the original in Section 382.507(a) by requiring the board, rather than the commission, to acquire title to carbon dioxide stored in the carbon dioxide repository. The substitute differs from the original in Section 382.507(b) by providing that the right, title and interest in carbon dioxide acquired under this section are the property of the permanent school fund, rather than of TCEQ acting on behalf of the state, and shall be administered and controlled by the School Land Board, rather than by TCEQ in the name of the state. Subsection (c) exists in the original bill and is deleted in the substitute bill.

The substitute differs from the original in Section 382.508(a) by providing that the transfer of a title under Section 382.507 does not relieve a producer of carbon dioxide, rather than an owner or operator of a clean coal project, of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide was stored. The substitute differs from the original in Section 382.508(b) by providing that, on the date the permanent school fund, rather than TCEQ, acquired the right, title and interest in carbon dioxide, rather than in carbon dioxide captured by a clean coal project, the producer of the carbon dioxide, rather than the owner or operator of a clean coal project, is relieved of liability for any act or omission regarding the carbon dioxide in the repository.

The substitute differs from the original in Section 382.509 by prohibiting TCEQ and the School Land Board, rather than only TCEQ, from establishing or regulating the rates charged for the transportation of carbon dioxide to the repository.

The substitute differs from the original in Section 382.510 by requiring the land commissioner, rather than TCEQ, to issue the required annual report and by providing that the report may be submitted electronically by posting on the General Land Office's Internet website. The substitute

also differs from the original in Section 382.510 by requiring the report to include information on the volume of carbon dioxide received from each producer, rather than from each originator, of carbon dioxide.

SECTION 2. No change from the original.