

BILL ANALYSIS

C.S.H.B. 469
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Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2008, the federally sponsored FutureGen project was awarded to Illinois rather than Texas. FutureGen is essentially a large-scale science experiment: a proposed coal gasification project in which power is generated from high hydrogen fuel, and carbon dioxide created by the project is captured and injected into geologic storage, thereby limiting carbon dioxide emissions into the atmosphere. Texas invested enormous effort into attracting FutureGen, including enacting incentives to attract the project. The principal incentives were a franchise tax credit for the project and an oil severance tax reduction for oil produced using carbon dioxide from the project.

C.S.H.B. 469 extends incentives to similar projects in Texas. The bill authorizes a franchise tax credit capped at \$100 million per project. The bill specifies that to qualify for the tax credit, a clean coal project must capture and be capable of sequestering in a geologic formation at least 70 percent of its carbon dioxide. The bill includes the Bureau of Economic Geology at The University of Texas at Austin to design, review, and evaluate protocols and standards for a monitoring, measuring, and verification process involving sequestered carbon dioxide. The bill extends to 30 years, from the current seven years, the oil severance tax reduction for enhanced recovery projects using anthropogenic carbon dioxide previously enacted for oil produced using carbon dioxide from such a project.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 4 and 7 and to Railroad Commission of Texas in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 469 amends the Government Code to establish a franchise tax credit for a clean energy project and makes conforming changes. The bill requires the comptroller of public accounts to adopt rules for issuing to an entity implementing a clean energy project in Texas a franchise tax credit.

C.S.H.B. 469 requires the comptroller to issue a franchise tax credit to an entity operating a clean energy project after the Railroad Commission of Texas has issued a certificate of compliance for the project to the entity, after the construction of the project has been completed, after the carbon-fueled electric generating facility associated with the project is fully operational, and after the Bureau of Economic Geology of The University of Texas at Austin verifies to the comptroller that such facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility.

C.S.H.B. 469 establishes 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 \$100 million or 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.

C.S.H.B. 469 establishes that the franchise tax credit is a credit against any franchise taxes that may 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. The bill authorizes the entity designated in the certificate of compliance for the project to assign the franchise tax credit to any other entity that has or acquires an interest in the income generated by the project.

C.S.H.B. 469 amends the Natural Resource Code to establish provisions regarding the verification, monitoring, and certification of a clean energy project. The bill establishes that the commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project. The bill 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. The bill requires the application to be accompanied by a certificate from a qualified independent engineer that the project is operational and meets certain standards under the definition of a "clean energy project" and by a fee payable to the commission. The bill establishes that the amount of the fee 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.

C.S.H.B. 469 requires an entity operating a facility seeking a certification from the commission to be responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project has complied with a requirement relating to a franchise tax credit for a clean energy project. The bill 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 under such requirement.

C.S.H.B. 469 requires such a contract, unless otherwise agreed by the applying entity and the bureau, to provide that the entity is required to compensate the bureau by paying eight annual fees, the first of which is required to 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.

C.S.H.B. 469 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 to provide a copy of the certificate to the comptroller. The bill prohibits the commission from issuing a certificate of compliance for more than three clean energy projects.

C.S.H.B. 469 defines "clean energy project" to mean a project to construct a carbon-fueled electric generating facility that will:

- have a capacity of at least 200 megawatts;

- use integrated gasification combined cycle or other pre-combustion technology;
- capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility;
- be capable of permanently sequestering in a geological formation the carbon dioxide captured; and
- be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project.

C.S.H.B. 469 defines "sequester" to mean the injection of carbon dioxide into a geological formation in a manner and under conditions that create a reasonable expectation that at least 99 percent of the carbon dioxide injected will remain sequestered from the atmosphere for at least 1,000 years. The bill defines "bureau" and "commission."

C.S.H.B. 469 amends the Tax Code to entitle the producer of oil recovered through an enhanced oil recovery project using carbon dioxide generated by a clean energy project to a tax rate reduction under the bill's provisions, notwithstanding other Tax Code provisions relating to an oil production tax exemption for enhanced recovery projects using anthropogenic carbon dioxide. The bill specifies that such a producer of oil is entitled to the tax rate reduction under the bill's provisions until the 30th anniversary of the date that the comptroller first approves an application for a tax rate reduction if the producer otherwise qualifies for the tax rate reduction.

C.S.H.B. 469 requires the comptroller to adopt rules under the bill's provisions not later than December 31, 2010.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 469 removes provisions from the original authorizing the governor to contract for the state with an organization for a purpose related to implementing a clean energy project; authorizing the governor and the comptroller of public accounts to adopt provisions for issuing to the entity with which the governor contracts not more than \$100 million in franchise tax credits to promote research and development activities related to a clean energy project in Texas; authorizing a franchise tax credit to be issued, in accordance with the governor's and comptroller's provisions, to the entity, irrespective of whether the entity owes or pays franchise tax under Texas law; and authorizing the entity to assign the tax credits to a taxable entity, as defined by state law, in accordance with the provisions adopted by the governor and comptroller.

C.S.H.B. 469 adds provisions not in the original requiring the comptroller to adopt rules for issuing to an entity implementing a clean energy project in Texas a franchise tax credit. The substitute adds provisions not in the original requiring the comptroller to issue a franchise tax credit to an entity operating a clean energy project after several conditions have been met. The substitute adds provisions not in the original establishing that the total amount of the franchise tax credit that may be issued to the entity designated in the certificate of compliance for a clean energy project is equal to the lesser of \$100 million or 10 percent of the total capital cost of the project. The substitute adds provisions not in the original clarifying that the franchise tax credit is a credit against any franchise taxes that may 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, and that the entity designated in the certificate of compliance for the project may assign the franchise tax credit to any other entity that has or acquires an interest in the income generated by the project.

C.S.H.B. 469 adds provisions not in the original establishing that the Railroad Commission of Texas is the authority responsible for certifying whether a project has met the requirements for a

clean energy project and sets forth provisions regarding the application for certification.

C.S.H.B. 469 adds provisions not in the original requiring an entity operating a facility seeking a certification from the commission to be responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project has complied with a requirement relating to a franchise tax credit for a clean energy project and sets forth provisions regarding such process. The substitute adds provisions not in the original that require a contract between an applying entity and the Bureau of Economic Geology of The University of Texas at Austin to provide that the entity is required to compensate the bureau by paying eight annual fees and that set forth a payment schedule.

C.S.H.B. 469 adds a provision not in the original requiring 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 to provide a copy of the certificate to the comptroller. The substitute adds a provision not in the original prohibiting the commission from issuing a certificate of compliance for more than three clean energy projects.

C.S.H.B. 469 removes a provision in the original requiring the bureau to monitor, measure, and verify the permanent status of sequestered carbon dioxide generated by the first three clean energy projects for which the governor contracts.

C.S.H.B. 469 adds provisions not in the original defining "sequester," "bureau," and "commission."

C.S.H.B. 469 differs from the original by specifying in the definition of "clean energy project" that such a project:

- is a project to construct a carbon-fueled electric generating facility, rather than a coal-fired electric generating facility;
- use pre-combustion technology other than integrated gasification combined cycle technology, as an alternative to using integrated gasification combined cycle technology;
- capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility, rather than being capable of capturing 60 percent of such carbon dioxide; and
- be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project.

C.S.H.B. 469 differs from the original by specifying that a producer of oil recovered through an enhanced oil recovery project using carbon dioxide generated by a clean energy project is entitled to a tax rate reduction until the 30th anniversary of the date the comptroller first approves an application for a tax rate reduction, rather than until the later of the 30th anniversary of the date that the producer first claims a tax rate reduction on a return or the effective date of a final rule adopted by the U.S. Environmental Protection Agency regulating carbon dioxide as a pollutant as in the original. The substitute removes provisions from the original specifying that the producer is entitled to the tax rate reduction if the agency to which the operator applies for a certification finds that, based on substantial evidence, there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 60 percent of the carbon dioxide sequestered in geologic formations in Texas will remain sequestered for at least 500 years.

C.S.H.B. 469 adds a provision not in the original requiring the comptroller to adopt rules provided under the substitute's provisions not later than December 31, 2010.