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H.B. No. 469

A BILL TO BE ENTITLED

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 490, Government Code, is amended by adding Section 490.004 to read as follows:

Sec. 490.004. ADVANCED CLEAN ENERGY PROJECTS. (a)
Notwithstanding any other provision of this chapter, an advanced clean energy project as defined by Section 382.003(1-a), Health and Safety Code, shall qualify in the same manner and to the same extent as a clean energy project as defined by Section 490.301 for the tax incentives provided by this chapter.

(b) For purposes of this section, an advanced clean energy project that uses low-sulfur coal shall have an emission level of not more than 0.04 pounds of sulfur dioxide per million British thermal units as determined by a 30-day average.

SECTION 2. The heading to Subchapter G, Chapter 490, Government Code, is amended to read as follows:

SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS

SECTION 3. Section 490.301, Government Code, is amended to read as follows:

Sec. 490.301. DEFINITIONS [~~DEFINITION~~]. In this

1 subchapter:

2 (1) "Clean [~~,"~~ "clean] coal project" has the meaning
3 assigned by Section 5.001, Water Code.

4 (2) "Clean energy project" has the meaning assigned by
5 Section 120.001, Natural Resources Code.

6 SECTION 4. The heading to Section 490.304, Government Code,
7 is amended to read as follows:

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

10 SECTION 5. Subchapter G, Chapter 490, Government Code, is
11 amended by adding Section 490.305 to read as follows:

12 Sec. 490.305. FRANCHISE TAX CREDIT FOR CLEAN ENERGY
13 PROJECT. (a) The comptroller shall adopt rules for issuing to an
14 entity implementing a clean energy project in this state a
15 franchise tax credit.

16 (b) The comptroller shall issue a franchise tax credit to an
17 entity operating a clean energy project after:

18 (1) the Railroad Commission of Texas has issued a
19 certificate of compliance for the project to the entity as provided
20 by Section 120.004, Natural Resources Code;

21 (2) the construction of the project has been
22 completed;

23 (3) the carbon-fueled electric generating facility
24 associated with the project is fully operational; and

25 (4) the Bureau of Economic Geology of The University
26 of Texas at Austin verifies to the comptroller that the
27 carbon-fueled electric generating facility associated with the

1 project is sequestering at least 70 percent of the carbon dioxide
2 resulting from the generation of electricity by the facility.

3 (b-1) The Texas Commission on Environmental Quality shall
4 accept and enforce as a permit condition a voluntary carbon dioxide
5 emission limit used to qualify a project for the franchise tax
6 credit described in Subsection (b).

7 (c) The total amount of the franchise tax credit that may be
8 issued to the entity designated in the certificate of compliance
9 for a clean energy project is equal to the lesser of:

10 (1) 10 percent of the total capital cost of the
11 project, including the cost of designing, engineering, permitting,
12 constructing, and commissioning the project, the cost of procuring
13 land, water, and equipment for the project, and all fees, taxes, and
14 commissions paid and other payments made in connection with the
15 project but excluding the cost of financing the capital cost of the
16 project; or

17 (2) \$100 million.

18 (d) The franchise tax credit is a credit against any
19 franchise taxes that may be assessed against the income generated
20 by a clean energy project from the generation and sale of power and
21 the sale of any products that are produced directly or indirectly by
22 the carbon-fueled process.

23 SECTION 6. Subtitle D, Title 3, Natural Resources Code, is
24 amended by adding Chapter 120 to read as follows:

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

27 Sec. 120.001. DEFINITIONS. In this chapter:

1 (1) "Bureau" means the Bureau of Economic Geology of
2 The University of Texas at Austin.

3 (2) "Clean energy project" means a project to
4 construct a carbon-fueled electric generating facility that will:

5 (A) have a capacity of at least 200 megawatts;

6 (B) use integrated gasification combined cycle
7 or other pre-combustion technology;

8 (C) capture at least 70 percent of the carbon
9 dioxide resulting from the generation of electricity by the
10 facility;

11 (D) be capable of permanently sequestering in a
12 geological formation the carbon dioxide captured;

13 (E) be capable of supplying the carbon dioxide
14 captured for purposes of an enhanced oil recovery project; and

15 (F) have emission limits in its permit that are
16 below 0.034 lbs. per million Btu nitrogen oxides, 0.016 lbs. per
17 million Btu sulfur dioxide, 0.022 lbs. per million Btu particulate
18 matter, and 0.0015 lbs. per million Btu volatile organic compounds.

19 (3) "Commission" means the Railroad Commission of
20 Texas.

21 (4) "Sequester" means the injection of carbon dioxide
22 into a geological formation in a manner and under conditions that
23 create a reasonable expectation that at least 99 percent of the
24 carbon dioxide injected will remain sequestered from the atmosphere
25 for at least 1,000 years.

26 Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a)
27 The commission is the authority responsible for certifying whether

1 a project has met the requirements for a clean energy project.

2 (b) An entity may apply to the commission for a
3 certification that a project operated by the entity meets the
4 requirements for a clean energy project. The application must be
5 accompanied by:

6 (1) a certificate from a qualified independent
7 engineer that the project is operational and meets the standards
8 provided by Sections 120.001(2)(A), (B), and (C); and

9 (2) a fee payable to the commission.

10 (c) The amount of the fee prescribed by Subsection (b)(2) is
11 \$50,000 unless the commission by rule determines that a fee in a
12 greater amount is necessary to cover the commission's costs of
13 processing an application.

14 Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE.

15 (a) An entity operating a facility seeking a certification from the
16 Railroad Commission of Texas pursuant to Section 120.002 above
17 shall be responsible for conducting a monitoring, measuring, and
18 verification process that demonstrates that the project has
19 complied with the requirements of Section 490.305(b)(4),
20 Government Code. The entity shall contract for the Bureau of
21 Economic Geology of The University of Texas at Austin to: design
22 initial protocols and standards for such a process; review the
23 conduct of the process in order to make any necessary changes in the
24 design of protocols and standards; evaluate the results of the
25 process; provide an evaluation of such results to the Railroad
26 Commission of Texas; and determine whether to transmit to the
27 comptroller the verification described in Section 490.305(b)(4),

1 Government Code.

2 (b) Unless otherwise agreed by the applying entity and the
3 Bureau of Economic Geology of The University of Texas at Austin, the
4 contract required by Subsection (a) of this section shall provide
5 that the entity shall compensate the Bureau of Economic Geology at
6 The University of Texas at Austin by paying eight annual fees, the
7 first of which shall be due at least 24 months prior to the date that
8 the entity first supplies carbon dioxide to an enhanced oil
9 recovery project, according to the following schedule: a fee of
10 \$700,000 in year one; a fee of \$1,300,000 in year two; a fee of
11 \$1,800,000 in year three; a fee of \$1,500,000 in year four; a fee of
12 \$1,200,000 in year five; a fee of \$900,000 in year six; a fee of
13 \$500,000 in year seven; and a fee of \$200,000 in year eight.

14 Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a)
15 On verification that a project meets the requirements for
16 certification as a clean energy project, the commission shall issue
17 a certificate of compliance for the project to the entity operating
18 the project and shall provide a copy of the certificate to the
19 comptroller.

20 (b) The commission may not issue a certificate of compliance
21 for more than three clean energy projects.

22 (c) This subsection applies only to a certificate of
23 compliance for a clean energy project that is issued after the
24 initial certificate of compliance for a project. Notwithstanding
25 Subsection (a):

26 (1) if at the time the commission issues the
27 certificate at least one commercially designed electric generating

1 facility operating in the United States and using integrated
2 gasification combined cycle technology or another precombustion
3 technology is capturing at least 75 percent of the carbon dioxide
4 resulting from the generation of electricity by the facility, the
5 commission may not issue the certificate unless the clean energy
6 project will capture at least 80 percent of the carbon dioxide
7 resulting from the generation of electricity by the carbon-fueled
8 electric generating facility associated with the project; and

9 (2) if at the time the commission issues the
10 certificate at least one commercially designed electric generating
11 facility operating in the United States and using integrated
12 gasification combined cycle technology or another precombustion
13 technology is capturing at least 85 percent of the carbon dioxide
14 resulting from the generation of electricity by the facility, the
15 commission may not issue the certificate unless the clean energy
16 project will capture at least 90 percent of the carbon dioxide
17 resulting from the generation of electricity by the carbon-fueled
18 electric generating facility associated with the project.

19 SECTION 7. Section 11.31, Tax Code, is amended by amending
20 Subsection (k) and adding Subsection (n) to read as follows:

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

25 (1) coal cleaning or refining facilities;

26 (2) atmospheric or pressurized and bubbling or
27 circulating fluidized bed combustion systems and gasification

- 1 fluidized bed combustion combined cycle systems;
- 2 (3) ultra-supercritical pulverized coal boilers;
- 3 (4) flue gas recirculation components;
- 4 (5) syngas purification systems and gas-cleanup
5 units;
- 6 (6) enhanced heat recovery systems;
- 7 (7) exhaust heat recovery boilers;
- 8 (8) heat recovery steam generators;
- 9 (9) superheaters and evaporators;
- 10 (10) enhanced steam turbine systems;
- 11 (11) methanation;
- 12 (12) coal combustion or gasification byproduct and
13 coproduct handling, storage, or treatment facilities;
- 14 (13) biomass cofiring storage, distribution, and
15 firing systems;
- 16 (14) coal cleaning or drying processes, such as coal
17 drying/moisture reduction, air jigging, precombustion
18 decarbonization, and coal flow balancing technology;
- 19 (15) oxy-fuel combustion technology, amine or chilled
20 ammonia scrubbing, fuel or emission conversion through the use of
21 catalysts, enhanced scrubbing technology, modified combustion
22 technology such as chemical looping, and cryogenic technology;
- 23 (16) if a state or federal governmental entity [~~the~~
24 ~~United States Environmental Protection Agency~~] adopts a final rule
25 or regulation regulating carbon dioxide as a pollutant, property
26 that is used, constructed, acquired, or installed wholly or partly
27 to capture or transport carbon dioxide from an anthropogenic source

1 in this state that is geologically sequestered in this state;

2 (17) fuel cells generating electricity using hydrogen
3 derived from coal, biomass, petroleum coke, or solid waste; and

4 (18) any other equipment designed to prevent, capture,
5 abate, or monitor nitrogen oxides, volatile organic compounds,
6 particulate matter, mercury, carbon monoxide, or any criteria
7 pollutant.

8 (n) Notwithstanding the other provisions of this section, a
9 person may not receive an exemption under this section for property
10 described by Subsection (k)(16) unless the property was placed into
11 service after September 1, 2009.

12 SECTION 8. Section 26.045, Tax Code, is amended by amending
13 Subsection (f) and adding Subsection (j) to read as follows:

14 (f) The Texas Commission on Environmental Quality shall
15 adopt rules establishing a nonexclusive list of facilities,
16 devices, or methods for the control of air, water, or land
17 pollution, which must include:

18 (1) coal cleaning or refining facilities;

19 (2) atmospheric or pressurized and bubbling or
20 circulating fluidized bed combustion systems and gasification
21 fluidized bed combustion combined cycle systems;

22 (3) ultra-supercritical pulverized coal boilers;

23 (4) flue gas recirculation components;

24 (5) syngas purification systems and gas-cleanup
25 units;

26 (6) enhanced heat recovery systems;

27 (7) exhaust heat recovery boilers;

- 1 (8) heat recovery steam generators;
- 2 (9) superheaters and evaporators;
- 3 (10) enhanced steam turbine systems;
- 4 (11) methanation;
- 5 (12) coal combustion or gasification byproduct and
6 coproduct handling, storage, or treatment facilities;
- 7 (13) biomass cofiring storage, distribution, and
8 firing systems;
- 9 (14) coal cleaning or drying processes such as coal
10 drying/moisture reduction, air jigging, precombustion
11 decarbonization, and coal flow balancing technology;
- 12 (15) oxy-fuel combustion technology, amine or chilled
13 ammonia scrubbing, fuel or emission conversion through the use of
14 catalysts, enhanced scrubbing technology, modified combustion
15 technology such as chemical looping, and cryogenic technology;
- 16 (16) if a state or federal governmental entity [~~the~~
17 ~~United States Environmental Protection Agency~~] adopts a final rule
18 or regulation regulating carbon dioxide as a pollutant, property
19 that is used, constructed, acquired, or installed wholly or partly
20 to capture or transport carbon dioxide from an anthropogenic source
21 in this state that is geologically sequestered in this state;
- 22 (17) fuel cells generating electricity using hydrogen
23 derived from coal, biomass, petroleum coke, or solid waste; and
- 24 (18) any other equipment designed to prevent, capture,
25 abate, or monitor nitrogen oxides, volatile organic compounds,
26 particulate matter, mercury, carbon monoxide, or any criteria
27 pollutant.

1 (j) Notwithstanding the other provisions of this section, a
2 person may not receive an exemption under this section for property
3 described by Subsection (f)(16) unless the property was placed into
4 service after September 1, 2009.

5 SECTION 9. Section 202.0545, Tax Code, is amended by
6 amending Subsections (a), (c), and (f) and adding Subsections (i),
7 (j), and (j-1) to read as follows:

8 (a) Subject to the limitations provided by this section,
9 ~~[until the later of the seventh anniversary of the date that the~~
10 ~~comptroller first approves an application for a tax rate reduction~~
11 ~~under this section or the effective date of a final rule adopted by~~
12 ~~the United States Environmental Protection Agency regulating~~
13 ~~carbon dioxide as a pollutant,]~~ the producer of oil recovered
14 through an enhanced oil recovery project that qualifies under
15 Section 202.054 for the recovered oil tax rate provided by Section
16 202.052(b) is entitled to an additional 50 percent reduction in
17 that tax rate if in the recovery of the oil the enhanced oil
18 recovery project uses carbon dioxide that:

19 (1) is captured from an anthropogenic source in this
20 state;

21 (2) would otherwise be released into the atmosphere as
22 industrial emissions;

23 (3) is measurable at the source of capture; and

24 (4) is sequestered in one or more geological
25 formations in this state following the enhanced oil recovery
26 process.

27 (c) To qualify for the tax rate reduction under this

1 section, the operator must:

2 (1) apply to the comptroller for the reduction and
3 include with the application any information and documentation that
4 the comptroller may require; ~~and~~

5 (2) apply for a certification from:

6 (A) the Railroad Commission of Texas, if carbon
7 dioxide used in the project is to be sequestered in an oil or
8 natural gas reservoir;

9 (B) the Texas Commission on Environmental
10 Quality, if carbon dioxide used in the project is to be sequestered
11 in a geological formation other than an oil or natural gas
12 reservoir; or

13 (C) both the Railroad Commission of Texas and the
14 Texas Commission on Environmental Quality if both Paragraphs (A)
15 and (B) apply; and

16 (3) have begun using carbon dioxide that satisfies the
17 criteria of Subsection (a) in an enhanced oil recovery project not
18 later than August 31, 2016.

19 (f) The comptroller shall approve the application if the
20 operator submits the certification or certifications required by
21 Subsection (c)(2) and if the comptroller determines that the oil is
22 otherwise eligible under this section and the operator meets the
23 requirement specified by Subsection (c)(3).

24 (i) This section expires August 31, 2039.

25 (j) Notwithstanding any other provision of this section, an
26 advanced clean energy project as defined by Section 382.003(1-a),
27 Health and Safety Code, shall qualify in the same manner and to the

1 same extent as a clean energy project as defined by Section 490.301,
2 Government Code, for the tax incentives provided by this section.

3 (j-1) For purposes of Subsection (j) of this section, an
4 advanced clean energy project that uses low-sulfur coal shall have
5 an emission level of not more than 0.04 pounds of sulfur dioxide per
6 million British thermal units as determined by a 30-day average.

7 SECTION 10. Sections 11.31(k) and 26.045(f), Tax Code, as
8 amended by this Act, apply only to ad valorem taxes imposed for a
9 tax year beginning on or after January 1, 2010.

10 SECTION 11. The comptroller shall adopt rules under Section
11 490.305, Government Code, as added by this Act, not later than
12 December 31, 2010.

13 SECTION 12. (a) Except as provided by Subsection (b) of
14 this section, this Act takes effect September 1, 2009.

15 (b) Sections 11.31(k) and 26.045(f), Tax Code, as amended by
16 this Act, take effect January 1, 2010.