

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09

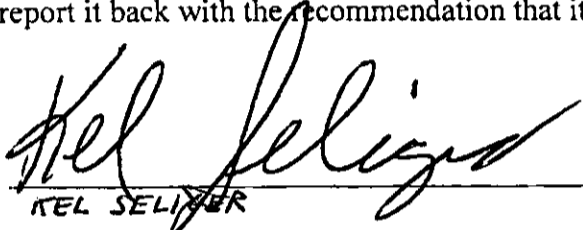
Date

Honorable David Dewhurst
President of the Senate

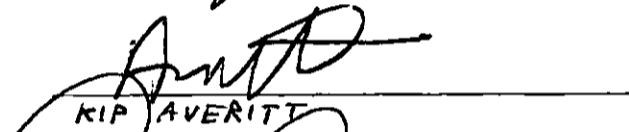
Honorable Joe Straus
Speaker of the House of Representatives

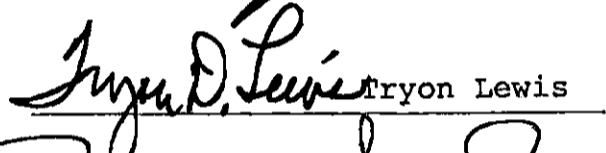
Sirs:

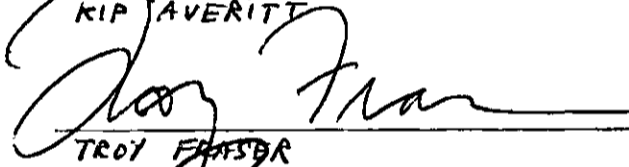
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 469 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

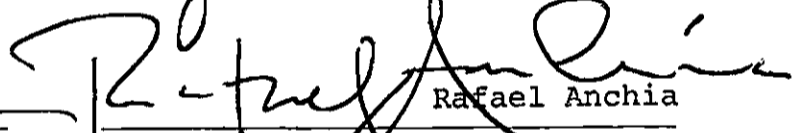

KEL SELINGER

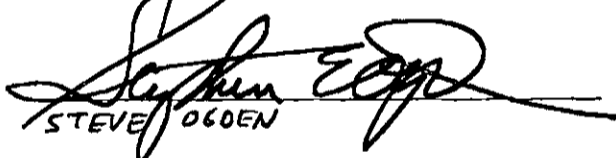

Phil King

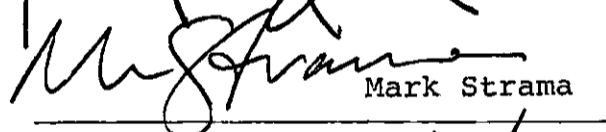

KIP AVERITT

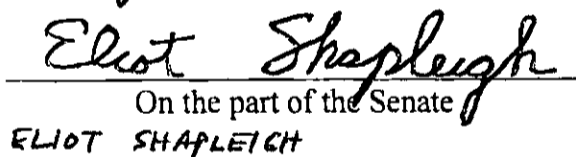

Tryon Lewis

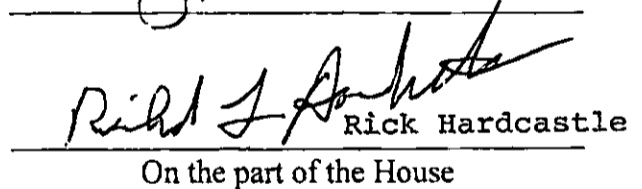

TROY FRAZIER


Rafael Anchia


STEVE OGDEN


Mark Strama


On the part of the Senate
ELIOT SHAPLEIGH


On the part of the House
Rick Hardcastle

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 469

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the establishment of incentives by this state for the
3 implementation of certain projects to capture and sequester carbon
4 dioxide that would otherwise be emitted into the atmosphere.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 490, Government Code, is amended by
7 adding Subchapter H to read as follows:

8 SUBCHAPTER H. FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT

9 Sec. 490.351. DEFINITION. In this subchapter, "clean
10 energy project" has the meaning assigned by Section 120.001,
11 Natural Resources Code.

12 Sec. 490.352. FRANCHISE TAX CREDIT FOR CLEAN ENERGY
13 PROJECT. (a) The comptroller shall adopt rules for issuing to an
14 entity implementing a clean energy project in this state a
15 franchise tax credit. A clean energy project is eligible for a
16 franchise tax credit only if the project is implemented in
17 connection with the construction of a new facility.

18 (b) The comptroller shall issue a franchise tax credit to an
19 entity operating a clean energy project after:

20 (1) the Railroad Commission of Texas has issued a
21 certificate of compliance for the project to the entity as provided
22 by Section 120.004, Natural Resources Code;

23 (2) the construction of the project has been
24 completed;

1 (3) the electric generating facility associated with
2 the project is fully operational;

3 (4) the Bureau of Economic Geology of The University
4 of Texas at Austin verifies to the comptroller that the electric
5 generating facility associated with the project is sequestering at
6 least 70 percent of the carbon dioxide resulting from or associated
7 with the generation of electricity by the facility; and

8 (5) the owner or operator of the project has entered
9 into an interconnection agreement relating to the project with the
10 Electric Reliability Council of Texas.

11 (c) The total amount of the franchise tax credit that may be
12 issued to the entity designated in the certificate of compliance
13 for a clean energy project is equal to the lesser of:

14 (1) 10 percent of the total capital cost of the
15 project, including the cost of designing, engineering, permitting,
16 constructing, and commissioning the project, the cost of procuring
17 land, water, and equipment for the project, and all fees, taxes, and
18 commissions paid and other payments made in connection with the
19 project but excluding the cost of financing the capital cost of the
20 project; or

21 (2) \$100 million.

22 (d) The amount of the franchise tax credit for each report
23 year is calculated by determining the amount of franchise tax that
24 is due based on the taxable margin generated by a clean energy
25 project from the generation and sale of power and the sale of any
26 products that are produced by the electric generation facility.
27 The amount of the franchise tax credit claimed under this section

1 for a report year may not exceed the amount of franchise tax
2 attributable to the clean energy project for that report year.

3 (e) The comptroller may not issue a franchise tax credit
4 under this section before September 1, 2013. This subsection
5 expires September 2, 2013.

6 SECTION 2. Section 382.003(1-a), Health and Safety Code, is
7 amended to read as follows:

8 (1-a) "Advanced clean energy project" means a project
9 for which an application for a permit or for an authorization to use
10 a standard permit under this chapter is received by the commission
11 on or after January 1, 2008, and before January 1, 2020, and that:

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

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

24 (i) on an annual basis a 99 percent or
25 greater reduction of sulfur dioxide emissions or, if the project is
26 designed for the use of feedstock substantially all of which is
27 subbituminous coal, an emission rate of 0.04 pounds or less of

1 sulfur dioxide per million British thermal units as determined by a
2 30-day average;

3 (ii) on an annual basis [7] a 95 percent or
4 greater reduction of mercury emissions;

5 (iii) [~~7~~ and] an annual average emission
6 rate for nitrogen oxides of:

7 (a) 0.05 pounds or less per million
8 British thermal units; or

9 (b) if the project uses gasification
10 technology, 0.034 pounds or less per million British thermal units;
11 and

12 (iv) an annual average emission rate for
13 filterable particulate matter of 0.015 pounds or less per million
14 British thermal units; and

15 (C) captures not less than 50 percent of the
16 [renders] carbon dioxide in the portion of the emissions stream
17 from the facility that is associated with the project and
18 sequesters that captured carbon dioxide by geologic storage or
19 other means [~~capable of capture, sequestration, or abatement if any~~
20 carbon dioxide is produced by the project].

21 SECTION 3. Subtitle D, Title 3, Natural Resources Code, is
22 amended by adding Chapter 120 to read as follows:

23 CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN
24 ENERGY PROJECT

25 Sec. 120.001. DEFINITIONS. In this chapter:

26 (1) "Bureau" means the Bureau of Economic Geology of
27 The University of Texas at Austin.

1 (2) "Clean energy project" means a project to
2 construct a coal-fueled or petroleum coke-fueled electric
3 generating facility, including a facility in which the fuel is
4 gasified before combustion, that will:

5 (A) have a capacity of at least 200 megawatts;

6 (B) meet the emissions profile for an advanced
7 clean energy project under Section 382.003(1-a)(B), Health and
8 Safety Code;

9 (C) capture at least 70 percent of the carbon
10 dioxide resulting from or associated with the generation of
11 electricity by the facility;

12 (D) be capable of permanently sequestering in a
13 geological formation the carbon dioxide captured; and

14 (E) be capable of supplying the carbon dioxide
15 captured for purposes of an enhanced oil recovery project.

16 (3) "Commission" means the Railroad Commission of
17 Texas.

18 (4) "Sequester" means to inject carbon dioxide into a
19 geological formation in a manner and under conditions that create a
20 reasonable expectation that at least 99 percent of the carbon
21 dioxide injected will remain sequestered from the atmosphere for at
22 least 1,000 years.

23 Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a)
24 The commission is the authority responsible for certifying whether
25 a project has met the requirements for a clean energy project.

26 (b) An entity may apply to the commission for a
27 certification that a project operated by the entity meets the

1 requirements for a clean energy project. The application must be
2 accompanied by:

3 (1) a certificate from a qualified independent
4 engineer that the project is operational and meets the standards
5 provided by Sections 120.001(2)(A), (B), and (C); and

6 (2) a fee payable to the commission.

7 (c) The amount of the fee prescribed by Subsection (b)(2) is
8 \$50,000 unless the commission by rule determines that a fee in a
9 greater amount is necessary to cover the commission's costs of
10 processing an application.

11 Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE.

12 (a) An entity that applies to the commission under Section 120.002
13 for a certification that a project operated by the entity meets the
14 requirements for a clean energy project is responsible for
15 conducting a monitoring, measuring, and verification process that
16 demonstrates that the project complies with the requirements of
17 Section 490.352(b)(4), Government Code.

18 (b) The entity shall contract with the bureau for the bureau
19 to:

20 (1) design initial protocols and standards for the
21 process described by Subsection (a);

22 (2) review the conduct of the process described by
23 Subsection (a) in order to make any necessary changes in the design
24 of the protocols and standards;

25 (3) evaluate the results of the process described by
26 Subsection (a);

27 (4) provide an evaluation of the results of the

1 process described by Subsection (a) to the commission; and

2 (5) determine whether to transmit to the comptroller
 3 the verification described by Section 490.352(b)(4), Government
 4 Code.

5 (c) Unless otherwise agreed by the entity and the bureau, a
 6 contract required by Subsection (b) must require the entity to
 7 compensate the bureau by paying an annual fee in accordance with the
 8 following schedule:

<u>Year</u>	<u>Amount</u>
<u>One</u>	<u>\$700,000</u>
<u>Two</u>	<u>\$1,300,000</u>
<u>Three</u>	<u>\$1,800,000</u>
<u>Four</u>	<u>\$1,500,000</u>
<u>Five</u>	<u>\$1,200,000</u>
<u>Six</u>	<u>\$900,000</u>
<u>Seven</u>	<u>\$500,000</u>
<u>Eight</u>	<u>\$200,000</u>

18 (d) The first payment under Subsection (c) is due not later
 19 than 24 months before the date the entity first supplies carbon
 20 dioxide captured by the project to an enhanced oil recovery
 21 project.

22 Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a)
 23 On verification that a project meets the requirements for
 24 certification as a clean energy project, the commission shall issue
 25 a certificate of compliance for the project to the entity operating
 26 the project and shall provide a copy of the certificate to the
 27 comptroller.

1 (b) The commission may not issue a certificate of compliance
2 for more than three clean energy projects.

3 SECTION 4. Subchapter H, Chapter 151, Tax Code, is amended
4 by adding Section 151.334 to read as follows:

5 Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED
6 IN CONNECTION WITH SEQUESTRATION OF CARBON DIOXIDE. Components of
7 tangible personal property used in connection with an advanced
8 clean energy project, as defined by Section 382.003, Health and
9 Safety Code, or a clean energy project, as defined by Section
10 120.001, Natural Resources Code, are exempted from the taxes
11 imposed by this chapter if:

12 (1) the components are installed to capture carbon
13 dioxide from an anthropogenic emission source, transport or inject
14 carbon dioxide from such a source, or prepare carbon dioxide from
15 such a source for transportation or injection; and

16 (2) the carbon dioxide is sequestered in this state:

17 (A) as part of an enhanced oil recovery project
18 that qualifies for a tax rate reduction under Section 202.0545, as
19 provided by Subsection (c) of that section; or

20 (B) in a manner and under conditions that create
21 a reasonable expectation that at least 99 percent of the carbon
22 dioxide will remain sequestered from the atmosphere for at least
23 1,000 years.

24 SECTION 5. Sections 202.0545(a) and (d), Tax Code, are
25 amended to read as follows:

26 (a) Subject to the limitations provided by this section,
27 until [~~the later of~~] the 30th [~~seventh~~] anniversary of the date that

1 the comptroller first approves an application for a tax rate
2 reduction under this section [~~or the effective date of a final rule~~
3 ~~adopted by the United States Environmental Protection Agency~~
4 ~~regulating carbon dioxide as a pollutant~~], the producer of oil
5 recovered through an enhanced oil recovery project that qualifies
6 under Section 202.054 for the recovered oil tax rate provided by
7 Section 202.052(b) is entitled to an additional 50 percent
8 reduction in that tax rate if in the recovery of the oil the
9 enhanced oil recovery project uses carbon dioxide that:

10 (1) is captured from an anthropogenic source in this
11 state;

12 (2) would otherwise be released into the atmosphere as
13 industrial emissions;

14 (3) is measurable at the source of capture; and

15 (4) is sequestered in one or more geological
16 formations in this state following the enhanced oil recovery
17 process.

18 (d) An agency to which an operator applies for a
19 certification under Subsection (c)(2) may issue the certification
20 only if the agency finds that, based on substantial evidence, there
21 is a reasonable expectation that:

22 (1) [~~the operator's planned sequestration program will~~
23 ~~ensure that~~] at least 99 percent of the carbon dioxide sequestered
24 as required by Subsection (a)(4) will remain sequestered for at
25 least 1,000 years; and

26 (2) the operator's planned sequestration program will
27 include appropriately designed monitoring and verification

1 measures that will be employed for a period sufficient to
2 demonstrate whether the sequestration program is performing as
3 expected.

4 SECTION 6. Section 313.021(4), Tax Code, is amended to read
5 as follows:

6 (4) "Qualifying time period" means:

7 (A) the first two tax years that begin on or after
8 the date a person's application for a limitation on appraised value
9 under this subchapter is approved, except as provided by Paragraph
10 (B) or (C); ~~[or]~~

11 (B) in connection with a nuclear electric power
12 generation facility, the first seven tax years that begin on or
13 after the third anniversary of the date the school district
14 approves the property owner's application for a limitation on
15 appraised value under this subchapter, unless a shorter time period
16 is agreed to by the governing body of the school district and the
17 property owner; or

18 (C) in connection with an advanced clean energy
19 project, as defined by Section 382.003, Health and Safety Code, the
20 first five tax years that begin on or after the third anniversary of
21 the date the school district approves the property owner's
22 application for a limitation on appraised value under this
23 subchapter, unless a shorter time period is agreed to by the
24 governing body of the school district and the property owner.

25 SECTION 7. (a) Not later than September 1, 2010, September
26 1, 2012, and September 1, 2016, the Texas Commission on
27 Environmental Quality shall make recommendations to the

1 legislature on whether the emissions profile set out in Sections
2 120.001(2)(B) and (C), Natural Resources Code, as added by this
3 Act, and Sections 382.003(1-a)(B) and (C), Health and Safety Code,
4 as amended by this Act, should be adjusted to increase or decrease
5 elements of the emissions profile. Before making its
6 recommendations, the commission shall determine whether any
7 commercially demonstrated electric generating facility operating
8 in the United States that meets the criteria and emissions profile
9 specified by Section 120.001(2), Natural Resources Code, as added
10 by this Act, is capturing and sequestering a greater percentage of
11 the carbon dioxide in the emissions stream from the facility than
12 would be required to meet the emissions profile set out in that
13 subdivision and whether any commercially demonstrated electric
14 generating facility operating in the United States that meets the
15 criteria and emissions profile specified by Sections
16 382.003(1-a)(A), (B), and (C), Health and Safety Code, as amended
17 by this Act, is capturing and sequestering a greater percentage of
18 the carbon dioxide in the emissions stream from the facility than
19 would be required to meet the emissions profile set out in those
20 paragraphs. If at least one such facility exists, the commission
21 shall recommend raising the minimum percentage of carbon dioxide in
22 the emissions stream from a facility that is required to be captured
23 and sequestered for the facility to qualify as a clean energy
24 project or advanced clean energy project to the highest percentage
25 of carbon dioxide that is being captured and sequestered by such a
26 facility.

27 (b) Factors that must be considered in the assessment of the

1 emissions profile include:

2 (1) the technical and economic feasibility of meeting
3 all of the elements of the emissions profile set out in Sections
4 120.001(2)(B) and (C), Natural Resources Code, as added by this
5 Act, or Sections 382.003(1-a)(A), (B), and (C), Health and Safety
6 Code, as amended by this Act, in a commercially viable project, as
7 documented by the United States Department of Energy;

8 (2) the technical and economic feasibility of projects
9 to meet all of the elements of the emissions profile and still use a
10 diverse range of fuels, including lignite; and

11 (3) the adequacy of the incentives provided by this
12 Act, or similar legislation that becomes law, to continue to
13 attract investment in and federal funding for clean energy projects
14 and advanced clean energy projects in this state.

15 (c) Any adjustments to the emissions profile implemented by
16 the legislature in response to a report required by this section do
17 not apply to an application considered administratively complete on
18 or before the date the adjustment takes effect.

19 SECTION 8. The comptroller shall adopt rules under Section
20 490.352, Government Code, as added by this Act, not later than
21 December 31, 2010.

22 SECTION 9. Not later than January 1, 2010, the Texas
23 Commission on Environmental Quality shall adopt rules as necessary
24 to implement Section 382.003, Health and Safety Code, as amended by
25 this Act.

26 SECTION 10. Section 151.334, Tax Code, as added by this Act,
27 does not affect taxes imposed before the effective date of this Act,

1 and the law in effect before the effective date of this Act is
2 continued in effect for purposes of the liability for and
3 collection of those taxes.

4 SECTION 11. The Railroad Commission of Texas may adopt
5 rules as necessary to implement Section 202.0545, Tax Code, as
6 amended by this Act.

7 SECTION 12. The comptroller of public accounts may adopt
8 rules as necessary to implement Section 202.0545, Tax Code, as
9 amended by this Act.

10 SECTION 13. This Act takes effect September 1, 2009.

House Bill 469
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 1. Subchapter A, Chapter 490, Government Code, is amended by adding Section 490.004 to read as follows:

Sec. 490.004. ADVANCED CLEAN ENERGY PROJECTS. (a) Notwithstanding any other provision of this chapter, an advanced clean energy project as defined by Section 382.003(1-a), Health and Safety Code, shall qualify in the same manner and to the same extent as a clean energy project as defined by Section 490.301 for the tax incentives provided by this chapter.

(b) For purposes of this section, an advanced clean energy project that uses low-sulfur coal shall have an emission level of not more than 0.04 pounds of sulfur dioxide per million British thermal units as determined by a 30-day average.

SECTION 2. The heading to Subchapter G, Chapter 490, Government Code, is amended to read as follows:
SUBCHAPTER G. CLEAN COAL PROJECTS AND CLEAN ENERGY PROJECTS

SECTION 3. Section 490.301, Government Code, is amended to add a definition for "clean energy project."

SECTION 4. The heading to Section 490.304, Government Code, is amended to read as follows:
Sec. 490.304. CONTRACTING AUTHORITY RELATED TO IMPLEMENTING CLEAN COAL

No equivalent provision.

SECTION __. Chapter 490, Government Code, is amended by adding Subchapter H to read as follows:
SUBCHAPTER H. CLEAN ENERGY PROJECTS

Sec. 490.351. Same as House version.

No equivalent provision.

Same as Senate version.

SECTION 1. Same as Senate version, except changes the heading to FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT.

Same as Senate version.

Same as Senate version.

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Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

PROJECT; FRANCHISE TAX CREDIT.

SECTION 5. Subchapter G, Chapter 490, Government Code, is amended by adding Section 490.305 to read as follows:

Sec. 490.305. FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT.

(a) The comptroller shall adopt rules for issuing to an entity implementing a clean energy project in this state a franchise tax credit.

(b) The comptroller shall issue a franchise tax credit to an entity operating a clean energy project after:

(1) the Railroad Commission of Texas has issued a certificate of compliance for the project to the entity as provided by Section 120.004, Natural Resources Code;

(2) the construction of the project has been completed;

(3) the carbon-fueled electric generating facility associated with the project is fully operational; and

(4) the Bureau of Economic Geology of The University of Texas at Austin verifies to the comptroller that the carbon-fueled electric generating facility associated with the project is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility.

(b-1) The Texas Commission on Environmental Quality shall accept and enforce as a permit condition a voluntary carbon dioxide emission limit used to qualify a project for the franchise tax credit described in

Sec. 490.352. FRANCHISE TAX CREDIT FOR CLEAN ENERGY PROJECT.

(a) The comptroller shall adopt rules for issuing to an entity implementing a clean energy project in this state a franchise tax credit.

(b) The comptroller shall make a decision whether to issue a franchise tax credit to an entity operating a clean energy project where:

(1) the Railroad Commission of Texas has issued a certificate of compliance for the project to the entity as provided by Section 120.004, Natural Resources Code;

(2) the construction of the project has been completed;

(3) the electric generating facility associated with the project is fully operational;

(4) the Bureau of Economic Geology of The University of Texas at Austin verifies to the comptroller that the electric generating facility associated with the project is sequestering at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility.

(5) The project's owners or operators have signed an interconnection agreement with the Electric Reliability Commission of Texas; and

(6) The comptroller has determined that the project has

Same as Senate version, except amends (a) to add a provision establishing that a clean energy project is eligible for a franchise tax credit only if the project is implemented in connection with the construction of a new facility.

Amends (b) to require the comptroller to issue the tax credit after certain conditions are met, rather than requiring the comptroller to make a decision whether to issue the tax credit where those conditions are met.

Amends (5) to establish that the owner or operator of the project has entered into an interconnection agreement relating to the project with the Electric Reliability Council of Texas, rather than that the project's owners and operators have signed such an agreement. Omits (6).

Amends (d) to establish 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. Removes provisions authorizing the designated entity to assign the franchise tax credit to certain other entities and requiring the assigning entity to inform the comptroller of all persons and entities receiving the credit. Adds a provision prohibiting the amount of the franchise tax credit claimed under this section for a report year from exceeding the amount of

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HOUSE VERSION

Subsection (b).

(c) 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:

- (1) 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; or
- (2) \$100 million.

(d) 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.

SENATE VERSION

the likelihood to generate taxable income within a reasonable time sufficient to substantially repay any franchise tax credits issued under this act

(c) 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:

- (1) 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; or
- (2) \$100 million.

(d) 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 electric generation facility. 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. Prior to the assignment of franchise tax credits under this section, the assigning entity must inform the comptroller in writing by a method to be determined by the comptroller the names and identifying information of all persons and entities receiving the credits.

CONFERENCE

franchise tax attributable to the clean energy project for that report year. Removes Section 490.353.

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CONFERENCE

(e) The comptroller may not issue a franchise tax credit under this section before September 1, 2013. This subsection expires September 2, 2013.

Sec. 490.353. USE OF MONEY FOR CLEAN ENERGY PROJECTS. (a) Notwithstanding Section 490.102, the governor may allocate under this section proceeds deposited in the fund to eligible applicants if the governor has the express written agreement of the lieutenant governor and the speaker of the house of representatives to do so.

(b) An allocation under this section may take the form of an investment in the form of equity, a convertible note, a debt instrument, a grant, a matching grant, or any combination of those methods.

(c) Before making an allocation under this subchapter, the governor shall enter into a written agreement with the entity to which the allocation is to be awarded.

(d) An applicant for an allocation under this section must provide any information considered necessary by the governor to determine whether the applicant qualifies for an allocation.

(e) In addition to any other provisions of this chapter, a clean energy project constitutes an opportunity for emerging technology suitable for consideration for an allocation under this section. Sections 490.102 and 490.103 and Subchapters D, E, and F do not apply to an allocation made pursuant to this section.

No equivalent provision.

SECTION __. Section 382.003(1-a), Health and Safety

SECTION 2. Same as Senate version.

House Bill 469
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Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Code, is amended to read as follows:

(1-a) "Advanced clean energy project" means 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 commission on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, 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 99 percent or greater reduction of sulfur dioxide emissions or, if the project is designed for the use of feedstock substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average;

(ii) on an annual basis [7] a 95 percent or greater reduction of mercury emissions;

(iii) [~~7~~ and] an annual average emission rate for nitrogen

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oxides of;
(a) 0.05 pounds or less per million British thermal units;
or
(b) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; 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 [renders] 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 [capable of capture, sequestration, or abatement if any carbon dioxide is produced by the project].

SECTION 6. Subtitle D, Title 3, Natural Resources Code, is amended by adding Chapter 120 to read as follows:

CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN ENERGY PROJECT

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Bureau" means the Bureau of Economic Geology of The University of Texas at Austin.

(2) "Clean energy project" means a project to construct a carbon-fueled electric generating facility that will:

SECTION 5. Subtitle D, Title 3, Natural Resources Code, is amended by adding Chapter 120 to read as follows:

CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN ENERGY PROJECT

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Bureau" means the Bureau of Economic Geology of The University of Texas at Austin.

(2) "Clean energy project" means a project to construct a coal-fueled or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified

SECTION 3. Same as Senate version.

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(A) have a capacity of at least 200 megawatts;
(B) use integrated gasification combined cycle or other pre-combustion technology;

(C) capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility;

(D) be capable of permanently sequestering in a geological formation the carbon dioxide captured;

(E) be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project; and

(F) have emission limits in its permit that are below 0.034 lbs. per million Btu nitrogen oxides, 0.016 lbs. per million Btu sulfur dioxide, 0.022 lbs. per million Btu particulate matter, and 0.0015 lbs. per million Btu volatile organic compounds.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Sequester" means 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.

Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a) The commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project.

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before combustion, that will:

(A) have a capacity of at least 200 megawatts;

(B) meet the emissions profile for an advanced clean energy project under Section 382.003(1-a)(B), Health and Safety Code;

(C) capture at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility;

(D) be capable of permanently sequestering in a geological formation the carbon dioxide captured; and

(E) be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Sequester" means to inject 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.

\Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a) The commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project.

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(b) An entity may apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. The application must be accompanied by:

(1) 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
(2) a fee payable to the commission.

(c) The amount of the fee prescribed by Subsection (b)(2) 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.

Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE. (a) An entity operating a facility seeking a certification from the Railroad Commission of Texas pursuant to Section 120.002 above shall be responsible

for conducting a monitoring, measuring, and verification process that demonstrates that the project has complied with the requirements of Section 490.305(b)(4), Government Code.

The entity shall contract for the Bureau of Economic Geology of The University of Texas at Austin 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;

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(b) An entity may apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. The application must be accompanied by:

(1) 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
(2) a fee payable to the commission.

(c) The amount of the fee prescribed by Subsection (b)(2) 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.

Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE. (a) An entity that applies to the 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 490.352(b)(4), Government Code.

(b) The entity shall contract with the bureau for the bureau to:

(1) design initial protocols and standards for the process described by Subsection (a);

(2) review the conduct of the process described by Subsection (a) in order to make any necessary changes in the design of the protocols and standards;

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evaluate the results of the process;

provide an evaluation of such results to the Railroad Commission of Texas; and

determine whether to transmit to the comptroller the verification described in Section 490.305(b)(4), Government Code.

(b) Unless otherwise agreed by the applying entity and the Bureau of Economic Geology of The University of Texas at Austin,

the contract required by Subsection (a) of this section shall provide that the entity shall compensate the Bureau of Economic Geology at The University of Texas at Austin by paying eight annual fees, the first of which shall 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.

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(3) evaluate the results of the process described by Subsection (a);

(4) provide an evaluation of the results of the process described by Subsection (a) to the commission; and

(5) determine whether to transmit to the comptroller the verification described by Section 490.352(b)(4), Government Code.

(c) Unless otherwise agreed by the entity and the bureau,

a contract required by Subsection (b) must require the entity to compensate the bureau by paying an annual fee in accordance with the following schedule:

<u>Year</u>	<u>Amount</u>
<u>One</u>	<u>\$700,000</u>
<u>Two</u>	<u>\$1,300,000</u>
<u>Three</u>	<u>\$1,800,000</u>
<u>Four</u>	<u>\$1,500,000</u>
<u>Five</u>	<u>\$1,200,000</u>
<u>Six</u>	<u>\$900,000</u>
<u>Seven</u>	<u>\$500,000</u>
<u>Eight</u>	<u>\$200,000</u>

(d) The first payment under Subsection (c) is due not later than 24 months before the date the entity first supplies carbon dioxide captured by the project to an

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Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a) On verification that a project meets the requirements for certification as a clean energy project, the commission shall issue a certificate of compliance for the project to the entity operating the project and shall provide a copy of the certificate to the comptroller.

(b) The commission may not issue a certificate of compliance for more than three clean energy projects.

(c) This subsection applies only to a certificate of compliance for a clean energy project that is issued after the initial certificate of compliance for a project. Notwithstanding Subsection (a):

(1) if at the time the commission issues the certificate at least one commercially designed electric generating facility operating in the United States and using integrated gasification combined cycle technology or another precombustion technology is capturing at least 75 percent of the carbon dioxide resulting from the generation of electricity by the facility, the commission may not issue the certificate unless the clean energy project will capture at least 80 percent of the carbon dioxide resulting from the generation of electricity by the carbon-fueled electric generating facility associated with the project; and

(2) if at the time the commission issues the certificate at least one commercially designed electric generating facility operating in the United States and using

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enhanced oil recovery project.

Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a) On verification that a project meets the requirements for certification as a clean energy project, the commission shall issue a certificate of compliance for the project to the entity operating the project and shall provide a copy of the certificate to the comptroller.

(b) The commission may not issue a certificate of compliance for more than three clean energy projects.

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integrated gasification combined cycle technology or another precombustion technology is capturing at least 85 percent of the carbon dioxide resulting from the generation of electricity by the facility, the commission may not issue the certificate unless the clean energy project will capture at least 90 percent of the carbon dioxide resulting from the generation of electricity by the carbon-fueled electric generating facility associated with the project.

SECTION 7. Section 11.31, Tax Code, is amended by amending Subsection (k) and adding Subsection (n) to read as follows:

(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

- (1) coal cleaning or refining facilities;
- (2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined cycle systems;
- (3) ultra-supercritical pulverized coal boilers;
- (4) flue gas recirculation components;
- (5) syngas purification systems and gas-cleanup units;
- (6) enhanced heat recovery systems;
- (7) exhaust heat recovery boilers;
- (8) heat recovery steam generators;

No equivalent provision.

Same as Senate version.

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- (9) superheaters and evaporators;
- (10) enhanced steam turbine systems;
- (11) methanation;
- (12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
- (13) biomass cofiring storage, distribution, and firing systems;
- (14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
- (15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;
- (16) if a state or federal governmental entity [~~the United States Environmental Protection Agency~~] adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture or transport carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;
- (17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and
- (18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

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(n) Notwithstanding the other provisions of this section, a person may not receive an exemption under this section for property described by Subsection (k)(16) unless the property was placed into service after September 1, 2009.

SECTION 8. Section 26.045, Tax Code, is amended by amending Subsection (f) and adding Subsection (j) to read as follows:

(f) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

- (1) coal cleaning or refining facilities;
- (2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined cycle systems;
- (3) ultra-supercritical pulverized coal boilers;
- (4) flue gas recirculation components;
- (5) syngas purification systems and gas-cleanup units;
- (6) enhanced heat recovery systems;
- (7) exhaust heat recovery boilers;
- (8) heat recovery steam generators;
- (9) superheaters and evaporators;
- (10) enhanced steam turbine systems;
- (11) methanation;
- (12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;

No equivalent provision.

Same as Senate version.

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(13) biomass cofiring storage, distribution, and firing systems;

(14) coal cleaning or drying processes such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;

(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;

(16) if a state or federal governmental entity [the United States Environmental Protection Agency] adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture or transport carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;

(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and

(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(j) Notwithstanding the other provisions of this section, a person may not receive an exemption under this section for property described by Subsection (f)(16) unless the property was placed into service after September 1, 2009.

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No equivalent provision.

SECTION 9. Section 202.0545, Tax Code, is amended by amending Subsections (a), (c), and (f) and adding Subsections (i), (j), and (j-1) to read as follows:
(a) Subject to the limitations provided by this section,

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SECTION 6. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.334 to read as follows:
Sec. 151.334. COMPONENTS OF TANGIBLE PERSONAL PROPERTY USED IN CONNECTION WITH SEQUESTRATION OF CARBON DIOXIDE. Components of tangible personal property used in connection with an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, or a clean energy project, as defined by Section 120.001, Natural Resources Code, are exempted from the taxes imposed by this chapter if:
(1) the components are installed to capture carbon dioxide from an anthropogenic emission source, transport or inject carbon dioxide from such a source, or prepare carbon dioxide from such a source for transportation or injection; and
(2) the carbon dioxide is sequestered in this state:
(A) as part of an enhanced oil recovery project that qualifies for a tax rate reduction under Section 202.0545, as provided by Subsection (c) of that section; or
(B) in a manner and under conditions that create a reasonable expectation that at least 99 percent of the carbon dioxide will remain sequestered from the atmosphere for at least 1,000 years.

SECTION __. Subsections (a) and (d), Section 202.0545, Tax Code, are amended to read as follows:

(a) Subject to the limitations provided by this section,

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SECTION 4. Same as Senate version.

SECTION 5. Same as Senate version.

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~~[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,]~~ 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) is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the enhanced oil recovery project uses carbon dioxide that:

- (1) is captured from an anthropogenic source in this state;
- (2) would otherwise be released into the atmosphere as industrial emissions;
- (3) is measurable at the source of capture; and
- (4) is sequestered in one or more geological formations in this state following the enhanced oil recovery process.

(c) To qualify for the tax rate reduction under this section, the operator must:

(1) apply to the comptroller for the reduction and include with the application any information and documentation that the comptroller may require; ~~and~~

(2) apply for a certification from:

(A) the Railroad Commission of Texas, if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir;

(B) the Texas Commission on Environmental Quality, if

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until ~~[the later of]~~ the 30th ~~[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,]~~ 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) is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the enhanced oil recovery project uses carbon dioxide that:

- (1) is captured from an anthropogenic source in this state;
- (2) would otherwise be released into the atmosphere as industrial emissions;
- (3) is measurable at the source of capture; and
- (4) is sequestered in one or more geological formations in this state following the enhanced oil recovery process.

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carbon dioxide used in the project is to be sequestered in a geological formation other than an oil or natural gas reservoir; or

(C) both the Railroad Commission of Texas and the Texas Commission on Environmental Quality if both Paragraphs (A) and (B) apply; and

(3) have begun using carbon dioxide that satisfies the criteria of Subsection (a) in an enhanced oil recovery project not later than August 31, 2016.

(f) The comptroller shall 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 and the operator meets the requirement specified by Subsection (c)(3).

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(d) An agency to which an operator applies for a certification under Subsection (c)(2) may issue the certification only if the agency finds that, based on substantial evidence, there is a reasonable expectation that:

(1) ~~[the operator's planned sequestration program will ensure that]~~ at least 99 percent of the carbon dioxide sequestered as required by Subsection (a)(4) will remain sequestered for at least 1,000 years; and

(2) the operator's planned sequestration program will include appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.

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(i) This section expires August 31, 2039.

(j) Notwithstanding any other provision of this section, an advanced clean energy project as defined by Section 382.003(1-a), Health and Safety Code, shall qualify in the same manner and to the same extent as a clean energy project as defined by Section 490.301, Government Code, for the tax incentives provided by this section.

(j-1) For purposes of Subsection (j) of this section, an advanced clean energy project that uses low-sulfur coal shall have an emission level of not more than 0.04 pounds of sulfur dioxide per million British thermal units as determined by a 30-day average.

SECTION 10. Sections 11.31(k) and 26.045(f), Tax Code, as amended by this Act, apply only to ad valorem taxes imposed for a tax year beginning on or after January 1, 2010.

No equivalent provision.

No equivalent provision.

Same as Senate version.

SECTION __. Subdivision (4), Section 313.021, Tax Code, is amended to read as follows:

(4) "Qualifying time period" means:

(A) the first two tax years that begin on or after the date a person's application for a limitation on appraised value under this subchapter is approved, except as provided by Paragraph (B) or (C); [or]

(B) in connection with a nuclear electric power generation facility, the first seven tax years that begin on or after the third anniversary of the date the school

SECTION 6. Same as Senate version.

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district approves the property owner's application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner; or (C) in connection with an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner.

No equivalent provision.

SECTION ___. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.559 to read as follows:
Sec. 5.559. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) In this section, "advanced clean energy project" has the meaning assigned by Section 382.003, Health and Safety Code.
(b) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under Chapter 26 for an advanced clean energy project to be administratively complete, the executive director shall complete the technical review of the application.
(c) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend the deadline set

Same as House version.

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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 the commission from meeting the deadline imposed by this subsection without creating an extraordinary burden on the resources of the commission.

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

(e) The commission shall adopt rules to implement this section.

No equivalent provision.

SECTION __. (a) Not later than September 1, 2010, September 1, 2012, and September 1, 2016, the Texas Commission on Environmental Quality shall make recommendations to the legislature on whether the emissions profile set out in Sections 120.001(2)(B) and (C), Natural Resources Code, as added by this Act, and Sections 382.003(1-a)(B) and (C), Health and Safety Code, as amended by this Act, should be adjusted to increase or decrease elements of the emissions profile. Before making its recommendations, the commission shall determine whether any commercially demonstrated electric generating facility operating in the United States that meets the criteria and emissions profile specified by Section 120.001(2), Natural Resources Code, as added by this Act, is capturing and sequestering a greater percentage of the carbon dioxide in the emissions stream

SECTION 7. Same as Senate version.

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from the facility than would be required to meet the emissions profile set out in that subdivision and whether any commercially demonstrated electric generating facility operating in the United States that meets the criteria and emissions profile specified by Sections 382.003(1-a)(A), (B), and (C), Health and Safety Code, as amended by this Act, is capturing and sequestering a greater percentage of the carbon dioxide in the emissions stream from the facility than would be required to meet the emissions profile set out in those paragraphs. If at least one such facility exists, the commission shall recommend raising the minimum percentage of carbon dioxide in the emissions stream from a facility that is required to be captured and sequestered for the facility to qualify as a clean energy project or advanced clean energy project to the highest percentage of carbon dioxide that is being captured and sequestered by such a facility.

(b) Factors that must be considered in the assessment of the emissions profile include:

(1) the technical and economic feasibility of meeting all of the elements of the emissions profile set out in Sections 120.001(2)(B) and (C), Natural Resources Code, as added by this Act, or Sections 382.003(1-a)(A), (B), and (C), Health and Safety Code, as amended by this Act, in a commercially viable project, as documented by the United States Department of Energy;

(2) the technical and economic feasibility of projects to meet all of the elements of the emissions profile and still

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use a diverse range of fuels, including lignite; and
(3) the adequacy of the incentives provided by this Act, or similar legislation that becomes law, to continue to attract investment in and federal funding for clean energy projects and advanced clean energy projects in this state.
(c) Any adjustments to the emissions profile implemented by the legislature in response to a report required by this section do not apply to an application considered administratively complete on or before the date the adjustment takes effect.

SECTION 11. The comptroller shall adopt rules under Section 490.305, Government Code, as added by this Act, not later than December 31, 2010.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 8. The comptroller shall adopt rules under Section 490.352, Government Code, as added by this Act, not later than December 31, 2010.

SECTION __. Not later than January 1, 2010, the Texas Commission on Environmental Quality shall adopt rules as necessary to implement Section 382.003, Health and Safety Code, as amended by this Act, and Section 5.559, Water Code, as added by this Act.

SECTION 9. 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 __. The Railroad Commission of Texas may adopt rules as necessary to implement Section 202.0545,

SECTION 8. Same as Senate version.

SECTION 9. Same as Senate version.

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

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Tax Code, as amended by this Act.

No equivalent provision.

SECTION __. The comptroller of public accounts may adopt rules as necessary to implement Section 202.0545, Tax Code, as amended by this Act.

SECTION 12. Same as Senate version.

SECTION 12. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.
(b) Sections 11.31(k) and 26.045(f), Tax Code, as amended by this Act, take effect January 1, 2010.

SECTION 10. This Act takes effect September 1, 2009.

SECTION 13. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB469** by King, Phil (relating to the establishment of incentives by this state for the implementation of certain projects to capture and sequester carbon dioxide that would otherwise be emitted into the atmosphere.), **Conference Committee Report**

Depending on the size of the franchise tax credit, the number of power plants constructed in accordance with provisions of the bill, and the amount and value of goods used in connection with the project, the state could forego an indeterminate amount of franchise and sales tax revenue. Also, depending on the number of producers participating in qualified EOR projects, the state could forego an indeterminate amount of severance tax revenue.

The bill would provide tax incentives to organizations that participate in research and development activities related to a "clean energy project". Specifically, a "clean energy project" is defined as the construction of a coal-fueled or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that: (1) has a capacity of at least 200 megawatts; (2) meets various emission limits outlined in the bill; (3) will capture at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility; (4) is capable of permanently sequestering the captured carbon dioxide in a geological formation; and (5) is capable of supplying the carbon dioxide for use in an Enhanced Oil Recovery (EOR) project.

The bill amends Section 382 of the Health and Safety Code to modify the definition of an "advanced clean energy project". Advanced clean energy projects would be similar to clean energy projects, except they would include modifications to existing facilities, have different emission standards, require a smaller percentage of the carbon dioxide emitted be captured and sequestered, and could involve only a portion of the emissions stream from the facility. The Texas Commission on Environment Quality would be responsible for approving the application of a project to be certified as an advanced clean energy project.

The bill provides for a franchise tax credit, that would equal up to the lesser of 10 percent of the total capital cost of the project or \$100 million, for an entity implementing a clean energy project, with a maximum of three projects receiving the credit. The Comptroller would decide whether to issue the tax credit to an entity only after: (1) the Railroad Commission has issued a certificate of compliance for the project; (2) the facility is completed and fully operational; (3) the Bureau of Economic Geology of the University of Texas at Austin verifies the facility is sequestering at least 70 percent of the carbon dioxide resulting from the generation of electricity by the facility; and (4) the project's owners have signed an interconnection agreement with the Electric Reliability Commission of Texas. The amount of franchise tax credit issued to each entity may not exceed the total amount of franchise tax that would have been due if the entity operating the clean energy project had not received the credit. The Comptroller could not issue a franchise tax credit until September 1, 2013.

The bill would create property tax abatement provisions for advanced clean energy projects located in county reinvestment zones.

The bill would require the Railroad Commission to issue a certificate of compliance verifying a project met the requirements for a clean energy project. The Railroad Commission would be

authorized to charge a fee to cover the cost of processing an application for certification.

The bill would require the Bureau of Economic Geology of the University of Texas at Austin (BEG) to monitor, measure, and verify the status of the sequestered carbon dioxide generated by clean energy projects. The BEG would also be responsible for designing initial protocols and standards for the process, reviewing the conduct of the process, evaluating the results of the process, and determining whether to transmit verification of the process to the Comptroller. The bill would allow the BEG to charge a varying annual fee, that would total \$8.1 million over eight years, to cover the cost of these services. The first fee would be due within two years of the date the project first supplies carbon captured by the project to an enhanced oil recovery project.

The bill would add new Section 151.334 to the Tax Code to create a sales tax exemption for certain components of tangible personal property used in connection with an advanced clean energy project. These changes to the Code would not affect taxes imposed before the effective date of this bill. With respect to the new sales tax exemption, there are currently no facilities in Texas being operated to capture and sequester anthropogenic carbon dioxide. Therefore, the amount and value of tangible personal property used for a project is unknown and the potential revenue loss from the sales tax exemption cannot be estimated.

The bill would amend the Tax Code to reduce the oil production tax rate from 4.6% to 1.15% for certain oil producers. To qualify, the oil produced must be recovered through an Enhanced Oil Recovery Project (EOR) that uses carbon dioxide generated by a clean energy project. Also, the producer must receive certification from either the Railroad Commission or the Texas Commission on Environmental Quality, depending on where the carbon dioxide is sequestered. The tax rate reduction would last for 30 years from the Comptroller's application approval date. Currently, a producer is eligible for the rate reduction for 7 years if at least 99% of the carbon dioxide sequestered will remain so for at least 1000 years. Since the bill would extend the length of the rate reduction the state could experience a revenue loss that would depend on the number of producers participating in an EOR project.

The bill would take effect September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

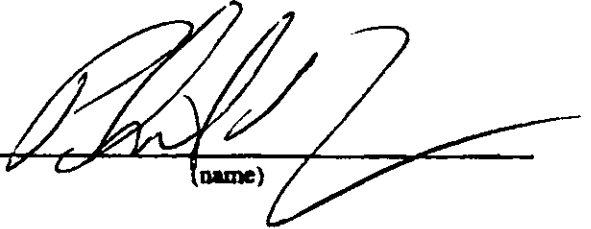
Source Agencies: 304 Comptroller of Public Accounts, 455 Railroad Commission, 720 The University of Texas System Administration, 582 Commission on Environmental Quality, 301 Office of the Governor

LBB Staff: JOB, KK, SZ, SD, MN

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 469 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5/30/08

(date)