

## **BILL ANALYSIS**

Senate Research Center  
81R36955 E

C.S.H.B. 469  
By: King, Phil et al. (Seliger)  
Natural Resources  
5/25/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas has an opportunity to become the first state in the United States with fully operational large-scale clean coal power plants that capture at least 70 percent of the carbon dioxide (CO<sub>2</sub>) they produce. In many cases, the captured CO<sub>2</sub> could be used for valuable enhanced oil recovery (EOR) projects, thus creating additional economic benefit to the state. The capture of 70 percent of CO<sub>2</sub> will meet some of the most stringent the emission standards in the United States.

Texas is well-suited to become a major repository for CO<sub>2</sub> capture. The Texas Bureau of Economic Geology at The University of Texas (bureau) estimates that as much as three to five billion barrels of additional Texas oil is available across the state to be recovered using CO<sub>2</sub> for EOR. Furthermore, Texas offers the nation many industrial and geological opportunities to use and store the vast amounts of CO<sub>2</sub> produced from burning coal for needed electric generation. Texas has the potential to become the low-cost provider of carbon sequestration services to the entire Southeastern United States.

H.B. 469 creates significant incentives for the development of clean coal technology. H.B. 469 directs the comptroller of public accounts to issue franchise tax credits of 10 percent of the total capital costs or \$100 million per qualifying project, whichever is less. Only the first three completed qualifying projects would be eligible, and the credits may not be claimed until each project is fully operational.

The bureau would monitor, measure, and verify the permanent status of sequestered CO<sub>2</sub> generated by the first three qualifying projects. H.B. 469 provides a payment schedule that qualifying projects must follow to reimburse BEG for the costs related to monitoring, measuring, and verifying the status of sequestered CO<sub>2</sub>.

Finally, H.B. 469 authorizes that the current reduced severance tax rate for manmade CO<sub>2</sub> used in enhanced oil recovery would apply to the use of CO<sub>2</sub> from clean energy projects for 30 years.

C.S.H.B. 469 amends current law relating to the establishment of incentives by this state for the implementation of certain projects to capture and sequester in geological formations carbon dioxide that would otherwise be emitted into the atmosphere.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 4 (Section 490.305, Government Code) and SECTION 8 of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 5 (Section 120.002, Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter G, Chapter 490, Government Code, to read as follows:

#### **SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS**

SECTION 2. Amends Section 490.301, Government Code, to define "clean coal project" and "clean energy project."

SECTION 3. Amends the heading to Section 490.304, Government Code, to read as follows:

Sec. 490.304. CONTRACTING AUTHORITY RELATED TO IMPLEMENTING CLEAN COAL PROJECT; FRANCHISE TAX CREDIT.

SECTION 4. Amends Subchapter G, Chapter 490, Government Code, by adding Section 490.305, as follows:

Sec. 490.305. FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT. (a) Requires the comptroller of public accounts (comptroller) to adopt rules for issuing to an entity implementing a clean energy project in this state a franchise tax credit.

(b) Requires the comptroller to issue a franchise tax credit to an entity operating a clean energy project after the Railroad Commission of Texas (commission) has issued a certificate of compliance for the project to the entity as provided by Section 120.004, Natural Resources Code; the construction of the project has been completed; the electric generating facility associated with the project is fully operational; and the Bureau of Economic Geology of The University of Texas at Austin (bureau) verifies to the comptroller that the electric generating facility associated with the project is sequestering at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility.

(c) Provides that the total amount of the franchise tax credit that is authorized to be issued to the entity designated in the certificate of compliance for a clean energy project is equal to the lesser of: 10 percent of the total capital cost of the project, including the cost of designing, engineering, permitting, constructing, and commissioning the project, the cost of procuring land, water, and equipment for the project, and all fees, taxes, and commissions paid and other payments made in connection with the project but excluding the cost of financing the capital cost of the project; or \$100 million.

(d) Provides that the franchise tax credit is a credit against any franchise taxes that are authorized to be assessed against the income generated by a clean energy project from the generation and sale of power and the sale of any products that are produced directly or indirectly by the electric generation facility. Authorizes the entity designated in the certificate of compliance for the project to assign the franchise tax credit to any other entity that has or acquires an interest in the income generated by the project.

(e) Prohibits the comptroller from issuing a franchise tax credit under this section before September 1, 2013. Provides that this subsection expires September 2, 2013.

SECTION 5. Amends Subtitle D, Title 3, Natural Resources Code, by adding Chapter 120, as follows:

#### CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN ENERGY PROJECT

Sec. 120.001. DEFINITIONS. Defines "bureau," "clean energy project," "commission," and "sequester."

Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a) Provides that the commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project.

(b) Authorizes an entity to apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. Requires that the application be accompanied by a certificate from a qualified independent engineer that the project is operational and meets the standards provided by Sections 120.001(2)(A) (relating to the megawatt capacity of a clean energy project), (B) (relating to the use of certain technology in a clean energy project), and (C) (relating to the use of certain technology in a clean energy project), and a fee payable to the commission.

(c) Provides that the amount of the fee prescribed by Subsection (b)(2)(relating to a fee payable to the commission) is \$50,000 unless the commission by rule determines that a fee in a greater amount is necessary to cover the commission's costs of processing an application.

Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE. (a) Provides that an entity that applies to the commission under Section 120.002 for a certification that a project operated by the entity meets the requirements for a clean energy project is responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project has complied with the requirements of Section 490.305(b)(4) (relating to the bureau verifying that a project is sequestering a certain percentage of carbon dioxide), Government Code.

(b) Requires the entity to contract with the bureau for the bureau to design initial protocols and standards for the process described by Subsection (a); review the conduct of the process described by Subsection (a) in order to make any necessary changes in the design of the protocols and standards; evaluate the results of the process described by Subsection (a); provide an evaluation of the results of the process described by Subsection (a) to the commission; and determine whether to transmit to the comptroller the verification described by Section 490.305(b)(4), Government Code.

(c) Requires that the contract required by Subsection (b), unless otherwise agreed by the entity and the bureau, require the entity to compensate the bureau by paying an annual fee in accordance with the following schedule: a fee of \$700,000 in year one; a fee of \$1,300,000 in year two; a fee of \$1,800,000 in year three; a fee of \$1,500,000 in year four; a fee of \$1,200,000 in year five; a fee of \$900,000 in year six; a fee of \$500,000 in year seven; and a fee of \$200,000 in year eight.

(d) Provides that the first payment under Subsection (c) is due not later than 24 months before the date the entity first supplies carbon dioxide captured by the project to an enhanced oil recovery project

Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a) Requires the commission, on verification that a project meets the requirements for certification as a clean energy project, to issue a certificate of compliance for the project to the entity operating the project and provide a copy of the certificate to the comptroller.

(b) Prohibits the commission from issuing a certificate of compliance for more than three clean energy projects.

SECTION 6. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.334, as follows:

Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED IN CONNECTION WITH GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE. Exempts components of tangible personal property used in connection with an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, or a clean energy project, as defined by Section 120.001, Natural Resources Code, from the taxes imposed by this chapter if the components are installed to capture carbon dioxide from an anthropogenic emission source, transport or inject carbon dioxide from such a source, or prepared carbon dioxide from such a source for transportation or injection; and the

carbon dioxide is geologically sequestered in this state as part of an enhanced oil recovery project that qualifies for a tax rate reduction under Section 202.0545, as provided by Subsection (c) of that section or in a manner and under conditions that create a reasonable expectation that at least 99 percent of the carbon dioxide injected will remain sequestered from the atmosphere for at least 1,000 years.

SECTION 7. Amends Section 202.0545, Tax Code, by adding Subsection (i), as follows:

(i) Entitles the producer of oil recovered through an enhanced oil recovery project that uses carbon dioxide that is generated by a clean energy project as defined by Section 120.001, Natural Resources Code, notwithstanding Subsection (a), to a tax rate reduction under this section until the 30th anniversary of the date the comptroller first approves an application for a tax rate reduction under this section if the producer otherwise qualifies for the tax rate reduction.

SECTION 8. Requires the comptroller to adopt rules under Section 490.305, Government Code, as added by this Act, not later than December 31, 2010.

SECTION 9. Makes application of Section 151.334, Tax Code, as added by this Act, prospective.

SECTION 10. Effective date: September 1, 2009.