

## BILL ANALYSIS

Senate Research Center

C.S.S.B. 1366  
By: Estes  
Natural Resources  
5/3/2005  
Committee Report (Substituted)

### 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.

C.S.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 Commission on Environmental Quality in SECTION 6 (Section 5.558, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 7 (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 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 to distribute a specific sum of money to the managing entity of the FutureGen project, contingent on the selection of a Texas

site for the location of the coal-based integrated sequestration and hydrogen project to be built. Requires the managing entity of the FutureGen project to provide records as considered necessary by the energy office to justify grants under this subsection. Prohibits cumulative distributions under this subsection from exceeding \$20 million.

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

SECTION 3. 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) Defines "clean coal project."

(b) Authorizes a corporation to 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 certain equipment.

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

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

(e) 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 4. 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 5. Amends Section 5.001, Water Code, by amending Subdivisions (2) and (3) and adding Subdivisions (4), (5), (6), and (7) to redefine "commission" and "executive director" and to define "clean coal project," "coal," "component of the FutureGen project," and "FutureGen project profile."

SECTION 6. Amends Subchapter M, Chapter 5, Water Code, by adding Section 5.558, as follows:

Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) Requires the Texas Commission on Environmental Quality (TCEQ), by rule, as authorized by federal law, to implement reasonable streamlined processes for issuing permits required to construct a clean coal project.

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

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

SECTION 7. Amends Section 16.053, Water Code, by adding Subsection (r) to require the Texas Water Development Board (TWDB), by rule, to provide for reasonable flexibility to allow for a timely amendment of a regional water plan, TWDB'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 reasonably required for a clean coal project, as defined in Section 5.001. Authorizes the rules to allow for amending a regional water plan without providing notice and without public meeting or hearing under certain conditions.

SECTION 8. Amends Subchapter B, Chapter 27, Water Code, by adding Section 27.022, as follows:

Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION. Provides that TCEQ 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 law.

SECTION 9. Amends the heading to Subchapter C, Chapter 27, Water Code, to read as follows:

SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

SECTION 10. 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 the injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law.

SECTION 11. Sets forth a deadline of September 1, 2006, for specific entities to adopt rules required by this Act.

SECTION 12. Effective date: upon passage or September 1, 2005.