

By: Averitt

S.B. No. 2111

Substitute the following for S.B. No. 2111:

By: Rios Ybarra

C.S.S.B. No. 2111

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the implementation of and incentives for projects
3 involving the capture, transportation, injection, sequestration,
4 geologic storage, or abatement of carbon dioxide; providing for the
5 issuance of bonds.

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

7 SECTION 1. Section 382.003, Health and Safety Code, is
8 amended by amending Subdivision (1-a) to read as follows:

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

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

22 (B) with regard to the portion of the emissions
23 stream from the facility that is associated with the project, is
24 capable of achieving on an annual basis a 99 percent or greater

1 reduction of sulfur dioxide emissions and[7] a 95 percent or
2 greater reduction of mercury emissions[7] and achieving an annual
3 average emission rate for nitrogen oxides of 0.05 pounds or less per
4 million British thermal units; and

5 (C) captures not less than 50 percent of the
6 ~~[renders]~~ carbon dioxide in the portion of the emissions stream
7 from the facility that is associated with the project and
8 sequesters that captured carbon dioxide by geologic storage or
9 other means ~~[capable of capture, sequestration, or abatement if any~~
10 ~~carbon dioxide is produced by the project]~~.

11 SECTION 2. Subtitle C, Title 5, Health and Safety Code, is
12 amended by adding Chapter 393 to read as follows:

13 CHAPTER 393. COMMISSION ADVANCED CLEAN ENERGY PROJECT GRANT AND
14 LOAN PROGRAM

15 Sec. 393.001. DEFINITIONS. In this chapter:

16 (1) "Account" means the commission advanced clean
17 energy project account established under this chapter.

18 (2) "Advanced clean energy project" has the meaning
19 assigned by Section 382.003.

20 (3) "Commission" means the Texas Commission on
21 Environmental Quality.

22 (4) "Program" means the commission advanced clean
23 energy project grant and loan program established under this
24 chapter.

25 Sec. 393.002. PROGRAM. The commission advanced clean
26 energy project grant and loan program is established to encourage
27 the development of advanced clean energy projects. Under the

1 program, the commission shall provide grants or other financial
2 incentives for eligible projects to accelerate the
3 commercialization of technologies for the control of air
4 contaminant emissions by electrical power generating facilities,
5 including technologies to capture, transport, and store carbon
6 dioxide in an environmentally protective manner.

7 Sec. 393.003. ACCOUNT. (a) The commission advanced clean
8 energy project account is an account in the general revenue fund.

9 (b) The account consists of:

10 (1) a subaccount in the account that consists of the
11 proceeds of bonds issued under Section 393.008;

12 (2) any amount appropriated by the legislature for the
13 account;

14 (3) gifts, grants, and other donations received for
15 the account; and

16 (4) interest earned on the investment of money in the
17 account.

18 (c) Money in the account may be appropriated only to the
19 commission to award grants or make or guarantee loans under this
20 chapter.

21 Sec. 393.004. GRANTS. (a) Under the program, the
22 commission may award a grant to the managing entity of an advanced
23 clean energy project to assist in the funding of the front-end
24 engineering and design portion of the project.

25 (b) The total amount of grants awarded under this section
26 for a project may not exceed 50 percent of the total amount invested
27 in the front-end engineering and design portion of the project by

1 private industry sources.

2 Sec. 393.005. LOANS AND LOAN GUARANTEES. (a) Under the
3 program, the commission may make or guarantee a loan to the managing
4 entity of an advanced clean energy project in this state.

5 (b) If a loan or loan guarantee is to be funded by the
6 proceeds of bonds issued under Section 393.008, the project must
7 qualify for the loan or guarantee under Section 49-q, Article III,
8 Texas Constitution.

9 Sec. 393.006. WRITTEN AGREEMENT. Before awarding a grant
10 or making a loan under this chapter, the commission shall enter into
11 a written agreement with the entity to which the grant is to be
12 awarded or the loan is to be made. The agreement may specify that
13 if, as of a date specified by the agreement, the entity has not used
14 the grant or loan for the purposes for which the grant or loan was
15 intended, the entity shall repay the amount of the grant or the
16 amount of the loan and any accrued interest, as applicable, under
17 terms specified by the agreement.

18 Sec. 393.007. PURCHASE OF GOODS AND SERVICES FROM SMALL AND
19 HISTORICALLY UNDERUTILIZED BUSINESSES. A recipient of a grant,
20 loan, or loan guarantee under this chapter is encouraged to
21 purchase goods and services from small businesses and historically
22 underutilized businesses, as those terms are defined by Section
23 481.191, Government Code.

24 Sec. 393.008. ISSUANCE OF BONDS. The Texas Public Finance
25 Authority shall issue general obligation bonds in accordance with
26 and subject to Chapter 1232, Government Code, for the purposes
27 authorized by Section 49-q, Article III, Texas Constitution.

1 Sec. 393.009. GUIDELINES AND CRITERIA, GRANT APPLICATION
2 REQUIREMENTS, AND PROJECT REQUIREMENTS. The commission by rule
3 shall adopt guidelines and criteria, grant application
4 requirements, and project requirements that are consistent with the
5 requirements of Section 391.003 and Subchapters B and C, Chapter
6 391, to the extent those provisions can be made applicable, except
7 that rules adopted under this section in accordance with Section
8 391.201(d) must require a project to document the ability of the
9 project to meet the emissions profile in the definition of
10 "advanced clean energy project" under Section 382.003.

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

13 Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED
14 IN CONNECTION WITH GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE.
15 Components of tangible personal property are exempted from the
16 taxes imposed by this chapter if:

17 (1) the components are installed to capture carbon
18 dioxide from an anthropogenic emission source, transport or inject
19 carbon dioxide from such a source, or prepare carbon dioxide from
20 such a source for transportation or injection; and

21 (2) the carbon dioxide is geologically sequestered in
22 this state:

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

26 (B) in a manner and under conditions that create
27 a reasonable expectation that at least 99 percent of the carbon

1 dioxide injected will remain sequestered from the atmosphere for at
2 least 1,000 years.

3 SECTION 4. Subsection (a), Section 202.0545, Tax Code, is
4 amended to read as follows:

5 (a) Subject to the limitations provided by this section,
6 until [~~the later of~~] the 30th [~~seventh~~] anniversary of the date that
7 the comptroller first approves an application for a tax rate
8 reduction under this section [~~or the effective date of a final rule~~
9 ~~adopted by the United States Environmental Protection Agency~~
10 ~~regulating carbon dioxide as a pollutant~~], the producer of oil
11 recovered through an enhanced oil recovery project that qualifies
12 under Section 202.054 for the recovered oil tax rate provided by
13 Section 202.052(b) is entitled to an additional 50 percent
14 reduction in that tax rate if in the recovery of the oil the
15 enhanced oil recovery project uses carbon dioxide that:

16 (1) is captured from an anthropogenic source in this
17 state;

18 (2) would otherwise be released into the atmosphere as
19 industrial emissions;

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

21 (4) is sequestered in one or more geological
22 formations in this state following the enhanced oil recovery
23 process.

24 SECTION 5. Subdivisions (1) and (4), Section 313.021, Tax
25 Code, are amended to read as follows:

26 (1) "Qualified investment" means:

27 (A) tangible personal property that is first

1 placed in service in this state during the applicable qualifying
2 time period that begins on or after January 1, 2002, and is
3 described as Section 1245 property by Section 1245(a), Internal
4 Revenue Code of 1986;

5 (B) tangible personal property that is first
6 placed in service in this state during the applicable qualifying
7 time period that begins on or after January 1, 2002, without regard
8 to whether the property is affixed to or incorporated into real
9 property, and that is used in connection with the manufacturing,
10 processing, or fabrication in a cleanroom environment of a
11 semiconductor product, without regard to whether the property is
12 actually located in the cleanroom environment, including:

13 (i) integrated systems, fixtures, and
14 piping;

15 (ii) all property necessary or adapted to
16 reduce contamination or to control airflow, temperature, humidity,
17 chemical purity, or other environmental conditions or
18 manufacturing tolerances; and

19 (iii) production equipment and machinery,
20 moveable cleanroom partitions, and cleanroom lighting;

21 (C) tangible personal property that is first
22 placed in service in this state during the applicable qualifying
23 time period that begins on or after January 1, 2002, without regard
24 to whether the property is affixed to or incorporated into real
25 property, and that is used in connection with the operation of a
26 nuclear electric power generation facility, including:

27 (i) property, including pressure vessels,

1 pumps, turbines, generators, and condensers, used to produce
2 nuclear electric power; and

3 (ii) property and systems necessary to
4 control radioactive contamination;

5 (D) tangible personal property that is first
6 placed in service in this state during the applicable qualifying
7 time period that begins on or after January 1, 2002, without regard
8 to whether the property is affixed to or incorporated into real
9 property, and that is used in connection with operating an
10 integrated gasification combined cycle electric generation
11 facility, including:

12 (i) property used to produce electric power
13 by means of a combined combustion turbine and steam turbine
14 application using synthetic gas or another product produced by the
15 gasification of coal or another carbon-based feedstock; or

16 (ii) property used in handling materials to
17 be used as feedstock for gasification or used in the gasification
18 process to produce synthetic gas or another carbon-based feedstock
19 for use in the production of electric power in the manner described
20 by Subparagraph (i); ~~or~~

21 (E) tangible personal property that is first
22 placed in service in this state during the applicable qualifying
23 time period that begins on or after January 1, 2010, without regard
24 to whether the property is affixed to or incorporated into real
25 property, and that is used in connection with operating an advanced
26 clean energy project, as defined by Section 382.003, Health and
27 Safety Code; or

1 (F) a building or a permanent, nonremovable
2 component of a building that is built or constructed during the
3 applicable qualifying time period that begins on or after January
4 1, 2002, and that houses tangible personal property described by
5 Paragraph (A), (B), (C), [~~or~~] (D), or (E).

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 6. Subchapter M, Chapter 5, Water Code, is amended
26 by adding Section 5.559 to read as follows:

27 Sec. 5.559. ADVANCED CLEAN ENERGY PROJECT PERMITTING

1 PROCEDURE. (a) In this section, "advanced clean energy project"
2 has the meaning assigned by Section 382.003, Health and Safety
3 Code.

4 (b) As authorized by federal law, not later than nine months
5 after the executive director declares an application for a permit
6 under Chapter 26 for an advanced clean energy project to be
7 administratively complete, the executive director shall complete
8 the technical review of the application.

9 (c) The commission shall issue a final order issuing or
10 denying the permit not later than nine months after the executive
11 director declares the application technically complete. The
12 commission may extend the deadline set out in this subsection up to
13 three months if it determines that the number of complex pending
14 applications for permits under this chapter will prevent the
15 commission from meeting the deadline imposed by this subsection
16 without creating an extraordinary burden on the resources of the
17 commission.

18 (d) The permit process authorized by this section is subject
19 to the requirements relating to a contested case hearing under this
20 chapter or Subchapters C-G, Chapter 2001, Government Code, as
21 applicable.

22 (e) The commission shall adopt rules to implement this
23 section.

24 SECTION 7. Chapter 27, Water Code, is amended by adding
25 Subchapter C-1 to read as follows:

1 SUBCHAPTER C-1. INJECTION AND GEOLOGIC STORAGE OF ANTHROPOGENIC

2 CARBON DIOXIDE

3 Sec. 27.041. JURISDICTION. (a) Except as provided by
4 Subsection (b), the railroad commission has jurisdiction over the
5 geologic storage of carbon dioxide in, and the injection of carbon
6 dioxide into, a reservoir that is initially or may be productive of
7 oil, gas, or geothermal resources or a saline formation directly
8 above or below such a reservoir.

9 (b) The jurisdiction of the railroad commission over the
10 geologic storage of carbon dioxide in, and the injection of carbon
11 dioxide into, a saline formation described by Subsection (a) is
12 subject to the review of the legislature based on the
13 recommendations made in the joint preliminary report described by
14 Section 10, S.B. No. 2111, Acts of the 81st Legislature, Regular
15 Session, 2009, or similar legislation that becomes law.

16 (c) Except as provided by Subsection (b), the railroad
17 commission has jurisdiction over a well used for the purpose
18 provided by Subsection (a) regardless of whether the well was
19 initially completed for that purpose or was initially completed for
20 another purpose and is converted to the purpose provided by
21 Subsection (a).

22 SECTION 8. Sections 11(a) and (b), Chapter 1277 (H.B.
23 3732), Acts of the 80th Legislature, Regular Session, 2007, are
24 amended to read as follows:

25 (a) Not later than September 1, 2012, and September 1, 2016,
26 the Texas Commission on Environmental Quality [~~and the State Energy~~
27 ~~Conservation Office~~] shall issue a [~~joint~~] report to the

1 legislature providing a status update on the implementation of the
2 advanced clean energy program and an assessment of whether the
3 emissions profile set out in Section 382.003(1-a)(C)
4 [~~382.003(1-a)(B)~~], Health and Safety Code, as amended [~~added~~] by
5 S.B. No. 2111, Acts of the 81st Legislature, Regular Session, 2009,
6 or similar legislation that becomes law [~~this Act~~], should be
7 adjusted to increase or decrease the percentage of the carbon
8 dioxide in the portion of the emissions stream from a facility that
9 is associated with an advanced clean energy project that is
10 required to be captured [~~elements of the emissions profile~~].

11 (b) Factors to be considered in the assessment of the
12 emissions profile shall include:

13 (1) the technical and economic feasibility of meeting
14 all of the elements of the emissions profile set out in Sections
15 382.003(1-a)(B) and (C), Health and Safety Code, as amended by S.B.
16 No. 2111, Acts of the 81st Legislature, Regular Session, 2009, or
17 similar legislation that becomes law, in a commercially viable
18 project, as documented by the United States Department of Energy;

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

22 (3) the adequacy of the incentives provided by this
23 Act and S.B. No. 2111, Acts of the 81st Legislature, Regular
24 Session, 2009, or similar legislation that becomes law, to continue
25 to attract investment in and federal funding for advanced clean
26 energy projects in this state.

27 SECTION 9. Section 27.038, Water Code, is repealed.

1 SECTION 10. (a) Not later than December 1, 2010, the Texas
2 Commission on Environmental Quality and the Railroad Commission of
3 Texas, in consultation with the Bureau of Economic Geology of The
4 University of Texas at Austin, shall prepare and file with the
5 legislature a joint preliminary report that:

6 (1) analyzes the requirements for the injection and
7 geologic storage of anthropogenic carbon dioxide into saline
8 formations that are not productive of oil, gas, or geothermal
9 resources;

10 (2) recommends a permitting process for anthropogenic
11 carbon dioxide injection wells and geologic storage facilities that
12 are used for the injection and storage of anthropogenic carbon
13 dioxide in saline formations not productive of oil, gas, or
14 geothermal resources;

15 (3) recommends the agency or agencies that should have
16 jurisdiction over permitting described by Subdivision (2) of this
17 subsection or any other permitting of geologic storage facilities
18 not subject to Subchapter C-1, Chapter 27, Water Code, as added by
19 this Act; and

20 (4) assesses the status of compliance with any federal
21 rules regulating the geologic storage and associated injection of
22 anthropogenic carbon dioxide.

23 (b) The preliminary report shall include:

24 (1) recommended criteria for identifying candidate
25 geologic storage sites in each of the following types of geological
26 settings:

27 (A) operating oil and gas fields;

- 1 (B) depleted oil and gas fields;
- 2 (C) unmineable coal seams;
- 3 (D) saline formations;
- 4 (E) geological systems that may be used as
- 5 engineered reservoirs to extract economical quantities of heat from
- 6 geothermal resources of low permeability or porosity;
- 7 (F) geological systems containing igneous
- 8 formations; and
- 9 (G) coalbeds being used for methane recovery;

10 (2) a proposed procedure for:

11 (A) providing an opportunity for public review

12 of, and the presentation of comments by interested persons

13 regarding, any activities related to geologic storage; and

14 (B) ensuring that the quality of the natural and

15 cultural resources of land overlying the site of a geologic storage

16 facility is protected from any geologic storage activities at the

17 site;

18 (3) a description of the status of leasehold or

19 mineral estate liability issues related to the geological

20 subsurface trespass of, or caused by, anthropogenic carbon dioxide

21 stored in private or state-owned land, including any relevant

22 experience from enhanced recovery operations using carbon dioxide;

23 (4) an analysis of and recommendations to address:

24 (A) the attributes of the subsurface area of

25 operations for geologic storage facilities; and

26 (B) the methods of financial assurance and the

27 allocation of long-term liability for the post-operational phases

1 of geologic storage projects;

2 (5) the status of any applications for permits that
3 have been received before the report is prepared;

4 (6) the status of any request for primary enforcement
5 authority for the underground injection and geologic storage of
6 anthropogenic carbon dioxide under the underground injection
7 control program; and

8 (7) any recommendations for additional legislation,
9 modifications to the memorandum of understanding between the Texas
10 Commission on Environmental Quality and the Railroad Commission of
11 Texas recorded in 16 T.A.C. Section 3.30, or new rules for
12 regulating geologic storage facilities and associated
13 anthropogenic carbon dioxide injection wells.

14 (c) This section expires December 31, 2010.

15 SECTION 11. Section 151.334, Tax Code, as added by this Act,
16 does not affect taxes imposed before the effective date of this Act,
17 and the law in effect before the effective date of this Act is
18 continued in effect for purposes of the liability for and
19 collection of those taxes.

20 SECTION 12. Not later than January 1, 2010, the Texas
21 Commission on Environmental Quality shall adopt rules as necessary
22 to implement Section 382.003, Health and Safety Code, as amended by
23 this Act, Chapter 393, Health and Safety Code, as added by this Act,
24 and Section 5.559, Water Code, as added by this Act.

25 SECTION 13. The Railroad Commission of Texas may adopt
26 rules as necessary to implement Section 202.0545, Tax Code, as
27 amended by this Act, and Subchapter C-1, Chapter 27, Water Code, as

1 added by this Act.

2 SECTION 14. The comptroller of public accounts may adopt
3 rules as necessary to implement Section 202.0545, Tax Code, as
4 amended by this Act.

5 SECTION 15. This Act does not make an appropriation.
6 Chapter 393, Health and Safety Code, as added by this Act, takes
7 effect only if a specific appropriation for the implementation of
8 that chapter is provided in a general appropriations act of the 81st
9 Legislature or a subsequent legislature.

10 SECTION 16. (a) Except as provided by Section 15 of this
11 Act and Subsections (b) and (c) of this section:

12 (1) this Act takes effect immediately if it receives a
13 vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution; and

15 (2) if this Act does not receive the vote necessary for
16 immediate effect, this Act takes effect September 1, 2009.

17 (b) Section 393.008, Health and Safety Code, as added by
18 this Act, takes effect on the date on which the constitutional
19 amendment proposed by the 81st Legislature, Regular Session, 2009,
20 authorizing the issuance of general obligation bonds to provide and
21 guarantee loans to encourage advanced clean energy projects takes
22 effect. If that amendment is not approved by the voters, Section
23 393.008, Health and Safety Code, as added by this Act, has no
24 effect.

25 (c) Section 393.009, Health and Safety Code, as added by
26 this Act, takes effect September 1, 2009, but only if S.B. No. 16,
27 Acts of the 81st Legislature, Regular Session, 2009, or similar

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1 legislation becomes law. If that bill or similar legislation does
2 not become law, Section 393.009, Health and Safety Code, as added by
3 this Act, has no effect.