

AN ACT

relating to the establishment of incentives by this state for the implementation of certain projects to capture and sequester carbon dioxide that would otherwise be emitted into the atmosphere.

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

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

SUBCHAPTER H. FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT

Sec. 490.351. DEFINITION. In this subchapter, "clean energy project" has the meaning assigned by Section 120.001, Natural Resources Code.

Sec. 490.352. FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT. (a) The comptroller shall adopt rules for issuing to an entity implementing a clean energy project in this state a franchise tax credit. A clean energy project is eligible for a franchise tax credit only if the project is implemented in connection with the construction of a new facility.

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

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

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

1           (3) the electric generating facility associated with  
2 the project is fully operational;

3           (4) the Bureau of Economic Geology of The University  
4 of Texas at Austin verifies to the comptroller that the electric  
5 generating facility associated with the project is sequestering at  
6 least 70 percent of the carbon dioxide resulting from or associated  
7 with the generation of electricity by the facility; and

8           (5) the owner or operator of the project has entered  
9 into an interconnection agreement relating to the project with the  
10 Electric Reliability Council of Texas.

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

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

21           (2) \$100 million.

22           (d) The amount of the franchise tax credit for each report  
23 year is calculated by determining the amount of franchise tax that  
24 is due based on the taxable margin generated by a clean energy  
25 project from the generation and sale of power and the sale of any  
26 products that are produced by the electric generation facility.

27 The amount of the franchise tax credit claimed under this section

1 for a report year may not exceed the amount of franchise tax  
2 attributable to the clean energy project for that report year.

3 (e) The comptroller may not issue a franchise tax credit  
4 under this section before September 1, 2013. This subsection  
5 expires September 2, 2013.

6 SECTION 2. Section 382.003(1-a), Health and Safety Code, is  
7 amended to read as follows:

8 (1-a) "Advanced clean energy project" means a project  
9 for which an application for a permit or for an authorization to use  
10 a standard permit under this chapter is received by the commission  
11 on or after January 1, 2008, and before January 1, 2020, and that:

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

21 (B) with regard to the portion of the emissions  
22 stream from the facility that is associated with the project, is  
23 capable of achieving:

24 (i) on an annual basis a 99 percent or  
25 greater reduction of sulfur dioxide emissions or, if the project is  
26 designed for the use of feedstock substantially all of which is  
27 subbituminous coal, an emission rate of 0.04 pounds or less of

1 sulfur dioxide per million British thermal units as determined by a  
2 30-day average;

3 (ii) on an annual basis [7] a 95 percent or  
4 greater reduction of mercury emissions;

5 (iii) [~~7~~ and] an annual average emission  
6 rate for nitrogen oxides of:

7 (a) 0.05 pounds or less per million  
8 British thermal units; or

9 (b) if the project uses gasification  
10 technology, 0.034 pounds or less per million British thermal units;  
11 and

12 (iv) an annual average emission rate for  
13 filterable particulate matter of 0.015 pounds or less per million  
14 British thermal units; and

15 (C) captures not less than 50 percent of the  
16 [~~renders~~] carbon dioxide in the portion of the emissions stream  
17 from the facility that is associated with the project and  
18 sequesters that captured carbon dioxide by geologic storage or  
19 other means [~~capable of capture, sequestration, or abatement if any~~  
20 ~~carbon dioxide is produced by the project~~].

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

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

25 Sec. 120.001. DEFINITIONS. In this chapter:

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

1           (2) "Clean energy project" means a project to  
2 construct a coal-fueled or petroleum coke-fueled electric  
3 generating facility, including a facility in which the fuel is  
4 gasified before combustion, that will:

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

6                   (B) meet the emissions profile for an advanced  
7 clean energy project under Section 382.003(1-a)(B), Health and  
8 Safety Code;

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

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

14                   (E) be capable of supplying the carbon dioxide  
15 captured for purposes of an enhanced oil recovery project.

16           (3) "Commission" means the Railroad Commission of  
17 Texas.

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

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

26           (b) An entity may apply to the commission for a  
27 certification that a project operated by the entity meets the

1 requirements for a clean energy project. The application must be  
2 accompanied by:

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

6 (2) a fee payable to the commission.

7 (c) The amount of the fee prescribed by Subsection (b)(2) is  
8 \$50,000 unless the commission by rule determines that a fee in a  
9 greater amount is necessary to cover the commission's costs of  
10 processing an application.

11 Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE.

12 (a) An entity that applies to the commission under Section 120.002  
13 for a certification that a project operated by the entity meets the  
14 requirements for a clean energy project is responsible for  
15 conducting a monitoring, measuring, and verification process that  
16 demonstrates that the project complies with the requirements of  
17 Section 490.352(b)(4), Government Code.

18 (b) The entity shall contract with the bureau for the bureau  
19 to:

20 (1) design initial protocols and standards for the  
21 process described by Subsection (a);

22 (2) review the conduct of the process described by  
23 Subsection (a) in order to make any necessary changes in the design  
24 of the protocols and standards;

25 (3) evaluate the results of the process described by  
26 Subsection (a);

27 (4) provide an evaluation of the results of the

1 process described by Subsection (a) to the commission; and  
 2 (5) determine whether to transmit to the comptroller  
 3 the verification described by Section 490.352(b)(4), Government  
 4 Code.

5 (c) Unless otherwise agreed by the entity and the bureau, a  
 6 contract required by Subsection (b) must require the entity to  
 7 compensate the bureau by paying an annual fee in accordance with the  
 8 following schedule:

9	<u>Year</u>	<u>Amount</u>
10	<u>One</u>	<u>\$700,000</u>
11	<u>Two</u>	<u>\$1,300,000</u>
12	<u>Three</u>	<u>\$1,800,000</u>
13	<u>Four</u>	<u>\$1,500,000</u>
14	<u>Five</u>	<u>\$1,200,000</u>
15	<u>Six</u>	<u>\$900,000</u>
16	<u>Seven</u>	<u>\$500,000</u>
17	<u>Eight</u>	<u>\$200,000</u>

18 (d) The first payment under Subsection (c) is due not later  
 19 than 24 months before the date the entity first supplies carbon  
 20 dioxide captured by the project to an enhanced oil recovery  
 21 project.

22 Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a)  
 23 On verification that a project meets the requirements for  
 24 certification as a clean energy project, the commission shall issue  
 25 a certificate of compliance for the project to the entity operating  
 26 the project and shall provide a copy of the certificate to the  
 27 comptroller.

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

3        SECTION 4. Subchapter H, Chapter 151, Tax Code, is amended  
4 by adding Section 151.334 to read as follows:

5        Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED  
6 IN CONNECTION WITH SEQUESTRATION OF CARBON DIOXIDE. Components of  
7 tangible personal property used in connection with an advanced  
8 clean energy project, as defined by Section 382.003, Health and  
9 Safety Code, or a clean energy project, as defined by Section  
10 120.001, Natural Resources Code, are exempted from the taxes  
11 imposed by this chapter if:

12            (1) the components are installed to capture carbon  
13 dioxide from an anthropogenic emission source, transport or inject  
14 carbon dioxide from such a source, or prepare carbon dioxide from  
15 such a source for transportation or injection; and

16            (2) the carbon dioxide is sequestered in this state:

17                    (A) as part of an enhanced oil recovery project  
18 that qualifies for a tax rate reduction under Section 202.0545, as  
19 provided by Subsection (c) of that section; or

20                    (B) in a manner and under conditions that create  
21 a reasonable expectation that at least 99 percent of the carbon  
22 dioxide will remain sequestered from the atmosphere for at least  
23 1,000 years.

24        SECTION 5. Sections 202.0545(a) and (d), Tax Code, are  
25 amended to read as follows:

26        (a) Subject to the limitations provided by this section,  
27 until [~~the later of~~] the 30th [~~seventh~~] anniversary of the date that



1 the comptroller first approves an application for a tax rate  
2 reduction under this section [~~or the effective date of a final rule~~  
3 ~~adopted by the United States Environmental Protection Agency~~  
4 ~~regulating carbon dioxide as a pollutant~~], the producer of oil  
5 recovered through an enhanced oil recovery project that qualifies  
6 under Section 202.054 for the recovered oil tax rate provided by  
7 Section 202.052(b) is entitled to an additional 50 percent  
8 reduction in that tax rate if in the recovery of the oil the  
9 enhanced oil recovery project uses carbon dioxide that:

10 (1) is captured from an anthropogenic source in this  
11 state;

12 (2) would otherwise be released into the atmosphere as  
13 industrial emissions;

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

15 (4) is sequestered in one or more geological  
16 formations in this state following the enhanced oil recovery  
17 process.

18 (d) An agency to which an operator applies for a  
19 certification under Subsection (c)(2) may issue the certification  
20 only if the agency finds that, based on substantial evidence, there  
21 is a reasonable expectation that:

22 (1) [~~the operator's planned sequestration program will~~  
23 ~~ensure that~~] at least 99 percent of the carbon dioxide sequestered  
24 as required by Subsection (a)(4) will remain sequestered for at  
25 least 1,000 years; and

26 (2) the operator's planned sequestration program will  
27 include appropriately designed monitoring and verification

1 measures that will be employed for a period sufficient to  
2 demonstrate whether the sequestration program is performing as  
3 expected.

4 SECTION 6. Section 313.021(4), Tax Code, is amended to read  
5 as follows:

6 (4) "Qualifying time period" means:

7 (A) the first two tax years that begin on or after  
8 the date a person's application for a limitation on appraised value  
9 under this subchapter is approved, except as provided by Paragraph  
10 (B) or (C); ~~or~~

11 (B) in connection with a nuclear electric power  
12 generation facility, the first seven tax years that begin on or  
13 after the third anniversary of the date the school district  
14 approves the property owner's application for a limitation on  
15 appraised value under this subchapter, unless a shorter time period  
16 is agreed to by the governing body of the school district and the  
17 property owner; or

18 (C) in connection with an advanced clean energy  
19 project, as defined by Section 382.003, Health and Safety Code, the  
20 first five tax years that begin on or after the third anniversary of  
21 the date the school district approves the property owner's  
22 application for a limitation on appraised value under this  
23 subchapter, unless a shorter time period is agreed to by the  
24 governing body of the school district and the property owner.

25 SECTION 7. (a) Not later than September 1, 2010, September  
26 1, 2012, and September 1, 2016, the Texas Commission on  
27 Environmental Quality shall make recommendations to the

1 legislature on whether the emissions profile set out in Sections  
2 120.001(2)(B) and (C), Natural Resources Code, as added by this  
3 Act, and Sections 382.003(1-a)(B) and (C), Health and Safety Code,  
4 as amended by this Act, should be adjusted to increase or decrease  
5 elements of the emissions profile. Before making its  
6 recommendations, the commission shall determine whether any  
7 commercially demonstrated electric generating facility operating  
8 in the United States that meets the criteria and emissions profile  
9 specified by Section 120.001(2), Natural Resources Code, as added  
10 by this Act, is capturing and sequestering a greater percentage of  
11 the carbon dioxide in the emissions stream from the facility than  
12 would be required to meet the emissions profile set out in that  
13 subdivision and whether any commercially demonstrated electric  
14 generating facility operating in the United States that meets the  
15 criteria and emissions profile specified by Sections  
16 382.003(1-a)(A), (B), and (C), Health and Safety Code, as amended  
17 by this Act, is capturing and sequestering a greater percentage of  
18 the carbon dioxide in the emissions stream from the facility than  
19 would be required to meet the emissions profile set out in those  
20 paragraphs. If at least one such facility exists, the commission  
21 shall recommend raising the minimum percentage of carbon dioxide in  
22 the emissions stream from a facility that is required to be captured  
23 and sequestered for the facility to qualify as a clean energy  
24 project or advanced clean energy project to the highest percentage  
25 of carbon dioxide that is being captured and sequestered by such a  
26 facility.

27 (b) Factors that must be considered in the assessment of the

1 emissions profile include:

2           (1) the technical and economic feasibility of meeting  
3 all of the elements of the emissions profile set out in Sections  
4 120.001(2)(B) and (C), Natural Resources Code, as added by this  
5 Act, or Sections 382.003(1-a)(A), (B), and (C), Health and Safety  
6 Code, as amended by this Act, in a commercially viable project, as  
7 documented by the United States Department of Energy;

8           (2) the technical and economic feasibility of projects  
9 to meet all of the elements of the emissions profile and still use a  
10 diverse range of fuels, including lignite; and

11           (3) the adequacy of the incentives provided by this  
12 Act, or similar legislation that becomes law, to continue to  
13 attract investment in and federal funding for clean energy projects  
14 and advanced clean energy projects in this state.

15           (c) Any adjustments to the emissions profile implemented by  
16 the legislature in response to a report required by this section do  
17 not apply to an application considered administratively complete on  
18 or before the date the adjustment takes effect.

19           SECTION 8. The comptroller shall adopt rules under Section  
20 490.352, Government Code, as added by this Act, not later than  
21 December 31, 2010.

22           SECTION 9. Not later than January 1, 2010, the Texas  
23 Commission on Environmental Quality shall adopt rules as necessary  
24 to implement Section 382.003, Health and Safety Code, as amended by  
25 this Act.

26           SECTION 10. Section 151.334, Tax Code, as added by this Act,  
27 does not affect taxes imposed before the effective date of this Act,

1 and the law in effect before the effective date of this Act is  
2 continued in effect for purposes of the liability for and  
3 collection of those taxes.

4         SECTION 11. The Railroad Commission of Texas may adopt  
5 rules as necessary to implement Section 202.0545, Tax Code, as  
6 amended by this Act.

7         SECTION 12. The comptroller of public accounts may adopt  
8 rules as necessary to implement Section 202.0545, Tax Code, as  
9 amended by this Act.

10         SECTION 13. This Act takes effect September 1, 2009.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 469 was passed by the House on May 5, 2009, by the following vote: Yeas 140, Nays 3, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 469 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 469 on May 31, 2009, by the following vote: Yeas 141, Nays 5, 1 present, not voting.

---

Chief Clerk of the House

H.B. No. 469

I certify that H.B. No. 469 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 469 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor