

1-1 By: Hughes, et al. (Senate Sponsor - Estes) H.B. No. 2201
1-2 (In the Senate - Received from the House May 13, 2005;
1-3 May 16, 2005, read first time and referred to Committee on Natural
1-4 Resources; May 21, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2201 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to implementing a clean coal project in this state.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. The legislature finds that:
1-13 (1) this state produces the most energy in the country
1-14 and is the largest consumer of coal in the country;
1-15 (2) the generation of electric energy in this state by
1-16 coal-powered generation is estimated to be 37 percent of the
1-17 electric energy generation in this state;
1-18 (3) affordable electric energy in this state is
1-19 founded on low-cost coal-powered generation;
1-20 (4) energy production has a significant role in
1-21 providing permanent, well-paid employment in this state for this
1-22 state's growing population, and the energy production industry
1-23 provides income and revenue that ensures this state may continue to
1-24 provide a high standard of services to this state's residences and
1-25 businesses;
1-26 (5) the United States Department of Energy's proposed
1-27 FutureGen research into integrated carbon sequestration and
1-28 hydrogen research provides for \$800 million in federal funding and
1-29 \$200 million in funding by private industry and other countries;
1-30 (6) it is a priority for this state to secure funding
1-31 under the United States Department of Energy's proposed FutureGen
1-32 programs because to do so will help this state to become a world
1-33 leader in innovative energy technologies and is expected to:
1-34 (A) create more than 11,000 new jobs in this
1-35 state;
1-36 (B) provide compensation for workers of more than
1-37 \$374.3 million;
1-38 (C) generate \$98 million in tax revenue; and
1-39 (D) result in a total economic benefit to this
1-40 state of \$1.2042 billion;
1-41 (7) FutureGen projects will provide this state with an
1-42 opportunity to meet this state's energy demands and lower emissions
1-43 of air contaminants, so the FutureGen technologies should be
1-44 encouraged for use in electric energy generation;
1-45 (8) this state is in a unique position to secure
1-46 funding under FutureGen projects since this state has:
1-47 (A) a ready source of coal and lignite to fuel
1-48 FutureGen projects;
1-49 (B) appropriate geological features for storing
1-50 carbon dioxide;
1-51 (C) a market for energy produced; and
1-52 (D) electric energy transmission resources
1-53 capable of carrying the resulting power loads;
1-54 (9) this state has 31 billion barrels of oil in
1-55 depleted oil fields that could be recovered by means of carbon
1-56 dioxide enhanced recovery;
1-57 (10) carbon dioxide from FutureGen projects could be
1-58 used to recover three billion barrels of oil and generate \$4 billion
1-59 in tax revenue for this state;
1-60 (11) hydrogen produced by FutureGen projects could be
1-61 used to fuel fuel cells and for this state's petrochemical industry
1-62 to manufacture products;
1-63 (12) to facilitate construction of one or more

2-1 components of the FutureGen projects at a new or existing electric
2-2 generating, steam production, or industrial products facility is in
2-3 the best interest of all of this state's residents; and

2-4 (13) streamlining procedural processes as necessary
2-5 to ensure predictability in this state's regulatory scheme will
2-6 improve this state's position for obtaining federal funding and
2-7 will preserve the environmental protection obtained by present
2-8 substantive regulatory standards.

2-9 SECTION 2. Section 2305.037, Government Code, is amended to
2-10 read as follows:

2-11 Sec. 2305.037. INNOVATIVE [~~RENEWABLE~~] ENERGY DEMONSTRATION
2-12 PROGRAM. (a) The energy office is the supervising state agency of
2-13 the innovative [~~renewable~~] energy demonstration program and shall
2-14 distribute grant money under the program for demonstration projects
2-15 that develop sustainable and innovative [~~renewable~~] energy
2-16 resources, including:

2-17 (1) a clean coal project, as defined by Section 5.001,
2-18 Water Code;

2-19 (2) photovoltaic, biomass, wind, and solar
2-20 applications; and

2-21 (3) [~~2~~] other appropriate low-emission, renewable,
2-22 and sustainable energy applications.

2-23 (b) Contingent on the selection of a Texas site for the
2-24 location of the coal-based integrated sequestration and hydrogen
2-25 project to be built in partnership with the United States
2-26 Department of Energy, commonly referred to as the FutureGen
2-27 project, and to the extent that funds are appropriated for this
2-28 purpose, the energy office shall distribute to the managing entity
2-29 of the FutureGen project an amount equal to 50 percent of the total
2-30 amount invested in the project by private industry sources. The
2-31 managing entity of the FutureGen project shall provide records as
2-32 considered necessary by the energy office to justify grants under
2-33 this subsection. Cumulative distributions under this subsection
2-34 may not exceed \$20 million.

2-35 (c) The energy office may require a grant recipient to match
2-36 a grant in a ratio determined by the energy office.

2-37 SECTION 3. Subchapter C, Chapter 171, Tax Code, is amended
2-38 by adding Section 171.108 to read as follows:

2-39 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM
2-40 TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS
2-41 STATE. (a) In this section, "clean coal project" has the meaning
2-42 assigned by Section 5.001, Water Code.

2-43 (b) A corporation may deduct from its apportioned taxable
2-44 capital the amortized cost of equipment or from its apportioned
2-45 taxable earned surplus 10 percent of the amortized cost of
2-46 equipment:

2-47 (1) that is used in a clean coal project;

2-48 (2) that is acquired by the corporation for use in
2-49 generation of electricity, production of process steam, or
2-50 industrial production;

2-51 (3) that the corporation uses in this state; and

2-52 (4) the cost of which is amortized in accordance with
2-53 Subsection (c).

2-54 (c) The amortization of the cost of capital used in a clean
2-55 coal project must:

2-56 (1) be for a period of at least 60 months;

2-57 (2) provide for equal monthly amounts;

2-58 (3) begin in the month during which the equipment is
2-59 placed in service in this state; and

2-60 (4) cover only a period during which the equipment is
2-61 used in this state.

2-62 (d) A corporation that makes a deduction under this section
2-63 shall file with the comptroller an amortization schedule showing
2-64 the period for which the deduction is to be made. On the request of
2-65 the comptroller, the corporation shall file with the comptroller
2-66 proof of the cost of the equipment or proof of the equipment's
2-67 operation in this state.

2-68 (e) A corporation may elect to make the deduction authorized
2-69 by this section from apportioned taxable capital or apportioned

3-1 taxable earned surplus, but not from both, for each separate
 3-2 regular annual period. An election for an initial period applies to
 3-3 the second tax period and to the first regular annual period.

3-4 SECTION 4. Section 313.024(b), Tax Code, is amended to read
 3-5 as follows:

3-6 (b) To be eligible for a limitation on appraised value under
 3-7 this subchapter, the corporation or limited liability company must
 3-8 use the property in connection with:

- 3-9 (1) manufacturing;
- 3-10 (2) research and development;
- 3-11 (3) a clean coal project, as defined by Section 5.001,
 3-12 Water Code; or
- 3-13 (4) ~~(3)~~ renewable energy electric generation.

3-14 SECTION 5. Section 5.001, Water Code, is amended by
 3-15 amending Subdivisions (2) and (3) and adding Subdivisions (4)
 3-16 through (7) to read as follows:

3-17 (2) "Commission" means the Texas [~~Natural Resource~~
 3-18 ~~Conservation~~] Commission on Environmental Quality.

3-19 (3) "Executive director" means the executive director
 3-20 of the Texas [~~Natural Resource Conservation~~] Commission on
 3-21 Environmental Quality.

3-22 (4) "Clean coal project" means the installation of one
 3-23 or more components of the coal-based integrated sequestration and
 3-24 hydrogen research project to be built in partnership with the
 3-25 United States Department of Energy, commonly referred to as the
 3-26 FutureGen project. The term includes the construction or
 3-27 modification of a facility for electric generation, industrial
 3-28 production, or the production of steam as a byproduct of coal
 3-29 gasification to the extent that the facility installs one or more
 3-30 components of the FutureGen project.

3-31 (5) "Coal" has the meaning assigned by Section
 3-32 134.004, Natural Resources Code.

3-33 (6) "Component of the FutureGen project" means a
 3-34 process, technology, or piece of equipment that:

3-35 (A) is designed to employ coal gasification
 3-36 technology to generate electricity, hydrogen, or steam in a manner
 3-37 that meets the FutureGen project profile;

3-38 (B) is designed to employ fuel cells to generate
 3-39 electricity in a manner that meets the FutureGen project profile;

3-40 (C) is designed to employ a hydrogen-fueled
 3-41 turbine to generate electricity where the hydrogen is derived from
 3-42 coal in a manner that meets the FutureGen project profile;

3-43 (D) is designed to demonstrate the efficacy at an
 3-44 electric generation or industrial production facility of a carbon
 3-45 dioxide capture technology in a manner that meets the FutureGen
 3-46 project profile;

3-47 (E) is designed to sequester a portion of the
 3-48 carbon dioxide captured from an electric generation or industrial
 3-49 production facility in a manner that meets the FutureGen project
 3-50 profile in conjunction with appropriate remediation plans and
 3-51 appropriate techniques for reservoir characterization, injection
 3-52 control, and monitoring;

3-53 (F) is designed to sequester carbon dioxide as
 3-54 part of enhanced oil recovery in a manner that meets the FutureGen
 3-55 project profile in conjunction with appropriate techniques for
 3-56 reservoir characterization, injection control, and monitoring;

3-57 (G) qualifies for federal funds designated for
 3-58 the FutureGen project;

3-59 (H) is required to perform the sampling,
 3-60 analysis, or research necessary to submit a proposal to the United
 3-61 States Department of Energy for the FutureGen project; or

3-62 (I) is required in a final United States
 3-63 Department of Energy request for proposals for the FutureGen
 3-64 project or is described in a final United States Department of
 3-65 Energy request for proposals as a desirable element to be
 3-66 considered in the awarding of the project.

3-67 (7) "FutureGen project profile" means a standard or
 3-68 standards relevant to a component of the FutureGen project, as
 3-69 provided in a final or amended United States Department of Energy

4-1 request for proposals or contract.

4-2 SECTION 6. Subchapter M, Chapter 5, Water Code, is amended
4-3 by adding Section 5.558 to read as follows:

4-4 Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As
4-5 authorized by federal law, the commission by rule shall implement
4-6 reasonably streamlined processes for issuing permits required to
4-7 construct a clean coal project.

4-8 (b) When acting pursuant to a rule under this section, the
4-9 commission shall make use of public meetings, informal conferences,
4-10 or advisory committees in order to obtain the opinions and advice of
4-11 interested persons.

4-12 (c) The permit processes authorized by this section are not
4-13 subject to the requirements relating to a contested case hearing
4-14 under this chapter, Chapter 382, Health and Safety Code, or
4-15 Subchapters C-G, Chapter 2001, Government Code.

4-16 SECTION 7. Section 16.053, Water Code, is amended by adding
4-17 Subsection (r) to read as follows:

4-18 (r) The board by rule shall provide for reasonable
4-19 flexibility to allow for a timely amendment of a regional water
4-20 plan, the board's approval of an amended regional water plan, and
4-21 the amendment of the state water plan, to facilitate planning for
4-22 water supplies reasonably required for a clean coal project, as
4-23 defined by Section 5.001. The rules may allow for amending a
4-24 regional water plan without providing notice and without a public
4-25 meeting or hearing under Subsection (h) if the amendment does not:

4-26 (1) significantly change the regional water plan, as
4-27 reasonably determined by the board; or

4-28 (2) adversely affect other water management
4-29 strategies in the regional water plan.

4-30 SECTION 8. Subchapter B, Chapter 27, Water Code, is amended
4-31 by adding Section 27.022 to read as follows:

4-32 Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION.
4-33 The commission has jurisdiction over the injection of carbon
4-34 dioxide produced by a clean coal project, to the extent authorized
4-35 by federal law, into a zone that is below the base of usable quality
4-36 water and that is not productive of oil, gas, or geothermal
4-37 resources by a Class II injection well, or by a Class I injection
4-38 well if required by federal law.

4-39 SECTION 9. The heading to Subchapter C, Chapter 27, Water
4-40 Code, is amended to read as follows:

4-41 SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

4-42 SECTION 10. Subchapter C, Chapter 27, Water Code, is
4-43 amended by adding Section 27.038 to read as follows:

4-44 Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION.
4-45 The railroad commission has jurisdiction over the injection of
4-46 carbon dioxide produced by a clean coal project, to the extent
4-47 authorized by federal law, into a reservoir that is productive of
4-48 oil, gas, or geothermal resources by a Class II injection well, or
4-49 by a Class I injection well if required by federal law.

4-50 SECTION 11. Not later than September 1, 2006:

4-51 (1) the Texas Water Development Board shall adopt
4-52 rules under Section 16.053, Water Code, as amended by this Act;

4-53 (2) the Texas Commission on Environmental Quality
4-54 shall adopt rules under Sections 5.558 and 27.022, Water Code, as
4-55 added by this Act; and

4-56 (3) the Railroad Commission of Texas shall adopt rules
4-57 under Section 27.038, Water Code, as added by this Act.

4-58 SECTION 12. (a) This section takes effect only if Senate
4-59 Bill No. 831, Acts of the 79th Legislature, Regular Session, 2005,
4-60 or similar legislation providing for funding emerging
4-61 technologies, is enacted and becomes law.

4-62 (b) Chapter 490, Government Code, as added by Senate Bill
4-63 No. 831, Acts of the 79th Legislature, Regular Session, 2005, is
4-64 amended by adding Subchapter G to read as follows:

4-65 SUBCHAPTER G. CLEAN COAL PROJECTS

4-66 Sec. 490.301. DEFINITION. In this section, "clean coal
4-67 project" has the meaning assigned by Section 5.001, Water Code.

4-68 Sec. 490.302. USE OF MONEY FOR CLEAN COAL PROJECT. (a)
4-69 Notwithstanding Section 490.102, the governor may allocate money

5-1 appropriated to the fund by the legislature to provide matching
5-2 money for a clean coal project as described by Section 2305.037 if
5-3 the governor has the express written prior approval of the
5-4 lieutenant governor and the speaker of the house of representatives
5-5 to do so.

5-6 (b) The governor may allocate proceeds deposited in the fund
5-7 as provided by an agreement described by Section 490.103 to provide
5-8 matching money for a clean coal project as described by Section
5-9 2305.037 if the governor has the express written prior approval of
5-10 the lieutenant governor and the speaker of the house of
5-11 representatives to do so.

5-12 Sec. 490.303. ELIGIBILITY OF CLEAN COAL PROJECT FOR MONEY.
5-13 Notwithstanding any other provision of this subchapter, a clean
5-14 coal project constitutes an opportunity for emerging technology
5-15 suitable for consideration for a grant under Subchapter C,
5-16 incentives as provided by Subchapter D, grant matching as provided
5-17 by Subchapter E, and acquisition of research superiority under
5-18 Subchapter F.

5-19 SECTION 13. This Act takes effect immediately if it
5-20 receives a vote of two-thirds of all the members elected to each
5-21 house, as provided by Section 39, Article III, Texas Constitution.
5-22 If this Act does not receive the vote necessary for immediate
5-23 effect, this Act takes effect September 1, 2005.

5-24 * * * * *