

BILL ANALYSIS

Senate Research Center
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S.B. 1366
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Natural Resources
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

This bill addresses permitting issues necessary for Texas to compete with other states for a one billion dollar United States Department of Energy public/private partnership project known as FutureGen. FutureGen will be a state-of-the-art power plant that uses coal to produce electricity while producing virtually zero emissions through a high-tech process of integrated carbon sequestration.

One of the critical selection criteria the Department of Energy has identified for the FutureGen project is the ability to ensure predictable and timely permitting. In Texas, it is difficult to estimate the permit time period due to the lengthy contested case hearing process for permits that may be necessary to build all of the elements of the FutureGen project.

The purpose of this bill is to create a more predictable and streamlined permitting process for the key components of the FutureGen project to better position Texas in the competition. The bill is also designed to create financial incentives to compete with the financial incentives packages being proposed by several other states competing for the FutureGen project.

FutureGen fits with the goals of the Governor's Clean Coal Technology Council. It is expected to create 11,000 new jobs and generate \$98 million in tax revenue with an estimated total economic benefit of over \$374 million.

As proposed, S.B. 1366 allows Texas the tools it needs to lead the nation in clean coal technology and receive the economic benefits of FutureGen.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 9 (Section 16.053, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth the findings of the legislature regarding energy production.

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

(j) Defines "clean coal project" and "significant net increase in emissions."

(k) Requires the Texas Commission on Environmental Quality (commission) to issue a standard permit for construction or modification of electric generating, steam production, or industrial production facilities that constitute a clean coal project and facilities ancillary to those facilities. Sets forth the requirements for the standard permit's requirements. Sets forth the information the person claiming a standard permit must submit with the registration if a clean coal project would result in a significant net increase in emissions of any criteria pollutant.

(l) Provides that Subsection (k) does not limit a person seeking authorization under a standard permit issued under that subsection from relying on the federal Clean Air Act or on a regulation adopted under that Act to demonstrate that a clear coal project does not constitute a new major source or a major modification under federal law.

(m) Provides that a clean coal project that constitutes a new major source or a major modification under federal new source review requirements is eligible to use the standard permit issued under Subsection (k), but is also subject to additional applicable federal requirements. Sets forth the public participation procedures applicable to the authorization of a new major source or a major modification under the standard permit. Requires the commission, in determining whether a clean coal project constitutes a "modification of existing facility," to apply certain exclusions.

SECTION 3. Amends Section 382.0541, Health and Safety Code, by adding Subsection (f) to require the commission to issue a general permit for the construction or modification of electric generating, steam production, or industrial production facilities that constitute a clean coal project and ancillary facilities associated with a clean coal project.

SECTION 4. Amends Section 2305.037, Government Code, as follows:

Sec. 2305.037. New heading: INNOVATIVE ENERGY DEMONSTRATION PROGRAM. (a) Provides that the state energy conservation office of the comptroller's office (energy office) is the supervising state agency of the innovative, rather than renewable, energy demonstration program. Requires the energy office to distribute grant money for demonstration projects that develop sustainable and innovative, rather than renewable, energy resources including, among other things, a clean coal project and other appropriate low-emission, renewable, and sustainable energy applications, rather than other appropriate renewable and sustainable energy applications. Makes nonsubstantive changes.

(b) Requires the energy office, for a grant awarded for a clean coal project, to award out of the innovative technology account a certain amount. Provides that the innovative energy technology account is an account in the general revenue fund and sets forth the circumstances under which it may be appropriated. Requires interest earned on money in the account to be credited to the account. Provides that the account is not subject to Section 403.095 (Use of Dedicated Revenue).

(c) Redesignated from existing Subsection (b). Makes a nonsubstantive change.

SECTION 5. Amends Subchapter C, Chapter 171, Tax Code, by adding Section 171.108, as follows:

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

(b) Sets forth the requirements for the amortization of the cost of capital used in a clean coal project.

(c) Sets forth the documents a corporation that makes a deduction under this section is required to file with the comptroller.

(c) Authorizes a corporation to 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. Provides that an election for an initial period applies to the second tax period and to the first regular annual period.

SECTION 6. Amends Section 313.024(b), Tax Code, to authorize an entity which uses the property in connection with a clean coal project to be eligible for a certain limitation on appraised value. Makes a nonsubstantive change.

SECTION 7. Amends Section 5.001, Water Code, by amending Subdivisions (2) and (3) and adding Subdivisions (4) and (5) to redefine "commission" and "executive director" and to define "clean coal project" and "coal."

SECTION 8. Amends Subchapter M, Chapter 5, Water Code, by adding Section 5.558, as follows:

Sec. 5.558. STREAMLINED PERMITTING PROCEDURES FOR CLEAN COAL PROJECTS. (a) Requires the commission, to the extent authorized by federal law, to adopt and implement streamlined procedures for issuing permits as required to construct a clean coal project.

(b) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to permitting procedures adopted under this section.

SECTION 9. Amends Section 16.053, Water Code, by adding Subsection (r) to require the Texas Water Development Board, by rule, to provide for the maximum flexibility possible 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, including water supplies necessary for the demands of a clean coal project. Requires the rules to allow for amending a regional water plan without providing notice and without public meeting or hearing under certain conditions.

SECTION 10. Amends the heading to Subchapter C, Chapter 27, Water Code, to read as follows:

SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

SECTION 11. Amends Subchapter C, Chapter 27, Water Code, by adding Section 27.038, as follows:

Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION. Provides that the Railroad Commission of Texas has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into certain areas.

SECTION 12. Requires the Texas Water Development Board to adopt rules under Section 16.053, Water Code, as amended by this Act, the Texas Commission on Environmental Quality to issue a standard permit under Section 382.05195(k), Health and Safety Code, as added by this Act, and the Texas Commission on Environmental Quality to issue a general permit under Section 382.0541(f), Health and Safety Code, as added by this Act, not later than September 1, 2006.

SECTION 13. Effective date: upon passage or September 1, 2005.