

BILL ANALYSIS

Senate Research Center
80R10129 JJT-F

S.B. 1461
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

FutureGen is a public-private partnership between the United States Department of Energy and the FutureGen Industrial Alliance to build an electric generation facility that is also capable of producing hydrogen and sequestering carbon dioxide. The intent of the research project is to create the first near-zero-emissions fossil fuel power plant. The prototype facility will be designed to allow testing of various components and fuel types in all phases of the process, as well as full measurement, monitoring, and verification of carbon dioxide sequestering.

Currently, the governor lacks the authority to contract with an organization, such as the FutureGen Industrial Alliance, on behalf of the State of Texas.

As proposed, S.B. 1461 allows the governor to contract with an organization that is exempt from federal income taxation for a purpose related to implementing a clean coal power plant project. This bill also designates land for the disposal of sequestered carbon dioxide and requires that the attorney general provide legal representation for the FutureGen Industrial Alliance in certain actions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

Sec. 490.301. DEFINITION. Defines "clean coal project" for the purposes of this subchapter, rather than this section.

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

Sec. 490.304. CONTRACTING AUTHORITY. (a) Authorizes the governor to 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.

(b) Provides that this section expires on the date the FutureGen Industrial Alliance, Inc., 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).

SECTION 3. Amends Section 119.006, Natural Resources Code, as follows:

Sec. 119.006. INDEMNIFICATION. Authorizes the Texas Department of Criminal Justice (TDCJ) to enter into a lease with the Texas Railroad Commission or with an

owner or operator of a clean coal project for the use of lands owned or controlled by TDCJ for permanent storage of carbon dioxide captured by a clean coal project, provided that such lease adequately TDCJ against liability for personal injury or property damage incurred by TDCJ as a result of the escape or migration of the carbon dioxide after it is injected into a zone or reservoir.

SECTION 4. Amends Chapter 119, Natural Resources Code, by adding Section 119.007, as follows:

Sec. 119.007. INDEMNIFICATION BY STATE AND REPRESENTATION BY ATTORNEY GENERAL. (a) Requires the attorney general to represent and defend an owner or operator of a clean coal project in a civil proceeding brought against the owner or operator that arises from an escape or migration of carbon dioxide captured or sequestered by the project if, not later than the 15th day after the date the owner or operator subject to the proceeding receives service of process, the owner or operator mails to the attorney general certain information.

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

(c) Requires the attorney general to decline to represent or defend the owner or operator in writing or to promptly take appropriate action to withdraw as attorney for the owner or operator upon certain determinations of the attorney general.

(d) Requires the state to pay certain costs and fees as they are incurred, to the extent approved by the attorney general as reasonable if on the basis of an actual or potential conflict of interest the attorney general declines to represent or withdraws from representing the owner or operator and the owner or operator employs an attorney to represent and defend the owner or operator in the proceeding.

(e) Requires the state to refund and pay certain costs if the attorney general declines to represent or defend the owner or operator or withdraws on the grounds described by Subsection (c)(2) or (3) and a court or jury later finds that the act or omission of the owner or operator was not intentional, wilful, or wanton misconduct and was within the scope of the escape or migration of captured or sequestered carbon dioxide.

(f) Authorizes the attorney general to file a counterclaim on behalf of the owner or operator under certain circumstances.

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

(h) Requires certain costs and fees to be paid from state funds on the warrant of the comptroller of public accounts out of appropriations made to the attorney general specifically designed for the payment of costs, fees, and expenses covered by this section.

(i) Provides that this section expires on the date the FutureGen Industrial Alliance, Inc., 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 5. Effective date: September 1, 2007.