

1-1 By: King of Parker, et al. (Senate Sponsor - Seliger) H.B. No. 469
1-2 (In the Senate - Received from the House May 6, 2009;
1-3 May 7, 2009, read first time and referred to Committee on Natural
1-4 Resources; May 25, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 25, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 469 By: Seliger

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

1-10 relating to the establishment of incentives by this state for the
1-11 implementation of certain projects to capture and sequester in
1-12 geological formations carbon dioxide that would otherwise be
1-13 emitted into the atmosphere.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. The heading to Subchapter G, Chapter 490,
1-16 Government Code, is amended to read as follows:

1-17 SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS

1-18 SECTION 2. Section 490.301, Government Code, is amended to
1-19 read as follows:

1-20 Sec. 490.301. DEFINITIONS [~~DEFINITION~~]. In this
1-21 subchapter:

1-22 (1) "Clean [~~clean~~] coal project" has the meaning
1-23 assigned by Section 5.001, Water Code.

1-24 (2) "Clean energy project" has the meaning assigned by
1-25 Section 120.001, Natural Resources Code.

1-26 SECTION 3. The heading to Section 490.304, Government Code,
1-27 is amended to read as follows:

1-28 Sec. 490.304. CONTRACTING AUTHORITY RELATED TO
1-29 IMPLEMENTING CLEAN COAL PROJECT; FRANCHISE TAX CREDIT.

1-30 SECTION 4. Subchapter G, Chapter 490, Government Code, is
1-31 amended by adding Section 490.305 to read as follows:

1-32 Sec. 490.305. FRANCHISE TAX CREDIT FOR CLEAN ENERGY
1-33 PROJECT. (a) The comptroller shall adopt rules for issuing to an
1-34 entity implementing a clean energy project in this state a
1-35 franchise tax credit.

1-36 (b) The comptroller shall issue a franchise tax credit to an
1-37 entity operating a clean energy project after:

1-38 (1) the Railroad Commission of Texas has issued a
1-39 certificate of compliance for the project to the entity as provided
1-40 by Section 120.004, Natural Resources Code;

1-41 (2) the construction of the project has been
1-42 completed;

1-43 (3) the electric generating facility associated with
1-44 the project is fully operational; and

1-45 (4) the Bureau of Economic Geology of The University
1-46 of Texas at Austin verifies to the comptroller that the electric
1-47 generating facility associated with the project is sequestering at
1-48 least 70 percent of the carbon dioxide resulting from or associated
1-49 with the generation of electricity by the facility.

1-50 (c) The total amount of the franchise tax credit that may be
1-51 issued to the entity designated in the certificate of compliance
1-52 for a clean energy project is equal to the lesser of:

1-53 (1) 10 percent of the total capital cost of the
1-54 project, including the cost of designing, engineering, permitting,
1-55 constructing, and commissioning the project, the cost of procuring
1-56 land, water, and equipment for the project, and all fees, taxes, and
1-57 commissions paid and other payments made in connection with the
1-58 project but excluding the cost of financing the capital cost of the
1-59 project; or

1-60 (2) \$100 million.

1-61 (d) The franchise tax credit is a credit against any
1-62 franchise taxes that may be assessed against the income generated
1-63 by a clean energy project from the generation and sale of power and

2-1 the sale of any products that are produced directly or indirectly by
2-2 the electric generation facility. The entity designated in the
2-3 certificate of compliance for the project may assign the franchise
2-4 tax credit to any other entity that has or acquires an interest in
2-5 the income generated by the project.

2-6 (e) The comptroller may not issue a franchise tax credit
2-7 under this section before September 1, 2013. This subsection
2-8 expires September 2, 2013.

2-9 SECTION 5. Subtitle D, Title 3, Natural Resources Code, is
2-10 amended by adding Chapter 120 to read as follows:

2-11 CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN
2-12 ENERGY PROJECT

2-13 Sec. 120.001. DEFINITIONS. In this chapter:

2-14 (1) "Bureau" means the Bureau of Economic Geology of
2-15 The University of Texas at Austin.

2-16 (2) "Clean energy project" means a project to
2-17 construct a coal-fueled or petroleum coke-fueled electric
2-18 generating facility, including a facility in which the fuel is
2-19 gasified before combustion, that will:

2-20 (A) have a capacity of at least 200 megawatts;

2-21 (B) meet the emissions profile for an advanced
2-22 clean energy project under Section 382.003(1-a)(B), Health and
2-23 Safety Code, except that a unit designed for the use of feedstock
2-24 substantially all of which is subbituminous coal must be capable of
2-25 achieving:

2-26 (i) on an annual basis a 99 percent or
2-27 greater reduction of sulfur dioxide emissions; or

2-28 (ii) an emission rate of 0.04 pounds or less
2-29 of sulfur dioxide per million British thermal units as determined
2-30 by a 30-day average;

2-31 (C) capture at least 70 percent of the carbon
2-32 dioxide resulting from or associated with the generation of
2-33 electricity by the facility;

2-34 (D) be capable of permanently sequestering in a
2-35 geological formation the carbon dioxide captured; and

2-36 (E) be capable of supplying the carbon dioxide
2-37 captured for purposes of an enhanced oil recovery project.

2-38 (3) "Commission" means the Railroad Commission of
2-39 Texas.

2-40 (4) "Sequester" means to inject carbon dioxide into a
2-41 geological formation in a manner and under conditions that create a
2-42 reasonable expectation that at least 99 percent of the carbon
2-43 dioxide injected will remain sequestered from the atmosphere for at
2-44 least 1,000 years.

2-45 Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a)
2-46 The commission is the authority responsible for certifying whether
2-47 a project has met the requirements for a clean energy project.

2-48 (b) An entity may apply to the commission for a
2-49 certification that a project operated by the entity meets the
2-50 requirements for a clean energy project. The application must be
2-51 accompanied by:

2-52 (1) a certificate from a qualified independent
2-53 engineer that the project is operational and meets the standards
2-54 provided by Sections 120.001(2)(A), (B), and (C); and

2-55 (2) a fee payable to the commission.

2-56 (c) The amount of the fee prescribed by Subsection (b)(2) is
2-57 \$50,000 unless the commission by rule determines that a fee in a
2-58 greater amount is necessary to cover the commission's costs of
2-59 processing an application.

2-60 Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE.

2-61 (a) An entity that applies to the commission under Section 120.002
2-62 for a certification that a project operated by the entity meets the
2-63 requirements for a clean energy project is responsible for
2-64 conducting a monitoring, measuring, and verification process that
2-65 demonstrates that the project complies with the requirements of
2-66 Section 490.305(b)(4), Government Code.

2-67 (b) The entity shall contract with the bureau for the bureau
2-68 to:

2-69 (1) design initial protocols and standards for the

3-1 process described by Subsection (a);
 3-2 (2) review the conduct of the process described by
 3-3 Subsection (a) in order to make any necessary changes in the design
 3-4 of the protocols and standards;
 3-5 (3) evaluate the results of the process described by
 3-6 Subsection (a);
 3-7 (4) provide an evaluation of the results of the
 3-8 process described by Subsection (a) to the commission; and
 3-9 (5) determine whether to transmit to the comptroller
 3-10 the verification described by Section 490.305(b)(4), Government
 3-11 Code.

3-12 (c) Unless otherwise agreed by the entity and the bureau, a
 3-13 contract required by Subsection (b) must require the entity to
 3-14 compensate the bureau by paying an annual fee in accordance with the
 3-15 following schedule:

<u>Year</u>	<u>Amount</u>
3-16 <u>One</u>	<u>\$700,000</u>
3-17 <u>Two</u>	<u>\$1,300,000</u>
3-18 <u>Three</u>	<u>\$1,800,000</u>
3-19 <u>Four</u>	<u>\$1,500,000</u>
3-20 <u>Five</u>	<u>\$1,200,000</u>
3-21 <u>Six</u>	<u>\$900,000</u>
3-22 <u>Seven</u>	<u>\$500,000</u>
3-23 <u>Eight</u>	<u>\$200,000</u>

3-24 (d) The first payment under Subsection (c) is due not later
 3-25 than 24 months before the date the entity first supplies carbon
 3-26 dioxide captured by the project to an enhanced oil recovery
 3-27 project.

3-28 Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a)
 3-29 On verification that a project meets the requirements for
 3-30 certification as a clean energy project, the commission shall issue
 3-31 a certificate of compliance for the project to the entity operating
 3-32 the project and shall provide a copy of the certificate to the
 3-33 comptroller.

3-34 (b) The commission may not issue a certificate of compliance
 3-35 for more than three clean energy projects.

3-36 SECTION 6. Subchapter H, Chapter 151, Tax Code, is amended
 3-37 by adding Section 151.334 to read as follows:

3-38 Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED
 3-39 IN CONNECTION WITH GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE.
 3-40 Components of tangible personal property used in connection with an
 3-41 advanced clean energy project, as defined by Section 382.003,
 3-42 Health and Safety Code, or a clean energy project, as defined by
 3-43 Section 120.001, Natural Resources Code, are exempted from the
 3-44 taxes imposed by this chapter if:

3-45 (1) the components are installed to capture carbon
 3-46 dioxide from an anthropogenic emission source, transport or inject
 3-47 carbon dioxide from such a source, or prepare carbon dioxide from
 3-48 such a source for transportation or injection; and

3-49 (2) the carbon dioxide is geologically sequestered in
 3-50 this state:

3-51 (A) as part of an enhanced oil recovery project
 3-52 that qualifies for a tax rate reduction under Section 202.0545, as
 3-53 provided by Subsection (c) of that section; or

3-54 (B) in a manner and under conditions that create
 3-55 a reasonable expectation that at least 99 percent of the carbon
 3-56 dioxide injected will remain sequestered from the atmosphere for at
 3-57 least 1,000 years.

3-58 SECTION 7. Section 202.0545, Tax Code, is amended by adding
 3-59 Subsection (i) to read as follows:

3-60 (i) Notwithstanding Subsection (a), the producer of oil
 3-61 recovered through an enhanced oil recovery project that uses carbon
 3-62 dioxide that is generated by a clean energy project as defined by
 3-63 Section 120.001, Natural Resources Code, is entitled to a tax rate
 3-64 reduction under this section until the 30th anniversary of the date
 3-65 the comptroller first approves an application for a tax rate
 3-66 reduction under this section if the producer otherwise qualifies
 3-67 for the tax rate reduction.

3-68 SECTION 8. The comptroller shall adopt rules under Section
 3-69

4-1 490.305, Government Code, as added by this Act, not later than
4-2 December 31, 2010.

4-3 SECTION 9. Section 151.334, Tax Code, as added by this Act,
4-4 does not affect taxes imposed before the effective date of this Act,
4-5 and the law in effect before the effective date of this Act is
4-6 continued in effect for purposes of the liability for and
4-7 collection of those taxes.

4-8 SECTION 10. This Act takes effect September 1, 2009.

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