LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB469** by King, Phil (Relating to the establishment of incentives by this state for the implementation of certain projects to capture and sequester in geological formations carbon dioxide that would otherwise be emitted into the atmosphere.), **As Engrossed**

Depending upon the size of the franchise tax credit and the number of power plants constructed in accordance with provisions of the bill, the state could forego an indeterminate amount of franchise tax revenue. Depending upon the number of producers participating in qualified EOR projects, the state could forego an indeterminate amount of severance tax revenue.

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a carbon-fueled electric generating facility that: (1) has a capacity of at least 200 megawatts; (2) uses Integrated Gasification Combined Cycle or other pre-combustion technology; (3) will capture at least 70 percent of the carbon dioxide produced by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project; and (6) meets emission limits on several other pollutants outlined in the bill. In addition, an "advanced clean energy project", defined in Chapter 382 of the Health and Safety Code, would also qualify for all tax incentives provided in the bill, provided it met certain emission levels outlined in the bill.

The bill provides for a franchise tax credit, that would equal the lesser of 10 percent of the total capital cost of the project or $100 million, for an entity implementing a clean energy project, with a maximum of three projects receiving the credit. The Comptroller would issue the tax credit to an entity only after: (1) the Railroad Commission has issued a certificate of compliance for the project; (2) the facility is completed and fully operational; and (3) the Bureau of Economic Geology of the University of Texas at Austin verifies the facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility. It is unknown how many clean energy projects would be undertaken and the capital cost of these projects. Therefore, the state could forego anywhere from zero to $300 million in franchise tax revenue.

The bill would require the Railroad Commission to issue a certificate of compliance verifying a project met the requirements for a clean energy project. The Railroad Commission would be authorized to charge a fee to cover the cost of processing an application for certification.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by clean energy projects. The bill would allow the BEG to charge a varying annual fee, that would total $8.1 million over eight years, to cover the cost of these services.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6 percent to 1.15 percent for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) and have begun the EOR project not later than August 31, 2016. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality, depending on where the carbon dioxide is sequestered. The tax rate reduction would expire August 31, 2039.

Currently, a producer is eligible for the rate reduction for 7 years if at least 99 percent of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction the state could forego an amount of oil production tax revenue that would depend on the number of producers participating in an EOR project.

The bill would amend Chapter 11.31 of the Tax Code to clarify that property used for clean energy projects would be eligible for property tax exemptions, already in statute, that are provided to property used for pollution control.

Sections of the bill regarding the property tax exemptions would take effect January 1, 2010. All other sections would take effect September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 455 Railroad Commission, 582 Commission on Environmental Quality, 720 The University of Texas System Administration, 301 Office of the Governor

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