

By: Seliger

S.B. No. 1459

A BILL TO BE ENTITLED

AN ACT

relating to indemnification requirements relating to a clean coal project.

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

SECTION 1. Section 119.006, Natural Resources Code, is amended to read as follows:

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

SECTION 2. Chapter 119, Natural Resources Code, is amended by adding Section 119.007 to read as follows:

Sec. 119.007. INDEMNIFICATION BY STATE AND REPRESENTATION

1 BY ATTORNEY GENERAL. (a) The attorney general shall represent and  
2 defend an owner or operator of a clean coal project in a civil  
3 proceeding brought against the owner or operator that arises from  
4 an escape or migration of carbon dioxide captured or sequestered by  
5 the project if, not later than the 15th day after the date the owner  
6 or operator subject to the proceeding receives service of process,  
7 the owner or operator mails to the attorney general:

8 (1) written notice of the proceeding; and

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

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

12 (B) agreement by the owner or operator to  
13 cooperate with the attorney general in the defense of the action;  
14 and

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

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

25 (c) The attorney general in writing shall decline to  
26 represent or defend the owner or operator or shall promptly take  
27 appropriate action to withdraw as attorney for the owner or

1 operator if the attorney general determines that:

2 (1) representing and defending an owner or operator  
3 under this section involves an actual or potential conflict of  
4 interest;

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

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

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

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

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

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

4           (f) The attorney general may file a counterclaim on behalf  
5 of the owner or operator if:

6           (1) the attorney general determines that the owner or  
7 operator is entitled to representation in a civil action under this  
8 section;

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

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

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

24           (h) Court costs, litigation expenses, and other costs of  
25 providing a defense or counterclaim, including attorney's fees  
26 obligated under this section, shall be paid from state funds on the  
27 warrant of the comptroller out of appropriations made to the

1 attorney general specifically designed for the payment of costs,  
2 fees, and expenses covered by this section.

3 (i) This section expires on the date the FutureGen  
4 Industrial Alliance, Inc., loses its qualification as being exempt  
5 from federal taxation under Section 501(a), Internal Revenue Code  
6 of 1986, by being listed as an exempt entity under Section 501(c)(3)  
7 of that code.

8 SECTION 3. This Act takes effect September 1, 2007.