

## **BILL ANALYSIS**

C.S.S.B. 2111  
By: Averitt  
Energy Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Given the rising demand for electric power, the abundance of coal, petroleum coke, biomass, and solid waste in the United States and Texas, and the reliability and cost-effectiveness of these carbon-based sources of electric generation, it is critical that such generation continue to be a viable component of Texas' power supply. "Clean carbon" projects have the potential to significantly reduce air emissions, including carbon dioxide, while ensuring that reliable and affordable electricity is available for Texas. Because utility-scale clean carbon projects have not yet been commercialized due to financial and technology risks associated with these projects, financial incentives and regulatory clarity are necessary to ensure that clean carbon projects are attracted to Texas.

C.S.S.B. 2111 expands upon the incentives passed for "advanced clean energy projects" under H.B. 3732, 80th Legislature, Regular Session, 2007. The bill establishes detailed criteria for the issuance of grants and loans to advanced clean energy projects. The bill also creates financial incentives for advanced clean energy projects by creating a sales tax exemption and clarifying provisions of local economic development tools to empower local taxing authorities to attract advanced clean energy projects to their communities. The bill requires the Texas Commission on Environmental Quality and the Railroad Commission of Texas to prepare and file a report regarding geologic storage of carbon dioxide and sets forth criteria for the report. The bill updates certain other reporting requirements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 2, 6, and 12 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 13 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 14 of this bill.

### **ANALYSIS**

C.S.S.B. 2111 amends the Health and Safety Code to redefine "advanced clean energy project" under the Texas Clean Air Act to mean a project for which an application for a permit, or for an authorization to use a standard permit, is received within a certain time frame and that:

- involves the use of coal, biomass, petroleum coke, solid waste, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

- with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving on an annual basis a 99 percent or greater reduction of sulfur dioxide emissions and a 95 percent or greater reduction of mercury emissions and achieving an annual average emissions rate for nitrogen oxides of 0.05 pounds or less per million British thermal units; and
- captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means.

C.S.S.B. 2111 establishes the commission advanced clean energy project grant and loan program to encourage the development of advanced clean energy projects. The bill requires the Texas Commission on Environmental Quality (TCEQ), under the program, to provide grants or other financial incentives for eligible projects to accelerate the commercialization of technologies for the control of air contaminant emissions by electrical power generating facilities, including technologies to capture, transport, and store carbon dioxide in an environmentally protective manner.

C.S.S.B. 2111 establishes that the commission advanced clean energy project account is an account in the general revenue fund. The bill provides that the account consists of a subaccount that consists of the proceeds of certain issued general obligation bonds; any amount appropriated by the legislature; gifts, grants, and other donations; and interest earned on the investment of account money. The bill authorizes money in the account to be appropriated only to TCEQ to award grants or to make or guarantee loans under the program.

C.S.S.B. 2111 authorizes TCEQ to award a grant under the program to the managing entity of an advanced clean energy project to assist in the funding of the front-end engineering and design portion of the project. The bill prohibits the total amount of such grants awarded for a project from exceeding 50 percent of the total amount invested in the front-end engineering and design portion of the project by private industry sources.

C.S.S.B. 2111 authorizes TCEQ, under the program, to make or guarantee a loan to the managing entity of an advanced clean energy project in Texas. The bill requires the project, if the loan or guarantee is to be funded by the proceeds of issued bonds, to qualify for the loan or guarantee under the constitutional provision authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage advanced clean energy projects.

C.S.S.B. 2111 requires TCEQ to enter into a written agreement with the entity to which a grant is to be awarded or a loan is to be made before awarding the grant or making the loan under the program. The bill 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.

C.S.S.B. 2111 establishes that a recipient of a grant, loan, or loan guarantee under the program is encouraged to purchase goods and services from small businesses and historically underutilized businesses.

C.S.S.B. 2111 requires the Texas Public Finance Authority to issue general obligation bonds for the purposes authorized by the constitutional provision authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage advanced clean energy projects.

C.S.S.B. 2111 requires TCEQ by rule to adopt guidelines and criteria, grant application requirements, and project requirements that are consistent with the requirements of amendments to the Health and Safety Code proposed by S.B. 16, 81st Legislature, Regular Session, 2009, to the extent those provisions can be made applicable, except that such rules adopted must require a

project to document the ability of the project to meet the emissions profile in the definition of "advanced clean energy project" as provided by the bill.

C.S.S.B. 2111 defines "account," "advanced clean energy project," "commission," and "program" under provisions governing the commission advanced clean energy project grant and loan program.

C.S.S.B. 2111 amends the Tax Code to exempt from sales tax components of tangible personal property if the components are installed to capture carbon dioxide from an anthropogenic emission source, transport or inject carbon dioxide from such a source, or prepare carbon dioxide from such a source for transportation or injection. The bill requires, for the purpose of the exemption, such carbon dioxide to be geologically sequestered in Texas as part of an enhanced oil recovery project that qualifies for a tax rate reduction, or sequestered 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.

C.S.S.B. 2111 establishes the date up to which the producer of oil recovered through an enhanced oil recovery project that qualifies for the recovered oil tax rate is entitled to an additional tax rate reduction to be the 30th anniversary of the date that the comptroller first approves an application for a tax rate reduction. The bill removes language that set the expiration date of the additional tax rate reduction as the later of the seventh anniversary of the tax rate reduction approval or the elective date of a final rule adopted by the U.S. Environmental Protection Agency regulating carbon dioxide as a pollutant.

C.S.S.B. 2111, in a provision relating to the limitation on appraised value of certain property used to create jobs, redefines "qualified investment" to include tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2010, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project. The bill, in the same provision, redefines "qualifying time period" to include, in connection with an advanced clean energy project, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value, unless a shorter time period is agreed to by the governing body of the school district and the property owner.

C.S.S.B. 2111 amends the Water Code to establish an advanced clean energy project permitting procedure. The bill defines "advanced clean energy project" by reference to the Health and Safety Code. The bill requires the executive director of TCEQ to complete the technical review of the application for an advanced clean energy project, as authorized by federal law, and not later than nine months after the executive director declares an application for a permit under provisions governing water quality control for an advanced clean energy project to be administratively complete. The bill requires TCEQ to issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The bill authorizes TCEQ to extend the deadline set out in the bill's provisions up to three months if TCEQ determines that the number of complex pending applications for permits will prevent TCEQ from meeting the imposed deadline without creating an extraordinary burden on the resources of TCEQ. The bill provides that the permitting procedure is subject to the requirements relating to a contested case hearing under the bill's provisions or under provisions of the Administrative Procedure Act, as applicable. The bill requires TCEQ to adopt rules to implement the advanced clean energy project permitting procedure.

C.S.S.B. 2111 establishes that, except as otherwise provided, the Railroad Commission of Texas has jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below such a reservoir. The bill establishes that such jurisdiction is subject to the review of the legislature based on the recommendations made in the

joint preliminary report described by provisions of the bill or similar legislation that becomes law. The bill makes such jurisdiction applicable to a well used for the geologic storage and injection of carbon dioxide regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and is converted to the purpose.

C.S.S.B. 2111 amends Chapter 1277 (H.B. 3732), Acts of the 80th Legislature, Regular Session, 2007, to require TCEQ, not later than September 1, 2012, and September 1, 2016, to issue a report to the legislature providing a status update on the implementation of the advanced clean energy program and an assessment of whether the emissions profile set out in the definition of "advanced clean energy project" as amended by the bill should be adjusted to increase or decrease the percentage of the carbon dioxide in the portion of the emissions stream from a facility that is associated with an advanced clean energy project that is required to be captured. The bill amends the factors to be considered in the assessment of the emissions profile to include:

- the technical and economic feasibility of meeting all of the elements of the emission profile set out in the definition, as amended by the bill or similar legislation that becomes law, in a commercially viable project, as documented by the United States Department of Energy;
- the technical and economic feasibility of projects to meet all of the elements of the emissions profile and still use a diverse range of fuels, including lignite; and
- the adequacy of the incentives provided by H.B. 3732, 80th Legislature, Regular Session, 2007, and this bill, or similar legislation that becomes law, to continue to attract investment in and federal funding for advanced clean energy projects in Texas.

The bill removes the State Energy Conservation Office from the updated reporting requirements.

C.S.S.B. 2111 establishes temporary provisions set to expire December 31, 2010, requiring TCEQ and the railroad commission, in consultation with the Bureau of Economic Geology of The University of Texas at Austin, not later than December 1, 2010, to prepare and file with the legislature a joint preliminary report that:

- analyzes the requirements for the injection and geologic storage of anthropogenic carbon dioxide into saline formations that are not productive of oil, gas, or geothermal resources;
- recommends a permitting process for anthropogenic carbon dioxide injection wells and geologic storage facilities that are used for the injection and storage of anthropogenic carbon dioxide in such saline formations;
- recommends the agency or agencies that should have jurisdiction over the permitting process or any other permitting of geologic storage facilities not subject to the bill's provisions regarding the railroad commission's jurisdiction over the geologic storage and injection of carbon dioxide as provided by provisions of the bill; and
- assesses the status of compliance with any federal rules regulating the geologic storage and associated injection of anthropogenic carbon dioxide.

C.S.S.B. 2111 requires the preliminary report to include:

- recommended criteria for identifying candidate geologic storage sites in certain types of geological settings;
- a proposed procedure for providing an opportunity for public review of, and the presentation of comments by interested persons regarding, any activities related to geologic storage, and ensuring that the quality of the natural and cultural resources of land overlying the site of a geologic storage facility is protected from any geologic storage activities at the site;
- a description of the status of leasehold or mineral estate liability issues related to the geological subsurface trespass of, or caused by, anthropogenic carbon dioxide stored in

private or state-owned land, including any relevant experience from enhanced recovery operations using carbon dioxide;

- an analysis of and recommendations to address the attributes of the subsurface area of operations for geologic storage facilities and the methods of financial assurance and the allocation of long-term liability for the post-operational phases of geologic storage projects;
- the status of any applications for permits that have been received before the report is prepared;
- the status of any request for primary enforcement authority for the underground injection and geologic storage of anthropogenic carbon dioxide under the underground injection control program; and
- any recommendations for additional legislation, modifications to the memorandum of understanding between TCEQ and the railroad commission recorded in provisions of the Texas Administrative Code, or new rules for regulating geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

C.S.S.B. 2111 requires TCEQ to adopt rules as necessary to implement provisions of the redefinition of "advanced clean energy project," the commission advanced clean energy project grant and loan program, and the advanced clean energy project permitting procedure, not later than January 1, 2010.

C.S.S.B. 2111 authorizes the railroad commission to adopt rules, as necessary, to implement the Tax Code provision relating to the additional tax rate reduction for certain oil producers and the Water Code provision relating to injection and geologic storage of anthropogenic carbon dioxide.

C.S.S.B. 2111 authorizes the comptroller of public accounts to adopt rules, as necessary, to implement the Tax Code provision relating to the additional tax rate reduction for certain oil producers.

C.S.S.B. 2111 provides that its provisions do not make an appropriation and that its provisions relating to the commission advanced clean energy project grant and loan program take effect only if a specific appropriation for implementation of such provisions is provided in a general appropriations act of the 81st Legislature or a subsequent legislature.

C.S.S.B. 2111 establishes that its provision requiring the Texas Public Finance Authority to issue general obligation bonds takes effect on the date on which the constitutional amendment proposed by the 81st Legislature, Regular Session, 2009, authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage advanced clean energy projects take effect. The bill establishes that if the amendment is not approved by the voters, the provision has no effect.

C.S.S.B. 2111 establishes that its provisions regarding guidelines and criteria, grant application requirements, and project requirements concerning the commission advanced clean energy project grant and loan program take effect September 1, 2009, only if S.B. 16, Acts of the 81st Legislature, Regular Session, 2009, or similar legislation becomes law, otherwise the provisions have no effect.

C.S.S.B. 2111 makes conforming changes.

C.S.S.B. 2111 repeals Section 27.038, Water Code, establishing that the railroad commission has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a reservoir that is productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

## **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 2111 removes the definition of "geologic storage" in the original.

C.S.S.B. 2111 differs from the original by allowing only components of tangible property that are installed to capture carbon dioxide for geologic sequestration to be exempt from sales tax, whereas the original exempted components that are used, constructed, or acquired. The substitute differs from the original by specifying that the anthropogenic source from which exempt components capture carbon dioxide is an anthropogenic emission source. The substitute clarifies the original's requirement that the carbon dioxide be geologically sequestered as part of an enhanced oil recovery project or otherwise by requiring the carbon dioxide to be geologically sequestered as part of an enhanced oil recovery project that qualifies for a tax rate reduction, or sequestered 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.

C.S.S.B. 2111 differs from the original by specifying that the preliminary report subject to the review of the legislature relating to the Railroad Commission of Texas' jurisdiction over geologic storage of carbon dioxide is a joint preliminary report.

C.S.S.B. 2111 adds provisions not in the original requiring the Texas Commission on Environmental Quality (TCEQ) to issue a report to the legislature providing a status update on the implementation of the advanced clean energy program and an assessment of whether the emissions profile set out in the definition of "advanced clean energy project" as amended by the bill should be adjusted to increase or decrease the percentage of the carbon dioxide in the portion of the emissions stream from a facility that is associated with an advanced clean energy project that is required to be captured. The substitute adds provisions not in the original amending the factors to be considered in the assessment of the emissions profile and removing the State Energy Conservation Office from the updated reporting requirements.

C.S.S.B. 2111 differs from the original by establishing that the bill's provisions requiring TCEQ and the railroad commission, in consultation with the Bureau of Economic Geology of The University of Texas at Austin, to prepare and file with the legislature a joint preliminary report are temporary and expire December 31, 2010.

C.S.S.B. 2111 differs from the original by providing that its provisions relating to the commission advanced clean energy project grant and loan program, rather than all of the bill's provisions as in the original, take effect only if a specific appropriation for implementation of such provisions is provided in a general appropriations act of the 81st Legislature, or alternatively, in a general appropriations act of a subsequent legislature.

C.S.S.B. 2111 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.