

BILL ANALYSIS

Senate Research Center
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S.B. 1459
By: Seliger
Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is no current law designating land for the disposal of sequestered carbon dioxide (CO₂) by a FutureGen plant or establishing legal representation for the FutureGen Industrial Alliance (alliance) if a FutureGen plant is established in this state.

FutureGen is a public-private partnership between the United States Department of Energy and the alliance to build an electric generation facility that is also capable of producing hydrogen and sequestering carbon dioxide (CO₂). This \$1 billion research project is intended to create the world's 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 to allow for full measurement, monitoring, and verification of CO₂ sequestration. The alliance will build the plant on a site selected through an open, competitive site-selection process. A request for proposals to host the site was issued in March 2006. A total of twelve proposals from seven different states responded to the request. From these, the alliance selected four final sites to consider: Matton, Illinois, Tuscola, Illinois, Heart of Brazos near Jewett, Texas, and Odessa, Texas. A final decision is expected by September 2007.

As proposed, S.B. 1459 adds real property owned by the Texas Department of Criminal Justice (TDCJ) to the possible locations for the clean coal project. Similar to existing law relating to The University of Texas System and the Permanent University Fund, this bill indemnifies TDCJ by the owner or operator of the FutureGen project against liability for personal injury or property damage resulting from the escape or migration of CO₂ after it is injected into a zone or reservoir if TDCJ property is used for the sequestration of CO₂ as part of the FutureGen project. This bill also provides indemnification by the state and representation by the attorney general in certain situations for an owner or operator of the FutureGen project that is the subject of a civil lawsuit arising from an escape or migration of CO₂ captured or sequestered by the project.

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 119.006, Natural Resources Code, as follows:

Sec. 119.006. Authorizes the Texas Department of Criminal Justice (TDCJ) to enter into a lease with the Railroad Commission of Texas 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 indemnifies 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. Makes nonsubstantive changes.

SECTION 2. 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 certain information to the attorney general.

(b) Requires the state, in any proceeding described by Subsection (a) in which the attorney general represents the owner or operator, 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.

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

(d) Requires the state to pay the owner or operator's court costs, litigation expenses, and attorney's 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 indemnify the owner or operator for any damages awarded and court costs and attorney's fees assessed as part of any final and unreversed judgment and pay the owner or operator's court costs, litigation expenses, and attorney's fees, to the extent approved by the attorney general as reasonable, 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, willful, 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 court costs, litigation expenses, and other costs of providing a defense or counterclaim, including attorney's fees obligated under this section, to be paid from state funds on the warrant of the comptroller 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) (regarding exemption from tax on corporations, certain trusts, etc.), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code.

SECTION 3. Effective date: September 1, 2007.