

1-1 By: Averitt S.B. No. 2111
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 17, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 17, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2111 By: Averitt

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

1-10 relating to the implementation of and incentives for projects
1-11 involving the capture, transportation, injection, sequestration,
1-12 geologic storage, or abatement of carbon dioxide; providing for the
1-13 issuance of bonds.

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

1-15 SECTION 1. Section 382.003, Health and Safety Code, is
1-16 amended by amending Subdivision (1-a) and adding Subdivision (7-c)
1-17 to read as follows:

1-18 (1-a) "Advanced clean energy project" means a project
1-19 for which an application for a permit or for an authorization to use
1-20 a standard permit under this chapter is received by the commission
1-21 on or after January 1, 2008, and before January 1, 2020, and that:

1-22 (A) involves the use of coal, biomass, petroleum
1-23 coke, solid waste, or fuel cells using hydrogen derived from such
1-24 fuels, in the generation of electricity, or the creation of liquid
1-25 fuels outside of the existing fuel production infrastructure while
1-26 co-generating electricity, whether the project is implemented in
1-27 connection with the construction of a new facility or in connection
1-28 with the modification of an existing facility and whether the
1-29 project involves the entire emissions stream from the facility or
1-30 only a portion of the emissions stream from the facility;

1-31 (B) with regard to the portion of the emissions
1-32 stream from the facility that is associated with the project, is
1-33 capable of achieving on an annual basis a 99 percent or greater
1-34 reduction of sulfur dioxide emissions and[7] a 95 percent or
1-35 greater reduction of mercury emissions[7] and achieving an annual
1-36 average emission rate for nitrogen oxides of 0.05 pounds or less per
1-37 million British thermal units; and

1-38 (C) captures not less than 50 percent of the
1-39 [renders] carbon dioxide in the portion of the emissions stream
1-40 from the facility that is associated with the project and
1-41 sequesters that captured carbon dioxide by geologic storage or
1-42 other means [capable of capture, sequestration, or abatement if any
1-43 carbon dioxide is produced by the project].

1-44 (7-c) "Geologic storage" means the underground
1-45 storage of carbon dioxide in a suitable geologic formation,
1-46 including storage that is accomplished in conjunction with an
1-47 enhanced oil recovery project.

1-48 SECTION 2. Subtitle C, Title 5, Health and Safety Code, is
1-49 amended by adding Chapter 393 to read as follows:

1-50 CHAPTER 393. COMMISSION ADVANCED CLEAN ENERGY PROJECT GRANT AND

1-51 LOAN PROGRAM

1-52 Sec. 393.001. DEFINITIONS. In this chapter:

1-53 (1) "Account" means the commission advanced clean
1-54 energy project account established under this chapter.

1-55 (2) "Advanced clean energy project" has the meaning
1-56 assigned by Section 382.003.

1-57 (3) "Commission" means the Texas Commission on
1-58 Environmental Quality.

1-59 (4) "Program" means the commission advanced clean
1-60 energy project grant and loan program established under this
1-61 chapter.

1-62 Sec. 393.002. PROGRAM. The commission advanced clean
1-63 energy project grant and loan program is established to encourage

2-1 the development of advanced clean energy projects. Under the
 2-2 program, the commission shall provide grants or other financial
 2-3 incentives for eligible projects to accelerate the
 2-4 commercialization of technologies for the control of air
 2-5 contaminant emissions by electrical power generating facilities,
 2-6 including technologies to capture, transport, and store carbon
 2-7 dioxide in an environmentally protective manner.

2-8 Sec. 393.003. ACCOUNT. (a) The commission advanced clean
 2-9 energy project account is an account in the general revenue fund.

2-10 (b) The account consists of:

2-11 (1) a subaccount in the account that consists of the
 2-12 proceeds of bonds issued under Section 393.008;

2-13 (2) any amount appropriated by the legislature for the
 2-14 account;

2-15 (3) gifts, grants, and other donations received for
 2-16 the account; and

2-17 (4) interest earned on the investment of money in the
 2-18 account.

2-19 (c) Money in the account may be appropriated only to the
 2-20 commission to award grants or make or guarantee loans under this
 2-21 chapter.

2-22 Sec. 393.004. GRANTS. (a) Under the program, the
 2-23 commission may award a grant to the managing entity of an advanced
 2-24 clean energy project to assist in the funding of the front-end
 2-25 engineering and design portion of the project.

2-26 (b) The total amount of grants awarded under this section
 2-27 for a project may not exceed 50 percent of the total amount invested
 2-28 in the front-end engineering and design portion of the project by
 2-29 private industry sources.

2-30 Sec. 393.005. LOANS AND LOAN GUARANTEES. (a) Under the
 2-31 program, the commission may make or guarantee a loan to the managing
 2-32 entity of an advanced clean energy project in this state.

2-33 (b) If a loan or loan guarantee is to be funded by the
 2-34 proceeds of bonds issued under Section 393.008, the project must
 2-35 qualify for the loan or guarantee under Section 49-q, Article III,
 2-36 Texas Constitution.

2-37 Sec. 393.006. WRITTEN AGREEMENT. Before awarding a grant
 2-38 or making a loan under this chapter, the commission shall enter into
 2-39 a written agreement with the entity to which the grant is to be
 2-40 awarded or the loan is to be made. The agreement may specify that
 2-41 if, as of a date specified by the agreement, the entity has not used
 2-42 the grant or loan for the purposes for which the grant or loan was
 2-43 intended, the entity shall repay the amount of the grant or the
 2-44 amount of the loan and any accrued interest, as applicable, under
 2-45 terms specified by the agreement.

2-46 Sec. 393.007. PURCHASE OF GOODS AND SERVICES FROM SMALL AND
 2-47 HISTORICALLY UNDERUTILIZED BUSINESSES. A recipient of a grant,
 2-48 loan, or loan guarantee under this chapter is encouraged to
 2-49 purchase goods and services from small businesses and historically
 2-50 underutilized businesses, as those terms are defined by Section
 2-51 481.191, Government Code.

2-52 Sec. 393.008. ISSUANCE OF BONDS. The Texas Public Finance
 2-53 Authority shall issue general obligation bonds in accordance with
 2-54 and subject to Chapter 1232, Government Code, for the purposes
 2-55 authorized by Section 49-q, Article III, Texas Constitution.

2-56 Sec. 393.009. GUIDELINES AND CRITERIA, GRANT APPLICATION
 2-57 REQUIREMENTS, AND PROJECT REQUIREMENTS. The commission by rule
 2-58 shall adopt guidelines and criteria, grant application
 2-59 requirements, and project requirements that are consistent with the
 2-60 requirements of Section 391.003 and Subchapters B and C, Chapter
 2-61 391, to the extent those provisions can be made applicable, except
 2-62 that rules adopted under this section in accordance with Section
 2-63 391.201(d) must require a project to document the ability of the
 2-64 project to meet the emissions profile in the definition of
 2-65 "advanced clean energy project" under Section 382.003.

2-66 SECTION 3. Subchapter H, Chapter 151, Tax Code, is amended
 2-67 by adding Section 151.334 to read as follows:

2-68 Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED
 2-69 IN CONNECTION WITH GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE.

3-1 Components of tangible personal property are exempted from the
 3-2 taxes imposed by this chapter if:

3-3 (1) the components are used, constructed, acquired, or
 3-4 installed to capture carbon dioxide from an anthropogenic source,
 3-5 transport or inject carbon dioxide from such a source, or prepare
 3-6 carbon dioxide from such a source for transportation or injection;
 3-7 and

3-8 (2) the carbon dioxide is geologically sequestered, as
 3-9 part of an enhanced oil recovery project or otherwise, in this
 3-10 state.

3-11 SECTION 4. Subsection (a), Section 202.0545, Tax Code, is
 3-12 amended to read as follows:

3-13 (a) Subject to the limitations provided by this section,
 3-14 until [~~the later of~~] the 30th [~~seventh~~] anniversary of the date that
 3-15 the comptroller first approves an application for a tax rate
 3-16 reduction under this section [~~or the effective date of a final rule~~
 3-17 ~~adopted by the United States Environmental Protection Agency~~
 3-18 ~~regulating carbon dioxide as a pollutant~~], the producer of oil
 3-19 recovered through an enhanced oil recovery project that qualifies
 3-20 under Section 202.054 for the recovered oil tax rate provided by
 3-21 Section 202.052(b) is entitled to an additional 50 percent
 3-22 reduction in that tax rate if in the recovery of the oil the
 3-23 enhanced oil recovery project uses carbon dioxide that:

3-24 (1) is captured from an anthropogenic source in this
 3-25 state;

3-26 (2) would otherwise be released into the atmosphere as
 3-27 industrial emissions;

3-28 (3) is measurable at the source of capture; and

3-29 (4) is sequestered in one or more geological
 3-30 formations in this state following the enhanced oil recovery
 3-31 process.

3-32 SECTION 5. Subdivisions (1) and (4), Section 313.021, Tax
 3-33 Code, are amended to read as follows:

3-34 (1) "Qualified investment" means:

3-35 (A) tangible personal property that is first
 3-36 placed in service in this state during the applicable qualifying
 3-37 time period that begins on or after January 1, 2002, and is
 3-38 described as Section 1245 property by Section 1245(a), Internal
 3-39 Revenue Code of 1986;

3-40 (B) tangible personal property that is first
 3-41 placed in service in this state during the applicable qualifying
 3-42 time period that begins on or after January 1, 2002, without regard
 3-43 to whether the property is affixed to or incorporated into real
 3-44 property, and that is used in connection with the manufacturing,
 3-45 processing, or fabrication in a cleanroom environment of a
 3-46 semiconductor product, without regard to whether the property is
 3-47 actually located in the cleanroom environment, including:

3-48 (i) integrated systems, fixtures, and
 3-49 piping;

3-50 (ii) all property necessary or adapted to
 3-51 reduce contamination or to control airflow, temperature, humidity,
 3-52 chemical purity, or other environmental conditions or
 3-53 manufacturing tolerances; and

3-54 (iii) production equipment and machinery,
 3-55 moveable cleanroom partitions, and cleanroom lighting;

3-56 (C) tangible personal property that is first
 3-57 placed in service in this state during the applicable qualifying
 3-58 time period that begins on or after January 1, 2002, without regard
 3-59 to whether the property is affixed to or incorporated into real
 3-60 property, and that is used in connection with the operation of a
 3-61 nuclear electric power generation facility, including:

3-62 (i) property, including pressure vessels,
 3-63 pumps, turbines, generators, and condensers, used to produce
 3-64 nuclear electric power; and

3-65 (ii) property and systems necessary to
 3-66 control radioactive contamination;

3-67 (D) tangible personal property that is first
 3-68 placed in service in this state during the applicable qualifying
 3-69 time period that begins on or after January 1, 2002, without regard

4-1 to whether the property is affixed to or incorporated into real
4-2 property, and that is used in connection with operating an
4-3 integrated gasification combined cycle electric generation
4-4 facility, including:

4-5 (i) property used to produce electric power
4-6 by means of a combined combustion turbine and steam turbine
4-7 application using synthetic gas or another product produced by the
4-8 gasification of coal or another carbon-based feedstock; or

4-9 (ii) property used in handling materials to
4-10 be used as feedstock for gasification or used in the gasification
4-11 process to produce synthetic gas or another carbon-based feedstock
4-12 for use in the production of electric power in the manner described
4-13 by Subparagraph (i); [~~or~~]

4-14 (E) tangible personal property that is first
4-15 placed in service in this state during the applicable qualifying
4-16 time period that begins on or after January 1, 2010, without regard
4-17 to whether the property is affixed to or incorporated into real
4-18 property, and that is used in connection with operating an advanced
4-19 clean energy project, as defined by Section 382.003, Health and
4-20 Safety Code; or

4-21 (F) a building or a permanent, nonremovable
4-22 component of a building that is built or constructed during the
4-23 applicable qualifying time period that begins on or after January
4-24 1, 2002, and that houses tangible personal property described by
4-25 Paragraph (A), (B), (C), [~~or~~] (D), or (E).

4-26 (4) "Qualifying time period" means:

4-27 (A) the first two tax years that begin on or after
4-28 the date a person's application for a limitation on appraised value
4-29 under this subchapter is approved, except as provided by Paragraph
4-30 (B) or (C); [~~or~~]

4-31 (B) in connection with a nuclear electric power
4-32 generation facility, the first seven tax years that begin on or
4-33 after the third anniversary of the date the school district
4-34 approves the property owner's application for a limitation on
4-35 appraised value under this subchapter, unless a shorter time period
4-36 is agreed to by the governing body of the school district and the
4-37 property owner; or

4-38 (C) in connection with an advanced clean energy
4-39 project, as defined by Section 382.003, Health and Safety Code, the
4-40 first five tax years that begin on or after the third anniversary of
4-41 the date the school district approves the property owner's
4-42 application for a limitation on appraised value under this
4-43 subchapter, unless a shorter time period is agreed to by the
4-44 governing body of the school district and the property owner.

4-45 SECTION 6. Subchapter M, Chapter 5, Water Code, is amended
4-46 by adding Section 5.559 to read as follows:

4-47 Sec. 5.559. ADVANCED CLEAN ENERGY PROJECT PERMITTING
4-48 PROCEDURE. (a) In this section, "advanced clean energy project"
4-49 has the meaning assigned by Section 382.003, Health and Safety
4-50 Code.

4-51 (b) As authorized by federal law, not later than nine months
4-52 after the executive director declares an application for a permit
4-53 under Chapter 26 for an advanced clean energy project to be
4-54 administratively complete, the executive director shall complete
4-55 the technical review of the application.

4-56 (c) The commission shall issue a final order issuing or
4-57 denying the permit not later than nine months after the executive
4-58 director declares the application technically complete. The
4-59 commission may extend the deadline set out in this subsection up to
4-60 three months if it determines that the number of complex pending
4-61 applications for permits under this chapter will prevent the
4-62 commission from meeting the deadline imposed by this subsection
4-63 without creating an extraordinary burden on the resources of the
4-64 commission.

4-65 (d) The permit process authorized by this section is subject
4-66 to the requirements relating to a contested case hearing under this
4-67 chapter or Subchapters C-G, Chapter 2001, Government Code, as
4-68 applicable.

4-69 (e) The commission shall adopt rules to implement this

5-1 section.

5-2 SECTION 7. Chapter 27, Water Code, is amended by adding
5-3 Subchapter C-1 to read as follows:

5-4 SUBCHAPTER C-1. INJECTION AND GEOLOGIC STORAGE OF ANTHROPOGENIC
5-5 CARBON DIOXIDE

5-6 Sec. 27.041. JURISDICTION. (a) Except as provided by
5-7 Subsection (b), the railroad commission has jurisdiction over the
5-8 geologic storage of carbon dioxide in, and the injection of carbon
5-9 dioxide into, a reservoir that is initially or may be productive of
5-10 oil, gas, or geothermal resources or a saline formation directly
5-11 above or below such a reservoir.

5-12 (b) The jurisdiction of the railroad commission over the
5-13 geologic storage of carbon dioxide in, and the injection of carbon
5-14 dioxide into, a saline formation described by Subsection (a) is
5-15 subject to the review of the legislature based on the
5-16 recommendations made in the preliminary report described by Section
5-17 9, S.B. No. 2111, Acts of the 81st Legislature, Regular Session,
5-18 2009.

5-19 (c) Except as provided by Subsection (b), the railroad
5-20 commission has jurisdiction over a well used for the purpose
5-21 provided by Subsection (a) regardless of whether the well was
5-22 initially completed for that purpose or was initially completed for
5-23 another purpose and is converted to the purpose provided by
5-24 Subsection (a).

5-25 SECTION 8. Section 27.038, Water Code, is repealed.

5-26 SECTION 9. (a) Not later than December 1, 2010, the Texas
5-27 Commission on Environmental Quality and the Railroad Commission of
5-28 Texas, in consultation with the Bureau of Economic Geology of The
5-29 University of Texas at Austin, shall prepare and file with the
5-30 legislature a joint preliminary report that:

5-31 (1) analyzes the requirements for the injection and
5-32 geologic storage of anthropogenic carbon dioxide into saline
5-33 formations that are not productive of oil, gas, or geothermal
5-34 resources;

5-35 (2) recommends a permitting process for anthropogenic
5-36 carbon dioxide injection wells and geologic storage facilities that
5-37 are used for the injection and storage of anthropogenic carbon
5-38 dioxide in saline formations not productive of oil, gas, or
5-39 geothermal resources;

5-40 (3) recommends the agency or agencies that should have
5-41 jurisdiction over permitting described by Subdivision (2) of this
5-42 subsection or any other permitting of geologic storage facilities
5-43 not subject to Subchapter C-1, Chapter 27, Water Code, as added by
5-44 this Act; and

5-45 (4) assesses the status of compliance with any federal
5-46 rules regulating the geologic storage and associated injection of
5-47 anthropogenic carbon dioxide.

5-48 (b) The preliminary report shall include:

5-49 (1) recommended criteria for identifying candidate
5-50 geologic storage sites in each of the following types of geological
5-51 settings:

- 5-52 (A) operating oil and gas fields;
- 5-53 (B) depleted oil and gas fields;
- 5-54 (C) unmineable coal seams;
- 5-55 (D) saline formations;
- 5-56 (E) geological systems that may be used as
5-57 engineered reservoirs to extract economical quantities of heat from
5-58 geothermal resources of low permeability or porosity;
- 5-59 (F) geological systems containing igneous
5-60 formations; and
- 5-61 (G) coalbeds being used for methane recovery;

5-62 (2) a proposed procedure for:

5-63 (A) providing an opportunity for public review
5-64 of, and the presentation of comments by interested persons
5-65 regarding, any activities related to geologic storage; and

5-66 (B) ensuring that the quality of the natural and
5-67 cultural resources of land overlying the site of a geologic storage
5-68 facility are protected from any geologic storage activities at the
5-69 site;

6-1 (3) a description of the status of leasehold or
6-2 mineral estate liability issues related to the geological
6-3 subsurface trespass of, or caused by, anthropogenic carbon dioxide
6-4 stored in private or state-owned land, including any relevant
6-5 experience from enhanced recovery operations using carbon dioxide;

6-6 (4) an analysis of and recommendations to address:
6-7 (A) the attributes of the subsurface area of
6-8 operations for geologic storage facilities; and

6-9 (B) the methods of financial assurance and the
6-10 allocation of long-term liability for the post-operational phases
6-11 of geologic storage projects;

6-12 (5) the status of any applications for permits that
6-13 have been received before the report is prepared;

6-14 (6) the status of any request for primary enforcement
6-15 authority for the underground injection and geologic storage of
6-16 anthropogenic carbon dioxide under the underground injection
6-17 control program; and

6-18 (7) any recommendations for additional legislation,
6-19 modifications to the memorandum of understanding between the Texas
6-20 Commission on Environmental Quality and the Railroad Commission of
6-21 Texas recorded in 16 T.A.C. Section 3.30, or new rules for
6-22 regulating geologic storage facilities and associated
6-23 anthropogenic carbon dioxide injection wells.

6-24 SECTION 10. Section 151.334, Tax Code, as added by this Act,
6-25 does not affect taxes imposed before the effective date of this Act,
6-26 and the law in effect before the effective date of this Act is
6-27 continued in effect for purposes of the liability for and
6-28 collection of those taxes.

6-29 SECTION 11. Not later than January 1, 2010, the Texas
6-30 Commission on Environmental Quality shall adopt rules as necessary
6-31 to implement Section 382.003, Health and Safety Code, as amended by
6-32 this Act, Chapter 393, Health and Safety Code, as added by this Act,
6-33 and Section 5.559, Water Code, as added by this Act.

6-34 SECTION 12. The Railroad Commission of Texas may adopt
6-35 rules as necessary to implement Section 202.0545, Tax Code, as
6-36 amended by this Act, and Subchapter C-1, Chapter 27, Water Code, as
6-37 added by this Act.

6-38 SECTION 13. The comptroller of public accounts may adopt
6-39 rules as necessary to implement Section 202.0545, Tax Code, as
6-40 amended by this Act.

6-41 SECTION 14. (a) Except as provided by Subsections (b) and
6-42 (c) of this section:

6-43 (1) this Act takes effect immediately if it receives a
6-44 vote of two-thirds of all the members elected to each house, as
6-45 provided by Section 39, Article III, Texas Constitution; and

6-46 (2) if this Act does not receive the vote necessary for
6-47 immediate effect, this Act takes effect September 1, 2009.

6-48 (b) Section 393.008, Health and Safety Code, as added by
6-49 this Act, takes effect on the date on which the constitutional
6-50 amendment proposed by the 81st Legislature, Regular Session, 2009,
6-51 authorizing the issuance of general obligation bonds to provide and
6-52 guarantee loans to encourage advanced clean energy projects takes
6-53 effect. If that amendment is not approved by the voters, Section
6-54 393.008, Health and Safety Code, as added by this Act, has no
6-55 effect.

6-56 (c) Section 393.009, Health and Safety Code, as added by
6-57 this Act, takes effect September 1, 2009, but only if Senate Bill
6-58 16, Acts of the 81st Legislature, Regular Session, 2009, becomes
6-59 law. If that bill does not become law, Section 393.009, Health and
6-60 Safety Code, as added by this Act, has no effect.

6-61 * * * * *