

## **BILL ANALYSIS**

Senate Research Center

S.B. 1461  
By: Seliger  
Natural Resources  
7/9/2007  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

FutureGen is a public-private partnership between the United States Department of Energy and the FutureGen Industrial Alliance to build an electric generation facility that is also capable of producing hydrogen and sequestering carbon dioxide. The intent of the research project is to create the first near-zero-emissions fossil fuel power plant. The prototype facility will be designed to allow testing of various components and fuel types in all phases of the process, as well as full measurement, monitoring, and verification of carbon dioxide sequestering.

Currently, the governor lacks the authority to contract with an organization, such as the FutureGen Industrial Alliance, on behalf of the State of Texas.

S.B. 1461 allows the governor to contract with an organization that is exempt from federal income taxation for a purpose related to implementing a clean coal power plant project. This bill also designates land for the disposal of sequestered carbon dioxide and requires that the attorney general provide legal representation for a state agency in a legal proceeding that arises from an escape or migration of carbon dioxide captured or sequestered in connection with a clean coal project.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 490.301, Government Code, as added by Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005 as follows:

Sec. 490.301. DEFINITION. Defines "clean coal project" for the purposes of this subchapter, rather than this section.

SECTION 2. Amends Subchapter G, Chapter 490, Government Code, as added by Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005, by adding Section 490.304, as follows:

Sec. 490.304. CONTRACTING AUTHORITY; FRANCHISE TAX CREDIT. (a) Authorizes the governor to contract 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.

(b) Authorizes the governor and the comptroller of public accounts (comptroller) to jointly adopt provisions for issuing to the entity with which the governor contracts under Subsection (a), including the FutureGen Industrial Alliance, Incorporated, franchise tax credits to promote research and development activities related to a clean coal project in this state. Requires the governor and comptroller to act under this subsection not later than December 31, 2007. Prohibits the franchise tax credits to be issued under this subsection from having a value in any year that exceeds the amount a retail electric provider pays in that year to the

entity for electricity generated for the clean coal project's research and development purposes. Authorizes a franchise tax credit to be issued, in accordance with the governor's and comptroller's provisions, to the entity, irrespective of whether the entity owes or pays a franchise tax under Chapter 171 (Franchise Tax), Tax Code. Authorizes the entity to assign the tax credits to a taxable entity, as defined by Section 171.0002 (Definition of Taxable Entity), Tax Code, in accordance with the governor's and comptroller's provisions.

(c) Provides that this section expires on the date the FutureGen Industrial Alliance loses its qualification as being exempt from federal taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3).

SECTION 3. Amends Chapter 119, Natural Resources Code, by adding Section 119.0025, as follows:

Sec. 119.0025. MONITORING OF SEQUESTERED CARBON DIOXIDE. Requires the Bureau of Economic Geology of The University of Texas at Austin to monitor, measure, and verify the permanent status of sequestered carbon dioxide in which the Railroad Commission of Texas has acquired the right, title, and interest under Section 119.002.

SECTION 4. Amends Section 119.004, Natural Resources Code, as follows:

Sec. 119.004. LIABILITY. (a) Creates this subsection from existing text.

(b) Provides that the owner or operator of a clean coal project, on the date the commission acquires the right, title, and interest in carbon dioxide captured by a clean coal power project under Section 119.002, is relieved from liability for any act or omission regarding the carbon dioxide injection location, and the method or means of performing carbon dioxide injection, if the injection location and method or means of injection comply with the terms of a license or permit issued by the state and applicable state law and regulations.

(c) Provides that no owner, operator, or contractor of a clean coal power project is immune from liability for personal injury or death that results from construction of the site, or drilling or operation of the injection wells, notwithstanding Subsection (b).

SECTION 5. Amends Section 119.006, Natural Resources Code, as follows:

Sec. 119.006. INDEMNIFICATION. Authorizes the Texas Board of Criminal Justice (board) to enter into a lease with the Texas Railroad Commission or with an owner or operator of a clean coal project for the use of lands owned or controlled by the board for permanent storage of carbon dioxide captured by a clean coal project, provided that such lease adequately indemnifies the board and the Texas Department of Criminal Justice (TDCJ) against liability for personal injury or property damage incurred by the board and TDCJ as a result of the escape or migration of the carbon dioxide after it is injected into a zone or reservoir.

SECTION 6. Amends Chapter 119, Natural Resources Code, by adding Section 119.007, as follows:

Sec. 119.007. REPRESENTATION BY ATTORNEY GENERAL. (a) Defines "state agency."

(b) Authorizes a state agency to request the attorney general to represent the state agency in a legal proceeding that arises from an escape or migration of carbon dioxide captured or sequestered in connection with a clean coal project.

(c) Authorizes a state agency to obtain outside counsel in accordance with Section 402.0212 (Provision of Legal Services--Outside Counsel), Government Code, and

for purposes of that section, the attorney general's declination to represent the agency constitutes the attorney general's approval of the outside counsel for the matter provided that the attorney general declines to represent the state agency.

SECTION 7. Effective date: September 1, 2007.