

## **BILL ANALYSIS**

Senate Research Center  
81R23505 SMH-F

C.S.S.B. 2111  
By: Averitt  
Natural Resources  
4/16/2009  
Committee Report (Substituted)

### **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.

C.S.S.B. 2111 amends current law relating to the implementation of and incentives for projects involving the capture, transportation, injection, sequestration, geological storage, or abatement of carbon dioxide.

[**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 2 (Section 393.009, Health and Safety Code) and SECTION 6 (Section 5.559, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 11 of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 12 of this bill.

Rulemaking authority is expressly granted to the comptroller or public accounts in SECTION 13 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. 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 2. 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**

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 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.

Sec. 393.003. ACCOUNT. (a) Provides that the commission advanced clean energy project account (account) is an account in the general revenue fund.

(b) Sets forth the contents of the account.

(c) Authorizes money in the account to be appropriated only to TCEQ to award grants or make or guarantee loans under this chapter.

Sec. 393.004. GRANTS. (a) 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.

(b) 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.

Sec. 393.005. LOANS AND LOAN GUARANTEES. (a) Authorizes TCEQ, under the program, to make or guarantee a loan to the managing entity of an advanced clean energy project in this state.

(b) Requires that the project, if the loan or loan guarantee is to be funded by the proceeds of bonds issued under Section 393.008, qualify for the loan or guarantee under Section 49-q, Article III (Legislative Department), Texas Constitution.

Sec. 393.006. WRITTEN AGREEMENT. Requires TCEQ, before awarding a grant or making a loan under this chapter, 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.

Sec. 393.007. PURCHASE OF GOODS AND SERVICES FROM SMALL AND HISTORICALLY UNDERUTILIZED BUSINESSES. Provides that a recipient of a grant, loan, or loan guarantee under this chapter 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.

Sec. 393.008. ISSUANCE OF BONDS. 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.

Sec. 393.009. GUIDELINES AND CRITERIA, GRANT APPLICATIONS REQUIREMENTS, AND PROJECT REQUIREMENTS. Requires TCEQ by rule to adopt guidelines and criteria, grant application requirements, and project requirements that are consistent with the requirements of Section 391.003 and Subchapters B and C, Chapter 391, to the extent those provisions can be made applicable, except that rules adopted under this section in accordance with Section 391.201(d) must require a project document the ability of the project to meet the emissions profile in the definition of "advanced clean energy project" under Section 382.003.

SECTION 3. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.334, as follows:

Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED IN CONNECTION WITH GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE. Provides that components of tangible personal property are exempted from the taxes

imposed by this chapter if the components 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 and the carbon dioxide is geologically sequestered, as part of an enhanced oil recovery project or otherwise, in this state.

SECTION 4. Amends Section 202.0545(a), Tax Code, to entitle 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 30th 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 5. Amends Sections 313.021(1) and (4), Tax Code, to redefine "qualified investment" and "qualifying time period."

SECTION 6. 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 7. 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, except as provided by Subsection (b), has jurisdiction over geological storage carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir.

(b) Provides that the jurisdiction of the railroad commission over the geological storage of carbon dioxide in, and the injection of carbon dioxide into, a saline formation described by Subsection (a) of this section is subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 9 of the Act enacting this section.

(c) Provides that the railroad commission, except as provided by Subsection (b), has jurisdiction over a well used for the purpose provided by Subsection (a) regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and is converted to the purpose provided by Subsection (a).

SECTION 8. Repealer: Section 27.038 (Jurisdiction Over Carbon Dioxide Injection), Water Code.

SECTION 9. (a) Requires TCEQ and the railroad commission, in consultation with the Bureau of Economic Geology of The University of Texas at Austin, not later than December 1, 2010, to prepare and file with the legislature a joint preliminary report that analyzes, recommends, and assesses certain information.

(b) Sets forth certain required content of the preliminary report.

SECTION 10. Provides that Section 151.334, Tax Code, as added by this Act, does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 11. 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.

SECTION 12. Authorizes the Railroad Commission of Texas to adopt rules as necessary to implement Section 202.0545, Tax Code, as amended by this Act, and Subchapter C-1, Chapter 27, Water Code, as added by this Act.

SECTION 13. Authorizes the comptroller to adopt rules as necessary to implement Section 202.0545, Tax Code, as amended by this Act.

SECTION 14. Effective date, except as provided by Subsection (b) and (c): upon passage or September 1, 2009.

(b) Provides that Section 393.008, Health and Safety Code, as added by this Act, takes effect on the date on which 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 takes effect. Provides that Section 393.008, Health and Safety Code, as added by this Act, has no effect if that amendment is not approved by the voters.

(c) Provides that Section 393.009, Health and Safety Code, as added by this Act, takes effect September 1, 2009, but only if S.B. 16, Acts of the 81st Legislature, Regular Session, 2009, becomes law. Provides that, Section 393.009, Health and Safety Code, as added by this Act, has no effect if that bill does not become law.