

1-1 By: Averitt S.B. No. 1785  
1-2 (In the Senate - Filed March 9, 2007; March 21, 2007, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 26, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 11, Nays 0; April 26, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1785 By: Averitt

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the implementation of clean energy projects in this  
1-11 state, including certain tax exemptions and rollbacks.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 447, Government Code, is amended by  
1-14 adding Section 447.013 to read as follows:

1-15 Sec. 447.013. ADVANCED CLEAN ENERGY PROJECT GRANT AND LOAN  
1-16 PROGRAM. (a) In this section:

1-17 (1) "Account" means the advanced clean energy project  
1-18 account established under this section.

1-19 (2) "Advanced clean energy project" has the meaning  
1-20 assigned by Section 382.003, Health and Safety Code.

1-21 (3) "Program" means the advanced clean energy project  
1-22 grant and loan program established under this section.

1-23 (b) The advanced clean energy project grant and loan program  
1-24 is established to encourage the development of advanced clean  
1-25 energy projects that produce reliable and affordable electric power  
1-26 in an environmentally protective manner. The program is  
1-27 administered by the state energy conservation office.

1-28 (c) The advanced clean energy project account is an account  
1-29 in the general revenue fund.

1-30 (d) The account consists of:

1-31 (1) a subaccount in the account that consists of the  
1-32 proceeds of bonds issued under Subsection (j);

1-33 (2) revenues allocated to the account under Section  
1-34 182.122, Tax Code;

1-35 (3) any amount appropriated by the legislature for the  
1-36 account;

1-37 (4) gifts, grants, and other donations received for  
1-38 the account; and

1-39 (5) interest earned on the investment of money in the  
1-40 account.

1-41 (e) Money in the account may be appropriated only to the  
1-42 state energy conservation office to award grants or to make or  
1-43 guarantee loans under this section. The total amount of grants that  
1-44 may be awarded under this section in any state fiscal biennium from  
1-45 revenues described by Subsection (d)(2) may not exceed \$20 million.  
1-46 The total amount of loans that may be made or guaranteed under this  
1-47 section in any state fiscal biennium from revenues described by  
1-48 Subsection (d)(2) may not exceed \$10 million.

1-49 (f) Before awarding a grant or making a loan under this  
1-50 section, the state energy conservation office shall enter into a  
1-51 written agreement with the entity to which the grant is to be  
1-52 awarded or the loan is to be made. The agreement may specify that  
1-53 if, as of a date specified by the agreement, the entity has not used  
1-54 the grant or loan for the purposes for which the grant or loan was  
1-55 intended, the entity shall repay the amount of the grant or the  
1-56 amount of the loan and any accrued interest, as applicable, under  
1-57 terms specified by the agreement.

1-58 (g) Under the program, the state energy conservation office  
1-59 may award a grant to the managing entity of an advanced clean energy  
1-60 project in an amount not to exceed 50 percent of the total amount  
1-61 invested in the project by private industry sources. The managing  
1-62 entity of the project must provide any information considered  
1-63 necessary by the state energy conservation office to determine

2-1 whether the entity qualifies for the grant.

2-2 (h) Under the program, the state energy conservation office  
 2-3 may make or guarantee a loan to the managing entity of an advanced  
 2-4 clean energy project in this state. If the loan or guarantee is to  
 2-5 be funded by the proceeds of bonds issued under Subsection (j), the  
 2-6 project must qualify for the loan or guarantee under Section 49-p,  
 2-7 Article III, Texas Constitution.

2-8 (i) A recipient of a grant or loan under this section is  
 2-9 encouraged to purchase goods and services from small businesses and  
 2-10 historically underutilized businesses, as those terms are defined  
 2-11 by Section 481.191.

2-12 (j) The Texas Public Finance Authority shall issue general  
 2-13 obligation bonds as authorized by Section 49-p, Article III, Texas  
 2-14 Constitution.

2-15 SECTION 2. Section 382.003, Health and Safety Code, is  
 2-16 amended by adding Subdivisions (1-a), (3-a), (7-a), and (11-a) to  
 2-17 read as follows:

2-18 (1-a) "Advanced clean energy project" means a project  
 2-19 that:

2-20 (A) involves the use of coal, biomass, petroleum  
 2-21 coke, or solid waste in the generation of electricity, or the  
 2-22 creation of liquid fuels, outside of the existing fuel production  
 2-23 infrastructure;

2-24 (B) on an annual basis, is capable of achieving a  
 2-25 99 percent reduction of sulfur dioxide emissions, a 95 percent  
 2-26 reduction of mercury emissions, and an emission rate for nitrogen  
 2-27 oxides of 0.05 pounds per million British thermal units; and

2-28 (C) renders carbon dioxide capable of capture,  
 2-29 sequestration, or abatement.

2-30 (3-a) "Coal" has the meaning assigned by Section  
 2-31 134.004, Natural Resources Code.

2-32 (7-a) "Federally qualified clean coal technology"  
 2-33 means a technology or process, including a technology or process  
 2-34 applied at the precombustion, combustion, or postcombustion stage,  
 2-35 for use at a new or existing facility that will achieve a 97 percent  
 2-36 reduction of sulfur dioxide emissions, an emission rate for  
 2-37 nitrogen oxides of 0.08 pounds per million British thermal units,  
 2-38 and significant reductions in mercury emissions associated with the  
 2-39 use of coal in the generation of electricity, process steam, or  
 2-40 industrial products, including the creation of liquid fuels,  
 2-41 hydrogen for fuel cells, and other coproducts. The technology used  
 2-42 must comply with applicable federal law regarding mercury emissions  
 2-43 and must render carbon dioxide capable of capture, sequestration,  
 2-44 or abatement. Federally qualified clean coal technology includes  
 2-45 atmospheric or pressurized fluidized bed combustion technology,  
 2-46 integrated gasification combined cycle technology, methanation  
 2-47 technology, magnetohydrodynamic technology, direct and indirect  
 2-48 coal-fired turbines, undiluted high-flame temperature oxygen  
 2-49 combustion technology that excludes air, and integrated  
 2-50 gasification fuel cells.

2-51 (11-a) "Solid waste" has the meaning assigned by  
 2-52 Section 361.003.

2-53 SECTION 3. Subchapter C, Chapter 382, Health and Safety  
 2-54 Code, is amended by adding Section 382.0566 to read as follows:

2-55 Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING  
 2-56 PROCEDURE. (a) An application for a permit under this chapter for  
 2-57 an advanced clean energy project must be received by the commission  
 2-58 on or after September 1, 2008, and before September 1, 2020.

2-59 (b) As authorized by federal law, not later than nine months  
 2-60 after the executive director declares an application for a permit  
 2-61 under this chapter for an advanced clean energy project to be  
 2-62 administratively complete, the executive director shall complete  
 2-63 its technical review of the application.

2-64 (c) The commission shall issue a final order issuing or  
 2-65 denying the permit not later than nine months after the executive  
 2-66 director declares the application technically complete. The  
 2-67 commission may extend the deadline set out in this subsection up to  
 2-68 three months if it determines that the number of complex pending  
 2-69 applications for permits under this chapter will prevent the

3-1 commission from meeting the deadline imposed by this subsection  
 3-2 without creating an extraordinary burden on the resources of the  
 3-3 commission.

3-4 (d) The permit process authorized by this section is subject  
 3-5 to the requirements relating to a contested case hearing under this  
 3-6 chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001,  
 3-7 Government Code, as applicable.

3-8 (e) An applicant for a permit under this chapter for an  
 3-9 advanced clean energy project is not required to prove, as part of  
 3-10 an analysis of whether the project will use the best available  
 3-11 control technology or reduce emissions to the lowest achievable  
 3-12 rate, that the federally qualified clean coal technology or  
 3-13 advanced clean energy technology proposed to be used in connection  
 3-14 with the project has been demonstrated to be feasible in a  
 3-15 commercial operation.

3-16 (f) The commission shall adopt rules to implement this  
 3-17 section.

3-18 SECTION 4. Section 11.31, Tax Code, is amended by adding  
 3-19 Subsections (k), (l), and (m) to read as follows:

3-20 (k) The Texas Commission on Environmental Quality shall  
 3-21 adopt rules establishing a nonexclusive list of facilities,  
 3-22 devices, or methods for the control of air, water, or land  
 3-23 pollution, which must include:

3-24 (1) coal cleaning or refining facilities;  
 3-25 (2) atmospheric or pressurized and bubbling or  
 3-26 circulating fluidized bed combustion systems and gasification  
 3-27 fluidized bed combustion combined cycle systems;  
 3-28 (3) ultra-supercritical pulverized coal boilers;  
 3-29 (4) flue gas recirculation components;  
 3-30 (5) syngas purification systems and gas-cleanup  
 3-31 units;

3-32 (6) enhanced heat recovery systems;  
 3-33 (7) exhaust heat recovery boilers;  
 3-34 (8) heat recovery steam generators;  
 3-35 (9) superheaters and evaporators;  
 3-36 (10) enhanced steam turbine systems;  
 3-37 (11) methanation;  
 3-38 (12) coal combustion or gasification byproduct and  
 3-39 coproduct handling, storage, or treatment facilities;  
 3-40 (13) biomass cofiring storage, distribution, and  
 3-41 firing systems;

3-42 (14) coal cleaning or drying processes, such as coal  
 3-43 drying/moisture reduction, air jigging, precombustion  
 3-44 decarbonization, and coal flow balancing technology;  
 3-45 (15) oxy-fuel combustion technology including  
 3-46 undiluted high-flame temperature oxygen combustion that excludes  
 3-47 air, amine or chilled ammonia scrubbing, fuel or emission  
 3-48 conversion through the use of catalysts, enhanced scrubbing  
 3-49 technology, modified combustion technology such as chemical  
 3-50 looping, and cryogenic technology; and

3-51 (16) any other equipment designed to prevent, capture,  
 3-52 abate, or monitor nitrogen oxides, volatile organic compounds,  
 3-53 particulate matter, mercury, carbon monoxide, carbon dioxide, or  
 3-54 any criteria pollutant.

3-55 (l) The Texas Commission on Environmental Quality by rule  
 3-56 shall update the list adopted under Subsection (k) at least once  
 3-57 every three years. An item may not be removed from the list unless  
 3-58 the commission finds compelling evidence to support the conclusion  
 3-59 that the item does not provide pollution control benefits.

3-60 (m) Notwithstanding the other provisions of this section,  
 3-61 if the facility, device, or method for the control of air, water, or  
 3-62 land pollution described in an application for an exemption under  
 3-63 this section is a facility, device, or method included on the list  
 3-64 adopted under Subsection (k), the executive director of the Texas  
 3-65 Commission on Environmental Quality, not later than the 30th day  
 3-66 after the date of receipt of the information required by  
 3-67 Subsections (c)(2) and (3) and without regard to whether the  
 3-68 information required by Subsection (c)(1) has been submitted, shall  
 3-69 determine that the facility, device, or method described in the

4-1 application is used wholly or partly as a facility, device, or  
4-2 method for the control of air, water, or land pollution and shall  
4-3 take the actions that are required by Subsection (d) in the event  
4-4 such a determination is made.

4-5 SECTION 5. Section 26.045, Tax Code, is amended to read as  
4-6 follows:

4-7 Sec. 26.045. ROLLBACK RELIEF FOR POLLUTION CONTROL  
4-8 REQUIREMENTS. (a) The rollback tax rate for a political  
4-9 subdivision of this state is increased by the rate that, if applied  
4-10 to the total current value, would impose an amount of taxes equal to  
4-11 the amount the political subdivision will spend out of its  
4-12 maintenance and operation funds under Section 26.012(16) [~~Tax~~  
4-13 ~~Code,~~] to pay for a facility, device, or method for the control of  
4-14 air, water, or land pollution that is necessary to meet the  
4-15 requirements of a permit issued by the Texas [~~Natural Resource~~  
4-16 ~~Conservation~~] Commission on Environmental Quality.

4-17 (b) In this section, "facility, device, or method for  
4-18 control of air, water, or land pollution" means any land,  
4-19 structure, building, installation, excavation, machinery,  
4-20 equipment, or device, and any attachment or addition to or  
4-21 reconstruction, replacement, or improvement of that property, that  
4-22 is used, constructed, acquired, or installed wholly or partly to  
4-23 meet or exceed rules or regulations adopted by any environmental  
4-24 protection agency of the United States or this state for the  
4-25 prevention, monitoring, control, or reduction of air, water, or  
4-26 land pollution.

4-27 (c) To receive an adjustment to the rollback tax rate under  
4-28 this section, a political subdivision shall present information to  
4-29 the executive director of the Texas [~~Natural Resource Conservation~~]  
4-30 Commission on Environmental Quality in a permit application or in a  
4-31 request for any exemption from a permit that would otherwise be  
4-32 required detailing:

4-33 (1) the anticipated environmental benefits from the  
4-34 installation of the facility, device, or method for the control of  
4-35 air, water, or land pollution;

4-36 (2) the estimated cost of the pollution control  
4-37 facility, device, or method; and

4-38 (3) the purpose of the installation of the facility,  
4-39 device, or method, and the proportion of the installation that is  
4-40 pollution control property.

4-41 (d) Following submission of the information required by  
4-42 Subsection (c), the executive director of the Texas [~~Natural~~  
4-43 ~~Resource Conservation~~] Commission on Environmental Quality shall  
4-44 determine whether [~~if~~] the facility, device, or method is used  
4-45 wholly or partly as a facility, device, or method for the control of  
4-46 air, water, or land pollution. If the executive director  
4-47 determines that the facility, device, or method is used wholly or  
4-48 partly to control pollution, the director shall issue a letter to  
4-49 the political subdivision stating that determination and the  
4-50 portion of the cost of the installation that is pollution control  
4-51 property.

4-52 (e) The Texas [~~Natural Resource Conservation~~] Commission on  
4-53 Environmental Quality may charge a political subdivision seeking a  
4-54 determination that property is pollution control property an  
4-55 additional fee not to exceed its administrative costs for  
4-56 processing the information, making the determination, and issuing  
4-57 the letter required by this section. The commission may adopt rules  
4-58 to implement this section.

4-59 (f) The Texas Commission on Environmental Quality shall  
4-60 adopt rules establishing a nonexclusive list of facilities,  
4-61 devices, or methods for the control of air, water, or land  
4-62 pollution, which must include:

4-63 (1) coal cleaning facilities;

4-64 (2) atmospheric or pressurized and bubbling or  
4-65 circulating fluidized bed combustion systems and gasification  
4-66 fluidized bed combustion combined cycle systems;

4-67 (3) ultra-supercritical pulverized coal boilers;

4-68 (4) flue gas recirculation components;

4-69 (5) syngas purification systems and gas-cleanup

5-1 units;  
5-2 (6) enhanced heat recovery systems;  
5-3 (7) exhaust heat recovery boilers;  
5-4 (8) heat recovery steam generators;  
5-5 (9) superheaters and evaporators;  
5-6 (10) enhanced steam turbine systems;  
5-7 (11) methanation;  
5-8 (12) coal combustion or gasification byproduct and  
5-9 coproduct handling, storage, or treatment facilities;  
5-10 (13) biomass cofiring storage, distribution, and  
5-11 firing systems;  
5-12 (14) coal cleaning or drying processes such as coal  
5-13 drying/moisture reduction, air jigging, precombustion  
5-14 decarbonization, and coal flow balancing technology;  
5-15 (15) oxy-fuel combustion technology including  
5-16 undiluted high-flame temperature oxygen combustion that excludes  
5-17 air, amine or chilled ammonia scrubbing, fuel or emission  
5-18 conversion through the use of catalysts, enhanced scrubbing  
5-19 technology, modified combustion technology such as chemical  
5-20 looping, and cryogenic technology; and  
5-21 (16) any other equipment designed to capture, abate,  
5-22 or monitor nitrogen oxides, volatile organic compounds,  
5-23 particulate matter, mercury, carbon monoxide, carbon dioxide, or  
5-24 any criteria pollutant.  
5-25 (g) The Texas Commission on Environmental Quality by rule  
5-26 shall update the list adopted under Subsection (f) at least once  
5-27 every three years. An item may not be removed from the list unless  
5-28 the commission finds compelling evidence to support the conclusion  
5-29 that the item does not render pollution control benefits.  
5-30 (h) Notwithstanding the other provisions of this section,  
5-31 if the facility, device, or method for the control of air, water, or  
5-32 land pollution described in a permit application or in a request for  
5-33 any exemption from a permit that would otherwise be required is a  
5-34 facility, device, or method included on the list adopted under  
5-35 Subsection (f), the executive director of the Texas Commission on  
5-36 Environmental Quality, not later than the 30th day after the date of  
5-37 receipt of the information required by Subsections (c)(2) and (3)  
5-38 and without regard to whether the information required by  
5-39 Subsection (c)(1) has been submitted, shall determine that the  
5-40 facility, device, or method described in the permit application or  
5-41 in the request for an exemption from a permit that would otherwise  
5-42 be required is used wholly or partly as a facility, device, or  
5-43 method for the control of air, water, or land pollution and shall  
5-44 take the action that is required by Subsection (d) in the event such  
5-45 a determination is made.  
5-46 (i) A political subdivision of the state seeking an  
5-47 adjustment in its rollback tax rate under this section shall  
5-48 provide to its tax assessor a copy of the letter issued by the  
5-49 executive director of the Texas ~~Natural Resource Conservation~~  
5-50 Commission on Environmental Quality under Subsection (d). The tax  
5-51 assessor shall accept the copy of the letter from the executive  
5-52 director as conclusive evidence that the facility, device, or  
5-53 method is used wholly or partly as pollution control property and  
5-54 shall adjust the rollback tax rate for the political subdivision as  
5-55 provided for by Subsection (a).  
5-56 SECTION 6. Section 182.022, Tax Code, is amended by adding  
5-57 Subsection (c) to read as follows:  
5-58 (c) Notwithstanding any other provision of this chapter, a  
5-59 tax under this chapter may not be imposed on gross receipts from the  
5-60 sale of electricity generated by an advanced clean energy project,  
5-61 as defined by Section 382.003, Health and Safety Code.  
5-62 SECTION 7. Section 182.122, Tax Code, is amended to read as  
5-63 follows:  
5-64 Sec. 182.122. ALLOCATION OF TAX. (a) Revenues collected  
5-65 under this chapter are allocated:  
5-66 (1) one-fourth to the foundation school fund; and  
5-67 (2) three-fourths to the general revenue fund.  
5-68 (b) The comptroller shall transfer to the advanced clean  
5-69 energy project account the first \$30 million of the revenues

6-1 collected under this chapter that are allocated to the general  
6-2 revenue fund under Subsection (a)(2) in any state fiscal biennium.

6-3 SECTION 8. Effective September 1, 2020, Section 182.122,  
6-4 Tax Code, is amended to read as follows:

6-5 Sec. 182.122. ALLOCATION OF TAX. Revenues collected under  
6-6 this chapter are allocated:

- 6-7 (1) one-fourth to the foundation school fund; and
- 6-8 (2) three-fourths to the general revenue fund.

6-9 SECTION 9. Subsection (b), Section 313.024, Tax Code, as  
6-10 effective January 1, 2008, is amended to read as follows:

6-11 (b) To be eligible for a limitation on appraised value under  
6-12 this subchapter, the entity must use the property in connection  
6-13 with:

- 6-14 (1) manufacturing;
- 6-15 (2) research and development;
- 6-16 (3) a clean coal project, as defined by Section 5.001,  
6-17 Water Code;
- 6-18 (4) an advanced clean energy [a gasification] project,  
6-19 as defined by Section 382.003, Health and Safety Code [for a coal  
6-20 and biomass mixture]; or
- 6-21 (5) renewable energy electric generation.

6-22 SECTION 10. The state energy conservation office shall  
6-23 establish the advanced clean energy grant and loan program under  
6-24 Section 447.013, Government Code, as added by this Act, not later  
6-25 than January 1, 2008.

6-26 SECTION 11. No technology, or level of emission reduction,  
6-27 solely by reason of the use of the technology, or the achievement of  
6-28 the emission reduction, by one or more facilities receiving  
6-29 incentives under this Act, shall be considered to be adequately  
6-30 demonstrated or achievable for purposes of the best available  
6-31 control technology analysis or lowest achievable emission rate  
6-32 analysis conducted by the Texas Commission on Environmental Quality  
6-33 under applicable law.

6-34 SECTION 12. Not later than January 1, 2008, the Texas  
6-35 Commission on Environmental Quality shall adopt rules required  
6-36 under Section 382.0566, Health and Safety Code, and Subsection (k),  
6-37 Section 11.31, Tax Code, as added by this Act, and Subsection (f),  
6-38 Section 26.045, Tax Code, as amended by this Act.

6-39 SECTION 13. (a) Not later than September 1, 2010, 2012,  
6-40 2014, 2016, and 2018, the Texas Commission on Environmental Quality  
6-41 and the state energy conservation office shall issue a joint report  
6-42 to the legislature providing a status update on the implementation  
6-43 of the advanced clean energy project grant and loan program and an  
6-44 assessment of whether the emissions profile set out in Paragraph  
6-45 (B), Subdivision (1-a), Section 382.003, Health and Safety Code, as  
6-46 added by this Act, should be adjusted to increase or decrease  
6-47 elements of the emissions profile.

6-48 (b) Factors to be considered in the assessment of the  
6-49 emissions profile shall include:

- 6-50 (1) the technical and economic feasibility of meeting  
6-51 all of the elements of the emissions profile in a commercially  
6-52 viable project, as documented by the United States Department of  
6-53 Energy;
- 6-54 (2) the technical and economic feasibility of projects  
6-55 to meet all of the elements of the emissions profile and still use a  
6-56 diverse range of fuels, including lignite; and
- 6-57 (3) the adequacy of the incentives provided by this  
6-58 Act to continue to attract investment in and federal funding for  
6-59 advanced clean energy projects in this state.

6-60 (c) Any adjustments to the emissions profile implemented by  
6-61 the legislature in response to a report required by this section  
6-62 shall not apply to an application deemed administratively complete  
6-63 on or before the date of the report.

6-64 SECTION 14. Subsection (j), Section 447.013, Government  
6-65 Code, as added by this Act, takes effect only if the constitutional  
6-66 amendment proposed by the 80th Legislature, Regular Session, 2007,  
6-67 authorizing the issuance of general obligation bonds to provide and  
6-68 guarantee loans to encourage the use of carbon-free hydrogen energy  
6-69 is approved by the voters. If that amendment is not approved by the

7-1 voters, Subsection (j), Section 447.013, Government Code, as added  
7-2 by this Act, has no effect.

7-3 SECTION 15. This Act takes effect immediately if it  
7-4 receives a vote of two-thirds of all the members elected to each  
7-5 house, as provided by Section 39, Article III, Texas Constitution.  
7-6 If this Act does not receive the vote necessary for immediate  
7-7 effect, this Act takes effect September 1, 2007.

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