

By: Cook of Navarro

H.B. No. 3112

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to contracting authority and indemnification requirements  
3 in relation to a clean coal project.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 490.301, Government Code, as added by  
6 Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005,  
7 is amended to read as follows:

8 Sec. 490.301. DEFINITION. In this subchapter [~~section~~],  
9 "clean coal project" has the meaning assigned by Section 5.001,  
10 Water Code.

11 SECTION 2. Subchapter G, Chapter 490, Government Code, as  
12 added by Chapter 1097, Acts of the 79th Legislature, Regular  
13 Session, 2005, is amended by adding Section 490.304 to read as  
14 follows:

15 Sec. 490.304. CONTRACTING AUTHORITY. (a) The governor may  
16 contract for the state with an organization exempt from federal  
17 income taxation under Section 501(a), Internal Revenue Code of  
18 1986, by being listed as an exempt entity under Section 501(c)(3) of  
19 that code, including the FutureGen Industrial Alliance, Inc., for a  
20 purpose related to implementing a clean coal project, including an  
21 innovative energy demonstration program described by Section  
22 2305.037.

23 (b) This section expires on the date the FutureGen  
24 Industrial Alliance, Inc., loses its qualification as being exempt

1 from federal taxation under Section 501(a), Internal Revenue Code  
2 of 1986, by being listed as an exempt entity under Section 501(c)(3)  
3 of that code.

4 SECTION 3. Section 119.006, Natural Resources Code, is  
5 amended to read as follows:

6 Sec. 119.006. INDEMNIFICATION. The University of Texas  
7 System, ~~and~~ the permanent university fund, and the Texas  
8 Department of Criminal Justice may enter into a lease with the  
9 commission~~]~~ or with an owner or operator of a clean coal  
10 project~~]~~ for the use of lands owned or controlled by the system,  
11 the ~~or~~ fund, or the department for permanent storage of carbon  
12 dioxide captured by a clean coal project, provided that such lease  
13 adequately indemnifies the system, the ~~and~~ fund, and the  
14 department against liability for personal injury or property damage  
15 incurred by the system, the ~~or~~ fund, or the department as a result  
16 of the escape or migration of the carbon dioxide after it is  
17 injected into a zone or reservoir. This section does not affect the  
18 application of Chapter 101, Civil Practice and Remedies Code, to  
19 any activity carried out by a governmental unit, as defined by that  
20 chapter.

21 SECTION 4. Chapter 119, Natural Resources Code, is amended  
22 by adding Section 119.007 to read as follows:

23 Sec. 119.007. INDEMNIFICATION BY STATE AND REPRESENTATION  
24 BY ATTORNEY GENERAL. (a) The attorney general shall represent and  
25 defend an owner or operator of a clean coal project in a civil  
26 proceeding brought against the owner or operator that arises from  
27 an escape or migration of carbon dioxide captured or sequestered by

1 the project if, not later than the 15th day after the date the owner  
2 or operator subject to the proceeding receives service of process,  
3 the owner or operator mails to the attorney general:

4 (1) written notice of the proceeding; and

5 (2) the owner or operator's written:

6 (A) authorization for the attorney general to  
7 represent and defend the owner or operator in the proceeding;

8 (B) agreement by the owner or operator to  
9 cooperate with the attorney general in the defense of the action;  
10 and

11 (C) consent that the attorney general may conduct  
12 the defense as the attorney general determines is advisable and in  
13 the best interests of the owner or operator, including consent for  
14 the attorney general to employ the attorney general's own  
15 discretion in settlement.

16 (b) In any proceeding described by Subsection (a) in which  
17 the attorney general represents the owner or operator, the state  
18 shall pay the court costs and litigation expenses of defending the  
19 action as they are incurred, to the extent approved by the attorney  
20 general as reasonable.

21 (c) The attorney general in writing shall decline to  
22 represent or defend the owner or operator or shall promptly take  
23 appropriate action to withdraw as attorney for the owner or  
24 operator if the attorney general determines that:

25 (1) representing and defending an owner or operator  
26 under this section involves an actual or potential conflict of  
27 interest;

1           (2) the act or omission that gave rise to the claim was  
2 intentional, wilful, or wanton misconduct; or

3           (3) the act or omission that gave rise to the claim was  
4 not within the scope of the escape or migration of captured or  
5 sequestered carbon dioxide.

6           (d) If on the basis of an actual or potential conflict of  
7 interest the attorney general declines to represent or withdraws  
8 from representing the owner or operator and the owner or operator  
9 employs an attorney to represent and defend the owner or operator in  
10 the proceeding, the state shall pay the owner or operator's court  
11 costs, litigation expenses, and attorney's fees as they are  
12 incurred, to the extent approved by the attorney general as  
13 reasonable.

14           (e) If the attorney general declines to represent or defend  
15 the owner or operator or withdraws on the grounds described by  
16 Subsection (c)(2) or (3) and a court or jury later finds that the  
17 act or omission of the owner or operator was not intentional,  
18 wilful, or wanton misconduct and was within the scope of the escape  
19 or migration of captured or sequestered carbon dioxide, the state  
20 shall:

21           (1) indemnify the owner or operator for any damages  
22 awarded and court costs and attorney's fees assessed as part of any  
23 final and unreversed judgment; and

24           (2) pay the owner or operator's court costs,  
25 litigation expenses, and attorney's fees, to the extent approved by  
26 the attorney general as reasonable.

27           (f) The attorney general may file a counterclaim on behalf

1 of the owner or operator if:

2 (1) the attorney general determines that the owner or  
3 operator is entitled to representation in a civil action under this  
4 section;

5 (2) the counterclaim arises out of any act or omission  
6 occurring within the scope of the operation of a clean coal project  
7 that is the subject of the civil action; and

8 (3) the owner or operator agrees in writing that if  
9 judgment is entered in favor of the owner or operator, the amount of  
10 the judgment will be applied to offset any judgment that may be  
11 entered in favor of the plaintiff and then to reimburse the state  
12 for court costs and litigation expenses required to pursue the  
13 counterclaim.

14 (g) The state shall pay to the owner or operator any  
15 positive balance of a collected judgment for a counterclaim that  
16 remains after applying the amount of the judgment to offset any  
17 judgment entered in favor of the plaintiff and to reimburse the  
18 state for court costs and litigation expenses required to pursue  
19 the counterclaim.

20 (h) Court costs, litigation expenses, and other costs of  
21 providing a defense or counterclaim, including attorney's fees  
22 obligated under this section, shall be paid from state funds on the  
23 warrant of the comptroller out of appropriations made to the  
24 attorney general specifically designed for the payment of costs,  
25 fees, and expenses covered by this section.

26 (i) This section expires on the date the FutureGen  
27 Industrial Alliance, Inc., loses its qualification as being exempt

1 from federal taxation under Section 501(a), Internal Revenue Code  
2 of 1986, by being listed as an exempt entity under Section 501(c)(3)  
3 of that code.

4 SECTION 5. This Act takes effect September 1, 2007.