

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 17, 2009**

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

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

**IN RE: SB2111** by Averitt (Relating to the implementation of and incentives for projects involving the capture, transportation, injection, sequestration, geologic storage, or abatement of carbon dioxide.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB2111, Committee Report 1st House, Substituted: a negative impact of (\$8,844,187) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$382,306)
2011	(\$8,461,881)
2012	(\$15,393,702)
2013	(\$22,068,702)
2014	(\$28,533,702)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated--Advanced Clean Energy Project</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated--Advanced Clean Energy Project</i>	Change in Number of State Employees from FY 2009
2010	(\$382,306)	\$60,000,000	(\$60,000,000)	4.0
2011	(\$8,461,881)	\$60,000,000	(\$60,000,000)	4.0
2012	(\$15,393,702)	\$60,000,000	(\$60,000,000)	5.0
2013	(\$22,068,702)	\$60,000,000	(\$60,000,000)	5.0
2014	(\$28,533,702)	\$60,000,000	(\$60,000,000)	5.0

**Fiscal Analysis**

The bill would make changes to the definition of an advanced clean energy project, including projects that involve the modification of an existing facility and allowing projects to be considered advanced clean energy if they involve only a portion of the emissions stream from a facility. For the portion of the emissions stream from a facility associated with a project, the bill would provide that a project achieve an annual average emissions rate for nitrogen oxides of 0.05 pounds or less per million British Thermal Units and capture not less than 50 percent of carbon dioxide in the emissions stream associated with the project. The project would also be required to sequester the carbon dioxide by geologic storage or other means.

The bill would establish a clean energy grant and loan program administered by the Texas Commission on Environmental Quality (TCEQ) to accelerate the development of advanced clean energy projects. Grants could be awarded to assist in the funding of the front-end-engineering and design of the project. Under the grant and loan program, TCEQ could make or guarantee a loan to the managing entity of an advanced clean energy project in this state. The Texas Public Finance Authority would be authorized to issue general obligation bonds to provide and guarantee loans to encourage advanced clean energy projects if an authorizing constitutional amendment is approved by voters.

The bill would create a new General Revenue Dedicated Advanced Clean Energy Project Account consisting of: a sub-account in the account that consists of the proceeds of bonds; any amount appropriated by the Legislature to the account; gifts, grants, and other donations received for the account; and interest earned on the investment of money in the account. Money in the account could only be appropriated to TCEQ to award grants or make or guarantee loans.

The bill would create a tax exemption for tangible personal property used to capture, transport, or inject anthropogenic carbon dioxide as part of an enhanced oil recovery project. The bill also would create property tax abatement provisions for advanced clean energy projects located in county reinvestment zones.

The bill would extend the tax rate reduction for qualified enhanced oil recovery projects (EOR) using sequestered carbon dioxide from clean energy projects from seven to ten years from the Comptroller's Office approval date.

The bill would provide the Railroad Commission with jurisdiction over the injection of anthropogenic carbon dioxide into a reservoir that is initially productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir.

The bill would require that TCEQ and Railroad Commission, in consultation with the Bureau of Economic Geology of the University of Texas at Austin (BEG), prepare and file with the Legislature a joint preliminary report that, for injection/geologic storage of carbon dioxide (CO<sub>2</sub>) into saline formations that are not productive of oil, gas or geothermal resources (1) analyzes requirements; (2) recommends a permitting process; (3) recommends an agency or agencies that should have jurisdiction; and (4) assesses the status of compliance with federal rules. The report would include recommended criteria for identifying candidate storage sites; a proposed procedure for public review and comment; ensuring that the quality of natural and cultural resources of land overlying the site are protected; a description of the status of leasehold or mineral estate liability related to possible subsurface trespass issues; analysis of attributes of subsurface area of operations and financial assurance methods; status of permit applications; status of request for enforcement primary for the CO<sub>2</sub> program; and recommended additional legislation or memorandum of understanding modifications that are needed.

The bill would take effect immediately if it receives a vote of two-thirds of all members to each house; otherwise, the bill would take effect September 1, 2009. The issuance of bonds would be contingent upon approval of a constitutional amendment by voters, and provisions relating to emissions reductions calculations would be contingent upon passage of Senate Bill 16.

## **Methodology**

With respect to the bill's sales tax exemption on property used in conjunction with operating an advanced clean coal project, the Comptroller's Office reports that there are currently no facilities in Texas being operated to capture and sequester anthropogenic carbon dioxide. Thus, this estimate assumes that anticipated sales tax revenues to the state would not be significantly impacted by the bill. However, passage of the bill could result in the state having to forgo sales tax revenues that might have occurred in the future absent the bill's exemptions. The amount of sales tax the state would forgo in the future would depend on the number of advanced clean coal projects and the amount of property exempted.

With respect to the oil production tax, current law relating to sequestered carbon dioxide already provides the same tax incentive of 1.15 percent for qualified EOR projects for a period of seven years.

According to the Comptroller, the fiscal impact from this provision would not occur until the eighth year of the (new) 10-year tax incentive period or fiscal year 2017. The Comptroller also reports that currently no exemptions have been granted for such EOR projects.

This estimate assumes that the constitutional amendment authorizing \$300 million in general obligation bonds to be issued for advanced clean energy projects (HJR 123) would be approved by voters. This estimate assumes that \$60 million in bonds would be issued each fiscal year for five years beginning in January 2010 and that the debt service would be paid out of the General Revenue Fund beginning in fiscal year 2011. Debt service, as estimated by the Texas Public Finance Authority, would be as follows: fiscal year 2011--\$8.1 million, fiscal year 2012--\$15.0 million, fiscal year 2013--\$21.7 million, fiscal year 2014--\$28.1 million. These amounts are included in the table above. Debt service estimates are based on taxable bonds because the funds would be provided to private entities. Interest is assumed at 7 percent at a 20-year issuance. This estimate assumes that the bond proceeds would be deposited to the Advanced Clean Energy Project Account created by the bill, and that the TCEQ would make \$60 million per fiscal year in grants, loans, and loan guarantees from the bond proceeds over a five-year period beginning in fiscal year 2010.

Administrative costs to the TCEQ include funding to establish and administer a new grant and loan program for advanced clean energy projects. It is estimated that 3.0 additional FTEs and related costs would be required at a cost of \$256,100 in fiscal year 2010 and \$236,600 in subsequent years and are included in the table above. This estimate assumes that costs to the TCEQ would be paid for out of the General Revenue Fund since the bill does not provide for such cost to be paid using the Advanced Clean Energy Project Account and since the only revenue source for the account would be bond proceeds, which could not be used for agency administrative costs.

Administrative costs to the Railroad Commission include costs associated with the bill providing the agency with jurisdiction over the injection of anthropogenic carbon dioxide into reservoirs. It is estimated that 1.0 FTE would be needed in 2010 and 2011, and that 2.0 FTEs would be needed in subsequent years. The costs to the Railroad are estimated at \$126,206 in fiscal year 2010, \$91,448 in 2011 and \$138,769 in subsequent years and are included in the table above.

According to the University of Texas System, there could be a revenue loss to the Permanent University Fund if land owned by the PUF was used for this purpose, since it would no longer be available for oil and gas exploration.. The University of Texas System reports that passage of the bill would likely result in several thousand acres of university lands being removed from consideration of oil and gas exploration based on an estimated amount of subsurface acres required to sequester the carbon dioxide emissions of a 200 megawatt combined cycle coal gasification electric generating plant and applying that the subsurface acres required to sequester that amount of CO<sub>2</sub>.

No significant costs are expected as a result of the bill's requirement for a joint preliminary report that, for injection/geologic storage of carbon dioxide (CO<sub>2</sub>) into saline formations to be completed by the TCEQ, BEG, and Railroad Commission.

This estimate assumes the bill would take effect on September 1, 2009.

### **Local Government Impact**

It is possible that some local governments might forgo future sales tax revenues due to the bill's provisions concerning sales tax exemptions for property used to capture, transport, or injection of anthropogenic carbon dioxide as part of an enhanced oil recovery project; however, this estimate assumes that in most cases such projects might be built without the incentives provided in the bill. Therefore, the amount of sales tax a local government would forgo is expected to be relatively insignificant.

**Source Agencies:** 304 Comptroller of Public Accounts, 455 Railroad Commission, 582 Commission on Environmental Quality, 347 Public Finance Authority, 301 Office of the Governor, 473 Public Utility Commission of Texas, 720 The University of Texas System Administration

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