

1-1 By: Crownover, et al. (Senate Sponsor - Estes) H.B. No. 2446  
 1-2 (In the Senate - Received from the House May 8, 2013;  
 1-3 May 9, 2013, read first time and referred to Committee on Natural  
 1-4 Resources; May 15, 2013, reported favorably by the following vote:  
 1-5 Yeas 11, Nays 0; May 15, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the definitions of advanced clean energy projects and  
 1-22 clean energy projects and to franchise tax credits for certain of  
 1-23 those projects.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subchapter H, Chapter 490, Government Code, is  
 1-26 transferred to Chapter 171, Tax Code, redesignated as Subchapter L,  
 1-27 Chapter 171, Tax Code, and amended to read as follows:

1-28 SUBCHAPTER L. [~~H. FRANCHISE~~] TAX CREDIT FOR CLEAN ENERGY PROJECT

1-29 Sec. ~~171.651~~ [~~490.351~~]. DEFINITION. In this subchapter,  
 1-30 "clean energy project" has the meaning assigned by Section 120.001,  
 1-31 Natural Resources Code.

1-32 Sec. ~~171.652~~. [~~490.352. FRANCHISE~~] TAX CREDIT FOR CLEAN  
 1-33 ENERGY PROJECT. (a) The comptroller shall adopt rules for issuing  
 1-34 to an entity implementing a clean energy project in this state a  
 1-35 [~~franchise tax~~] credit against the tax imposed under this chapter.  
 1-36 A clean energy project is eligible for a [~~franchise tax~~] credit  
 1-37 only if the project is implemented in connection with the  
 1-38 construction of a new facility.

1-39 (b) The comptroller shall issue a [~~franchise tax~~] credit to  
 1-40 an entity operating a clean energy project after:

1-41 (1) the Railroad Commission of Texas has issued a  
 1-42 certificate of compliance for the project to the entity as provided  
 1-43 by Section 120.004, Natural Resources Code;

1-44 (2) the construction of the project has been  
 1-45 completed;

1-46 (3) the electric generating facility associated with  
 1-47 the project is fully operational;

1-48 (4) the Bureau of Economic Geology of The University  
 1-49 of Texas at Austin verifies to the comptroller that the electric  
 1-50 generating facility associated with the project is sequestering at  
 1-51 least 70 percent of the carbon dioxide resulting from or associated  
 1-52 with the generation of electricity by the facility; and

1-53 (5) the owner or operator of the project has entered  
 1-54 into an interconnection agreement relating to the project with the  
 1-55 Electric Reliability Council of Texas.

1-56 (c) The total amount of the [~~franchise tax~~] credit that may  
 1-57 be issued to the entity designated in the certificate of compliance  
 1-58 for a clean energy project is equal to the lesser of:

1-59 (1) 10 percent of the total capital cost of the  
 1-60 project, including the cost of designing, engineering, permitting,  
 1-61 constructing, and commissioning the project, the cost of procuring

2-1 land, water, and equipment for the project, and all fees, taxes, and  
 2-2 commissions paid and other payments made in connection with the  
 2-3 project but excluding the cost of financing the capital cost of the  
 2-4 project; or

2-5 (2) \$100 million.

2-6 (d) ~~[The amount of the franchise tax credit for each report~~  
 2-7 ~~year is calculated by determining the amount of franchise tax that~~  
 2-8 ~~is due based on the taxable margin generated by a clean energy~~  
 2-9 ~~project from the generation and sale of power and the sale of any~~  
 2-10 ~~products that are produced by the electric generation facility.]~~  
 2-11 The total [amount of the franchise tax] credit that a taxable entity  
 2-12 may claim [claimed] under this section for a report, including the  
 2-13 amount of any carryforward credit, [year] may not exceed the amount  
 2-14 of franchise tax due by the taxable entity for the report after any  
 2-15 applicable tax credits [attributable to the clean energy project  
 2-16 for that report year]. If a taxable entity is eligible to claim a  
 2-17 credit that exceeds the limitation of this subsection, the taxable  
 2-18 entity may carry the unused credit forward for not more than 20  
 2-19 consecutive reports. A carryforward is considered the remaining  
 2-20 portion of the credit that the taxable entity does not claim in the  
 2-21 current year because of the limitation.

2-22 (e) The entity designated in the certificate of compliance  
 2-23 for a clean energy project may assign the credit to one or more  
 2-24 taxable entities. A taxable entity to which the credit is assigned  
 2-25 may claim the credit against the tax imposed under this chapter  
 2-26 subject to the conditions and limitations of this subchapter.

2-27 (f) The comptroller may not issue a [franchise tax] credit  
 2-28 under this section before the later of:

2-29 (1) September 1, 2018; or

2-30 (2) the expiration of an agreement under Chapter 313  
 2-31 regarding the clean energy project for which the credit is issued  
 2-32 [2013. This subsection expires September 2, 2013].

2-33 SECTION 2. Section 382.003(1-a), Health and Safety Code, is  
 2-34 amended to read as follows:

2-35 (1-a) "Advanced clean energy project" means a project  
 2-36 for which an application for a permit or for an authorization to use  
 2-37 a standard permit under this chapter is received by the commission  
 2-38 on or after January 1, 2008, and before January 1, 2020, and that:

2-39 (A) involves the use of coal, biomass, petroleum  
 2-40 coke, solid waste, natural gas, or fuel cells using hydrogen  
 2-41 derived from such fuels, in the generation of electricity, or the  
 2-42 creation of liquid fuels outside of the existing fuel production  
 2-43 infrastructure while co-generating electricity, whether the  
 2-44 project is implemented in connection with the construction of a new  
 2-45 facility or in connection with the modification of an existing  
 2-46 facility and whether the project involves the entire emissions  
 2-47 stream from the facility or only a portion of the emissions stream  
 2-48 from the facility;

2-49 (B) with regard to the portion of the emissions  
 2-50 stream from the facility that is associated with the project, is  
 2-51 capable of achieving:

2-52 (i) on an annual basis:

2-53 (a) a 99 percent or greater reduction  
 2-54 of sulfur dioxide emissions;

2-55 (b) [or,] if the project is designed  
 2-56 for the use of feedstock, substantially all of which is  
 2-57 subbituminous coal, an emission rate of 0.04 pounds or less of  
 2-58 sulfur dioxide per million British thermal units as determined by a  
 2-59 30-day average; or

2-60 (c) if the project is designed for the  
 2-61 use of one or more combustion turbines that burn natural gas, a  
 2-62 sulfur dioxide emission rate that meets best available control  
 2-63 technology requirements as determined by the commission;

2-64 (ii) on an annual basis:

2-65 (a) a 95 percent or greater reduction  
 2-66 of mercury emissions; or

2-67 (b) if the project is designed for the  
 2-68 use of one or more combustion turbines that burn natural gas, a  
 2-69 mercury emission rate that complies with applicable federal

3-1 requirements;  
3-2 (iii) an annual average emission rate for  
3-3 nitrogen oxides of:  
3-4 (a) 0.05 pounds or less per million  
3-5 British thermal units; ~~[or]~~  
3-6 (b) if the project uses gasification  
3-7 technology, 0.034 pounds or less per million British thermal units;  
3-8 or  
3-9 (c) if the project is designed for the  
3-10 use of one or more combustion turbines that burn natural gas, two  
3-11 parts per million by volume; and  
3-12 (iv) an annual average emission rate for  
3-13 filterable particulate matter of 0.015 pounds or less per million  
3-14 British thermal units; and  
3-15 (C) captures not less than 50 percent of the  
3-16 carbon dioxide in the portion of the emissions stream from the  
3-17 facility that is associated with the project and sequesters that  
3-18 captured carbon dioxide by geologic storage or other means.

3-19 SECTION 3. Section 120.001(2), Natural Resources Code, is  
3-20 amended to read as follows:  
3-21 (2) "Clean energy project" means a project to  
3-22 construct a coal-fueled, natural gas-fueled, or petroleum  
3-23 coke-fueled electric generating facility, including a facility in  
3-24 which the fuel is gasified before combustion, that will:  
3-25 (A) have a capacity of at least 200 megawatts;  
3-26 (B) meet the emissions profile for an advanced  
3-27 clean energy project under Section 382.003(1-a)(B), Health and  
3-28 Safety Code;  
3-29 (C) capture at least 70 percent of the carbon  
3-30 dioxide resulting from or associated with the generation of  
3-31 electricity by the facility;  
3-32 (D) be capable of permanently sequestering in a  
3-33 geological formation the carbon dioxide captured; and  
3-34 (E) be capable of supplying the carbon dioxide  
3-35 captured for purposes of an enhanced oil recovery project.

3-36 SECTION 4. Section 120.002(b), Natural Resources Code, is  
3-37 amended to read as follows:  
3-38 (b) An entity may apply to the commission for a  
3-39 certification that a project operated by the entity meets the  
3-40 requirements for a clean energy project. An entity may not submit  
3-41 an application under this section before September 1, 2018. The  
3-42 application must be accompanied by:  
3-43 (1) a certificate from a qualified independent  
3-44 engineer that the project is operational and meets the standards  
3-45 provided by Sections 120.001(2)(A), (B), and (C); and  
3-46 (2) a fee payable to the commission.

3-47 SECTION 5. Section 120.003(a), Natural Resources Code, is  
3-48 amended to read as follows:  
3-49 (a) An entity that applies to the commission under Section  
3-50 120.002 for a certification that a project operated by the entity  
3-51 meets the requirements for a clean energy project is responsible  
3-52 for conducting a monitoring, measuring, and verification process  
3-53 that demonstrates that the project complies with the requirements  
3-54 of Section 171.652(b)(4), Tax ~~[490.352(b)(4), Government]~~ Code.

3-55 SECTION 6. Section 120.004(b), Natural Resources Code, is  
3-56 amended to read as follows:  
3-57 (b) The commission may not issue a certificate of compliance  
3-58 for more than three clean energy projects. Not more than one of the  
3-59 clean energy projects may be a natural gas project.

3-60 SECTION 7. Not later than January 1, 2014, the comptroller  
3-61 of public accounts shall adopt rules necessary to implement  
3-62 Subchapter L, Chapter 171, Tax Code, as redesignated and amended by  
3-63 this Act.

3-64 SECTION 8. Not later than January 1, 2014, the Texas  
3-65 Commission on Environmental Quality shall adopt rules as necessary  
3-66 to implement the change in law made by this Act to Section 382.003,  
3-67 Health and Safety Code.

3-68 SECTION 9. The Railroad Commission of Texas may adopt rules  
3-69 as necessary to implement the change in law made by this Act to

4-1 Section 120.001, Natural Resources Code.

4-2 SECTION 10. The changes in law made by this Act do not apply  
4-3 to a clean energy project that includes a precombustion integrated  
4-4 gasification combined cycle technology with carbon capture and was  
4-5 selected by the United States Department of Energy for a Clean Coal  
4-6 Power Initiative award before February 1, 2010. A clean energy  
4-7 project that includes a precombustion integrated gasification  
4-8 combined cycle technology with carbon capture and was selected by  
4-9 the United States Department of Energy for a Clean Coal Power  
4-10 Initiative award before February 1, 2010, is governed by the law in  
4-11 effect immediately before the effective date of this Act, and the  
4-12 former law is continued in effect for that purpose.

4-13 SECTION 11. This Act takes effect immediately if it  
4-14 receives a vote of two-thirds of all the members elected to each  
4-15 house, as provided by Section 39, Article III, Texas Constitution.  
4-16 If this Act does not receive the vote necessary for immediate  
4-17 effect, this Act takes effect September 1, 2013.

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