By: Estes S.B. No. 1366

(In the Senate - Filed March 10, 2005; March 21, 2005, read first time and referred to Committee on Natural Resources; May 3, 2005, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; May 3, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1366 By: Estes

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 leader in innovative energy technologies and is expected to:

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

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

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

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

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

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

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

(B) appropriate geological features for storing carbon dioxide;

(C) a market for energy produced; and

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

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

(10) carbon dioxide from FutureGen projects could be used to recover three billion barrels of oil and generate $4 billion 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 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) 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, the energy office shall 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. The managing entity of the FutureGen project shall provide records as considered necessary by the energy office to justify grants under this subsection. Cumulative distributions under this subsection may not exceed $20 million.

(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 3. 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) In this section, "clean coal project" has the meaning assigned by Section 5.001, Water Code.

(b) A corporation may 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:

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

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

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

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

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

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

(2) provide for equal monthly amounts;

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

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

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

(e) A corporation may 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. An election for an initial period applies to the second tax period and to the first regular annual period.

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

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

(1) manufacturing;

(2) research and development;

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

(4) [~~(3)~~] renewable energy electric generation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) "FutureGen project profile" means a standard or standards relevant to a component of the FutureGen project, as

provided in a final or amended United States Department of Energy request for proposals or contract.

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

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

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

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

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

(r) The board by rule shall 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. The rules may 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:

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

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

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

Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION. The commission has jurisdiction over the 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. The heading to Subchapter C, Chapter 27, Water Code, is amended to read as follows:

SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

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

Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION. The railroad commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a reservoir that is 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. Not later than September 1, 2006:

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

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

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

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

* * * * *