LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 16, 2013

TO: Honorable Jim Keffer, Chair, House Committee on Energy Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2446** by Crownover (Relating to the definitions of advanced clean energy projects and clean energy projects and to franchise tax credits for certain of those projects.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2446, Committee Report 1st House, Substituted: an impact of $0 through the biennium ending August 31, 2015.

However, the bill will result in a negative impact of ($4,000,000) beginning in FY 2017.

General Revenue-Related Funds, Ten-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	$0
2015	$0
2016	$0
2017	($4,000,000)
2018	($8,700,000)
2019	($9,000,000)
2020	($9,000,000)
2021	($9,000,000)
2022	($9,000,000)
2023	($9,000,000)

All Funds, Ten-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *School Districts*	Probable (Cost) from *Foundation School Fund* 193
2014	$0	$0
2015	$0	$0
2016	$0	$0
2017	($4,200,000)	($4,000,000)
2018	($8,800,000)	($8,700,000)
2019	($9,100,000)	($9,000,000)
2020	($8,700,000)	($9,000,000)
2021	($8,300,000)	($9,000,000)
2022	($8,000,000)	($9,000,000)
2023	($7,300,000)	($9,000,000)

Fiscal Analysis

This bill would amend Chapter 171, Tax Code, regarding the franchise tax, by moving provisions from the Government Code for a franchise tax credit for a clean energy project to Chapter 171. The bill would also amend the provisions for the tax credit by setting the limit on the amount of credit that could be claimed on a report to not more than the amount of tax due for the report after any applicable credits. The bill would provide that credits that could not claimed due to the limitation could be carried forward for not more than twenty consecutive reports. The would allow the entity designated in the certificate of compliance for a clean energy project to assign the credit to one or more taxable entities who would be able to claim the credit under the same provisions as the transferring entity. The bill would provide that the Comptroller could not issue a credit prior to the latter of September 1, 2018, or the expiration of a limitation of taxable value agreement under Chapter 313 regarding the clean energy project.

The bill would amend the Health and Safety Code to add natural gas to the fuels potentially eligible to be used in an advanced clean energy project and would add a provision regarding sulfur dioxide emissions at a project involving use of natural gas as a fuel.

The bill would amend the Natural Resources Code to add natural gas-fueled electric generating facility to the type of facilities which could qualify as a clean energy project. The bill would set the time at which an entity could apply to for certification as a clean energy project to on or after September 1, 2018 and specify that not more than one of the three projects certified could be a natural gas project.

The bill would require the Comptroller to adopt rules to implement the franchise tax credit not later than January 1, 2014. The bill would require the Texas Commission on Environmental Quality to adopt rules to implement the changes to the Health and Safety Code not later than January 1, 2014. The bill would allow the Railroad Commission to adopt rules as necessary to implement the changes to the Natural Resources Code.

The bill would provide that the changes made by the bill would not apply to a project that was selected by the United States Department of Energy for a Clean Coal Power Initiative Award before February 1, 2010 and that the law in effect immediately before the effective date of the bill would govern that project.

This bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect

September 1, 2013.

Methodology

The bill would prohibit the issuance of any franchise tax credits before September 1, 2018 or while a project is under a cap agreement under Chapter 313. This would appear to apply to the clean coal project mentioned above since under current law the application for the franchise tax credit must be complete by September 2, 2013, when that provision is set to expire.

Through the expansion of the definition of "advanced clean energy project" (ACEP), this bill would allow combined-cycle natural-gas-fueled power plants, capturing carbon dioxide for enhanced oil recovery to become eligible for Chapter 313 of the Tax Code.

Presently, there is one announced natural-gas-fueled power plant-valued at $450 million-meeting the requirements of the bill. It is scheduled to be operational in mid-2015 in Point Comfort. Another plant of this type is assumed. The second natural-gas-fueled power plant would not be eligible for the franchise tax credits. A third plant-valued at over $1 billion- of the clean coal category is close to breaking ground and would represent the second of three plants allowable under the statute governing the franchise tax credits. This plant is currently qualified for a Chapter 313 limitation; the analysis above reflects the other two plants with respect to those limitations. A third project eligible for the franchise tax credit is currently unknown and it its potential fiscal impact cannot be estimated.

The franchise tax credit, to be received after the end of the Chapter 313 limitation period, capped at 10 percent of initial capital costs, would be $45 million the first natural-gas-fueled power plant.

The estimated fiscal impact on the school district levy is based on two natural-gas-fueled projects, one being completed in 2015 and one in 2016. The state would incur cost under the Foundation School Program corresponding to local M&O revenue losses associated with expansion of projects eligible for value limitation under Chapter 313 of the Tax Code. Additional state cost of $4.0 million is estimated beginning in FY17, increasing to approximately $9.0 million by FY19 and continuing at similar levels through FY23.

Local Government Impact

School districts could lose revenue as a result of the bill's provisions regarding Chapter 313 of the Tax Code. As shown in the table above, this loss is estimated at $4.2 million in fiscal year 2017 and $8.8 million in fiscal year 2018. Similar fiscal implications are expected in future years beyond fiscal year 2018.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 455 Railroad Commission, 582 Commission on Environmental Quality, 720 The University of Texas System Administration

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