



Rep. John E. Bradley

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LRB097 10263 ASK 56600 a

1 AMENDMENT TO SENATE BILL 2062

2 AMENDMENT NO. _____. Amend Senate Bill 2062, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the Clean
6 Coal FutureGen for Illinois Act of 2011.

7 Section 5. Purpose. Recognizing that the FutureGen Project
8 is a first-of-a-kind research project to permanently sequester
9 underground captured CO₂ emissions from: (1) a coal-fueled
10 power plant that uses as its primary fuel source high volatile
11 bituminous rank coal with greater than 1.7 pounds of sulfur per
12 million btu content or (2) other approved and permitted
13 captured CO₂ sources in the State of Illinois, and that such a
14 project would have benefits to the economy and environment of
15 Illinois, the purpose of this Act is to provide the non-profit
16 FutureGen Alliance with adequate liability protection and

1 permitting certainty to facilitate the siting of the FutureGen
2 Project in the State of Illinois, to provide to the State of
3 Illinois certain financial benefits from environmental
4 attributes for the Project, and to help secure over \$1 billion
5 in federal funding for the Project.

6 Section 10. Legislative findings. The General Assembly
7 finds and determines that:

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

12 (2) in order to meet the energy needs of the State of
13 Illinois, keep its economy strong and protect the
14 environment while reducing its contribution to
15 human-induced greenhouse gas emissions, the State of
16 Illinois must be a leader in developing new low-carbon
17 technologies;

18 (3) carbon capture and storage is a low-carbon
19 technology that involves capturing the captured CO₂ from
20 fossil fuel energy electric generating units and other
21 industrial facilities and injecting it into secure
22 geologic strata for permanent storage;

23 (4) the FutureGen Project is a public-private
24 partnership between the Federal Department of Energy, the
25 FutureGen Alliance, and other partners that proposes to use

1 this new technology as part of a plan to transport and
2 store captured CO₂ from a coal-fueled power plant that uses
3 as its primary fuel source high-volatile bituminous rank
4 coal with greater than 1.7 pounds of sulfur per million btu
5 content and other captured CO₂ sources that are approved by
6 the appropriate State of Illinois agency and permitted in
7 the State of Illinois;

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

14 (6) the FutureGen Project provides an opportunity for
15 the State of Illinois to partner with the Federal
16 Department of Energy, the FutureGen Alliance, and other
17 partners in the development of these innovative clean-coal
18 technologies;

19 (7) the FutureGen Project will make the State of
20 Illinois a center for developing and refining clean coal
21 technology and carbon capture and storage, and will result
22 in the development of new technologies designed to improve
23 the efficiency of the energy industry that will be
24 replicated world wide;

25 (8) the FutureGen Project is an important coal
26 development and conversion project that will create jobs in

1 the State of Illinois during the construction and
2 operations phases, contribute to the overall economy of the
3 State of Illinois and help reinvigorate the Illinois Basin
4 coal industry; and

5 (9) the FutureGen Project and the property necessary
6 for the FutureGen Project serve a substantial public
7 purpose as its advanced clean-coal electricity generation,
8 advanced emissions control and carbon capture and storage
9 technologies will benefit the citizens of the State of
10 Illinois.

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

12 "Agency" means the Illinois Environmental Protection
13 Agency or the United States Environmental Protection Agency
14 depending upon which agency has primacy for the CO₂ injection
15 permit.

16 "Captured CO₂" means CO₂ and other trace chemical
17 constituents approved by the Agency for injection into the
18 Mount Simon Formation.

19 "Carbon capture and storage" means the process of
20 collecting captured CO₂ from coal combustion by-products for
21 the purpose of injecting and storing the captured CO₂ for
22 permanent storage.

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

1 "Department" means the Department of Commerce and Economic
2 Opportunity.

3 "Director" means the Director of Commerce and Economic
4 Opportunity.

5 "Federal Department" means the federal Department of
6 Energy.

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

12 "FutureGen Project" means the public-private partnership
13 between the Federal Department, the FutureGen Alliance, and
14 other partners that will control captured CO₂ and will
15 construct and operate a pipeline and storage field for captured
16 CO₂.

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

22 "Operator" means the FutureGen Alliance and its member
23 companies, including their parent companies, subsidiaries,
24 affiliates, directors, officers, employees, and agents, or a
25 not-for-profit successor-in-interest approved by the
26 Department.

1 "Operations phase" means the period of time during which
2 the Operator injects and simultaneously monitors CO₂ into the
3 Mount Simon Formation in accordance with its permit approved by
4 the Agency for the FutureGen Project.

5 "Post-injection" means after the captured CO₂ has been
6 successfully injected into the wellhead at the point at which
7 the captured CO₂ is transferred into the wellbore for carbon
8 sequestration and storage into the Mount Simon Formation.

9 "Pre-injection" means all activities and occurrences prior
10 to successful delivery 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 including but not limited to, the operation of the FutureGen
14 Project.

15 "Public liability" means any civil legal liability arising
16 out of or resulting from the storage, escape, release, or
17 migration of the sequestered CO₂ that was injected by the
18 Operator. The term "public liability", however, does not
19 include any legal liability arising out of or resulting from
20 the construction, operation, or other pre-injection activity
21 of the Operator or any other third party.

22 "Public liability action" or "action" means a written
23 demand, lawsuit, or claim from any third party received by the
24 Operator seeking a remedy or alleging liability on behalf of
25 Operator resulting from any public liability and is limited to
26 such written demands, claims, or lawsuits asserting claims for

1 property damages, personal or bodily injury damages,
2 environmental damages, or trespass.

3 "Sequestered CO₂" means the captured CO₂ from the FutureGen
4 Project operations that is injected into the Mount Simon
5 Formation by the Operator.

6 Section 20. Title to sequestered CO₂. If the FutureGen
7 Alliance selects as its location for CO₂ storage a designated
8 site or sites in the State of Illinois suitable for injection
9 of captured CO₂ into the Mount Simon Formation, then the
10 Operator shall retain all rights, title, and interest in and to
11 and any liabilities associated with the pre-injection CO₂. The
12 Operator shall retain all rights, title, and interest,
13 including any environmental benefits or credits, in and to and
14 any liabilities associated with the sequestered CO₂ during the
15 operations phase of the FutureGen Project, plus an additional
16 10-year period. Following the operations phase of the FutureGen
17 Project, plus an additional 10-year period, and upon compliance
18 with all applicable permits, the Operator shall transfer and
19 convey and the State of Illinois shall accept and receive, with
20 no payment due from the State of Illinois, all rights, title,
21 and interest, including any future environmental benefits or
22 credits, in and to and any liabilities associated with the
23 sequestered CO₂.

24 Section 25. Insurance against qualified losses.

1 (a) The Operator shall procure an insurance policy from a
2 private insurance carrier or carriers, if and to the extent
3 that such a policy is available at a reasonable cost, that
4 insures the Operator against any qualified loss stemming from a
5 public liability action. The coverage limits for such an
6 insurance policy shall be at least \$25,000,000. Within every
7 10-year period after operations begin for the Project, the
8 Operator and Department shall mutually agree on an independent
9 third party, with appropriate insurance expertise, to conduct a
10 risk-weighted analysis of the project, assess the appropriate
11 level of insurance to protect the project from the financial
12 consequences of public liability actions, and make a
13 recommendation as to whether a greater amount of insurance
14 coverage than the Operator has at the time is commercially
15 available at a reasonable cost to the Operator. This analysis
16 shall incorporate, and not be inconsistent with, results from
17 similar risk-based analyses that may be required of the
18 Operator by the agency permitting CO₂ injection as part of its
19 financial assurance process. The Operator and the Department
20 shall have an opportunity to review the draft analysis and any
21 recommendations for narrowed or expanded levels of insurance
22 coverage prior to finalization of the analysis. If the
23 independent third party recommends that a greater amount of
24 insurance coverage is commercially available at a reasonable
25 cost to the Operator, then the Operator shall procure the
26 recommended level of insurance, to the extent the insurance is

1 commercially available and is recognized as a recoverable cost
2 under the terms of any CO₂ services agreement or power purchase
3 agreement that may be in place for the project at the time of
4 the analysis. The cost of the independent third party shall be
5 borne by the Operator.

6 (b) The protections provided by the State under this Act
7 and the obligations on the Operator shall only apply after the
8 Operator establishes a CO₂ Storage Trust Fund consistent with
9 the purposes of this Act and pays a \$50,000,000 fee to the
10 State, which is to be deposited into the CO₂ Storage Trust
11 Fund. The fee shall be considered a non-refundable expenditure
12 to the Operator for immediate protections and benefits provided
13 by the State.

14 The purpose of the CO₂ Storage Trust Fund shall be to
15 complement commercially-available insurance products and to
16 support the Operator's ability to satisfy financial assurance
17 obligations that may be required by law or the terms of the
18 Operator's permit issued by the Agency.

19 The funds in the CO₂ Storage Trust Fund may used to satisfy
20 any qualified loss stemming from a public liability action to
21 the extent that such loss is not otherwise covered by an
22 insurance policy. The funds may also be used to pay reasonable
23 administrative costs associated with managing and resolving
24 claims associated with the CO₂ Storage Trust Fund, except that
25 during the operations phase, no payments from the CO₂ Storage
26 Trust Fund may be used to pay legal fees associated with

1 defending claims resulting from a public liability action. The
2 funds may also be used for post-operations phase activities,
3 including monitoring, CO₂ storage site maintenance, storage
4 site staffing, insurance, well and site closure, or other
5 activities for which a law or permit requires financial
6 assurance.

7 The CO₂ Storage Trust Fund shall be funded in the following
8 manner, toward a maximum amount of \$250,000,000 per 100 million
9 metric tons of CO₂ storage site design capacity, unless the
10 permit approved by the Agency requires a higher maximum amount:

11 (1) Subsequent future annual payments to the CO₂
12 Storage Trust Fund shall be made during the operations
13 phase of the project at an initial rate of \$950,000 per
14 million metric tons of CO₂ injected, with the rate for
15 subsequent annual payments adjusted up or down in order to
16 meet the financial requirements of the Agency's permit and
17 to fulfill the requirements of the Act.

18 (2) The Operator shall deliver annually to the
19 Department an audited financial report that includes CO₂
20 Storage Trust Fund balances, liabilities, projected
21 balances, projected liabilities, and evidence that the
22 financial health of the CO₂ Storage Trust Fund is
23 sufficient for the purposes of this Act.

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

1 (4) The trustee shall administer the CO₂ Storage Trust
2 Fund on behalf of the Operator during the operations phase
3 of the Project plus an additional 10-year period, and on
4 behalf of both the Operator and the State of Illinois after
5 title to the CO₂ has been transferred to the State of
6 Illinois, to ensure compliance with the Operator's permits
7 and this Act

8 (5) Once the permitting agency has issued a certificate
9 of completion, or a comparable instrument indicating the
10 site is safely closed, any surplus balance in the CO₂
11 Storage Trust Fund shall be distributed to the State. If
12 the Federal Government provides liability protections that
13 obviates, in part or in full, the purpose of the CO₂
14 Storage Trust Fund, then any surplus balance shall be
15 distributed in accordance with this paragraph (5).

16 (c) The Operator shall maintain an absolute minimum level
17 of financial assurances in the amount of \$100,000,000 against
18 potential losses stemming from a public liability action, in
19 the combination of insurance, CO₂ Storage Trust Fund balance,
20 project assets, or cash or cash equivalents during the
21 operations phase of the FutureGen Project, plus an additional
22 10-year period.

23 (d) Pursuant to Section 30 of this Act, the State shall
24 indemnify and hold harmless the Operator against any qualified
25 loss stemming from a public liability action to the extent that
26 the qualified loss is greater than \$100,000,000 and is not

1 covered by the combination of an insurance policy under
2 subsection (a) of this Section, funds in the CO₂ Storage Trust
3 Fund, project assets, and cash or cash equivalents.

4 (e) If the FutureGen Alliance identifies a designated site
5 or sites in Illinois suitable for injection of captured CO₂
6 into the Mount Simon Formation, then the Department shall be
7 authorized to contract with the FutureGen Alliance, under terms
8 not inconsistent with this Act, in order to define the rights
9 and obligations of the FutureGen Alliance and the Department,
10 including but not limited to, the insurance and indemnification
11 obligations under Sections 25 and 30 of this Act.

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

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

20 (1) the intentional or willful misconduct of the
21 Operator;

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 CO₂, including any limitations on the chemical

1 composition of any sequestered CO₂; or

2 (3) any pre-injection activities of the Operator.

3 Section 30. Indemnification. Notwithstanding any law to
4 the contrary, subject to and consistent with the conditions
5 provided in Section 25 of this Act, the State of Illinois shall
6 indemnify, hold harmless, defend, and release the Operator from
7 and against any public liability action asserted against the
8 Operator, subject 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 intentional or willful misconduct of the
13 Operator;

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

20 (3) any pre-injection activities of the Operator; or

21 (4) a qualified loss to the extent that it is equal to
22 or less than \$100,000,000 or is covered by the combination
23 of funds in an insurance policy under subsection (a) of
24 Section 25 of this Act, funds in the CO₂ Storage Trust Fund
25 under subsection (b) of Section 25 of this Act, project

1 assets, and cash or cash equivalents.

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

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

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

1 may appear in such action through private counsel to respond or
2 object only to any aspect of a proposed settlement or proposed
3 court order which would directly affect the day-to-day
4 operations of the FutureGen Project. In any such action, the
5 State of Illinois shall pay the court costs and litigation
6 expenses of defending such action, to the extent approved by
7 the Attorney General as reasonable, as they are incurred.

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

23 (c) In any action asserted by the Operator or the State of
24 Illinois to enforce the indemnification obligations of the
25 State of Illinois as provided in Section 30 of the Act, the
26 non-prevailing party is responsible for any reasonable court

1 costs, litigation expenses, and attorneys fees incurred by the
2 prevailing party.

3 (d) Court costs and litigation expenses and other costs of
4 providing a defense, including attorneys' fees, paid or
5 obligated under this Section, and the costs of indemnification,
6 including the payment of any final judgment or final settlement
7 under this Section, must be paid by warrant from appropriations
8 to the Department pursuant to vouchers certified by the
9 Attorney General.

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

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

1 Section 40. Permitting. The State of Illinois shall issue
2 to the Operator all necessary and appropriate permits
3 consistent with State and federal law and corresponding
4 regulations. The State of Illinois must allow the Operator to
5 combine applications when appropriate, and the State of
6 Illinois must otherwise streamline the application process for
7 timely permit issuance.

8 Section 43. Tax exemption. The State of Illinois has
9 offered certain incentives to the FutureGen Alliance to make
10 the State of Illinois the most attractive location for the
11 FutureGen Project.

12 Section 45. Incentives. The State of Illinois has offered
13 certain incentives to the FutureGen Alliance to make the State
14 of Illinois the most attractive location for the FutureGen
15 Project.

16 Section 900. The State Lawsuit Immunity Act is amended by
17 changing Section 1 as follows:

18 (745 ILCS 5/1) (from Ch. 127, par. 801)

19 Sec. 1. Except as provided in the Illinois Public Labor
20 Relations Act, the Court of Claims Act, the State Officials and
21 Employees Ethics Act, and Section 1.5 of this Act, ~~and, except~~
22 ~~as provided in and to the extent provided in the Clean Coal~~

1 ~~FutureGen for Illinois Act,~~ the State of Illinois shall not be
2 made a defendant or party in any court.

3 (Source: P.A. 95-18, eff. 7-30-07; 95-331, eff. 8-21-07;
4 95-876, eff. 8-21-08.)

5 (705 ILCS 505/8.5 rep.)

6 Section 910. The Court of Claims Act is amended by
7 repealing Section 8.5.

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

10 Section 999. Effective date. This Act takes effect upon
11 becoming law."