

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: King of Parker, Anchia, Hughes, Lewis,  
Strama, et al.

H.B. No. 469

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of incentives by this state for the  
3 implementation of certain projects to capture and sequester in  
4 geological formations carbon dioxide that would otherwise be  
5 emitted into the atmosphere.

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

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

9 Sec. 490.004. ADVANCED CLEAN ENERGY PROJECTS. (a)

10 Notwithstanding any other provision of this chapter, an advanced  
11 clean energy project as defined by Section 382.003(1-a), Health and  
12 Safety Code, shall qualify in the same manner and to the same extent  
13 as a clean energy project as defined by Section 490.301 for the tax  
14 incentives provided by this chapter.

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

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

21 SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS

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

24 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.

**ADOPTED**

MAY 27 2009

*Lataf Dew*  
Secretary of the Senate

By: Salisio

H.B. No. 4109

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: Sliger

C.S. \_\_\_B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the establishment of incentives by this state for the  
3 implementation of certain projects to capture and sequester in  
4 geological formations carbon dioxide that would otherwise be  
5 emitted into the atmosphere.

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

7 SECTION 1. The heading to Subchapter G, Chapter 490,  
8 Government Code, is amended to read as follows:

9 SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS

10 SECTION 2. Section 490.301, Government Code, is amended to  
11 read as follows:

12 Sec. 490.301. DEFINITIONS [~~DEFINITION~~]. In this  
13 subchapter:

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

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

18 SECTION 3. The heading to Section 490.304, Government Code,  
19 is amended to read as follows:

20 Sec. 490.304. CONTRACTING AUTHORITY RELATED TO  
21 IMPLEMENTING CLEAN COAL PROJECT; FRANCHISE TAX CREDIT.

22 SECTION 4. Subchapter G, Chapter 490, Government Code, is  
23 amended by adding Section 490.305 to read as follows:

24 Sec. 490.305. FRANCHISE TAX CREDIT FOR CLEAN ENERGY

1 PROJECT. (a) The comptroller shall adopt rules for issuing to an  
2 entity implementing a clean energy project in this state a  
3 franchise tax credit.

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

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

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

11 (3) the electric generating facility associated with  
12 the project is fully operational; and

13 (4) the Bureau of Economic Geology of The University  
14 of Texas at Austin verifies to the comptroller that the electric  
15 generating facility associated with the project is sequestering at  
16 least 70 percent of the carbon dioxide resulting from or associated  
17 with the generation of electricity by the facility.

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

21 (1) 10 percent of the total capital cost of the  
22 project, including the cost of designing, engineering, permitting,  
23 constructing, and commissioning the project, the cost of procuring  
24 land, water, and equipment for the project, and all fees, taxes, and  
25 commissions paid and other payments made in connection with the  
26 project but excluding the cost of financing the capital cost of the  
27 project; or





1 substantially all of which is subbituminous coal must be capable of  
2 achieving:

3 (i) on an annual basis a 99 percent or  
4 greater reduction of sulfur dioxide emissions; or

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

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

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

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

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

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

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

25 (b) An entity may apply to the commission for a  
26 certification that a project operated by the entity meets the  
27 requirements for a clean energy project. The application must be

1 accompanied by:

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

5 (2) a fee payable to the commission.

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

10 Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE.

11 (a) An entity that applies to the commission under Section 120.002  
12 for a certification that a project operated by the entity meets the  
13 requirements for a clean energy project is responsible for  
14 conducting a monitoring, measuring, and verification process that  
15 demonstrates that the project complies with the requirements of  
16 Section 490.305(b)(4), Government Code.

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

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

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

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

26 (4) provide an evaluation of the results of the  
27 process described by Subsection (a) to the commission; and

1           (5) determine whether to transmit to the comptroller  
2 the verification described by Section 490.305(b)(4), Government  
3 Code.

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

<u>Year</u>	<u>Amount</u>
<u>One</u>	<u>\$700,000</u>
<u>Two</u>	<u>\$1,300,000</u>
<u>Three</u>	<u>\$1,800,000</u>
<u>Four</u>	<u>\$1,500,000</u>
<u>Five</u>	<u>\$1,200,000</u>
<u>Six</u>	<u>\$900,000</u>
<u>Seven</u>	<u>\$500,000</u>
<u>Eight</u>	<u>\$200,000</u>

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

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

27           (b) The commission may not issue a certificate of compliance

1 for more than three clean energy projects.

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

4 Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED  
5 IN CONNECTION WITH GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE.

6 Components of tangible personal property used in connection with an  
7 advanced clean energy project, as defined by Section 382.003,  
8 Health and Safety Code, or a clean energy project, as defined by  
9 Section 120.001, Natural Resources Code, are exempted from the  
10 taxes imposed by this chapter if:

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

15 (2) the carbon dioxide is geologically sequestered in  
16 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 injected will remain sequestered from the atmosphere for at  
23 least 1,000 years.

24 SECTION 7. Section 202.0545, Tax Code, is amended by adding  
25 Subsection (i) to read as follows:

26 (i) Notwithstanding Subsection (a), the producer of oil  
27 recovered through an enhanced oil recovery project that uses carbon

1 dioxide that is generated by a clean energy project as defined by  
2 Section 120.001, Natural Resources Code, is entitled to a tax rate  
3 reduction under this section until the 30th anniversary of the date  
4 the comptroller first approves an application for a tax rate  
5 reduction under this section if the producer otherwise qualifies  
6 for the tax rate reduction.

7           SECTION 8. The comptroller shall adopt rules under Section  
8 490.305, Government Code, as added by this Act, not later than  
9 December 31, 2010.

10           SECTION 9. Section 151.334, Tax Code, as added by this Act,  
11 does not affect taxes imposed before the effective date of this Act,  
12 and the law in effect before the effective date of this Act is  
13 continued in effect for purposes of the liability for and  
14 collection of those taxes.

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

# ADOPTED

MAY 27 2009

  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

1 Amend H.B. 469 (senate engrossment) as follows:

2 (1) In SECTION 4 of the bill (page 1, line 36), between  
3 "shall" and "issue", insert "make a decision whether to".

4 (2) In SECTION 4 of the bill (page 1, line 37), strike  
5 "after" and insert "where".

6 (3) In SECTION 4 of the bill (page 1, line 44), strike  
7 "and".

8 (4) In SECTION 4 of the bill (page 1, line 50), add  
9 subsections (b)(5) and (b)(6) and renumber subsequent SECTIONS  
10 of the bill accordingly.

11 "(5) The project's owners or operators have signed an  
12 interconnection agreement with the Electric Reliability  
13 Commission of Texas; and

14 (6) The comptroller has determined that the project has the  
15 likelihood to generate taxable income within a reasonable time  
16 sufficient to substantially repay any franchise tax credits  
17 issued under this act".

# ADOPTED

MAY 27 2009

*Robert Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Ogd*

1 Amend H.B. 469 (senate engrossment) as follows:

2 (1) In SECTION 4 of the bill (page 2, line 5), after the  
3 words, "generated by the project." add, "Prior to the assignment  
4 of franchise tax credits under this section, the assigning  
5 entity must inform the comptroller in writing by a method to be  
6 determined by the comptroller the names and identifying  
7 information of all persons and entities receiving the credits."

# ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 3

*Lotay Spaw*  
Secretary of the Senate

BY: *A. Newt*

1 Amend C.S.H.B. No. 469 (senate committee report) as follows:

2 (1) Strike SECTIONS 1, 2, and 3 of the bill (page 1, lines  
3 15-29).

4 (2) Strike the recital to SECTION 4 of the bill (page 1,  
5 lines 30 and 31) and substitute the following:

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

## 8 SUBCHAPTER H. CLEAN ENERGY PROJECTS

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

12 (3) In SECTION 4 of the bill, strike the heading to added  
13 Section 490.305, Government Code (page 1, lines 32 and 33), and  
14 substitute the following:

15 Sec. 490.352. FRANCHISE TAX CREDIT FOR CLEAN ENERGY  
16 PROJECT.

17 (4) At the end of SECTION 4 of the bill, immediately  
18 following added Section 490.305, Government Code (page 2, between  
19 lines 8 and 9), insert the following:

20 Sec. 490.353. USE OF MONEY FOR CLEAN ENERGY PROJECTS. (a)  
21 Notwithstanding Section 490.102, the governor may allocate under  
22 this section proceeds deposited in the fund to eligible applicants  
23 if the governor has the express written agreement of the lieutenant  
24 governor and the speaker of the house of representatives to do so.

25 (b) An allocation under this section may take the form of an  
26 investment in the form of equity, a convertible note, a debt  
27 instrument, a grant, a matching grant, or any combination of those  
28 methods.

29 (c) Before making an allocation under this subchapter, the



1 governor shall enter into a written agreement with the entity to  
2 which the allocation is to be awarded.

3 (d) An applicant for an allocation under this section must  
4 provide any information considered necessary by the governor to  
5 determine whether the applicant qualifies for an allocation.

6 (e) In addition to any other provisions of this chapter, a  
7 clean energy project constitutes an opportunity for emerging  
8 technology suitable for consideration for an allocation under this  
9 section. Sections 490.102 and 490.103 and Subchapters D, E, and F  
10 do not apply to an allocation made pursuant to this section.

11 (5) In SECTION 5 of the bill, strike added Section  
12 120.001(2)(B), Natural Resources Code (page 2, lines 21-30), and  
13 substitute the following:

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

17 (6) In SECTION 5 of the bill, in added Section 120.003(a),  
18 Natural Resources Code (page 2, line 66), strike "490.305(b)(4)"  
19 and substitute "490.352(b)(4)".

20 (7) In SECTION 5 of the bill, in added Section  
21 120.003(b)(5), Natural Resources Code (page 3, line 10), strike  
22 "Section 490.305(b)(4)" and substitute "Section 490.352(b)(4)".

23 (8) In SECTION 6 of the bill, in the heading to added Section  
24 151.334, Tax Code (page 3, line 40), strike "GEOLOGIC".

25 (9) In SECTION 6 of the bill, in added Section 151.334(2),  
26 Tax Code (page 3, line 50), strike "geologically".

27 (10) In SECTION 6 of the bill, in added Section  
28 151.334(2)(B), Tax Code (page 3, line 57), strike "injected".

29 (11) Strike SECTION 7 of the bill (page 3, lines 59-68).

30 (12) In SECTION 8 of the bill (page 4, line 1), strike  
31 "490.305" and substitute "490.352".

1 (13) Add the following SECTIONS to the bill, appropriately  
2 numbered:

3 SECTION \_\_\_\_ . Section 382.003(1-a), Health and Safety Code,  
4 is amended to read as follows:

5 (1-a) "Advanced clean energy project" means a project  
6 for which an application for a permit or for an authorization to use  
7 a standard permit under this chapter is received by the commission  
8 on or after January 1, 2008, and before January 1, 2020, and that:

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

18 (B) with regard to the portion of the emissions  
19 stream from the facility that is associated with the project, is  
20 capable of achieving:

21 (i) on an annual basis a 99 percent or  
22 greater reduction of sulfur dioxide emissions or, if the project is  
23 designed for the use of feedstock substantially all of which is  
24 subbituminous coal, an emission rate of 0.04 pounds or less of  
25 sulfur dioxide per million British thermal units as determined by a  
26 30-day average;

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

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

31 (a) 0.05 pounds or less per million

1 British thermal units; or

2 (b) if the project uses gasification  
3 technology, 0.034 pounds or less per million British thermal units;  
4 and

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

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

14 SECTION \_\_\_\_\_. Subsections (a) and (d), Section 202.0545,  
15 Tax Code, are amended to read as follows:

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

27 (1) is captured from an anthropogenic source in this  
28 state;

29 (2) would otherwise be released into the atmosphere as  
30 industrial emissions;

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

1 (4) is sequestered in one or more geological  
2 formations in this state following the enhanced oil recovery  
3 process.

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

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

12 (2) the operator's planned sequestration program will  
13 include appropriately designed monitoring and verification  
14 measures that will be employed for a period sufficient to  
15 demonstrate whether the sequestration program is performing as  
16 expected.

17 SECTION \_\_\_\_\_. Subdivision (4), Section 313.021, Tax Code,  
18 is amended to read as follows:

19 (4) "Qualifying time period" means:

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

24 (B) in connection with a nuclear electric power  
25 generation facility, the first seven tax years that begin on or  
26 after the third anniversary of the date the school district  
27 approves the property owner's application for a limitation on  
28 appraised value under this subchapter, unless a shorter time period  
29 is agreed to by the governing body of the school district and the  
30 property owner; or

31 (C) in connection with an advanced clean energy

1 project, as defined by Section 382.003, Health and Safety Code, the  
2 first five tax years that begin on or after the third anniversary of  
3 the date the school district approves the property owner's  
4 application for a limitation on appraised value under this  
5 subchapter, unless a shorter time period is agreed to by the  
6 governing body of the school district and the property owner.

7 SECTION \_\_\_\_\_. Subchapter M, Chapter 5, Water Code, is  
8 amended by adding Section 5.559 to read as follows:

9 Sec. 5.559. ADVANCED CLEAN ENERGY PROJECT PERMITTING  
10 PROCEDURE. (a) In this section, "advanced clean energy project"  
11 has the meaning assigned by Section 382.003, Health and Safety  
12 Code.

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

18 (c) The commission shall issue a final order issuing or  
19 denying the permit not later than nine months after the executive  
20 director declares the application technically complete. The  
21 commission may extend the deadline set out in this subsection up to  
22 three months if it determines that the number of complex pending  
23 applications for permits under this chapter will prevent the  
24 commission from meeting the deadline imposed by this subsection  
25 without creating an extraordinary burden on the resources of the  
26 commission.

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

31 (e) The commission shall adopt rules to implement this

1 section.

2 SECTION \_\_\_\_\_. (a) Not later than September 1, 2010,  
3 September 1, 2012, and September 1, 2016, the Texas Commission on  
4 Environmental Quality shall make recommendations to the  
5 legislature on whether the emissions profile set out in Sections  
6 120.001(2)(B) and (C), Natural Resources Code, as added by this  
7 Act, and Sections 382.003(1-a)(B) and (C), Health and Safety Code,  
8 as amended by this Act, should be adjusted to increase or decrease  
9 elements of the emissions profile. Before making its  
10 recommendations, the commission shall determine whether any  
11 commercially demonstrated electric generating facility operating  
12 in the United States that meets the criteria and emissions profile  
13 specified by Section 120.001(2), Natural Resources Code, as added  
14 by this Act, is capturing and sequestering a greater percentage of  
15 the carbon dioxide in the emissions stream from the facility than  
16 would be required to meet the emissions profile set out in that  
17 subdivision and whether any commercially demonstrated electric  
18 generating facility operating in the United States that meets the  
19 criteria and emissions profile specified by Sections  
20 382.003(1-a)(A), (B), and (C), Health and Safety Code, as amended  
21 by this Act, is capturing and sequestering a greater percentage of  
22 the carbon dioxide in the emissions stream from the facility than  
23 would be required to meet the emissions profile set out in those  
24 paragraphs. If at least one such facility exists, the commission  
25 shall recommend raising the minimum percentage of carbon dioxide in  
26 the emissions stream from a facility that is required to be captured  
27 and sequestered for the facility to qualify as a clean energy  
28 project or advanced clean energy project to the highest percentage  
29 of carbon dioxide that is being captured and sequestered by such a  
30 facility.

31 (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 \_\_\_\_\_. Not later than January 1, 2010, the Texas  
20 Commission on Environmental Quality shall adopt rules as necessary  
21 to implement Section 382.003, Health and Safety Code, as amended by  
22 this Act, and Section 5.559, Water Code, as added by this Act.

23 SECTION \_\_\_\_\_. The Railroad Commission of Texas may adopt  
24 rules as necessary to implement Section 202.0545, Tax Code, as  
25 amended by this Act.

26 SECTION \_\_\_\_\_. The comptroller of public accounts may adopt  
27 rules as necessary to implement Section 202.0545, Tax Code, as  
28 amended by this Act.

29 (14) Renumber the existing SECTIONS of the bill  
30 accordingly.





**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**Revision 1**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB469** by King, Phil (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.), **As Passed 2nd House**

**Depending on the size of the franchise tax credit, the number of power plants constructed in accordance with provisions of the bill, and the amount and value of goods used in connection with the project, the state could forego an indeterminate amount of franchise and sales tax revenue. Also, depending on the number of producers participating in qualified EOR projects, the state could forego an indeterminate amount of severance tax revenue.**

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a coal-fueled or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that: (1) has a capacity of at least 200 megawatts; (2) meets various emission limits outlined in the bill; (3) will capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; and (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project.

The bill amends Section 382 of the Health and Safety Code to modify the definition of an "advanced clean energy project". Advanced clean energy projects would be similar to clean energy projects, except they would include modifications to existing facilities, have different emission standards, require a smaller percentage of the carbon dioxide emitted be captured and sequestered, and could involve only a portion of the emissions stream from the facility. The Texas Commission on Environment Quality would be responsible for approving the application of a project to be certified as an advanced clean energy project.

The bill provides for a franchise tax credit, that would equal the lesser of 10 percent of the total capital cost of the project or \$100 million, for an entity implementing a clean energy project, with a maximum of three projects receiving the credit. The Comptroller would decide whether to issue the tax credit to an entity only after: (1) the Railroad Commission has issued a certificate of compliance for the project; (2) the facility is completed and fully operational; (3) the Bureau of Economic Geology of the University of Texas at Austin verifies the facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility; (4) the project's owners have signed an interconnection agreement with the Electric Reliability Commission of Texas; and (5) the Comptroller has determined that the project has the likelihood to generate taxable income within a reasonable time sufficient to substantially repay any franchise tax credits the project receives. The Comptroller could not issue a franchise tax credit until September 1, 2013.

The bill would create property tax abatement provisions for advanced clean energy projects located in county reinvestment zones.

The governor, contingent upon agreement from the lieutenant governor and the speaker of the house of representatives, may allocated funds from the Texas Emerging Technology Fund to organizations



participating in a clean energy project.

The bill would require the Railroad Commission to issue a certificate of compliance verifying a project met the requirements for a clean energy project. The Railroad Commission would be authorized to charge a fee to cover the cost of processing an application for certification.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by clean energy projects. The BEG would also be responsible for designing initial protocols and standards for the process, reviewing the conduct of the process, evaluating the results of the process, and determining whether to transmit verification of the process to the Comptroller. The bill would allow the BEG to charge a varying annual fee, that would total \$8.1 million over eight years, to cover the cost of these services. The first fee would be due within two years of the date the project first supplies carbon captured by the project to an enhanced oil recovery project.

The bill would add new Section 151.334 to the Tax Code to create a sales tax exemption for certain components of tangible personal property used in connection with an advanced clean energy project. These changes to the Code would not affect taxes imposed before the effective date of this bill. With respect to the new sales tax exemption, there are currently no facilities in Texas being operated to capture and sequester anthropogenic carbon dioxide. Therefore, the amount and value of tangible personal property used for a project is unknown and the potential revenue loss from the sales tax exemption cannot be estimated.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6% to 1.15% for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) that uses carbon dioxide generated by a clean energy project. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality, depending on where the carbon dioxide is sequestered. The tax rate reduction would last for 30 years from the Comptroller's application approval date. Currently, a producer is eligible for the rate reduction for 7 years if at least 99% of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction the state could experience a revenue loss that would depend on the number of producers participating in an EOR project.

The bill would take effect September 1, 2009.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 455 Railroad Commission, 720 The University of Texas System Administration, 582 Commission on Environmental Quality, 301 Office of the Governor

**LBB Staff:** JOB, KK, SZ, SD, MN



**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB469** by King, Phil (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.), **As Passed 2nd House**

The fiscal implications of the bill cannot be determined at this time
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**Local Government Impact**

The fiscal implications of the bill cannot be determined at this time

**Source Agencies:**

**LBB Staff:** JOB, KK



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 25, 2009

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB469** by King, Phil (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.), **Committee Report 2nd House, Substituted**

**Depending on the size of the franchise tax credit, the number of power plants constructed in accordance with provisions of the bill, and the amount and value of goods used in connection with the project, the state could forego an indeterminate amount of franchise and sales tax revenue. Also, depending on the number of producers participating in qualified EOR projects, the state could forego an indeterminate amount of severance tax revenue.**

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a coal-fueled or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that: (1) has a capacity of at least 200 megawatts; (2) meet various emission limits outlined in the bill; (3) will capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; and (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project.

The bill provides for a franchise tax credit, that would equal the lesser of 10 percent of the total capital cost of the project or \$100 million, for an entity implementing a clean energy project, with a maximum of three projects receiving the credit. The Comptroller would issue the tax credit to an entity only after: (1) the Railroad Commission has issued a certificate of compliance for the project; (2) the facility is completed and fully operational; and (3) the Bureau of Economic Geology of the University of Texas at Austin verifies the facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility. The Comptroller could not issue a franchise tax credit until September 1, 2013.

The bill would require the Railroad Commission to issue a certificate of compliance verifying a project met the requirements for a clean energy project. The Railroad Commission would be authorized to charge a fee to cover the cost of processing an application for certification.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by clean energy projects. The BEG would also be responsible for designing initial protocols and standards for the process, reviewing the conduct of the process, evaluating the results of the process, and determining whether to transmit verification of the process to the Comptroller. The bill would allow the BEG to charge a varying annual fee, that would total \$8.1 million over eight years, to cover the cost of these services. The first fee would be due within two years of the date the project first supplies carbon captured by the project to an enhanced oil recovery project.

The bill would add new Section 151.334 to the Tax Code to create a sales tax exemption for certain tangible personal property used to capture, transport, or inject anthropogenic carbon dioxide as part of an enhanced oil recovery project meeting certain requirements. These changes to the Code would not





affect taxes imposed before the effective date of this bill. With respect to the new sales tax exemption, there are currently no facilities in Texas being operated to capture and sequester anthropogenic carbon dioxide. Therefore, the amount and value of tangible personal property used for a project is unknown and the potential revenue loss from the sales tax exemption cannot be estimated.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6% to 1.15% for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) that uses carbon dioxide generated by a clean energy project. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality, depending on where the carbon dioxide is sequestered. The tax rate reduction would last for 30 years from the Comptroller's application approval date. Currently, a producer is eligible for the rate reduction for 7 years if at least 99% of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction the state could experience a revenue loss that would depend on the number of producers participating in an EOR project.

The bill would take effect September 1, 2009.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 455 Railroad Commission, 720 The University of Texas System Administration, 582 Commission on Environmental Quality, 301 Office of the Governor

**LBB Staff:** JOB, SZ, SD, KK, MN



LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB469** by King, Phil (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.), **As Engrossed**

**Depending upon the size of the franchise tax credit and the number of power plants constructed in accordance with provisions of the bill, the state could forego an indeterminate amount of franchise tax revenue. Depending upon the number of producers participating in qualified EOR projects, the state could forego an indeterminate amount of severance tax revenue.**

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a carbon-fueled electric generating facility that: (1) has a capacity of at least 200 megawatts; (2) uses Integrated Gasification Combined Cycle or other pre-combustion technology; (3) will capture at least 70 percent of the carbon dioxide produced by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project; and (6) meets emission limits on several other pollutants outlined in the bill. In addition, an "advanced clean energy project", defined in Chapter 382 of the Health and Safety Code, would also qualify for all tax incentives provided in the bill, provided it met certain emission levels outlined in the bill.

The bill provides for a franchise tax credit, that would equal the lesser of 10 percent of the total capital cost of the project or \$100 million, for an entity implementing a clean energy project, with a maximum of three projects receiving the credit. The Comptroller would issue the tax credit to an entity only after: (1) the Railroad Commission has issued a certificate of compliance for the project; (2) the facility is completed and fully operational; and (3) the Bureau of Economic Geology of the University of Texas at Austin verifies the facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility. It is unknown how many clean energy projects would be undertaken and the capital cost of these projects. Therefore, the state could forego anywhere from zero to \$300 million in franchise tax revenue.

The bill would require the Railroad Commission to issue a certificate of compliance verifying a project met the requirements for a clean energy project. The Railroad Commission would be authorized to charge a fee to cover the cost of processing an application for certification.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by clean energy projects. The bill would allow the BEG to charge a varying annual fee, that would total \$8.1 million over eight years, to cover the cost of these services.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6 percent to 1.15 percent for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) and have begun the EOR project not later than August 31, 2016. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality, depending on where the carbon dioxide is sequestered. The tax rate



reduction would expire August 31, 2039.

Currently, a producer is eligible for the rate reduction for 7 years if at least 99 percent of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction the state could forego an amount of oil production tax revenue that would depend on the number of producers participating in an EOR project.

The bill would amend Chapter 11.31 of the Tax Code to clarify that property used for clean energy projects would be eligible for property tax exemptions, already in statute, that are provided to property used for pollution control.

Sections of the bill regarding the property tax exemptions would take effect January 1, 2010. All other sections would take effect September 1, 2009.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 455 Railroad Commission, 582 Commission on Environmental Quality, 720 The University of Texas System Administration, 301 Office of the Governor

**LBB Staff:** JOB, SZ, SD, KK, MN



LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 15, 2009

TO: Honorable Jim Keffer, Chair, House Committee on Energy Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB469** by King, Phil (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.), **Committee Report 1st House, Substituted**

**Depending on the size of the franchise tax credit and the number of power plants constructed in accordance with provisions of the bill, the state could forego an indeterminate amount of franchise tax revenue. Depending on the location of carbon sequestration, the state could experience a revenue loss to the Permanent University Fund. Depending on the number of producers participating in qualified EOR projects, the state could experience an indeterminate loss of severance tax revenue.**

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a carbon-fueled electric generating facility that: (1) has a capacity of at least 200 megawatts; (2) uses Integrated Gasification Combined Cycle or other pre-combustion technology; (3) will capture at least 70 percent of the carbon dioxide produced by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; and (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project.

The bill provides for a franchise tax credit, that would equal the lesser of 10 percent of the total capital cost of the project or \$100 million, for an entity implementing a clean energy project, with a maximum of three projects receiving the credit. The Comptroller would issue the tax credit to an entity only after: (1) the Railroad Commission has issued a certificate of compliance for the project; (2) the facility is completed and fully operational; and (3) the Bureau of Economic Geology of the University of Texas at Austin verifies the facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility.

The bill would require the Railroad Commission to issue a certificate of compliance verifying a project met the requirements for a clean energy project. The Railroad Commission would be authorized to charge a fee to cover the cost of processing an application for certification.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by clean energy projects. The bill would allow the BEG to charge a varying annual fee, that would total \$8.1 million over eight years, to cover the cost of these services.

The University Lands Office of the UT System estimates that approximately ten thousand acres of land will be needed, per clean energy project, to sequester the necessary amount of carbon dioxide. According to the office, if land owned by the Permanent University Fund was used for this purpose, there would be an approximate loss of \$33.5 million to the PUF over 5 years, since the land would no longer be available for oil and gas exploration.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6% to 1.15% for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil





Recovery Project (EOR) that uses carbon dioxide generated by a clean energy project. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality, depending on where the carbon dioxide is sequestered. The tax rate reduction will last for 30 years.

Currently, a producer is eligible for the rate reduction for 7 years if at least 99% of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction the state could experience a revenue loss that would depend on the number of producers participating in an EOR project.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 455 Railroad Commission, 720 The University of Texas System Administration, 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality, 301 Office of the Governor

**LBB Staff:** JOB, SZ, SD, KK, MN



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 24, 2009**

**TO:** Honorable Jim Keffer, Chair, House Committee on Energy Resources

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB469** by King, Phil (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.), **As Introduced**

**Depending on the size of the franchise tax credit and the number of power plants constructed in accordance with the provisions of the bill, the state could experience an indeterminate amount of loss in revenue.**

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a coal-fired power plant that: (1) can generate at least 200 megawatts; (2) uses Integrated Gasification and Combined Cycle technology; and (3) is capable of capturing and permanently sequestering in a geological formation at least 60% of the carbon dioxide generated by the power plant. The bill does not limit the number of entities eligible for these incentives.

The bill provides for a franchise tax credit not to exceed \$100 million per organization implementing a clean energy project. The governor and the comptroller would adopt provisions detailing the issuance of the franchise tax credit, for example, on how much of the franchise tax credit would be allowed per year. An organization would be qualified to receive the franchise tax credit irrespective of whether the entity owes or pays the franchise tax. Additionally, the entity would be permitted to assign the tax credits to a taxable entity.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by the first three clean energy projects. The BEG has indicated the cost of monitoring one clean energy project will be approximately \$1,000,000 per year. These costs mainly consist of hiring approximately 7 FTEs per year and purchasing necessary equipment. The BEG also estimates that approximately ten thousand acres of land will be needed, per clean energy project, to sequester the necessary amount of carbon dioxide. According to the BEG, there could be a revenue loss to the Permanent University Fund if land owned by the PUF was used for this purpose, since it would no longer be available for oil and gas exploration.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6% to 1.15% for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) that uses carbon dioxide generated by a clean energy project. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality (depending on where the carbon dioxide is sequestered) that at least 60% of the carbon dioxide sequestered will remain so for at least 500 years. The tax rate reduction will last for 30 years. Currently, a producer is eligible for the rate reduction for 7 years if at least 99% of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction and impose a less stringent requirement for obtaining the reduction, the state could experience a revenue loss that would depend on the number of producers participating in an EOR project.

**Local Government Impact**



No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 301 Office of the Governor, 304 Comptroller of Public Accounts, 455 Railroad Commission, 582 Commission on Environmental Quality, 720 The University of Texas System Administration

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