



Rep. Thomas Holbrook

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LRB097 09017 ASK 51224 a

1 AMENDMENT TO HOUSE BILL 1878

2 AMENDMENT NO. _____. Amend House Bill 1878 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Clean Coal FutureGen for Illinois Act is
5 amended by changing Sections 15, 20, 25, 30, and 998 as
6 follows:

7 (20 ILCS 1107/15)

8 (Section scheduled to be repealed on March 1, 2011)

9 Sec. 15. Definitions. For the purposes of this Act:

10 "Agency" means the Illinois Environmental Protection
11 Agency.

12 "Captured CO2" means CO2 and other trace chemical
13 constituents approved by the Agency for injection into the
14 Mount Simon Formation.

15 "Carbon capture and storage" means the process of
16 collecting captured CO2 from coal combustion by-products for

1 the purpose of injecting and storing the captured CO2 for
2 permanent storage.

3 "Carbon dioxide" or "CO2" means a colorless, odorless gas
4 in the form of one carbon and 2 oxygen atoms that is the
5 principal greenhouse gas.

6 "Department" means the Department of Commerce and Economic
7 Opportunity.

8 "Director" means the Director of Commerce and Economic
9 Opportunity.

10 "Federal Department" means the federal Department of
11 Energy.

12 "FutureGen Alliance" is a 501(c)(3) non-profit consortium
13 of coal and energy producers created to benefit the public
14 interest and the interest of science through the research,
15 development, and demonstration of near zero-emission coal
16 technology, with the cooperation of the Federal Department.

17 "FutureGen Project" means the public-private partnership
18 between the Federal Department and the FutureGen Alliance that
19 will control captured CO2 and will construct and operate a
20 pipeline and storage field for captured CO2.

21 "Mount Simon Formation" means the deep sandstone reservoir
22 into which the sequestered CO2 is to be injected at a depth
23 greater than 3,500 feet below ground surface and that is
24 bounded by the granitic basement below and the Eau Claire Shale
25 above.

26 "Operator" means the FutureGen Alliance and its member

1 companies, including their parent companies, subsidiaries,
2 affiliates, directors, officers, employees, and agents, or a
3 not-for-profit successor-in-interest approved by the
4 Department.

5 "Operational phase" means the period of time during which
6 the Operator injects and monitors CO2 into the Mount Simon
7 Formation in accordance with its permit approved by the Agency
8 for the FutureGen Project.

9 "Post-injection" means after the captured CO2 has been
10 successfully injected into the wellhead at the point at which
11 the captured CO2 is transferred into the wellbore for carbon
12 sequestration and storage into the Mount Simon Formation.

13 "Pre-injection" means all activities and occurrences prior
14 to successful delivery into the wellhead at the point at which
15 the captured CO2 is transferred into the wellbore for carbon
16 sequestration and storage into the Mount Simon Formation,
17 including but not limited to, the operation of the FutureGen
18 Project.

19 "Public liability" means any civil legal liability arising
20 out of or resulting from the storage, escape, release, or
21 migration of the post-injection sequestered CO2 that was
22 injected by the Operator and for which title is transferred to
23 the State pursuant to Section 20 of this Act. The term "public
24 liability", however, does not include any legal liability
25 arising out of or resulting from the construction, operation,
26 or other pre-injection activity of the Operator or any other

1 third party.

2 "Public liability action" or "action" means a written
3 demand, lawsuit, or claim from any third party received by the
4 Operator seeking a remedy or alleging liability on behalf of
5 Operator resulting from any public liability.

6 "Sequestered CO2" means the captured CO2 from the FutureGen
7 Project operations that is injected into the Mount Simon
8 Formation by the Operator.

9 (Source: P.A. 95-18, eff. 7-30-07; 96-1491, eff. 12-30-10.)

10 (20 ILCS 1107/20)

11 (Section scheduled to be repealed on March 1, 2011)

12 Sec. 20. Title to sequestered CO2 ~~gas~~. If the FutureGen
13 Alliance selects as its location for CO2 storage a designated
14 site or sites ~~Project locates at either the Tuscola or Mattoon~~
15 ~~site~~ in the State of Illinois suitable for injection of
16 captured CO2 into the Mount Simon Formation, then the ~~FutureGen~~
17 ~~Alliance agrees that the Operator shall transfer and convey and~~
18 ~~the State of Illinois shall accept and receive, with no payment~~
19 ~~due from the State of Illinois, all rights, title, and interest~~
20 ~~in and to and any liabilities associated with the sequestered~~
21 ~~gas, including any current or future environmental benefits,~~
22 ~~marketing claims, tradable credits, emissions allocations or~~
23 ~~offsets (voluntary or compliance based) associated therewith,~~
24 ~~upon such gas reaching the status of post injection, which~~
25 ~~shall be verified by the Agency or other designated State of~~

1 ~~Illinois agency. The~~ Operator shall retain all rights, title,
2 and interest in and to and any liabilities associated with the
3 pre-injection CO2 sequestered gas. The Operator shall retain
4 all rights, title, and interest, including any environmental
5 benefits or credits, in and to and any liabilities associated
6 with the sequestered CO2 during the operational phase of the
7 FutureGen Project. Following the operational phase of the
8 FutureGen Project and upon compliance with all applicable
9 permits, the Operator shall transfer and convey and the State
10 of Illinois shall accept and receive, with no payment due from
11 the State of Illinois, all rights, title, and interest,
12 including any environmental benefits or credits, in and to and
13 any liabilities associated with the sequestered CO2. Illinois
14 ~~State Geological Survey of the University of Illinois shall~~
15 ~~monitor, measure, and verify the permanent status of~~
16 ~~sequestered carbon dioxide and co sequestered gases in which~~
17 ~~the State has acquired the right, title, and interest under~~
18 ~~this Section.~~

19 (Source: P.A. 95-18, eff. 7-30-07; 95-728, eff. 7-1-08 - See
20 Sec. 999.)

21 (20 ILCS 1107/25)

22 (Section scheduled to be repealed on March 1, 2011)

23 Sec. 25. Insurance against qualified losses.

24 (a) The Operator ~~Department~~ shall procure an insurance
25 policy from a private insurance carrier or carriers, if and to

1 the extent that such a policy is available at a reasonable
2 cost, that insures the Operator against any qualified loss
3 stemming from a public liability action. The coverage limits
4 for such an insurance policy shall be at least \$15,000,000
5 ~~policy must be procured in accordance with the provisions of~~
6 ~~the Procurement Code.~~

7 (a-5) The Operator shall establish and fund a newly-created
8 CO2 Storage Trust Fund.

9 (1) The purpose of the CO2 Storage Trust Fund shall be
10 to complement commercially-available insurance products
11 and to support the Operator's ability to satisfy financial
12 assurance obligations that may be required by law or the
13 terms of the Operator's permit issued by the Agency.

14 (2) The funds in the CO2 Storage Trust Fund may used to
15 satisfy any qualified loss stemming from a public liability
16 action to the extent that such loss is not otherwise
17 covered by an insurance policy. The funds may also be used
18 to pay reasonable administrative costs associated with
19 managing and resolving claims associated with the CO2
20 Storage Trust Fund. The funds may also be used for well
21 closure, post-injection monitoring, or other activities
22 for which a law or permit requires financial assurance.

23 (3) The CO2 Storage Trust Fund shall be funded in the
24 following manner, toward a maximum amount of \$50,000,000
25 per 100 million metric tons of CO2 storage site design
26 capacity, unless the permit approved by the Agency requires

1 a higher maximum amount:

2 (A) The CO2 Storage Trust Fund shall be funded with
3 an initial payment of 20% of the total projected
4 maximum amount of the fund as forecasted by the
5 Operator, based on the total amount of sequestered CO2
6 projected to be stored during the operational phase of
7 the FutureGen Project which may not exceed the
8 permitted storage site design capacity, at least 30
9 days prior to the first day of regular CO2 injection
10 operations are forecasted to begin into the Mount Simon
11 Formation in accordance with its permit approved by the
12 Agency.

13 (B) Subsequent future payments to the CO2 Storage
14 Trust Fund shall be made during the during the
15 Operational Phase of the Project according to the
16 following formula:

17 For each million metric tons of sequestered CO2, the
18 subsequent future payments to the CO2 Storage Trust Fund
19 shall be determined by taking the difference between the
20 trust fund maximum amount and the initial payment divided
21 by the CO2 storage site capacity, measured in million
22 metric tons, designated in the Operator's permit with the
23 Agency. If 100 million metric tons was the total design
24 capacity of the CO2 storage facility, then the subsequent
25 annual future payments to the CO2 Storage Trust Fund would
26 be \$400,000 per million metric tons of CO2 injected.

1 (4) The Operator shall select, subject to the approval
2 of the Agency, an independent third-party trustee to
3 administer the CO2 Storage Trust Fund.

4 (b) Pursuant to Section 30 of this Act, the State shall
5 indemnify and hold harmless the Operator against any qualified
6 loss stemming from a public liability action to the extent that
7 the qualified loss is not covered under an insurance policy
8 under subsection (a) of this Section and to the extent that the
9 CO2 Storage Trust Fund lacks adequate funds to cover the loss.

10 (c) (Blank). ~~The Department shall pay any insurance~~
11 ~~premium, deductible, or liability under subsections (a) or (b)~~
12 ~~from appropriations by the General Assembly for that purpose.~~
13 ~~It is the intent of this Act that, to the extent practical, any~~
14 ~~unexpended balance of the proceeds from the sale of emission~~
15 ~~reduction rights or tradable credits to which the State has~~
16 ~~title under Section 20 should be used for the purposes of this~~
17 ~~subsection (c).~~

18 (d) If the FutureGen Alliance identifies a designated site
19 or sites in Illinois suitable for injection of captured CO2
20 into the Mount Simon Formation, ~~locates the FutureGen Project~~
21 ~~at either the Mattoon or Tuscola site in the State of Illinois,~~
22 then the Department shall be authorized to contract with the
23 FutureGen Alliance, under terms not inconsistent with this Act,
24 in order to define the rights and obligations of the FutureGen
25 Alliance and the Department, including but not limited to, the
26 insurance and indemnification obligations under Sections 25

1 and 30 of this Act.

2 (e) If federal indemnification covers all or a portion of
3 the obligations assumed by the State under Section 25 of this
4 Act, such State obligations shall be reduced in proportion to
5 the federal indemnification and be considered subordinated to
6 any federal indemnification.

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

10 (1) the intentional or willful misconduct of the
11 Operator ~~in its operation of the FutureGen Project;~~

12 (2) the failure of the Operator to comply with any
13 applicable law, rule, regulation, or other requirement
14 established by the Federal Department, Agency, or State of
15 Illinois for the carbon capture and storage of the
16 sequestered CO2 gas, including any limitations on the
17 chemical composition of any sequestered CO2 gas; or

18 (3) any the pre-injection activities operation of the
19 Operator FutureGen Project.

20 (Source: P.A. 95-18, eff. 7-30-07.)

21 (20 ILCS 1107/30)

22 (Section scheduled to be repealed on March 1, 2011)

23 Sec. 30. Indemnification. Notwithstanding any law to the
24 contrary, subject to and consistent with the conditions
25 provided in Section 25 of this Act, the State of Illinois shall

1 indemnify, hold harmless, defend, and release the Operator from
2 and against any public liability action asserted against the
3 Operator, subject to the following terms and conditions:

4 (a) The obligation of the State of Illinois to indemnify
5 the Operator does not extend to any public liability arising
6 out of or relating to:

7 (1) the intentional or willful misconduct of the
8 Operator ~~in its operation of the FutureGen Project;~~

9 (2) the failure of the Operator to materially comply
10 with any applicable law, rule, regulation, or other
11 requirement established by the Federal Department, Agency,
12 or State of Illinois for the carbon capture and storage of
13 the sequestered CO2 gas, including any limitations on the
14 chemical composition of any sequestered CO2 gas;

15 (3) any the pre-injection activities of the Operator
16 ~~operation of the FutureGen Project;~~ or

17 (4) a qualified loss to the extent that it is paid
18 under an insurance policy under subsection (a) or from the
19 CO2 Storage Trust Fund under subsection (b) of Section 25
20 of this Act.

21 (b) The indemnification obligations of the State of
22 Illinois assumed under Section 30 of this Act shall be reduced
23 in proportion and be subordinated to any federal
24 indemnification that covers all or a portion of the State's
25 obligations.

26 (Source: P.A. 95-18, eff. 7-30-07.)

1 (20 ILCS 1107/998)

2 (Section scheduled to be repealed on March 1, 2011)

3 Sec. 998. Repeal. This Act is repealed on March 1, 2015
4 ~~2011~~.

5 (Source: P.A. 95-18, eff. 7-30-07; 96-1491, eff. 12-30-10.)

6 (20 ILCS 1107/23 rep.)

7 (20 ILCS 1107/50 rep.)

8 Section 10. The Clean Coal FutureGen for Illinois Act is
9 amended by repealing Sections 23 and 50.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."