

## **BILL ANALYSIS**

Senate Research Center  
80R20213 E

C.S.H.B. 3732  
By: Hardcastle et al. (Averitt)  
Natural Resources  
5/15/2007  
Committee Report (Substituted)

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

As the population and the economy of Texas continue to grow, additional energy capacity will be needed. The method used to supply that additional energy is a matter of great concern to people across the state. It is in the best interest of the state that future energy sources be not only reliable, but also environmentally clean.

C.S.H.B. 3732 provides incentives for investment in advanced, clean energy technology.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission [Texas Commission on Environmental Quality] in SECTION 4 (Section 382.0566, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 5 (Section 11.31, Tax Code), SECTION 6 (Section 26.045, Tax Code), and SECTION 10 (Section 202.0545, Tax Code), of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 10 (Section 202.0545, Tax Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 10 (Section 202.0545, Tax Code) of this bill.

Rulemaking authority is expressly granted to the State Energy Conservation Office in SECTION 13 of this bill.

### **SECTION BY SECTION ANALYSIS**

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Chapter 447, Government Code, by adding Section 447.013, as follows:

Sec. 447.013. **ADVANCED CLEAN ENERGY PROJECT GRANT AND LOAN PROGRAM.** (a) Defines "account," "program," and "advanced clean energy project."

(b) Provides that the advanced clean energy project grant and loan program (program) is established to encourage the development of advanced clean energy projects in an environmentally protective manner. Provides that the program is administered by the State Energy Conservation Office (office).

(c) Provides that the advanced clean energy project account (account) is an account in the general revenue fund.

(d) Provides that the account consists of a sub-account in the account that consists of the proceeds of bonds issued under Subsection (j); revenues allocated to the account under Section 182.122, Tax Code; any amount appropriated by the

legislature for the account; gifts, grants, and other donations received for the account; and interest earned on the investment of money in the account.

(e) Authorizes the money in the account to be appropriated only to the office to award grants or to make or guarantee loans under this section. Prohibits the total amount of grants that are authorized to be awarded under this section in any state fiscal biennium from revenues described by Subsection (d)(2) from exceeding \$20 million. Prohibits the total amount of loans that may be made or guaranteed under this section in any state fiscal biennium from revenues described by Subsection (d)(2) from exceeding \$10 million.

(f) Requires the office, before awarding a grant or making a loan under this section, to enter into a written agreement with the entity to which the grant is to be awarded or the loan is to be made. Authorizes the agreement to specify that if, as of a date specified by the agreement, the entity has not used the grant or loan for the purposes for which the grant or loan was intended, the entity is required to repay the amount of the grant or the amount of the loan and any accrued interest, as applicable, under terms specified by the agreement.

(g) Authorizes the office, under this program, to award a grant to the managing entity of an advanced clean energy project in an amount not to exceed 50 percent of the total amount invested in the project by private industry sources. Requires the managing entity of the project to provide any information considered necessary by the office to determine whether the entity qualifies for the grant.

(h) Authorizes the office, under this program, to make or guarantee a loan to the managing entity of an advanced clean energy project in this state. Requires the project, if the loan or guarantee is to be funded by the proceeds of bonds issued under Subsection (j), to qualify for the loan or guarantee under Section 49-p, Article III, Texas Constitution.

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

(j) Requires the Texas Public Finance Authority to issue general obligation bonds in accordance with and subject to Chapter 1232, Government Code, for the purposes authorized by Section 49-p, Article III, Texas Constitution.

SECTION 2. Amends Section 382.003, Health and Safety Code, by adding Subdivisions (1-a), (3-a), (7-a), and (11-a), to define "advanced clean energy project," "coal," "federally qualified clean coal technology," and "solid waste."

SECTION 3. Amends Section 382.0518, Health and Safety Code, by adding Subsection (c-1), as follows:

(c-1) Requires TNRCC, in considering the issuance of a permit for a new electric generating facility, to analyze and consider certain factors.

SECTION 4. Amend Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.0566, as follows:

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) Requires the executive director of TNRCC to complete a technical review of the application, as authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete.

(b) Requires TNRCC to issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. Authorizes TNRCC to extend the deadline set out in this subsection up

to three months if it determines that the number of complex pending applications for permits under this chapter will prevent TNRCC from meeting the deadline imposed by this subsection without creating an extraordinary burden on TNRCC resources.

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

(d) Requires TNRCC to adopt rules to implement this section.

(e) Requires TNRCC, not later than September 1 of the years 2010, 2012, 2014, 2016, and 2018 to determine whether any element of the emissions profile specified by Section 382.003(1-a)(B) should be increased or decreased; to determine whether any other regulated pollutant should be added to the emissions profile; and to adopt rules adjusting the profile if the TNRCC determines an adjustment to be appropriate.

(f) Sets forth the factors TNRCC is required to consider under Subsection (e) in determining whether the emissions profile should be adjusted.

(g) Provides that any adjustment to the emissions profile that is adopted by TNRCC rule under Subsection (e) applies only to an application that the executive director has not declared to be administratively complete as of the date the rule is adopted.

(h) Prohibits TNRCC from considering any technology or level of emission reduction to be adequately demonstrated or achievable for purposes of a best available control technology analysis or lowest achievable emission rate analysis conducted by TNRCC under another provision of this chapter solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive under a law listed in Subsection (f)(3).

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

SECTION 5. Amends Section 11.31, Tax Code, by adding Subsections (k), (l), and (m), as follows:

(k) Requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules establishing a nonexclusive list of facilities, devices or methods for the control of air, water, or land pollution. Sets forth the required facilities, devices or methods that are to be included in the list.

(l) Requires TCEQ to by rule to update the list adopted under Subsection (k) at least once every three years. Prohibits an item from being removed from the list unless TCEQ finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.

(m) Requires the executive director of TCEQ (executive director), if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), to determine, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, that the facility, device or method described in the application is used wholly or partly as a facility, device, or

method for the control of air, water, or land pollution, and in the event that such a determination has been made, to take the actions that are required by Subsection (d); notwithstanding the other provisions of this section.

SECTION 6. Amends Section 26.045, Tax Code, as follows:

Sec. 26.045. ROLLBACK RELIEF FOR POLLUTION CONTROL REQUIREMENTS.

(a) Makes a conforming change.

(b) Makes no change this subsection.

(c) Makes a conforming change.

(d) Makes conforming and nonsubstantive changes.

(e) Makes a conforming change.

(f) Requires TCEQ to adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution. Sets forth the required facilities, devices, or methods that are required to be included in the list.

(g) Requires TCEQ by rule to update the list adopted under Subsection (f) at least once every three years. Prohibits an item from being removed from the list unless TCEQ finds compelling evidence to support the conclusion that the item does not render pollution control benefits.

(h) Requires the executive director, if the facility, device, or method for the control of air, water, or land pollution described in a permit application or in a request for any exemption from a permit that would otherwise be required is a facility, device, or method included on the list adopted under Subsection (f), to determine, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, that the facility, device, or method described in the permit application or in the request for an exemption from a permit that would otherwise be required is used wholly or partly as a facility, device, or method for the control of air water, or land pollution, and in the event that such a determination has been made, to take the actions that are required by Subsection (d); notwithstanding the other provisions of this section.

(i) Redesignated from existing Subsection (f). Makes a conforming change.

SECTION 7. Amends Section 182.022, Tax Code, by adding Subsection (c), as follows:

(c) Prohibits a tax under this chapter from being imposed on gross receipts from the sale of electricity generated by an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, notwithstanding the other provisions of this chapter.

SECTION 8. Amends Section 182.122, Tax Code, as follows:

Sec. 182.122. ALLOCATION OF TAX. (a) Creates this subsection from existing text.

(b) Requires the comptroller of public accounts to transfer to the advanced clean energy project account the first \$30 million of the revenues collected under this chapter that are allocated to the general revenue fund under Subsection (a)(2) in any state fiscal biennium.

SECTION 9. Amends Section 182.122, Tax Code, effective September 1, 2020, as follows:

Sec. 182.122. ALLOCATION OF TAX. Requires revenues collected under this chapter to be allocated one-fourth to the foundation school fund and three-fourths to the general revenue fund.

SECTION 10. Amends Subchapter B, Chapter 202, Tax Code, by adding Section 202.0545, as follows:

Sec. 202.0545. TAX EXEMPTION FOR ENHANCED RECOVERY PROJECTS USING ANTHROPOGENIC CARBON DIOXIDE. (a) Entitles 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), to an additional 50 percent reduction in that tax rate, until the United States Environmental Protection Agency or TCEQ adopts a final rule or regulation regulating carbon dioxide as a pollutant and subject to the limitations provided by this section, 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 emission; 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.

(b) Requires the tax reduction provided by Subsection (a), in the event that a portion of the carbon dioxide used in the enhanced oil recovery project is anthropogenic carbon dioxide that satisfies the criteria under Subsection (a) and a portion of the carbon dioxide used in the project fails to satisfy the criteria of Subsection (a) because it is not anthropogenic, to be reduced to reflect the proportion of the carbon dioxide used in the project that satisfies the criteria of Subsection (a).

(c) Requires the operation, to qualify for the tax rate reduction under this section, to apply to the comptroller for the reduction and include with the application any information and documentation that the comptroller may require, and to apply for a certification from certain agencies.

(d) Authorizes an agency to which an operator applies for a certification under Subsection (c)(2) to issue the certification only if the agency finds that, based on substantial evidence, there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide as required by Subsection (a)(4) will remain sequestered for at least 1,000 years; and that it includes appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.

(e-1) Sets forth circumstances in which the tax rate reduction does not apply.

(f) Requires the comptroller to approve the application if the operator submits the certification or certifications required by Subsection (c)(2) and if the comptroller determines that the oil is otherwise eligible under this section.

(g) Entitles the producer or producers of the oil, if, before the comptroller approves an application for the tax rate reduction under this section, the tax imposed by this chapter is paid at the rate provided by Section 202.052(a) or (b) on oil that qualifies under this section, to a credit against taxes imposed by this chapter in an amount equal to the difference between the tax paid on the oil and the tax due on the oil after the rate reduction under this section is applied. Provides that the credit is allowed to each producer according to the producer's proportionate share in the oil. Requires one or more of the producers of the oil, to receive a credit, to apply to the comptroller for the credit not later than the first anniversary of the date the oil is produced.

(h) Authorizes the comptroller, Railroad Commission of Texas, and TCEQ to adopt rules and establish procedures to implement and administer this section.

SECTION 11. Amends Section 313.024(b), Tax Code, as effective January 1, 2008, to include an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, rather than a gasification project for a coal and biomass mixture.

SECTION 12. Requires the office to issue, not later than September 1, 2015, a report to the legislature providing an assessment of whether the advanced clean energy program should be extended due to a continued need for incentives to ensure that a diverse range of affordable fuels, including lignite, can be utilized in a manner that achieves the lowest emission profile that is technically and economically feasible.

SECTION 13. Requires the office to adopt rules to establish the advanced clean energy grant and loan program under Section 447.013, Government Code, as added by this Act, not later than January 1, 2008.

SECTION 14. Provides that Section 382.0518(c-1), Health and Safety Code, as added by this Act, applies only to an application for a permit under Section 382.0518, Health and Safety Code, that is received by TCEQ on or after January 1, 2008.

SECTION 15. Requires TCEQ, not later than January 1, 2008, to adopt rules required under Section 382.0566, Health and Safety Code, and Section 11.31(k), Tax Code, as added by this Act, and Section 26.045(f), Tax Code, as amended by this Act.

SECTION 16. Provides that Section 447.013(j), Government Code, as added by this Act, takes effect contingent on 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 clean energy projects is approved by the voters.

SECTION 17. Effective date: upon passage or September 1, 2007, except as otherwise provided by this Act.