

BILL ANALYSIS

Senate Research Center

S.B. 2111
By: Averitt
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 80th Legislature, Regular Session, 2007, passed H.B. 3732, creating incentives for advanced clean energy projects. This bill implements changes necessary to expand these incentives and extends the governor's current authority to issue a matching grant to the winner of the "FutureGen" project to other qualifying advanced clean energy projects.

As proposed, S.B. 2111 provides that a clean coal project or an advanced clean energy project constitutes an opportunity for emerging technology suitable for consideration for grants, incentives, grant matching, and acquisition of research superiority. The bill establishes criteria and an interagency coordination process relating to the issuance of grants and loans to advanced clean energy projects. This bill also creates financial incentives for advanced clean energy projects by creating a sales tax exemption and clarifying provisions of local economic development tools to empower local taxing authorities to attract advanced clean energy projects to their communities.

[**Note:** 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.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 12 (Section 5.559, Water Code) and SECTION 13 (Section 27.022, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 17 of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 18 of this bill.

Rulemaking authority is expressly granted to the comptroller or public accounts in SECTION 19 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter G, Chapter 490, Government Code, to read as follows:

SUBCHAPTER G. CLEAN COAL PROJECTS AND ADVANCED CLEAN ENERGY PROJECTS

SECTION 2. Amends Section 490.301, Government Code, as follows:

Sec. 490.301. New heading: DEFINITIONS. Defines "advanced clean energy project" and makes nonsubstantive changes.

SECTION 2. [*sic*] Amends the heading to Section 490.302, Government Code, to read as follows:

Sec. 490.302. USE OF MONEY FOR CLEAN COAL PROJECT OR ADVANCED CLEAN ENERGY PROJECT.

SECTION 3. Amends Section 490.302, by adding Subsection (c), as follows:

(c) Provides that notwithstanding Section 490.102 (Allocation of Fund):

(1) until September 1, 2010, the governor is authorized to allocate money appropriated to the Texas emerging technology fund (fund) by the legislature to provide matching money for an advanced clean energy project as described by Chapter 393, Government Code, that captures not less than 70 percent of any carbon dioxide produced by the combustion of fuel and sequesters that captured carbon dioxide by geologic storage or other means; and

(2) beginning September 1, 2010, the governor is authorized to allocate money appropriated to the fund by the legislature to provide matching money for an advanced clean energy project as described by Chapter 393, Government Code, if the governor did not allocate money provided by Subdivision (1).

SECTION 4. Amends Section 490.303, Government Code, as follows:

Sec. 490.303. New heading: ELIGIBILITY OF CLEAN COAL PROJECT OR ADVANCED CLEAN ENERGY PROJECT FOR MONEY. Provides that notwithstanding any other provision of this subchapter, a clean coal project or an advanced clean energy project constitutes an opportunity for emerging technology suitable for consideration for a grant under Subchapter C (Texas Emerging Technology Fund), incentives as provided by Subchapter D (Incentives for Commercialization Activities), grant matching as provided by Subchapter E (Research Award Matching), and acquisition of research superiority under Subchapter F (Acquisition of Research Superiority).

SECTION 5. Amends Section 382.003, Health and Safety Code, by amending Subdivision (1-a) and adding Subdivision (7-c), to redefine "advanced clean energy project" and define "geologic storage."

SECTION 6. Amends Subtitle C, Title 5, Health and Safety Code, by adding Chapter 393, as follows:

CHAPTER 393. COMMISSION ADVANCED CLEAN ENERGY PROJECT GRANT AND LOAN PROGRAM. [*sic*]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 393.001. DEFINITIONS. Defines "account," "advanced clean energy project," "commission," and "program."

Sec. 393.002. PROGRAM. (a) Establishes the commission advanced clean energy project grant and loan program (program) to encourage the development of advanced clean energy projects. Requires the Texas Commission on Environmental Quality (TCEQ), under the program, to provide grants, or other financial incentives for eligible projects in order to accelerate the commercialization of technologies for the control of air contaminate emissions by electrical power generating facilities, including technologies to capture, transport, and store carbon dioxide in an environmentally protective manner.

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

(c) Sets forth the contents of the account.

(d) Authorizes money in the account to be appropriated only to TCEQ to award grants or service debt associated with the administration of the loan program

established by section [sic] 393.002 and funded by the proceeds of bonds issued under subsection [sic] (i).

(e) Authorizes TCEQ, under the program, to award a grant to the managing entity of an advanced clean energy project to assist in the funding of the front-end engineering and design portion of the project. Prohibits the total amount of grants awarded under this section for a project from exceeding 50 percent of the total amount invested in the front-end engineering and design portion of the project by private industry sources.

(f) Requires TCEQ, 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 TCEQ, under the program, to make or guarantee a loan to the managing entity of an advanced clean energy project in this state. Requires that the project, if the loan or guarantee is to be funded by the proceeds of bonds issued under Subsection (i), qualify for the loan or guarantee under Section 49-q [*this section of the constitution does not currently exist*], Article III (Legislative Department), Texas Constitution.

(h) 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 (Definitions), Government Code.

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

(j) Provides that this subsection applies only to an advanced clean energy project described by Section 490.302(c)(1), Government Code, and that the other provisions of this section apply to an advanced clean energy project described by Section 490.302(c)(1), Government Code, only to the extent they do not conflict with this subsection. Requires TCEQ, if the governor allocates funds to the account under Section 492.302(c)(1), to solicit proposals for the construction in this state of an advanced clean energy project described by that section, conduct a review of proposals submitted in conjunction with a review team made up of an equal number of representatives from the Railroad Commission of Texas, the Public Utility Commission of Texas, and the comptroller of public accounts' (comptroller) office, and distribute to the managing entity of the project selected an amount equal to 50 percent of the total amount invested in the project by private industry sources. Provides that the limitations provided by Subsection (e) on the purpose for which a grant under this section may be awarded and on the amount of a grant do not apply to a grant under this subsection. Requires the managing entity of the project to provide records as considered necessary by TCEQ to justify grants under this subsection. Prohibits the cumulative distributions under this subsection from exceeding \$200 million. Requires TCEQ to develop an application review process to implement this subsection that specifies the submission deadline, processing time frame, and award announcement schedule necessary to ensure that applications are evaluated in time to select a winner and make the initial distributions of money before September 1, 2010. Requires TCEQ, in conjunction with the review team, to develop application review criteria that take into consideration the criteria developed by TCEQ to evaluate grants or loans for advanced clean energy projects under the other provisions of this chapter. Requires that the application

review criteria give particular emphasis to the relative economic benefit of the proposed project to this state.

Sec. 393.003. GUIDELINES, CRITERIA, GRANT APPLICATIONS, AND PROJECT REQUIREMENTS. (a) Requires TCEQ to adopt grant guidelines and criteria, grant application criteria, and project requirements consistent with the requirements of sections [sic] 391.003-391.205, except that the documentation requirements of section [sic] 391.201(d) are prohibited from relating to baseline emission reductions, but rather shall relate to the ability of a project to meet the emissions profile in the definition of "advanced clean energy project" under section [sic] 382.003.

[Reserves Sections 393.004-393.400 for expansion.]

SECTION 7. Amends Section 151.318(a), Tax Code, by adding subsection [sic] (a)(12), to exempt certain items from the taxes imposed by this chapter if sold, leased, or rented to, or stored, used or consumed by a manufacturer, including components of tangible personal property that are used, constructed, acquired, or installed to capture carbon dioxide from an anthropogenic source, transport or inject carbon dioxide from such a source, or prepare carbon dioxide from such a source for transportation or injection, if the carbon dioxide is geologically sequestered, as part of an enhanced oil recovery project or otherwise, in this state.

SECTION 8. Amends Section 202.0545(a), Tax Code, as follows:

(a) Entitles 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 tax for oil produced in this state), subject to the limitations provided by this section, until the 10th anniversary of the date that the comptroller first approves an application for a tax rate reduction under this section, rather than 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, to an additional 50 percent reduction in that tax rate if in the recovery of the oil the enhanced oil recovery project uses certain forms of carbon dioxide.

SECTION 9. Amends Subchapter C, Chapter 312, Tax Code, by adding Section 312.404, as follows:

Sec. 312.404. TAX ABATEMENT AGREEMENT FOR ADVANCED CLEAN ENERGY PROJECT IN COUNTY REINVESTMENT ZONE. (a) Defines "advanced clean energy project."

(b) Authorizes an agreement made under this subchapter with the owner of property that is an advanced clean energy project to include a provision that defers the effective date of the agreement to a later date agreed to by the taxing unit and the owner of the property.

(c) Authorizes the agreement, if the effective date of an agreement is deferred under Subsection (b), to have a term ending not later than 10 years after the effective date of the agreement, notwithstanding Sections 312.204 (Municipal Tax Abatement Agreement) and 312.208 (Modification or Termination of Agreement).

SECTION 10. Amends Section 313.007, Tax Code, as follows:

Sec. 313.007. EXPIRATION. (a) Creates this subsection from existing text. Provides that Subchapters B (Limitation on Appraised Value of Certain Property Used to Create Jobs), C (Limitation on Appraised Value of Property in Certain Rural School Districts), and D (School Tax Credits) expire December 31, 2020, rather than December 31, 2011.

(b) Authorizes a school district, notwithstanding the other provisions of this chapter, to approve an application for a limitation on appraised value under Subchapter B or C on or after December 31, 2011, only if the applicant intends to use the property in connection with an advanced clean energy project, as defined by Section 382.003 (Definitions), Health and Safety Code.

SECTION 11. Amends Sections 313.021(1) and (4), Tax Code, to redefine "qualified investment" and "qualifying time period."

SECTION 12. Amends Subchapter M, Chapter 5, Water Code, by adding Section 5.559, as follows:

Sec. 5.559. **ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE.**

(a) Defines "advanced clean energy project."

(b) Requires the executive director of the Texas Natural Resource Conservation Commission (executive director), not later than nine months after the executive director declares an application for a permit under Chapter 26 (Water Quality Control) for an advanced clean energy project to be administratively complete, to complete the technical review of the application.

(c) Requires the Texas Natural Resource Conservation Commission (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 the resources of TNRCC.

(d) Provides that the permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter or Subchapters C (Contested Cases: General Rights and Procedures), D (Contested Cases: Evidence, Witnesses, and Discovery), E (Contested Cases: Testimony of Child), F (Contested Cases: Final Decisions and Orders; Motions for Rehearing), and G (Contested Cases: Judicial Review), Chapter 2001 (Administrative Procedure), Government Code, as applicable.

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

SECTION 13. Amends Subchapter B, Chapter 27, Water Code, by amending Section 27.022, as follows:

Sec. 27.022. New heading: **JURISDICTION OVER ANTHROPOGENIC CARBON DIOXIDE INJECTION.** (a) Creates this subsection from existing text. Provides that TNRCC has jurisdiction over the injection of anthropogenic carbon dioxide except as provided by Subchapter C-1, rather than over the injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

(b) Requires TNRCC to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this section.

SECTION 14. Amends Chapter 27, Water Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. INJECTION AND GEOLOGIC STORAGE OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 27.041. **JURISDICTION.** (a) Provides that the railroad commission has jurisdiction over injection of anthropogenic carbon dioxide into a reservoir that is initially productive of oil, gas, or geothermal resources or a saline formation directly above or below that

reservoir. Requires that any well initially completed under the jurisdiction of the railroad commission remain under the jurisdiction of the railroad commission, notwithstanding the well's subsequent use for the injection of anthropogenic carbon dioxide.

(b) Provides that this subchapter does not apply to the injection of fluid through the use of a Class II injection well as defined by 40 C.F.R. Section 144.6(b) (relating to wells which inject fluids) for the sole purpose of the enhanced recovery of oil or gas.

SECTION 15. Makes application of Section 393.002(i), Health and Safety Code, as added by this Act, contingent upon approval by the voters of the constitutional amendment proposed by the 81st Legislature, Regular Session, 2009, authorizing the issuance of general obligation bonds to provide and guarantee loans to encourage advanced clean energy projects.

SECTION 16. Repealer: Section 27.038 (Jurisdiction Over Carbon Dioxide Injection), Water Code.

SECTION 17. Requires TCEQ, not later than January 1, 2010, to adopt rules as necessary to implement Section 382.003, Health and Safety Code, as amended by this Act, Chapter 393, Health and Safety Code, as added by this Act, Section 5.559, Water Code, as added by this Act, Chapter 27, as mended [*sic*] by this Act.

SECTION 18. Authorizes the Railroad Commission of Texas to adopt rules, as necessary, to implement Section 202.0545, Tax Code, as amended by this Act, and Chapter 27, Water Code, as amended by this Act.

SECTION 19. Authorizes the comptroller to adopt rules, as necessary, to implement Section 202.0545, Tax Code, as amended by this Act.

SECTION 20. Makes application of Section 151.318, Tax Code, of this Act prospective.

SECTION 21. Effective date: upon passage or September 1, 2009.