

BILL ANALYSIS

Senate Research Center

H.B. 2201
By: Hughes et al. (Estes)
Natural Resources
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The U.S. Department of Energy has outlined an integrated carbon sequestration and hydrogen research (a.k.a. "FutureGen") proposal that provides for \$800 million in federal funding with the remaining \$200 million to be funded by private industry and other nations. Securing the FutureGen project is expected to create over 11,000 new jobs with labor compensation of over \$374.3 million dollars, generate \$98 million in tax revenue and result in over \$1.2 billion in total economic benefit to Texas. Securing the U.S. Department of Energy's FutureGen project in Texas is a top priority.

One of the critical selection criteria the Department of Energy has identified for the FutureGen project is the ability to ensure the predictable and timely permitting and construction of the components that will make up the FutureGen project. In Texas, there is not currently a predictable regulatory process that will enable the State to reliably estimate the time period for securing permits to construct all the components of the FutureGen project. An example of the uncertain regulatory process is the lengthy contested case hearing process for air, water quality, water rights, waste, and mine permits that may be necessary to build all the elements of the FutureGen project.

H.B. 2201 creates a more predictable and streamlined permitting process for the key components of the FutureGen project to better position Texas in the competition for the project. The bill is also designed to create financial incentives to compete with the financial incentive packages being proposed by several other states competing for the FutureGen project.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 6 (Section 5.558, Water Code), to the Texas Water Development Board in SECTION 7 (Section 16.053, Water Code), and the to the Railroad Commission of Texas in SECTION 11 (Section 27.039, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth a list of legislative findings supporting a clean coal project.

SECTION 2. Amends Section 2305.037, Government Code, as follows:

Sec. 2305.037. New heading: INNOVATIVE ENERGY DEMONSTRATION PROGRAM. (a) Provides that the energy office is the supervising state agency of the innovative, rather than renewable, energy demonstration program and requires the energy office to distribute grant money under the program for certain demonstration projects that develop sustainable and innovative energy resources.

(b) Requires the energy office, contingent on the selection of a Texas site for the location of the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project, and to the extent that funds are appropriated for this purpose, to distribute to the managing entity of the FutureGen project an amount equal to 50 percent of the total amount invested in the project by private industry sources. Requires the managing entity of the FutureGen project to provide records as considered necessary by the energy office to justify grants

under this subsection. Prohibits cumulative distributions under this subsection from exceeding \$20 million.

(c) Authorizes the energy office to require a grant recipient under the program to match a grant in a ratio determined by the energy office.

SECTION 3. Amends Subchapter C, Chapter 171, Tax Code, by adding Section 171.108, as follows:

Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE. (a) Authorizes a corporation to deduct from its apportioned taxable capital the amortized cost of equipment or from its apportioned taxable earned surplus 10 percent of the amortized cost of equipment that is used, acquired, and paid for in a certain manner.

(b) Requires the amortization of the cost of capital used in a clean coal project, as defined by Section 5.001 (Definitions), Water Code, to meet certain criteria.

(c) Requires a corporation that makes a deduction under this section to file with the comptroller of public accounts (comptroller) an amortization schedule showing the period for which the deduction is to be made. Requires a corporation, on the request of the comptroller, to file with the comptroller proof of the cost of the equipment or proof of the equipment's operation in this state.

(d) Authorizes a corporation to elect to make the deduction authorized by this section from apportioned taxable capital or apportioned taxable earned surplus, but not from both, for each separate regular annual period. Provides that an election for an initial period applies to the second tax period and to the first regular annual period.

SECTION 4. Amends Section 313.024(b), Tax Code, to require the corporation or limited liability company, to be eligible for a limitation on appraised value under this subchapter, to use the property in connection with a clean coal project, as defined by Section 5.001, Water Code.

SECTION 5. Amends Section 5.001, Water Code, by amending Subdivisions (2) and (3) and adding Subdivisions (4), (5), (6), and (7), to redefine "commission" and "executive director" and define "clean coal project," "coal," "component of the FutureGen project," and "FutureGen project profile."

SECTION 6. Amends Subchapter M, Chapter 5, Water Code, adding Section 5.558, as follows:

Sec. 5.558. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) Authorizes the United States Department of Energy to specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. Provides that, if the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project that equal not more than certain specified amounts.

(b) Requires the Texas Commission on Environmental Quality (TCEQ) by rule, as authorized by federal law, to implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) Requires TCEQ, when acting under a rule adopted under Subsection (b), to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) Provides that, for the purposes of Subsection (b), a permit application submitted under this section that meets the emission standards described by Subsection (a) is deemed to be the recommendation of the executive director of

the commission and requires the permit application, after a public meeting described by Subsection (c), to be forwarded to the State Office of Administrative Hearings for a contested case hearing.

(e) Provides that this section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

SECTION 7. Amends Section 16.053, Water Code, by adding Subsection (r), as follows:

(r) Requires the Texas Water Development Board (board) by rule to provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan, to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001. Authorizes the rules to allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not meet certain criteria.

SECTION 8. Amends Subchapter B, Chapter 27, Water Code, by adding Section 27.022, as follows:

Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION. Provides that TCEQ has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

SECTION 9. Amends the heading to Subchapter C, Chapter 27, Water Code, to read as follows:

SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

SECTION 10. Amends Subchapter C, Chapter 27, Water Code, by adding Section 27.038, as follows:

Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION. Provides that the Railroad Commission of Texas (railroad commission) has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a reservoir productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

SECTION 11. Amends Subchapter C, Chapter 27, Water Code, by adding Section 27.039, as follows:

Sec. 27.039. RESERVOIR CHARACTERIZATION, REMEDIATION, AND MONITORING FOR CARBON DIOXIDE SEQUESTRATION PERMIT. (a) Requires the railroad commission by rule to establish procedures, techniques, and standards for reservoir characterization, monitoring, and remediation for carbon dioxide sequestration.

(b) Requires the railroad commission to require four-dimensional reservoir characterization of a proposed reservoir for carbon dioxide sequestration before the commission issues a permit for injecting carbon dioxide. Authorizes the railroad commission to issue the permit only if the reservoir characterization demonstrates that the reservoir proposed for the sequestration is capable of retaining 90 percent of the carbon dioxide to be injected under the permit for a period of at least 100 years.

(c) Requires the railroad commission by rule to establish a program for detecting and monitoring surface leakage of injected carbon dioxide from a permitted sequestration project by measuring carbon dioxide pressure and concentration in the reservoir.

(d) Requires the railroad commission by rule to require a permitted carbon dioxide sequestration project to sequester an additional amount of carbon dioxide that is equal to the amount of carbon dioxide that leaks from the project. Requires the additional sequestration to be completed before the first anniversary of the detection of the leak.

SECTION 12. Requires TCEQ, TWDB, and the railroad commission, no later than September 1, 2006, to adopt rules under provisions as added or amended by this Act.

SECTION 13. Effective date: upon passage or September 1, 2005.