

BILL ANALYSIS

C.S.H.B. 3112
By: Cook, Byron
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The State of Texas has applied with the Department of Energy to be a host of the FutureGen project. This project will be funded by the federal government. Its purpose is to construct, study, and effectuate the deep injection and permanent storage of carbon dioxide that is generated in the production of electricity. The 79th Texas Legislature passed House Bill 2201 setting up much of the statutory structure for Texas to host the FutureGen project. House Bill 149 in the 3rd Called Session of the 79th Texas Legislature was passed to address long-term liability issues that may arise from the permanent sequestration of carbon dioxide.

This bill is a follow-up to the previously enacted FutureGen legislation. This bill will help clarify and enhance the State of Texas' best value offerings for selection by the FutureGen Industrial Alliance as the host state of a clean coal project.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

This bill amends the Government Code by adding a section entitled "Contracting Authority." This bill gives the Governor of Texas specific authority to enter contractual agreements for the state with an organization exempt from federal income taxation under Section 501 (a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501 (c) (3) of that code, including the FutureGen Industrial Alliance, Inc., for a purpose related to implementing a clean coal project, including an innovative energy demonstration program.

This bill clarifies that the contracting authority section added by this Act expires on the date the FutureGen Industrial Alliance, Inc., loses its qualification as being exempt from federal taxation as described by this bill.

This bill amends the Natural Resources Code by adding a section entitled "Monitoring of Sequestered Carbon Dioxide," and states that the Bureau of Economic Geology of the University of Texas at Austin shall monitor, measure, and verify the permanent status of sequestered carbon dioxide in which the Railroad Commission of Texas (commission) has acquired the right, title, and interest. This bill relieves from liability, certain owners and operators of a clean coal project which meet certain criteria as established by this bill. This bill clarifies that no owner, operator or contractor of a clean coal project is immune from liability for personal injury or death that is a result of certain issues as provided by this bill.

This bill adds the Texas Board of Criminal Justice to the list of state entities which may enter into a lease with the commission or an owner or operator of a clean coal project for the use of lands for permanent storage of carbon dioxide captured by a clean coal project. The bill further adds the Texas Department of Criminal Justice to the list of state entities which are indemnified against liability for certain things and in certain instances as provided by this bill.

This bill includes certain state agencies which may request the attorney general to represent the state agency in a legal proceeding that arises from certain instances in connection with a clean coal project as described by the bill. The bill further provides that if the attorney general declines to represent the state agency, the agency may obtain outside counsel.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The caption of the bill was changed in the substitute. The original caption read "relating to contracting authority and indemnification requirements in relation to a clean coal project." The substitute caption reads "relating to certain matters regarding a clean coal project, including contracting authority and indemnification requirements, liability, representation of a state agency by the attorney general, and monitoring of sequestered carbon dioxide."

The substitute added a section dealing with the monitoring of sequestered carbon dioxide. The substitute also adds a section dealing with the liability of certain owners, operators, and contractors of a clean coal project.

In the section dealing with indemnification, the original stated that the Texas "Department" of Criminal Justice may enter into a lease, and the substitute states that the Texas "Board" of Criminal Justice may enter into a lease, the substitute also changes or adds the word "board" in other places to reflect this change. The substitute also adds the Texas Department of Criminal Justice to the list of those state entities which are indemnified by this bill.

The original bill had a section entitled Indemnification by State and Representation by Attorney General. The substitute strikes the word "Indemnification by State."

The following information was included in the original version of the bill, but is not in the substitute. The original stated that the attorney general shall represent and defend an owner or operator of a clean coal project in a civil proceeding that arises from an escape or migration of carbon dioxide captured or sequestered by the project, and set the parameters for how such an owner or operator would request this representation and how that representation would be handled by the attorney general, including court costs and litigation paid by the state. The original stated the basis and determination by which the attorney general declines to represent the owner or operator. The original stated procedures related to the employment of another attorney by the owner or operator and that the state shall pay the court costs, litigation expenses, and attorney's fees as deemed reasonable by the attorney general. The original stated that if the attorney general declined to represent the owner or operator for certain reasons as stated in the original bill and that the owner or operator were later cleared by a court or jury that the state shall indemnify the owner or operator for certain things as specified by the original bill. The original also included certain information (including certain payments by the state) dealing with a counterclaim filed by the attorney general on behalf of the owner or operator. The original stated that the section dealing with "indemnification by state and representation by attorney general" would expire on the date the FutureGen Industrial Alliance, Inc., loses its qualification as being exempt from federal taxation. (As stated at the beginning of this paragraph of the bill analysis, all of this information was in the original but was removed by the substitute.)

The following information was not in the original but was added by the substitute. The substitute provides a list defining "state agency" for the purposes of the section of the bill dealing with "Representation by Attorney General." The substitute states that a state agency may request the attorney general to represent them in a legal proceeding that arises from an escape or migration of carbon dioxide captured or sequestered in connection with a clean coal project. The substitute states that if the attorney general declines to represent the state agency, that the state agency may obtain outside counsel, and that for the purposes of this section, the attorney general's declination to represent the agency constitutes the attorney general's approval of the outside counsel for the matter. (As stated at the beginning of this paragraph of the bill analysis, all of this information was not included in the original but is added by the substitute.)