

## **BILL ANALYSIS**

Senate Research Center

H.B. 469  
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Natural Resources  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas has an opportunity to become the first state in the United States with fully operational large-scale clean coal power plants that capture at least 70 percent of the carbon dioxide (CO<sub>2</sub>) they produce. In many cases, the captured CO<sub>2</sub> could be used for valuable enhanced oil recovery (EOR) projects, thus creating additional economic benefit to the state. The capture of 70 percent of CO<sub>2</sub> will meet some of the most stringent the emission standards in the United States.

Texas is well-suited to become a major repository for CO<sub>2</sub> capture. The Texas Bureau of Economic Geology at The University of Texas (bureau) estimates that as much as three to five billion barrels of additional Texas oil is available across the state to be recovered using CO<sub>2</sub> for EOR. Furthermore, Texas offers the nation many industrial and geological opportunities to use and store the vast amounts of CO<sub>2</sub> produced from burning coal for needed electric generation. Texas has the potential to become the low-cost provider of carbon sequestration services to the entire Southeastern United States.

H.B. 469 creates significant incentives for the development of clean coal technology. H.B. 469 directs the comptroller of public accounts to issue franchise tax credits of 10 percent of the total capital costs or \$100 million per qualifying project, whichever is less. Only the first three completed qualifying projects would be eligible, and the credits may not be claimed until each project is fully operational.

The bureau would monitor, measure, and verify the permanent status of sequestered CO<sub>2</sub> generated by the first three qualifying projects. H.B. 469 provides a payment schedule that qualifying projects must follow to reimburse BEG for the costs related to monitoring, measuring, and verifying the status of sequestered CO<sub>2</sub>.

Finally, H.B. 469 authorizes that the current reduced severance tax rate for manmade CO<sub>2</sub> used in enhanced oil recovery would apply to the use of CO<sub>2</sub> from clean energy projects for 30 years.

H.B. 469 relates to the establishment of incentives by this state for the implementation of certain projects to capture and sequester in geological formations carbon dioxide that would otherwise be emitted into the atmosphere.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 5 (Section 490.305, Government Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 6 (Section 120.002, Natural Resources Code) of this bill.

Rulemaking authority is expressly granted to Texas Commission on Environmental Quality in SECTION 7 (Section 11.31, Tax Code) and SECTION 8 (Section 26.045, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 490, Government Code, by adding Section 490.004, as follows:

Sec. 490.004. **ADVANCED CLEAN ENERGY PROJECTS.** (a) Requires an advanced clean energy project as defined by Section 382.003(1-a) (relating to the definition of "advanced clean energy project"), Health and Safety Code, notwithstanding any other provision of this chapter, to qualify in the same manner and to the same extent as a clean energy project as defined by Section 490.301 (Definition) for the tax incentives provided by this chapter.

(b) Requires that an advanced clean energy project that uses low-sulfur coal, for purposes of this section, to have an emission level of not more than 0.04 pounds of sulfur dioxide per million British thermal units as determined by a 30-day average.

SECTION 2. Amends the heading to Subchapter G, Chapter 490, Government Code, to read as follows:

**SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS**

SECTION 3. Amends Section 490.301, Government Code, to define "clean coal project" and "clean energy project."

SECTION 4. Amends the heading to Section 490.304, Government Code, to read as follows:

Sec. 490.304. **CONTRACTING AUTHORITY RELATED TO IMPLEMENTING CLEAN COAL PROJECT; FRANCHISE TAX CREDIT.**

SECTION 5. Amends Subchapter G, Chapter 490, Government Code, by adding Section 490.305, as follows:

Sec. 490.305. **FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT.** (a) Requires the comptroller of public accounts (comptroller) to adopt rules for issuing to an entity implementing a clean energy project in this state a franchise tax credit.

(b) Requires the comptroller to issue a franchise tax credit to an entity operating a clean energy project after the Railroad Commission of Texas (commission) has issued a certificate of compliance for the project to the entity as provided by Section 120.004, Natural Resources Code; the construction of the project has been completed; the carbon-fueled electric generating facility associated with the project is fully operational; and the Bureau of Economic Geology of The University of Texas at Austin (bureau) verifies to the comptroller that the carbon-fueled electric generating facility associated with the project is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility.

(b-1) Requires the Texas Commission on Environmental Quality (TCEQ) to accept and enforce as a permit condition a voluntary carbon dioxide emission limit used to qualify a project for the franchise tax credit described in Subsection (b).

(c) Provides that the total amount of the franchise tax credit that is authorized to be issued to the entity designated in the certificate of compliance for a clean energy project is equal to the lesser of: 10 percent of the total capital cost of the project, including the cost of designing, engineering, permitting, constructing, and commissioning the project, the cost of procuring land, water, and equipment for the project, and all fees, taxes, and commissions paid and other payments made in connection with the project but excluding the cost of financing the capital cost of the project; or \$100 million.

(d) Provides that the franchise tax credit is a credit against any franchise taxes that are authorized to be assessed against the income generated by a clean energy project from the generation and sale of power and the sale of any products that are produced directly or indirectly by the carbon-fueled process.

SECTION 6. Amends Subtitle D, Title 3, Natural Resources Code, by adding Chapter 120, as follows:

CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION  
OF CLEAN ENERGY PROJECT

Sec. 120.001. DEFINITIONS. Defines "bureau," "clean energy project," "commission," and "sequester."

Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a) Provides that the commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project.

(b) Authorizes an entity to apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. Requires that the application be accompanied by a certificate from a qualified independent engineer that the project is operational and meets the standards provided by Sections 120.001(2)(A) (relating to the megawatt capacity of a clean energy project), (B) (relating to the use of certain technology in a clean energy project), and (C) (relating to the use of certain technology in a clean energy project), and a fee payable to the commission.

(c) Provides that the amount of the fee prescribed by Subsection (b)(2)(relating to a fee payable to the commission) is \$50,000 unless the commission by rule determines that a fee in a greater amount is necessary to cover the commission's costs of processing an application.

Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE. (a) Requires that an entity operating a facility seeking a certification from the commission pursuant to Section 120.002 above be responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project has complied with the requirements of Section 490.305(b)(4) (relating to the bureau verifying that a project is sequestering a certain percentage of carbon dioxide), Government Code. Requires the entity to contract for the bureau to design initial protocols and standards for such a process; review the conduct of the process in order to make any necessary changes in the design of protocols and standards; evaluate the results of the process; provide an evaluation of such results to the commission; and determine whether to transmit to the comptroller the verification described in Section 490.305(b)(4), Government Code.

(b) Requires that the contract required by Subsection (a) of this section, unless otherwise agreed by the applying entity and the bureau, provide that the entity is required to compensate the bureau by paying eight annual fees, the first of which be due at least 24 months prior to the date that the entity first supplies carbon dioxide to an enhanced oil recovery project, according to the following schedule: a fee of \$700,000 in year one; a fee of \$1,300,000 in year two; a fee of \$1,800,000 in year three; a fee of \$1,500,000 in year four; a fee of \$1,200,000 in year five; a fee of \$900,000 in year six; a fee of \$500,000 in year seven; and a fee of \$200,000 in year eight.

Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a) Requires the commission, on verification that a project meets the requirements for certification as a clean energy project, to issue a certificate of compliance for the project to the entity operating the project and provide a copy of the certificate to the comptroller.

(b) Prohibits the commission from issuing a certificate of compliance for more than three clean energy projects.

(c) Provides that this subsection applies only to a certificate of compliance for a clean energy project that is issued after the initial certificate of compliance for a project. Provides that, notwithstanding Subsection (a):

(1) if at the time the commission issues the certificate at least one commercially designed electric generating facility operating in the United States and using integrated gasification combined cycle technology or another precombustion technology is capturing at least 75 percent of the carbon dioxide resulting from the generation of electricity by the facility, the commission is prohibited from issuing the certificate unless the clean energy project will capture at least 80 percent of the carbon dioxide resulting from the generation of electricity by the carbon-fueled electric generating facility associated with the project; and

(2) if at the time the commission issues the certificate at least one commercially designed electric generating facility operating in the United States and using integrated gasification combined cycle technology or another precombustion technology is capturing at least 85 percent of the carbon dioxide resulting from the generation of electricity by the facility, the commission is prohibited from issuing the certificate unless the clean energy project will capture at least 90 percent of the carbon dioxide resulting from the generation of electricity by the carbon-fueled electric generating facility associated with the project.

SECTION 7. Amends Section 11.31, Tax Code, by amending Subsection (k) and adding Subsection (n), as follows:

(k) Requires TCEQ to adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which is required to include certain facilities and systems, including property that, if a state or federal governmental entity, rather than the United States Environmental Protection Agency, adopts a final rule or regulation regulating carbon dioxide as a pollutant, is used, constructed, acquired, or installed wholly or partly to capture or transport carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.

(n) Prohibits a person, notwithstanding the other provisions of this section, from receiving an exemption under this section for property described by Subsection (k)(16) (relating to certain property that captures or transports carbon dioxide) unless the property was placed into service after September 1, 2009.

SECTION 8. Amends Section 26.045, Tax Code, by amending Subsection (f) and adding Subsection (j), as follows:

(f) Requires TCEQ to adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which are required to include certain facilities and systems, including property that, if a state or federal governmental entity, rather than the United States Environmental Protection Agency, adopt a final rule or regulation regulating carbon dioxide as a pollutant, is used, constructed, acquired, or installed wholly or partly to capture or transport carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.

(j) Prohibits a person, notwithstanding the other provisions of this section, from receiving an exemption under this section for property described by Subsection (f)(16) (relating to certain property that captures or transports carbon dioxide) unless the property was placed into service after September 1, 2009.

SECTION 9. Amends Section 202.0545, Tax Code, by amending Subsections (a), (c), and (f), and adding Subsections (i), (j), and (j-1), as follows:

(a) Provides that the producer of oil recovered through an enhanced oil recovery project that qualifies under Section 202.054 (Qualification of Oil from New or Expanded Enhanced Recovery Project for Special Tax Rate) for the recovered oil tax rate provided by Section 202.052(b) (relating to the rate of the tax imposed for oil produced in this state), subject to the limitations provided by this section, is entitled to an additional 50

percent reduction in that tax rate if in the recovery of the oil the enhanced oil recovery project uses carbon dioxide that is captured from an anthropogenic source in this state; would otherwise be released into the atmosphere as industrial emissions; is measurable at the source of capture; and is sequestered in one or more geological formations in this state following the enhanced oil recovery process. Deletes existing text providing that the producer of oil recovered through an enhanced oil recovery project that qualifies under Section 202.054 for the recovered oil tax rate provided by Section 202.052(b), subject to the limitations provided by this section, until the later of the seventh anniversary of the date that the comptroller first approves an application for a tax rate reduction under this section or the effective date of a final rule adopted by the United States Environmental Protection Agency regulating carbon dioxide as a pollutant, is captured from an anthropogenic source in this state; would otherwise be released into the atmosphere as industrial emissions; is measurable at the source of capture; and is sequestered in one or more geological formations in this state following the enhanced oil recovery process.

(c) Requires the operator, to qualify for the tax rate reduction under this section, to apply to the comptroller for the reduction and include with the application certain information and documentation; apply for a certification from certain agencies if carbon dioxide used in the project is to be sequestered in a certain reservoir; and have begun using carbon dioxide that satisfies the criteria of Subsection (a) in an enhanced oil recovery project not later than August 31, 2016.

(f) Requires the comptroller to approve the application if the operator submits the certification or certifications required by Subsection (c)(2) (relating to applying for a certification from certain agencies) and if the comptroller determines that the oil is otherwise eligible under this section and the operator meets the requirement specified by Subsection (c)(3) (relating to requiring the operator to have begun using carbon dioxide according to certain criteria).

(i) Provides that this section expires August 31, 2039.

(j) Requires that an advanced clean energy project as defined by Section 382.003(1-a) (relating to the definition of an "advanced clean energy project"), Health and Safety Code, notwithstanding any other provision of this section, qualify in the same manner and to the same extent as a clean energy project as defined by Section 490.301 (Definition), Government Code, for the tax incentives provided by this section.

(j-1) Requires that an advanced clean energy project that uses low-sulfur coal, for purposes of Subsection (j) of this section, have an emission level of not more than 0.04 pounds of sulfur dioxide per million British thermal units as determined by a 30-day average.

SECTION 10. Provides that Sections 11.31(k) and 26.045(f), Tax Code, as amended by this Act, apply only to ad valorem taxes imposed for a tax year beginning on or after January 1, 2010.

SECTION 11. Requires the comptroller to adopt rules under Section 490.305, Government Code, as added by this Act, not later than December 31, 2010.

SECTION 12. (a) Effective date, as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 11.31(k) and 26.045(f), Tax Code, as amended by this Act: January 1, 2010.