

By: Morrison

H.B. No. 4724

A BILL TO BE ENTITLED

AN ACT

relating to the franchise tax credit for certain clean energy projects.

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

SECTION 1. Section 120.001(2), Natural Resources Code, is amended to read as follows:

(2) "Clean energy project" means a project that:

(A) uses storage technology for the primary purpose of capturing, storing, sequestering, using, or reusing carbon dioxide emissions to prevent carbon dioxide from entering the atmosphere; and

(B) is constructed as part of, or is located adjacent to, a power generation facility, including a coal-fired generation facility, natural gas-fired power system, hydrogen-powered facility, or ammonia-powered system ~~[to construct a coal-fueled, natural gas-fueled, or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that will:~~

~~[(A) have a capacity of at least 200 megawatts,~~

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

~~[(C) capture at least 70 percent of the carbon dioxide resulting from or associated with the generation of~~

1 ~~electricity by the facility,~~

2 ~~[(D) be capable of permanently sequestering in a~~  
3 ~~geological formation the carbon dioxide captured, and~~

4 ~~[(E) be capable of supplying the carbon dioxide~~  
5 ~~captured for purposes of an enhanced oil recovery project].~~

6 SECTION 2. Section 120.002(b), Natural Resources Code, is  
7 amended to read as follows:

8 (b) An entity may apply to the commission for a  
9 certification that a project operated by the entity meets the  
10 requirements for a clean energy project. ~~[An entity may not submit~~  
11 ~~an application under this section before September 1, 2018.]~~ The  
12 application must be accompanied by~~+~~

13 ~~[(1)]~~ a certificate from a qualified independent  
14 engineer that the project is operational and meets the standards  
15 provided by Section 120.001(2) ~~[Sections 120.001(2)(A), (B), and~~  
16 ~~(C), and~~

17 ~~[(2) a fee payable to the commission].~~

18 SECTION 3. Section 120.003(b), Natural Resources Code, is  
19 amended to read as follows:

20 (b) The Texas Commission on Environmental Quality ~~[entity]~~  
21 shall ~~[contract with the bureau for the bureau to]~~:

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

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

27 (3) evaluate the results of the process described by

1 Subsection (a);

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

4 (5) determine whether to transmit to the comptroller  
5 the verification described by Section 171.602(b)(4), Tax Code.

6 SECTION 4. Section 171.602, Tax Code, is amended by  
7 amending Subsections (a), (b), (c), and (f) and adding Subsections  
8 (c-1) and (c-2) to read as follows:

9 (a) The comptroller shall adopt rules for issuing to an  
10 entity implementing a clean energy project in this state a credit  
11 against the tax imposed under this chapter. ~~[A clean energy project  
12 is eligible for a credit only if the project is implemented in  
13 connection with the construction of a new facility.]~~

14 (b) The comptroller shall issue a credit to an entity  
15 operating a clean energy project after:

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

19 (2) the construction of the project has been  
20 completed;

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

23 (4) the Texas Commission on Environmental Quality  
24 ~~[Bureau of Economic Geology of The University of Texas at Austin]~~  
25 verifies to the comptroller that the electric generating facility  
26 associated with the project is capturing, storing, sequestering,  
27 using, or reusing carbon dioxide in a manner that prevents at least

1 90 [70] percent of the carbon dioxide resulting from or associated  
2 with the generation of electricity by the facility from entering  
3 the atmosphere; and

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

7 (c) Subject to Subsections (c-1) and (c-2), the [The] total  
8 amount of the credit that may be issued to the entity designated in  
9 the certificate of compliance for a clean energy project is equal to  
10 the lesser of:

11 (1) 25 [40] percent of the total capital cost of the  
12 project, including the cost of designing, engineering, permitting,  
13 constructing, and commissioning the project, the cost of procuring  
14 land, water, and equipment for the project, and all fees, taxes, and  
15 commissions paid and other payments made in connection with the  
16 project but excluding the cost of financing the capital cost of the  
17 project; or

18 (2) \$100 million.

19 (c-1) The total amount of credits that may be issued under  
20 this subchapter during a state fiscal biennium may not exceed \$500  
21 million.

22 (c-2) The comptroller by rule shall prescribe procedures by  
23 which the comptroller will allocate credits under this subchapter  
24 if the amount of credits to be issued in a state fiscal biennium  
25 exceeds the limit under Subsection (c-1). The procedures must  
26 provide that credits are allocated and issued to taxable entities  
27 on a first-come, first-served basis according to the date the

1 requirements of Subsection (b) are satisfied.

2 (f) The comptroller may not issue a credit under this  
3 section after December 31, 2033 ~~[before the later of:~~

4 ~~[(1) September 1, 2018, or~~

5 ~~[(2) the expiration of an agreement under Chapter 313~~  
6 ~~regarding the clean energy project for which the credit is issued].~~

7 SECTION 5. Sections 120.001(1), 120.002(c), 120.003(c),  
8 120.003(d), and 120.004(b), Natural Resources Code, are repealed.

9 SECTION 6. A taxable entity may apply for a credit under  
10 Subchapter L, Chapter 171, Tax Code, as amended by this Act, only  
11 for capital costs incurred on or after the effective date of this  
12 Act.

13 SECTION 7. (a) Except as provided by Subsection (b) of this  
14 section, this Act applies only to a report originally due on or  
15 after the effective date of this Act.

16 (b) The changes in law made by this Act do not affect a  
17 franchise tax credit issued before the effective date of this Act,  
18 including carryforward of the credit. The credit is governed by the  
19 law in effect when the credit was issued, the former law is  
20 continued in effect for that purpose, and a taxable entity may claim  
21 the credit on a report originally due on or after the effective date  
22 of this Act.

23 SECTION 8. This Act takes effect January 1, 2024.