



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1135

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.

LRB095 03560 BDD 23564 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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

1 dioxide, then the Attorney General shall, upon timely and
2 appropriate notice by the operator, appear on behalf of the
3 operator and defend the action. Any such notice must be in
4 writing, must be mailed within 15 days after the date of
5 receipt by the operator of service of process, and must
6 authorize the Attorney General to represent and defend the
7 operator in the proceeding. The giving of this notice to the
8 Attorney General constitutes an agreement by the operator to
9 cooperate with the Attorney General in his or her defense of
10 the action and a consent that the Attorney General shall
11 conduct the defense as he or she deems advisable and in the
12 best interests of the operator, including settlement in the
13 Attorney General's discretion. In any such proceeding, the
14 State shall pay the court costs and litigation expenses of
15 defending the action, to the extent approved by the Attorney
16 General as reasonable, as they are incurred.

17 (b) If the Attorney General determines that so appearing
18 and defending an operator either (i) involves an actual or
19 potential conflict of interest or (ii) that the act or omission
20 that gave rise to the claim was not within the scope of the
21 escape or migration of injected carbon dioxide or was
22 intentional, wilful, or wanton misconduct, then the Attorney
23 General shall decline in writing to appear or defend or shall
24 promptly take appropriate action to withdraw as attorney for
25 the operator.

26 Upon receipt of such a declination or withdrawal by the

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

7 In the event that the Attorney General declines to appear
8 or withdraws on the grounds that the act or omission was not
9 within the scope of the escape or migration of injected carbon
10 dioxide or was intentional, wilful, or wanton misconduct, and a
11 court or jury finds that the act or omission of the operator
12 was within the scope of the escape or migration of injected
13 carbon dioxide and was not intentional, wilful, or wanton
14 misconduct, the State shall indemnify the operator for any
15 damages awarded and court costs and attorneys' fees assessed as
16 part of any final and unreversed judgment. In such event the
17 State shall also pay the operator's court costs, litigation
18 expenses, and attorneys' fees to the extent approved by the
19 Attorney General as reasonable.

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

22 (1) the Attorney General determines that the operator
23 is entitled to representation in a civil action under this
24 Section;

25 (2) the counterclaim arises out of any act or omission
26 occurring within the scope of the operation of a clean-coal

1 project that is the subject of the civil action; and

2 (3) the operator agrees in writing that if judgment is
3 entered in favor of the operator, the amount of the
4 judgment will be applied to offset any judgment that may be
5 entered in favor of the plaintiff, and then to reimburse
6 the State treasury for court costs and litigation expenses
7 required to pursue the counterclaim. The balance of the
8 collected judgment shall be paid to the operator.

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

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

1 operator.

2 (e) Court costs and litigation expenses and other costs of
3 providing a defense or counterclaim, including attorneys' fees
4 obligated under this Section, shall be paid from the State
5 treasury on the warrant of the Comptroller out of
6 appropriations made to the Attorney General specifically
7 designed for the payment of costs, fees, and expenses covered
8 by this Section.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.