

By: Seliger

S.B. No. 1461

A BILL TO BE ENTITLED

AN ACT

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

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. (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, Inc., for a
purpose related to implementing a clean coal project, including an
innovative energy demonstration program described by Section
2305.037.

(b) This section expires on the date the FutureGen
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

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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.