

## **BILL ANALYSIS**

C.S.S.B. 1461  
By: Seliger  
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; Franchise Tax Credit." 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, Incorporated, for a purpose related to implementing a clean coal project, including an innovative energy demonstration program.

This bill also states that the governor and the comptroller jointly may adopt provisions for issuing to the entity with which the governor contracts, franchise tax credits to promote research and development activities related to a clean coal project in this state. This bill clarifies that the governor and comptroller must act under this subsection not later than December 31, 2007. This bill further states that the franchise tax credits to be issued in any year may not have a value 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. This bill further states that in accordance with the governor's and comptroller's provisions, a franchise tax credit may be issued to the entity, irrespective of whether the entity owes or pays a franchise tax, and the entity may assign the tax credits to a taxable entity.

This bill clarifies that the contracting authority section added by this Act expires on the date the FutureGen Industrial Alliance, Incorporated, 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 substitute adds language which deals with franchise tax credits. This language which is added by the substitute, allows the governor and the comptroller jointly to adopt provisions for issuing to the entity with which the governor contracts, franchise tax credits to promote research and development activities related to a clean coal project in this state within certain parameters set out by this bill.