



Rep. André M. Thapedi

Filed: 4/9/2013

09800HB2994ham001

LRB098 06184 AMC 44036 a

1 AMENDMENT TO HOUSE BILL 2994

2 AMENDMENT NO. _____. Amend House Bill 2994 by replacing
3 line 25 on page 558 through line 4 on page 566 with the
4 following:

5 "(h-5) Sequestration enforcement.

6 (A) All contracts entered into under subsection (h) of
7 this Section and all sourcing agreements under subsection
8 (h-1) of this Section, regardless of duration, shall
9 require the owner of any facility supplying SNG under the
10 contract or sourcing agreement to provide certified
11 documentation to the Commission each year, starting in the
12 facility's first year of commercial operation, accurately
13 reporting the quantity of carbon dioxide emissions from the
14 facility that have been captured and sequestered and
15 reporting any quantities of carbon dioxide released from
16 the site or sites at which carbon dioxide emissions were
17 sequestered in prior years, based on continuous monitoring
18 of those sites.

1 (B) If, in any year, the owner of the clean coal SNG
2 facility fails to demonstrate that the SNG facility
3 captured and sequestered at least 90% of the total carbon
4 dioxide emissions that the facility would otherwise emit or
5 that sequestration of emissions from prior years has
6 failed, resulting in the release of carbon dioxide into the
7 atmosphere, then the owner of the clean coal SNG facility
8 must pay a penalty of \$20 per ton of excess carbon dioxide
9 emissions not to exceed \$40,000,000, in any given year
10 which shall be deposited into the Energy Efficiency Trust
11 Fund and distributed pursuant to subsection (b) of Section
12 6-6 of the Renewable Energy, Energy Efficiency, and Coal
13 Resources Development Law of 1997. On or before the 5-year
14 anniversary of the execution of the contract and every 5
15 years thereafter, an expert hired by the owner of the
16 facility with the approval of the Attorney General shall
17 conduct an analysis to determine the cost of sequestration
18 of at least 90% of the total carbon dioxide emissions the
19 plant would otherwise emit. If the analysis shows that the
20 actual annual cost is greater than the penalty, then the
21 penalty shall be increased to equal the actual cost.
22 Provided, however, to the extent that the owner of the
23 facility described in subsection (h) of this Section can
24 demonstrate that the failure was as a result of acts of God
25 (including fire, flood, earthquake, tornado, lightning,
26 hurricane, or other natural disaster); any amendment,

1 modification, or abrogation of any applicable law or
2 regulation that would prevent performance; war; invasion;
3 act of foreign enemies; hostilities (regardless of whether
4 war is declared); civil war; rebellion; revolution;
5 insurrection; military or usurped power or confiscation;
6 terrorist activities; civil disturbance; riots;
7 nationalization; sabotage; blockage; or embargo, the owner
8 of the facility described in subsection (h) of this Section
9 shall not be subject to a penalty if and only if (i) it
10 promptly provides notice of its failure to the Commission;
11 (ii) as soon as practicable and consistent with any order
12 or direction from the Commission, it submits to the
13 Commission proposed modifications to its carbon capture
14 and sequestration plan; and (iii) it carries out its
15 proposed modifications in the manner and time directed by
16 the Commission.

17 If the Commission finds that the facility has not
18 satisfied each of these requirements, then the facility
19 shall be subject to the penalty. If the owner of the clean
20 coal SNG facility captured and sequestered more than 90% of
21 the total carbon dioxide emissions that the facility would
22 otherwise emit, then the owner of the facility may credit
23 such additional amounts to reduce the amount of any future
24 penalty to be paid. The penalty resulting from the failure
25 to capture and sequester at least the minimum amount of
26 carbon dioxide shall not be passed on to a utility or its

1 customers.

2 If the clean coal SNG facility fails to meet the
3 requirements specified in this subsection (h-5), then the
4 Attorney General, on behalf of the People of the State of
5 Illinois, shall bring an action to enforce the obligations
6 related to the facility set forth in this subsection (h-5),
7 including any penalty payments owed, but not including the
8 physical obligation to capture and sequester at least 90%
9 of the total carbon dioxide emissions that the facility
10 would otherwise emit. Such action may be filed in any
11 circuit court in Illinois. By entering into a contract
12 pursuant to subsection (h) of this Section, the clean coal
13 SNG facility agrees to waive any objections to venue or to
14 the jurisdiction of the court with regard to the Attorney
15 General's action under this subsection (h-5).

16 Compliance with the sequestration requirements and any
17 penalty requirements specified in this subsection (h-5)
18 for the clean coal SNG facility shall be assessed annually
19 by the Commission, which may in its discretion retain an
20 expert to facilitate its assessment. If any expert is
21 retained by the Commission, then the clean coal SNG
22 facility shall pay for the expert's reasonable fees, and
23 such costs shall not be passed through to the utility or
24 its customers.

25 In addition, carbon dioxide emission credits received
26 by the clean coal SNG facility in connection with

1 sequestration of carbon dioxide from the facility must be
2 sold in a timely fashion with any revenue, less applicable
3 fees and expenses and any expenses required to be paid by
4 facility for carbon dioxide transportation or
5 sequestration, deposited into the reconciliation account
6 within 30 days after receipt of such funds by the owner of
7 the clean coal SNG facility.

8 The clean coal SNG facility is prohibited from
9 transporting or sequestering carbon dioxide unless the
10 owner of the carbon dioxide pipeline that transfers the
11 carbon dioxide from the facility and the owner of the
12 sequestration site where the carbon dioxide captured by the
13 facility is stored has acquired all applicable permits
14 under applicable State and federal laws, statutes, rules,
15 or regulations prior to the transfer or sequestration of
16 carbon dioxide. The responsibility for compliance with the
17 sequestration requirements specified in this subsection
18 (h-5) for the clean coal SNG facility shall reside solely
19 with the clean coal SNG facility, regardless of whether the
20 facility has contracted with another party to capture,
21 transport, or sequester carbon dioxide.

22 (C) If, in any year, the owner of a clean coal SNG
23 brownfield facility fails to demonstrate that the clean
24 coal SNG brownfield facility captured and sequestered at
25 least 85% of the total carbon dioxide emissions that the
26 facility would otherwise emit, then the owner of the clean

1 coal SNG brownfield facility must pay a penalty of \$20 per
2 ton of excess carbon emissions up to \$20,000,000, which
3 shall be deposited into the Energy Efficiency Trust Fund
4 and distributed pursuant to subsection (b) of Section 6-6
5 of the Renewable Energy, Energy Efficiency, and Coal
6 Resources Development Law of 1997. Provided, however, to
7 the extent that the owner of the clean coal SNG brownfield
8 facility can demonstrate that the failure was as a result
9 of acts of God (including fire, flood, earthquake, tornado,
10 lightning, hurricane, or other natural disaster); any
11 amendment, modification, or abrogation of any applicable
12 law or regulation that would prevent performance; war;
13 invasion; act of foreign enemies; hostilities (regardless
14 of whether war is declared); civil war; rebellion;
15 revolution; insurrection; military or usurped power or
16 confiscation; terrorist activities; civil disturbances;
17 riots; nationalization; sabotage; blockage; or embargo,
18 the owner of the clean coal SNG brownfield facility shall
19 not be subject to a penalty if and only if (i) it promptly
20 provides notice of its failure to the Commission; (ii) as
21 soon as practicable and consistent with any order or
22 direction from the Commission, it submits to the Commission
23 proposed modifications to its carbon capture and
24 sequestration plan; and (iii) it carries out its proposed
25 modifications in the manner and time directed by the
26 Commission. If the Commission finds that the facility has

1 not satisfied each of these requirements, then the facility
2 shall be subject to the penalty. If the owner of a clean
3 coal SNG brownfield facility demonstrates that the clean
4 coal SNG brownfield facility captured and sequestered more
5 than 85% of the total carbon emissions that the facility
6 would otherwise emit, the owner of the clean coal SNG
7 brownfield facility may credit such additional amounts to
8 reduce the amount of any future penalty to be paid. The
9 penalty resulting from the failure to capture and sequester
10 at least the minimum amount of carbon dioxide shall not be
11 passed on to a utility or its customers.

12 In addition to any penalty for the clean coal SNG
13 brownfield facility's failure to capture and sequester at
14 least its minimum sequestration requirement, the Attorney
15 General, on behalf of the People of the State of Illinois,
16 shall bring an action for specific performance of this
17 subsection (h-5). Such action may be filed in any circuit
18 court in Illinois. By entering into a sourcing agreement
19 pursuant to subsection (h-1) of this Section, the clean
20 coal SNG brownfield facility agrees to waive any objections
21 to venue or to the jurisdiction of the court with regard to
22 the Attorney General's action for specific performance
23 under this subsection (h-5).

24 Compliance with the sequestration requirements and
25 penalty requirements specified in this subsection (h-5)
26 for the clean coal SNG brownfield facility shall be

1 assessed annually by the Commission, which may in its
2 discretion retain an expert to facilitate its assessment.
3 If an expert is retained by the Commission, then the clean
4 coal SNG brownfield facility shall pay for the expert's
5 reasonable fees, and such costs shall not be passed through
6 to a utility or its customers. A SNG facility operating
7 pursuant to this subsection (h-5) shall not forfeit its
8 designation as a clean coal SNG facility or a clean coal
9 SNG brownfield facility if the facility fails to fully
10 comply with the applicable carbon sequestration
11 ~~sequestration~~ requirements in any given year, provided the
12 requisite offsets are purchased or requisite penalties are
13 paid.

14 Responsibility for compliance with the sequestration
15 requirements specified in this subsection (h-5) for the
16 clean coal SNG brownfield facility shall reside solely with
17 the clean coal SNG brownfield facility regardless of
18 whether the facility has contracted with another party to
19 capture, transport, or sequester carbon dioxide.".