Executive Committee

Filed: 3/19/2009

AMENDMENT TO HOUSE BILL 3668

AMENDMENT NO. ______. Amend House Bill 3668 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Climate Action and Clean Energy Investment Act of 2009.

Section 5. Legislative findings.

(a) The General Assembly finds that:

(1) The Intergovernmental Panel on Climate Change has concluded that it is "unequivocal" that the Earth's climate is already warming and that most of the warming is due to the burning of fossil fuels and other human activities.

(2) Warning signs of global warming are being discovered and reported throughout the world. Melting glaciers, severe storms, prolonged drought, reduced mountain snow-pack, and dying coral reefs are among the signs that global warming is underway.

(3) Decisive action at the international, national, state, and local levels to address the threat of global warming is necessary to meet the challenge posed by global warming.

(4) Illinois businesses and industry will benefit from proactive policies that make the State competitive as the world's economy shifts from high-carbon to low-carbon energy technologies.

(5) By exercising a global leadership role, Illinois will position its economy, technology centers, and financial institutions to benefit from the new low-carbon economy, with millions of "green jobs" expected to be created from the next generation of industries that produce and sell alternative fuels, export renewable energy, design high-tech energy efficiency solutions, and sell carbon emission reduction credits.

(6) Many of the clean energy policies that reduce global warming pollution also provide economic and quality of life benefits such as reduced energy bills, green space preservation, air quality improvements, reduced traffic congestion, improved transportation choices, and economic development and job creation through the application of energy conservation and new energy technologies.

(7) In the absence of a federal policy, states and cities are establishing their own plans to reduce carbon dioxide emissions. For example, 8 northeastern states

began a regional cap and trade program this year to reduce greenhouse gas emissions from their electric power industry. Ten western states have adopted a regional cap and trade plan to reduce GHG emissions from power plants, transportation fuels, building energy use, and industrial sources. Thirteen states have adopted automobile standards to address global warming.

(8) The mayors of more than 376 U.S. cities, including Richard M. Daley of Chicago, Ross Ferraro of Carol Stream, Michael Belsky of Highland Park, Al Larson of Schaumburg, and Richard Hyde of Waukegan have signed the U.S. Mayors Climate Protection Agreement, pledging, among other things, to meet the Kyoto Protocol goal of reducing greenhouse emissions in those cities to 1990 levels by 2012.

(9) A market-based cap and invest program holds great promise to help Illinois reduce greenhouse gas emissions in a cost-effective manner. The cap and invest program is best pursued in cooperation with other states, particularly Midwestern states. The interests of the public are best served by a cap and invest program that is as broad, simple, predictable, equitable, and transparent as possible.

(10) The right to emit greenhouse gases should be auctioned rather than given away. An auction of emissions allowances would generate hundreds of millions of dollars

annually, and the proceeds of each auction should be used to create green jobs, develop clean energy sources, and help consumers manage and reduce their energy costs.

(11) The Illinois Environmental Protection Agency shall propose and the Illinois Pollution Control Board shall adopt a market-based cap and invest program that achieves the greenhouse gas reduction targets specified in this Act. The program shall be developed and implemented in consultation with State agencies and stakeholders, including the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and others, in a manner that minimizes costs and maximizes benefits for the economy in Illinois, improves and modernizes energy infrastructure in Illinois, maintains electric system reliability, maximizes additional environmental and economic co-benefits for Illinois, and complements the State's efforts to improve air quality.

Section 10. Definitions.

"Agency" means the Illinois Environmental Protection Agency.

"Allowance" means an authorization from the Agency to emit, during a specified year, up to one ton of carbon dioxide or an equivalent amount of other greenhouse gases, as determined by the Agency.

"Board" means the Illinois Pollution Control Board.

"Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of carbon dioxide or an equivalent amount of other greenhouse gases, as determined by the Agency.

"Direct emissions" means greenhouse gas emissions made by a greenhouse gas emission source at that source.

"Emissions offset" means an action that (i) is undertaken by a greenhouse gas emission source not subject to the emissions cap, (ii) achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and (iii) is approved by the Agency.

"First deliverer of electricity" means: (i) for electricity generated within Illinois or other participating states, the generator of that electricity; (ii) for electricity generated outside Illinois, the entity that first delivers the electricity to Illinois customers for consumption in Illinois.

"Greenhouse gas" (GHG) or "greenhouse gases" includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Greenhouse gas emission source" or "source" means any source or category of sources that emits greenhouse gases at a level that, in the opinion of the Agency, necessitates participation by the source or category of sources in the cap and invest program in order for the State to effectively reduce greenhouse gas emissions and monitor compliance with the

Statewide greenhouse gas emissions limit.

"Leakage" means a reduction in emissions of greenhouse gases within Illinois or other participating states that is offset by an increase in emissions of greenhouse gases in non-participating states.

"Market-based cap and invest program" means a program established under this Act and corresponding regulations that creates a "cap" on the sum of all GHG emissions from all covered sources; reduces the cap over time; creates tradable emissions "allowances" equivalent to a specified amount of GHG emissions, with the total amount of allowances equal to the emissions cap; requires covered sources to submit allowances equivalent to the level of emissions for which they are responsible at the end of each of compliance period; authorizes covered sources to choose the best mix of reducing emissions or buying allowances for their situation; provides for the auctioning of emissions allowances by the Agency and the investment of those proceeds in technologies and projects to help Illinois meet the Act's GHG reduction goals; mitigates potential transition costs; and promotes adaptation to climate change impacts.

Participating state" means a state of the United States that has adopted a similar market-based program to reduce GHG emissions and that has signed a Memorandum of Understanding with the Agency to allow interstate trading of allowances and emissions offsets.

Section 15. Market-Based Cap and Invest Program.

(a) Pursuant to the Illinois Administrative Procedure Act, the Agency shall propose and the Board shall adopt by October 1, 2010, rules necessary to establish and implement a market-based cap and invest program effective January 1, 2012, to limit the emissions of greenhouse gases, subject to the provisions of this Act. The rules shall be designed to facilitate the State's participation in the emerging midwestern greenhouse gas cap and trade system. The rules shall require aggregate greenhouse gas emission reductions from covered sources of at least 25 percent below 2005 levels by 2020, 45 percent below 2005 levels by 2030, and 80 percent below 2005 levels by 2050.

(b) In developing and adopting these rules, the Agency and Board shall do all of the following:

(1) design the rules in a manner that is equitable, seeks to minimize costs and maximize the total benefits to Illinois, and encourages early action to reduce greenhouse gas emissions;

(2) ensure that activities undertaken to comply with the rules do not disproportionately impact low-income communities;

(3) ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this Section receive appropriate credit for early

voluntary reductions;

(4) ensure that activities undertaken under the rules complement and do not interfere with efforts to achieve and maintain federal and State ambient air quality standards and to reduce toxic air contaminant emissions;

(5) consider the cost-effectiveness of the rules;

(6) consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and the provision of other benefits to the economy, environment, and public health.

(7) minimize the administrative burden of implementing and complying with these rules;

(8) minimize leakage.

(9) consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases;

(10) ensure that greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the Agency; and

(11) ensure that greenhouse gas emission reductions are in addition to any greenhouse gas emission reductions otherwise required by law or regulation, and any other greenhouse gas emission reductions that otherwise would occur in Illinois or a participating state.

The Agency shall consult with the Illinois Commerce Commission and the Illinois Power Agency in the development of the rules as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

After January 1, 2012, the Agency may revise rules adopted under this Section and adopt additional rules to further the provisions of this Act.

(c) All allowances issued by the State shall be auctioned, and the proceeds of each auction must be used to benefit the public under Sections 20 and 25. Auctions shall be implemented quarterly by the Agency. Two pre-compliance auctions shall be held between January 1, 2011, and December 31, 2011, to facilitate market price discovery and compliance planning by capped sources.

Each source shall own and provide to the Director at the close of the applicable compliance period allowances equal to its direct emissions during that period; such allowances may be issued by other participating states with which the Agency has established a trading relationship. A source may acquire emissions offsets from other sources in lieu of reductions at its facilities. However, offsets should be limited to 1% of total emissions or 10% of required emissions reductions for that compliance period, whichever is less. Emissions offsets should be generated by projects implemented within the participating states to capture the economic benefits of these projects and to protect public health by reducing conventional smog-forming and toxic air pollutants.

Rules adopted under this Section shall, at a minimum, cap emissions from the following sources: sources that are the first deliverer of electricity in the State, including electricity generated outside the State; large industrial stationary sources; large manufacturers and distributors of transportation fuels, including, but not limited to, oil refineries, oil storage facilities, and wholesale and retail distributors; manufacturers and distributors of natural gas and oil used to heat and power buildings, including, but not limited to, oil refineries, oil storage facilities, and wholesale and retail distributors of natural gas; and any other sources or categories of sources that the Agency determines may be included under the cap without undue administrative difficulty and from which emissions can be reliably quantified and monitoredy.

Section 20. Global Warming Action Fund. The Global Warming Action Fund is established as a special fund in the State treasury to receive revenues from the auction of allowances under subsection (b) of Section 15. Revenues generated by the auctioning of allowances shall be used to support programs and projects that contribute to the emission reduction goals of this Act, including, but not limited to, those that (i) increase utilization of renewable energy, energy efficiency, low-emitting modes of transportation, geologic carbon sequestration, and terrestrial sequestration (such as programs that enhance the stewardship and restoration of the State's forests and wetlands) (ii) address transition costs, including job training or transition programs that help industries adapt to clean technology and production, and (iii) provide assistance to utility consumers.

Section 25. Analysis of Investment and Expenditure Options.

(a) The Agency and the Department of Commerce and Economic Opportunity shall conduct the analysis described in this Section and present their findings and recommendations to the General Assembly by January 1, 2010. The Agency and the Department of Commerce and Economic Opportunity shall consult with the Illinois Finance Authority, the Illinois Department of Labor, the Illinois Commerce Commission, the Illinois Power Agency, the Illinois Department of Natural Resources, the Illinois Department of Agriculture, and other interested stakeholders, including, but not limited to, the environmental justice community, industry sectors, business groups, academic institutions, and environmental organizations. The analysis shall consider how the State can best use the revenues in the Global Warming Action Fund to serve the State's overriding interest in making the transition to an economy with low greenhouse gas emissions in a way that maximizes public benefits and minimizes public costs.

(b) The analysis shall make recommendations regarding the specific apportionment of allowance revenues among various options that benefit the public, including, but not limited to, those programs and projects discussed in Section 20.

(c) The analysis shall model and estimate the impact of revenue apportionment on the State economy, its residents, and its natural resources of the various options considered and shall recommend the optimal mix of revenue uses. In determining the optimal mix of revenue uses, the analysis shall recognize the long-term nature of the transition and prioritize those investments with a long-term yield. In identifying the optimal uses of revenues, the analysis shall select uses that:

(1) produce the most cost-effective emission reductions on a societal basis;

(2) maximize greenhouse gas emission reductions in capped and non-capped sectors;

(3) minimize disruptive economic impacts on workers, businesses, and low-income and other consumers;

(4) equitably distribute the costs and benefits of the transition among State residents, communities and economic sectors, with specific recommendations and strategies to assist low-income residents in reducing their greenhouse gas emissions;

(5) maximize sustainable economic development and job growth;

(6) protect and enhance the public health, water quality, air quality, habitat, and other natural

resources; and

(7) avoid creating among revenue recipients a sense of entitlement to a long-term stream of revenues which would in turn create incentives to oppose emission reductions that would reduce the size of the Fund.

When possible the analysis shall quantify the impact of each revenue use on emissions, emission reduction costs, jobs, and other benchmarks related to the goals stated in this subsection.

Section 30. Transition to a federal program. If the federal government adopts a program that the Agency determines to be comparable to the market-based cap and invest program authorized in Section 15, the Agency shall immediately begin to transition into the federal program in order to create one national system of tradable greenhouse gas emissions.

Section 35. Enforcement. The Agency shall monitor compliance with and enforce any rule adopted by the Board under this Act.

Section 80. The State Finance Act is amended by adding Section 5.719 as follows:

(30 ILCS 105/5.719 new)

Sec. 5.719. The Global Warming Action Fund.

(415 ILCS 140/Act rep.)

Section 90. The Kyoto Protocol Act of 1998 is amended by the repealing Act.

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