

1                                    AMENDMENT TO SENATE BILL 372

2            AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 372, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5            "Section 5. The Environmental Protection Act is amended  
6 by changing Section 9.9 and adding Section 9.10 as follows:

7            (415 ILCS 5/9.9)

8            Sec. 9.9. Nitrogen oxides trading system.

9            (a) The General Assembly finds:

10            (1) That USEPA has issued a Final Rule published in  
11 the Federal Register on October 27, 1998, entitled  
12 "Finding of Significant Contribution and Rulemaking for  
13 Certain States in the Ozone Transport Assessment Group  
14 Region for Purposes of Reducing Regional Transport of  
15 Ozone", hereinafter referred to as the "NOx SIP Call",  
16 compliance with which will require reducing emissions of  
17 nitrogen oxides ("NOx");

18            (2) That reducing emissions of NOx in the State  
19 helps the State to meet the national ambient air quality  
20 standard for ozone;

21            (3) That emissions trading is a cost-effective  
22 means of obtaining reductions of NOx emissions.

1 (b) The Agency shall propose and the Board shall adopt  
2 regulations to implement an interstate NOx trading program  
3 (hereinafter referred to as the "NOx Trading Program") as  
4 provided for in 40 CFR Part 96, including incorporation by  
5 reference of appropriate provisions of 40 CFR Part 96 and  
6 regulations to address 40 CFR Section 96.4(b), Section  
7 96.55(c), Subpart E, and Subpart I. In addition, the Agency  
8 shall propose and the Board shall adopt regulations to  
9 implement NOx emission reduction programs for cement kilns  
10 and stationary internal combustion engines.

11 (c) Allocations of NOx allowances to large electric  
12 generating units ("EGUs") and large non-electric generating  
13 units ("non-EGUs"), as defined by 40 CFR Part 96.4(a), shall  
14 not exceed the State's trading budget for those source  
15 categories to be included in the State Implementation Plan  
16 for NOx.

17 (d) In adopting regulations to implement the NOx Trading  
18 Program, the Board shall:

19 (1) assure that the economic impact and technical  
20 feasibility of NOx emissions reductions under the NOx  
21 Trading Program are considered relative to the  
22 traditional regulatory control requirements in the State  
23 for EGUs and non-EGUs;

24 (2) provide that emission units, as defined in  
25 Section 39.5(1) of this Act, may opt into the NOx Trading  
26 Program;

27 (3) provide for voluntary reductions of NOx  
28 emissions from emission units, as defined in Section  
29 39.5(1) of this Act, not otherwise included under  
30 paragraph (c) or (d)(2) of this Section to provide  
31 additional allowances to EGUs and non-EGUs to be  
32 allocated by the Agency. The regulations shall further  
33 provide that such voluntary reductions are verifiable,  
34 quantifiable, permanent, and federally enforceable;

1 (4) provide that the Agency allocate to non-EGUs  
 2 allowances that are designated in the rule, unless the  
 3 Agency has been directed to transfer the allocations to  
 4 another unit subject to the requirements of the NOx  
 5 Trading Program, and that upon shutdown of a non-EGU, the  
 6 unit may transfer or sell the NOx allowances that are  
 7 allocated to such unit; and

8 (5) provide that the Agency shall set aside  
 9 annually a number of allowances, not to exceed 5% of the  
 10 total EGU trading budget, to be made available to new  
 11 EGUs.

12 (A) Those EGUs that commence commercial  
 13 operation, as defined in 40 CFR Section 96.2, at a  
 14 time that is more than half way through the control  
 15 period in 2003 2002 shall return to the Agency any  
 16 allowances that were issued to it by the Agency and  
 17 were not used for compliance in 2004 2003.

18 (B) The Agency may charge EGUs that commence  
 19 commercial operation, as defined in 40 CFR Section  
 20 96.2, on or after January 1, 2003, for the  
 21 allowances it issues to them.

22 (e) The Agency may adopt procedural rules, as necessary,  
 23 to implement the regulations promulgated by the Board  
 24 pursuant to subsections (b) and (d) and to implement  
 25 subsection (i) of this Section.

26 (f) Notwithstanding any provisions in subparts T, U, and  
 27 W of Section 217 of Title 35 of the Illinois Administrative  
 28 Code to the contrary, compliance with the regulations  
 29 promulgated by the Board pursuant to subsections (b) and (d)  
 30 of this Section is required by May 31, 2004. The--regulations  
 31 promulgated--by-the-Board-pursuant-to-subsections-(b)-and-(d)  
 32 of-this-Section-shall-not-be-enforced-until-the-later-of--May  
 33 17-2003,-or-the-first-day-of-the-control-season-subsequent-to  
 34 the-calendar-year-in-which-all-of-the-other-states-subject-to

1 the provisions of the NOx SIP Call that are located in USEPA  
2 Region V or that are contiguous to Illinois have adopted  
3 regulations to implement NOx trading programs and other  
4 required reductions of NOx emissions pursuant to the NOx SIP  
5 Call, and such regulations have received final approval by  
6 USEPA as part of the respective states' SIPS for ozone, or a  
7 final FIP for ozone promulgated by USEPA is effective for  
8 such other states.

9 (g) To the extent that a court of competent jurisdiction  
10 finds a provision of 40 CFR Part 96 invalid, the  
11 corresponding Illinois provision shall be stayed until such  
12 provision of 40 CFR Part 96 is found to be valid or is  
13 re-promulgated. To the extent that USEPA or any court of  
14 competent jurisdiction stays the applicability of any  
15 provision of the NOx SIP Call to any person or circumstance  
16 relating to Illinois, during the period of that stay, the  
17 effectiveness of the corresponding Illinois provision shall  
18 be stayed. To the extent that the invalidity of the  
19 particular requirement or application does not affect other  
20 provisions or applications of the NOx SIP Call pursuant to 40  
21 CFR 51.121 or the NOx trading program pursuant to 40 CFR Part  
22 96 or 40 CFR Part 97, this Section, and rules or regulations  
23 promulgated hereunder, will be given effect without the  
24 invalid provisions or applications.

25 (h) Notwithstanding any other provision of this Act, any  
26 source or other authorized person that participates in the  
27 NOx Trading Program shall be eligible to exchange NOx  
28 allowances with other sources in accordance with this Section  
29 and with regulations promulgated by the Board or the Agency.

30 (i) There is hereby created within the State Treasury an  
31 interest-bearing special fund to be known as the NOx Trading  
32 System Fund, which shall be used and administered by the  
33 Agency for the purposes stated below:

34 (1) To accept funds from persons who purchase NOx

1 allowances from the Agency;

2 (2) To disburse the proceeds of the NOx allowances  
3 sales pro-rata to the owners or operators of the EGUs  
4 that received allowances from the Agency but not from the  
5 Agency's set-aside, in accordance with regulations that  
6 may be promulgated by the Agency; and

7 (3) To finance the reasonable costs incurred by the  
8 Agency in the administration of the NOx Trading System.

9 (Source: P.A. 91-631, eff. 8-19-99.)

10 (415 ILCS 5/9.10 new)

11 Sec. 9.10. Fossil fuel-fired electric generating plants.

12 (a) The General Assembly finds and declares that:

13 (1) fossil fuel-fired electric generating plants  
14 are a significant source of air emissions in this State  
15 and have become the subject of a number of important new  
16 studies of their effects on the public health;

17 (2) existing state and federal policies, that allow  
18 older plants that meet federal standards to operate  
19 without meeting the more stringent requirements  
20 applicable to new plants, are being questioned on the  
21 basis of their environmental impacts and the economic  
22 distortions such policies cause in a deregulated energy  
23 market;

24 (3) fossil fuel-fired electric generating plants  
25 are, or may be, affected by a number of regulatory  
26 programs, some of which are under review or development  
27 on the state and national levels, and to a certain extent  
28 the international level, including the federal acid rain  
29 program, tropospheric ozone, mercury and other hazardous  
30 pollutant control requirements, regional haze, and global  
31 warming;

32 (4) scientific uncertainty regarding the formation  
33 of certain components of regional haze and the air

1 quality modeling that predict impacts of control measures  
2 requires careful consideration of the timing of the  
3 control of some of the pollutants from these facilities,  
4 particularly sulfur dioxides and nitrogen oxides that  
5 each interact with ammonia and other substances in the  
6 atmosphere;

7 (5) the development of energy policies to promote a  
8 safe, sufficient, reliable, and affordable energy supply  
9 on the state and national levels is being affected by the  
10 on-going deregulation of the power generation industry  
11 and the evolving energy markets;

12 (6) the Governor's formation of an Energy Cabinet  
13 and the development of a State energy policy calls for  
14 actions by the Agency and the Board that are in harmony  
15 with the energy needs and policy of the State, while  
16 protecting the public health and the environment;

17 (7) Illinois coal is an abundant resource and an  
18 important component of Illinois' economy whose use should  
19 be encouraged to the greatest extent possible consistent  
20 with protecting the public health and the environment;

21 (8) renewable forms of energy should be promoted as  
22 an important element of the energy and environmental  
23 policies of the State and that it is a goal of the State  
24 that at least 5% of the State's energy production and use  
25 be derived from renewable forms of energy by 2010 and at  
26 least 15% from renewable forms of energy by 2020;

27 (9) efforts on the state and federal levels are  
28 underway to consider the multiple environmental  
29 regulations affecting electric generating plants in order  
30 to improve the ability of government and the affected  
31 industry to engage in effective planning through the use  
32 of multi-pollutant strategies; and

33 (10) these issues, taken together, call for a  
34 comprehensive review of the impact of these facilities on

1 the public health, considering also the energy supply,  
2 reliability, and costs, the role of renewable forms of  
3 energy, and the developments in federal law and  
4 regulations that may affect any state actions, prior to  
5 making final decisions in Illinois.

6 (b) Taking into account the findings and declarations of  
7 the General Assembly contained in subsection (a) of this  
8 Section, the Agency shall, before September 30, 2004, but not  
9 before September 30, 2003, issue to the House and Senate  
10 Committees on Environment and Energy findings that address  
11 the potential need for the control or reduction of emissions  
12 from fossil fuel-fired electric generating plants, including  
13 the following provisions:

14 (1) reduction of nitrogen oxide emissions, as  
15 appropriate, with consideration of maximum annual  
16 emissions rate limits or establishment of an emissions  
17 trading program and with consideration of the  
18 developments in federal law and regulations that may  
19 affect any State action, prior to making final decisions  
20 in Illinois;

21 (2) reduction of sulfur dioxide emissions, as  
22 appropriate, with consideration of maximum annual  
23 emissions rate limits or establishment of an emissions  
24 trading program and with consideration of the  
25 developments in federal law and regulations that may  
26 affect any State action, prior to making final decisions  
27 in Illinois;

28 (3) incentives to promote renewable sources of  
29 energy consistent with item (8) of subsection (a) of  
30 this Section;

31 (4) reduction of mercury as appropriate,  
32 consideration of the availability of control technology,  
33 industry practice requirements, or incentive programs, or  
34 some combination of these approaches that are sufficient

1 to prevent unacceptable local impacts from individual  
2 facilities and with consideration of the developments in  
3 federal law and regulations that may affect any state  
4 action, prior to making final decisions in Illinois; and

5 (5) establishment of a banking system, consistent  
6 with the United States Department of Energy's voluntary  
7 reporting system, for certifying credits for voluntary  
8 offsets of emissions of greenhouse gases, as identified  
9 by the United States Environmental Protection Agency, or  
10 other voluntary reductions of greenhouse gases. Such  
11 reduction efforts may include, but are not limited to,  
12 carbon sequestration, technology-based control measures,  
13 energy efficiency measures, and the use of renewable  
14 energy sources.

15 The Agency shall consider the impact on the public  
16 health, considering also energy supply, reliability and  
17 costs, the role of renewable forms of energy, and  
18 developments in federal law and regulations that may affect  
19 any state actions, prior to making final decisions in  
20 Illinois.

21 (c) Nothing in this Section is intended to or should be  
22 interpreted in a manner to limit or restrict the authority of  
23 the Illinois Environmental Protection Agency to propose, or  
24 the Illinois Pollution Control Board to adopt, any  
25 regulations applicable or that may become applicable to the  
26 facilities covered by this Section that are required by  
27 federal law.

28 (d) The Agency may file proposed rules with the Board to  
29 effectuate its findings provided to the Senate Committee on  
30 Environment and Energy and the House Committee on Environment  
31 and Energy in accordance with subsection (b) of this Section.  
32 Any such proposal shall not be submitted sooner than 90 days  
33 after the issuance of the findings provided for in subsection  
34 (b) of this Section. The Board shall take action on any such

1 proposal within one year of the Agency's filing of the  
2 proposed rules.

3 Section 99. Effective date. This Act takes effect July  
4 1, 2001."