

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) a gasification project for a coal and biomass
24 mixture;

25 (3) photovoltaic, biomass, wind, and solar
26 applications; and

27 (4) [~~2~~] other appropriate low-emission, renewable,

1 and sustainable energy applications.

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

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

17 SECTION 3. Subchapter C, Chapter 382, Health and Safety
18 Code, is amended by adding Section 382.0565 to read as follows:

19 Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE.

20 (a) The United States Department of Energy may specify the
21 FutureGen emissions profile for a project in that department's
22 request for proposals or request for a contract. If the United
23 States Department of Energy does not specify in a request for
24 proposals or a request for a contract the FutureGen emissions
25 profile, the profile means emissions of air contaminants at a
26 component of the FutureGen project, as defined by Section 5.001,
27 Water Code, that equal not more than:

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

4 (2) 10 percent of the average mercury content of the
5 coal or coals used for the generation of electricity at the
6 component;

7 (3) 0.05 pounds of nitrogen oxides per million British
8 thermal units of energy produced at the component; and

9 (4) 0.005 pounds of particulate matter per million
10 British thermal units of energy produced at the component.

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

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

19 (d) The permit processes authorized by this section are not
20 subject to the requirements relating to a contested case hearing
21 under this chapter, Chapter 5, Water Code, or Subchapters C-G,
22 Chapter 2001, Government Code.

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

27 SECTION 4. Subchapter C, Chapter 171, Tax Code, is amended

1 by adding Section 171.108 to read as follows:

2 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM
3 TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS
4 STATE. (a) In this section, "clean coal project" has the meaning
5 assigned by Section 5.001, Water Code.

6 (b) A corporation may deduct from its apportioned taxable
7 capital the amortized cost of equipment or from its apportioned
8 taxable earned surplus 10 percent of the amortized cost of
9 equipment:

10 (1) that is used in a clean coal project;

11 (2) that is acquired by the corporation for use in
12 generation of electricity, production of process steam, or
13 industrial production;

14 (3) that the corporation uses in this state; and

15 (4) the cost of which is amortized in accordance with
16 Subsection (c).

17 (c) The amortization of the cost of capital used in a clean
18 coal project must:

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

20 (2) provide for equal monthly amounts;

21 (3) begin in the month during which the equipment is
22 placed in service in this state; and

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

25 (d) A corporation that makes a deduction under this section
26 shall file with the comptroller an amortization schedule showing
27 the period for which the deduction is to be made. On the request of

1 the comptroller, the corporation shall file with the comptroller
2 proof of the cost of the equipment or proof of the equipment's
3 operation in this state.

4 (e) A corporation may elect to make the deduction authorized
5 by this section from apportioned taxable capital or apportioned
6 taxable earned surplus, but not from both, for each separate
7 regular annual period. An election for an initial period applies to
8 the second tax period and to the first regular annual period.

9 SECTION 5. Section 313.024(b), Tax Code, is amended to read
10 as follows:

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

- 14 (1) manufacturing;
- 15 (2) research and development;
- 16 (3) a clean coal project, as defined by Section 5.001,
17 Water Code;
- 18 (4) a gasification project for a coal and biomass
19 mixture; or
- 20 (5) [~~(3)~~] renewable energy electric generation.

21 SECTION 6. Section 5.001, Water Code, is amended by
22 amending Subdivisions (2) and (3) and adding Subdivisions (4), (5),
23 (6), and (7) to read as follows:

24 (2) "Commission" means the Texas [~~Natural Resource~~
25 ~~Conservation~~] Commission on Environmental Quality.

26 (3) "Executive director" means the executive director
27 of the Texas [~~Natural Resource Conservation~~] Commission on

1 Environmental Quality.

2 (4) "Clean coal project" means the installation of one
3 or more components of the coal-based integrated sequestration and
4 hydrogen research project to be built in partnership with the
5 United States Department of Energy, commonly referred to as the
6 FutureGen project. The term includes the construction or
7 modification of a facility for electric generation, industrial
8 production, or the production of steam as a byproduct of coal
9 gasification to the extent that the facility installs one or more
10 components of the FutureGen project.

11 (5) "Coal" has the meaning assigned by Section
12 134.004, Natural Resources Code.

13 (6) "Component of the FutureGen project" means a
14 process, technology, or piece of equipment that:

15 (A) is designed to employ coal gasification
16 technology to generate electricity, hydrogen, or steam in a manner
17 that meets the FutureGen project profile;

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

20 (C) is designed to employ a hydrogen-fueled
21 turbine to generate electricity where the hydrogen is derived from
22 coal in a manner that meets the FutureGen project profile;

23 (D) is designed to demonstrate the efficacy at an
24 electric generation or industrial production facility of a carbon
25 dioxide capture technology in a manner that meets the FutureGen
26 project profile;

27 (E) is designed to sequester a portion of the

1 carbon dioxide captured from an electric generation or industrial
2 production facility in a manner that meets the FutureGen project
3 profile in conjunction with appropriate remediation plans and
4 appropriate techniques for reservoir characterization, injection
5 control, and monitoring;

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

10 (G) qualifies for federal funds designated for
11 the FutureGen project;

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

15 (I) is required in a final United States
16 Department of Energy request for proposals for the FutureGen
17 project or is described in a final United States Department of
18 Energy request for proposals as a desirable element to be
19 considered in the awarding of the project.

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

24 SECTION 7. Subchapter M, Chapter 5, Water Code, is amended
25 by adding Section 5.558 to read as follows:

26 Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As
27 authorized by federal law, the commission by rule shall implement

1 reasonably streamlined processes for issuing permits required to
2 construct a component of the FutureGen project designed to meet the
3 FutureGen emissions profile as defined by Section 382.0565, Health
4 and Safety Code.

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

9 (c) The permit processes authorized by this section are not
10 subject to the requirements relating to a contested case hearing
11 under this chapter, Chapter 382, Health and Safety Code, or
12 Subchapters C-G, Chapter 2001, Government Code.

13 (d) This section does not apply to an application for a
14 permit to construct or modify a new or existing coal-fired electric
15 generating facility that will use pulverized or supercritical
16 pulverized coal.

17 SECTION 8. Section 16.053, Water Code, is amended by adding
18 Subsection (r) to read as follows:

19 (r) The board by rule shall provide for reasonable
20 flexibility to allow for a timely amendment of a regional water
21 plan, the board's approval of an amended regional water plan, and
22 the amendment of the state water plan, to facilitate planning for
23 water supplies reasonably required for a clean coal project, as
24 defined by Section 5.001. The rules may allow for amending a
25 regional water plan without providing notice and without a public
26 meeting or hearing under Subsection (h) if the amendment does not:

27 (1) significantly change the regional water plan, as

1 reasonably determined by the board; or
2 (2) adversely affect other water management
3 strategies in the regional water plan.

4 SECTION 9. Subchapter B, Chapter 27, Water Code, is amended
5 by adding Section 27.022 to read as follows:

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

13 SECTION 10. The heading to Subchapter C, Chapter 27, Water
14 Code, is amended to read as follows:

15 SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

16 SECTION 11. Subchapter C, Chapter 27, Water Code, is
17 amended by adding Section 27.038 to read as follows:

18 Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION.
19 The railroad commission has jurisdiction over injection of carbon
20 dioxide produced by a clean coal project, to the extent authorized
21 by federal law, into a reservoir that is productive of oil, gas, or
22 geothermal resources by a Class II injection well, or by a Class I
23 injection well if required by federal law.

24 SECTION 12. (a) This section takes effect only if Senate
25 Bill No. 831, Acts of the 79th Legislature, Regular Session, 2005,
26 or similar legislation providing for funding emerging
27 technologies, is enacted and becomes law.

1 (b) Chapter 490, Government Code, as added by Senate Bill
2 No. 831, Acts of the 79th Legislature, Regular Session, 2005, is
3 amended by adding Subchapter G to read as follows:

4 SUBCHAPTER G. CLEAN COAL PROJECTS

5 Sec. 490.301. DEFINITION. In this section, "clean coal
6 project" has the meaning assigned by Section 5.001, Water Code.

7 Sec. 490.302. USE OF MONEY FOR CLEAN COAL PROJECT. (a)
8 Notwithstanding Section 490.102, the governor may allocate money
9 appropriated to the fund by the legislature to provide matching
10 money for a clean coal project as described by Section 2305.037 if
11 the governor has the express written prior approval of the
12 lieutenant governor and the speaker of the house of representatives
13 to do so.

14 (b) The governor may allocate proceeds deposited in the fund
15 as provided by an agreement described by Section 490.103 to provide
16 matching money for a clean coal project as described by Section
17 2305.037 if the governor has the express written prior approval of
18 the lieutenant governor and the speaker of the house of
19 representatives to do so.

20 Sec. 490.303. ELIGIBILITY OF CLEAN COAL PROJECT FOR MONEY.
21 Notwithstanding any other provision of this subchapter, a clean
22 coal project constitutes an opportunity for emerging technology
23 suitable for consideration for a grant under Subchapter C,
24 incentives as provided by Subchapter D, grant matching as provided
25 by Subchapter E, and acquisition of research superiority under
26 Subchapter F.

27 SECTION 13. Not later than September 1, 2006:

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

3 (2) the Texas Commission on Environmental Quality
4 shall adopt rules under Section 382.0565, Health and Safety Code,
5 and under Sections 5.558 and 27.022, Water Code, as added by this
6 Act; and

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

9 SECTION 14. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2201 was passed by the House on May 11, 2005, by the following vote: Yeas 143, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2201 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2201 on May 29, 2005, by the following vote: Yeas 140, Nays 3, 2 present, not voting; and that the House adopted H.C.R. No. 238 authorizing certain corrections in H.B. No. 2201 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 2201

I certify that H.B. No. 2201 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2201 on May 29, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 238 authorizing certain corrections in H.B. No. 2201 on May 30, 2005, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor