



Rep. Jay C. Hoffman

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1 AMENDMENT TO SENATE BILL 1704

2 AMENDMENT NO. _____. Amend Senate Bill 1704 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Clean
5 Coal FutureGen for Illinois Act.

6 Section 5. Purpose. Recognizing that the FutureGen Project
7 is a first-of-a-kind research project to permanently sequester
8 underground carbon-dioxide emissions from a coal-fueled power
9 plant, and that such a project would have benefits to the
10 economy and environment of Illinois, the purpose of this Act is
11 to provide the FutureGen Alliance with adequate liability
12 protection and permitting certainty to facilitate the siting of
13 the FutureGen Project in the State of Illinois.

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

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

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

10 (3) carbon capture and storage is a low-carbon technology
11 that involves capturing the carbon dioxide from fossil fuel
12 energy and hydrogen generating units and injecting it into
13 secure geologic strata for permanent storage;

14 (4) the FutureGen Project is a public-private partnership
15 between the Federal Department of Energy and the FutureGen
16 Alliance that proposes to use this new technology as part of a
17 plan to build and operate a near zero emission coal fueled
18 power plant;

19 (5) the FutureGen Project will help ensure the long-term
20 viability of Illinois Basin coal as a major energy source in
21 the State of Illinois and throughout the nation and represents
22 a significant step in the State of Illinois' efforts to become
23 a self-sufficient, clean energy producer;

24 (6) the FutureGen Project provides an opportunity for the
25 State of Illinois to partner with the Federal Department of
26 Energy and the FutureGen Alliance in the development of these

1 innovative clean-coal technologies;

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

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

13 (9) the FutureGen Project and the property necessary for
14 the FutureGen Project serve a substantial public purpose as its
15 coal gasification, electricity generation, hydrogen
16 production, advanced emissions control and carbon capture and
17 storage technologies will benefit the citizens of the State of
18 Illinois.

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

20 "Agency" means the Illinois Environmental Protection
21 Agency.

22 "Carbon capture and storage" means the process of capturing
23 CO2 and other chemical constituents from coal combustion
24 by-products for the purpose of injecting and storing the gas
25 for permanent storage.

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

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

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

8 "Federal Department" means the federal Department of
9 Energy.

10 "FutureGen Alliance" is a 501(c)(3) non-profit consortium
11 of coal and energy producers that, as of the effective date of
12 this Act, includes American Electric Power, Anglo American plc,
13 BHP Billiton, E. ON US, China Huaneng Group, CONSOL Energy,
14 Foundation Coal, Kennecott Energy, Peabody Energy, PPL
15 Corporation, Rio Tinto Energy American, Southern Company, and
16 Xstrata Coal.

17 "FutureGen Project" means the public-private partnership
18 between the Federal Department and the FutureGen Alliance that
19 will construct and operate a coal-fueled power plant utilizing
20 state-of-the-art clean-coal technology and carbon capture and
21 storage. Two locations in Illinois, Tuscola and Mattoon, are
22 under consideration for the FutureGen Project. These are the
23 only locations eligible for benefits under this Act.

24 "Mount Simon Formation" means the deep sandstone reservoir
25 into which the sequestered gas is to be injected at depths
26 generally ranging between 5,500 and 8,500 feet below ground

1 surface and that is bounded by the granitic basement below and
2 the Eau Claire Shale above.

3 "Operator" means the FutureGen Alliance and its member
4 companies, including their parent companies, subsidiaries,
5 affiliates, directors, officers, employees, and agents.

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

10 "Pre-injection" means all activities and occurrences prior
11 to successful delivery into the wellhead at the point at which
12 the gas is transferred into the wellbore for carbon
13 sequestration and storage into the Mt. Simon Formation,
14 including but not limited to, the operation of the FutureGen
15 Project.

16 "Public liability" means any civil legal liability arising
17 out of or resulting from the storage, escape, release, or
18 migration of the post-injection sequestered gas that was
19 injected during the operation of the FutureGen Project by the
20 FutureGen Alliance. The term "public liability", however, does
21 not include any legal liability arising out of or resulting
22 from the construction, operation, or other pre-injection
23 activity of the Operator.

24 "Public liability action" or "action" means a written
25 demand, lawsuit, or claim from any third party received by the
26 Operator seeking a remedy or alleging liability on behalf of

1 Operator resulting from any public liability.

2 "Sequestered gas" means the CO2 and other chemical
3 constituents from the FutureGen Project operations that are
4 injected into the Mount Simon Formation.

5 Section 20. Title to sequestered gas. If the FutureGen
6 Project locates at either the Tuscola or Mattoon site in the
7 State of Illinois, then the FutureGen Alliance agrees that the
8 Operator shall transfer and convey and the State of Illinois
9 shall accept and receive, with no payment due from the State of
10 Illinois, all rights, title, and interest in and to and any
11 liabilities associated with the sequestered gas, including any
12 current or future environmental benefits, marketing claims,
13 tradable credits, emissions allocations or offsets (voluntary
14 or compliance based) associated therewith, upon such gas
15 reaching the status of post-injection, which shall be verified
16 by the Agency or other designated State of Illinois agency. The
17 Operator shall retain all rights, title, and interest in and to
18 and any liabilities associated with the pre-injection
19 sequestered gas. The Illinois State Geological Survey of the
20 Illinois Department of Natural Resources shall monitor,
21 measure, and verify the permanent status of sequestered carbon
22 dioxide and co-sequestered gases in which the State has
23 acquired the right, title, and interest under this Section.

24 Section 23. Sequestered gas. The State of Illinois may not

1 intentionally remove sequestered gas unless the removal is for
2 the purpose of research and development.

3 Section 25. Insurance against qualified losses.

4 (a) The Department shall procure an insurance policy from a
5 private insurance carrier or carriers, if and to the extent
6 that such a policy is available, that insures the Operator
7 against any qualified loss stemming from a public liability
8 action. The policy must be procured in accordance with the
9 provisions of the Procurement Code.

10 (b) Pursuant to Section 30 of this Act, the State shall
11 indemnify the Operator against any qualified loss stemming from
12 a public liability action to the extent that the qualified loss
13 is not covered under an insurance policy under subsection (a)
14 of this Section.

15 (c) The Department shall pay any insurance premium,
16 deductible, or liability under subsections (a) or (b) from
17 appropriations by the General Assembly for that purpose. It is
18 the intent of this Act that, to the extent practical, any
19 unexpended balance of the proceeds from the sale of emission
20 reduction rights or tradable credits to which the State has
21 title under Section 20 should be used for the purposes of this
22 subsection (c).

23 (d) If the FutureGen Alliance locates the FutureGen Project
24 at either the Mattoon or Tuscola site in the State of Illinois,
25 then the Department shall be authorized to contract with the

1 FutureGen Alliance, under terms not inconsistent with this Act,
2 in order to define the rights and obligations of the FutureGen
3 Alliance and the Department, including but not limited to, the
4 insurance and indemnification obligations under Sections 25
5 and 30 of this Act.

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

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

14 (1) the intentional or willful misconduct of the
15 Operator in its operation of the FutureGen Project;

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

22 (3) the pre-injection operation of the FutureGen
23 Project.

24 Section 30. Indemnification. Notwithstanding any law to
25 the contrary, the State of Illinois shall indemnify, hold

1 harmless, defend, and release the Operator from and against any
2 public liability action asserted against the Operator, subject
3 to the following terms and conditions:

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

7 (1) the intentional or willful misconduct of the
8 Operator in its operation of the FutureGen Project;

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

15 (3) the pre-injection operation of the FutureGen
16 Project; or

17 (4) a qualified loss to the extent that it is paid
18 under an insurance policy under subsection (a) of Section
19 25 of this Act.

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

25 Section 35. Representation. In furtherance of the State of

1 Illinois' obligations set forth in subsection (b) of Section 25
2 and in Section 30 of this Act, the Attorney General has the
3 following duties:

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

26 (b) In the event that the Attorney General determines

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

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

21 (d) Court costs and litigation expenses and other costs of
22 providing a defense, including attorneys' fees, paid or
23 obligated under this Section, and the costs of indemnification,
24 including the payment of any final judgment or final settlement
25 under this Section, must be paid by warrant from appropriations
26 to the Department pursuant to vouchers certified by the

1 Attorney General.

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

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

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

1 Section 43. Tax exemption. An operator is exempt from any
2 tax imposed by the State of Illinois that is based upon the
3 nameplate capacity of generating units.

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

8 Section 50. Jurisdiction. The Court of Claims has no
9 jurisdiction concerning any public liability action under this
10 Act or from the operation of the FutureGen Project. A public
11 liability action must be brought in the circuit court, which is
12 hereby granted jurisdiction over these matters. The
13 jurisdiction over civil, administrative, or other legal
14 processes is not, otherwise, affected by this Act.

15 Section 900. The Department of Commerce and Economic
16 Opportunity Law of the Civil Administrative Code of Illinois is
17 amended by changing Section 605-332 as follows:

18 (20 ILCS 605/605-332)

19 Sec. 605-332. Financial assistance to energy generation
20 facilities.

21 (a) As used in this Section:

22 "New electric generating facility" means a

1 newly-constructed electric generation plant or a newly
2 constructed generation capacity expansion at an existing
3 facility, including the transmission lines and associated
4 equipment that transfers electricity from points of supply to
5 points of delivery, and for which foundation construction
6 commenced not sooner than July 1, 2001, which is designed to
7 provide baseload electric generation operating on a continuous
8 basis throughout the year and:

9 (1) has an aggregate rated generating capacity of at
10 least 400 megawatts for all new units at one site, uses
11 coal or gases derived from coal as its primary fuel source,
12 and supports the creation of at least 150 new Illinois coal
13 mining jobs; or

14 (2) is funded through a federal Department of Energy
15 grant before December 31, 2010 ~~2007~~ and supports the
16 creation of Illinois coal-mining jobs; or

17 (3) uses coal gasification or integrated
18 gasification-combined cycle units that generate
19 electricity or chemicals, or both, and supports the
20 creation of Illinois coal-mining jobs.

21 "New gasification facility" means a newly constructed coal
22 gasification facility that generates chemical feedstocks or
23 transportation fuels derived from coal (which may include, but
24 are not limited to, methane, methanol, and nitrogen
25 fertilizer), that supports the creation or retention of
26 Illinois coal-mining jobs, and that qualifies for financial

1 assistance from the Department before December 31, 2010 ~~2006~~. A
2 new gasification facility does not include a pilot project
3 located within Jefferson County or within a county adjacent to
4 Jefferson County for synthetic natural gas from coal.

5 "New facility" means a new electric generating facility or
6 a new gasification facility. A new facility does not include a
7 pilot project located within Jefferson County or within a
8 county adjacent to Jefferson County for synthetic natural gas
9 from coal.

10 "Eligible business" means an entity that proposes to
11 construct a new facility and that has applied to the Department
12 to receive financial assistance pursuant to this Section. With
13 respect to use and occupation taxes, wherever there is a
14 reference to taxes, that reference means only those taxes paid
15 on Illinois-mined coal used in a new facility.

16 "Department" means the Illinois Department of Commerce and
17 Economic Opportunity.

18 (b) The Department is authorized to provide financial
19 assistance to eligible businesses for new facilities from funds
20 appropriated by the General Assembly as further provided in
21 this Section.

22 An eligible business seeking qualification for financial
23 assistance for a new facility, for purposes of this Section
24 only, shall apply to the Department in the manner specified by
25 the Department. Any projections provided by an eligible
26 business as part of the application shall be independently

1 verified in a manner as set forth by the Department. An
2 application shall include, but not be limited to:

3 (1) the projected or actual completion date of the new
4 facility for which financial assistance is sought;

5 (2) copies of documentation deemed acceptable by the
6 Department establishing either (i) the total State
7 occupation and use taxes paid on Illinois-mined coal used
8 at the new facility for a minimum of 4 preceding calendar
9 quarters or (ii) the projected amount of State occupation
10 and use taxes paid on Illinois-mined coal used at the new
11 facility in 4 calendar year quarters after completion of
12 the new facility. Bond proceeds subject to this Section
13 shall not be allocated to an eligible business until the
14 eligible business has demonstrated the revenue stream
15 sufficient to service the debt on the bonds; and

16 (3) the actual or projected amount of capital
17 investment by the eligible business in the new facility.

18 The Department shall determine the maximum amount of
19 financial assistance for eligible businesses in accordance
20 with this paragraph. The Department shall not provide financial
21 assistance from general obligation bond funds to any eligible
22 business unless it receives a written certification from the
23 Director of the Bureau of the Budget (now Governor's Office of
24 Management and Budget) that 80% of the State occupation and use
25 tax receipts for a minimum of the preceding 4 calendar quarters
26 for all eligible businesses or as included in projections on

1 approved applications by eligible businesses equal or exceed
2 110% of the maximum annual debt service required with respect
3 to general obligation bonds issued for that purpose. The
4 Department may provide financial assistance not to exceed the
5 amount of State general obligation debt calculated as above,
6 the amount of actual or projected capital investment in the
7 facility, or \$100,000,000, whichever is less. Financial
8 assistance received pursuant to this Section may be used for
9 capital facilities consisting of buildings, structures,
10 durable equipment, and land at the new facility. Subject to the
11 provisions of the agreement covering the financial assistance,
12 a portion of the financial assistance may be required to be
13 repaid to the State if certain conditions for the governmental
14 purpose of the assistance were not met.

15 An eligible business shall file a monthly report with the
16 Illinois Department of Revenue stating the amount of
17 Illinois-mined coal purchased during the previous month for use
18 in the new facility, the purchase price of that coal, the
19 amount of State occupation and use taxes paid on that purchase
20 to the seller of the Illinois-mined coal, and such other
21 information as that Department may reasonably require. In sales
22 of Illinois-mined coal between related parties, the purchase
23 price of the coal must have been determined in an arms-length
24 transaction. The report shall be filed with the Illinois
25 Department of Revenue on or before the 20th day of each month
26 on a form provided by that Department. However, no report need

1 be filed by an eligible business in a month when it made no
2 reportable purchases of coal in the previous month. The
3 Illinois Department of Revenue shall provide a summary of such
4 reports to the Governor's Office of Management and Budget.

5 Upon granting financial assistance to an eligible
6 business, the Department shall certify the name of the eligible
7 business to the Illinois Department of Revenue. Beginning with
8 the receipt of the first report of State occupation and use
9 taxes paid by an eligible business and continuing for a 25-year
10 period, the Illinois Department of Revenue shall each month pay
11 into the Energy Infrastructure Fund 80% of the net revenue
12 realized from the 6.25% general rate on the selling price of
13 Illinois-mined coal that was sold to an eligible business.

14 (Source: P.A. 93-167, eff. 7-10-03; 93-1064, eff. 1-13-05;
15 94-65, eff. 6-21-05; 94-1030, eff. 7-14-06.)

16 Section 905. The Illinois Enterprise Zone Act is amended by
17 changing Section 5.5 as follows:

18 (20 ILCS 655/5.5) (from Ch. 67 1/2, par. 609.1)

19 Sec. 5.5. High Impact Business.

20 (a) In order to respond to unique opportunities to assist
21 in the encouragement, development, growth and expansion of the
22 private sector through large scale investment and development
23 projects, the Department is authorized to receive and approve
24 applications for the designation of "High Impact Businesses" in

1 Illinois subject to the following conditions:

2 (1) such applications may be submitted at any time
3 during the year;

4 (2) such business is not located, at the time of
5 designation, in an enterprise zone designated pursuant to
6 this Act;

7 (3) the business intends to do one or more of the
8 following:

9 (A) the business intends to make a minimum
10 investment of \$12,000,000 which will be placed in
11 service in qualified property and intends to create 500
12 full-time equivalent jobs at a designated location in
13 Illinois or intends to make a minimum investment of
14 \$30,000,000 which will be placed in service in
15 qualified property and intends to retain 1,500
16 full-time jobs at a designated location in Illinois.
17 The business must certify in writing that the
18 investments would not be placed in service in qualified
19 property and the job creation or job retention would
20 not occur without the tax credits and exemptions set
21 forth in subsection (b) of this Section. The terms
22 "placed in service" and "qualified property" have the
23 same meanings as described in subsection (h) of Section
24 201 of the Illinois Income Tax Act; or

25 (B) the business intends to establish a new
26 electric generating facility at a designated location

1 in Illinois. "New electric generating facility", for
2 purposes of this Section, means a newly-constructed
3 electric generation plant or a newly-constructed
4 generation capacity expansion at an existing electric
5 generation plant, including the transmission lines and
6 associated equipment that transfers electricity from
7 points of supply to points of delivery, and for which
8 such new foundation construction commenced not sooner
9 than July 1, 2001. Such facility shall be designed to
10 provide baseload electric generation and shall operate
11 on a continuous basis throughout the year; and (i)
12 shall have an aggregate rated generating capacity of at
13 least 1,000 megawatts for all new units at one site if
14 it uses natural gas as its primary fuel and foundation
15 construction of the facility is commenced on or before
16 December 31, 2004, or shall have an aggregate rated
17 generating capacity of at least 400 megawatts for all
18 new units at one site if it uses coal or gases derived
19 from coal as its primary fuel and shall support the
20 creation of at least 150 new Illinois coal mining jobs,
21 or (ii) shall be funded through a federal Department of
22 Energy grant before December 31, 2010 ~~July 1, 2006~~ and
23 shall support the creation of Illinois coal-mining
24 jobs, or (iii) shall use coal gasification or
25 integrated gasification-combined cycle units that
26 generate electricity or chemicals, or both, and shall

1 support the creation of Illinois coal-mining jobs. The
2 business must certify in writing that the investments
3 necessary to establish a new electric generating
4 facility would not be placed in service and the job
5 creation in the case of a coal-fueled plant would not
6 occur without the tax credits and exemptions set forth
7 in subsection (b-5) of this Section. The term "placed
8 in service" has the same meaning as described in
9 subsection (h) of Section 201 of the Illinois Income
10 Tax Act; or

11 (B-5) the business intends to establish a new
12 gasification facility at a designated location in
13 Illinois. As used in this Section, "new gasification
14 facility" means a newly constructed coal gasification
15 facility that generates chemical feedstocks or
16 transportation fuels derived from coal (which may
17 include, but are not limited to, methane, methanol, and
18 nitrogen fertilizer), that supports the creation or
19 retention of Illinois coal-mining jobs, and that
20 qualifies for financial assistance from the Department
21 before December 31, 2010 ~~2006~~. A new gasification
22 facility does not include a pilot project located
23 within Jefferson County or within a county adjacent to
24 Jefferson County for synthetic natural gas from coal;
25 or

26 (C) the business intends to establish production

1 operations at a new coal mine, re-establish production
2 operations at a closed coal mine, or expand production
3 at an existing coal mine at a designated location in
4 Illinois not sooner than July 1, 2001; provided that
5 the production operations result in the creation of 150
6 new Illinois coal mining jobs as described in
7 subdivision (a)(3)(B) of this Section, and further
8 provided that the coal extracted from such mine is
9 utilized as the predominant source for a new electric
10 generating facility. The business must certify in
11 writing that the investments necessary to establish a
12 new, expanded, or reopened coal mine would not be
13 placed in service and the job creation would not occur
14 without the tax credits and exemptions set forth in
15 subsection (b-5) of this Section. The term "placed in
16 service" has the same meaning as described in
17 subsection (h) of Section 201 of the Illinois Income
18 Tax Act; or

19 (D) the business intends to construct new
20 transmission facilities or upgrade existing
21 transmission facilities at designated locations in
22 Illinois, for which construction commenced not sooner
23 than July 1, 2001. For the purposes of this Section,
24 "transmission facilities" means transmission lines
25 with a voltage rating of 115 kilovolts or above,
26 including associated equipment, that transfer

1 electricity from points of supply to points of delivery
2 and that transmit a majority of the electricity
3 generated by a new electric generating facility
4 designated as a High Impact Business in accordance with
5 this Section. The business must certify in writing that
6 the investments necessary to construct new
7 transmission facilities or upgrade existing
8 transmission facilities would not be placed in service
9 without the tax credits and exemptions set forth in
10 subsection (b-5) of this Section. The term "placed in
11 service" has the same meaning as described in
12 subsection (h) of Section 201 of the Illinois Income
13 Tax Act; and

14 (4) no later than 90 days after an application is
15 submitted, the Department shall notify the applicant of the
16 Department's determination of the qualification of the
17 proposed High Impact Business under this Section.

18 (b) Businesses designated as High Impact Businesses
19 pursuant to subdivision (a) (3) (A) of this Section shall qualify
20 for the credits and exemptions described in the following Acts:
21 Section 9-222 and Section 9-222.1A of the Public Utilities Act,
22 subsection (h) of Section 201 of the Illinois Income Tax Act,
23 and Section 1d of the Retailers' Occupation Tax Act; provided
24 that these credits and exemptions described in these Acts shall
25 not be authorized until the minimum investments set forth in
26 subdivision (a) (3) (A) of this Section have been placed in

1 service in qualified properties and, in the case of the
2 exemptions described in the Public Utilities Act and Section 1d
3 of the Retailers' Occupation Tax Act, the minimum full-time
4 equivalent jobs or full-time jobs set forth in subdivision
5 (a)(3)(A) of this Section have been created or retained.
6 Businesses designated as High Impact Businesses under this
7 Section shall also qualify for the exemption described in
8 Section 51 of the Retailers' Occupation Tax Act. The credit
9 provided in subsection (h) of Section 201 of the Illinois
10 Income Tax Act shall be applicable to investments in qualified
11 property as set forth in subdivision (a)(3)(A) of this Section.

12 (b-5) Businesses designated as High Impact Businesses
13 pursuant to subdivisions (a)(3)(B), (a)(3)(B-5), (a)(3)(C),
14 and (a)(3)(D) of this Section shall qualify for the credits and
15 exemptions described in the following Acts: Section 51 of the
16 Retailers' Occupation Tax Act, Section 9-222 and Section
17 9-222.1A of the Public Utilities Act, and subsection (h) of
18 Section 201 of the Illinois Income Tax Act; however, the
19 credits and exemptions authorized under Section 9-222 and
20 Section 9-222.1A of the Public Utilities Act, and subsection
21 (h) of Section 201 of the Illinois Income Tax Act shall not be
22 authorized until the new electric generating facility, the new
23 gasification facility, the new transmission facility, or the
24 new, expanded, or reopened coal mine is operational, except
25 that a new electric generating facility whose primary fuel
26 source is natural gas is eligible only for the exemption under

1 Section 51 of the Retailers' Occupation Tax Act.

2 (c) High Impact Businesses located in federally designated
3 foreign trade zones or sub-zones are also eligible for
4 additional credits, exemptions and deductions as described in
5 the following Acts: Section 9-221 and Section 9-222.1 of the
6 Public Utilities Act; and subsection (g) of Section 201, and
7 Section 203 of the Illinois Income Tax Act.

8 (d) Existing Illinois businesses which apply for
9 designation as a High Impact Business must provide the
10 Department with the prospective plan for which 1,500 full-time
11 jobs would be eliminated in the event that the business is not
12 designated.

13 (e) New proposed facilities which apply for designation as
14 High Impact Business must provide the Department with proof of
15 alternative non-Illinois sites which would receive the
16 proposed investment and job creation in the event that the
17 business is not designated as a High Impact Business.

18 (f) In the event that a business is designated a High
19 Impact Business and it is later determined after reasonable
20 notice and an opportunity for a hearing as provided under the
21 Illinois Administrative Procedure Act, that the business would
22 have placed in service in qualified property the investments
23 and created or retained the requisite number of jobs without
24 the benefits of the High Impact Business designation, the
25 Department shall be required to immediately revoke the
26 designation and notify the Director of the Department of

1 Revenue who shall begin proceedings to recover all wrongfully
2 exempted State taxes with interest. The business shall also be
3 ineligible for all State funded Department programs for a
4 period of 10 years.

5 (g) The Department shall revoke a High Impact Business
6 designation if the participating business fails to comply with
7 the terms and conditions of the designation.

8 (h) Prior to designating a business, the Department shall
9 provide the members of the General Assembly and Commission on
10 Government Forecasting and Accountability with a report
11 setting forth the terms and conditions of the designation and
12 guarantees that have been received by the Department in
13 relation to the proposed business being designated.

14 (Source: P.A. 93-1064, eff. 1-13-05; 93-1067, eff. 1-15-05;
15 94-65, eff. 6-21-05.)

16 Section 910. The Court of Claims Act is amended by adding
17 Section 8.5 as follows:

18 (705 ILCS 505/8.5 new)

19 Sec. 8.5. No jurisdiction over liability of certain
20 clean-coal operations. The Court of Claims has no jurisdiction
21 concerning any public liability action, as defined in the Clean
22 Coal FutureGen for Illinois Act, or from the operation of the
23 FutureGen Project. A public liability action, as defined under
24 Section 15 of the Clean Coal FutureGen for Illinois Act, must

1 be brought in the circuit court.

2 Section 915. The State Lawsuit Immunity Act is amended by
3 changing Section 1 as follows:

4 (745 ILCS 5/1) (from Ch. 127, par. 801)

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

11 (Source: P.A. 93-414, eff. 1-1-04; 93-615, eff. 11-19-03;
12 revised 12-19-03.)

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

15 Section 998. Repeal. This Act is repealed on December 31,
16 2010 unless the FutureGen Project has been located at either
17 the Mattoon or Tuscola site in Illinois.

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