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H.B. No. 2201

A BILL TO BE ENTITLED

AN ACT

relating to implementing a clean coal project in this state.

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

SECTION 1. The legislature finds that:

(1) this state produces the most energy in the country and is the largest consumer of coal in the country;

(2) the generation of electric energy in this state by coal-powered generation is estimated to be 37 percent of the electric energy generation in this state;

(3) affordable electric energy in this state is founded on low-cost coal-powered generation;

(4) energy production has a significant role in providing permanent, well-paid employment in this state for this state's growing population, and the energy production industry provides income and revenue that ensures this state may continue to provide a high standard of services to this state's residences and businesses;

(5) the United States Department of Energy's proposed FutureGen research into integrated carbon sequestration and hydrogen research provides for \$800 million in federal funding and \$200 million in funding by private industry and other countries;

(6) it is a priority for this state to secure funding under the United States Department of Energy's proposed FutureGen programs because to do so will help this state to become a world

1 leader in innovative energy technologies and is expected to:

2 (A) create more than 11,000 new jobs in this
3 state;

4 (B) provide compensation for workers of more than
5 \$374.3 million;

6 (C) generate \$98 million in tax revenue; and

7 (D) result in a total economic benefit to this
8 state of \$1.2042 billion;

9 (7) FutureGen projects will provide this state with an
10 opportunity to meet this state's energy demands and lower emissions
11 of air contaminants, so the FutureGen technologies should be
12 encouraged for use in electric energy generation;

13 (8) this state is in a unique position to secure
14 funding under FutureGen projects since this state has:

15 (A) a ready source of coal and lignite to fuel
16 FutureGen projects;

17 (B) appropriate geological features for storing
18 carbon dioxide;

19 (C) a market for energy produced; and

20 (D) electric energy transmission resources
21 capable of carrying the resulting power loads;

22 (9) this state has 31 billion barrels of oil in
23 depleted oil fields that could be recovered by means of carbon
24 dioxide enhanced recovery;

25 (10) carbon dioxide from FutureGen projects could be
26 used to recover three billion barrels of oil and generate \$4 billion
27 in tax revenue for this state;

1 (11) hydrogen produced by FutureGen projects could be
2 used to fuel fuel cells and for this state's petrochemical industry
3 to manufacture products;

4 (12) to facilitate construction of one or more
5 components of the FutureGen projects at a new or existing electric
6 generating, steam production, or industrial products facility is in
7 the best interest of all of this state's residents; and

8 (13) streamlining procedural processes as necessary
9 to ensure predictability in this state's regulatory scheme will
10 improve this state's position for obtaining federal funding and
11 will preserve the environmental protection obtained by present
12 substantive regulatory standards.

13 SECTION 2. Section 2305.037, Government Code, is amended to
14 read as follows:

15 Sec. 2305.037. INNOVATIVE [~~RENEWABLE~~] ENERGY DEMONSTRATION
16 PROGRAM. (a) The energy office is the supervising state agency of
17 the innovative [~~renewable~~] energy demonstration program and shall
18 distribute grant money under the program for demonstration projects
19 that develop sustainable and innovative [~~renewable~~] energy
20 resources, including:

21 (1) a clean coal project, as defined by Section 5.001,
22 Water Code;

23 (2) photovoltaic, biomass, wind, and solar
24 applications; and

25 (3) [~~(2)~~] other appropriate low-emission, renewable,
26 and sustainable energy applications.

27 (b) Contingent on the selection of a Texas site for the

1 location of the coal-based integrated sequestration and hydrogen
2 project to be built in partnership with the United States
3 Department of Energy, commonly referred to as the FutureGen
4 project, and to the extent that funds are appropriated for this
5 purpose, the energy office shall distribute to the managing entity
6 of the FutureGen project an amount equal to 50 percent of the total
7 amount invested in the project by private industry sources. The
8 managing entity of the FutureGen project shall provide records as
9 considered necessary by the energy office to justify grants under
10 this subsection. Cumulative distributions under this subsection
11 may not exceed \$20 million.

12 (c) The energy office may require a grant recipient under
13 the program to match a grant in a ratio determined by the energy
14 office.

15 SECTION 3. Subchapter C, Chapter 171, Tax Code, is amended
16 by adding Section 171.108 to read as follows:

17 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM
18 TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS
19 STATE. (a) A corporation may deduct from its apportioned taxable
20 capital the amortized cost of equipment or from its apportioned
21 taxable earned surplus 10 percent of the amortized cost of
22 equipment:

23 (1) that is used in a clean coal project, as defined by
24 Section 5.001, Water Code;

25 (2) that is acquired by the corporation for use in
26 generation of electricity, production of process steam, or
27 industrial production;

1 (3) that the corporation uses in this state; and
2 (4) the cost of which is amortized in accordance with
3 Subsection (b).

4 (b) The amortization of the cost of capital used in a clean
5 coal project, as defined by Section 5.001, Water Code, must:

6 (1) be for a period of at least 60 months;

7 (2) provide for equal monthly amounts;

8 (3) begin on the month during which the equipment is
9 placed in service in this state; and

10 (4) cover only a period during which the equipment is
11 used in this state.

12 (c) A corporation that makes a deduction under this section
13 shall file with the comptroller an amortization schedule showing
14 the period for which the deduction is to be made. On the request of
15 the comptroller, the corporation shall file with the comptroller
16 proof of the cost of the equipment or proof of the equipment's
17 operation in this state.

18 (d) A corporation may elect to make the deduction authorized
19 by this section from apportioned taxable capital or apportioned
20 taxable earned surplus, but not from both, for each separate
21 regular annual period. An election for an initial period applies to
22 the second tax period and to the first regular annual period.

23 SECTION 4. Section 313.024(b), Tax Code, is amended to read
24 as follows:

25 (b) To be eligible for a limitation on appraised value under
26 this subchapter, the corporation or limited liability company must
27 use the property in connection with:

- 1 (1) manufacturing;
- 2 (2) research and development;
- 3 (3) a clean coal project, as defined by Section 5.001,
- 4 Water Code; or
- 5 (4) ~~(3)~~ renewable energy electric generation.

6 SECTION 5. Section 5.001, Water Code, is amended by

7 amending Subdivisions (2) and (3) and adding Subdivisions (4), (5),

8 (6), and (7) to read as follows:

9 (2) "Commission" means the Texas ~~[Natural Resource~~

10 ~~Conservation]~~ Commission on Environmental Quality.

11 (3) "Executive director" means the executive director

12 of the Texas ~~[Natural Resource Conservation]~~ Commission on

13 Environmental Quality.

14 (4) "Clean coal project" means the installation of one

15 or more components of the coal-based integrated sequestration and

16 hydrogen research project to be built in partnership with the

17 United States Department of Energy, commonly referred to as the

18 FutureGen project. The term includes the construction or

19 modification of a facility for electric generation, industrial

20 production, or the production of steam as a byproduct of coal

21 gasification to the extent that the facility installs one or more

22 components of the FutureGen project.

23 (5) "Coal" has the meaning assigned by Section

24 134.004, Natural Resources Code.

25 (6) "Component of the FutureGen project" means a

26 process, technology, or piece of equipment that:

27 (A) is designed to employ coal gasification

1 technology to generate electricity, hydrogen, or steam in a manner
2 that meets the FutureGen project profile;

3 (B) is designed to employ fuel cells to generate
4 electricity in a manner that meets the FutureGen project profile;

5 (C) is designed to employ a hydrogen-fueled
6 turbine to generate electricity where the hydrogen is derived from
7 coal in a manner that meets the FutureGen profile;

8 (D) is designed to demonstrate the efficacy at an
9 electric generation or industrial production facility of a carbon
10 dioxide capture technology in a manner that meets the FutureGen
11 project profile;

12 (E) is designed to sequester a portion of the
13 carbon dioxide captured from an electric generation or industrial
14 production facility in a manner that meets the FutureGen project
15 profile in conjunction with appropriate remediation plans and
16 appropriate techniques for reservoir characterization, injection
17 control, and monitoring;

18 (F) is designed to sequester carbon dioxide as
19 part of enhanced oil recovery in a manner that meets the FutureGen
20 project profile, in conjunction with appropriate techniques for
21 reservoir characterization, injection control, and monitoring;

22 (G) qualifies for federal funds designated for
23 the FutureGen project;

24 (H) is required to perform the sampling,
25 analysis, or research necessary to submit a proposal to the United
26 States Department of Energy for the FutureGen project; or

27 (I) is required in a final United States

1 Department of Energy request for proposals for the FutureGen
2 project or is described in a final United States Department of
3 Energy request for proposals as a desirable element to be
4 considered in the awarding of the project.

5 (7) "FutureGen project profile" means a standard or
6 standards relevant to a component of the FutureGen project, as
7 provided in a final or amended United States Department of Energy
8 request for proposals or contract.

9 SECTION 6. Subchapter M, Chapter 5, Water Code, is amended
10 by adding Section 5.558 to read as follows:

11 Sec. 5.558. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a)
12 The United States Department of Energy may specify the FutureGen
13 emissions profile for a project in that department's request for
14 proposals or request for a contract. If the United States
15 Department of Energy does not specify in a request for proposals or
16 a request for a contract the FutureGen emissions profile, the
17 profile means emissions of air contaminants at a component of the
18 FutureGen project that equal not more than:

19 (1) one percent of the average sulphur content of the
20 coal or coals used for the generation of electricity at the
21 component;

22 (2) 10 percent of the average mercury content of the
23 coal or coals used for the generation of electricity at the
24 component;

25 (3) 0.05 pounds of nitrogen oxides per million British
26 thermal units of energy produced at the component; and

27 (4) 0.005 pounds of particulate matter per million

1 British thermal units of energy produced at the component.

2 (b) As authorized by federal law, the commission by rule
3 shall implement reasonably streamlined processes for issuing
4 permits required to construct a component of the FutureGen project
5 designed to meet the FutureGen emissions profile.

6 (c) When acting under a rule adopted under Subsection (b),
7 the commission shall use public meetings, informal conferences, or
8 advisory committees to gather the opinions and advice of interested
9 persons.

10 (d) For the purposes of Subsection (b), a permit application
11 submitted under this section that meets the emission standards
12 described by Subsection (a) is deemed to be the recommendation of
13 the executive director of the commission and after a public meeting
14 described by Subsection (c) shall be forwarded to the State Office
15 of Administrative Hearings for a contested case hearing.

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

20 SECTION 7. Section 16.053, Water Code, is amended by adding
21 Subsection (r) to read as follows:

22 (r) The board by rule shall provide for reasonable
23 flexibility to allow for a timely amendment of a regional water
24 plan, the board's approval of an amended regional water plan, and
25 the amendment of the state water plan, to facilitate planning for
26 water supplies reasonably required for a clean coal project, as
27 defined by Section 5.001. The rules may allow for amending a

1 regional water plan without providing notice and without a public
2 meeting or hearing under Subsection (h) if the amendment does not:

3 (1) significantly change the regional water plan, as
4 reasonably determined by the board; or

5 (2) adversely affect other water management
6 strategies in the regional water plan.

7 SECTION 8. Subchapter B, Chapter 27, Water Code, is amended
8 by adding Section 27.022 to read as follows:

9 Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION.

10 The commission has jurisdiction over injection of carbon dioxide
11 produced by a clean coal project, to the extent authorized by
12 federal law, into a zone that is below the base of usable quality
13 water and that is not productive of oil, gas, or geothermal
14 resources by a Class II injection well, or by a Class I injection
15 well if required by federal law.

16 SECTION 9. The heading to Subchapter C, Chapter 27, Water
17 Code, is amended to read as follows:

18 SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

19 SECTION 10. Subchapter C, Chapter 27, Water Code, is
20 amended by adding Section 27.038 to read as follows:

21 Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION.

22 The railroad commission has jurisdiction over injection of carbon
23 dioxide produced by a clean coal project, to the extent authorized
24 by federal law, into a reservoir productive of oil, gas, or
25 geothermal resources by a Class II injection well, or by a Class I
26 injection well if required by federal law.

27 SECTION 11. Subchapter C, Chapter 27, Water Code, is

1 amended by adding Section 27.039 to read as follows:

2 Sec. 27.039. RESERVOIR CHARACTERIZATION, REMEDIATION, AND
3 MONITORING FOR CARBON DIOXIDE SEQUESTRATION PERMIT. (a) The
4 railroad commission by rule shall establish procedures,
5 techniques, and standards for reservoir characterization,
6 monitoring, and remediation for carbon dioxide sequestration.

7 (b) The railroad commission shall require four-dimensional
8 reservoir characterization of a proposed reservoir for carbon
9 dioxide sequestration before the commission issues a permit for
10 injecting carbon dioxide. The railroad commission may issue the
11 permit only if the reservoir characterization demonstrates that the
12 reservoir proposed for the sequestration is capable of retaining 90
13 percent of the carbon dioxide to be injected under the permit for a
14 period of at least 100 years.

15 (c) The railroad commission by rule shall establish a
16 program for detecting and monitoring surface leakage of injected
17 carbon dioxide from a permitted sequestration project by measuring
18 carbon dioxide pressure and concentration in the reservoir.

19 (d) The railroad commission by rule shall require a
20 permitted carbon dioxide sequestration project to sequester an
21 additional amount of carbon dioxide that is equal to the amount of
22 carbon dioxide that leaks from the project. The additional
23 sequestration must be completed before the first anniversary of the
24 detection of the leak.

25 SECTION 12. Not later than September 1, 2006:

26 (1) the Texas Water Development Board shall adopt
27 rules under Section 16.053, Water Code, as amended by this Act;

1 (2) the Texas Commission on Environmental Quality
2 shall adopt rules under Sections 5.558 and 27.022, Water Code, as
3 added by this Act; and

4 (3) the Railroad Commission of Texas shall adopt rules
5 under Section 27.038, Water Code, as added by this Act.

6 SECTION 13. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2005.