

## **BILL ANALYSIS**

Senate Research Center

H.B. 2446  
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Natural Resources  
5/10/2013  
Engrossed

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

Industry experts explain that carbon dioxide has been used in enhanced oil recovery operations to recover oil in Texas for decades and that oil recovered from such operations constitutes as much as 25 percent of all oil recovered during that period. These experts estimate that tens of billions of barrels of additional oil could be recovered with conventional carbon dioxide enhanced oil recovery technologies. However, the experts agree that anthropogenic carbon dioxide must be taken into account in order to fully realize the potential of this type of oil recovery.

H.B. 2446 amends current law relating to the definitions of advanced clean energy projects and clean energy projects and to franchise tax credits for certain of those projects.

[**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 previously granted to the comptroller of public accounts of the State of Texas (comptroller) is modified in SECTION 1 (Section 171.652, Tax Code) of this bill.

Rulemaking authority is expressly granted to the comptroller in SECTION 7 of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 8 of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 9 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Transfers Subchapter H, Chapter 490, Government Code, to Chapter 171, Tax Code, redesignates it as Subchapter L, Chapter 171, Tax Code, and amends it as follows:

#### **SUBCHAPTER L. TAX CREDIT FOR CLEAN ENERGY PROJECT**

Sec. 171.651. DEFINITION. Redesignates existing Section 490.351 as Section 171.651. Defines, in this subchapter, "clean energy project."

Sec. 171.652. TAX CREDIT FOR CLEAN ENERGY PROJECT. Redesignates existing Section 490.352 as Section 171.652. (a) Requires the comptroller of public accounts of the State of Texas (comptroller) to adopt rules for issuing to an entity implementing a clean energy project in this state a credit against the tax imposed under this chapter, rather than a franchise tax credit. Provides that a clean energy project is eligible for a credit, rather than a franchise tax credit, only if the project is implemented in connection with the construction of a new facility.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Prohibits the total credit that a taxable entity is authorized to claim under this section for a report, including the amount of any carryforward credit, from exceeding the amount of franchise tax due by the taxable entity for the report after any applicable tax credits. Authorizes a taxable entity, if the taxable entity is eligible to claim a credit that exceeds the limitation of this subsection, to carry the unused credit forward for not more than 20 consecutive reports. Provides that a carryforward is considered the remaining portion of the credit that the taxable entity does not claim in the current year because of the limitation.

Deletes existing text providing that the amount of the franchise tax credit for each report year is calculated by determining the amount of franchise tax that is due based on the taxable margin generated by a clean energy project from the generation and sale of power and the sale of any products that are produced by the electric generation facility. Deletes existing text prohibiting the amount of the franchise tax credit claimed under this section for a report year from exceeding the amount of franchise tax attributable to the clean energy project for that report year.

(e) Authorizes the entity designated in the certificate of compliance for a clean energy project to assign the credit to one or more taxable entities. Authorizes a taxable entity to which the credit is assigned to claim the credit against the tax imposed under this chapter subject to the conditions and limitations of this subchapter.

(f) Prohibits the comptroller from issuing a credit under this section before the later of September 1, 2018 or the expiration of an agreement under Chapter 313 (Notice for Local and Special Laws) regarding the clean energy project for which the credit is issued, rather than before September 1, 2013. Deletes existing text providing that this subsection expires September 2, 2013.

SECTION 2. Amends Section 382.003(1-a), Health and Safety Code, as follows:

(1-a) Defines "advanced clean energy project" to mean a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the Texas Natural Resource Conservation Commission (TNRCC) on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(B) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(i) on an annual basis:

(a)-(b) Makes nonsubstantive changes; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology requirements as determined by TNRCC;

(ii) on an annual basis:

- (a) Makes nonsubstantive changes; or
- (b) if the project is designed for the use of one or more combustion turbines that burn natural gas, a mercury emission rate that complies with applicable federal requirements;
- (iii) an annual average emission rate for nitrogen oxides of:
  - (a)-(b) Makes nonsubstantive changes; or
  - (c) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and
- (iv) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and
- (C) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means.

SECTION 3. Amends Section 120.001(2), Natural Resources Code, to redefine "clean energy project."

SECTION 4. Amends Section 120.002(b), Natural Resources Code, as follows:

- (b) Authorizes an entity to apply to the Railroad Commission of Texas (railroad commission) for a certification that a project operated by the entity meets the requirements for a clean energy project. Prohibits an entity from submitting an application under this section before September 1, 2018. 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), (B), and (C) and a fee payable to the railroad commission.

SECTION 5. Amends Section 120.003(a), Natural Resources Code, to provide that an entity that applies to the railroad commission under Section 120.002 for a certification that a project operated by the entity meets the requirements for a clean energy project is responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project complies with the requirements of Section 171.652(b)(4), Tax Code, rather than Section 490.352(b)(4), Government Code.

SECTION 6. Amends Section 120.004(b), Natural Resources Code, as follows:

- (b) Prohibits the railroad commission from issuing a certificate of compliance for more than three clean energy projects. Prohibits more than one of the clean energy projects from being a natural gas project.

SECTION 7. Requires the comptroller, not later than January 1, 2014, to adopt rules necessary to implement Subchapter L, Chapter 171, Tax Code, as redesignated and amended by this Act.

SECTION 8. Requires the Texas Commission on Environmental Quality, not later than January 1, 2014, to adopt rules as necessary to implement the change in law made by this Act to Section 382.003 (Definitions), Health and Safety Code.

SECTION 9. Authorizes the railroad commission to adopt rules as necessary to implement the change in law made by this Act to Section 120.001, Natural Resources Code.

SECTION 10. Provides that the changes in law made by this Act do not apply to a clean energy project that includes a precombustion integrated gasification combined cycle technology with carbon capture and was selected by the United States Department of Energy for a Clean Coal

Power Initiative award before February 1, 2010. Provides that a clean energy project that includes a precombustion integrated gasification combined cycle technology with carbon capture and was selected by the United States Department of Energy for a Clean Coal Power Initiative award before February 1, 2010, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 11. Effective date: upon passage or September 1, 2013.