AN ACT

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.

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

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

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

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

Sec. 490.304. CONTRACTING AUTHORITY; FRANCHISE TAX CREDIT. (a) The governor may 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, Incorporated, for a purpose related to implementing a clean coal project, including an innovative energy demonstration program described by Section 2305.037.

(b) The governor and the comptroller jointly may 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. The governor and comptroller must act under this subsection not later than December 31, 2007. The franchise tax credits to be issued under this subsection 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. A franchise tax credit may 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, Tax Code. The entity may assign the tax credits to a taxable entity, as defined by Section 171.0002, Tax Code, in accordance with the governor's and comptroller's provisions.

(c) This section expires on the date the FutureGen Industrial Alliance, Incorporated, 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) of that code.

SECTION 3. Chapter 119, Natural Resources Code, is amended by adding Section 119.0025 to read as follows:

Sec. 119.0025. MONITORING OF SEQUESTERED CARBON DIOXIDE. 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 commission has acquired the right, title, and interest under Section 119.002.

SECTION 4. Section 119.004, Natural Resources Code, is amended to read as follows:

Sec. 119.004. LIABILITY. (a) The transfer of title to the state under Section 119.002 does not relieve an owner or operator of a clean coal project of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide was captured.

(b) On the date the commission acquires the right, title, and interest in carbon dioxide captured by a clean coal project under Section 119.002, the owner or operator of the clean coal project 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) Notwithstanding Subsection (b), no owner, operator, or contractor of the clean coal 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.

SECTION 5. 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 Board 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 board for permanent storage of carbon dioxide captured by a clean coal project, provided that such lease adequately indemnifies the system, the [~~and~~] fund, the board, and the Texas Department of Criminal Justice against liability for personal injury or property damage incurred by the system, the [~~or~~] fund, the board, 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 6. Chapter 119, Natural Resources Code, is amended by adding Section 119.007 to read as follows:

Sec. 119.007. REPRESENTATION BY ATTORNEY GENERAL. (a) In this section, "state agency" includes:

(1) a department, commission, board, office, or other agency in the legislative, executive, or judicial branch of state government; and

(2) a university system or institution of higher education as defined by Section 61.003, Education Code.

(b) A state agency may 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) If the attorney general declines to represent the state agency, the state agency may obtain outside counsel in accordance

with Section 402.0212, 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.

SECTION 7. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1461 passed the Senate on April 26, 2007, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 21, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1461 passed the House, with amendment, on May 4, 2007, by the following vote: Yeas 139, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor