

By: Seliger

S.B. No. 1461

Substitute the following for S.B. No. 1461:

By: Farabee

C.S.S.B. No. 1461

A BILL TO BE ENTITLED

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.

1        (b) The governor and the comptroller jointly may adopt  
2 provisions for issuing to the entity with which the governor  
3 contracts under Subsection (a), including the FutureGen Industrial  
4 Alliance, Incorporated, franchise tax credits to promote research  
5 and development activities related to a clean coal project in this  
6 state. The governor and comptroller must act under this subsection  
7 not later than December 31, 2007. The franchise tax credits to be  
8 issued under this subsection in any year may not have a value that  
9 exceeds the amount a retail electric provider pays in that year to  
10 the entity for electricity generated for the clean coal project's  
11 research and development purposes. A franchise tax credit may be  
12 issued, in accordance with the governor's and comptroller's  
13 provisions, to the entity, irrespective of whether the entity owes  
14 or pays a franchise tax under Chapter 171, Tax Code. The entity may  
15 assign the tax credits to a taxable entity, as defined by Section  
16 171.0002, Tax Code, in accordance with the governor's and  
17 comptroller's provisions.

18        (c) This section expires on the date the FutureGen  
19 Industrial Alliance, Incorporated, loses its qualification as  
20 being exempt from federal taxation under Section 501(a), Internal  
21 Revenue Code of 1986, by being listed as an exempt entity under  
22 Section 501(c)(3) of that code.

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

25        Sec. 119.0025. MONITORING OF SEQUESTERED CARBON DIOXIDE.  
26 The Bureau of Economic Geology of The University of Texas at Austin  
27 shall monitor, measure, and verify the permanent status of

1 sequestered carbon dioxide in which the commission has acquired the  
2 right, title, and interest under Section 119.002.

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

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

10 (b) On the date the commission acquires the right, title,  
11 and interest in carbon dioxide captured by a clean coal project  
12 under Section 119.002, the owner or operator of the clean coal  
13 project is relieved from liability for any act or omission  
14 regarding the carbon dioxide injection location, and the method or  
15 means of performing carbon dioxide injection, if the injection  
16 location and method or means of injection comply with the terms of a  
17 license or permit issued by the state and applicable state law and  
18 regulations.

19 (c) Notwithstanding Subsection (b), no owner, operator or  
20 contractor of the clean coal project is immune from liability for  
21 personal injury or death that results from construction of the  
22 site, or drilling or operation of the injection wells.

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

25 Sec. 119.006. INDEMNIFICATION. The University of Texas  
26 System, ~~and~~ the permanent university fund, and the Texas Board of  
27 Criminal Justice may enter into a lease with the commission~~]~~ or

1 with an owner or operator of a clean coal project~~[7]~~ for the use of  
2 lands owned or controlled by the system, the ~~[or]~~ fund, or the board  
3 for permanent storage of carbon dioxide captured by a clean coal  
4 project, provided that such lease adequately indemnifies the  
5 system, the ~~[and]~~ fund, the board, and the Texas Department of  
6 Criminal Justice against liability for personal injury or property  
7 damage incurred by the system, the ~~[or]~~ fund, the board, or the  
8 department as a result of the escape or migration of the carbon  
9 dioxide after it is injected into a zone or reservoir. This section  
10 does not affect the application of Chapter 101, Civil Practice and  
11 Remedies Code, to any activity carried out by a governmental unit,  
12 as defined by that chapter.

13 SECTION 6. Chapter 119, Natural Resources Code, is amended  
14 by adding Section 119.007 to read as follows:

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

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

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

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

26 (c) If the attorney general declines to represent the state  
27 agency, the state agency may obtain outside counsel in accordance

1 with Section 402.0212, Government Code, and for purposes of that  
2 section, the attorney general's declination to represent the agency  
3 constitutes the attorney general's approval of the outside counsel  
4 for the matter.

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