



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1704

Introduced 2/9/2007, by Sen. Gary Forby

SYNOPSIS AS INTRODUCED:

New Act

20 ILCS 605/605-332

20 ILCS 655/5.5

705 ILCS 505/8.5 new

735 ILCS 30/5-5-5

735 ILCS 30/15-5-45 new

745 ILCS 5/1

from Ch. 67 1/2, par. 609.1

from Ch. 127, par. 801

Creates the Clean Coal FutureGen for Illinois Act for the purpose of providing the FutureGen Alliance with adequate liability protection, land use rights, and permitting certainty to facilitate the siting of the FutureGen Project in Illinois. Contain provisions concerning transfer of title to sequestered gas and associated liabilities to the State; insurance and indemnification by the State for the Operator for certain liabilities; permits; land use, including condemnation powers; and economic incentives. Contains other provisions and a severability clause. Amends: the Department of Commerce and Economic Opportunity Law concerning financial assistance; the Illinois Enterprise Zone Act concerning high impact businesses; the Court of Claims Act and the State Lawsuit Immunity Act concerning jurisdiction; and the Eminent Domain Act concerning condemnation authority. Effective immediately.

LRB095 09141 RCE 29334 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning alternative energy.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Clean
5 Coal FutureGen for Illinois Act.

6 Section 5. Purpose. Recognizing that the FutureGen Project
7 is a first-of-a-kind research project to permanently sequester
8 underground carbon-dioxide emissions from a coal-fueled power
9 plant, and that such a project would have benefits to the
10 economy and environment of Illinois, the purpose of this Act is
11 to provide the FutureGen Alliance with adequate liability
12 protection, land use rights, and permitting certainty to
13 facilitate the siting of the FutureGen Project in the State of
14 Illinois.

15 Section 10. Legislative findings. The General Assembly
16 finds and determines that:

17 (1) human-induced greenhouse gas emissions have been
18 identified as contributing to global warming, the effects of
19 which pose a threat to public health and safety and the economy
20 of the State of Illinois;

21 (2) in order to meet the energy needs of the State of
22 Illinois, keep its economy strong and protect the environment

1 while reducing its contribution to human-induced greenhouse
2 gas emissions, the State of Illinois must be a leader in
3 developing new low-carbon technologies;

4 (3) carbon capture and storage is a low-carbon technology
5 that involves capturing the carbon dioxide from fossil fuel
6 energy and hydrogen generating units and injecting it into
7 secure geologic strata for permanent storage;

8 (4) the FutureGen Project is a public-private partnership
9 between the Federal Department of Energy and the FutureGen
10 Alliance that proposes to use this new technology as part of a
11 plan to build and operate a near zero emission coal fueled
12 power plant;

13 (5) the FutureGen Project will help ensure the long-term
14 viability of Illinois Basin coal as a major energy source in
15 the State of Illinois and throughout the nation and represents
16 a significant step in the State of Illinois' efforts to become
17 a self-sufficient, clean energy producer;

18 (6) the FutureGen Project provides an opportunity for the
19 State of Illinois to partner with the Federal Department of
20 Energy and the FutureGen Alliance in the development of these
21 innovative clean-coal technologies;

22 (7) the FutureGen Project will make the State of Illinois a
23 center for developing and refining clean coal technology,
24 hydrogen production and carbon capture and storage, and will
25 result in the development of new technologies designed to
26 improve the efficiency of the energy industry that will be

1 replicated world wide;

2 (8) the FutureGen Project will create jobs in the State of
3 Illinois during the construction and operational phases,
4 contribute to the overall economy of the State of Illinois and
5 help reinvigorate the Illinois Basin coal industry; and

6 (9) the FutureGen Project serves a substantial public
7 purpose as its coal gasification, electricity generation,
8 hydrogen production, advanced emissions control and carbon
9 capture and storage technologies will benefit the citizens of
10 the State of Illinois.

11 Section 15. Definitions. For the purposes of this Act:

12 "Agency" means the Illinois Environmental Protection
13 Agency.

14 "Carbon capture and storage" means the process of capturing
15 and injecting sequestered gas for permanent storage.

16 "Carbon dioxide" or "CO2" means a colorless, odorless gas
17 in the form of one carbon and 2 oxygen atoms that is a
18 combustion byproduct and the principal greenhouse gas.

19 "Department" means the Department of Commerce and Economic
20 Opportunity.

21 "Director" means the Director of Commerce and Economic
22 Opportunity.

23 "Federal Department" means the federal Department of
24 Energy.

25 "FutureGen Alliance" is a 501(c)(3) non-profit consortium

1 of coal and energy producers that, as of the effective date of
2 this Act, includes American Electric Power, Anglo American plc,
3 BHP Billiton, E. ON US, China Huaneng Group, CONSOL Energy,
4 Foundation Coal, Peabody Energy, PPL Corporation, Rio Tinto
5 Energy American, and Southern Company.

6 "FutureGen Project" means the public-private partnership
7 between the Federal Department and the FutureGen Alliance that
8 will construct and operate a coal-fueled power plant utilizing
9 state-of-the-art clean-coal technology and carbon capture and
10 storage.

11 "Mount Simon Formation" means the deep sandstone reservoir
12 into which the sequestered gas is to be injected at depths
13 generally ranging between 5,500 and 8,500 feet below ground
14 surface and that is bounded by the granitic basement below and
15 the Eau Claire Shale above.

16 "Operator" means the FutureGen Alliance and its member
17 companies, including their parent companies, subsidiaries,
18 affiliates, directors, officers, employees, and agents.

19 "Post-injection" means after the sequestered gas has been
20 successfully injected into the Mount Simon Formation.

21 "Pre-injection" means all activities and occurrences prior
22 to successful injection into the Mt. Simon Formation, including
23 but not limited to, the operation of the FutureGen Project
24 (including CO2 capture, CO2 transport, and well-bore
25 operations).

26 "Public liability" means any civil legal liability arising

1 out of or resulting from the storage, escape, release, or
2 migration of the post-injection sequestered gas that was
3 injected during the operation of the FutureGen Project by the
4 FutureGen Alliance. The term "public liability", however, does
5 not include any legal liability arising out of or resulting
6 from the construction, operation, or other pre-injection
7 activity of the Operator.

8 "Public liability action" or "action" means a written
9 demand from any third party received by the Operator seeking a
10 remedy or alleging liability on behalf of Operator resulting
11 from any public liability.

12 "Sequestered gas" means the CO2 and other chemical
13 constituents from the FutureGen Project operations that are
14 injected into the Mount Simon Formation in concentrations
15 determined to be acceptable by the Agency.

16 Section 20. Title to sequestered gas. If the FutureGen
17 Project locates in the State of Illinois, then the FutureGen
18 Alliance agrees that the Operator shall transfer and convey and
19 the State of Illinois shall accept and receive, at no cost to
20 the State of Illinois, all rights, title, and interest in and
21 to and any liabilities associated with the sequestered gas,
22 including any current or future environmental benefits,
23 marketing claims, tradable credits, emissions allocations or
24 offsets (voluntary or compliance based) associated therewith,
25 upon such gas reaching the status of post-injection, which

1 shall be verified by the Agency or other designated State of
2 Illinois agency. The Operator shall retain all rights, title,
3 and interest in and to and any liabilities associated with the
4 pre-injection sequestered gas.

5 Section 23. Sequestered gas. The State of Illinois may not
6 intentionally remove sequestered gas unless the removal is for
7 the purpose of research and development.

8 Section 25. Insurance against qualified losses.

9 (a) The Department shall procure an insurance policy from a
10 private insurance carrier or carriers, if and to the extent
11 that such a policy is available, that insures the Operator
12 against any qualified loss stemming from a public liability
13 action. The policy must be procured in accordance with the
14 provisions of the Procurement Code.

15 (b) Pursuant to Section 30 of this Act, the State shall
16 indemnify the Operator against any qualified loss stemming from
17 a public liability action to the extent that the qualified loss
18 is not covered under an insurance policy under subsection (a)
19 of this Section.

20 (c) The Department shall pay any insurance premium,
21 deductible, or liability under subsections (a) or (b) from
22 appropriations by the General Assembly for that purpose. It is
23 the intent of this Act that, to the extent practical, any
24 unexpended balance of the proceeds from the sale of emission

1 reduction rights or tradable credits to which the State has
2 title under Section 20 should be used for the purposes of this
3 subsection (c).

4 (d) If the FutureGen Alliance locates the FutureGen Project
5 in the State of Illinois, then the Department shall be
6 authorized to contract with the FutureGen Alliance, under terms
7 not inconsistent with this Act, in order to define the rights
8 and obligations of the FutureGen Alliance and the Department,
9 including but not limited to, the insurance and indemnification
10 obligations under Sections 25 and 30 of this Act.

11 (e) If federal indemnification covers all or a portion of
12 the obligations assumed by the State under Section 25 of this
13 Act, such State obligations shall be reduced in proportion to
14 the federal indemnification and be considered subordinated to
15 any federal indemnification.

16 (g) For the purpose of this Section, "qualified loss" means
17 a loss by the Operator stemming from a public liability action
18 other than those losses arising out of or relating to:

19 (1) the negligence or the intentional or willful
20 misconduct of the Operator in its operation of the
21 FutureGen Project;

22 (2) the failure of the Operator to comply with any
23 applicable law, rule, regulation, or other requirement
24 established by the Federal Department, Agency, or State of
25 Illinois for the carbon capture and storage of the
26 sequestered gas, including any limitations on the chemical

1 composition of any sequestered gas; or
2 (3) the pre-injection operation of the FutureGen
3 Project.

4 Section 30. Indemnification. Notwithstanding any law to
5 the contrary, the State of Illinois shall indemnify, hold
6 harmless, defend, and release the Operator from and against any
7 public liability action asserted against the Operator, subject
8 to the following terms and conditions:

9 (a) The obligation of the State of Illinois to indemnify
10 the Operator does not extend to any public liability arising
11 out of or relating to:

12 (1) the negligence or intentional or willful
13 misconduct of the Operator in its operation of the
14 FutureGen Project;

15 (2) the failure of the Operator to comply with any
16 applicable law, rule, regulation, or other requirement
17 established by the Federal Department, Agency, or State of
18 Illinois for the carbon capture and storage of the
19 sequestered gas, including any limitations on the chemical
20 composition of any sequestered gas;

21 (3) the pre-injection operation of the FutureGen
22 Project; or

23 (4) a qualified loss to the extent that it is paid
24 under an insurance policy under subsection (a) of Section
25 of this Act.

1 (b) The indemnification obligations of the State of
2 Illinois assumed under Section 30 of this Act shall be reduced
3 in proportion and be subordinated to any federal
4 indemnification that covers all or a portion of the State's
5 obligations.

6 Section 35. Role of Attorney General. In furtherance of the
7 State of Illinois's obligations set forth in subsection (b) of
8 Section 25 and in Section 30 of this Act, the Attorney General
9 has the following duties:

10 (1) In the event that any public liability action covered
11 under Section 30 of this Act is commenced against the Operator,
12 the Attorney General shall, upon timely and appropriate notice
13 to the Attorney General by the Operator, appear on behalf of
14 the Operator and defend the action. Any such notice must be in
15 writing, must be mailed within 15 days after the date of
16 receipt by the Operator of service of process, and must
17 authorize the Attorney General to represent and defend the
18 Operator in the action. The delivery of this notice to the
19 Attorney General constitutes an agreement by the Operator to
20 cooperate with the Attorney General in defense of the action
21 and a consent for the Attorney General to conduct the defense
22 as the Attorney General deems to be advisable and in the best
23 interests of the Operator and the State of Illinois, including
24 settlement in the Attorney General's discretion. In any such
25 action, the State of Illinois shall pay the court costs and

1 litigation expenses of defending such action, to the extent
2 approved by the Attorney General as reasonable, as they are
3 incurred.

4 (b) In the event that the Attorney General determines
5 either (i) that so appearing and defending an Operator involves
6 an actual or potential conflict of interest or (ii) that the
7 claim was not within the scope of the indemnity as provided in
8 Section 30 of the Act, the Attorney General shall decline in
9 writing to appear or defend or shall promptly take appropriate
10 action to withdraw as attorney for such Operator. Upon receipt
11 of such declination or withdrawal by the Attorney General on
12 the basis of an actual or potential conflict of interest, the
13 Operator may employ its own attorney to appear and defend, in
14 which event the State of Illinois shall pay the Operator's
15 court costs, litigation expenses, and attorneys' fees, to the
16 extent approved by the Attorney General as reasonable, as they
17 are incurred.

18 (c) In any action asserted by the Operator or the State of
19 Illinois to enforce the indemnification obligations of the
20 State of Illinois as provided in Section 30 of the Act, the
21 non-prevailing party is responsible for any reasonable court
22 costs, litigation expenses, and attorneys fees incurred by the
23 prevailing party.

24 (d) Court costs and litigation expenses and other costs of
25 providing a defense, including attorneys' fees, paid or
26 obligated under this Section, and the costs of indemnification,

1 including the payment of any final judgment or final settlement
2 under this Section, must be paid by warrant from appropriations
3 to the Department pursuant to vouchers certified by the
4 Attorney General.

5 (e) Nothing contained or implied in this Section shall
6 operate, or be construed or applied, to deprive the State of
7 Illinois, or any Operator, of any defense otherwise available.

8 (f) Any judgment subject to State of Illinois
9 indemnification under this Section is not enforceable against
10 the Operator, but shall be paid by the State of Illinois in the
11 following manner: Upon receipt of a certified copy of the
12 judgment, the Attorney General shall review it to determine if
13 the judgment is (i) final, unreversed, and no longer subject to
14 appeal and (ii) subject to indemnification under Section 30 of
15 this Act. If the Attorney General determines that it is, then
16 the Attorney General shall submit a voucher for the amount of
17 the judgment and any interest thereon to the State of Illinois
18 Comptroller and the amount must be paid by warrant from
19 appropriation to the Department to the judgment creditor solely
20 out of available appropriations.

21 Section 40. Permitting. The Agency shall issue to the
22 Operator all necessary and appropriate permits consistent with
23 State and federal law and corresponding regulations. The Agency
24 has the right to reasonable access to any third-party property
25 to ensure compliance with any permit issued under this Section.

1 Section 45. Acquisition of property by condemnation.

2 (a) In light of the importance of providing the FutureGen
3 Alliance adequate assurances and in furtherance of the goals of
4 this Act, the Department has the discretionary authorities as
5 set forth in this Section.

6 (b) In connection with the carbon capture and storage of
7 the sequestered gas, including the ongoing surface and
8 subsurface monitoring thereof, the Department and Agency have
9 the right to enter upon, take, or damage private property or
10 any interest thereon by exercise of the power of condemnation,
11 in the manner provided for under the Eminent Domain Act (735
12 ILCS 30/), that are necessary and convenient for the operations
13 of the FutureGen Project. The operations of the FutureGen
14 Project are hereby recognized and declared to be affected with
15 a public interest, and all of the property used in those
16 operations is hereby recognized and declared to be devoted to
17 public use.

18 Section 50. Incentives. The State of Illinois has offered
19 certain incentives to the FutureGen Alliance to make the State
20 of Illinois the most attractive location for the FutureGen
21 Project.

22 Section 65. Jurisdiction. The Court of Claims has no
23 jurisdiction concerning any public liability action under this

1 Act or from the operation of the FutureGen Project. A public
2 liability action must be brought in the circuit court, which is
3 hereby granted jurisdiction over these matters. The
4 jurisdiction over civil, administrative, or other legal
5 processes is not, otherwise, affected by this Act.

6 Section 900. The Department of Commerce and Economic
7 Opportunity Law of the Civil Administrative Code of Illinois is
8 amended by changing Section 605-332 as follows:

9 (20 ILCS 605/605-332)

10 Sec. 605-332. Financial assistance to energy generation
11 facilities.

12 (a) As used in this Section:

13 "New electric generating facility" means a
14 newly-constructed electric generation plant or a newly
15 constructed generation capacity expansion at an existing
16 facility, including the transmission lines and associated
17 equipment that transfers electricity from points of supply to
18 points of delivery, and for which foundation construction
19 commenced not sooner than July 1, 2001, which is designed to
20 provide baseload electric generation operating on a continuous
21 basis throughout the year and:

22 (1) has an aggregate rated generating capacity of at
23 least 400 megawatts for all new units at one site, uses
24 coal or gases derived from coal as its primary fuel source,

1 and supports the creation of at least 150 new Illinois coal
2 mining jobs; or

3 (2) is funded through a federal Department of Energy
4 grant before December 31, 2010 ~~2007~~ and supports the
5 creation of Illinois coal-mining jobs; or

6 (3) uses coal gasification or integrated
7 gasification-combined cycle units that generate
8 electricity or chemicals, or both, and supports the
9 creation of Illinois coal-mining jobs.

10 "New gasification facility" means a newly constructed coal
11 gasification facility that generates chemical feedstocks or
12 transportation fuels derived from coal (which may include, but
13 are not limited to, methane, methanol, and nitrogen
14 fertilizer), that supports the creation or retention of
15 Illinois coal-mining jobs, and that qualifies for financial
16 assistance from the Department before December 31, 2010 ~~2006~~. A
17 new gasification facility does not include a pilot project
18 located within Jefferson County or within a county adjacent to
19 Jefferson County for synthetic natural gas from coal.

20 "New facility" means a new electric generating facility or
21 a new gasification facility. A new facility does not include a
22 pilot project located within Jefferson County or within a
23 county adjacent to Jefferson County for synthetic natural gas
24 from coal.

25 "Eligible business" means an entity that proposes to
26 construct a new facility and that has applied to the Department

1 to receive financial assistance pursuant to this Section. With
2 respect to use and occupation taxes, wherever there is a
3 reference to taxes, that reference means only those taxes paid
4 on Illinois-mined coal used in a new facility.

5 "Department" means the Illinois Department of Commerce and
6 Economic Opportunity.

7 (b) The Department is authorized to provide financial
8 assistance to eligible businesses for new facilities from funds
9 appropriated by the General Assembly as further provided in
10 this Section.

11 An eligible business seeking qualification for financial
12 assistance for a new facility, for purposes of this Section
13 only, shall apply to the Department in the manner specified by
14 the Department. Any projections provided by an eligible
15 business as part of the application shall be independently
16 verified in a manner as set forth by the Department. An
17 application shall include, but not be limited to:

18 (1) the projected or actual completion date of the new
19 facility for which financial assistance is sought;

20 (2) copies of documentation deemed acceptable by the
21 Department establishing either (i) the total State
22 occupation and use taxes paid on Illinois-mined coal used
23 at the new facility for a minimum of 4 preceding calendar
24 quarters or (ii) the projected amount of State occupation
25 and use taxes paid on Illinois-mined coal used at the new
26 facility in 4 calendar year quarters after completion of

1 the new facility. Bond proceeds subject to this Section
2 shall not be allocated to an eligible business until the
3 eligible business has demonstrated the revenue stream
4 sufficient to service the debt on the bonds; and

5 (3) the actual or projected amount of capital
6 investment by the eligible business in the new facility.

7 The Department shall determine the maximum amount of
8 financial assistance for eligible businesses in accordance
9 with this paragraph. The Department shall not provide financial
10 assistance from general obligation bond funds to any eligible
11 business unless it receives a written certification from the
12 Director of the Bureau of the Budget (now Governor's Office of
13 Management and Budget) that 80% of the State occupation and use
14 tax receipts for a minimum of the preceding 4 calendar quarters
15 for all eligible businesses or as included in projections on
16 approved applications by eligible businesses equal or exceed
17 110% of the maximum annual debt service required with respect
18 to general obligation bonds issued for that purpose. The
19 Department may provide financial assistance not to exceed the
20 amount of State general obligation debt calculated as above,
21 the amount of actual or projected capital investment in the
22 facility, or \$100,000,000, whichever is less. Financial
23 assistance received pursuant to this Section may be used for
24 capital facilities consisting of buildings, structures,
25 durable equipment, and land at the new facility. Subject to the
26 provisions of the agreement covering the financial assistance,

1 a portion of the financial assistance may be required to be
2 repaid to the State if certain conditions for the governmental
3 purpose of the assistance were not met.

4 An eligible business shall file a monthly report with the
5 Illinois Department of Revenue stating the amount of
6 Illinois-mined coal purchased during the previous month for use
7 in the new facility, the purchase price of that coal, the
8 amount of State occupation and use taxes paid on that purchase
9 to the seller of the Illinois-mined coal, and such other
10 information as that Department may reasonably require. In sales
11 of Illinois-mined coal between related parties, the purchase
12 price of the coal must have been determined in an arms-length
13 transaction. The report shall be filed with the Illinois
14 Department of Revenue on or before the 20th day of each month
15 on a form provided by that Department. However, no report need
16 be filed by an eligible business in a month when it made no
17 reportable purchases of coal in the previous month. The
18 Illinois Department of Revenue shall provide a summary of such
19 reports to the Governor's Office of Management and Budget.

20 Upon granting financial assistance to an eligible
21 business, the Department shall certify the name of the eligible
22 business to the Illinois Department of Revenue. Beginning with
23 the receipt of the first report of State occupation and use
24 taxes paid by an eligible business and continuing for a 25-year
25 period, the Illinois Department of Revenue shall each month pay
26 into the Energy Infrastructure Fund 80% of the net revenue

1 realized from the 6.25% general rate on the selling price of
2 Illinois-mined coal that was sold to an eligible business.

3 (Source: P.A. 93-167, eff. 7-10-03; 93-1064, eff. 1-13-05;
4 94-65, eff. 6-21-05; 94-1030, eff. 7-14-06.)

5 Section 905. The Illinois Enterprise Zone Act is amended by
6 changing Section 5.5 as follows:

7 (20 ILCS 655/5.5) (from Ch. 67 1/2, par. 609.1)

8 Sec. 5.5. High Impact Business.

9 (a) In order to respond to unique opportunities to assist
10 in the encouragement, development, growth and expansion of the
11 private sector through large scale investment and development
12 projects, the Department is authorized to receive and approve
13 applications for the designation of "High Impact Businesses" in
14 Illinois subject to the following conditions:

15 (1) such applications may be submitted at any time
16 during the year;

17 (2) such business is not located, at the time of
18 designation, in an enterprise zone designated pursuant to
19 this Act;

20 (3) the business intends to do one or more of the
21 following:

22 (A) the business intends to make a minimum
23 investment of \$12,000,000 which will be placed in
24 service in qualified property and intends to create 500

1 full-time equivalent jobs at a designated location in
2 Illinois or intends to make a minimum investment of
3 \$30,000,000 which will be placed in service in
4 qualified property and intends to retain 1,500
5 full-time jobs at a designated location in Illinois.
6 The business must certify in writing that the
7 investments would not be placed in service in qualified
8 property and the job creation or job retention would
9 not occur without the tax credits and exemptions set
10 forth in subsection (b) of this Section. The terms
11 "placed in service" and "qualified property" have the
12 same meanings as described in subsection (h) of Section
13 201 of the Illinois Income Tax Act; or

14 (B) the business intends to establish a new
15 electric generating facility at a designated location
16 in Illinois. "New electric generating facility", for
17 purposes of this Section, means a newly-constructed
18 electric generation plant or a newly-constructed
19 generation capacity expansion at an existing electric
20 generation plant, including the transmission lines and
21 associated equipment that transfers electricity from
22 points of supply to points of delivery, and for which
23 such new foundation construction commenced not sooner
24 than July 1, 2001. Such facility shall be designed to
25 provide baseload electric generation and shall operate
26 on a continuous basis throughout the year; and (i)

1 shall have an aggregate rated generating capacity of at
2 least 1,000 megawatts for all new units at one site if
3 it uses natural gas as its primary fuel and foundation
4 construction of the facility is commenced on or before
5 December 31, 2004, or shall have an aggregate rated
6 generating capacity of at least 400 megawatts for all
7 new units at one site if it uses coal or gases derived
8 from coal as its primary fuel and shall support the
9 creation of at least 150 new Illinois coal mining jobs,
10 or (ii) shall be funded through a federal Department of
11 Energy grant before December 31, 2010 ~~July 1, 2006~~ and
12 shall support the creation of Illinois coal-mining
13 jobs, or (iii) shall use coal gasification or
14 integrated gasification-combined cycle units that
15 generate electricity or chemicals, or both, and shall
16 support the creation of Illinois coal-mining jobs. The
17 business must certify in writing that the investments
18 necessary to establish a new electric generating
19 facility would not be placed in service and the job
20 creation in the case of a coal-fueled plant would not
21 occur without the tax credits and exemptions set forth
22 in subsection (b-5) of this Section. The term "placed
23 in service" has the same meaning as described in
24 subsection (h) of Section 201 of the Illinois Income
25 Tax Act; or

26 (B-5) the business intends to establish a new

1 gasification facility at a designated location in
2 Illinois. As used in this Section, "new gasification
3 facility" means a newly constructed coal gasification
4 facility that generates chemical feedstocks or
5 transportation fuels derived from coal (which may
6 include, but are not limited to, methane, methanol, and
7 nitrogen fertilizer), that supports the creation or
8 retention of Illinois coal-mining jobs, and that
9 qualifies for financial assistance from the Department
10 before December 31, 2010 ~~2006~~. A new gasification
11 facility does not include a pilot project located
12 within Jefferson County or within a county adjacent to
13 Jefferson County for synthetic natural gas from coal;
14 or

15 (C) the business intends to establish production
16 operations at a new coal mine, re-establish production
17 operations at a closed coal mine, or expand production
18 at an existing coal mine at a designated location in
19 Illinois not sooner than July 1, 2001; provided that
20 the production operations result in the creation of 150
21 new Illinois coal mining jobs as described in
22 subdivision (a)(3)(B) of this Section, and further
23 provided that the coal extracted from such mine is
24 utilized as the predominant source for a new electric
25 generating facility. The business must certify in
26 writing that the investments necessary to establish a

1 new, expanded, or reopened coal mine would not be
2 placed in service and the job creation would not occur
3 without the tax credits and exemptions set forth in
4 subsection (b-5) of this Section. The term "placed in
5 service" has the same meaning as described in
6 subsection (h) of Section 201 of the Illinois Income
7 Tax Act; or

8 (D) the business intends to construct new
9 transmission facilities or upgrade existing
10 transmission facilities at designated locations in
11 Illinois, for which construction commenced not sooner
12 than July 1, 2001. For the purposes of this Section,
13 "transmission facilities" means transmission lines
14 with a voltage rating of 115 kilovolts or above,
15 including associated equipment, that transfer
16 electricity from points of supply to points of delivery
17 and that transmit a majority of the electricity
18 generated by a new electric generating facility
19 designated as a High Impact Business in accordance with
20 this Section. The business must certify in writing that
21 the investments necessary to construct new
22 transmission facilities or upgrade existing
23 transmission facilities would not be placed in service
24 without the tax credits and exemptions set forth in
25 subsection (b-5) of this Section. The term "placed in
26 service" has the same meaning as described in

1 subsection (h) of Section 201 of the Illinois Income
2 Tax Act; and

3 (4) no later than 90 days after an application is
4 submitted, the Department shall notify the applicant of the
5 Department's determination of the qualification of the
6 proposed High Impact Business under this Section.

7 (b) Businesses designated as High Impact Businesses
8 pursuant to subdivision (a) (3) (A) of this Section shall qualify
9 for the credits and exemptions described in the following Acts:
10 Section 9-222 and Section 9-222.1A of the Public Utilities Act,
11 subsection (h) of Section 201 of the Illinois Income Tax Act,
12 and Section 1d of the Retailers' Occupation Tax Act; provided
13 that these credits and exemptions described in these Acts shall
14 not be authorized until the minimum investments set forth in
15 subdivision (a) (3) (A) of this Section have been placed in
16 service in qualified properties and, in the case of the
17 exemptions described in the Public Utilities Act and Section 1d
18 of the Retailers' Occupation Tax Act, the minimum full-time
19 equivalent jobs or full-time jobs set forth in subdivision
20 (a) (3) (A) of this Section have been created or retained.
21 Businesses designated as High Impact Businesses under this
22 Section shall also qualify for the exemption described in
23 Section 51 of the Retailers' Occupation Tax Act. The credit
24 provided in subsection (h) of Section 201 of the Illinois
25 Income Tax Act shall be applicable to investments in qualified
26 property as set forth in subdivision (a) (3) (A) of this Section.

1 (b-5) Businesses designated as High Impact Businesses
2 pursuant to subdivisions (a) (3) (B), (a) (3) (B-5), (a) (3) (C),
3 and (a) (3) (D) of this Section shall qualify for the credits and
4 exemptions described in the following Acts: Section 51 of the
5 Retailers' Occupation Tax Act, Section 9-222 and Section
6 9-222.1A of the Public Utilities Act, and subsection (h) of
7 Section 201 of the Illinois Income Tax Act; however, the
8 credits and exemptions authorized under Section 9-222 and
9 Section 9-222.1A of the Public Utilities Act, and subsection
10 (h) of Section 201 of the Illinois Income Tax Act shall not be
11 authorized until the new electric generating facility, the new
12 gasification facility, the new transmission facility, or the
13 new, expanded, or reopened coal mine is operational, except
14 that a new electric generating facility whose primary fuel
15 source is natural gas is eligible only for the exemption under
16 Section 51 of the Retailers' Occupation Tax Act.

17 (c) High Impact Businesses located in federally designated
18 foreign trade zones or sub-zones are also eligible for
19 additional credits, exemptions and deductions as described in
20 the following Acts: Section 9-221 and Section 9-222.1 of the
21 Public Utilities Act; and subsection (g) of Section 201, and
22 Section 203 of the Illinois Income Tax Act.

23 (d) Existing Illinois businesses which apply for
24 designation as a High Impact Business must provide the
25 Department with the prospective plan for which 1,500 full-time
26 jobs would be eliminated in the event that the business is not

1 designated.

2 (e) New proposed facilities which apply for designation as
3 High Impact Business must provide the Department with proof of
4 alternative non-Illinois sites which would receive the
5 proposed investment and job creation in the event that the
6 business is not designated as a High Impact Business.

7 (f) In the event that a business is designated a High
8 Impact Business and it is later determined after reasonable
9 notice and an opportunity for a hearing as provided under the
10 Illinois Administrative Procedure Act, that the business would
11 have placed in service in qualified property the investments
12 and created or retained the requisite number of jobs without
13 the benefits of the High Impact Business designation, the
14 Department shall be required to immediately revoke the
15 designation and notify the Director of the Department of
16 Revenue who shall begin proceedings to recover all wrongfully
17 exempted State taxes with interest. The business shall also be
18 ineligible for all State funded Department programs for a
19 period of 10 years.

20 (g) The Department shall revoke a High Impact Business
21 designation if the participating business fails to comply with
22 the terms and conditions of the designation.

23 (h) Prior to designating a business, the Department shall
24 provide the members of the General Assembly and Commission on
25 Government Forecasting and Accountability with a report
26 setting forth the terms and conditions of the designation and

1 guarantees that have been received by the Department in
2 relation to the proposed business being designated.

3 (Source: P.A. 93-1064, eff. 1-13-05; 93-1067, eff. 1-15-05;
4 94-65, eff. 6-21-05.)

5 Section 910. The Court of Claims Act is amended by adding
6 Section 8.5 as follows:

7 (705 ILCS 505/8.5 new)

8 Sec. 8.5. No jurisdiction over liability of certain
9 clean-coal operations. The Court of Claims has no jurisdiction
10 concerning any public liability action, as defined in the Clean
11 Coal FutureGen for Illinois Act, or from the operation of the
12 FutureGen Project. A public liability action, as defined under
13 Section 15 of the Clean Coal FutureGen for Illinois Act, must
14 be brought in the circuit court.

15 Section 915. The Eminent Domain Act is amended by changing
16 Section 5-5-5 and by adding Section 15-5-45 as follows:

17 (735 ILCS 30/5-5-5)

18 Sec. 5-5-5. Exercise of the power of eminent domain; public
19 use; blight.

20 (a) In addition to all other limitations and requirements,
21 a condemning authority may not take or damage property by the
22 exercise of the power of eminent domain unless it is for a

1 public use, as set forth in this Section.

2 (a-5) Subsections (b), (c), (d), (e), and (f) of this
3 Section do not apply to the acquisition of property under the
4 O'Hare Modernization Act. A condemning authority may exercise
5 the power of eminent domain for the acquisition or damaging of
6 property under the O'Hare Modernization Act as provided for by
7 law in effect prior to the effective date of this Act.

8 (a-10) Subsections (b), (c), (d), (e), and (f) of this
9 Section do not apply to the acquisition or damaging of property
10 in furtherance of the goals and objectives of an existing tax
11 increment allocation redevelopment plan. A condemning
12 authority may exercise the power of eminent domain for the
13 acquisition of property in furtherance of an existing tax
14 increment allocation redevelopment plan as provided for by law
15 in effect prior to the effective date of this Act.

16 As used in this subsection, "existing tax increment
17 allocation redevelopment plan" means a redevelopment plan that
18 was adopted under the Tax Increment Allocation Redevelopment
19 Act (Article 11, Division 74.4 of the Illinois Municipal Code)
20 prior to April 15, 2006 and for which property assembly costs
21 were, before that date, included as a budget line item in the
22 plan or described in the narrative portion of the plan as part
23 of the redevelopment project, but does not include (i) any
24 additional area added to the redevelopment project area on or
25 after April 15, 2006, (ii) any subsequent extension of the
26 completion date of a redevelopment plan beyond the estimated

1 completion date established in that plan prior to April 15,
2 2006, (iii) any acquisition of property in a conservation area
3 for which the condemnation complaint is filed more than 12
4 years after the effective date of this Act, or (iv) any
5 acquisition of property in an industrial park conservation
6 area.

7 As used in this subsection, "conservation area" and
8 "industrial park conservation area" have the same meanings as
9 under Section 11-74.4-3 of the Illinois Municipal Code.

10 (b) If the exercise of eminent domain authority is to
11 acquire property for public ownership and control, then the
12 condemning authority must prove that (i) the acquisition of the
13 property is necessary for a public purpose and (ii) the
14 acquired property will be owned and controlled by the
15 condemning authority or another governmental entity.

16 (c) Except when the acquisition is governed by subsection
17 (b) or is primarily for one of the purposes specified in
18 subsection (d), (e), or (f) and the condemning authority elects
19 to proceed under one of those subsections, if the exercise of
20 eminent domain authority is to acquire property for private
21 ownership or control, or both, then the condemning authority
22 must prove by clear and convincing evidence that the
23 acquisition of the property for private ownership or control is
24 (i) primarily for the benefit, use, or enjoyment of the public
25 and (ii) necessary for a public purpose.

26 An acquisition of property primarily for the purpose of the

1 elimination of blight is rebuttably presumed to be for a public
2 purpose and primarily for the benefit, use, or enjoyment of the
3 public under this subsection.

4 Any challenge to the existence of blighting factors alleged
5 in a complaint to condemn under this subsection shall be raised
6 within 6 months of the filing date of the complaint to condemn,
7 and if not raised within that time the right to challenge the
8 existence of those blighting factors shall be deemed waived.

9 Evidence that the Illinois Commerce Commission has granted
10 a certificate or otherwise made a finding of public convenience
11 and necessity for an acquisition of property (or any right or
12 interest in property) for private ownership or control
13 (including, without limitation, an acquisition for which the
14 use of eminent domain is authorized under the Public Utilities
15 Act, the Telephone Company Act, or the Electric Supplier Act)
16 to be used for utility purposes creates a rebuttable
17 presumption that such acquisition of that property (or right or
18 interest in property) is (i) primarily for the benefit, use, or
19 enjoyment of the public and (ii) necessary for a public
20 purpose.

21 In the case of an acquisition of property (or any right or
22 interest in property) for private ownership or control to be
23 used for utility, pipeline, CO2 capture, CO2 transport, CO2
24 injection and storage, coal gasification, or railroad purposes
25 for which no certificate or finding of public convenience and
26 necessity by the Illinois Commerce Commission is required,

1 evidence that the acquisition is one for which the use of
2 eminent domain is authorized under one of the following laws
3 creates a rebuttable presumption that the acquisition of that
4 property (or right or interest in property) is (i) primarily
5 for the benefit, use, or enjoyment of the public and (ii)
6 necessary for a public purpose:

7 (1) the Public Utilities Act,

8 (2) the Telephone Company Act,

9 (3) the Electric Supplier Act,

10 (4) the Railroad Terminal Authority Act,

11 (5) the Grand Avenue Railroad Relocation Authority
12 Act,

13 (6) the West Cook Railroad Relocation and Development
14 Authority Act,

15 (7) Section 4-505 of the Illinois Highway Code,

16 (8) Section 17 or 18 of the Railroad Incorporation Act,

17 (9) Section 18c-7501 of the Illinois Vehicle Code, and

18 -

19 (10) the Clean Coal FutureGen for Illinois Act.

20 (d) If the exercise of eminent domain authority is to
21 acquire property for private ownership or control and if the
22 primary basis for the acquisition is the elimination of blight
23 and the condemning authority elects to proceed under this
24 subsection, then the condemning authority must: (i) prove by a
25 preponderance of the evidence that acquisition of the property
26 for private ownership or control is necessary for a public

1 purpose; (ii) prove by a preponderance of the evidence that the
2 property to be acquired is located in an area that is currently
3 designated as a blighted area or conservation area under an
4 applicable statute; (iii) if the existence of blight or
5 blighting factors is challenged in an appropriate motion filed
6 within 6 months after the date of filing of the complaint to
7 condemn, prove by a preponderance of the evidence that the
8 required blighting factors existed in the area so designated
9 (but not necessarily in the particular property to be acquired)
10 at the time of the designation under item (ii) or at any time
11 thereafter; and (iv) prove by a preponderance of the evidence
12 at least one of the following:

13 (A) that it has entered into an express written
14 agreement in which a private person or entity agrees to
15 undertake a development project within the blighted area
16 that specifically details the reasons for which the
17 property or rights in that property are necessary for the
18 development project;

19 (B) that the exercise of eminent domain power and the
20 proposed use of the property by the condemning authority
21 are consistent with a regional plan that has been adopted
22 within the past 5 years in accordance with Section 5-14001
23 of the Counties Code or Section 11-12-6 of the Illinois
24 Municipal Code or with a local land resource management
25 plan adopted under Section 4 of the Local Land Resource
26 Management Planning Act; or

1 (C) that (1) the acquired property will be used in the
2 development of a project that is consistent with the land
3 uses set forth in a comprehensive redevelopment plan
4 prepared in accordance with the applicable statute
5 authorizing the condemning authority to exercise the power
6 of eminent domain and is consistent with the goals and
7 purposes of that comprehensive redevelopment plan, and (2)
8 an enforceable written agreement, deed restriction, or
9 similar encumbrance has been or will be executed and
10 recorded against the acquired property to assure that the
11 project and the use of the property remain consistent with
12 those land uses, goals, and purposes for a period of at
13 least 40 years, which execution and recording shall be
14 included as a requirement in any final order entered in the
15 condemnation proceeding.

16 The existence of an ordinance, resolution, or other
17 official act designating an area as blighted is not prima facie
18 evidence of the existence of blight. A finding by the court in
19 a condemnation proceeding that a property or area has not been
20 proven to be blighted does not apply to any other case or
21 undermine the designation of a blighted area or conservation
22 area or the determination of the existence of blight for any
23 other purpose or under any other statute, including without
24 limitation under the Tax Increment Allocation Redevelopment
25 Act (Article 11, Division 74.4 of the Illinois Municipal Code).

26 Any challenge to the existence of blighting factors alleged

1 in a complaint to condemn under this subsection shall be raised
2 within 6 months of the filing date of the complaint to condemn,
3 and if not raised within that time the right to challenge the
4 existence of those blighting factors shall be deemed waived.

5 (e) If the exercise of eminent domain authority is to
6 acquire property for private ownership or control and if the
7 primary purpose of the acquisition is one of the purposes
8 specified in item (iii) of this subsection and the condemning
9 authority elects to proceed under this subsection, then the
10 condemning authority must prove by a preponderance of the
11 evidence that: (i) the acquisition of the property is necessary
12 for a public purpose; (ii) an enforceable written agreement,
13 deed restriction, or similar encumbrance has been or will be
14 executed and recorded against the acquired property to assure
15 that the project and the use of the property remain consistent
16 with the applicable purpose specified in item (iii) of this
17 subsection for a period of at least 40 years, which execution
18 and recording shall be included as a requirement in any final
19 order entered in the condemnation proceeding; and (iii) the
20 acquired property will be one of the following:

21 (1) included in the project site for a residential
22 project, or a mixed-use project including residential
23 units, where not less than 20% of the residential units in
24 the project are made available, for at least 15 years, by
25 deed restriction, long-term lease, regulatory agreement,
26 extended use agreement, or a comparable recorded

1 encumbrance, to low-income households and very low-income
2 households, as defined in Section 3 of the Illinois
3 Affordable Housing Act;

4 (2) used primarily for public airport, road, parking,
5 or mass transportation purposes and sold or leased to a
6 private party in a sale-leaseback, lease-leaseback, or
7 similar structured financing;

8 (3) owned or used by a public utility or electric
9 cooperative for utility purposes;

10 (4) owned or used by a railroad for passenger or
11 freight transportation purposes;

12 (5) sold or leased to a private party that operates a
13 water supply, waste water, recycling, waste disposal,
14 waste-to-energy, or similar facility;

15 (6) sold or leased to a not-for-profit corporation
16 whose purposes include the preservation of open space, the
17 operation of park space, and similar public purposes;

18 (7) used as a library, museum, or related facility, or
19 as infrastructure related to such a facility;

20 (8) used by a private party for the operation of a
21 charter school open to the general public; or

22 (9) a historic resource, as defined in Section 3 of the
23 Illinois State Agency Historic Resources Preservation Act,
24 a landmark designated as such under a local ordinance, or a
25 contributing structure within a local landmark district
26 listed on the National Register of Historic Places, that is

1 being acquired for purposes of preservation or
2 rehabilitation.

3 (f) If the exercise of eminent domain authority is to
4 acquire property for public ownership and private control and
5 if the primary purpose of the acquisition is one of the
6 purposes specified in item (iii) of this subsection and the
7 condemning authority elects to proceed under this subsection,
8 then the condemning authority must prove by a preponderance of
9 the evidence that: (i) the acquisition of the property is
10 necessary for a public purpose; (ii) the acquired property will
11 be owned by the condemning authority or another governmental
12 entity; and (iii) the acquired property will be controlled by a
13 private party that operates a business or facility related to
14 the condemning authority's operation of a university, medical
15 district, hospital, exposition or convention center, mass
16 transportation facility, or airport, including, but not
17 limited to, a medical clinic, research and development center,
18 food or commercial concession facility, social service
19 facility, maintenance or storage facility, cargo facility,
20 rental car facility, bus facility, taxi facility, flight
21 kitchen, fixed based operation, parking facility, refueling
22 facility, water supply facility, and railroad tracks and
23 stations.

24 (g) This Article is a limitation on the exercise of the
25 power of eminent domain, but is not an independent grant of
26 authority to exercise the power of eminent domain.

1 (Source: P.A. 94-1055, eff. 1-1-07.)

2 (735 ILCS 30/15-5-45 new)

3 Sec. 15-5-45. Eminent domain powers in New Acts. The
4 following provisions of law may include express grants of the
5 power to acquire property by condemnation or eminent domain:

6 Clean Coal FutureGen for Illinois Act; Department of
7 Commerce and Economic Opportunity; for activities
8 associated with the FutureGen Project, as defined in the
9 Clean Coal FutureGen for Illinois Act.

10 Section 920. The State Lawsuit Immunity Act is amended by
11 changing Section 1 as follows:

12 (745 ILCS 5/1) (from Ch. 127, par. 801)

13 Sec. 1. Except as provided in the Illinois Public Labor
14 Relations Act, the Court of Claims Act, ~~and~~ the State Officials
15 and Employees Ethics Act, ~~or~~ Section 1.5 of this Act, and,
16 except as provided in and to the extent provided in the Clean
17 Coal FutureGen for Illinois Act, the State of Illinois shall
18 not be made a defendant or party in any court.

19 (Source: P.A. 93-414, eff. 1-1-04; 93-615, eff. 11-19-03;
20 revised 12-19-03.)

21 Section 997. Severability. The provisions of this Act are
22 severable under Section 1.31 of the Statute on Statutes.

1 Section 999. Effective date. This Act takes effect upon
2 becoming law.