(The House considered SB 1461 by Seliger, the Senate companion bill, in lieu of HB 3112, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 1461.)

HOUSE RESEARCH ORGANIZATION bill analysis 5/3/2007

HB 3112
B. Cook, et al.
(CSHB 3112 by Gonzalez Toureilles)

SUBJECT: FutureGen clean coal project participation incentives

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 7 ayes — Hardcastle, Farabee, Crownover, Chisum, Corte, Crabb, Gonzalez Toureilles

0 nays

WITNESSES: For — Donna McDonald, Clean Coal Technology Foundation of Texas; Jay Stewart, FutureGen Texas; Michael Williams, Governor's Clean Coal Technology Council; (*Registered, but did not testify*: Bill Hammond, Texas Association of Business; Joel Trouart, Westmoreland Coal Co.)

Against — Karen Hadden, Sustainable Energy and Economic Development Coalition

On — Scott Anderson, Environmental Defense; Scott Tinker, Bureau of Economic Geology – University of Texas

BACKGROUND: FutureGen is a federal initiative of the U.S. Department of Energy to build a coal-based integrated sequestration and hydrogen project and eventually create a zero-emissions fossil fuel plant. The prototype plant would attempt to establish the technical and economic feasibility of producing electricity and hydrogen from coal, while capturing and sequestering the carbon dioxide (CO_2) produced in the process. Two of the finalists for the project are sites near Jewett in East Texas and near Odessa in West Texas, along with two sites in Illinois.

HB 2201 by Hughes, enacted by the 79th Legislature during the 2005 regular session, provided up to $20 million in state matching funds to the entity managing the FutureGen project, contingent on the selection of a Texas site for the project. The bill required the Texas Commission on Environmental Quality (TCEQ) to implement a streamlined process for issuing permits for a clean coal project. The Texas Water Development

Board must allow for timely approval of amendments to the state and regional water plans to meet water demands for a clean coal project. The bill also granted a franchise tax deduction for equipment used by a corporation in a clean coal project and tax credits on property used in connection with such a project.

HB 149 by Chisum, enacted in 2006 during the third called session of the 79th Legislature, granted to the Texas Railroad Commission (RRC) title to CO_2 produced by a clean coal project. The bill also allowed the commission to sell CO_2 captured by a clean coal project for enhanced oil recovery or another beneficial use, with proceeds accruing to the general revenue fund. HB 149 also authorized the University of Texas (UT) System and Permanent University Fund (PUF) to allow the use of UT System or PUF lands for permanent storage of CO_2 captured by a clean coal project.

DIGEST:

CSHB 3112 would allow the governor to contract with a tax-exempt 501(c)(3) organization, including the FutureGen Industrial Alliance, Inc., for implementation of a clean coal project, including the FutureGen project. This provision would expire when the FutureGen Industrial Alliance lost its qualification as a tax exempt organization.

The bill would direct the Bureau of Economic Geology at the University of Texas at Austin to monitor, measure, and verify the status of sequestered CO_2 in which the RRC had acquired the right, title, and interest.

The bill would limit the liability of an owner and operator of a clean coal project. On the date that the RRC acquired the right, title, and interest in CO_2 captured by a clean coal project, the owner and operator of the project would be relieved from liability for any act regarding the CO_2 injection location and method or means of injection if the location and method or means complied with a permit issued by the state and with state law and regulations. No owner, operator, or contractor of a clean coal project would be immune from liability for injury or death resulting from construction of the site or from drilling and operation of injection wells.

CSHB 3112 would add the Texas Board of Criminal Justice to the list of agencies allowed to use land controlled by the board for permanent storage of CO_2 captured by a clean coal project.

The bill would allow a state agency to request the attorney general to represent it in a legal proceeding arising from the escape or migration of CO_2 captured or sequestered in connection with a clean coal project. The agency could obtain outside counsel if the attorney general declined to represent the state agency.

The bill would take effect September 1, 2007.

SUPPORTERS SAY:

CSHB 3112 contains provisions that would strengthen Texas' bid to host the FutureGen demonstration project. Clean coal technology stands to revolutionize the energy industry by unlocking an emissions-free source of power. Recognizing this potential, President Bush has proposed a $1 billion investment by the federal government for a public-private FutureGen clean coal project. Along with Illinois, Texas has been named as one of the two finalists for the project, the location of which will be announced this summer. CSHB 3112 contains key proposals recommended by the FutureGen Alliance that would help ensure that the project was successful in the event that Texas was chosen to host it.

CSHB 3112 would provide a narrow limitation on liability for CO_2 injected into the ground, a provision insisted upon by the FutureGen Industrial Alliance in its consideration of Texas as a host for the project. The liability limitation included in the bill closely mirrors established case law governing the regulation of carbon injection for enhanced oil recovery, which has occurred in Texas for more than 30 years. This narrow provision would limit liability only for the injection of CO_2. Negligence on behalf of the operator of a clean coal project resulting in personal injury or death resulting from construction of the site or drilling and operation of the injection wells would not be covered.

OPPONENTS SAY:

The Legislature should not limit the liability for an organization operating a clean coal project. FutureGen proponents claim that the clean coal project would produce an environmentally benign, zero emissions plant where harmful CO_2 is stored safely underground. If there is no risk associated with a FutureGen plant, the need for limitation of liability should not exist. In reality, the technology FutureGen would employ is expensive, experimental, and potentially problematic. For this reason, the state should not grant a blanket liability limitation, potentially leaving the state to deal with any problems associated with CO_2 sequestration and injection if the technology proved faulty.

NOTES:

HB 3112 as filed would have directed the attorney general to defend the owner and operator of a clean coal project in any civil proceeding brought against that person arising from the escape or migration of CO_2 from the project. The bill as filed would have required the state to pay the court costs and litigation expenses of defending that action.

The committee substitute added a section that would direct the Bureau of Economic Geology at the University of Texas at Austin to monitor sequestered CO_2. The committee substitute also added a section that would limit the liability of an owner and operator of a clean coal project.

A similar bill, HB 3110 by B. Cook, which would limit the liability of a FutureGen project operator in exactly the way proposed by CSHB 3112, also has been postponed until today.

The companion bill, SB 1461 by Seliger, passed the Senate on the Local and Uncontested Calendar on April 26 and was reported favorably, as substituted, by the House Energy Resources Committee on May 3, making it eligible to be considered in lieu of HB 3112.