

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 14, 2009

TO: Honorable Rene Oliveira, Chair, House Committee on Ways & Means

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

IN RE: HB3206 by Edwards (Relating to the implementation of the exemption from ad valorem taxation for pollution control property.), **As Introduced**

Depending upon what rule changes would be adopted and how they would affect the determination of the portion of the property that is pollution control, there could be an indeterminate fiscal impact to the state.

The bill would implement a recommendation in the Legislative Budget Board (LBB) *Government Effectiveness and Efficiency Report* entitled, "Revise the Property Tax Exemption for Pollution Control Equipment."

The bill would modify the program at the Texas Commission on Environmental Quality (TCEQ) which determines property tax exemptions for certain pollution control property. The bill would require TCEQ to use its own cost analysis procedure as a maximum exemption when making a use determination for equipment listed in Section 11.31(k) of the Texas Tax Code (Tier IV). The bill would allow applicants to propose their own method for calculating partial determination, but would not allow the TCEQ to issue a use determination greater than the maximum exemption. The bill would require applicants who received an exemption based on Tier IV for the 2009 tax year to re-apply if they want the exemption for tax year 2010. In addition, the bill would require an applicant for a Tier IV use determination to submit information detailing the environmental benefit gained from the device. The bill would require the agency to inform applicants for a partial environmental use of an item after making a Tier IV determination. The bill would also require the creation of a permanent advisory committee.

It is anticipated that TCEQ could implement this bill within current resources. The bill would not affect ad valorem tax rates or valuations, but would provide for rulemaking authority concerning the determination of the portion of property that is eligible for exemption as pollution control property by TCEQ. Since the rulemaking authority contained in the bill is discretionary, information is not available on what rule changes would be adopted or how they would affect the allocation of the use of properties. Therefore, the fiscal impact cannot be determined.

Because the state is constitutionally prohibited from imposing a state property tax, the bill would not have a direct fiscal impact to the state. However, Section 403.302 of the Government Code requires the Comptroller of Public Accounts (CPA) to conduct a property value study to determine the total taxable value for each school district. Total taxable value is an element in the state's school funding formula. The bill could reduce exemptions to property tax, which could cause a change in school district taxable values reported to the Commissioner of Education by the CPA thereby affecting future state costs.

Local Government Impact

The fiscal impact to local governments cannot be estimated at this time. Any use determinations for Tier IV equipment granted during 2009 would be void in 2010 unless the applicant re-applies. If the applicant does not re-apply, the applicant would owe taxes on the equipment. The fiscal impact for local government would vary based on the formula for partial determinations. A number of the items in Tier IV were not considered prior to 2008 to be eligible for a positive use determination. Tier IV applications could contain property which is currently on the tax rolls and has been taxed for prior years. In these cases, a positive use determination would have the impact of removing a percentage of an item's value from the tax rolls and decreasing tax revenue.

Source Agencies: 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: JOB, MN, JI, HC