LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 25, 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.), **Committee Report 2nd House, Substituted**

Depending on the size of the franchise tax credit, the number of power plants constructed in accordance with provisions of the bill, and the amount and value of goods used in connection with the project, the state could forego an indeterminate amount of franchise and sales tax revenue. Also, depending on 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 coal-fueled or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that: (1) has a capacity of at least 200 megawatts; (2) meet various emission limits outlined in the bill; (3) will capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; and (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project.

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. The Comptroller could not issue a franchise tax credit until September 1, 2013.

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 BEG would also be responsible for designing initial protocols and standards for the process, reviewing the conduct of the process, evaluating the results of the process, and determining whether to transmit verification of the process to the Comptroller. 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 first fee would be due within two years of the date the project first supplies carbon captured by the project to an enhanced oil recovery project.

The bill would add new Section 151.334 to the Tax Code to create a sales tax exemption for certain tangible personal property used to capture, transport, or inject anthropogenic carbon dioxide as part of an enhanced oil recovery project meeting certain requirements. These changes to the Code would not affect taxes imposed before the effective date of this bill. With respect to the new sales tax exemption, there are currently no facilities in Texas being operated to capture and sequester anthropogenic carbon dioxide. Therefore, the amount and value of tangible personal property used for a project is unknown and the potential revenue loss from the sales tax exemption cannot be estimated.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6% to 1.15% for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) that uses carbon dioxide generated by a clean energy project. 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 last for 30 years from the Comptroller's application approval date. Currently, a producer is eligible for the rate reduction for 7 years if at least 99% 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 experience a revenue loss that would depend on the number of producers participating in an EOR project.

The bill 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, 720 The University of Texas System Administration, 582 Commission on Environmental Quality, 301 Office of the Governor

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