

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

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

Section 5. Purpose. Recognizing that the FutureGen Project is a first-of-a-kind research project to permanently sequester underground captured CO₂ emissions from: (1) a coal-fueled power plant that uses as its primary fuel source high volatile bituminous rank coal with greater than 1.7 pounds of sulfur per million btu content or (2) other approved and permitted captured CO₂ sources in the State of Illinois, and that such a project would have benefits to the economy and environment of Illinois, the purpose of this Act is to provide the non-profit FutureGen Alliance with adequate liability protection and permitting certainty to facilitate the siting of the FutureGen Project in the State of Illinois, to provide to the State of Illinois certain financial benefits from environmental attributes for the Project, and to help secure over \$1 billion in federal funding for the Project.

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

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

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

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

(4) the FutureGen Project is a public-private partnership between the federal Department of Energy, the FutureGen Alliance, and other partners that proposes to use this new technology as part of a plan to transport and store captured CO₂ from a coal-fueled power plant that uses as its primary fuel source high-volatile bituminous rank coal with greater than 1.7 pounds of sulfur per million btu content and other captured CO₂ sources that are approved by the appropriate State of Illinois agency and permitted in the State of Illinois;

(5) the FutureGen Project will help ensure the

long-term viability of Illinois Basin coal as a major energy source in the State of Illinois and throughout the nation and represents a significant step in the State of Illinois' efforts to become a self-sufficient, clean energy producer;

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

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

(8) the FutureGen Project is an important coal development and conversion project that will create jobs in the State of Illinois during the construction and operations phases, contribute to the overall economy of the State of Illinois and help reinvigorate the Illinois Basin coal industry; and

(9) the FutureGen Project and the property necessary for the FutureGen Project serve a substantial public purpose as its advanced clean-coal electricity generation, advanced emissions control and carbon capture and storage

technologies will benefit the citizens of the State of Illinois.

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

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

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

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

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

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

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

"Federal Department" means the federal Department of Energy.

"FutureGen Alliance" is a 501(c)(3) non-profit consortium of coal and energy producers created to benefit the public

interest and the interest of science through the research, development, and demonstration of near zero-emission coal technology, with the cooperation of the Federal Department.

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

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

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

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

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

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

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

"Public liability action" or "action" means a written demand, lawsuit, or claim from any third party received by the Operator seeking a remedy or alleging liability on behalf of Operator resulting from any public liability and is limited to such written demands, claims, or lawsuits asserting claims for property damages, personal or bodily injury damages, environmental damages, or trespass.

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

Section 20. Title to sequestered CO₂. If the FutureGen Alliance selects as its location for CO₂ storage a designated

site or sites in the State of Illinois suitable for injection of captured CO₂ into the Mount Simon Formation, then the Operator shall retain all rights, title, and interest in and to and any liabilities associated with the pre-injection CO₂. The Operator shall retain all rights, title, and interest, including any environmental benefits or credits, in and to and any liabilities associated with the sequestered CO₂ during the operations phase of the FutureGen Project, plus an additional 10-year period. Following the operations phase of the FutureGen Project, plus an additional 10-year period, and upon compliance with all applicable permits, the Operator shall transfer and convey and the State of Illinois shall accept and receive, with no payment due from the State of Illinois, all rights, title, and interest, including any future environmental benefits or credits, in and to and any liabilities associated with the sequestered CO₂.

Section 25. Insurance against qualified losses.

(a) The Operator shall procure an insurance policy from a private insurance carrier or carriers, if and to the extent that such a policy is available at a reasonable cost, that insures the Operator against any qualified loss stemming from a public liability action. The coverage limits for such an insurance policy shall be at least \$25,000,000. Within every 10-year period after operations begin for the Project, the Operator and Department shall mutually agree on an independent

third party, with appropriate insurance expertise, to conduct a risk-weighted analysis of the project, assess the appropriate level of insurance to protect the project from the financial consequences of public liability actions, and make a recommendation as to whether a greater amount of insurance coverage than the Operator has at the time is commercially available at a reasonable cost to the Operator. This analysis shall incorporate, and not be inconsistent with, results from similar risk-based analyses that may be required of the Operator by the agency permitting CO₂ injection as part of its financial assurance process. The Operator and the Department shall have an opportunity to review the draft analysis and any recommendations for narrowed or expanded levels of insurance coverage prior to finalization of the analysis. If the independent third party recommends that a greater amount of insurance coverage is commercially available at a reasonable cost to the Operator, then the Operator shall procure the recommended level of insurance, to the extent the insurance is commercially available and is recognized as a recoverable cost under the terms of any CO₂ services agreement or power purchase agreement that may be in place for the project at the time of the analysis. The cost of the independent third party shall be borne by the Operator.

(b) The protections provided by the State under this Act and the obligations on the Operator shall only apply after the Operator establishes a CO₂ Storage Trust Fund consistent with

the purposes of this Act and pays a \$50,000,000 fee to the State, which is to be deposited into the CO₂ Storage Trust Fund. The fee shall be considered a non-refundable expenditure to the Operator for immediate protections and benefits provided by the State.

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

The funds in the CO₂ Storage Trust Fund may be used to satisfy any qualified loss stemming from a public liability action to the extent that such loss is not otherwise covered by an insurance policy. The funds may also be used to pay reasonable administrative costs associated with managing and resolving claims associated with the CO₂ Storage Trust Fund, except that during the operations phase, no payments from the CO₂ Storage Trust Fund may be used to pay legal fees associated with defending claims resulting from a public liability action. The funds may also be used for post-operations phase activities, including monitoring, CO₂ storage site maintenance, storage site staffing, insurance, well and site closure, or other activities for which a law or permit requires financial assurance.

The CO₂ Storage Trust Fund shall be funded in the following manner, toward a maximum amount of \$250,000,000 per 100 million

metric tons of CO₂ storage site design capacity, unless the permit approved by the Agency requires a higher maximum amount:

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

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

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

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

(5) Once the permitting agency has issued a certificate

of completion, or a comparable instrument indicating the site is safely closed, any surplus balance in the CO₂ Storage Trust Fund shall be distributed to the State. If the Federal Government provides liability protections that obviates, in part or in full, the purpose of the CO₂ Storage Trust Fund, then any surplus balance shall be distributed in accordance with this paragraph (5).

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

(d) Pursuant to Section 30 of this Act, the State shall indemnify and hold harmless the Operator against any qualified loss stemming from a public liability action to the extent that the qualified loss is greater than \$100,000,000 and is not covered by the combination of an insurance policy under subsection (a) of this Section, funds in the CO₂ Storage Trust Fund, project assets, and cash or cash equivalents.

(e) If the FutureGen Alliance identifies a designated site or sites in Illinois suitable for injection of captured CO₂ into the Mount Simon Formation, then the Department shall be authorized to contract with the FutureGen Alliance, under terms not inconsistent with this Act, in order to define the rights

and obligations of the FutureGen Alliance and the Department, including, but not limited to, the insurance and indemnification obligations under Sections 25 and 30 of this Act.

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

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

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

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

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

Section 30. Indemnification. Notwithstanding any law to the contrary, subject to and consistent with the conditions provided in Section 25 of this Act, the State of Illinois shall indemnify, hold harmless, defend, and release the Operator from

and against any public liability action asserted against the Operator, subject to the following terms and conditions:

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

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

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

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

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

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

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

(a) In the event that any public liability action covered under Section 30 of this Act is commenced against the Operator, the Attorney General shall, upon timely and appropriate notice to the Attorney General by the Operator, appear on behalf of the Operator and defend the action. Any such notice must be in writing, must be mailed within 15 days after the date of receipt by the Operator of service of process, and must authorize the Attorney General to represent and defend the Operator in the action. The delivery of this notice to the Attorney General constitutes an agreement by the Operator to cooperate with the Attorney General in defense of the action and a consent that the Attorney General shall conduct the defense as the Attorney General deems advisable and in the best interests of the Operator and the State of Illinois, including settlement in the Attorney General's discretion. The Operator may appear in such action through private counsel to respond or object only to any aspect of a proposed settlement or proposed court order which would directly affect the day-to-day operations of the FutureGen Project. In any such action, the State of Illinois shall pay the court costs and litigation expenses of defending such action, to the extent approved by the Attorney General as reasonable, as they are incurred.

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

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

(d) Court costs and litigation expenses and other costs of providing a defense, including attorneys' fees, paid or obligated under this Section, and the costs of indemnification, including the payment of any final judgment or final settlement under this Section, must be paid by warrant from appropriations

to the Department pursuant to vouchers certified by the Attorney General.

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

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

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

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

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

Section 90. Conditional repeal. This Act shall be repealed within 5 years after the effective date of this amendatory Act of the 97th General Assembly, unless construction of a pipeline and storage field for captured CO₂ for the FutureGen Project has commenced.

Section 800. The State Officials and Employees Ethics Act is amended by changing Section 20-5 as follows:

(5 ILCS 430/20-5)

(Text of Section before amendment by P.A. 96-1528)

Sec. 20-5. Executive Ethics Commission.

(a) The Executive Ethics Commission is created.

(b) The Executive Ethics Commission shall consist of 9 commissioners. The Governor shall appoint 5 commissioners, and

the Attorney General, Secretary of State, Comptroller, and Treasurer shall each appoint one commissioner. Appointments shall be made by and with the advice and consent of the Senate by three-fifths of the elected members concurring by record vote. Any nomination not acted upon by the Senate within 60 session days of the receipt thereof shall be deemed to have received the advice and consent of the Senate. If, during a recess of the Senate, there is a vacancy in an office of commissioner, the appointing authority shall make a temporary appointment until the next meeting of the Senate when the appointing authority shall make a nomination to fill that office. No person rejected for an office of commissioner shall, except by the Senate's request, be nominated again for that office at the same session of the Senate or be appointed to that office during a recess of that Senate. No more than 5 commissioners may be of the same political party.

The terms of the initial commissioners shall commence upon qualification. Four initial appointees of the Governor, as designated by the Governor, shall serve terms running through June 30, 2007. One initial appointee of the Governor, as designated by the Governor, and the initial appointees of the Attorney General, Secretary of State, Comptroller, and Treasurer shall serve terms running through June 30, 2008. The initial appointments shall be made within 60 days after the effective date of this Act.

After the initial terms, commissioners shall serve for

4-year terms commencing on July 1 of the year of appointment and running through June 30 of the fourth following year. Commissioners may be reappointed to one or more subsequent terms.

Vacancies occurring other than at the end of a term shall be filled by the appointing authority only for the balance of the term of the commissioner whose office is vacant.

Terms shall run regardless of whether the position is filled.

(c) The appointing authorities shall appoint commissioners who have experience holding governmental office or employment and shall appoint commissioners from the general public. A person is not eligible to serve as a commissioner if that person (i) has been convicted of a felony or a crime of dishonesty or moral turpitude, (ii) is, or was within the preceding 12 months, engaged in activities that require registration under the Lobbyist Registration Act, (iii) is related to the appointing authority, or (iv) is a State officer or employee.

(d) The Executive Ethics Commission shall have jurisdiction over all officers and employees of State agencies other than the General Assembly, the Senate, the House of Representatives, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Senate Operations Commission, the legislative support services agencies, and the Office of the

Auditor General. The jurisdiction of the Commission is limited to matters arising under this Act.

A member or legislative branch State employee serving on an executive branch board or commission remains subject to the jurisdiction of the Legislative Ethics Commission and is not subject to the jurisdiction of the Executive Ethics Commission.

(d-5) The Executive Ethics Commission shall have jurisdiction over all chief procurement officers and procurement compliance monitors and their respective staffs. The Executive Ethics Commission shall have jurisdiction over any matters arising under the Illinois Procurement Code if the Commission is given explicit authority in that Code.

(d-6) The Executive Ethics Commission shall have jurisdiction over the Illinois Power Agency and its staff. The Director of the Agency shall be appointed by a majority of the commissioners of the Executive Ethics Commission, subject to Senate confirmation, for a term of 2 years; provided that, notwithstanding any other provision of State law, the term of the Director holding the position on the effective date of this amendatory Act of the 97th General Assembly shall expire on December 31, 2013. The Director is removable for cause by a majority of the Commission upon a finding of neglect, malfeasance, absence, or incompetence.

(e) The Executive Ethics Commission must meet, either in person or by other technological means, at least monthly and as often as necessary. At the first meeting of the Executive

Ethics Commission, the commissioners shall choose from their number a chairperson and other officers that they deem appropriate. The terms of officers shall be for 2 years commencing July 1 and running through June 30 of the second following year. Meetings shall be held at the call of the chairperson or any 3 commissioners. Official action by the Commission shall require the affirmative vote of 5 commissioners, and a quorum shall consist of 5 commissioners. Commissioners shall receive compensation in an amount equal to the compensation of members of the State Board of Elections and may be reimbursed for their reasonable expenses actually incurred in the performance of their duties.

(f) No commissioner or employee of the Executive Ethics Commission may during his or her term of appointment or employment:

- (1) become a candidate for any elective office;
- (2) hold any other elected or appointed public office except for appointments on governmental advisory boards or study commissions or as otherwise expressly authorized by law;
- (3) be actively involved in the affairs of any political party or political organization; or
- (4) advocate for the appointment of another person to an appointed or elected office or position or actively participate in any campaign for any elective office.

(g) An appointing authority may remove a commissioner only

for cause.

(h) The Executive Ethics Commission shall appoint an Executive Director. The compensation of the Executive Director shall be as determined by the Commission. The Executive Director of the Executive Ethics Commission may employ and determine the compensation of staff, as appropriations permit.

(i) The Executive Ethics Commission shall appoint, by a majority of the members appointed to the Commission, chief procurement officers and procurement compliance monitors in accordance with the provisions of the Illinois Procurement Code. The compensation of a chief procurement officer and procurement compliance monitor shall be determined by the Commission.

(Source: P.A. 96-555, eff. 8-18-09.)

(Text of Section after amendment by P.A. 96-1528)

Sec. 20-5. Executive Ethics Commission.

(a) The Executive Ethics Commission is created.

(b) The Executive Ethics Commission shall consist of 9 commissioners. The Governor shall appoint 5 commissioners, and the Attorney General, Secretary of State, Comptroller, and Treasurer shall each appoint one commissioner. Appointments shall be made by and with the advice and consent of the Senate by three-fifths of the elected members concurring by record vote. Any nomination not acted upon by the Senate within 60 session days of the receipt thereof shall be deemed to have

received the advice and consent of the Senate. If, during a recess of the Senate, there is a vacancy in an office of commissioner, the appointing authority shall make a temporary appointment until the next meeting of the Senate when the appointing authority shall make a nomination to fill that office. No person rejected for an office of commissioner shall, except by the Senate's request, be nominated again for that office at the same session of the Senate or be appointed to that office during a recess of that Senate. No more than 5 commissioners may be of the same political party.

The terms of the initial commissioners shall commence upon qualification. Four initial appointees of the Governor, as designated by the Governor, shall serve terms running through June 30, 2007. One initial appointee of the Governor, as designated by the Governor, and the initial appointees of the Attorney General, Secretary of State, Comptroller, and Treasurer shall serve terms running through June 30, 2008. The initial appointments shall be made within 60 days after the effective date of this Act.

After the initial terms, commissioners shall serve for 4-year terms commencing on July 1 of the year of appointment and running through June 30 of the fourth following year. Commissioners may be reappointed to one or more subsequent terms.

Vacancies occurring other than at the end of a term shall be filled by the appointing authority only for the balance of

the term of the commissioner whose office is vacant.

Terms shall run regardless of whether the position is filled.

(c) The appointing authorities shall appoint commissioners who have experience holding governmental office or employment and shall appoint commissioners from the general public. A person is not eligible to serve as a commissioner if that person (i) has been convicted of a felony or a crime of dishonesty or moral turpitude, (ii) is, or was within the preceding 12 months, engaged in activities that require registration under the Lobbyist Registration Act, (iii) is related to the appointing authority, or (iv) is a State officer or employee.

(d) The Executive Ethics Commission shall have jurisdiction over all officers and employees of State agencies other than the General Assembly, the Senate, the House of Representatives, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Senate Operations Commission, the legislative support services agencies, and the Office of the Auditor General. The Executive Ethics Commission shall have jurisdiction over all board members and employees of Regional Transit Boards. The jurisdiction of the Commission is limited to matters arising under this Act, except as provided in subsection (d-5).

A member or legislative branch State employee serving on an

executive branch board or commission remains subject to the jurisdiction of the Legislative Ethics Commission and is not subject to the jurisdiction of the Executive Ethics Commission.

(d-5) The Executive Ethics Commission shall have jurisdiction over all chief procurement officers and procurement compliance monitors and their respective staffs. The Executive Ethics Commission shall have jurisdiction over any matters arising under the Illinois Procurement Code if the Commission is given explicit authority in that Code.

(d-6) The Executive Ethics Commission shall have jurisdiction over the Illinois Power Agency and its staff. The Director of the Agency shall be appointed by a majority of the commissioners of the Executive Ethics Commission, subject to Senate confirmation, for a term of 2 years; provided that, notwithstanding any other provision of State law, the term of the Director holding the position on the effective date of this amendatory Act of the 97th General Assembly shall expire on December 31, 2013. The Director is removable for cause by a majority of the Commission upon a finding of neglect, malfeasance, absence, or incompetence.

(e) The Executive Ethics Commission must meet, either in person or by other technological means, at least monthly and as often as necessary. At the first meeting of the Executive Ethics Commission, the commissioners shall choose from their number a chairperson and other officers that they deem appropriate. The terms of officers shall be for 2 years

commencing July 1 and running through June 30 of the second following year. Meetings shall be held at the call of the chairperson or any 3 commissioners. Official action by the Commission shall require the affirmative vote of 5 commissioners, and a quorum shall consist of 5 commissioners. Commissioners shall receive compensation in an amount equal to the compensation of members of the State Board of Elections and may be reimbursed for their reasonable expenses actually incurred in the performance of their duties.

(f) No commissioner or employee of the Executive Ethics Commission may during his or her term of appointment or employment:

(1) become a candidate for any elective office;

(2) hold any other elected or appointed public office except for appointments on governmental advisory boards or study commissions or as otherwise expressly authorized by law;

(3) be actively involved in the affairs of any political party or political organization; or

(4) advocate for the appointment of another person to an appointed or elected office or position or actively participate in any campaign for any elective office.

(g) An appointing authority may remove a commissioner only for cause.

(h) The Executive Ethics Commission shall appoint an Executive Director. The compensation of the Executive Director

shall be as determined by the Commission. The Executive Director of the Executive Ethics Commission may employ and determine the compensation of staff, as appropriations permit.

(i) The Executive Ethics Commission shall appoint, by a majority of the members appointed to the Commission, chief procurement officers and procurement compliance monitors in accordance with the provisions of the Illinois Procurement Code. The compensation of a chief procurement officer and procurement compliance monitor shall be determined by the Commission.

(Source: P.A. 96-555, eff. 8-18-09; 96-1528, eff. 7-1-11.)

Section 820. The Executive Reorganization Implementation Act is amended by changing Section 3.1 as follows:

(15 ILCS 15/3.1) (from Ch. 127, par. 1803.1)

Sec. 3.1. "Agency directly responsible to the Governor" or "agency" means any office, officer, division, or part thereof, and any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government, except that it does not apply to any agency whose primary function is service to the General Assembly or the Judicial Branch of State government, or to any agency administered by the Attorney General, Secretary of State, State Comptroller or State Treasurer. In addition the term does not apply to the following agencies created by law

with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor:

- (1) the State Board of Elections;
- (2) the State Board of Education;
- (3) the Illinois Commerce Commission;
- (4) the Illinois Workers' Compensation Commission;
- (5) the Civil Service Commission;
- (6) the Fair Employment Practices Commission;
- (7) the Pollution Control Board;
- (8) the Department of State Police Merit Board;
- (9) the Illinois Racing Board; ~~—~~
- (10) the Illinois Power Agency.

(Source: P.A. 96-796, eff. 10-29-09.)

Section 830. The Civil Administrative Code of Illinois is amended by changing Sections 5-15 and 5-20 as follows:

(20 ILCS 5/5-15) (was 20 ILCS 5/3)

Sec. 5-15. Departments of State government. The Departments of State government are created as follows:

The Department on Aging.

The Department of Agriculture.

The Department of Central Management Services.

The Department of Children and Family Services.

The Department of Commerce and Economic Opportunity.

The Department of Corrections.

The Department of Employment Security.

The Illinois Emergency Management Agency.

The Department of Financial and Professional Regulation.

The Department of Healthcare and Family Services.

The Department of Human Rights.

The Department of Human Services.

~~The Illinois Power Agency.~~

The Department of Juvenile Justice.

The Department of Labor.

The Department of the Lottery.

The Department of Natural Resources.

The Department of Public Health.

The Department of Revenue.

The Department of State Police.

The Department of Transportation.

The Department of Veterans' Affairs.

(Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
95-777, eff. 8-4-08; 96-328, eff. 8-11-09.)

(20 ILCS 5/5-20) (was 20 ILCS 5/4)

Sec. 5-20. Heads of departments. Each department shall have an officer as its head who shall be known as director or secretary and who shall, subject to the provisions of the Civil Administrative Code of Illinois, execute the powers and discharge the duties vested by law in his or her respective department.

The following officers are hereby created:

Director of Aging, for the Department on Aging.

Director of Agriculture, for the Department of Agriculture.

Director of Central Management Services, for the Department of Central Management Services.

Director of Children and Family Services, for the Department of Children and Family Services.

Director of Commerce and Economic Opportunity, for the Department of Commerce and Economic Opportunity.

Director of Corrections, for the Department of Corrections.

Director of the Illinois Emergency Management Agency, for the Illinois Emergency Management Agency.

Director of Employment Security, for the Department of Employment Security.

Secretary of Financial and Professional Regulation, for the Department of Financial and Professional Regulation.

Director of Healthcare and Family Services, for the Department of Healthcare and Family Services.

Director of Human Rights, for the Department of Human Rights.

Secretary of Human Services, for the Department of Human Services.

~~Director of the Illinois Power Agency, for the Illinois Power Agency.~~

Director of Juvenile Justice, for the Department of Juvenile Justice.

Director of Labor, for the Department of Labor.

Director of the Lottery, for the Department of the Lottery.

Director of Natural Resources, for the Department of Natural Resources.

Director of Public Health, for the Department of Public Health.

Director of Revenue, for the Department of Revenue.

Director of State Police, for the Department of State Police.

Secretary of Transportation, for the Department of Transportation.

Director of Veterans' Affairs, for the Department of Veterans' Affairs.

(Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07; 95-777, eff. 8-4-08; 96-328, eff. 8-11-09.)

Section 840. The Personnel Code is amended by changing Section 4c as follows:

(20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

Sec. 4c. General exemptions. The following positions in State service shall be exempt from jurisdictions A, B, and C, unless the jurisdictions shall be extended as provided in this Act:

(1) All officers elected by the people.

(2) All positions under the Lieutenant Governor, Secretary of State, State Treasurer, State Comptroller, State Board of Education, Clerk of the Supreme Court, Attorney General, and State Board of Elections.

(3) Judges, and officers and employees of the courts, and notaries public.

(4) All officers and employees of the Illinois General Assembly, all employees of legislative commissions, all officers and employees of the Illinois Legislative Reference Bureau, the Legislative Research Unit, and the Legislative Printing Unit.

(5) All positions in the Illinois National Guard and Illinois State Guard, paid from federal funds or positions in the State Military Service filled by enlistment and paid from State funds.

(6) All employees of the Governor at the executive mansion and on his immediate personal staff.

(7) Directors of Departments, the Adjutant General, the Assistant Adjutant General, the Director of the Illinois Emergency Management Agency, members of boards and commissions, and all other positions appointed by the Governor by and with the consent of the Senate.

(8) The presidents, other principal administrative officers, and teaching, research and extension faculties of Chicago State University, Eastern Illinois University,

Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the Illinois Community College Board, Southern Illinois University, Illinois Board of Higher Education, University of Illinois, State Universities Civil Service System, University Retirement System of Illinois, and the administrative officers and scientific and technical staff of the Illinois State Museum.

(9) All other employees except the presidents, other principal administrative officers, and teaching, research and extension faculties of the universities under the jurisdiction of the Board of Regents and the colleges and universities under the jurisdiction of the Board of Governors of State Colleges and Universities, Illinois Community College Board, Southern Illinois University, Illinois Board of Higher Education, Board of Governors of State Colleges and Universities, the Board of Regents, University of Illinois, State Universities Civil Service System, University Retirement System of Illinois, so long as these are subject to the provisions of the State Universities Civil Service Act.

(10) The State Police so long as they are subject to the merit provisions of the State Police Act.

(11) (Blank).

(12) The technical and engineering staffs of the

Department of Transportation, the Department of Nuclear Safety, the Pollution Control Board, and the Illinois Commerce Commission, and the technical and engineering staff providing architectural and engineering services in the Department of Central Management Services.

(13) All employees of the Illinois State Toll Highway Authority.

(14) The Secretary of the Illinois Workers' Compensation Commission.

(15) All persons who are appointed or employed by the Director of Insurance under authority of Section 202 of the Illinois Insurance Code to assist the Director of Insurance in discharging his responsibilities relating to the rehabilitation, liquidation, conservation, and dissolution of companies that are subject to the jurisdiction of the Illinois Insurance Code.

(16) All employees of the St. Louis Metropolitan Area Airport Authority.

(17) All investment officers employed by the Illinois State Board of Investment.

(18) Employees of the Illinois Young Adult Conservation Corps program, administered by the Illinois Department of Natural Resources, authorized grantee under Title VIII of the Comprehensive Employment and Training Act of 1973, 29 USC 993.

(19) Seasonal employees of the Department of

Agriculture for the operation of the Illinois State Fair and the DuQuoin State Fair, no one person receiving more than 29 days of such employment in any calendar year.

(20) All "temporary" employees hired under the Department of Natural Resources' Illinois Conservation Service, a youth employment program that hires young people to work in State parks for a period of one year or less.

(21) All hearing officers of the Human Rights Commission.

(22) All employees of the Illinois Mathematics and Science Academy.

(23) All employees of the Kankakee River Valley Area Airport Authority.

(24) The commissioners and employees of the Executive Ethics Commission.

(25) The Executive Inspectors General, including special Executive Inspectors General, and employees of each Office of an Executive Inspector General.

(26) The commissioners and employees of the Legislative Ethics Commission.

(27) The Legislative Inspector General, including special Legislative Inspectors General, and employees of the Office of the Legislative Inspector General.

(28) The Auditor General's Inspector General and employees of the Office of the Auditor General's Inspector General.

(29) All employees of the Illinois Power Agency.

(Source: P.A. 95-728, eff. 7-1-08 - See Sec. 999.)

Section 860. The Illinois Power Agency Act is amended by changing Sections 1-5, 1-15, 1-20, 1-25, 1-70, and 1-75 as follows:

(20 ILCS 3855/1-5)

Sec. 1-5. Legislative declarations and findings. The General Assembly finds and declares:

(1) The health, welfare, and prosperity of all Illinois citizens require the provision of adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

(2) The transition to retail competition is not complete. Some customers, especially residential and small commercial customers, have failed to benefit from lower electricity costs from retail and wholesale competition.

(3) Escalating prices for electricity in Illinois pose a serious threat to the economic well-being, health, and safety of the residents of and the commerce and industry of the State.

(4) To protect against this threat to economic well-being, health, and safety it is necessary to improve the process of procuring electricity to serve Illinois

residents, to promote investment in energy efficiency and demand-response measures, and to support development of clean coal technologies and renewable resources.

(5) Procuring a diverse electricity supply portfolio will ensure the lowest total cost over time for adequate, reliable, efficient, and environmentally sustainable electric service.

(6) Including cost-effective renewable resources in that portfolio will reduce long-term direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.

(7) Energy efficiency, demand-response measures, and renewable energy are resources currently underused in Illinois.

(8) The State should encourage the use of advanced clean coal technologies that capture and sequester carbon dioxide emissions to advance environmental protection goals and to demonstrate the viability of coal and coal-derived fuels in a carbon-constrained economy.

(9) The General Assembly enacted Public Act 96-0795 to reform the State's purchasing processes, recognizing that government procurement is susceptible to abuse if structural and procedural safeguards are not in place to ensure independence, insulation, oversight, and transparency.

(10) The principles that underlie the procurement reform legislation apply also in the context of power purchasing.

The General Assembly therefore finds that it is necessary to create the Illinois Power Agency and that the goals and objectives of that Agency are to accomplish each of the following:

(A) Develop electricity procurement plans to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability, for electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois. The procurement plan shall be updated on an annual basis and shall include renewable energy resources sufficient to achieve the standards specified in this Act.

(B) Conduct competitive procurement processes to procure the supply resources identified in the procurement plan.

(C) Develop electric generation and co-generation facilities that use indigenous coal or renewable resources, or both, financed with bonds issued by the Illinois Finance Authority.

(D) Supply electricity from the Agency's facilities at cost to one or more of the following: municipal electric

systems, governmental aggregators, or rural electric cooperatives in Illinois.

(E) Ensure that the process of power procurement is conducted in an ethical and transparent fashion, immune from improper influence.

(F) Continue to review its policies and practices to determine how best to meet its mission of providing the lowest cost power to the greatest number of people, at any given point in time, in accordance with applicable law.

(G) Operate in a structurally insulated, independent, and transparent fashion so that nothing impedes the Agency's mission to secure power at the best prices the market will bear, provided that the Agency meets all applicable legal requirements.

(Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

(20 ILCS 3855/1-15)

Sec. 1-15. Illinois Power Agency.

(a) For the purpose of effectuating the policy declared in Section 1-5 of this Act, a State agency known as the Illinois Power Agency is created. The Agency shall exercise governmental and public powers, be perpetual in duration, and have the powers and duties enumerated in this Act, together with such others conferred upon it by law.

(b) The Agency is not created or organized, and its operations shall not be conducted, for the purpose of making a

profit. No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to any of its employees or any other private persons, except as provided in this Act for actual services rendered. The Agency shall operate as an independent agency subject to the oversight of the Executive Ethics Commission.

(Source: P.A. 95-481, eff. 8-28-07.)

(20 ILCS 3855/1-20)

Sec. 1-20. General powers of the Agency.

(a) The Agency is authorized to do each of the following:

(1) Develop electricity procurement plans to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability, for electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois. The procurement plans shall be updated on an annual basis and shall include electricity generated from renewable resources sufficient to achieve the standards specified in this Act.

(2) Conduct competitive procurement processes to procure the supply resources identified in the procurement plan, pursuant to Section 16-111.5 of the Public Utilities Act.

(3) Develop electric generation and co-generation

facilities that use indigenous coal or renewable resources, or both, financed with bonds issued by the Illinois Finance Authority.

(4) Supply electricity from the Agency's facilities at cost to one or more of the following: municipal electric systems, governmental aggregators, or rural electric cooperatives in Illinois.

(b) Except as otherwise limited by this Act, the Agency has all of the powers necessary or convenient to carry out the purposes and provisions of this Act, including without limitation, each of the following:

(1) To have a corporate seal, and to alter that seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

(2) To use the services of the Illinois Finance Authority necessary to carry out the Agency's purposes.

(3) To negotiate and enter into loan agreements and other agreements with the Illinois Finance Authority.

(4) To obtain and employ personnel and hire consultants that are necessary to fulfill the Agency's purposes, and to make expenditures for that purpose within the appropriations for that purpose.

(5) To purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property whether tangible or intangible,

or any interest therein, within the State.

(6) To acquire real or personal property, whether tangible or intangible, including without limitation property rights, interests in property, franchises, obligations, contracts, and debt and equity securities, and to do so by the exercise of the power of eminent domain in accordance with Section 1-21; except that any real property acquired by the exercise of the power of eminent domain must be located within the State.

(7) To sell, convey, lease, exchange, transfer, abandon, or otherwise dispose of, or mortgage, pledge, or create a security interest in, any of its assets, properties, or any interest therein, wherever situated.

(8) To purchase, take, receive, subscribe for, or otherwise acquire, hold, make a tender offer for, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, or grant a security interest in, use, and otherwise deal in and with, bonds and other obligations, shares, or other securities (or interests therein) issued by others, whether engaged in a similar or different business or activity.

(9) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Act, including contracts with any person, including personal service contracts, or with any local government, State

agency, or other entity; and all State agencies and all local governments are authorized to enter into and do all things necessary to perform any such agreement, contract, or other instrument with the Agency. No such agreement, contract, or other instrument shall exceed 40 years.

(10) To lend money, invest and reinvest its funds in accordance with the Public Funds Investment Act, and take and hold real and personal property as security for the payment of funds loaned or invested.

(11) To borrow money at such rate or rates of interest as the Agency may determine, issue its notes, bonds, or other obligations to evidence that indebtedness, and secure any of its obligations by mortgage or pledge of its real or personal property, machinery, equipment, structures, fixtures, inventories, revenues, grants, and other funds as provided or any interest therein, wherever situated.

(12) To enter into agreements with the Illinois Finance Authority to issue bonds whether or not the income therefrom is exempt from federal taxation.

(13) To procure insurance against any loss in connection with its properties or operations in such amount or amounts and from such insurers, including the federal government, as it may deem necessary or desirable, and to pay any premiums therefor.

(14) To negotiate and enter into agreements with

trustees or receivers appointed by United States bankruptcy courts or federal district courts or in other proceedings involving adjustment of debts and authorize proceedings involving adjustment of debts and authorize legal counsel for the Agency to appear in any such proceedings.

(15) To file a petition under Chapter 9 of Title 11 of the United States Bankruptcy Code or take other similar action for the adjustment of its debts.

(16) To enter into management agreements for the operation of any of the property or facilities owned by the Agency.

(17) To enter into an agreement to transfer and to transfer any land, facilities, fixtures, or equipment of the Agency to one or more municipal electric systems, governmental aggregators, or rural electric agencies or cooperatives, for such consideration and upon such terms as the Agency may determine to be in the best interest of the citizens of Illinois.

(18) To enter upon any lands and within any building whenever in its judgment it may be necessary for the purpose of making surveys and examinations to accomplish any purpose authorized by this Act.

(19) To maintain an office or offices at such place or places in the State as it may determine.

(20) To request information, and to make any inquiry,

investigation, survey, or study that the Agency may deem necessary to enable it effectively to carry out the provisions of this Act.

(21) To accept and expend appropriations.

(22) To engage in any activity or operation that is incidental to and in furtherance of efficient operation to accomplish the Agency's purposes, including hiring employees that the Director deems essential for the operations of the Agency.

(23) To adopt, revise, amend, and repeal rules with respect to its operations, properties, and facilities as may be necessary or convenient to carry out the purposes of this Act, subject to the provisions of the Illinois Administrative Procedure Act and Sections 1-22 and 1-35 of this Act.

(24) To establish and collect charges and fees as described in this Act.

(25) To manage procurement of substitute natural gas from a facility that meets the criteria specified in subsection (a) of Section 1-58 of this Act, on terms and conditions that may be approved by the Agency pursuant to subsection (d) of Section 1-58 of this Act, to support the operations of State agencies and local governments that agree to such terms and conditions. This procurement process is not subject to the Procurement Code.

(Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;

96-1000, eff. 7-2-10.)

(20 ILCS 3855/1-25)

Sec. 1-25. Agency subject to other laws. Unless otherwise stated, the Agency is subject to the provisions of all applicable laws, including but not limited to, each of the following:

(1) The State Records Act.

(2) The Illinois Procurement Code, except that the Illinois Procurement Code does not apply to the hiring of procurement administrators or procurement planning consultants pursuant to Section 1-75 of the Illinois Power Agency Act.

(3) The Freedom of Information Act.

(4) The State Property Control Act.

(5) (Blank). ~~The Personnel Code.~~

(6) The State Officials and Employees Ethics Act.

(Source: P.A. 95-481, eff. 8-28-07.)

(20 ILCS 3855/1-70)

Sec. 1-70. Agency officials.

(a) The Agency shall have a Director who meets the qualifications specified in Section 5-222 of the Civil Administrative Code of Illinois (20 ILCS 5/5-222).

(b) Within the Illinois Power Agency, the Agency shall establish a Planning and Procurement Bureau and a Resource

Development Bureau. Each Bureau shall report to the Director.

(c) The Chief of the Planning and Procurement Bureau shall be appointed by the Director, at the Director's sole discretion, and (i) shall have at least 5 ~~10~~ years of direct experience in electricity supply planning and procurement and (ii) shall also hold an advanced degree in risk management, law, business, or a related field.

(d) The Chief of the Resource Development Bureau shall be appointed by the Director and (i) shall have at least 5 ~~10~~ years of direct experience in electric generating project development and (ii) shall also hold an advanced degree in economics, engineering, law, business, or a related field.

(e) The Director shall receive an annual salary of \$100,000 or as set by the Compensation Review Board, whichever is higher. The Bureau Chiefs shall each receive an annual salary of \$85,000 or as set by the Compensation Review Board, whichever is higher.

(f) The Director and Bureau Chiefs shall not, for 2 years prior to appointment or for 2 years after he or she leaves his or her position, be employed by an electric utility, independent power producer, power marketer, or alternative retail electric supplier regulated by the Commission or the Federal Energy Regulatory Commission.

(g) The Director and Bureau Chiefs are prohibited from: (i) owning, directly or indirectly, 5% or more of the voting capital stock of an electric utility, independent power

producer, power marketer, or alternative retail electric supplier; (ii) being in any chain of successive ownership of 5% or more of the voting capital stock of any electric utility, independent power producer, power marketer, or alternative retail electric supplier; (iii) receiving any form of compensation, fee, payment, or other consideration from an electric utility, independent power producer, power marketer, or alternative retail electric supplier, including legal fees, consulting fees, bonuses, or other sums. These limitations do not apply to any compensation received pursuant to a defined benefit plan or other form of deferred compensation, provided that the individual has otherwise severed all ties to the utility, power producer, power marketer, or alternative retail electric supplier.

(Source: P.A. 95-481, eff. 8-28-07.)

(20 ILCS 3855/1-75)

Sec. 1-75. Planning and Procurement Bureau. The Planning and Procurement Bureau has the following duties and responsibilities:

(a) The Planning and Procurement Bureau shall each year, beginning in 2008, develop procurement plans and conduct competitive procurement processes in accordance with the requirements of Section 16-111.5 of the Public Utilities Act for the eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000

customers in Illinois. For the purposes of this Section, the term "eligible retail customers" has the same definition as found in Section 16-111.5(a) of the Public Utilities Act.

(1) The Agency shall each year, beginning in 2008, as needed, issue a request for qualifications for experts or expert consulting firms to develop the procurement plans in accordance with Section 16-111.5 of the Public Utilities Act. In order to qualify an expert or expert consulting firm must have:

(A) direct previous experience assembling large-scale power supply plans or portfolios for end-use customers;

(B) an advanced degree in economics, mathematics, engineering, risk management, or a related area of study;

(C) 10 years of experience in the electricity sector, including managing supply risk;

(D) expertise in wholesale electricity market rules, including those established by the Federal Energy Regulatory Commission and regional transmission organizations;

(E) expertise in credit protocols and familiarity with contract protocols;

(F) adequate resources to perform and fulfill the required functions and responsibilities; and

(G) the absence of a conflict of interest and

inappropriate bias for or against potential bidders or the affected electric utilities.

(2) The Agency shall each year, as needed, issue a request for qualifications for a procurement administrator to conduct the competitive procurement processes in accordance with Section 16-111.5 of the Public Utilities Act. In order to qualify an expert or expert consulting firm must have:

(A) direct previous experience administering a large-scale competitive procurement process;

(B) an advanced degree in economics, mathematics, engineering, or a related area of study;

(C) 10 years of experience in the electricity sector, including risk management experience;

(D) expertise in wholesale electricity market rules, including those established by the Federal Energy Regulatory Commission and regional transmission organizations;

(E) expertise in credit and contract protocols;

(F) adequate resources to perform and fulfill the required functions and responsibilities; and

(G) the absence of a conflict of interest and inappropriate bias for or against potential bidders or the affected electric utilities.

(3) The Agency shall provide affected utilities and other interested parties with the lists of qualified

experts or expert consulting firms identified through the request for qualifications processes that are under consideration to develop the procurement plans and to serve as the procurement administrator. The Agency shall also provide each qualified expert's or expert consulting firm's response to the request for qualifications. All information provided under this subparagraph shall also be provided to the Commission. The Agency may provide by rule for fees associated with supplying the information to utilities and other interested parties. These parties shall, within 5 business days, notify the Agency in writing if they object to any experts or expert consulting firms on the lists. Objections shall be based on:

- (A) failure to satisfy qualification criteria;
- (B) identification of a conflict of interest; or
- (C) evidence of inappropriate bias for or against potential bidders or the affected utilities.

The Agency shall remove experts or expert consulting firms from the lists within 10 days if there is a reasonable basis for an objection and provide the updated lists to the affected utilities and other interested parties. If the Agency fails to remove an expert or expert consulting firm from a list, an objecting party may seek review by the Commission within 5 days thereafter by filing a petition, and the Commission shall render a ruling on the petition within 10 days. There is no right of appeal of the

Commission's ruling.

(4) The Agency shall issue requests for proposals to the qualified experts or expert consulting firms to develop a procurement plan for the affected utilities and to serve as procurement administrator.

(5) The Agency shall select an expert or expert consulting firm to develop procurement plans based on the proposals submitted and shall award ~~one year~~ contracts of up to 5 years to those selected ~~with an option for the Agency for a one year renewal.~~

(6) The Agency shall select an expert or expert consulting firm, with approval of the Commission, to serve as procurement administrator based on the proposals submitted. If the Commission rejects, within 5 days, the Agency's selection, the Agency shall submit another recommendation within 3 days based on the proposals submitted. The Agency shall award a 5-year ~~one year~~ contract to the expert or expert consulting firm so selected with Commission approval ~~with an option for the Agency for a one year renewal.~~

(b) The experts or expert consulting firms retained by the Agency shall, as appropriate, prepare procurement plans, and conduct a competitive procurement process as prescribed in Section 16-111.5 of the Public Utilities Act, to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over

time, taking into account any benefits of price stability, for eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in the State of Illinois.

(c) Renewable portfolio standard.

(1) The procurement plans shall include cost-effective renewable energy resources. A minimum percentage of each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be generated from cost-effective renewable energy resources: at least 2% by June 1, 2008; at least 4% by June 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1, 2011; at least 7% by June 1, 2012; at least 8% by June 1, 2013; at least 9% by June 1, 2014; at least 10% by June 1, 2015; and increasing by at least 1.5% each year thereafter to at least 25% by June 1, 2025. To the extent that it is available, at least 75% of the renewable energy resources used to meet these standards shall come from wind generation and, beginning on June 1, 2011, at least the following percentages of the renewable energy resources used to meet these standards shall come from photovoltaics on the following schedule: 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and thereafter.

For purposes of this subsection (c), "cost-effective"

means that the costs of procuring renewable energy resources do not cause the limit stated in paragraph (2) of this subsection (c) to be exceeded and do not exceed benchmarks based on market prices for renewable energy resources in the region, which shall be developed by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor and shall be subject to Commission review and approval.

(2) For purposes of this subsection (c), the required procurement of cost-effective renewable energy resources for a particular year shall be measured as a percentage of the actual amount of electricity (megawatt-hours) supplied by the electric utility to eligible retail customers in the planning year ending immediately prior to the procurement. For purposes of this subsection (c), the amount paid per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this subsection (c), the total amount paid for electric service includes without limitation amounts paid for supply, transmission, distribution, surcharges, and add-on taxes.

Notwithstanding the requirements of this subsection (c), the total of renewable energy resources procured pursuant to the procurement plan for any single year shall be reduced by an amount necessary to limit the annual

estimated average net increase due to the costs of these resources included in the amounts paid by eligible retail customers in connection with electric service to:

(A) in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(B) in 2009, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(C) in 2010, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(D) in 2011, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2010 or 2% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; and

(E) thereafter, the amount of renewable energy resources procured pursuant to the procurement plan for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these resources included in the

amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these resources in 2011.

No later than June 30, 2011, the Commission shall review the limitation on the amount of renewable energy resources procured pursuant to this subsection (c) and report to the General Assembly its findings as to whether that limitation unduly constrains the procurement of cost-effective renewable energy resources.

(3) Through June 1, 2011, renewable energy resources shall be counted for the purpose of meeting the renewable energy standards set forth in paragraph (1) of this subsection (c) only if they are generated from facilities located in the State, provided that cost-effective renewable energy resources are available from those facilities. If those cost-effective resources are not available in Illinois, they shall be procured in states that adjoin Illinois and may be counted towards compliance. If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance. After June 1, 2011, cost-effective renewable

energy resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with the standards set forth in paragraph (1) of this subsection (c). If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance.

(4) The electric utility shall retire all renewable energy credits used to comply with the standard.

(5) Beginning with the year commencing June 1, 2010, an electric utility subject to this subsection (c) shall apply the lesser of the maximum alternative compliance payment rate or the most recent estimated alternative compliance payment rate for its service territory for the corresponding compliance period, established pursuant to subsection (d) of Section 16-115D of the Public Utilities Act to its retail customers that take service pursuant to the electric utility's hourly pricing tariff or tariffs. The electric utility shall retain all amounts collected as a result of the application of the alternative compliance payment rate or rates to such customers, and, beginning in 2011, the utility shall include in the information provided under item (1) of subsection (d) of Section 16-111.5 of the Public Utilities Act the amounts collected under the alternative compliance payment rate or rates for the prior year ending May 31. Notwithstanding any limitation on the

procurement of renewable energy resources imposed by item (2) of this subsection (c), the Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year by an amount equal to the amounts collected by the utility under the alternative compliance payment rate or rates in the prior year ending May 31.

(d) Clean coal portfolio standard.

(1) The procurement plans shall include electricity generated using clean coal. Each utility shall enter into one or more sourcing agreements with the initial clean coal facility, as provided in paragraph (3) of this subsection (d), covering electricity generated by the initial clean coal facility representing at least 5% of each utility's total supply to serve the load of eligible retail customers in 2015 and each year thereafter, as described in paragraph (3) of this subsection (d), subject to the limits specified in paragraph (2) of this subsection (d). It is the goal of the State that by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities. For purposes of this subsection (d), "cost-effective" means that the expenditures pursuant to such sourcing agreements do not cause the limit stated in paragraph (2) of this subsection (d) to be exceeded and do not exceed cost-based benchmarks, which shall be developed to assess all expenditures pursuant to such sourcing

agreements covering electricity generated by clean coal facilities, other than the initial clean coal facility, by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor and shall be subject to Commission review and approval.

~~(A)~~ A utility party to a sourcing agreement shall immediately retire any emission credits that it receives in connection with the electricity covered by such agreement.

~~(B)~~ Utilities shall maintain adequate records documenting the purchases under the sourcing agreement to comply with this subsection (d) and shall file an accounting with the load forecast that must be filed with the Agency by July 15 of each year, in accordance with subsection (d) of Section 16-111.5 of the Public Utilities Act.

~~(C)~~ A utility shall be deemed to have complied with the clean coal portfolio standard specified in this subsection (d) if the utility enters into a sourcing agreement as required by this subsection (d).

(2) For purposes of this subsection (d), the required execution of sourcing agreements with the initial clean coal facility for a particular year shall be measured as a percentage of the actual amount of electricity (megawatt-hours) supplied by the electric utility to eligible retail customers in the planning year ending

immediately prior to the agreement's execution. For purposes of this subsection (d), the amount paid per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this subsection (d), the total amount paid for electric service includes without limitation amounts paid for supply, transmission, distribution, surcharges and add-on taxes.

Notwithstanding the requirements of this subsection (d), the total amount paid under sourcing agreements with clean coal facilities pursuant to the procurement plan for any given year shall be reduced by an amount necessary to limit the annual estimated average net increase due to the costs of these resources included in the amounts paid by eligible retail customers in connection with electric service to:

(A) in 2010, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009;

(B) in 2011, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2010 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009;

(C) in 2012, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers

during the year ending May 31, 2011 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009;

(D) in 2013, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2012 or 2% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009; and

(E) thereafter, the total amount paid under sourcing agreements with clean coal facilities pursuant to the procurement plan for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these resources included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of (i) 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or (ii) the incremental amount per kilowatthour paid for these resources in 2013. These requirements may be altered only as provided by statute.

No later than June 30, 2015, the Commission shall review the limitation on the total amount paid under sourcing agreements, if any, with clean coal facilities pursuant to this subsection (d) and report to the General Assembly its findings as to whether that limitation unduly

constrains the amount of electricity generated by cost-effective clean coal facilities that is covered by sourcing agreements.

(3) Initial clean coal facility. In order to promote development of clean coal facilities in Illinois, each electric utility subject to this Section shall execute a sourcing agreement to source electricity from a proposed clean coal facility in Illinois (the "initial clean coal facility") that will have a nameplate capacity of at least 500 MW when commercial operation commences, that has a final Clean Air Act permit on the effective date of this amendatory Act of the 95th General Assembly, and that will meet the definition of clean coal facility in Section 1-10 of this Act when commercial operation commences. The sourcing agreements with this initial clean coal facility shall be subject to both approval of the initial clean coal facility by the General Assembly and satisfaction of the requirements of paragraph (4) of this subsection (d) and shall be executed within 90 days after any such approval by the General Assembly. The Agency and the Commission shall have authority to inspect all books and records associated with the initial clean coal facility during the term of such a sourcing agreement. A utility's sourcing agreement for electricity produced by the initial clean coal facility shall include:

(A) a formula contractual price (the "contract

price") approved pursuant to paragraph (4) of this subsection (d), which shall:

(i) be determined using a cost of service methodology employing either a level or deferred capital recovery component, based on a capital structure consisting of 45% equity and 55% debt, and a return on equity as may be approved by the Federal Energy Regulatory Commission, which in any case may not exceed the lower of 11.5% or the rate of return approved by the General Assembly pursuant to paragraph (4) of this subsection (d); and

(ii) provide that all miscellaneous net revenue, including but not limited to net revenue from the sale of emission allowances, if any, substitute natural gas, if any, grants or other support provided by the State of Illinois or the United States Government, firm transmission rights, if any, by-products produced by the facility, energy or capacity derived from the facility and not covered by a sourcing agreement pursuant to paragraph (3) of this subsection (d) or item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, whether generated from the synthesis gas derived from coal, from SNG, or from natural gas, shall be credited against the revenue

requirement for this initial clean coal facility;

(B) power purchase provisions, which shall:

(i) provide that the utility party to such sourcing agreement shall pay the contract price for electricity delivered under such sourcing agreement;

(ii) require delivery of electricity to the regional transmission organization market of the utility that is party to such sourcing agreement;

(iii) require the utility party to such sourcing agreement to buy from the initial clean coal facility in each hour an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times a fraction, the numerator of which is such utility's retail market sales of electricity (expressed in kilowatthours sold) in the State during the prior calendar month and the denominator of which is the total retail market sales of electricity (expressed in kilowatthours sold) in the State by utilities during such prior month and the sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this subsection (d) and paragraph (5) of subsection (d)

of Section 16-115 of the Public Utilities Act, provided that the amount purchased by the utility in any year will be limited by paragraph (2) of this subsection (d); and

(iv) be considered pre-existing contracts in such utility's procurement plans for eligible retail customers;

(C) contract for differences provisions, which shall:

(i) require the utility party to such sourcing agreement to contract with the initial clean coal facility in each hour with respect to an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times a fraction, the numerator of which is such utility's retail market sales of electricity (expressed in kilowatthours sold) in the utility's service territory in the State during the prior calendar month and the denominator of which is the total retail market sales of electricity (expressed in kilowatthours sold) in the State by utilities during such prior month and the sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this

subsection (d) and paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act, provided that the amount paid by the utility in any year will be limited by paragraph (2) of this subsection (d);

(ii) provide that the utility's payment obligation in respect of the quantity of electricity determined pursuant to the preceding clause (i) shall be limited to an amount equal to (1) the difference between the contract price determined pursuant to subparagraph (A) of paragraph (3) of this subsection (d) and the day-ahead price for electricity delivered to the regional transmission organization market of the utility that is party to such sourcing agreement (or any successor delivery point at which such utility's supply obligations are financially settled on an hourly basis) (the "reference price") on the day preceding the day on which the electricity is delivered to the initial clean coal facility busbar, multiplied by (2) the quantity of electricity determined pursuant to the preceding clause (i); and

(iii) not require the utility to take physical delivery of the electricity produced by the facility;

(D) general provisions, which shall:

(i) specify a term of no more than 30 years, commencing on the commercial operation date of the facility;

(ii) provide that utilities shall maintain adequate records documenting purchases under the sourcing agreements entered into to comply with this subsection (d) and shall file an accounting with the load forecast that must be filed with the Agency by July 15 of each year, in accordance with subsection (d) of Section 16-111.5 of the Public Utilities Act.

(iii) provide that all costs associated with the initial clean coal facility will be periodically reported to the Federal Energy Regulatory Commission and to purchasers in accordance with applicable laws governing cost-based wholesale power contracts;

(iv) permit the Illinois Power Agency to assume ownership of the initial clean coal facility, without monetary consideration and otherwise on reasonable terms acceptable to the Agency, if the Agency so requests no less than 3 years prior to the end of the stated contract term;

(v) require the owner of the initial clean coal facility to provide documentation to the

Commission each year, starting in the facility's first year of commercial operation, accurately reporting the quantity of carbon emissions from the facility that have been captured and sequestered and report any quantities of carbon released from the site or sites at which carbon emissions were sequestered in prior years, based on continuous monitoring of such sites. If, in any year after the first year of commercial operation, the owner of the facility fails to demonstrate that the initial clean coal facility captured and sequestered at least 50% of the total carbon emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, the owner of the facility must offset excess emissions. Any such carbon offsets must be permanent, additional, verifiable, real, located within the State of Illinois, and legally and practicably enforceable. The cost of such offsets for the facility that are not recoverable shall not exceed \$15 million in any given year. No costs of any such purchases of carbon offsets may be recovered from a utility or its customers. All carbon offsets purchased for this purpose and any carbon emission credits

associated with sequestration of carbon from the facility must be permanently retired. The initial clean coal facility shall not forfeit its designation as a clean coal facility if the facility fails to fully comply with the applicable carbon sequestration requirements in any given year, provided the requisite offsets are purchased. However, the Attorney General, on behalf of the People of the State of Illinois, may specifically enforce the facility's sequestration requirement and the other terms of this contract provision. Compliance with the sequestration requirements and offset purchase requirements specified in paragraph (3) of this subsection (d) shall be reviewed annually by an independent expert retained by the owner of the initial clean coal facility, with the advance written approval of the Attorney General. The Commission may, in the course of the review specified in item (vii), reduce the allowable return on equity for the facility if the facility wilfully fails to comply with the carbon capture and sequestration requirements set forth in this item (v);

(vi) include limits on, and accordingly provide for modification of, the amount the utility is required to source under the sourcing

agreement consistent with paragraph (2) of this subsection (d);

(vii) require Commission review: (1) to determine the justness, reasonableness, and prudence of the inputs to the formula referenced in subparagraphs (A) (i) through (A) (iii) of paragraph (3) of this subsection (d), prior to an adjustment in those inputs including, without limitation, the capital structure and return on equity, fuel costs, and other operations and maintenance costs and (2) to approve the costs to be passed through to customers under the sourcing agreement by which the utility satisfies its statutory obligations. Commission review shall occur no less than every 3 years, regardless of whether any adjustments have been proposed, and shall be completed within 9 months;

(viii) limit the utility's obligation to such amount as the utility is allowed to recover through tariffs filed with the Commission, provided that neither the clean coal facility nor the utility waives any right to assert federal pre-emption or any other argument in response to a purported disallowance of recovery costs;

(ix) limit the utility's or alternative retail electric supplier's obligation to incur any

liability until such time as the facility is in commercial operation and generating power and energy and such power and energy is being delivered to the facility busbar;

(x) provide that the owner or owners of the initial clean coal facility, which is the counterparty to such sourcing agreement, shall have the right from time to time to elect whether the obligations of the utility party thereto shall be governed by the power purchase provisions or the contract for differences provisions;

(xi) append documentation showing that the formula rate and contract, insofar as they relate to the power purchase provisions, have been approved by the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act;

(xii) provide that any changes to the terms of the contract, insofar as such changes relate to the power purchase provisions, are subject to review under the public interest standard applied by the Federal Energy Regulatory Commission pursuant to Sections 205 and 206 of the Federal Power Act; and

(xiii) conform with customary lender requirements in power purchase agreements used as the basis for financing non-utility generators.

(4) Effective date of sourcing agreements with the initial clean coal facility.

Any proposed sourcing agreement with the initial clean coal facility shall not become effective unless the following reports are prepared and submitted and authorizations and approvals obtained:

(i) Facility cost report. The owner of the initial clean coal facility shall submit to the Commission, the Agency, and the General Assembly a front-end engineering and design study, a facility cost report, method of financing (including but not limited to structure and associated costs), and an operating and maintenance cost quote for the facility (collectively "facility cost report"), which shall be prepared in accordance with the requirements of this paragraph (4) of subsection (d) of this Section, and shall provide the Commission and the Agency access to the work papers, relied upon documents, and any other backup documentation related to the facility cost report.

(ii) Commission report. Within 6 months following receipt of the facility cost report, the Commission, in consultation with the Agency, shall submit a report to the General Assembly setting forth its analysis of the facility cost report. Such report shall include, but not be limited to, a comparison of the costs associated with electricity generated by the initial clean coal

facility to the costs associated with electricity generated by other types of generation facilities, an analysis of the rate impacts on residential and small business customers over the life of the sourcing agreements, and an analysis of the likelihood that the initial clean coal facility will commence commercial operation by and be delivering power to the facility's busbar by 2016. To assist in the preparation of its report, the Commission, in consultation with the Agency, may hire one or more experts or consultants, the costs of which shall be paid for by the owner of the initial clean coal facility. The Commission and Agency may begin the process of selecting such experts or consultants prior to receipt of the facility cost report.

(iii) General Assembly approval. The proposed sourcing agreements shall not take effect unless, based on the facility cost report and the Commission's report, the General Assembly enacts authorizing legislation approving (A) the projected price, stated in cents per kilowatthour, to be charged for electricity generated by the initial clean coal facility, (B) the projected impact on residential and small business customers' bills over the life of the sourcing agreements, and (C) the maximum allowable return on equity for the project; and

(iv) Commission review. If the General Assembly enacts authorizing legislation pursuant to subparagraph (iii) approving a sourcing agreement, the Commission shall, within 90 days of such enactment, complete a review of such sourcing agreement. During such time period, the Commission shall implement any directive of the General Assembly, resolve any disputes between the parties to the sourcing agreement concerning the terms of such agreement, approve the form of such agreement, and issue an order finding that the sourcing agreement is prudent and reasonable.

The facility cost report shall be prepared as follows:

(A) The facility cost report shall be prepared by duly licensed engineering and construction firms detailing the estimated capital costs payable to one or more contractors or suppliers for the engineering, procurement and construction of the components comprising the initial clean coal facility and the estimated costs of operation and maintenance of the facility. The facility cost report shall include:

(i) an estimate of the capital cost of the core plant based on one or more front end engineering and design studies for the gasification island and related facilities. The core plant shall include all civil, structural, mechanical, electrical, control, and safety systems.

(ii) an estimate of the capital cost of the balance of the plant, including any capital costs associated with sequestration of carbon dioxide emissions and all interconnects and interfaces required to operate the facility, such as transmission of electricity, construction or backfeed power supply, pipelines to transport substitute natural gas or carbon dioxide, potable water supply, natural gas supply, water supply, water discharge, landfill, access roads, and coal delivery.

The quoted construction costs shall be expressed in nominal dollars as of the date that the quote is prepared and shall include ~~(1)~~ capitalized financing costs during construction, ~~(2)~~ taxes, insurance, and other owner's costs, and ~~(3)~~ an assumed escalation in materials and labor beyond the date as of which the construction cost quote is expressed.

(B) The front end engineering and design study for the gasification island and the cost study for the balance of plant shall include sufficient design work to permit quantification of major categories of materials, commodities and labor hours, and receipt of quotes from vendors of major equipment required to construct and operate the clean coal facility.

(C) The facility cost report shall also include an

operating and maintenance cost quote that will provide the estimated cost of delivered fuel, personnel, maintenance contracts, chemicals, catalysts, consumables, spares, and other fixed and variable operations and maintenance costs. ~~(a)~~ The delivered fuel cost estimate will be provided by a recognized third party expert or experts in the fuel and transportation industries. ~~(b)~~ The balance of the operating and maintenance cost quote, excluding delivered fuel costs, will be developed based on the inputs provided by duly licensed engineering and construction firms performing the construction cost quote, potential vendors under long-term service agreements and plant operating agreements, or recognized third party plant operator or operators.

The operating and maintenance cost quote (including the cost of the front end engineering and design study) shall be expressed in nominal dollars as of the date that the quote is prepared and shall include ~~(1)~~ taxes, insurance, and other owner's costs, and ~~(2)~~ an assumed escalation in materials and labor beyond the date as of which the operating and maintenance cost quote is expressed.

(D) The facility cost report shall also include ~~(i)~~ an analysis of the initial clean coal facility's ability to deliver power and energy into the applicable

regional transmission organization markets and ~~(ii)~~ an analysis of the expected capacity factor for the initial clean coal facility.

(E) Amounts paid to third parties unrelated to the owner or owners of the initial clean coal facility to prepare the core plant construction cost quote, including the front end engineering and design study, and the operating and maintenance cost quote will be reimbursed through Coal Development Bonds.

(5) Re-powering and retrofitting coal-fired power plants previously owned by Illinois utilities to qualify as clean coal facilities. During the 2009 procurement planning process and thereafter, the Agency and the Commission shall consider sourcing agreements covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities, as defined by Section 1-10 of this Act. Pursuant to such procurement planning process, the owners of such facilities may propose to the Agency sourcing agreements with utilities and alternative retail electric suppliers required to comply with subsection (d) of this Section and item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, covering electricity generated by such facilities. In the case of sourcing agreements that are power purchase agreements, the contract price for electricity sales shall be

established on a cost of service basis. In the case of sourcing agreements that are contracts for differences, the contract price from which the reference price is subtracted shall be established on a cost of service basis. The Agency and the Commission may approve any such utility sourcing agreements that do not exceed cost-based benchmarks developed by the procurement administrator, in consultation with the Commission staff, Agency staff and the procurement monitor, subject to Commission review and approval. The Commission shall have authority to inspect all books and records associated with these clean coal facilities during the term of any such contract.

(6) Costs incurred under this subsection (d) or pursuant to a contract entered into under this subsection (d) shall be deemed prudently incurred and reasonable in amount and the electric utility shall be entitled to full cost recovery pursuant to the tariffs filed with the Commission.

(e) The draft procurement plans are subject to public comment, as required by Section 16-111.5 of the Public Utilities Act.

(f) The Agency shall submit the final procurement plan to the Commission. The Agency shall revise a procurement plan if the Commission determines that it does not meet the standards set forth in Section 16-111.5 of the Public Utilities Act.

(g) The Agency shall assess fees to each affected utility

to recover the costs incurred in preparation of the annual procurement plan for the utility.

(h) The Agency shall assess fees to each bidder to recover the costs incurred in connection with a competitive procurement process.

(Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09; 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

Section 880. The Illinois Procurement Code is amended by changing Section 50-39 as follows:

(30 ILCS 500/50-39)

Sec. 50-39. Procurement communications reporting requirement.

(a) Any written or oral communication received by a State employee that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including, but not limited to, an application, a contract, or a project, shall be reported to the Procurement Policy Board, and, with respect to the Illinois Power Agency, by the initiator of the communication, and may be reported also by the recipient. Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement

plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content, and extent of any such communication in writing by submitting a report with the following information:

(1) The names of any party to the communication.

(2) The date on which the communication occurred.

(3) The time at which the communication occurred.

(4) The duration of the communication.

(5) The method (written, oral, etc.) of the communication.

(6) A summary of the substantive content of the communication.

These communications do not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and (iii) statements made by a State employee of the agency to the agency head or other employees of that agency or to the employees of the Executive Ethics Commission. The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of a contract.

(b) The report required by subsection (a) shall be submitted monthly and include at least the following: (i) the date and time of each communication; (ii) the identity of each person from whom the written or oral communication was received, the individual or entity represented by that person, and any action the person requested or recommended; (iii) the identity and job title of the person to whom each communication was made; (iv) if a response is made, the identity and job title of the person making each response; (v) a detailed summary of the points made by each person involved in the communication; (vi) the duration of the communication; (vii) the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication; and (viii) any other pertinent information.

(c) Additionally, when an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes, but is not limited to, the items listed in subsection (b).

(d) The Procurement Policy Board shall make each report submitted pursuant to this Section available on its website within 7 days after its receipt of the report. The Procurement Policy Board may promulgate rules to ensure compliance with

this Section.

(e) The reporting requirements shall also be conveyed through ethics training under the State ~~Employees and Officials and Employees~~ Ethics Act. An employee who knowingly and intentionally violates this Section shall be subject to suspension or discharge. The Executive Ethics Commission shall promulgate rules, including emergency rules, to implement this Section.

(f) This Section becomes operative on January 1, 2011.

(Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the effective date of changes made by P.A. 96-795); 96-920, eff. 7-1-10; revised 9-27-10.)

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

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

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

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

(705 ILCS 505/8.5 rep.)

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

Section 995. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

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

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