

By: Estes

S.B. No. 1366

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;

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

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

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

SECTION 2. Section 382.05195, Health and Safety Code, is amended by adding Subsections (j), (k), (l), and (m) to read as follows:

(j) For purposes of Subsections (k), (l), and (m):

(1) "Clean coal project" has the meaning assigned by Section 5.001, Water Code.

(2) "Significant net increase in emissions" means:

(A) an increase in emissions resulting solely from the installation of clean coal technology that is equal to or greater than the major modification threshold under commission rules for pollutants for which the area is designated nonattainment or for precursor to those pollutants; or

(B) an increase in emissions that is significant, as defined by 40 C.F.R. Section 52.21(b)(23), for pollutants for which the area is designated nonattainment or for precursor to

1 those pollutants.

2 (k) The commission shall issue a standard permit for
3 construction or modification of electric generating, steam
4 production, or industrial production facilities that constitute a
5 clean coal project and facilities ancillary to those facilities.
6 The standard permit's requirements must comply with and be no more
7 stringent than requirements of federal law and must be consistent
8 with streamlined permitting requirements applicable to a clean coal
9 project. If a clean coal project would result in a significant net
10 increase in emissions of any criteria pollutant, a person claiming
11 authorization under the standard permit shall submit with the
12 registration for the standard permit information sufficient to
13 demonstrate that the increased emissions would not cause or
14 contribute to the violation of a national ambient air quality
15 standard, cause or contribute to the violation of a prevention of
16 significant deterioration increment, or cause or contribute to a
17 violation of a prevention of significant deterioration visibility
18 limitation.

19 (l) Subsection (k) does not limit a person seeking
20 authorization under a standard permit issued under that subsection
21 from relying on a provision of the federal Clean Air Act (42 U.S.C.
22 Section 7401 et seq.) or on a regulation adopted under that Act to
23 demonstrate that a clean coal project does not constitute a new
24 major source or a major modification under federal law.

25 (m) A clean coal project that constitutes a new major source
26 or a major modification under federal new source review
27 requirements is eligible to use the standard permit issued under

Subsection (k) but is also subject to additional applicable federal requirements. The public participation procedures applicable to the authorization of a new major source or a major modification under the standard permit issued under Subsection (k) must consist of notice and comment procedures that are functionally equivalent to those required by the federal Clean Air Act and regulations adopted under that federal Act, but Chapter 2001, Government Code, does not apply to the public participation procedures. In determining whether a clean coal project constitutes a "modification of existing facility," the commission shall apply all exclusions recognized by the United States Environmental Protection Agency for physical changes.

SECTION 3. Section 382.0541, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) The commission shall issue a general permit authorized by 40 C.F.R. Section 70.6(d) for the construction or modification of electric generating, steam production, or industrial production facilities that constitute a clean coal project, as defined by Section 5.001, Water Code, and ancillary facilities associated with a clean coal project.

SECTION 4. Section 2305.037, Government Code, is amended to read as follows:

Sec. 2305.037. INNOVATIVE [~~RENEWABLE~~] ENERGY DEMONSTRATION PROGRAM. (a) The energy office is the supervising state agency of the innovative [~~renewable~~] energy demonstration program and shall distribute grant money under the program for demonstration projects that develop sustainable and innovative [~~renewable~~] energy

resources, including:

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

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

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

(b) For a grant awarded by the energy office for a clean coal project, as defined by Section 5.001, Water Code, the energy office shall award out of the innovative energy technology account an amount that equals half of the amount invested in the project by private persons, but not more than \$20 million. The innovative energy technology account is an account in the general revenue fund that may be appropriated only for issuing and administering grants under this section. Interest earned on money in the account shall be credited to the account. The account is not subject to Section 403.095.

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

SECTION 5. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.108 to read as follows:

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

(1) that is acquired by the corporation for use in

1 generation of electricity, production of process steam, or
2 industrial production;

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

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

8 (1) be for a period of at least 60 months;
9 (2) provide for equal monthly amounts;
10 (3) begin on the month during which the equipment is
11 placed in service in this state; and

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

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

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

25 SECTION 6. Section 313.024(b), Tax Code, is amended to read
26 as follows:

27 (b) To be eligible for a limitation on appraised value under

1 this subchapter, the corporation or limited liability company must
2 use the property in connection with:

- 3 (1) manufacturing;
- 4 (2) research and development;
- 5 (3) a clean coal project, as defined by Section 5.001,
6 Water Code; or
- 7 (4) [~~(3)~~] renewable energy electric generation.

8 SECTION 7. Section 5.001, Water Code, is amended by
9 amending Subdivisions (2) and (3) and adding Subdivisions (4) and
10 (5) to read as follows:

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

13 (3) "Executive director" means the executive director
14 of the Texas [~~Natural Resource Conservation~~] Commission on
15 Environmental Quality.

16 (4) "Clean coal project" means the installation of one
17 or more components of the coal-based integrated sequestration and
18 hydrogen research project in partnership with the United States
19 Department of Energy, commonly referred to as the FutureGen
20 project, including the construction or modification of an electric
21 generation, steam production, or industrial production facility.

22 (5) "Coal" has the meaning assigned by Section
23 134.004, Natural Resources Code.

24 SECTION 8. Subchapter M, Chapter 5, Water Code, is amended
25 by adding Section 5.558 to read as follows:

26 Sec. 5.558. STREAMLINED PERMITTING PROCEDURES FOR CLEAN
27 COAL PROJECTS. (a) The commission, to the extent authorized by

1 federal law, shall adopt and implement streamlined procedures for
2 issuing permits as required to construct a clean coal project.

3 (b) Chapter 2001, Government Code, does not apply to
4 permitting procedures adopted under this section.

5 SECTION 9. Section 16.053, Water Code, is amended by adding
6 Subsection (r) to read as follows:

7 (r) The board by rule shall provide for the maximum
8 flexibility possible to allow for a timely amendment of a regional
9 water plan, the board's approval of an amended regional water plan,
10 and the amendment of the state water plan, to facilitate planning
11 for water supplies, including water supplies necessary for the
12 demands of a clean coal project. The rules must allow for amending
13 a regional water plan without providing notice and without a public
14 meeting or hearing under Subsection (h) if the amendment does not:

15 (1) significantly change the regional water plan, as
16 determined by the board; or

17 (2) adversely affect other water management
18 strategies in the regional water plan.

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

21 SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

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

24 Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION.
25 The railroad commission has jurisdiction over injection of carbon
26 dioxide produced by a clean coal project, to the extent authorized
27 by federal law, into:

1 (1) a reservoir productive of oil, gas, or geothermal
2 resources by a Class II injection well, or by a Class I injection
3 well if required by federal law; or

4 (2) a zone that is below the base of usable quality
5 water and that is not productive of oil, gas, or geothermal
6 resources by a Class II injection well, or by a Class I injection
7 well if required by federal law.

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

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

11 (2) the Texas Commission on Environmental Quality
12 shall issue a standard permit under Section 382.05195(k), Health
13 and Safety Code, as added by this Act; and

14 (3) the Texas Commission on Environmental Quality
15 shall issue a general permit under Section 382.0541(f), Health and
16 Safety Code, as added by this Act.

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