

SENATE AMENDMENTS

2nd Printing

By: Hardcastle, Deshotel, Darby, Solomons,
Cook of Colorado, et al.

H.B. No. 3732

A BILL TO BE ENTITLED

AN ACT

relating to the implementation of ultraclean energy projects and
other environmentally protective projects in this state.

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

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

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

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

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

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

(b) The ultraclean energy project grant and loan program is
established to encourage the development of ultraclean energy
projects in an environmentally protective manner. The program is
administered by the state energy conservation office.

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

(d) The account consists of:

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

(2) revenues allocated to the account under Section

1 182.122, Tax Code;

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

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

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

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

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

25 (g) Under the program, the state energy conservation office
26 may award a grant to the managing entity of an ultraclean energy
27 project in an amount not to exceed 50 percent of the total amount

1 invested in the project by private industry sources. The managing
2 entity of the project must provide any information considered
3 necessary by the state energy conservation office to determine
4 whether the entity qualifies for the grant.

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

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

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

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

21 (3-a) "Clean coal technology" means a technology or
22 process, including a technology or process applied at the
23 precombustion, combustion, or postcombustion stage, for use at a
24 new or existing facility that will achieve a 97 percent reduction of
25 sulfur dioxide emissions, an emission rate for nitrogen oxides of
26 0.08 pounds per million British thermal units, and significant
27 reductions in mercury emissions associated with the use of coal in

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

13 (3-b) "Coal" has the meaning assigned by Section
14 134.004, Natural Resources Code.

15 (11-a) "Solid waste" has the meaning assigned by
16 Section 361.003.

17 (12-a) "Ultraclean energy project" means a project
18 that:

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

24 (B) is capable of achieving a 99 percent
25 reduction of sulfur dioxide emissions, a 95 percent reduction of
26 mercury emissions, and an emission rate for nitrogen oxides of 0.05
27 pounds per million British thermal units; and

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

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

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

9 (b) As authorized by federal law, not later than nine months
10 after the executive director declares an application for a permit
11 under this chapter for an advanced clean energy project to be
12 administratively complete, the executive director shall complete
13 its technical review of the application.

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

23 (d) The permit process authorized by this section is subject
24 to the requirements relating to a contested case hearing under this
25 chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001,
26 Government Code, as applicable.

27 (e) An applicant for a permit under this chapter for an

1 ultraclean energy project is not required to prove, as part of an
2 analysis of whether the project will use the best available control
3 technology or reduce emissions to the lowest achievable rate, that
4 the clean coal technology or ultraclean energy technology proposed
5 to be used in connection with the project has been demonstrated to
6 be feasible in a commercial operation.

7 (f) The commission shall adopt rules to implement this
8 section.

9 SECTION 4. Section 11.31, Tax Code, is amended by amending
10 Subsection (b) and adding Subsections (k), (l), and (m) to read as
11 follows:

12 (b) In this section, "facility, device, or method for the
13 control of air, water, or land pollution" means land that is
14 acquired after January 1, 1994, or any structure, building,
15 installation, excavation, machinery, equipment, or device, and any
16 attachment or addition to or reconstruction, replacement, or
17 improvement of that property, that is used, constructed, acquired,
18 or installed wholly or partly to meet or exceed rules or regulations
19 adopted by any environmental protection agency of the United
20 States, this state, or a political subdivision of this state for the
21 prevention, monitoring, control, or reduction of air, water, or
22 land pollution. Whether or not carbon dioxide is considered a
23 pollutant, the term includes property that is used, constructed,
24 acquired, or installed wholly or partly to capture carbon dioxide
25 from an anthropogenic source that is used in an enhanced recovery
26 project for which a producer of oil receives a severance tax
27 exemption under Section 202.0545, or that is geologically

1 sequestered. This section does not apply to a motor vehicle.

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

6 (1) coal cleaning facilities;

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

10 (3) ultra-supercritical pulverized coal boilers;

11 (4) flue gas recirculation components;

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

14 (6) enhanced heat recovery systems;

15 (7) exhaust heat recovery boilers;

16 (8) heat recovery steam generators;

17 (9) superheaters and evaporators;

18 (10) enhanced steam turbine systems;

19 (11) methanation;

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

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

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

27 (15) oxy-fuel combustion technology, amine or chilled

1 ammonia scrubbing, fuel or emission conversion through the use of
2 catalysts, enhanced scrubbing technology, modified combustion
3 technology such as chemical looping, and cryogenic technology; and
4 (16) any other equipment designed to capture, abate,
5 or monitor nitrogen oxides, volatile organic compounds,
6 particulate matter, mercury, carbon monoxide, carbon dioxide, or
7 any criteria pollutant.

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

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

27 SECTION 5. Section 26.045, Tax Code, is amended to read as

1 follows:

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

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

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

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

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

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

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

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

26 (f) The Texas Commission on Environmental Quality shall
27 adopt rules establishing a nonexclusive list of facilities,

1 devices, or methods for the control of air, water, or land
2 pollution, which must include:

3 (1) coal cleaning facilities;

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

7 (3) ultra-supercritical pulverized coal boilers;

8 (4) flue gas recirculation components;

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

11 (6) enhanced heat recovery systems;

12 (7) exhaust heat recovery boilers;

13 (8) heat recovery steam generators;

14 (9) superheaters and evaporators;

15 (10) enhanced steam turbine systems;

16 (11) methanation;

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

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

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

24 (15) oxy-fuel combustion technology, amine or chilled
25 ammonia scrubbing, fuel or emission conversion through the use of
26 catalysts, enhanced scrubbing technology, modified combustion
27 technology such as chemical looping, and cryogenic technology; and

1 (16) any other equipment designed to capture, abate,
2 or monitor nitrogen oxides, volatile organic compounds,
3 particulate matter, mercury, carbon monoxide, carbon dioxide, or
4 any criteria pollutant.

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

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

26 (i) A political subdivision of the state seeking an
27 adjustment in its rollback tax rate under this section shall

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

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

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

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

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

19 (1) one-fourth to the foundation school fund; and

20 (2) three-fourths to the general revenue fund.

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

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

27 Sec. 182.122. ALLOCATION OF TAX. Revenues collected under

1 this chapter are allocated:

2 (1) one-fourth to the foundation school fund; and

3 (2) three-fourths to the general revenue fund.

4 SECTION 9. Subchapter B, Chapter 202, Tax Code, is amended
5 by adding Section 202.0545 to read as follows:

6 Sec. 202.0545. TAX EXEMPTION FOR ENHANCED RECOVERY PROJECTS
7 USING ANTHROPOGENIC CARBON DIOXIDE. (a) Subject to the
8 limitations provided by this section, the producer of oil recovered
9 through an enhanced oil recovery project that qualifies under
10 Section 202.054 for the recovered oil tax rate provided by Section
11 202.052(b) is entitled to an additional 50 percent reduction in
12 that tax rate if in the recovery of the oil the enhanced oil
13 recovery project uses carbon dioxide that:

14 (1) is captured from an anthropogenic source;

15 (2) would otherwise be released into the atmosphere as
16 industrial emission;

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

18 (4) is sequestered in one or more geological
19 formations following the enhanced oil recovery process.

20 (b) In the event that a portion of the carbon dioxide used in
21 the enhanced oil recovery project is anthropogenic carbon dioxide
22 that satisfies the criteria of Subsection (a) and a portion of the
23 carbon dioxide used in the project fails to satisfy the criteria of
24 Subsection (a) because it is not anthropogenic, the tax reduction
25 provided by Subsection (a) shall be reduced to reflect the
26 proportion of the carbon dioxide used in the project that satisfies
27 the criteria of Subsection (a).

1 (c) To qualify for the tax rate reduction under this
2 section, the operator must apply to the comptroller for the
3 reduction and include with the application any information and
4 documentation that the comptroller may require.

5 (d) To qualify for the tax rate reduction under this
6 section, the operator must apply for a certification from:

7 (1) the Railroad Commission of Texas, if carbon
8 dioxide used in the project is to be sequestered in a reservoir
9 productive of oil or natural gas;

10 (2) the Texas Commission on Environmental Quality, if
11 carbon dioxide used in the project is to be sequestered in a
12 geological formation other than a reservoir productive of oil or
13 natural gas; or

14 (3) both the Railroad Commission of Texas and the
15 Texas Commission on Environmental Quality if both Subdivisions (1)
16 and (2) apply.

17 (e) An agency to which an operator applies for a
18 certification under Subsection (d) may issue the certification only
19 if the agency finds that, based on substantial evidence, there is a
20 reasonable expectation that:

21 (1) the operator's planned sequestration program will
22 ensure that at least 99 percent of the carbon dioxide sequestered as
23 required by Subsection (a)(4) will remain sequestered for at least
24 1,000 years; and

25 (2) the operator's planned sequestration program will
26 include appropriately designed monitoring and verification
27 measures that will be employed for a period sufficient to

1 demonstrate whether the sequestration program is performing as
2 expected.

3 (e-1) The tax rate reduction does not apply if the
4 operator's sequestration program or the operator's monitoring and
5 verification measures differ substantially from the planned
6 program described by Subsection (e), and the operator shall refund
7 the difference between the amount of the tax paid under this section
8 and the amount that would have been imposed in the absence of this
9 section.

10 (f) The comptroller shall approve the application if the
11 operator submits the certification or certifications required by
12 Subsection (d) and if the comptroller determines that the oil is
13 otherwise eligible under this section.

14 (g) If, before the comptroller approves an application for
15 the tax rate reduction under this section, the tax imposed by this
16 chapter is paid at the rate provided by Section 202.052(a) or (b) on
17 oil that qualifies under this section, the producer or producers of
18 the oil are entitled to a credit against taxes imposed by this
19 chapter in an amount equal to the difference between the tax paid on
20 the oil and the tax due on the oil after the rate reduction under
21 this section is applied. The credit is allowed to each producer
22 according to the producer's proportionate share in the oil. To
23 receive a credit, one or more of the producers of the oil must apply
24 to the comptroller for the credit not later than the first
25 anniversary of the date the oil is produced.

26 (h) The comptroller may enact rules and establish
27 procedures to implement and administer this section.

1 (i) The Railroad Commission of Texas may enact rules and
2 establish procedures to implement and administer this section.

3 (j) The Texas Commission on Environmental Quality may enact
4 rules and establish procedures to implement and administer this
5 section.

6 SECTION 10. Section 313.024(b), Tax Code, as effective
7 January 1, 2008, is amended to read as follows:

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

11 (1) manufacturing;

12 (2) research and development;

13 (3) a clean coal project, as defined by Section 5.001,
14 Water Code;

15 (4) an ultraclean energy [a gasification] project, as
16 defined by Section 382.003, Health and Safety Code [for a coal and
17 biomass mixture]; or

18 (5) renewable energy electric generation.

19 SECTION 11. (a) Not later than September 1, 2012, and
20 September 1, 2016, the Texas Commission on Environmental Quality
21 and the State Energy Conservation Office shall issue a joint report
22 to the legislature providing a status update on the implementation
23 of the ultraclean energy program and an assessment of whether the
24 emissions profile set out in Section 382.003(12-a)(B), Health and
25 Safety Code, as added by this Act, should be adjusted to increase or
26 decrease elements of the emissions profile.

27 (b) Factors to be considered in the assessment of the

1 emissions profile shall include:

2 (1) the technical and economic feasibility of meeting
3 all of the elements of the emissions profile in a commercially
4 viable project, as documented by the United States Department of
5 Energy;

6 (2) the technical and economic feasibility of projects
7 to meet all of the elements of the emissions profile and still use a
8 diverse range of fuels, including lignite; and

9 (3) the adequacy of the incentives provided by this
10 Act to continue to attract investment in and federal funding for
11 ultraclean energy projects in this state.

12 (c) Any adjustments to the emissions profile implemented by
13 the legislature in response to a report required by this section
14 shall not apply to an application deemed administratively complete
15 on or before the date of the report.

16 (d) Not later than September 1, 2020, the State Energy
17 Conservation Office shall issue a report to the legislature
18 providing an assessment of whether the ultraclean energy program
19 should be extended due to a continued need for incentives to ensure
20 that a diverse range of affordable fuels, including lignite, can be
21 utilized in a manner that achieves the lowest emission profile that
22 is technically and economically feasible.

23 SECTION 12. The state energy conservation office shall
24 promulgate rules to establish the ultraclean energy grant and loan
25 program under Section 447.013, Government Code, as added by this
26 Act, not later than January 1, 2008.

27 SECTION 13. Not later than January 1, 2008, the Texas

1 Commission on Environmental Quality shall adopt rules required
2 under Section 382.0566, Health and Safety Code, and Section
3 11.31(k), Tax Code, as added by this Act, and Section 26.045(f), Tax
4 Code, as amended by this Act.

5 SECTION 14. Section 447.013(j), Government Code, as added
6 by this Act, takes effect only if the constitutional amendment
7 proposed by the 80th Legislature, Regular Session, 2007,
8 authorizing the issuance of general obligation bonds to provide and
9 guarantee loans to encourage the use of carbon-free hydrogen energy
10 is approved by the voters. If that amendment is not approved by the
11 voters, Section 447.013(j), Government Code, as added by this Act,
12 has no effect.

13 SECTION 15. The amendment made by this Act to Section
14 11.31(b), Tax Code, takes effect January 1, 2008.

15 SECTION 16. Except as otherwise provided by this Act, this
16 Act takes effect immediately if it receives a vote of two-thirds of
17 all the members elected to each house, as provided by Section 39,
18 Article III, Texas Constitution. If this Act does not receive the
19 vote necessary for immediate effect, this Act takes effect
20 September 1, 2007.

ADOPTED

MAY 22 2007

Leta Stovall
Secretary of the Senate

By: Avenitt

H.B. No. 3732

Substitute the following for ___B. No. _____:

By: Avenitt

C.S. ___B. No. _____

A BILL TO BE ENTITLED

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AN ACT

2 relating to the implementation of advanced clean energy projects
3 and other environmentally protective projects in this state.

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

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

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

15 (b) The advanced clean energy project grant and loan program
16 is established to encourage the development of advanced clean
17 energy projects in an environmentally protective manner. The
18 program is administered by the State Energy Conservation Office.

19 (c) The advanced clean energy project account is an account
20 in the general revenue fund.

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23 proceeds of bonds issued under Subsection (j);

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

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

25 (g) Under the program, the State Energy Conservation Office
26 may award a grant to the managing entity of an advanced clean energy
27 project in an amount not to exceed 50 percent of the total amount

1 invested in the project by private industry sources. The managing
2 entity of the project must provide any information considered
3 necessary by the State Energy Conservation Office to determine
4 whether the entity qualifies for the grant.

5 (h) Under the program, the State Energy Conservation Office
6 may make or guarantee a loan to the managing entity of an advanced
7 clean energy project in this state. If the loan or guarantee is to
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9 project must qualify for the loan or guarantee under Section 49-g,
10 Article III, Texas Constitution.

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

15 (j) The Texas Public Finance Authority shall issue general
16 obligation bonds in accordance with and subject to Chapter 1232,
17 Government Code, for the purposes authorized by Section 49-g,
18 Article III, Texas Constitution.

19 SECTION 2. Section 382.003, Health and Safety Code, is
20 amended by adding Subdivisions (1-a), (3-a), (7-a), and (11-a) to
21 read as follows:

22 (1-a) "Advanced clean energy project" means a project
23 for which an application for a permit under this chapter is received
24 by the commission on or after January 1, 2008, and before January 1,
25 2020, and that:

26 (A) involves the use of coal, biomass, petroleum
27 coke, or solid waste, or hydrogen fuel cells derived from such

1 fuels, in the generation of electricity, or the creation of liquid
2 fuels outside of the existing fuel production infrastructure while
3 co-generating electricity;

4 (B) is capable of achieving on an annual basis a
5 99 percent or greater reduction of sulfur dioxide emissions, a 95
6 percent or greater reduction of mercury emissions, and an emission
7 rate for nitrogen oxides of 0.05 pounds or less per million British
8 thermal units or of achieving the emissions profile required by
9 rules adopted by the commission under Section 382.0566, if
10 applicable; and

11 (C) renders carbon dioxide capable of capture,
12 sequestration, or abatement.

13 (3-a) "Coal" has the meaning assigned by Section
14 134.004, Natural Resources Code.

15 (7-a) "Federally qualified clean coal technology"
16 means a technology or process, including a technology or process
17 applied at the precombustion, combustion, or postcombustion stage,
18 for use at a new or existing facility that will achieve on an annual
19 basis a 97 percent or greater reduction of sulfur dioxide
20 emissions, an emission rate for nitrogen oxides of 0.08 pounds or
21 less per million British thermal units, and significant reductions
22 in mercury emissions associated with the use of coal in the
23 generation of electricity, process steam, or industrial products,
24 including the creation of liquid fuels, hydrogen for fuel cells,
25 and other coproducts. The technology used must comply with
26 applicable federal law regarding mercury emissions and must render
27 carbon dioxide capable of capture, sequestration, or abatement.

1 Federally qualified clean coal technology includes atmospheric or
2 pressurized fluidized bed combustion technology, integrated
3 gasification combined cycle technology, methanation technology,
4 magnetohydrodynamic technology, direct and indirect coal-fired
5 turbines, undiluted high-flame temperature oxygen combustion
6 technology that excludes air, and integrated gasification fuel
7 cells.

8 (11-a) "Solid waste" has the meaning assigned by
9 Section 361.003.

10 SECTION 3. Section 382.0518, Health and Safety Code, is
11 amended by adding Subsection (c-1) to read as follows:

12 (c-1) In considering the issuance of a permit for a new
13 electric generating facility, the commission shall analyze and
14 consider:

15 (1) the cumulative effects of the facility's expected
16 emissions together with the cumulative effects of the authorized
17 emissions from all sources of pollution permitted under this
18 section that are located within a radius of impact specified by
19 commission rule; and

20 (2) whether the emissions from the facility will cause
21 an area to be designated a nonattainment area.

22 SECTION 4. Subchapter C, Chapter 382, Health and Safety
23 Code, is amended by adding Sections 382.0566 and 382.0567 to read as
24 follows:

25 Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING
26 PROCEDURE. (a) As authorized by federal law, not later than nine
27 months after the executive director declares an application for a

1 permit under this chapter for an advanced clean energy project to be
2 administratively complete, the executive director shall complete
3 its technical review of the application.

4 (b) The commission shall issue a final order issuing or
5 denying the permit not later than nine months after the executive
6 director declares the application technically complete. The
7 commission may extend the deadline set out in this subsection up to
8 three months if it determines that the number of complex pending
9 applications for permits under this chapter will prevent the
10 commission from meeting the deadline imposed by this subsection
11 without creating an extraordinary burden on the resources of the
12 commission.

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

17 (d) The commission shall adopt rules to implement this
18 section.

19 (e) Not later than September 1 of the years 2010, 2012,
20 2014, 2016, and 2018, the commission shall:

21 (1) determine whether any element of the emissions
22 profile specified by Section 382.003(1-a)(B) should be increased or
23 decreased;

24 (2) determine whether any other regulated pollutant
25 should be added to the emissions profile; and

26 (3) adopt rules adjusting the profile if the
27 commission determines an adjustment to be appropriate.

1 (f) The factors the commission must consider under
2 Subsection (e) in determining whether the emissions profile should
3 be adjusted include:

4 (1) the technical and economic feasibility of
5 achieving all of the elements of the emissions profile in a
6 commercially viable project, as documented by the United States
7 Department of Energy;

8 (2) the technical and economic feasibility of projects
9 to achieve all of the elements of the emissions profile and still
10 use a diverse range of fuels, including lignite; and

11 (3) the adequacy of the incentives provided by this
12 section, Section 447.013, Government Code, and Sections 11.31,
13 26.045, 182.022, 182.122, 202.0545, and 313.024, Tax Code, to
14 continue to attract investment in and federal funding for advanced
15 clean energy projects in this state.

16 (g) Any adjustment to the emissions profile that is adopted
17 by commission rule under Subsection (e) applies only to an
18 application that the executive director has not declared to be
19 administratively complete as of the date the rule is adopted.

20 (h) The commission may not consider any technology or level
21 of emission reduction to be adequately demonstrated or achievable
22 for purposes of a best available control technology analysis or
23 lowest achievable emission rate analysis conducted by the
24 commission under another provision of this chapter solely because
25 the technology is used or the emission reduction is achieved by a
26 facility receiving an incentive under a law listed in Subsection
27 (f)(3).

1 Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALY
2 FEASIBLE NOT REQUIRED. An applicant for a permit under this chapter
3 for a project in connection with which advanced clean energy
4 technology, federally qualified clean coal technology, or another
5 technology is proposed to be used is not required to prove, as part
6 of an analysis of whether the project will use the best available
7 control technology or reduce emissions to the lowest achievable
8 rate, that the technology proposed to be used has been demonstrated
9 to be feasible in a commercial operation.

10 SECTION 5. Section 11.31, Tax Code, is amended by adding
11 Subsections (k), (l), and (m) to read as follows:

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

16 (1) coal cleaning or refining facilities;

17 (2) atmospheric or pressurized and bubbling or
18 circulating fluidized bed combustion systems and gasification
19 fluidized bed combustion combined cycle systems;

20 (3) ultra-supercritical pulverized coal boilers;

21 (4) flue gas recirculation components;

22 (5) syngas purification systems and gas-cleanup
23 units;

24 (6) enhanced heat recovery systems;

25 (7) exhaust heat recovery boilers;

26 (8) heat recovery steam generators;

27 (9) superheaters and evaporators;

- 1 (10) enhanced steam turbine systems;
2 (11) methanation;
3 (12) coal combustion or gasification byproduct and
4 coproduct handling, storage, or treatment facilities;
5 (13) biomass cofiring storage, distribution, and
6 firing systems;
7 (14) coal cleaning or drying processes, such as coal
8 drying/moisture reduction, air jigging, precombustion
9 decarbonization, and coal flow balancing technology;
10 (15) oxy-fuel combustion technology, amine or chilled
11 ammonia scrubbing, fuel or emission conversion through the use of
12 catalysts, enhanced scrubbing technology, modified combustion
13 technology such as chemical looping, and cryogenic technology;
14 (16) if the United States Environmental Protection
15 Agency or the Texas Commission on Environmental Quality adopts a
16 final rule or regulation regulating carbon dioxide as a pollutant,
17 property that is used, constructed, acquired, or installed wholly
18 or partly to capture carbon dioxide from an anthropogenic source
19 that is used in an enhanced recovery project in this state or that
20 is geologically sequestered in this state;
21 (17) fuel cells generating electricity using
22 hydrocarbons without combustion; and
23 (18) any other equipment designed to prevent, capture,
24 abate, or monitor nitrogen oxides, volatile organic compounds,
25 particulate matter, mercury, carbon monoxide, or any criteria
26 pollutant.
27 (1) The Texas Commission on Environmental Quality by rule

1 shall update the list adopted under Subsection (k) at least once
2 every three years. An item may be removed from the list if the
3 commission finds compelling evidence to support the conclusion that
4 the item does not provide pollution control benefits.

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

19 SECTION 6. Section 26.045, Tax Code, is amended to read as
20 follows:

21 Sec. 26.045. ROLLBACK RELIEF FOR POLLUTION CONTROL
22 REQUIREMENTS. (a) The rollback tax rate for a political
23 subdivision of this state is increased by the rate that, if applied
24 to the total current value, would impose an amount of taxes equal to
25 the amount the political subdivision will spend out of its
26 maintenance and operation funds under Section 26.012(16) [~~7, Tax~~
27 ~~Code,~~] to pay for a facility, device, or method for the control of

1 air, water, or land pollution that is necessary to meet the
2 requirements of a permit issued by the Texas [~~Natural Resource~~
3 ~~Conservation~~] Commission on Environmental Quality.

4 (b) In this section, "facility, device, or method for
5 control of air, water, or land pollution" means any land,
6 structure, building, installation, excavation, machinery,
7 equipment, or device, and any attachment or addition to or
8 reconstruction, replacement, or improvement of that property, that
9 is used, constructed, acquired, or installed wholly or partly to
10 meet or exceed rules or regulations adopted by any environmental
11 protection agency of the United States or this state for the
12 prevention, monitoring, control, or reduction of air, water, or
13 land pollution.

14 (c) To receive an adjustment to the rollback tax rate under
15 this section, a political subdivision shall present information to
16 the executive director of the Texas [~~Natural Resource Conservation~~]
17 Commission on Environmental Quality in a permit application or in a
18 request for any exemption from a permit that would otherwise be
19 required detailing:

20 (1) the anticipated environmental benefits from the
21 installation of the facility, device, or method for the control of
22 air, water, or land pollution;

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

25 (3) the purpose of the installation of the facility,
26 device, or method, and the proportion of the installation that is
27 pollution control property.

1 (d) Following submission of the information required by
2 Subsection (c), the executive director of the Texas [~~Natural~~
3 ~~Resource Conservation~~] Commission on Environmental Quality shall
4 determine whether [~~if~~] the facility, device, or method is used
5 wholly or partly as a facility, device, or method for the control of
6 air, water, or land pollution. If the executive director determines
7 that the facility, device, or method is used wholly or partly to
8 control pollution, the director shall issue a letter to the
9 political subdivision stating that determination and the portion of
10 the cost of the installation that is pollution control property.

11 (e) The Texas [~~Natural Resource Conservation~~] Commission on
12 Environmental Quality may charge a political subdivision seeking a
13 determination that property is pollution control property an
14 additional fee not to exceed its administrative costs for
15 processing the information, making the determination, and issuing
16 the letter required by this section. The commission may adopt rules
17 to implement this section.

18 (f) The Texas Commission on Environmental Quality shall
19 adopt rules establishing a nonexclusive list of facilities,
20 devices, or methods for the control of air, water, or land
21 pollution, which must include:

22 (1) coal cleaning or refining facilities;

23 (2) atmospheric or pressurized and bubbling or
24 circulating fluidized bed combustion systems and gasification
25 fluidized bed combustion combined cycle systems;

26 (3) ultra-supercritical pulverized coal boilers;

27 (4) flue gas recirculation components;

- 1 (5) syngas purification systems and gas-cleanup
2 units;
- 3 (6) enhanced heat recovery systems;
4 (7) exhaust heat recovery boilers;
5 (8) heat recovery steam generators;
6 (9) superheaters and evaporators;
7 (10) enhanced steam turbine systems;
8 (11) methanation;
9 (12) coal combustion or gasification byproduct and
10 coproduct handling, storage, or treatment facilities;
- 11 (13) biomass cofiring storage, distribution, and
12 firing systems;
- 13 (14) coal cleaning or drying processes such as coal
14 drying/moisture reduction, air jigging, precombustion
15 decarbonization, and coal flow balancing technology;
- 16 (15) oxy-fuel combustion technology, amine or chilled
17 ammonia scrubbing, fuel or emission conversion through the use of
18 catalysts, enhanced scrubbing technology, modified combustion
19 technology such as chemical looping, and cryogenic technology;
- 20 (16) if the United States Environmental Protection
21 Agency or the Texas Commission on Environmental Quality adopts a
22 final rule or regulation regulating carbon dioxide as a pollutant,
23 property that is used, constructed, acquired, or installed wholly
24 or partly to capture carbon dioxide from an anthropogenic source
25 that is used in an enhanced recovery project in this state or that
26 is geologically sequestered in this state;
- 27 (17) fuel cells generating electricity using

1 hydrocarbons without combustion; and

2 (18) any other equipment designed to prevent, capture,
3 abate, or monitor nitrogen oxides, volatile organic compounds,
4 particulate matter, mercury, carbon monoxide, or any criteria
5 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 be removed from the list if the
9 commission finds compelling evidence to support the conclusion that
10 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 7. 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 advanced clean energy project,
15 as defined by Section 382.003, Health and Safety Code.

16 SECTION 8. 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 advanced clean
23 energy project account the first \$30 million of the revenues
24 collected under this chapter that are allocated to the general
25 revenue fund under Subsection (a)(2) in any state fiscal biennium.

26 SECTION 9. 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 10. Subchapter B, Chapter 202, Tax Code, is amended
6 by adding Section 202.0545 to read as follows:

7 Sec. 202.0545. TAX EXEMPTION FOR ENHANCED RECOVERY PROJECTS
8 USING ANTHROPOGENIC CARBON DIOXIDE. (a) Until the United States
9 Environmental Protection Agency or the Texas Commission on
10 Environmental Quality adopts a final rule or regulation regulating
11 carbon dioxide as a pollutant and subject to the limitations
12 provided by this section, the producer of oil recovered through an
13 enhanced oil recovery project that qualifies under Section 202.054
14 for the recovered oil tax rate provided by Section 202.052(b) is
15 entitled to an additional 50 percent reduction in that tax rate if
16 in the recovery of the oil the enhanced oil recovery project uses
17 carbon dioxide that:

18 (1) is captured from an anthropogenic source in this
19 state;

20 (2) would otherwise be released into the atmosphere as
21 industrial emissions;

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

23 (4) is sequestered in one or more geological
24 formations in this state following the enhanced oil recovery
25 process.

26 (b) In the event that a portion of the carbon dioxide used in
27 the enhanced oil recovery project is anthropogenic carbon dioxide

1 that satisfies the criteria of Subsection (a) and a portion of the
2 carbon dioxide used in the project fails to satisfy the criteria of
3 Subsection (a) because it is not anthropogenic, the tax reduction
4 provided by Subsection (a) shall be reduced to reflect the
5 proportion of the carbon dioxide used in the project that satisfies
6 the criteria of Subsection (a).

7 (c) To qualify for the tax rate reduction under this
8 section, the operator must:

9 (1) apply to the comptroller for the reduction and
10 include with the application any information and documentation that
11 the comptroller may require; and

12 (2) apply for a certification from:

13 (A) the Railroad Commission of Texas, if carbon
14 dioxide used in the project is to be sequestered in an oil or
15 natural gas reservoir;

16 (B) the Texas Commission on Environmental
17 Quality, if carbon dioxide used in the project is to be sequestered
18 in a geological formation other than an oil or natural gas
19 reservoir; or

20 (C) both the Railroad Commission of Texas and the
21 Texas Commission on Environmental Quality if both Paragraphs (A)
22 and (B) apply.

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

27 (1) the operator's planned sequestration program will

1 ensure that at least 99 percent of the carbon dioxide sequestered as
2 required by Subsection (a)(4) will remain sequestered for at least
3 1,000 years; and

4 (2) the operator's planned sequestration program will
5 include appropriately designed monitoring and verification
6 measures that will be employed for a period sufficient to
7 demonstrate whether the sequestration program is performing as
8 expected.

9 (e) The tax rate reduction does not apply if the operator's
10 sequestration program or the operator's monitoring and
11 verification measures differ substantially from the planned
12 program described by Subsection (d), and the operator shall refund
13 the difference between the amount of the tax paid under this section
14 and the amount that would have been imposed in the absence of this
15 section.

16 (f) The comptroller shall approve the application if the
17 operator submits the certification or certifications required by
18 Subsection (c)(2) and if the comptroller determines that the oil is
19 otherwise eligible under this section.

20 (g) If, before the comptroller approves an application for
21 the tax rate reduction under this section, the tax imposed by this
22 chapter is paid at the rate provided by Section 202.052(a) or (b) on
23 oil that qualifies under this section, the producer or producers of
24 the oil are entitled to a credit against taxes imposed by this
25 chapter in an amount equal to the difference between the tax paid on
26 the oil and the tax due on the oil after the rate reduction under
27 this section is applied. The credit is allowed to each producer

1 according to the producer's proportionate share in the oil. To
2 receive a credit, one or more of the producers of the oil must apply
3 to the comptroller for the credit not later than the first
4 anniversary of the date the oil is produced.

5 (h) The comptroller, the Railroad Commission of Texas, and
6 the Texas Commission on Environmental Quality may adopt rules and
7 establish procedures to implement and administer this section.

8 SECTION 11. Section 313.024(b), Tax Code, as effective
9 January 1, 2008, is amended to read as follows:

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

13 (1) manufacturing;

14 (2) research and development;

15 (3) a clean coal project, as defined by Section 5.001,
16 Water Code;

17 (4) an advanced clean energy [a gasification] project,
18 as defined by Section 382.003, Health and Safety Code [for a coal
19 and biomass mixture]; or

20 (5) renewable energy electric generation.

21 SECTION 12. Not later than September 1, 2015, the State
22 Energy Conservation Office shall issue a report to the legislature
23 providing an assessment of whether the advanced clean energy
24 program should be extended due to a continued need for incentives to
25 ensure that a diverse range of affordable fuels, including lignite,
26 can be used in a manner that achieves the lowest emission profile
27 that is technically and economically feasible.

1 SECTION 13. The State Energy Conservation Office shall
2 adopt rules to establish the advanced clean energy grant and loan
3 program under Section 447.013, Government Code, as added by this
4 Act, not later than January 1, 2008. Such rules may allow for the
5 recovery of fees and administrative expenses.

6 SECTION 14. Section 382.0518(c-1), Health and Safety Code,
7 as added by this Act, applies only to an application for a permit
8 under Section 382.0518, Health and Safety Code, that is received by
9 the Texas Commission on Environmental Quality on or after January
10 1, 2008.

11 SECTION 15. Not later than January 1, 2008, the Texas
12 Commission on Environmental Quality shall adopt rules required
13 under Section 382.0566, Health and Safety Code, and Section
14 11.31(k), Tax Code, as added by this Act, and Section 26.045(f), Tax
15 Code, as amended by this Act.

16 SECTION 16. Section 447.013(j), Government Code, as added
17 by this Act, takes effect only if the constitutional amendment
18 proposed by the 80th Legislature, Regular Session, 2007,
19 authorizing the issuance of general obligation bonds to provide and
20 guarantee loans to encourage clean energy projects is approved by
21 the voters. If that amendment is not approved by the voters,
22 Section 447.013(j), Government Code, as added by this Act, has no
23 effect.

24 SECTION 17. Except as otherwise provided by this Act, this
25 Act takes effect immediately if it receives a vote of two-thirds of
26 all the members elected to each house, as provided by Section 39,
27 Article III, Texas Constitution. If this Act does not receive the

1 vote necessary for immediate effect, this Act takes effect
2 September 1, 2007.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 22 2007

BY:

Vanderkate

Leta Spaw
Secretary of the Senate

1 Amend H.B. No. 3732 (Senate Committee printing) as follows:

2 (1) In the recital of SECTION 1 of the bill (page 1, line
3 14), strike "Section 447.013" and substitute "Sections 447.013
4 and 447.014".

5 (2) In SECTION 1 of the bill, following proposed Section
6 447.013, Government Code (page 2, between lines 14 and 15), add
7 the following:

8 Sec. 447.014. HYDROGEN ENERGY LOAN PROGRAM. (a) The
9 State Energy Conservation Office shall establish and administer
10 a program to make and guarantee loans to business entities for
11 projects that:

12 (1) expand the use of carbon-free hydrogen energy in
13 this state; or

14 (2) relate to the manufacture, storage, distribution,
15 or sale of carbon-free hydrogen energy in this state.

16 (b) The Texas Public Finance Authority shall issue general
17 obligation bonds in an aggregate amount not to exceed \$250
18 million as authorized by Section 49-p, Article III, Texas
19 Constitution.

20 (c) The program may be funded by:

21 (1) the proceeds of bonds issued under Subsection

22 (c); or

23 (2) gifts, grants, and donations made for that
24 purpose.

25 (d) The comptroller may adopt rules to implement this
26 section.

27 (e) For purposes of this section, hydrogen is considered to
28 be carbon-free if:

29 (1) any carbon resulting from the production of the hydrogen

x

41

1 is captured during production and:

2 (A) permanently geologically; or

3 (B) used in the production of other carbon-based
4 products at a rate that exceeds 90 percent of the input ; and

5 (2) Any carbon resulting from the generation of any
6 electricity used in the production of the hydrogen is captured
7 and:

8 (A) permanently geologically sequestered; or

9 (B) used in the production of other carbon-based
10 products at a rate that exceeds 90 percent of the input.

11 (c) For purposes of subsection (e), the generation of
12 wind power, solar power, hydroelectricity, geothermal
13 electricity, tidal electricity, or nuclear power is considered
14 to result in no carbon.

15 (d) Hydrogen that is generated as a byproduct of the
16 manufacturing of chlorine is considered carbon-free so long as
17 it meets the criteria of subsection (e).

18 (3) In SECTION 13 of the bill, after "administrative
19 expenses." (page 8, line 40), add "The State Energy Conservation
20 Office shall establish a program under Section 447.014,
21 Government Code, as added by this Act, not later than January 1,
22 2008."

23 (4) In SECTION 16 of the bill (page 8, line 51), between
24 "16." and "Section 447.013(j)", insert "(a)".

25 (5) Add the following to the end of SECTION 16 of the bill
26 (page 8, between lines 58 and 59):

27 (b) Section 447.014, Government Code, as added by this
28 Act, takes effect only if the constitutional amendment proposed
29 by the 80th Legislature, Regular Session, 2007, authorizing the
30 issuance of general obligation bonds to provide and guarantee
31 loans to encourage the use of carbon-free hydrogen energy, is

1 approved by the voters. If that amendment is not approved by the
2 voters, Section 447.014, Government Code, has no effect.

3

ADOPTED

FLOOR AMENDMENT NO. 2

MAY 22 2007 BY:

Lotay Spaul
Secretary of the Senate

(Fraser)

1 Amend Section 4 of C.S.H.B. No. 3732 by adding the
2 following subsection (d) to new Section 382.0566 of the Health
3 and Safety Code, and renumbering the following subsections of
4 accordingly:

5 (d) The commission shall not issue a permit under this
6 chapter for an advanced clean energy project if emissions from
7 the proposed facility will cause an area to be designated a
8 nonattainment area.

ADOPTED

FLOOR AMENDMENT NO. 4

MAY 22 2007

BY: *Thuy Nguyen (Watson)*

Letai Spaw
Secretary of the Senate

1 Amend C.S.H.B. 3732 by inserting SECTION as follows and
2 renumbering the following SECTIONS accordingly:

3 SECTION . Subchapter B, Chapter 382, Health and Safety
4 Code, is amended by adding Section 382.0174 to read as follows:

5 Sec. 382.0174. EMISSION REDUCTION STRATEGIES FOR
6 GREENHOUSE GASES. (a) In this section, "greenhouse gas"
7 includes carbon dioxide, methane, nitrous oxide,
8 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

9 (b) Not later than October 31, 2008, the commission shall
10 prepare and deliver to each member of the legislature a report
11 including a list of strategies for reducing emissions of
12 greenhouse gases in this state that:

13 (1) may result in net savings for consumers or
14 businesses in this state; or

15 (2) can be achieved without financial cost to
16 consumers or businesses in this state.

17 (c) In preparing the list of emission reduction
18 strategies, the commission shall consider the strategies for
19 reducing the emissions of greenhouse gases that have been
20 implemented in other states or nations.

21 (d) In determining under Subsection (b) whether an
22 emission reduction strategy may result in a financial cost to
23 consumers or businesses in this state, the commission shall
24 consider the total net costs that may occur over the life of the
25 strategy, as opposed to the short-term capital costs that may
26 result from the implementation of the strategy.

27 (e) The commission may appoint advisory committees to
28 assist the commission in identifying and evaluating greenhouse
29 gas emission reduction strategies.

+

ADOPTED

Nation
Amy

MAY 22 2007

FLOOR AMENDMENT NO. 5

Letty Spaw
Secretary of the Senate

BY:

1 Amend C.S.H.B. No. 3732 by striking SECTION 3 of the
2 bill and substituting the following appropriately numbered
3 SECTION:

4 SECTION __. Section 382.0518, Health and Safety Code,
5 is amended by adding Subsection (c-1) to read as follows:

6 (c-1) In considering the issuance of a permit for a new
7 electric generating facility, the commission shall analyze and
8 consider:

9 (1) the cumulative effects of the facility's expected
10 emissions together with the cumulative effects of the authorized
11 emissions from all sources of pollution permitted under this
12 section, as well as all sources of pollution from electric
13 generating facility applications determined to be technically
14 complete, that are located within a radius of impact specified
15 by commission rule, or 200 km, whichever is greater; and

16 (2) whether the emissions from the facility will
17 cause an area to be designated a nonattainment area; or

18 (3) whether the emissions from the facility will
19 negatively affect compliance with the state implementation plan.

ADOPTED

FLOOR AMENDMENT NO. 6

MAY 22 2007

BY:

[Signature]
(Van de Putte)

[Signature]
Secretary of the Senate

1 Amend H.B. No. 3732, senate committee printing, as follows:

2 1.) On page 2, line 23, strike "hydrogen fuel cells derived
3 from such fuels".

4
5 2.) On page 2, line 23, after "solid waste," and before
6 "or" insert the following: "hydrogen derived from the
7 manufacture of chlorine, coke, or other chemical and
8 petrochemical production processes, hydrogen fuel cells powered
9 by such fuels,".

10 (3.) On page 2, line 35 strike the "." and insert the
11 following: "if any carbon dioxide is produced by the project.".

12 (4.) On page 4, line 40, between "hydrocarbons" and
13 "without" insert the following:

14 "or hydrogen".

15 (4.) On page 6, line 14, between "hydrocarbons" and
16 "without" insert the following: "or hydrogen".

ADOPTED

MAY 22 2007

Leta Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 7

BY: *Jim Blumenthal*

1 Amend C.S.H.B. No. 3732 (senate committee printing) by adding
2 the following appropriately numbered SECTION to the bill and
3 renumbering the subsequent SECTIONS accordingly:

4 SECTION _____. SELECTIVE CATALYTIC REDUCTION TECHNOLOGY OR
5 LOW TEMPERATURE OXIDATION TECHNOLOGY PILOT. (a) The Texas
6 Commission on Environmental Quality shall select one cement kiln
7 stack in a nonattainment or a near nonattainment area for the
8 purpose of a pilot test to determine the effectiveness of a
9 selective catalytic reduction technology or a low temperature
10 oxidation technology as an advanced control technology for reducing
11 the nitrogen oxides emissions from the cement kiln stack. The Texas
12 Commission on Environmental Quality shall select a selective
13 catalytic reduction technology or a low temperature oxidation
14 technology vendor to provide the selective catalytic reduction
15 technology or low temperature oxidation technology needed to
16 conduct the testing required by this subsection.

17 (b) The Texas Commission on Environmental Quality shall:

18 (1) conduct a feasibility study, design, supervise,
19 and monitor the testing required by Subsection (a) of this section
20 in consultation with:

21 (A) the selective catalytic reduction technology
22 or low temperature oxidation technology vendor selected by the
23 commission;

24 (B) the owner or operator of the cement kiln
25 stack selected for testing under Subsection (a) of this section;

26 (C) representatives of a regional council of
27 government of the region in which the cement kiln is located; and

28 (D) a representative of a citizen environmental
29 advocacy group active within the region; and

1 (2) verify the accuracy of the results of the testing.

2 (c) The Texas Commission on Environmental Quality may
3 accept and hold a gift or grant conditioned on its use for testing
4 advanced controls for nitrogen oxides emissions from cement kilns
5 in a nonattainment or near nonattainment area and use such gifts or
6 grants without an appropriation for the pilot test under this
7 section.

8 (d) The Texas Commission on Environmental Quality shall:

9 (1) not later than December 31, 2008, complete the
10 selective catalytic reduction technology or low temperature
11 oxidation technology testing required under Subsection (a) of this
12 section; and

13 (2) not later than January 1, 2009, prepare and
14 deliver to each member of the legislature a report describing:

15 (A) the results of the testing, including whether
16 any reduction in nitrogen oxides emissions resulted from the use of
17 the selective catalytic reduction technology or low temperature
18 oxidation technology; and

19 (B) the costs involved in the installation, use,
20 and maintenance of the selective catalytic reduction technology or
21 low temperature oxidation technology.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 14, 2007

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

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

IN RE: **HB3732** by Hardcastle (Relating to the implementation of advanced clean energy projects and other environmentally protective projects in this state.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3732, Committee Report 2nd House, Substituted: a negative impact of (\$30,000,000) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$30,000,000)
2009	\$0
2010	(\$30,000,000)
2011	\$0
2012	(\$30,000,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND</i> 1	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated--Ultraclean Energy Project</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated--Ultraclean Energy Project</i>	Change in Number of State Employees from FY 2007
2008	(\$30,000,000)	\$30,127,500	(\$10,127,500)	2.0
2009	\$0	\$127,500	(\$10,127,500)	2.0
2010	(\$30,000,000)	\$30,127,500	(\$10,127,500)	2.0
2011	\$0	\$127,500	(\$10,127,500)	2.0
2012	(\$30,000,000)	\$30,127,500	(\$10,127,500)	2.0

Fiscal Analysis

The bill would create the Ultraclean Energy Project Grant and Loan Program to encourage the development of ultraclean energy projects that produce reliable and affordable electric power in an environmentally protective manner. The program would be administered by the State Energy Conservation Office (SECO) located within the Office of the Comptroller. The bill would create the new General Revenue-Dedicated Ultraclean Energy Project (UCEP) Account within the General Revenue Fund. Money in the account could only be appropriated to the SECO to award grants or make or guarantee loans under the program.

The UCEP Account would consist of bonds issued by the Texas Public Finance Authority; the first \$30 million in revenues from gross receipt taxes from utilities collected in any biennium; appropriations by the Legislature to the account; gifts grants and donations; and interest earned on the investment of money in the account. From the proceeds of the gross receipt tax, the SECO would be authorized to award up to \$20 million in grants from the UCEP account each fiscal biennium and up to \$10 million to make or guarantee loans.

The Texas Public Finance Authority (TPFA) would be directed to issue general obligation bonds. Loans made or guaranteed from the proceeds of such bonds would have to satisfy conditions in the Texas Constitution, Article III, Section 49-p.

The Texas Commission on Environmental Quality would be required to establish a permitting procedure for ultraclean energy projects. The TCEQ would also be required to establish a nonexclusive list of facilities, devices or methods for the control of air, water or land pollution. The bill would provide various forms of tax relief, abatement, exemptions, and property appraisal limitations for ultraclean energy projects, including a tax exemption from the oil production tax for the enhanced recovery of anthropogenic carbon dioxide. The Railroad Commission and the TCEQ would be responsible for approving the enhanced recovery tax exemption applications.

The bill would require the SECO to establish the ultraclean energy grant and loan program by January 1, 2008. The SECO could provide for the recovery of fees and administrative expenses relating to the UCEP. The bill would require the TCEQ to adopt rules relating to the ultraclean energy project and rollback relief by January 1, 2008. The provision relating to the issuance of general obligation bonds by the TPFA would take effect only if the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage the use of carbon-free hydrogen energy were approved by the voters.

The bill would require the TCEQ and the SECO to issue a joint report to the Legislature by September 1, 2010 and again by September 1, 2016 providing an update on the status of implementation of the UCEP program.

Methodology

This estimate assumes that the transfers from gross receipt taxes to the newly created General Revenue-Dedicated UCEP Account would occur in the first year of each future biennium.

For the TPFA to issue the general obligation bonds required by the bill, a constitutional amendment would have to be passed and approved by voters to authorize the bonds. House Joint Resolution 93 proposes \$250 million in bonds for projects encouraging the use of carbon-free energy project loans. This estimate assumes that if the resolution were approved, such bond proceeds would only be used to guarantee loans to business entities; no General Revenue is expected to be needed for debt service because loan repayments would be used to repay the debt. The total debt service on such bonds is estimated at \$24.6 million for the 2008-09 biennium. If a portion of loans would default, the state could be liable for a portion of that debt service.

The above estimate includes salary and related costs for 2 FTE positions for the SECO to implement the ultraclean energy grant and loan programs. This estimate assumes such costs would be paid through fees assessed on applicants to cover the cost of administering the program (estimated to be \$127,500 per fiscal year), and that those fees would be deposited to the newly-created UCEP Account. This estimate assumes that the SECO would make \$10 million in grant awards out of the UCEP Account per year, or 50 percent of the biennial amount designated for such purposes. This estimate assumes that the \$10 million biennial allocation of UCEP Account funds for loans would not be spent; rather it would remain in the account to guarantee the loans.

The bill's exemption on the sale of electricity generated by an ultraclean energy project from gross receipts taxes would likely result in a loss in tax revenue to the state. The loss would depend on the number of ultraclean energy facilities that would become operational and the electricity sales associated with such facilities. The bill's expansion of the oil production tax exemption for anthropogenic carbon dioxide recovery also could result in a loss of tax revenue to the state. The loss

would depend on the number of producers choosing to capture oil using carbon dioxide from an anthropogenic source.

No significant administrative costs to the TCEQ, the Railroad Commission, or to the TPFA is expected as a result of the bill's passage.

Local Government Impact

Because of the bill's proposed tax abatements, local governments may see a reduction in tax revenue if existing coal energy projects located within their jurisdictions meet the qualifications of an ultraclean energy project. The reduction would depend upon the value of such an entity's property and the tax rate of the jurisdiction.

Source Agencies: 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

LBB Staff: JOB, WK, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 9, 2007

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

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

IN RE: HB3732 by Hardcastle (Relating to the implementation of ultraclean energy projects and other environmentally protective projects in this state.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3732, As Engrossed: a negative impact of (\$30,255,000) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$30,127,500)
2009	(\$127,500)
2010	(\$30,127,500)
2011	(\$127,500)
2012	(\$30,127,500)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND</i> 1	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated--Ultraclean Energy Project</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated--Ultraclean Energy Project</i>	Probable Savings/ (Cost) from <i>GENERAL REVENUE FUND</i> 1
2008	(\$30,000,000)	\$30,000,000	(\$10,000,000)	(\$127,500)
2009	\$0	\$0	(\$10,000,000)	(\$127,500)
2010	(\$30,000,000)	\$30,000,000	(\$10,000,000)	(\$127,500)
2011	\$0	\$0	(\$10,000,000)	(\$127,500)
2012	(\$30,000,000)	\$30,000,000	(\$10,000,000)	(\$127,500)

Fiscal Year	Change in Number of State Employees from FY 2007
2008	2.0
2009	2.0
2010	2.0
2011	2.0
2012	2.0

Fiscal Analysis

The bill would create the Ultraclean Energy Project Grant and Loan Program to encourage the

development of ultraclean energy projects that produce reliable and affordable electric power in an environmentally protective manner. The program would be administered by the State Energy Conservation Office (SECO) located within the Office of the Comptroller. The bill would create the new General Revenue-Dedicated Ultraclean Energy Project (UCEP) Account within the General Revenue Fund. Money in the account could only be appropriated to the SECO to award grants or make or guarantee loans under the program.

The UCEP Account would consist of bonds issued by the Texas Public Finance Authority; the first \$30 million in revenues from gross receipt taxes from utilities collected in any biennium; appropriations by the Legislature to the account; gifts grants and donations; and interest earned on the investment of money in the account. From the proceeds of the gross receipt tax, the SECO would be authorized to award up to \$20 million in grants from the UCEP account each fiscal biennium and up to \$10 million to make or guarantee loans.

The Texas Public Finance Authority (TPFA) would be directed to issue general obligation bonds. Loans made or guaranteed from the proceeds of such bonds would have to satisfy conditions in the Texas Constitution, Article III, Section 49-p.

The Texas Commission on Environmental Quality would be required to establish a permitting procedure for ultraclean energy projects. The TCEQ would also be required to establish a nonexclusive list of facilities, devices or methods for the control of air, water or land pollution. The bill would provide various forms of tax relief, abatement, exemptions, and property appraisal limitations for ultraclean energy projects, including a tax exemption from the oil production tax for the enhanced recovery of anthropogenic carbon dioxide. The Railroad Commission and the TCEQ would be responsible for approving the enhanced recovery tax exemption applications.

The bill would require the SECO to establish the ultraclean energy grant and loan program by January 1, 2008. The bill would require the TCEQ to adopt rules relating to the ultraclean energy project and rollback relief by January 1, 2008. The provision relating to the issuance of general obligation bonds by the TPFA would take effect only if the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage the use of carbon-free hydrogen energy were approved by the voters.

The bill would require the TCEQ and the SECO to issue a joint report to the Legislature by September 1, 2010 and again by September 1, 2016 providing an update on the status of implementation of the UCEP program.

Methodology

This estimate assumes that the transfers from gross receipt taxes to the newly created General Revenue-Dedicated UCEP Account would occur in the first year of each future biennium.

For the TPFA to issue the general obligation bonds required by the bill, a constitutional amendment would have to be passed and approved by voters to authorize the bonds. House Joint Resolution 93 proposes \$250 million in bonds for projects encouraging the use of carbon-free energy project loans. This estimate assumes that if the resolution were approved, such bond proceeds would only be used to guarantee loans to business entities; no General Revenue is expected to be needed for debt service because loan repayments would be used to repay the debt. The total debt service on such bonds is estimated at \$24.6 million for the 2008-09 biennium. If a portion of loans would default, the state could be liable for a portion of that debt service.

The above estimate includes salary and related costs for 2 FTE positions for the SECO to implement the ultraclean energy grant and loan programs. This estimate assumes such costs would be paid out of the General Revenue Fund because the bill does not provide for payment of administrative costs out of the newly created UCEP Account. This estimate assumes that the SECO would make \$10 million in grant awards out of the UCEP Account per year, or 50 percent of the biennial amount designated for such purposes. This estimate assumes that the \$10 million biennial allocation of UCEP Account funds for loans would not be spent; rather it would remain in the account to guarantee the loans.

The bill's exemption on the sale of electricity generated by an ultraclean energy project from gross receipts taxes would likely result in a loss in tax revenue to the state. The loss would depend on the number of ultraclean energy facilities that would become operational and the electricity sales associated with such facilities. The bill's expansion of the oil production tax exemption for anthropogenic carbon dioxide recovery also could result in a loss of tax revenue to the state. The loss would depend on the number of producers choosing to capture oil using carbon dioxide from an anthropogenic source.

No significant administrative costs to the TCEQ, the Railroad Commission, or to the TPFA is expected as a result of the bill's passage.

Local Government Impact

Because of the bill's proposed tax abatements, local governments may see a reduction in tax revenue if existing coal energy projects located within their jurisdictions meet the qualifications of an ultraclean energy project. The reduction would depend upon the value of such an entity's property and the tax rate of the jurisdiction.

Source Agencies: 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

LBB Staff: JOB, WK, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 18, 2007

TO: Honorable Rick Hardcastle, Chair, House Committee on Energy Resources

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

IN RE: HB3732 by Hardcastle (Relating to the implementation of ultraclean energy projects in this state.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3732, Committee Report 1st House, Substituted: a negative impact of (\$30,255,000) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$30,127,500)
2009	(\$127,500)
2010	(\$30,127,500)
2011	(\$127,500)
2012	(\$30,127,500)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND 1</i>	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated-Ultraclean Energy Project</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated-Ultraclean Energy Project</i>	Probable Savings/ (Cost) from <i>GENERAL REVENUE FUND 1</i>
2008	(\$30,000,000)	\$30,000,000	(\$10,000,000)	(\$127,500)
2009	\$0	\$0	(\$10,000,000)	(\$127,500)
2010	(\$30,000,000)	\$30,000,000	(\$10,000,000)	(\$127,500)
2011	\$0	\$0	(\$10,000,000)	(\$127,500)
2012	(\$30,000,000)	\$30,000,000	(\$10,000,000)	(\$127,500)

Fiscal Year	Change in Number of State Employees from FY 2007
2008	2.0
2009	2.0
2010	2.0
2011	2.0
2012	2.0

Fiscal Analysis

The bill would create the Ultraclean Energy Project Grant and Loan Program to encourage the

development of ultraclean energy projects that produce reliable and affordable electric power in an environmentally protective manner. The program would be administered by the State Energy Conservation Office (SECO) located within the Office of the Comptroller. The bill would create the new General Revenue-Dedicated Ultraclean Energy Project (UCEP) Account within the General Revenue Fund. Money in the account could only be appropriated to the SECO to award grants or make or guarantee loans under the program.

The UCEP Account would consist of bonds issued by the Texas Public Finance Authority; the first \$30 million in revenues from gross receipt taxes from utilities collected in any biennium; appropriations by the Legislature to the account; gifts grants and donations; and interest earned on the investment of money in the account. From the proceeds of the gross receipt tax, the SECO would be authorized to award up to \$20 million in grants from the UCEP account each fiscal biennium and up to \$10 million to make or guarantee loans.

The Texas Public Finance Authority (TPFA) would be directed to issue general obligation bonds. Loans made or guaranteed from the proceeds of such bonds would have to satisfy conditions in the Texas Constitution, Article III, Section 49-p.

The Texas Commission on Environmental Quality would be required to establish a permitting procedure for ultraclean energy projects. The TCEQ would also be required to establish a nonexclusive list of facilities, devices or methods for the control of air, water or land pollution. The bill would provide various forms of tax relief, abatement, exemptions, and property appraisal limitations for ultraclean energy projects.

The bill would require the SECO to establish the ultraclean energy grant and loan program by January 1, 2008. The bill would require the TCEQ to adopt rules relating to the ultraclean energy project and rollback relief by January 1, 2008. The provision relating to the issuance of general obligation bonds by the TPFA would take effect only if the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage the use of carbon-free hydrogen energy were approved by the voters.

Methodology

This estimate assumes that the transfers from gross receipt taxes to the newly created General Revenue-Dedicated UCEP Account would occur in the first year of each future biennium.

For the TPFA to issue the general obligation bonds required by the bill, a constitutional amendment would have to be passed and approved by voters to authorize the bonds. House Joint Resolution 93 proposes \$250 million in bonds for projects encouraging the use of carbon-free energy project loans. This estimate assumes that if the resolution were approved, such bond proceeds would only be used to guarantee loans to business entities; no General Revenue is expected to be needed for debt service because loan repayments would be used to repay the debt. The total debt service on such bonds is estimated at \$24.6 million for the 2008-09 biennium. If a portion of loans would default, the state could be liable for a portion of that debt service.

The above estimate includes salary and related costs for 2 FTE positions for the SECO to implement the ultraclean energy grant and loan programs. This estimate assumes such costs would be paid out of the General Revenue Fund because the bill does not provide for payment of administrative costs out of the newly created UCEP Account. This estimate assumes that the SECO would make \$10 million in grant awards out of the UCEP Account per year, or 50 percent of the biennial amount designated for such purposes. This estimate assumes that the \$10 million biennial allocation of UCEP Account funds for loans would not be spent; rather it would remain in the account to guarantee the loans.

The bill's exemption on the sale of electricity generated by an ultraclean energy project from gross receipts taxes would likely result in a loss in tax revenue to the state. The loss would depend on the number of ultraclean energy facilities that would become operational and the electricity sales associated with such facilities.

No significant administrative costs to the TCEQ or to the TPFA is expected as a result of the bill's

passage.

Local Government Impact

Because of the bill's proposed tax abatements, local governments may see a reduction in tax revenue if existing coal energy projects located within their jurisdictions meet the qualifications of an ultraclean energy project. The reduction would depend upon the value of such an entity's property and the tax rate of the jurisdiction.

Source Agencies: 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 4, 2007

TO: Honorable Rick Hardcastle, Chair, House Committee on Energy Resources

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

IN RE: HB3732 by Hardcastle (Relating to implementing ultraclean energy projects in this state.),
As Introduced

No significant fiscal implication to the State is anticipated.

The bill would provide incentives for the use of clean coal technology by offering tax abatements and expedited permit processing for ultraclean energy projects. The bills require the Texas Commission on Environmental Quality (TCEQ) to issue or deny a permit for an ultra clean energy project within one year after receiving an administratively complete permit application. The TCEQ also would be required to include all elements of modern coal-fired Electric Generating Facilities (EGFs) to the list of equipment eligible for property tax "rollback" abatements. The bills also propose to amend section 313.024 of the Tax Code to add ultraclean energy projects to the uses of property eligible for limitations on appraised value for tax purposes. The proposed legislation would also require the TCEQ to adopt rules to implement the bill's provisions no later than January 1, 2008.

The TCEQ reports that implementing this bill will not result in significant administrative costs to the agency.

Local Government Impact

Because the bill would add a new list of types of pollution control equipment that is eligible for rollback abatements and include ultraclean energy projects to the types of uses eligible for certain appraised property value limitations, the bill could result in a loss of revenue to local entities collecting property taxes. The loss would depend on the value of property associated with clean coal technologies and ultraclean energy projects that would have otherwise been implemented within an entity's jurisdiction and subject to such taxes absent the rollback abatements and the limitations on appraised value provided by the legislation.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

