

By: Hardcastle, Deshotel, Darby, Solomons,
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H.B. No. 3732

Substitute the following for H.B. No. 3732:

By: Farabee

C.S.H.B. No. 3732

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the implementation of ultraclean energy projects in
3 this state.

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

5 SECTION 1. Chapter 447, Government Code, is amended by
6 adding Section 447.013 to read as follows:

7 Sec. 447.013. ULTRACLEAN ENERGY PROJECT GRANT AND LOAN
8 PROGRAM. (a) In this section:

9 (1) "Account" means the ultraclean energy project
10 account established under this section.

11 (2) "Program" means the ultraclean energy project
12 grant and loan program established under this section.

13 (3) "Ultraclean energy project" has the meaning
14 assigned by Section 382.003, Health and Safety Code.

15 (b) The ultraclean energy project grant and loan program is
16 established to encourage the development of ultraclean energy
17 projects that produce reliable and affordable electric power in an
18 environmentally protective manner. The program is administered by
19 the state energy conservation office.

20 (c) The ultraclean energy project account is an account in
21 the general revenue fund.

22 (d) The account consists of:

23 (1) a sub-account in the account that consists of the
24 proceeds of bonds issued under Subsection (j);

1 (2) revenues allocated to the account under Section
2 182.122, Tax Code;

3 (3) any amount appropriated by the legislature for the
4 account;

5 (4) gifts, grants, and other donations received for
6 the account; and

7 (5) interest earned on the investment of money in the
8 account.

9 (e) Money in the account may be appropriated only to the
10 state energy conservation office to award grants or to make or
11 guarantee loans under this section. The total amount of grants that
12 may be awarded under this section in any state fiscal biennium from
13 revenues described by Subsection (d)(2) may not exceed \$20 million.
14 The total amount of loans that may be made or guaranteed under this
15 section in any state fiscal biennium from revenues described by
16 Subsection (d)(2) may not exceed \$10 million.

17 (f) Before awarding a grant or making a loan under this
18 section, the state energy conservation office shall enter into a
19 written agreement with the entity to which the grant is to be
20 awarded or the loan is to be made. The agreement may specify that
21 if, as of a date specified by the agreement, the entity has not used
22 the grant or loan for the purposes for which the grant or loan was
23 intended, the entity shall repay the amount of the grant or the
24 amount of the loan and any accrued interest, as applicable, under
25 terms specified by the agreement.

26 (g) Under the program, the state energy conservation office
27 may award a grant to the managing entity of an ultraclean energy

1 project in an amount not to exceed 50 percent of the total amount
2 invested in the project by private industry sources. The managing
3 entity of the project must provide any information considered
4 necessary by the state energy conservation office to determine
5 whether the entity qualifies for the grant.

6 (h) Under the program, the state energy conservation office
7 may make or guarantee a loan to the managing entity of an ultraclean
8 energy project in this state. If the loan or guarantee is to be
9 funded by the proceeds of bonds issued under Subsection (j), the
10 project must qualify for the loan or guarantee under Section 49-p,
11 Article III, Texas Constitution.

12 (i) A recipient of a grant or loan under this section is
13 encouraged to purchase goods and services from small businesses and
14 historically underutilized businesses, as those terms are defined
15 by Section 481.191, Government Code.

16 (j) The Texas Public Finance Authority shall issue general
17 obligation bonds as authorized by Section 49-p, Article III, Texas
18 Constitution.

19 SECTION 2. Section 382.003, Health and Safety Code, is
20 amended by adding Subdivisions (3-a), (3-b), (11-a), and (12-a) to
21 read as follows:

22 (3-a) "Clean coal technology" means a technology or
23 process, including a technology or process applied at the
24 precombustion, combustion, or postcombustion stage, for use at a
25 new or existing facility that will achieve a 97 percent reduction of
26 sulfur dioxide emissions, an emission rate for nitrogen oxides of
27 0.08 pounds per million British thermal units, and significant

1 reductions in mercury emissions associated with the use of coal in
2 the generation of electricity, process steam, or industrial
3 products, including the creation of liquid fuels, hydrogen for fuel
4 cells, and other coproducts. The technology used must comply with
5 applicable federal law regarding mercury emissions and must render
6 carbon dioxide capable of capture, sequestration, or abatement.
7 Clean coal technology includes atmospheric or pressurized
8 fluidized bed combustion technology, integrated gasification
9 combined cycle technology, methanation technology,
10 magnetohydrodynamic technology, direct and indirect coal-fired
11 turbines, undiluted high-flame temperature oxygen combustion
12 technology that excludes air, and integrated gasification fuel
13 cells.

14 (3-b) "Coal" has the meaning assigned by Section
15 134.004, Natural Resources Code.

16 (11-a) "Solid waste" has the meaning assigned by
17 Section 361.003.

18 (12-a) "Ultraclean energy project" means a project
19 that:

20 (A) involves the use of coal, biomass, petroleum
21 coke, or solid waste in the generation of electricity, process
22 steam, or industrial products, including gasification and the
23 creation of liquid fuels, hydrogen for fuel cells, and other
24 coproducts;

25 (B) is capable of achieving a 99 percent
26 reduction of sulfur dioxide emissions, a 95 percent reduction of
27 mercury emissions, and an emission rate for nitrogen oxides of 0.05

1 pounds per million British thermal units; and

2 (C) renders carbon dioxide capable of capture,
3 sequestration, or abatement.

4 SECTION 3. Subchapter C, Chapter 382, Health and Safety
5 Code, is amended by adding Section 382.0566 to read as follows:

6 Sec. 382.0566. ULTRACLEAN ENERGY PROJECT PERMITTING
7 PROCEDURE. (a) An application for a permit under this chapter for
8 an ultraclean energy project must be received by the commission on
9 or after September 1, 2008, and before September 1, 2020.

10 (b) As authorized by federal law, not later than the first
11 anniversary of the date the commission declares an application for
12 a permit under this chapter for an ultraclean energy project to be
13 administratively complete, the commission shall issue a final order
14 issuing or denying the permit.

15 (c) The permit process authorized by this section is subject
16 to the requirements relating to a contested case hearing under this
17 chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001,
18 Government Code, as applicable.

19 (d) An applicant for a permit under this chapter for an
20 ultraclean energy project is not required to prove, as part of an
21 analysis of whether the project will use the best available control
22 technology or reduce emissions to the lowest achievable rate, that
23 the clean coal technology or ultraclean energy technology proposed
24 to be used in connection with the project has been demonstrated to
25 be feasible in a commercial operation.

26 (e) The commission shall adopt rules to implement this
27 section.

1 SECTION 4. Section 11.31, Tax Code, is amended by adding
2 Subsections (k), (l), and (m) to read as follows:

3 (k) The Texas Commission on Environmental Quality shall
4 adopt rules establishing a nonexclusive list of facilities,
5 devices, or methods for the control of air, water, or land
6 pollution, which must include:

7 (1) coal cleaning facilities;

8 (2) atmospheric or pressurized and bubbling or
9 circulating fluidized bed combustion systems and gasification
10 fluidized bed combustion combined cycle systems;

11 (3) ultra-supercritical pulverized coal boilers;

12 (4) flue gas recirculation components;

13 (5) syngas purification systems and gas-cleanup
14 units;

15 (6) enhanced heat recovery systems;

16 (7) exhaust heat recovery boilers;

17 (8) heat recovery steam generators;

18 (9) superheaters and evaporators;

19 (10) enhanced steam turbine systems;

20 (11) methanation;

21 (12) coal combustion or gasification byproduct and
22 coproduct handling, storage, or treatment facilities;

23 (13) biomass cofiring storage, distribution, and
24 firing systems;

25 (14) coal cleaning or drying processes, such as coal
26 drying/moisture reduction, air jigging, precombustion
27 decarbonization, and coal flow balancing technology;

1 (15) oxy-fuel combustion technology, amine or chilled
2 ammonia scrubbing, fuel or emission conversion through the use of
3 catalysts, enhanced scrubbing technology, modified combustion
4 technology such as chemical looping, and cryogenic technology; and

5 (16) any other equipment designed to capture, abate,
6 or monitor nitrogen oxides, volatile organic compounds,
7 particulate matter, mercury, carbon monoxide, carbon dioxide, or
8 any criteria pollutant.

9 (1) The Texas Commission on Environmental Quality by rule
10 shall update the list adopted under Subsection (k) at least once
11 every three years. An item may not be removed from the list unless
12 the commission finds compelling evidence to support the conclusion
13 that the item does not provide pollution control benefits.

14 (m) Notwithstanding the other provisions of this section,
15 if the facility, device, or method for the control of air, water, or
16 land pollution described in an application for an exemption under
17 this section is a facility, device, or method included on the list
18 adopted under Subsection (k), the executive director of the Texas
19 Commission on Environmental Quality, not later than the 30th day
20 after the date of receipt of the information required by
21 Subsections (c)(2) and (3) and without regard to whether the
22 information required by Subsection (c)(1) has been submitted, shall
23 determine that the facility, device, or method described in the
24 application is used wholly or partly as a facility, device, or
25 method for the control of air, water, or land pollution and shall
26 take the actions that are required by Subsection (d) in the event
27 such a determination is made.

1 SECTION 5. Section 26.045, Tax Code, is amended to read as
2 follows:

3 Sec. 26.045. ROLLBACK RELIEF FOR POLLUTION CONTROL
4 REQUIREMENTS. (a) The rollback tax rate for a political
5 subdivision of this state is increased by the rate that, if applied
6 to the total current value, would impose an amount of taxes equal to
7 the amount the political subdivision will spend out of its
8 maintenance and operation funds under Section 26.012(16) [~~Tax~~
9 ~~Code,~~] to pay for a facility, device, or method for the control of
10 air, water, or land pollution that is necessary to meet the
11 requirements of a permit issued by the Texas [~~Natural Resource~~
12 ~~Conservation~~] Commission on Environmental Quality.

13 (b) In this section, "facility, device, or method for
14 control of air, water, or land pollution" means any land,
15 structure, building, installation, excavation, machinery,
16 equipment, or device, and any attachment or addition to or
17 reconstruction, replacement, or improvement of that property, that
18 is used, constructed, acquired, or installed wholly or partly to
19 meet or exceed rules or regulations adopted by any environmental
20 protection agency of the United States or this state for the
21 prevention, monitoring, control, or reduction of air, water, or
22 land pollution.

23 (c) To receive an adjustment to the rollback tax rate under
24 this section, a political subdivision shall present information to
25 the executive director of the Texas [~~Natural Resource Conservation~~]
26 Commission on Environmental Quality in a permit application or in a
27 request for any exemption from a permit that would otherwise be

1 required detailing:

2 (1) the anticipated environmental benefits from the
3 installation of the facility, device, or method for the control of
4 air, water, or land pollution;

5 (2) the estimated cost of the pollution control
6 facility, device, or method; and

7 (3) the purpose of the installation of the facility,
8 device, or method, and the proportion of the installation that is
9 pollution control property.

10 (d) Following submission of the information required by
11 Subsection (c), the executive director of the Texas [~~Natural~~
12 ~~Resource Conservation~~] Commission on Environmental Quality shall
13 determine whether [~~if~~] the facility, device, or method is used
14 wholly or partly as a facility, device, or method for the control of
15 air, water, or land pollution. If the executive director determines
16 that the facility, device, or method is used wholly or partly to
17 control pollution, the director shall issue a letter to the
18 political subdivision stating that determination and the portion of
19 the cost of the installation that is pollution control property.

20 (e) The Texas [~~Natural Resource Conservation~~] Commission on
21 Environmental Quality may charge a political subdivision seeking a
22 determination that property is pollution control property an
23 additional fee not to exceed its administrative costs for
24 processing the information, making the determination, and issuing
25 the letter required by this section. The commission may adopt rules
26 to implement this section.

27 (f) The Texas Commission on Environmental Quality shall

1 adopt rules establishing a nonexclusive list of facilities,
2 devices, or methods for the control of air, water, or land
3 pollution, which must include:

4 (1) coal cleaning facilities;

5 (2) atmospheric or pressurized and bubbling or
6 circulating fluidized bed combustion systems and gasification
7 fluidized bed combustion combined cycle systems;

8 (3) ultra-supercritical pulverized coal boilers;

9 (4) flue gas recirculation components;

10 (5) syngas purification systems and gas-cleanup
11 units;

12 (6) enhanced heat recovery systems;

13 (7) exhaust heat recovery boilers;

14 (8) heat recovery steam generators;

15 (9) superheaters and evaporators;

16 (10) enhanced steam turbine systems;

17 (11) methanation;

18 (12) coal combustion or gasification byproduct and
19 coproduct handling, storage, or treatment facilities;

20 (13) biomass cofiring storage, distribution, and
21 firing systems;

22 (14) coal cleaning or drying processes such as coal
23 drying/moisture reduction, air jigging, precombustion
24 decarbonization, and coal flow balancing technology;

25 (15) oxy-fuel combustion technology, amine or chilled
26 ammonia scrubbing, fuel or emission conversion through the use of
27 catalysts, enhanced scrubbing technology, modified combustion

1 technology such as chemical looping, and cryogenic technology; and
2 (16) any other equipment designed to capture, abate,
3 or monitor nitrogen oxides, volatile organic compounds,
4 particulate matter, mercury, carbon monoxide, carbon dioxide, or
5 any criteria pollutant.

6 (g) The Texas Commission on Environmental Quality by rule
7 shall update the list adopted under Subsection (f) at least once
8 every three years. An item may not be removed from the list unless
9 the commission finds compelling evidence to support the conclusion
10 that the item does not render pollution control benefits.

11 (h) Notwithstanding the other provisions of this section,
12 if the facility, device, or method for the control of air, water, or
13 land pollution described in a permit application or in a request for
14 any exemption from a permit that would otherwise be required is a
15 facility, device, or method included on the list adopted under
16 Subsection (f), the executive director of the Texas Commission on
17 Environmental Quality, not later than the 30th day after the date of
18 receipt of the information required by Subsections (c)(2) and (3)
19 and without regard to whether the information required by
20 Subsection (c)(1) has been submitted, shall determine that the
21 facility, device, or method described in the permit application or
22 in the request for an exemption from a permit that would otherwise
23 be required is used wholly or partly as a facility, device, or
24 method for the control of air, water, or land pollution and shall
25 take the action that is required by Subsection (d) in the event such
26 a determination is made.

27 (i) A political subdivision of the state seeking an

1 adjustment in its rollback tax rate under this section shall
2 provide to its tax assessor a copy of the letter issued by the
3 executive director of the Texas [~~Natural Resource Conservation~~]
4 Commission on Environmental Quality under Subsection (d). The tax
5 assessor shall accept the copy of the letter from the executive
6 director as conclusive evidence that the facility, device, or
7 method is used wholly or partly as pollution control property and
8 shall adjust the rollback tax rate for the political subdivision as
9 provided for by Subsection (a).

10 SECTION 6. Section 182.022, Tax Code, is amended by adding
11 Subsection (c) to read as follows:

12 (c) Notwithstanding any other provision of this chapter, a
13 tax under this chapter may not be imposed on gross receipts from the
14 sale of electricity generated by an ultraclean energy project, as
15 defined by Section 382.003, Health and Safety Code.

16 SECTION 7. Section 182.122, Tax Code, is amended to read as
17 follows:

18 Sec. 182.122. ALLOCATION OF TAX. (a) Revenues collected
19 under this chapter are allocated:

- 20 (1) one-fourth to the foundation school fund; and
21 (2) three-fourths to the general revenue fund.

22 (b) The comptroller shall transfer to the ultraclean energy
23 project account the first \$30 million of the revenues collected
24 under this chapter that are allocated to the general revenue fund
25 under Subsection (a)(2) in any state fiscal biennium.

26 SECTION 8. Effective September 1, 2020, Section 182.122,
27 Tax Code, is amended to read as follows:

1 Sec. 182.122. ALLOCATION OF TAX. Revenues collected under
2 this chapter are allocated:

- 3 (1) one-fourth to the foundation school fund; and
4 (2) three-fourths to the general revenue fund.

5 SECTION 9. Section 313.024(b), Tax Code, as effective
6 January 1, 2008, is amended to read as follows:

7 (b) To be eligible for a limitation on appraised value under
8 this subchapter, the entity must use the property in connection
9 with:

- 10 (1) manufacturing;
11 (2) research and development;
12 (3) a clean coal project, as defined by Section 5.001,
13 Water Code;
14 (4) an ultraclean energy [a gasification] project, as
15 defined by Section 382.003, Health and Safety Code [for a coal and
16 biomass mixture]; or
17 (5) renewable energy electric generation.

18 SECTION 10. The state energy conservation office shall
19 establish the ultraclean energy grant and loan program under
20 Section 447.013, Government Code, as added by this Act, not later
21 than January 1, 2008.

22 SECTION 11. Not later than January 1, 2008, the Texas
23 Commission on Environmental Quality shall adopt rules required
24 under Section 382.0566, Health and Safety Code, and Section
25 11.31(k), Tax Code, as added by this Act, and Section 26.045(f), Tax
26 Code, as amended by this Act.

27 SECTION 12. Section 447.013(j), Government Code, as added

1 by this Act, takes effect only if the constitutional amendment
2 proposed by the 80th Legislature, Regular Session, 2007,
3 authorizing the issuance of general obligation bonds to provide and
4 guarantee loans to encourage the use of carbon-free hydrogen energy
5 is approved by the voters. If that amendment is not approved by the
6 voters, Section 447.013(j), Government Code, as added by this Act,
7 has no effect.

8 SECTION 13. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2007.