

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1785
By: Averitt
Natural Resources
4/24/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As the population and economy of Texas continue to grow, additional energy capacity will be needed. Because the method used to supply additional energy is imperative to the wellbeing of Texas, future energy sources need to be reliable and environmentally clean.

C.S.S.B. 1785 provides incentives to encourage the use of advanced clean energy technology.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 382.0566, Health and Safety Code), as the successor agency to the Texas Natural Resources Conservation Commission and in SECTION 4 (Section 11.31, Tax Code), and SECTION 5 (Section 26.045, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality (TCEQ), as the successor agency to TNRCC.]

SECTION 1. Amends Chapter 447, Government Code, by adding Section 447.013, as follows:

Sec. 447.013. ADVANCED CLEAN ENERGY PROJECT GRANT AND LOAN PROGRAM. (a) Defines "account," "advanced clean energy project," and "program."

(b) Provides that the advanced clean energy project grant and loan program (program) is established to encourage the development of advanced clean energy projects that produce reliable and affordable electric power in an environmentally friendly manner. Provides that the program is administered by the state energy conservation office (conservation office).

(c) Provides that the advanced clean energy project account (account) is an account in the general revenue fund.

(d) Sets forth certain funds of which the account consists.

(e) Authorizes money in the account to be appropriated only to the conservation office to award grants or to make or guarantee loans under this section. Prohibits the total amount of grants that are authorized to be awarded under this section in any state fiscal biennium from revenues described by Subsection (d)(2) from exceeding \$20 million. Prohibits the total amount of loans that are authorized to be made or guaranteed under this section in any state fiscal biennium from revenues described by Subsection (d)(2) from exceeding \$10 million.

(f) Requires the conservation office to enter into a written agreement with the entity to which the grant is to be awarded or the loan is to be made before awarding a grant or making a loan under this section. Authorizes the agreement to specify that if, as of a date specified by the agreement, the entity has not used the grant or loan for the purposes for which the grant or loan was intended, the

entity is required to repay the amount of the grant or the amount of the loan and any accrued interest, as applicable, under terms specified by the agreement.

(g) Authorizes the conservation office, under the program, to award a grant to the managing entity of an advanced clean energy project (project) in an amount not to exceed 50 percent of the total amount invested in the project by private industry sources. Requires the managing entity of the project to provide any information considered necessary by the conservation office to determine whether the entity qualifies for the grant.

(h) Authorizes the conservation office, under the program, to make or guarantee a loan to the managing entity of a project in this state. Requires the project to qualify for the loan or guarantee under Section 49-p, Article III, Texas Constitution if the loan or guarantee is to be funded by the proceeds of bonds issued under Subsection (j).

(i) Provides that a recipient of a grant or loan under this section is encouraged to purchase goods and services from small businesses and historically underutilized business, as those terms are defined by Section 481.191 (Definitions).

(j) Requires the Texas Finance Authority to issue general obligation bonds as authorized by Section 49-p, Article III, Texas Constitution.

SECTION 2. Amends Section 382.003, Health and Safety Code, by adding Subdivisions (1-a), (3-a), (7-a), and (11-a), to define "advanced clean energy project," "coal," "federally qualified clean coal technology," and "solid waste," respectively.

SECTION 3. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.0566, as follows:

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) Requires an application for a permit under this chapter for an advanced clean energy project to be received by the Texas Natural Resources Conservation Commission (TNRCC) on or after September 1, 2008, and before September 1, 2020.

(b) Requires the executive director of the TNRCC (executive director) to complete the technical review of the application as authorized by law, not later than nine months after the executive director declares an application for a permit under this chapter for a project to be administratively complete.

(c) Requires TNRCC to issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. Authorizes TNRCC to extend the deadline set out in this subsection up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent TNRCC from meeting the deadline imposed by this subsection without creating an extraordinary burden on the resources of TNRCC.

(d) Provides that the permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5 (Texas Natural Resources Conservation Commission), Water Code, or Subchapters C (Contested Cases: General Rights and Procedures), D (Contested Cases: Evidence Witnesses, and Discovery), E (Contested Cases: Testimony of a Child), F (Contested Cases: Final Decisions and Orders), and G (Contested Cases: Judicial Review), Chapter 2001, Government Code, as applicable.

(e) Provides that an applicant for a permit under this chapter for an advanced clean energy project is not required to prove, as part of an analysis of whether the project will use the best available control technology or reduce emissions to the lowest achievable control technology or reduce emissions to the lowest achievable

rate, that the federally qualified clean coal technology or advanced clean energy technology proposed to be used in connection with the project has been demonstrated to be feasible in a commercial operation.

(f) Requires TNRCC to adopt rules to implement this section.

SECTION 4. Amends Section 11.31, Tax Code, by adding Subsections (k), (l), and (m), as follows:

(k) Requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules establishing a nonexclusive list of certain facilities, devices, or methods for the control of air, water, or land pollution, which is required to include certain items.

(l) Requires TCEQ by rule to update the list adopted under Subsection (k) at least once every three years. Prohibits an item from being removed from the list unless TCEQ finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.

(m) Requires the executive director of TCEQ, notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), to determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and to take the actions that are required by Subsection (d) in the event such a determination not later than the 30th day after receiving the information required by Subsections (c)(2) and (3) and without requiring information described under Subsection (c)(1).

SECTION 5. Amends Section 26.045, Tax Code, as follows:

Sec. 26.045. ROLLBACK RELIEF FOR POLLUTION CONTROL REQUIREMENTS.

(a) Changes references to TNRCC to the Texas Commission on Environmental Quality (TCEQ).

(c) Makes a conforming change.

(d) Makes conforming and nonsubstantive changes.

(e) Makes a conforming change.

(f) Requires TCEQ to adopt rules establishing a nonexclusive list of facilities, devices, or methods, for the control of air, water, or land pollution that is required to include certain entities, systems, equipment, and processes.

(g) Requires TCEQ by rule to update the list adopted under Subsection (f) at least once every three years. Prohibits an item from being removed from the list unless TCEQ finds compelling evidence to support the conclusion that the item does not render pollution control benefits.

(h) Requires the executive director of TCEQ, notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in a permit application or in a request for any exemption from a permit that would otherwise be required is a facility, device, or method included on the list adopted under Subsection (f), to determine that the facility, device, or method described in the permit application or in the request for an exemption from a permit that would otherwise be required is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and to take action that is required by Subsection (d) in the event such a determination not later than the 30th day after receiving the information required

by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted.

(i) Redesignated from existing Subsection (f). Makes conforming changes.

SECTION 6. Amends Section 182.022, Tax Code, by adding Subsection (c), as follows:

(c) Prohibits a tax under this chapter from being imposed on gross receipts from the sale of electricity generated by an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, notwithstanding any other provision of this chapter.

SECTION 7. Amends Section 182.122, Tax Code, as follows:

Sec. 182.122. ALLOCATION OF TAX. (a) Creates this subsection from existing text.

(b) Requires the comptroller of public accounts (comptroller) to transfer to the account the first \$30 million of the revenues collected under this chapter that are allocated to the general revenue fund under Subsection (a) (2) in any state fiscal biennium.

SECTION 8. Amends Section 182.122, Tax Code, effective September 1, 2020, as follows:

Sec. 182.122. ALLOCATION OF TAX. Provides that revenues under this chapter are allocated by one-fourth to the foundation school fund and three-fourths to the general revenue fund.

SECTION 9. Amends Section 313.024(b), Tax Code, effective January 1, 2008, to require an entity to use the property in connection with an advanced clean energy project, rather than a gasification project for coal and biomass mixture, to be eligible for a limitation on appraised value under this subchapter.

SECTION 10. Requires the conservation office to establish the program under Section 447.013, Government Code, as added by this Act, not later than January 1, 2008.

SECTION 11. Requires that no technology, or level of emissions reduction, solely by reason of the use of the technology, or achievement of the emissions reduction, by one or more facilities receiving incentives under this Act, be considered to be adequately demonstrated or achievable for purposes of the best available control technology analysis or lowest achievable emissions rate analysis conducted by TCEQ under applicable law.

SECTION 12. Requires TCEQ to adopt rules required under Section 382.0566, Health and Safety Code, and Section 11.31(k), Tax Code, as added by this Act, and Section 26.045 (f), Tax Code, as amended by this Act, not later than January 1, 2008.

SECTION 13. (a) Requires TCEQ and the conservation office, not later than September 1, 2010, 2012, 2014, 2016, and 2018, to issue a joint report to the legislature providing a status update on the implementation of the program and assessment of whether the emissions profile set out in Paragraph (B), Subdivision (1-a), Section 382.003, Health and Safety Code, as added by this Act, should be adjusted to increase or decrease elements of the emissions profile.

(b) Requires certain factors to be considered in the assessment of the emissions profile.

(c) Prohibits any adjustments to the emissions profile implemented by the legislature in response to a report required by this section from applying to an application deemed administratively complete on or before the date of the report.

SECTION 14. Makes application of Section 447.013(j), Government Code, as added by this Act, contingent upon voter approval of the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage the use of carbon-free hydrogen energy.

SECTION 15. Effective date: upon passage or September 1, 2007.