

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 and permitting certainty to facilitate the siting of  
13 the FutureGen Project in the State of Illinois.

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

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

20 (2) in order to meet the energy needs of the State of  
21 Illinois, keep its economy strong and protect the environment  
22 while reducing its contribution to human-induced greenhouse

1 gas emissions, the State of Illinois must be a leader in  
2 developing new low-carbon technologies;

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

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

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

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

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

1 (8) the FutureGen Project is an important coal development  
2 and conversion project that 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 and the property necessary for  
7 the FutureGen Project serve a substantial public purpose as its  
8 coal gasification, electricity generation, hydrogen  
9 production, advanced emissions control and carbon capture and  
10 storage technologies will benefit the citizens of the State of  
11 Illinois.

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

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

15 "Carbon capture and storage" means the process of capturing  
16 CO<sub>2</sub> and other chemical constituents from coal combustion  
17 by-products for the purpose of injecting and storing the gas  
18 for permanent storage.

19 "Carbon dioxide" or "CO<sub>2</sub>" means a colorless, odorless gas  
20 in the form of one carbon and 2 oxygen atoms that is the  
21 principal greenhouse gas.

22 "Department" means the Department of Commerce and Economic  
23 Opportunity.

24 "Director" means the Director of Commerce and Economic  
25 Opportunity.

1 "Federal Department" means the federal Department of  
2 Energy.

3 "FutureGen Alliance" is a 501(c)(3) non-profit consortium  
4 of coal and energy producers that, as of the effective date of  
5 this Act, includes American Electric Power, Anglo American plc,  
6 BHP Billiton, E. ON US, China Huaneng Group, CONSOL Energy,  
7 Foundation Coal, Kennecott Energy, Peabody Energy, PPL  
8 Corporation, Rio Tinto Energy American, Southern Company, and  
9 Xstrata Coal.

10 "FutureGen Project" means the public-private partnership  
11 between the Federal Department and the FutureGen Alliance that  
12 will construct and operate a coal-fueled power plant utilizing  
13 state-of-the-art clean-coal technology and carbon capture and  
14 storage. Two locations in Illinois, Tuscola and Mattoon, are  
15 under consideration for the FutureGen Project. These are the  
16 only locations eligible for benefits under this Act.

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

22 "Operator" means the FutureGen Alliance and its member  
23 companies, including their parent companies, subsidiaries,  
24 affiliates, directors, officers, employees, and agents.

25 "Post-injection" means after the captured gas has been  
26 successfully injected into the wellhead at the point at which

1 the gas is transferred into the wellbore for carbon  
2 sequestration and storage into the Mount Simon Formation.

3 "Pre-injection" means all activities and occurrences prior  
4 to successful delivery into the wellhead at the point at which  
5 the gas is transferred into the wellbore for carbon  
6 sequestration and storage into the Mount Simon Formation,  
7 including but not limited to, the operation of the FutureGen  
8 Project.

9 "Public liability" means any civil legal liability arising  
10 out of or resulting from the storage, escape, release, or  
11 migration of the post-injection sequestered gas that was  
12 injected during the operation of the FutureGen Project by the  
13 FutureGen Alliance. The term "public liability", however, does  
14 not include any legal liability arising out of or resulting  
15 from the construction, operation, or other pre-injection  
16 activity of the Operator.

17 "Public liability action" or "action" means a written  
18 demand, lawsuit, or claim from any third party received by the  
19 Operator seeking a remedy or alleging liability on behalf of  
20 Operator resulting from any public liability.

21 "Sequestered gas" means the CO2 and other chemical  
22 constituents from the FutureGen Project operations that are  
23 injected into the Mount Simon Formation.

24 Section 20. Title to sequestered gas. If the FutureGen  
25 Project locates at either the Tuscola or Mattoon site in the

1 State of Illinois, then the FutureGen Alliance agrees that the  
2 Operator shall transfer and convey and the State of Illinois  
3 shall accept and receive, with no payment due from the State of  
4 Illinois, all rights, title, and interest in and to and any  
5 liabilities associated with the sequestered gas, including any  
6 current or future environmental benefits, marketing claims,  
7 tradable credits, emissions allocations or offsets (voluntary  
8 or compliance based) associated therewith, upon such gas  
9 reaching the status of post-injection, which shall be verified  
10 by the Agency or other designated State of Illinois agency. The  
11 Operator shall retain all rights, title, and interest in and to  
12 and any liabilities associated with the pre-injection  
13 sequestered gas. The Illinois State Geological Survey of the  
14 Illinois Department of Natural Resources shall monitor,  
15 measure, and verify the permanent status of sequestered carbon  
16 dioxide and co-sequestered gases in which the State has  
17 acquired the right, title, and interest under this Section.

18 Section 23. Sequestered gas. The State of Illinois may not  
19 intentionally remove sequestered gas unless the removal is for  
20 the purpose of research and development.

21 Section 25. Insurance against qualified losses.

22 (a) The Department shall procure an insurance policy from a  
23 private insurance carrier or carriers, if and to the extent  
24 that such a policy is available, that insures the Operator

1 against any qualified loss stemming from a public liability  
2 action. The policy must be procured in accordance with the  
3 provisions of the Procurement Code.

4 (b) Pursuant to Section 30 of this Act, the State shall  
5 indemnify the Operator against any qualified loss stemming from  
6 a public liability action to the extent that the qualified loss  
7 is not covered under an insurance policy under subsection (a)  
8 of this Section.

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

17 (d) If the FutureGen Alliance locates the FutureGen Project  
18 at either the Mattoon or Tuscola site in the State of Illinois,  
19 then the Department shall be authorized to contract with the  
20 FutureGen Alliance, under terms not inconsistent with this Act,  
21 in order to define the rights and obligations of the FutureGen  
22 Alliance and the Department, including but not limited to, the  
23 insurance and indemnification obligations under Sections 25  
24 and 30 of this Act.

25 (e) If federal indemnification covers all or a portion of  
26 the obligations assumed by the State under Section 25 of this

1 Act, such State obligations shall be reduced in proportion to  
2 the federal indemnification and be considered subordinated to  
3 any federal indemnification.

4 (g) For the purpose of this Section, "qualified loss" means  
5 a loss by the Operator stemming from a public liability action  
6 other than those losses arising 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 comply with any  
10 applicable law, rule, regulation, or other requirement  
11 established by the Federal Department, Agency, or State of  
12 Illinois for the carbon capture and storage of the  
13 sequestered gas, including any limitations on the chemical  
14 composition of any sequestered gas; or

15 (3) the pre-injection operation of the FutureGen  
16 Project.

17 Section 30. Indemnification. Notwithstanding any law to  
18 the contrary, the State of Illinois shall indemnify, hold  
19 harmless, defend, and release the Operator from and against any  
20 public liability action asserted against the Operator, subject  
21 to the following terms and conditions:

22 (a) The obligation of the State of Illinois to indemnify  
23 the Operator does not extend to any public liability arising  
24 out of or relating to:

25 (1) the intentional or willful misconduct of the



1 Operator in its operation of the FutureGen Project;

2 (2) the failure of the Operator to comply with any  
3 applicable law, rule, regulation, or other requirement  
4 established by the Federal Department, Agency, or State of  
5 Illinois for the carbon capture and storage of the  
6 sequestered gas, including any limitations on the chemical  
7 composition of any sequestered gas;

8 (3) the pre-injection operation of the FutureGen  
9 Project; or

10 (4) a qualified loss to the extent that it is paid  
11 under an insurance policy under subsection (a) of Section  
12 25 of this Act.

13 (b) The indemnification obligations of the State of  
14 Illinois assumed under Section 30 of this Act shall be reduced  
15 in proportion and be subordinated to any federal  
16 indemnification that covers all or a portion of the State's  
17 obligations.

18 Section 35. Representation. In furtherance of the State of  
19 Illinois' obligations set forth in subsection (b) of Section 25  
20 and in Section 30 of this Act, the Attorney General has the  
21 following duties:

22 (a) In the event that any public liability action covered  
23 under Section 30 of this Act is commenced against the Operator,  
24 the Attorney General shall, upon timely and appropriate notice  
25 to the Attorney General by the Operator, appear on behalf of

1 the Operator and defend the action. Any such notice must be in  
2 writing, must be mailed within 15 days after the date of  
3 receipt by the Operator of service of process, and must  
4 authorize the Attorney General to represent and defend the  
5 Operator in the action. The delivery of this notice to the  
6 Attorney General constitutes an agreement by the Operator to  
7 cooperate with the Attorney General in defense of the action  
8 and a consent that the Attorney General shall conduct the  
9 defense as the Attorney General deems advisable and in the best  
10 interests of the Operator and the State of Illinois, including  
11 settlement in the Attorney General's discretion. The Operator  
12 may appear in such action through private counsel to respond or  
13 object only to any aspect of a proposed settlement or proposed  
14 court order which would directly affect the day-to-day  
15 operations of the FutureGen Project. In any such action, the  
16 State of Illinois shall pay the court costs and litigation  
17 expenses of defending such action, to the extent approved by  
18 the Attorney General as reasonable, as they are incurred.

19 (b) In the event that the Attorney General determines  
20 either (i) that so appearing and defending the Operator  
21 involves an actual or potential conflict of interest or (ii)  
22 that the act or omission which gave rise to the claim was not  
23 within the scope of the indemnity as provided in Section 30 of  
24 this Act, the Attorney General shall decline in writing to  
25 appear or defend or shall promptly take appropriate action to  
26 withdraw as attorney for the Operator. Upon receipt of such

1 declination or withdrawal by the Attorney General on the basis  
2 of an actual or potential conflict of interest, the Operator  
3 may employ its own attorney to appear and defend, in which  
4 event the State of Illinois shall pay the Operator's court  
5 costs, litigation expenses, and attorneys' fees, to the extent  
6 approved by the Attorney General as reasonable, as they are  
7 incurred.

8 (c) In any action asserted by the Operator or the State of  
9 Illinois to enforce the indemnification obligations of the  
10 State of Illinois as provided in Section 30 of the Act, the  
11 non-prevailing party is responsible for any reasonable court  
12 costs, litigation expenses, and attorneys fees incurred by the  
13 prevailing party.

14 (d) Court costs and litigation expenses and other costs of  
15 providing a defense, including attorneys' fees, paid or  
16 obligated under this Section, and the costs of indemnification,  
17 including the payment of any final judgment or final settlement  
18 under this Section, must be paid by warrant from appropriations  
19 to the Department pursuant to vouchers certified by the  
20 Attorney General.

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

24 (f) Any judgment subject to State of Illinois  
25 indemnification under this Section is not enforceable against  
26 the Operator, but shall be paid by the State of Illinois in the

1 following manner: Upon receipt of a certified copy of the  
2 judgment, the Attorney General shall review it to determine if  
3 the judgment is (i) final, unreversed, and no longer subject to  
4 appeal and (ii) subject to indemnification under Section 30 of  
5 this Act. If the Attorney General determines that it is, then  
6 the Attorney General shall submit a voucher for the amount of  
7 the judgment and any interest thereon to the State of Illinois  
8 Comptroller and the amount must be paid by warrant from  
9 appropriation to the Department to the judgment creditor solely  
10 out of available appropriations.

11 Section 40. Permitting. The State of Illinois shall issue  
12 to the Operator all necessary and appropriate permits  
13 consistent with State and federal law and corresponding  
14 regulations. The State of Illinois must allow the Operator to  
15 combine applications when appropriate, and the State of  
16 Illinois must otherwise streamline the application process for  
17 timely permit issuance.

18 Section 43. Tax exemption. An operator is exempt from any  
19 tax imposed by the State of Illinois that is based upon the  
20 nameplate capacity of generating units.

21 Section 45. Incentives. The State of Illinois has offered  
22 certain incentives to the FutureGen Alliance to make the State  
23 of Illinois the most attractive location for the FutureGen

1 Project.

2 Section 50. Jurisdiction. The Court of Claims has  
3 jurisdiction concerning any public liability action arising  
4 under this Act or arising from the operation of the FutureGen  
5 Project, except that a public liability action may be brought  
6 in the circuit court if the cause of action is one of personal  
7 injury or wrongful death and the injury or death was  
8 proximately caused by the storage, escape, release, or  
9 migration of the post-injection sequestered gas that was  
10 injected during the operation of the FutureGen Project by the  
11 FutureGen Alliance, and the circuit court is hereby granted  
12 jurisdiction over these matters. The jurisdiction over civil,  
13 administrative, or other legal processes is not, otherwise,  
14 affected by this Act.

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

18 (20 ILCS 605/605-332)

19 Sec. 605-332. Financial assistance to energy generation  
20 facilities.

21 (a) As used in this Section:

22 "New electric generating facility" means a  
23 newly-constructed electric generation plant or a newly

1 constructed generation capacity expansion at an existing  
2 facility, including the transmission lines and associated  
3 equipment that transfers electricity from points of supply to  
4 points of delivery, and for which foundation construction  
5 commenced not sooner than July 1, 2001, which is designed to  
6 provide baseload electric generation operating on a continuous  
7 basis throughout the year and:

8 (1) has an aggregate rated generating capacity of at  
9 least 400 megawatts for all new units at one site, uses  
10 coal or gases derived from coal as its primary fuel source,  
11 and supports the creation of at least 150 new Illinois coal  
12 mining jobs; or

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

16 (3) uses coal gasification or integrated  
17 gasification-combined cycle units that generate  
18 electricity or chemicals, or both, and supports the  
19 creation of Illinois coal-mining jobs.

20 "New gasification facility" means a newly constructed coal  
21 gasification facility that generates chemical feedstocks or  
22 transportation fuels derived from coal (which may include, but  
23 are not limited to, methane, methanol, and nitrogen  
24 fertilizer), that supports the creation or retention of  
25 Illinois coal-mining jobs, and that qualifies for financial  
26 assistance from the Department before December 31, 2010 ~~2006~~. A

1 new gasification facility does not include a pilot project  
2 located within Jefferson County or within a county adjacent to  
3 Jefferson County for synthetic natural gas from coal.

4 "New facility" means a new electric generating facility or  
5 a new gasification facility. A new facility does not include a  
6 pilot project located within Jefferson County or within a  
7 county adjacent to Jefferson County for synthetic natural gas  
8 from coal.

9 "Eligible business" means an entity that proposes to  
10 construct a new facility and that has applied to the Department  
11 to receive financial assistance pursuant to this Section. With  
12 respect to use and occupation taxes, wherever there is a  
13 reference to taxes, that reference means only those taxes paid  
14 on Illinois-mined coal used in a new facility.

15 "Department" means the Illinois Department of Commerce and  
16 Economic Opportunity.

17 (b) The Department is authorized to provide financial  
18 assistance to eligible businesses for new facilities from funds  
19 appropriated by the General Assembly as further provided in  
20 this Section.

21 An eligible business seeking qualification for financial  
22 assistance for a new facility, for purposes of this Section  
23 only, shall apply to the Department in the manner specified by  
24 the Department. Any projections provided by an eligible  
25 business as part of the application shall be independently  
26 verified in a manner as set forth by the Department. An

1 application shall include, but not be limited to:

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

4 (2) copies of documentation deemed acceptable by the  
5 Department establishing either (i) the total State  
6 occupation and use taxes paid on Illinois-mined coal used  
7 at the new facility for a minimum of 4 preceding calendar  
8 quarters or (ii) the projected amount of State occupation  
9 and use taxes paid on Illinois-mined coal used at the new  
10 facility in 4 calendar year quarters after completion of  
11 the new facility. Bond proceeds subject to this Section  
12 shall not be allocated to an eligible business until the  
13 eligible business has demonstrated the revenue stream  
14 sufficient to service the debt on the bonds; and

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

17 The Department shall determine the maximum amount of  
18 financial assistance for eligible businesses in accordance  
19 with this paragraph. The Department shall not provide financial  
20 assistance from general obligation bond funds to any eligible  
21 business unless it receives a written certification from the  
22 Director of the Bureau of the Budget (now Governor's Office of  
23 Management and Budget) that 80% of the State occupation and use  
24 tax receipts for a minimum of the preceding 4 calendar quarters  
25 for all eligible businesses or as included in projections on  
26 approved applications by eligible businesses equal or exceed



1 110% of the maximum annual debt service required with respect  
2 to general obligation bonds issued for that purpose. The  
3 Department may provide financial assistance not to exceed the  
4 amount of State general obligation debt calculated as above,  
5 the amount of actual or projected capital investment in the  
6 facility, or \$100,000,000, whichever is less. Financial  
7 assistance received pursuant to this Section may be used for  
8 capital facilities consisting of buildings, structures,  
9 durable equipment, and land at the new facility. Subject to the  
10 provisions of the agreement covering the financial assistance,  
11 a portion of the financial assistance may be required to be  
12 repaid to the State if certain conditions for the governmental  
13 purpose of the assistance were not met.

14 An eligible business shall file a monthly report with the  
15 Illinois Department of Revenue stating the amount of  
16 Illinois-mined coal purchased during the previous month for use  
17 in the new facility, the purchase price of that coal, the  
18 amount of State occupation and use taxes paid on that purchase  
19 to the seller of the Illinois-mined coal, and such other  
20 information as that Department may reasonably require. In sales  
21 of Illinois-mined coal between related parties, the purchase  
22 price of the coal must have been determined in an arms-length  
23 transaction. The report shall be filed with the Illinois  
24 Department of Revenue on or before the 20th day of each month  
25 on a form provided by that Department. However, no report need  
26 be filed by an eligible business in a month when it made no

1 reportable purchases of coal in the previous month. The  
2 Illinois Department of Revenue shall provide a summary of such  
3 reports to the Governor's Office of Management and Budget.

4 Upon granting financial assistance to an eligible  
5 business, the Department shall certify the name of the eligible  
6 business to the Illinois Department of Revenue. Beginning with  
7 the receipt of the first report of State occupation and use  
8 taxes paid by an eligible business and continuing for a 25-year  
9 period, the Illinois Department of Revenue shall each month pay  
10 into the Energy Infrastructure Fund 80% of the net revenue  
11 realized from the 6.25% general rate on the selling price of  
12 Illinois-mined coal that was sold to an eligible business.

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

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

17 (20 ILCS 655/5.5) (from Ch. 67 1/2, par. 609.1)

18 Sec. 5.5. High Impact Business.

19 (a) In order to respond to unique opportunities to assist  
20 in the encouragement, development, growth and expansion of the  
21 private sector through large scale investment and development  
22 projects, the Department is authorized to receive and approve  
23 applications for the designation of "High Impact Businesses" in  
24 Illinois subject to the following conditions:

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

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

6           (3) the business intends to do one or more of the  
7 following:

8           (A) the business intends to make a minimum  
9 investment of \$12,000,000 which will be placed in  
10 service in qualified property and intends to create 500  
11 full-time equivalent jobs at a designated location in  
12 Illinois or intends to make a minimum investment of  
13 \$30,000,000 which will be placed in service in  
14 qualified property and intends to retain 1,500  
15 full-time jobs at a designated location in Illinois.  
16 The business must certify in writing that the  
17 investments would not be placed in service in qualified  
18 property and the job creation or job retention would  
19 not occur without the tax credits and exemptions set  
20 forth in subsection (b) of this Section. The terms  
21 "placed in service" and "qualified property" have the  
22 same meanings as described in subsection (h) of Section  
23 201 of the Illinois Income Tax Act; or

24           (B) the business intends to establish a new  
25 electric generating facility at a designated location  
26 in Illinois. "New electric generating facility", for

1 purposes of this Section, means a newly-constructed  
2 electric generation plant or a newly-constructed  
3 generation capacity expansion at an existing electric  
4 generation plant, including the transmission lines and  
5 associated equipment that transfers electricity from  
6 points of supply to points of delivery, and for which  
7 such new foundation construction commenced not sooner  
8 than July 1, 2001. Such facility shall be designed to  
9 provide baseload electric generation and shall operate  
10 on a continuous basis throughout the year; and (i)  
11 shall have an aggregate rated generating capacity of at  
12 least 1,000 megawatts for all new units at one site if  
13 it uses natural gas as its primary fuel and foundation  
14 construction of the facility is commenced on or before  
15 December 31, 2004, or shall have an aggregate rated  
16 generating capacity of at least 400 megawatts for all  
17 new units at one site if it uses coal or gases derived  
18 from coal as its primary fuel and shall support the  
19 creation of at least 150 new Illinois coal mining jobs,  
20 or (ii) shall be funded through a federal Department of  
21 Energy grant before December 31, 2010 ~~July 1, 2006~~ and  
22 shall support the creation of Illinois coal-mining  
23 jobs, or (iii) shall use coal gasification or  
24 integrated gasification-combined cycle units that  
25 generate electricity or chemicals, or both, and shall  
26 support the creation of Illinois coal-mining jobs. The

1 business must certify in writing that the investments  
2 necessary to establish a new electric generating  
3 facility would not be placed in service and the job  
4 creation in the case of a coal-fueled plant would not  
5 occur without the tax credits and exemptions set forth  
6 in subsection (b-5) of this Section. The term "placed  
7 in service" has the same meaning as described in  
8 subsection (h) of Section 201 of the Illinois Income  
9 Tax Act; or

10 (B-5) the business intends to establish a new  
11 gasification facility at a designated location in  
12 Illinois. As used in this Section, "new gasification  
13 facility" means a newly constructed coal gasification  
14 facility that generates chemical feedstocks or  
15 transportation fuels derived from coal (which may  
16 include, but are not limited to, methane, methanol, and  
17 nitrogen fertilizer), that supports the creation or  
18 retention of Illinois coal-mining jobs, and that  
19 qualifies for financial assistance from the Department  
20 before December 31, 2010 ~~2006~~. A new gasification  
21 facility does not include a pilot project located  
22 within Jefferson County or within a county adjacent to  
23 Jefferson County for synthetic natural gas from coal;  
24 or

25 (C) the business intends to establish production  
26 operations at a new coal mine, re-establish production

1 operations at a closed coal mine, or expand production  
2 at an existing coal mine at a designated location in  
3 Illinois not sooner than July 1, 2001; provided that  
4 the production operations result in the creation of 150  
5 new Illinois coal mining jobs as described in  
6 subdivision (a)(3)(B) of this Section, and further  
7 provided that the coal extracted from such mine is  
8 utilized as the predominant source for a new electric  
9 generating facility. The business must certify in  
10 writing that the investments necessary to establish a  
11 new, expanded, or reopened coal mine would not be  
12 placed in service and the job creation would not occur  
13 without the tax credits and exemptions set forth in  
14 subsection (b-5) of this Section. The term "placed in  
15 service" has the same meaning as described in  
16 subsection (h) of Section 201 of the Illinois Income  
17 Tax Act; or

18 (D) the business intends to construct new  
19 transmission facilities or upgrade existing  
20 transmission facilities at designated locations in  
21 Illinois, for which construction commenced not sooner  
22 than July 1, 2001. For the purposes of this Section,  
23 "transmission facilities" means transmission lines  
24 with a voltage rating of 115 kilovolts or above,  
25 including associated equipment, that transfer  
26 electricity from points of supply to points of delivery

1           and that transmit a majority of the electricity  
2           generated by a new electric generating facility  
3           designated as a High Impact Business in accordance with  
4           this Section. The business must certify in writing that  
5           the investments necessary to construct new  
6           transmission facilities or upgrade existing  
7           transmission facilities would not be placed in service  
8           without the tax credits and exemptions set forth in  
9           subsection (b-5) of this Section. The term "placed in  
10          service" has the same meaning as described in  
11          subsection (h) of Section 201 of the Illinois Income  
12          Tax Act; and

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

17          (b) Businesses designated as High Impact Businesses  
18          pursuant to subdivision (a) (3) (A) of this Section shall qualify  
19          for the credits and exemptions described in the following Acts:  
20          Section 9-222 and Section 9-222.1A of the Public Utilities Act,  
21          subsection (h) of Section 201 of the Illinois Income Tax Act,  
22          and Section 1d of the Retailers' Occupation Tax Act; provided  
23          that these credits and exemptions described in these Acts shall  
24          not be authorized until the minimum investments set forth in  
25          subdivision (a) (3) (A) of this Section have been placed in  
26          service in qualified properties and, in the case of the

1 exemptions described in the Public Utilities Act and Section 1d  
2 of the Retailers' Occupation Tax Act, the minimum full-time  
3 equivalent jobs or full-time jobs set forth in subdivision  
4 (a)(3)(A) of this Section have been created or retained.  
5 Businesses designated as High Impact Businesses under this  
6 Section shall also qualify for the exemption described in  
7 Section 51 of the Retailers' Occupation Tax Act. The credit  
8 provided in subsection (h) of Section 201 of the Illinois  
9 Income Tax Act shall be applicable to investments in qualified  
10 property as set forth in subdivision (a)(3)(A) of this Section.

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



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

7           (d) Existing Illinois businesses which apply for  
8 designation as a High Impact Business must provide the  
9 Department with the prospective plan for which 1,500 full-time  
10 jobs would be eliminated in the event that the business is not  
11 designated.

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

17           (f) In the event that a business is designated a High  
18 Impact Business and it is later determined after reasonable  
19 notice and an opportunity for a hearing as provided under the  
20 Illinois Administrative Procedure Act, that the business would  
21 have placed in service in qualified property the investments  
22 and created or retained the requisite number of jobs without  
23 the benefits of the High Impact Business designation, the  
24 Department shall be required to immediately revoke the  
25 designation and notify the Director of the Department of  
26 Revenue who shall begin proceedings to recover all wrongfully

1 exempted State taxes with interest. The business shall also be  
2 ineligible for all State funded Department programs for a  
3 period of 10 years.

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

7 (h) Prior to designating a business, the Department shall  
8 provide the members of the General Assembly and Commission on  
9 Government Forecasting and Accountability with a report  
10 setting forth the terms and conditions of the designation and  
11 guarantees that have been received by the Department in  
12 relation to the proposed business being designated.

13 (Source: P.A. 93-1064, eff. 1-13-05; 93-1067, eff. 1-15-05;  
14 94-65, eff. 6-21-05.)

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

17 (705 ILCS 505/8.5 new)

18 Sec. 8.5. Jurisdiction concerning the FutureGen Project.  
19 The Court of Claims has jurisdiction concerning any public  
20 liability action, as defined in the Clean Coal FutureGen for  
21 Illinois Act, arising under that Act or arising from the  
22 operation of the FutureGen Project, except that a public  
23 liability action may be brought in the circuit court if the  
24 cause of action is one of personal injury or wrongful death and

1 the injury or death was proximately caused by the storage,  
2 escape, release, or migration of the post-injection  
3 sequestered gas that was injected during the operation of the  
4 FutureGen Project by the FutureGen Alliance, and the circuit  
5 court is granted jurisdiction over these matters.

6 Section 915. The State Lawsuit Immunity Act is amended by  
7 changing Section 1 as follows:

8 (745 ILCS 5/1) (from Ch. 127, par. 801)

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

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

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

19 Section 998. Repeal. This Act is repealed on December 31,  
20 2010 unless the FutureGen Project has been located at either  
21 the Mattoon or Tuscola site in Illinois.

22 Section 999. Effective date. This Act takes effect upon

1 becoming law.