



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB3190

Introduced 11/14/2006, by Sen. Dale A. Righter

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 21276 BDD 59667 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.