

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 26, 2009

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

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

IN RE: HB4668 by Merritt (Relating to a fee on the importation and exportation of natural gas for coastal protection.), **As Introduced**

Because the fee established by the bill would likely be challenged as a violation of the U.S Constitution, the amount of revenue that would be generated by the bill's passage cannot be estimated.

The bill would impose a fee of 25 cents per each million British thermal units (btu) on each person who purchases natural gas that is imported into or exported out of this state. The fee would be paid on or before the 25th day of each month for the preceding month's collections. The bill would impose a penalty of 12 percent on delinquent fees. Fee revenues resulting from the bill's passage would be deposited to the credit of the General Revenue-Dedicated Coastal Protection Account No. 27 until it is certified that the unencumbered balance in the fund has reached \$20 million. Thereafter, the fee would be deposited to the credit of the General Revenue fund until the unencumbered balance in the fund falls below \$20 million.

The Comptroller reports that the bill may violate Article 1, § 10, Clause 2 of the U.S. Constitution, which prohibits the states from placing a duty or impost on imports or exports. The basis of the fee is natural gas that is being imported or exported. In addition, the Comptroller reports that the fee may be subject to a challenge under the Commerce Clause of the U.S. Constitution because it is imposed on gas that is purchased for import or export, but not on gas that is both produced and consumed in the state.

Because the fee established by the bill would likely be challenged as a violation of the U.S Constitution, the amount of revenue that would be generated by the bill's passage cannot be estimated. If the fee would not be determined to violate the U.S. Constitution, the bill could result in annual revenues to the Coastal Protection Fund No. 27 of \$20 million and annual revenues to the General Revenue Fund of \$1,215.0 million, based on an estimated 5 trillion btu (or cubic feet) of natural gas imported and exported to/from Texas to/from other state and countries, as reported by the GLO.

Local Government Impact

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

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 455 Railroad Commission

LBB Staff: JOB, MN, ZS, TL