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H.B. No. 2446

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the definitions of advanced clean energy projects and
3 clean energy projects and to franchise tax credits for certain of
4 those projects.

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

6 SECTION 1. Subchapter H, Chapter 490, Government Code, is
7 transferred to Chapter 171, Tax Code, redesignated as Subchapter L,
8 Chapter 171, Tax Code, and amended to read as follows:

9 SUBCHAPTER L. [~~H. FRANCHISE~~] TAX CREDIT FOR CLEAN ENERGY PROJECT

10 Sec. 171.651 [~~490.351~~]. DEFINITION. In this subchapter,
11 "clean energy project" has the meaning assigned by Section 120.001,
12 Natural Resources Code.

13 Sec. 171.652. [~~490.352. FRANCHISE~~] TAX CREDIT FOR CLEAN
14 ENERGY PROJECT. (a) The comptroller shall adopt rules for issuing
15 to an entity implementing a clean energy project in this state a
16 [~~franchise tax~~] credit against the tax imposed under this chapter.
17 A clean energy project is eligible for a [~~franchise tax~~] credit
18 only if the project is implemented in connection with the
19 construction of a new facility.

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

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

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

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

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

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

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

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

23 (2) \$100 million.

24 (d) [~~The amount of the franchise tax credit for each report~~
25 ~~year is calculated by determining the amount of franchise tax that~~
26 ~~is due based on the taxable margin generated by a clean energy~~
27 ~~project from the generation and sale of power and the sale of any~~

1 ~~products that are produced by the electric generation facility.]~~
2 The total ~~[amount of the franchise tax]~~ credit that a taxable entity
3 may claim ~~[claimed]~~ under this section for a report, including the
4 amount of any carryforward credit, ~~[year]~~ may not exceed the amount
5 of franchise tax due by the taxable entity for the report after any
6 applicable tax credits ~~[attributable to the clean energy project~~
7 ~~for that report year]~~. If a taxable entity is eligible to claim a
8 credit that exceeds the limitation of this subsection, the taxable
9 entity may carry the unused credit forward for not more than 20
10 consecutive reports. A carryforward is considered the remaining
11 portion of the credit that the taxable entity does not claim in the
12 current year because of the limitation.

13 (e) The entity designated in the certificate of compliance
14 for a clean energy project may assign the credit to one or more
15 taxable entities. A taxable entity to which the credit is assigned
16 may claim the credit against the tax imposed under this chapter
17 subject to the conditions and limitations of this subchapter.

18 (f) The comptroller may not issue a ~~[franchise tax]~~ credit
19 under this section before the later of:

- 20 (1) September 1, 2018; or
21 (2) the expiration of an agreement under Chapter 313
22 regarding the clean energy project for which the credit is issued
23 ~~[2013. This subsection expires September 2, 2013].~~

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

26 (1-a) "Advanced clean energy project" means a project
27 for which an application for a permit or for an authorization to use

1 a standard permit under this chapter is received by the commission
2 on or after January 1, 2008, and before January 1, 2020, and that:

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

13 (B) with regard to the portion of the emissions
14 stream from the facility that is associated with the project, is
15 capable of achieving:

16 (i) on an annual basis:

17 (a) a 99 percent or greater reduction
18 of sulfur dioxide emissions;

19 (b) ~~or~~ if the project is designed
20 for the use of feedstock, substantially all of which is
21 subbituminous coal, an emission rate of 0.04 pounds or less of
22 sulfur dioxide per million British thermal units as determined by a
23 30-day average; or

24 (c) if the project is designed for the
25 use of one or more combustion turbines that burn natural gas, a
26 sulfur dioxide emission rate that meets best available control
27 technology requirements as determined by the commission;

1 (ii) on an annual basis:

2 (a) a 95 percent or greater reduction
3 of mercury emissions; or

4 (b) if the project is designed for the
5 use of one or more combustion turbines that burn natural gas, a
6 mercury emission rate that complies with applicable federal
7 requirements;

8 (iii) an annual average emission rate for
9 nitrogen oxides of:

10 (a) 0.05 pounds or less per million
11 British thermal units; ~~or~~

12 (b) if the project uses gasification
13 technology, 0.034 pounds or less per million British thermal units;
14 or

15 (c) if the project is designed for the
16 use of one or more combustion turbines that burn natural gas, two
17 parts per million by volume; and

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

21 (C) captures not less than 50 percent of the
22 carbon dioxide in the portion of the emissions stream from the
23 facility that is associated with the project and sequesters that
24 captured carbon dioxide by geologic storage or other means.

25 SECTION 3. Section 120.001(2), Natural Resources Code, is
26 amended to read as follows:

27 (2) "Clean energy project" means a project to

1 construct a coal-fueled, natural gas-fueled, or petroleum
2 coke-fueled electric generating facility, including a facility in
3 which the fuel is gasified before combustion, that will:

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

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

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 SECTION 4. Section 120.002(b), Natural Resources Code, is
16 amended to read as follows:

17 (b) An entity may apply to the commission for a
18 certification that a project operated by the entity meets the
19 requirements for a clean energy project. An entity may not submit
20 an application under this section before September 1, 2018. The
21 application must be accompanied by:

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

25 (2) a fee payable to the commission.

26 SECTION 5. Section 120.003(a), Natural Resources Code, is
27 amended to read as follows:

1 (a) An entity that applies to the commission under Section
2 120.002 for a certification that a project operated by the entity
3 meets the requirements for a clean energy project is responsible
4 for conducting a monitoring, measuring, and verification process
5 that demonstrates that the project complies with the requirements
6 of Section 171.652(b)(4), Tax [~~490.352(b)(4), Government~~] Code.

7 SECTION 6. Section 120.004(b), Natural Resources Code, is
8 amended to read as follows:

9 (b) The commission may not issue a certificate of compliance
10 for more than three clean energy projects. Not more than one of the
11 clean energy projects may be a natural gas project.

12 SECTION 7. Not later than January 1, 2014, the comptroller
13 of public accounts shall adopt rules necessary to implement
14 Subchapter L, Chapter 171, Tax Code, as redesignated and amended by
15 this Act.

16 SECTION 8. Not later than January 1, 2014, the Texas
17 Commission on Environmental Quality shall adopt rules as necessary
18 to implement the change in law made by this Act to Section 382.003,
19 Health and Safety Code.

20 SECTION 9. The Railroad Commission of Texas may adopt rules
21 as necessary to implement the change in law made by this Act to
22 Section 120.001, Natural Resources Code.

23 SECTION 10. The changes in law made by this Act do not apply
24 to a clean energy project that includes a precombustion integrated
25 gasification combined cycle technology with carbon capture and was
26 selected by the United States Department of Energy for a Clean Coal
27 Power Initiative award before February 1, 2010. A clean energy

1 project that includes a precombustion integrated gasification
2 combined cycle technology with carbon capture and was selected by
3 the United States Department of Energy for a Clean Coal Power
4 Initiative award before February 1, 2010, is governed by the law in
5 effect immediately before the effective date of this Act, and the
6 former law is continued in effect for that purpose.

7 SECTION 11. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2013.