



Sen. Scott M. Bennett

# Adopted in Senate on Nov 14, 2019

10100SB0671sam002

LRB101 04433 CPF 64722 a

1 AMENDMENT TO SENATE BILL 671

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 671, by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by  
5 changing Section 22.59 as follows:

6 (415 ILCS 5/22.59)

7 Sec. 22.59. CCR surface impoundments.

8 (a) The General Assembly finds that:

9 (1) the State of Illinois has a long-standing policy to  
10 restore, protect, and enhance the environment, including  
11 the purity of the air, land, and waters, including  
12 groundwaters, of this State;

13 (2) a clean environment is essential to the growth and  
14 well-being of this State;

15 (3) CCR generated by the electric generating industry  
16 has caused groundwater contamination and other forms of

1 pollution at active and inactive plants throughout this  
2 State;

3 (4) poorly constructed and inadequately maintained CCR  
4 surface impoundments have contributed to environmental  
5 disasters outside of Illinois;

6 (5) the health effects of exposure to CCR have become  
7 the subject of a number of studies;

8 (6) ~~(4)~~ environmental laws should be supplemented to  
9 ensure consistent, responsible regulation of all existing  
10 CCR surface impoundments; and

11 (7) ~~(5)~~ meaningful participation of State residents,  
12 especially vulnerable populations who may be affected by  
13 regulatory actions, is critical to ensure that  
14 environmental justice considerations are incorporated in  
15 the development of, decision-making related to, and  
16 implementation of environmental laws and rulemaking that  
17 protects and improves the well-being of communities in this  
18 State that bear disproportionate burdens imposed by  
19 environmental pollution.

20 Therefore, the purpose of this Section is to promote a  
21 healthful environment, including clean water, air, and land,  
22 meaningful public involvement, and the responsible disposal  
23 and storage of coal combustion residuals, so as to protect  
24 public health and to prevent pollution of the environment of  
25 this State.

26 The provisions of this Section shall be liberally construed

1 to carry out the purposes of this Section.

2 (b) No person shall:

3 (1) Cause, threaten, ~~cause~~ or allow the release  
4 ~~discharge~~ of any contaminants from ~~a~~ CCR ~~surface~~  
5 ~~impoundment~~ into the environment so as to cause air, water,  
6 or other pollution in Illinois, either alone or in  
7 combination with contaminants from other sources, or so as  
8 to violate, directly or indirectly, a violation of this Act  
9 ~~Section~~ or any regulations or standards adopted by the  
10 Board under this Act. Section, ~~either alone or in~~  
11 ~~combination with contaminants from other sources,~~

12 (2) Construct ~~construct,~~ install, modify, operate, or  
13 close any CCR surface impoundment without a permit granted  
14 by the Agency, or so as to violate any conditions imposed  
15 by such permit, any provision of this Act Section or any  
16 regulations or standards adopted by the Board under this  
17 Act. Section, ~~or~~

18 (3) (Blank). ~~cause or allow, directly or indirectly,~~  
19 ~~the discharge, deposit, injection, dumping, spilling,~~  
20 ~~leaking, or placing of any CCR upon the land in a place and~~  
21 ~~manner so as to cause or tend to cause a violation this~~  
22 ~~Section or any regulations or standards adopted by the~~  
23 ~~Board under this Section.~~

24 (c) For purposes of this Section, a permit issued by the  
25 Administrator of the United States Environmental Protection  
26 Agency under Section 4005 of the federal Resource Conservation

1 and Recovery Act, shall be deemed to be a permit under this  
2 Section and subsection (y) of Section 39.

3 (d) Before commencing closure of a CCR surface impoundment,  
4 in accordance with Board rules, the owner of a CCR surface  
5 impoundment must submit to the Agency for approval a closure  
6 alternatives analysis that analyzes all closure methods being  
7 considered and that otherwise satisfies all closure  
8 requirements adopted by the Board under this Act. Complete  
9 removal of CCR, as specified by the Board's rules, from the CCR  
10 surface impoundment must be considered and analyzed. Removal,  
11 as that term is defined in Section 3.405 of this Act, does not  
12 apply to the Board's rules specifying complete removal of CCR.  
13 The selected closure method must ensure compliance with  
14 regulations adopted by the Board pursuant to this Section.

15 (e) Owners or operators of CCR surface impoundments who  
16 have submitted a closure plan to the Agency before May 1, 2019,  
17 and who have completed closure prior to 24 months after July  
18 30, 2019 (the effective date of Public Act 101-171) ~~this~~  
19 ~~amendatory Act of the 101st General Assembly~~ shall not be  
20 required to obtain a construction permit for the surface  
21 impoundment closure under this Section.

22 (f) Except for the State, its agencies and institutions, a  
23 unit of local government, or not-for-profit electric  
24 cooperative as defined in Section 3.4 of the Electric Supplier  
25 Act, any person who owns or operates a CCR surface impoundment  
26 in this State shall post with the Agency a performance bond or

1 other security for the purpose of: (i) ensuring closure of the  
2 CCR surface impoundment and post-closure care in accordance  
3 with this Act and its rules; and (ii) ensuring ~~insuring~~  
4 remediation of releases from the CCR surface impoundment. The  
5 only acceptable forms of financial assurance are: a trust fund,  
6 a surety bond guaranteeing payment, a surety bond guaranteeing  
7 performance, ~~or~~ an irrevocable letter of credit, or insurance  
8 that is not self-insurance.

9 (1) The cost estimate for the post-closure care of a  
10 CCR surface impoundment shall be calculated using a 30-year  
11 post-closure care period or such longer period as may be  
12 approved by the Agency under Board or federal rules.

13 (2) The Agency is authorized to enter into such  
14 contracts and agreements as it may deem necessary to carry  
15 out the purposes of this Section. Neither the State, nor  
16 the Director, nor any State employee shall be liable for  
17 any damages or injuries arising out of or resulting from  
18 any action taken under this Section.

19 (3) The Agency shall have the authority to approve or  
20 disapprove any performance bond or other security posted  
21 under this subsection. Any person whose performance bond or  
22 other security is disapproved by the Agency may contest the  
23 disapproval as a permit denial appeal pursuant to Section  
24 40.

25 (4) If insurance is used as financial assurance it must  
26 meet the following criteria:

1           (A) Insurance may only be used as financial  
2 assurance if it is accompanied by:

3           (i) a surety bond or irrevocable letter of  
4 credit covering the value of the total cost of  
5 premiums over the life of the insurance policy,  
6 plus 50% of that total cost; and

7           (ii) proof of a trust fund that shall receive  
8 any forfeited funds from the surety bond or  
9 irrevocable letter of credit under subdivision (i)  
10 of this subparagraph (A) if the owner or operator  
11 fails to pay insurance premiums.

12           (B) The life of the policy shall be the duration of  
13 the closure and post-closure period, as well as any  
14 period of remediation of release.

15           (C) The policy shall provide that insurance  
16 premiums shall be paid no less than 2 years in advance  
17 of the due date for that premium, except that the first  
18 2 years of premiums shall be paid in bulk as a single  
19 payment upon issuance of the policy. The owner or  
20 operator of the CCR surface impoundment or the  
21 third-party payer shall submit to the Agency proof of  
22 payment of each premium within 2 weeks after making  
23 payment.

24           (D) The face value amount of the policy for which  
25 insurance is serving as financial assurance shall be at  
26 least equal to all of the following that apply:

1           (i) the cost estimate for closure, if used as  
2           financial assurance for closure;

3           (ii) the cost estimate for post-closure, if  
4           used as financial assurance for post-closure; or

5           (iii) the cost estimate for remediation of  
6           releases, if used as financial assurance for  
7           remediation of releases.

8           When remediation of a release is required, within  
9           60 days after the Agency's approval of the cost  
10          estimate for that remediation the policy shall be  
11          amended to cover that approved cost estimate or the  
12          owner or operator of the CCR surface impoundment shall  
13          obtain a separate policy covering the amount of the  
14          approved cost estimate.

15          (E) The face value of the policy shall be updated  
16          within 90 days after the Agency approves a revised cost  
17          estimate. Cost estimates shall be updated:

18               (i) at least annually;

19               (ii) whenever there is a significant  
20               modification to an approved plan for closure,  
21               post-closure, or remediation of releases; and

22               (iii) upon request by the Agency.

23          (F) The policy shall guarantee that,  
24          notwithstanding litigation:

25               (i) funds will be available without delay to  
26               close, if used as financial assurance for closure;

1           (ii) funds will be available without delay to  
2           perform any required post-closure care, if used as  
3           financial assurance for post-closure; and

4           (iii) funds will be available without delay  
5           for remediation of releases, if used as financial  
6           assurance for remediation of releases.

7           (G) For insurance used as financial assurance for  
8           closure, the policy shall guarantee that once closure  
9           begins the insurer will be responsible for payout of  
10           funds up to an amount equal to the face amount of the  
11           policy, upon the direction of the Agency, to the party  
12           or parties the Agency specifies.

13           (H) The policy shall provide that payment of  
14           insurance premiums may be made by the insured or by any  
15           third party, including, but not limited to, the trustee  
16           of the trust fund specified under subdivision (ii) of  
17           subparagraph (A) of this paragraph (4).

18           (I) The policy must not be terminated, canceled, or  
19           suspended for any reason other than failure to pay a  
20           premium.

21           (J) If nonpayment of premiums by the owner or  
22           operator of the CCR surface impoundment risks  
23           terminating, cancelling, or suspending the policy, the  
24           insurer shall provide notice by certified mail to the  
25           owner or operator, the trustee of the trust fund  
26           specified under subdivision (ii) of subparagraph (A)



1           of this paragraph (4), and the Agency. Termination,  
2           cancellation, or suspension shall not occur within 120  
3           days after the date of receipt of the notice by the  
4           owner or operator and the Agency, as evidenced by  
5           return receipts.

6           (K) If nonpayment of premiums by the owner or  
7           operator of the CCR surface impoundment risks  
8           terminating, cancelling, or suspending the policy, and  
9           after notice has been provided under subparagraph (J),  
10          within 100 days of receiving that notice the owner or  
11          operator shall acquire an acceptable substitute form  
12          of financial assurance at least equal to the face value  
13          of the policy. If the owner or operator fails to  
14          acquire an acceptable substitute form of financial  
15          assurance within the 100-day period, the surety bond or  
16          irrevocable letter of credit specified under  
17          subdivision (i) of subparagraph (A) of this paragraph  
18          (4) shall be forfeited and the funds shall be directed  
19          without delay, and in any event not more than 10 days  
20          after the 100-day period, into the trust fund specified  
21          under subdivision (ii) of subparagraph (A) of this  
22          paragraph (4). Within 10 days of receipt of those funds  
23          in the trust fund, the trustee of the fund shall use  
24          the monies in the trust fund to pay any premiums that  
25          are due or past due. Using the funds in the trust fund,  
26          the trustee shall continue to pay the remaining

1           premiums for the life of the policy.

2           (L) The Board's rules required under subsection  
3           (g) of this Section shall address, among other things,  
4           how to ensure continued payment of premiums if the  
5           trustee of the trust fund specified under subdivision  
6           (ii) of subparagraph (A) of this paragraph (4) fails to  
7           make timely payment of premiums.

8           (M) The insurer shall be licensed to conduct  
9           business in Illinois and have at least an "A-" rating,  
10           or its equivalent, from a recognized rating agency.

11           (N) In the event of a transfer of ownership of the  
12           CCR surface impoundment, the policy shall contain a  
13           provision requiring continued payment of premiums by  
14           the insured at least until any successor owner or  
15           operator of the CCR surface impoundment obtains, and  
16           the Agency approves, acceptable substitute financial  
17           assurance with a value of, at a minimum, the face value  
18           of the policy.

19           Failure to pay the premium, without substitution of  
20           alternative financial assurance at least equal to face  
21           value of the policy within the time period specified in  
22           subparagraph (K), shall constitute a violation of this Act.

23           (g) The Board shall adopt rules establishing construction  
24 permit requirements, operating permit requirements, design  
25 standards, reporting, financial assurance, and closure and  
26 post-closure care requirements for CCR surface impoundments.

1 Not later than 8 months after July 30, 2019 (the effective date  
2 of Public Act 101-171) ~~this amendatory Act of the 101st General~~  
3 ~~Assembly~~ the Agency shall propose, and not later than one year  
4 after receipt of the Agency's proposal the Board shall adopt,  
5 rules under this Section. The rules must, at a minimum:

6 (1) be at least as protective and comprehensive as the  
7 federal regulations or amendments thereto promulgated by  
8 the Administrator of the United States Environmental  
9 Protection Agency in Subpart D of 40 CFR 257 governing CCR  
10 surface impoundments;

11 (2) specify the minimum contents of CCR surface  
12 impoundment construction and operating permit  
13 applications, including the closure alternatives analysis  
14 required under subsection (d);

15 (3) specify which types of permits include  
16 requirements for closure, post-closure, remediation and  
17 all other requirements applicable to CCR surface  
18 impoundments;

19 (4) specify when permit applications for existing CCR  
20 surface impoundments must be submitted, taking into  
21 consideration whether the CCR surface impoundment must  
22 close under the RCRA;

23 (5) specify standards for review and approval by the  
24 Agency of CCR surface impoundment permit applications;

25 (6) specify meaningful public participation procedures  
26 for the issuance of CCR surface impoundment construction

1 and operating permits, including, but not limited to,  
2 public notice of the submission of permit applications, an  
3 opportunity for the submission of public comments, an  
4 opportunity for a public hearing prior to permit issuance,  
5 and a summary and response of the comments prepared by the  
6 Agency;

7 (7) prescribe the type and amount of the performance  
8 bonds or other securities required under subsection (f),  
9 and the conditions under which the State is entitled to  
10 collect moneys from such performance bonds or other  
11 securities;

12 (8) specify a procedure to identify areas of  
13 environmental justice concern in relation to CCR surface  
14 impoundments;

15 (9) specify a method to prioritize CCR surface  
16 impoundments required to close under RCRA if not otherwise  
17 specified by the United States Environmental Protection  
18 Agency, so that the CCR surface impoundments with the  
19 highest risk to public health and the environment, and  
20 areas of environmental justice concern are given first  
21 priority;

22 (10) define when complete removal of CCR is achieved  
23 and specify the standards for responsible removal of CCR  
24 from CCR surface impoundments, including, but not limited  
25 to, dust controls and the protection of adjacent surface  
26 water and groundwater; and

1 (11) describe the process and standards for  
2 identifying a specific alternative source of groundwater  
3 pollution when the owner or operator of the CCR surface  
4 impoundment believes that groundwater contamination on the  
5 site is not from the CCR surface impoundment.

6 (12) Specify that an owner or operator of a CCR surface  
7 impoundment shall certify to the Agency that all  
8 contractors, subcontractors, and installers utilized to  
9 construct, install, modify, or close a CCR surface  
10 impoundment in accordance with a permit issued under this  
11 Act are participants in:

12 (i) a training program that is approved by and  
13 registered with the United States Department of  
14 Labor's Employment and Training Administration and  
15 that includes instruction in erosion control and  
16 environmental remediation, including, but not limited  
17 to, a 40-hour hazardous waste worker training course  
18 and a hazardous waste supervisor training course as  
19 prescribed under 29 C.F.R. 1926.65; and

20 (ii) a training program that is approved by and  
21 registered with the United States Department of  
22 Labor's Employment and Training Administration and  
23 that includes instruction in the operation of heavy  
24 equipment and excavation.

25 For purposes of this Section, "contractors,  
26 subcontractors, and installers" shall not apply to

1 construction-related professional services.  
2 "Construction-related professional services" includes, but is  
3 not limited to, those services within the scope of: the  
4 practice of architecture as defined in Section 4 of the  
5 Illinois Architecture Practice Act of 1989; professional  
6 engineering as defined in Section 4 of the Professional  
7 Engineering Practice Act of 1989; the practice of a structural  
8 engineer under the Structural Engineering Practice Act of 1989;  
9 or land surveying under the Illinois Professional Land Surveyor  
10 Act of 1989.

11 (h) Any owner of a CCR surface impoundment that generates  
12 CCR and sells or otherwise provides coal combustion byproducts  
13 pursuant to Section 3.135 of this Act shall, every 12 months,  
14 post on its publicly available website a report specifying the  
15 volume or weight of CCR, in cubic yards or tons, that it sold  
16 or provided during the past 12 months.

17 (i) The owner of a CCR surface impoundment shall post all  
18 closure plans, permit applications, and supporting  
19 documentation, as well as any Agency approval of the plans or  
20 applications on its publicly available website.

21 (j) The owner or operator of a CCR surface impoundment  
22 shall pay the following fees:

23 (1) An initial fee to the Agency within 6 months after  
24 July 30, 2019 (the effective date of Public Act 101-171)  
25 ~~this amendatory Act of the 101st General Assembly~~ of:

26 \$50,000 for each closed CCR surface impoundment;

1           and

2                 \$75,000 for each CCR surface impoundment that have  
3           not completed closure.

4           (2) Annual fees to the Agency, beginning on July 1,  
5           2020, of:

6                 \$25,000 for each CCR surface impoundment that has  
7           not completed closure; and

8                 \$15,000 for each CCR surface impoundment that has  
9           completed closure, but has not completed post-closure  
10          care.

11          (k) All fees collected by the Agency under subsection (j)  
12          shall be deposited into the Environmental Protection Permit and  
13          Inspection Fund.

14          (l) The Coal Combustion Residual Surface Impoundment  
15          Financial Assurance Fund is created as a special fund in the  
16          State treasury. Any moneys forfeited to the State of Illinois  
17          from any performance bond or other security required under this  
18          Section shall be placed in the Coal Combustion Residual Surface  
19          Impoundment Financial Assurance Fund and shall, upon approval  
20          by the Governor and the Director, be used by the Agency for the  
21          purposes for which such performance bond or other security was  
22          issued. The Coal Combustion Residual Surface Impoundment  
23          Financial Assurance Fund is not subject to the provisions of  
24          subsection (c) of Section 5 of the State Finance Act.

25          (m) The provisions of this Section shall apply, without  
26          limitation, to all existing CCR surface impoundments and any

1 CCR surface impoundments constructed after July 30, 2019 (the  
2 effective date of Public Act 101-171) ~~this amendatory Act of~~  
3 ~~the 101st General Assembly~~, except to the extent prohibited by  
4 the Illinois or United States Constitutions.

5 (Source: P.A. 101-171, eff. 7-30-19; revised 10-22-19.)

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law."