



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB5825

Introduced 08/22/06, by Rep. Chapin Rose

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Clean-Coal Project Indemnification Act. Requires the Attorney General to appear and defend an operator of a clean-coal project in civil proceedings commenced against the operator arising from the escape or migration of injected carbon dioxide. Sets forth requirements and procedures for the representation. Requires the State to indemnify the operator unless the conduct or inaction that gave rise to the claim or cause of action was intentional, wilful, or wanton misconduct. Effective immediately.

LRB094 21311 BDD 59671 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning energy.

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

4 Section 1. Short title. This Act may be cited as the  
5 Clean-Coal Project Indemnification Act.

6 Section 5. Definitions. As used in this Act:

7 "Clean-coal project" means the installation of one or more  
8 components of the coal-based integrated sequestration and  
9 hydrogen research project to be built in partnership with the  
10 United States Department of Energy, commonly referred to as the  
11 FutureGen project.

12 "Injected carbon dioxide" means carbon dioxide that is  
13 generated from a clean-coal project, captured, and injected,  
14 for storage, into an underground geologic formation, stratum,  
15 reservoir, or cavern.

16 "Operator" means any person or entity operating a  
17 clean-coal project and that person's or entity's employees and  
18 agents.

19 Section 10. Representation and indemnification by the  
20 State.

21 (a) If a civil proceeding is commenced against an operator  
22 arising from the escape or migration of injected carbon  
23 dioxide, then the Attorney General shall, upon timely and  
24 appropriate notice by the operator, appear on behalf of the  
25 operator and defend the action. Any such notice must be in  
26 writing, must be mailed within 15 days after the date of  
27 receipt by the operator of service of process, and must  
28 authorize the Attorney General to represent and defend the  
29 operator in the proceeding. The giving of this notice to the  
30 Attorney General constitutes an agreement by the operator to  
31 cooperate with the Attorney General in his or her defense of

1 the action and a consent that the Attorney General shall  
2 conduct the defense as he or she deems advisable and in the  
3 best interests of the operator, including settlement in the  
4 Attorney General's discretion. In any such proceeding, the  
5 State shall pay the court costs and litigation expenses of  
6 defending the action, to the extent approved by the Attorney  
7 General as reasonable, as they are incurred.

8 (b) If the Attorney General determines that so appearing  
9 and defending an operator either (i) involves an actual or  
10 potential conflict of interest or (ii) that the act or omission  
11 that gave rise to the claim was not within the scope of the  
12 escape or migration of injected carbon dioxide or was  
13 intentional, wilful, or wanton misconduct, then the Attorney  
14 General shall decline in writing to appear or defend or shall  
15 promptly take appropriate action to withdraw as attorney for  
16 the operator.

17 Upon receipt of such a declination or withdrawal by the  
18 Attorney General on the basis of an actual or potential  
19 conflict of interest, the operator may employ his or her own  
20 attorney to appear and defend, in which event the State shall  
21 pay the operator's court costs, litigation expenses, and  
22 attorneys' fees to the extent approved by the Attorney General  
23 as reasonable, as they are incurred.

24 In the event that the Attorney General declines to appear  
25 or withdraws on the grounds that the act or omission was not  
26 within the scope of the escape or migration of injected carbon  
27 dioxide or was intentional, wilful, or wanton misconduct, and a  
28 court or jury finds that the act or omission of the operator  
29 was within the scope of the escape or migration of injected  
30 carbon dioxide and was not intentional, wilful, or wanton  
31 misconduct, the State shall indemnify the operator for any  
32 damages awarded and court costs and attorneys' fees assessed as  
33 part of any final and unreversed judgment. In such event the  
34 State shall also pay the operator's court costs, litigation  
35 expenses, and attorneys' fees to the extent approved by the  
36 Attorney General as reasonable.

1 (c) The Attorney General may file a counterclaim on behalf  
2 of an operator if:

3 (1) the Attorney General determines that the operator  
4 is entitled to representation in a civil action under this  
5 Section;

6 (2) the counterclaim arises out of any act or omission  
7 occurring within the scope of the operation of a clean-coal  
8 project that is the subject of the civil action; and

9 (3) the operator agrees in writing that if judgment is  
10 entered in favor of the operator, the amount of the  
11 judgment will be applied to offset any judgment that may be  
12 entered in favor of the plaintiff, and then to reimburse  
13 the State treasury for court costs and litigation expenses  
14 required to pursue the counterclaim. The balance of the  
15 collected judgment shall be paid to the operator.

16 (d) In any such proceeding where notice in accordance with  
17 this Section has been given to the Attorney General, unless the  
18 court or jury finds that the conduct or inaction that gave rise  
19 to the claim or cause of action was intentional, wilful, or  
20 wanton misconduct, the State shall indemnify the operator for  
21 any damages awarded and court costs and attorneys' fees  
22 assessed as part of any final and unreversed judgment or shall  
23 pay the judgment.

24 Unless the Attorney General determines that the conduct or  
25 inaction that gave rise to the claim or cause of action was  
26 intentional, wilful, or wanton misconduct, the case may be  
27 settled, in the Attorney General's discretion and with the  
28 operator's consent, and the State shall indemnify the operator  
29 for any damages, court costs, and attorneys' fees agreed to as  
30 part of the settlement or shall pay such settlement. Where the  
31 operator is represented by private counsel, any settlement must  
32 be so approved by the Attorney General and the court having  
33 jurisdiction, which obligates the State to indemnify the  
34 operator.

35 (e) Court costs and litigation expenses and other costs of  
36 providing a defense or counterclaim, including attorneys' fees

1 obligated under this Section, shall be paid from the State  
2 treasury on the warrant of the Comptroller out of  
3 appropriations made to the Attorney General specifically  
4 designed for the payment of costs, fees, and expenses covered  
5 by this Section.

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