



Rep. Thomas Holbrook

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1 AMENDMENT TO HOUSE BILL 680

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 680 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Carbon Dioxide Geologic Storage Act.

6 Section 5. Statement of policy. It is in the public  
7 interest to promote the geologic storage of carbon dioxide.  
8 Doing so will help ensure the viability of the Illinois coal,  
9 natural gas, power, and other industries under a spectrum of  
10 potential environmental regulations and will promote economic  
11 development in Illinois. Further, geologic storage of carbon  
12 dioxide, a potentially valuable commodity, may allow for its  
13 ready availability if needed for commercial, industrial, or  
14 other uses, including enhanced recovery of oil, gas, and other  
15 minerals.

16 To be practical and effective, geologic storage of carbon

1 dioxide requires cooperative use of surface and subsurface  
2 property interests often across large areas. It is therefore in  
3 the public interest to employ procedures that promote, in a  
4 manner fair to all interests, the use of all pore space in a  
5 clearly defined reservoir to ensure comprehensive management  
6 of the reservoir and the efficient use of natural resources. It  
7 is important that rules governing the use and development of  
8 subsurface pore space be consistent with both established  
9 precedents and subsurface private property rights.

10 Section 10. Definitions. As used in this Act, unless the  
11 context requires a different meaning:

12 "Carbon dioxide injection well" means a well that is used  
13 to inject carbon dioxide into a reservoir for geologic storage.

14 "Department" means the Department of Natural Resources.

15 "Geologic storage" means the underground storage of carbon  
16 dioxide in a reservoir.

17 "Gross revenue" means the aggregate total revenue actually  
18 received by the storage operator from third parties for  
19 operation of the storage facility, including any sales of  
20 federal, State, or other production or investment tax credits  
21 received in connection with the operation of the storage  
22 facility, free of any costs, charges, or deductions.

23 "Mineral owner" means, as identified in the tax assessor's  
24 records for each county containing some portion of the proposed  
25 reservoir, any owner of a whole or fractional interest in any

1 or all minerals in real property above, below, or within the  
2 proposed reservoir that has been severed from the surface  
3 estate by grant, exception, reservation, lease, or other means.

4 "Pore space" means subsurface cavities or voids, whether  
5 natural or artificially created, that can be used as storage  
6 space for carbon dioxide or other substances.

7 "Pore space owner" means the person, trust, corporation, or  
8 other entity who has title to the pore space.

9 "Reservoir" means any depleted oil or gas reservoir, saline  
10 formation, coal seam, or any natural or artificial subsurface  
11 stratum or formation with a clearly defined reservoir boundary  
12 and pore space of sufficient porosity and permeability for  
13 injection and storage of carbon dioxide. "Reservoir" does not  
14 include an underground source of drinking water.

15 "Reservoir boundary" means the area specified in the  
16 certificate of unit designation that delineates the vertical  
17 and horizontal limits of the reservoir, including buffer areas,  
18 such that any carbon dioxide injected into the reservoir will  
19 remain within the boundary. The reservoir boundary must be  
20 established by identifying physical parameters, such as  
21 structural or stratigraphic geologic features, that will  
22 constrain buoyant migration of the injected carbon dioxide such  
23 that it will remain within the boundary. The reservoir boundary  
24 need not include the entirety of a geologic formation if it can  
25 be shown that physical parameters, such as geologic features,  
26 will contain injected carbon dioxide within the boundary.

1 "Reservoir permit" means a permit issued by the Department  
2 allowing a person to establish and operate a storage facility.

3 "Storage facility" means the reservoir, underground  
4 equipment, and surface facilities and equipment used or  
5 proposed to be used in a geologic storage operation. "Storage  
6 facility" does not include pipelines used to transport carbon  
7 dioxide to the storage facility from the carbon dioxide source.  
8 "Storage facility" also does not include a single carbon  
9 dioxide injection well to be used for experimental, research,  
10 or evaluation purposes as long as the well does not inject more  
11 than 100,000 tons of carbon dioxide in total and does not  
12 operate for more than 5 years.

13 "Storage operator" means a person holding or applying for a  
14 certificate of unit designation and a reservoir permit under  
15 this Act and holding or applying for a UIC permit for the  
16 injection of carbon dioxide.

17 "Surface owners" means, as identified in the tax assessor's  
18 records for each county containing some portion of the proposed  
19 reservoir, any owner of a whole or undivided fee simple  
20 interest or other freehold interest, which may or may not  
21 include mineral rights, in the surface above the proposed  
22 reservoir, but does not include an owner of a right-of-way,  
23 easement, leasehold, or any other lesser estate.

24 "UIC permit" means an Underground Injection Control permit  
25 authorized under the federal Safe Drinking Water Act's  
26 Underground Injection Control (UIC) Program that allows a

1 person to operate a carbon dioxide injection well.

2 Section 12. Applicability. This Act applies only to carbon  
3 dioxide injections that commence on or after January 1, 2012.

4 Section 15. Reservoir permit.

5 (a) A storage operator must have a reservoir permit issued  
6 by the Department to operate a storage facility in the State. A  
7 reservoir permit may be transferred or assigned from one  
8 storage operator to another upon written consent of the  
9 Department.

10 (b) The Department shall issue a reservoir permit to the  
11 storage operator if the Department finds that:

12 (1) a certificate of unit designation has been issued  
13 as provided in Section 25;

14 (2) the interests of non-consenting pore space owners  
15 within the reservoir boundary have been addressed as  
16 provided in Section 35;

17 (3) the interests of mineral owners within the  
18 reservoir boundary have been addressed as provided in  
19 Section 40; and

20 (4) the storage operator has applied for a UIC permit  
21 or has been issued a UIC permit.

22 The Department may condition the granting of a reservoir  
23 permit on obtaining a UIC permit, but no State agency may delay  
24 the processing of the reservoir permit application on the

1 grounds that the application for another required permit is  
2 pending.

3 (c) The Department shall issue only one reservoir permit  
4 per reservoir. A storage operator may not apply for a reservoir  
5 permit where the reservoir permit encompasses an area that is  
6 included in certificate of unit designation the storage  
7 operator does not hold. A storage operator may apply to expand  
8 the reservoir boundary of an existing reservoir permit it does  
9 hold.

10 (d) The Department shall hold a public hearing regarding a  
11 reservoir permit application to ensure that the requirements of  
12 subsection (b) of this Section have been satisfied.

13 (1) Notice of the public hearing shall include:

14 (A) The type of proceedings before the Department  
15 and a general statement of purpose for such  
16 proceedings.

17 (B) A description of the reservoir boundary,  
18 including a legal description of the reservoir.

19 (C) A description of the proposed storage facility  
20 and its operations.

21 (D) The time, date, and place of the public  
22 hearing.

23 (E) The limitations on standing provided by  
24 subsection (h) of this Section.

25 (2) Upon receipt of the reservoir permit application,  
26 the Department shall fix the time and place for the public

1 hearing, which shall be no less than 30 days nor more than  
2 60 days after the date of filing of the application. The  
3 Department shall give notice of the hearing at least 30  
4 days prior to the hearing in the following manner:

5 (A) By United States first class mail directed to  
6 all local governments with jurisdiction over some  
7 portion of the proposed reservoir, and to all surface  
8 owners and all mineral owners within the proposed  
9 reservoir boundary at their last-known address as  
10 shown by the records described for each in Section 10  
11 of this Act. For any surface owner or mineral owner  
12 within the proposed reservoir boundary that is not  
13 identified in such records, the storage operator shall  
14 be deemed to have acted in good faith, shall not be  
15 subject to further obligations, and shall have no  
16 liability to such owners for any legal or equitable  
17 remedy or relief arising from, in connection with, or  
18 otherwise relating to the storage facility, provided  
19 the published notice required by subparagraph (B) of  
20 paragraph (2) of this subsection (d) is given. The  
21 storage operator shall not be liable for any errors or  
22 omissions in such records. The Department's  
23 certificate that it has mailed the notices is evidence  
24 that it has done so.

25 (B) By publication of such notice in a newspaper of  
26 general circulation published in each county

1 containing some portion of the reservoir at least once  
2 each week for 3 successive weeks. The first publication  
3 shall be at least 30 days prior to the date of the  
4 public hearing. If there is no newspaper published in a  
5 county containing some portion of the reservoir, then  
6 the publication shall be in a newspaper published in an  
7 adjoining county in this State, having circulation in  
8 the county in which that portion of the reservoir is  
9 located.

10 (e) If the Department does not complete the review of a  
11 reservoir permit application within 90 days after receipt,  
12 including the public notice and hearing as described in  
13 subsection (d) of this Section, then the reservoir permit shall  
14 be issued. If the Department does not find the storage operator  
15 to have met the requirements detailed in subsection (b) of this  
16 Section, then the Department may either decline the application  
17 or require amendment to the application before granting the  
18 reservoir permit. If the Department requires amendment to the  
19 application, then the Department shall have 30 days after the  
20 storage operator amends its application to either grant or  
21 decline to grant the reservoir permit or the reservoir permit.

22 (f) The Department may charge a fee to the storage operator  
23 for review of the reservoir permit application. The fee must be  
24 in the amount set by Department rule. The amount must be based  
25 on the Department's anticipated expenses that it will incur in  
26 reviewing the reservoir permit application and shall not exceed



1 \$10,000.

2 (g) The Department may include conditions in the reservoir  
3 permit to carry out the reservoir permit requirements. The  
4 reservoir permit shall contain a description of the reservoir  
5 boundary and shall authorize the storage operator to use all  
6 pore space within the reservoir as a storage facility.

7 (h) The Department shall have the right at all times to go  
8 upon and inspect a storage facility for the purpose of  
9 ascertaining compliance with the provisions of this Act.

10 Section 20. Ownership and conveyance of pore space.

11 (a) Title to pore space is vested in the owner of the  
12 overlying surface estate.

13 (b) A conveyance of title to the surface estate conveys the  
14 pore space in all strata underlying the surface estate.

15 (c) Title to pore space may not be severed from the surface  
16 estate.

17 (d) Grants of easement to use or leasing of pore space is  
18 not a severance prohibited by this Section.

19 (e) The grants of easement or leasing of pore space shall  
20 not confer any right to enter upon or otherwise use the surface  
21 of the land unless the grant of easement or lease expressly so  
22 provides.

23 Section 25. Unit designation.

24 (a) The Department shall issue a certificate of unit

1 designation to the storage operator if the Department finds  
2 that:

3 (1) the reservoir has a clearly defined boundary;

4 (2) the reservoir is suitable for carbon dioxide  
5 injection and storage, including the presence of physical  
6 parameters, such as structural or stratigraphic geologic  
7 features, to ensure injected carbon dioxide remains within  
8 the reservoir boundary;

9 (3) the reservoir boundary encompasses an area of at  
10 least 5,000 acres;

11 (4) the storage operator has made a good-faith effort  
12 to identify all surface owners and all mineral owners and  
13 their last-known addresses using the records described for  
14 each in Section 10 of this Act;

15 (5) the storage operator has made a good-faith effort  
16 to obtain ownership, grants of easement, or leaseholds from  
17 all known pore space owners within the reservoir boundary;  
18 and

19 (6) the storage operator owns or has obtained grants of  
20 easement or leaseholds from persons who own at least 51% of  
21 the proposed reservoir's pore space based upon the number  
22 of surface acres within the reservoir boundary.

23 (b) If the Department does not complete the review of a  
24 unit designation application within 60 days after receipt, then  
25 the certificate of unit designation shall be issued. If the  
26 Department does not find the storage operator to have met the

1 requirements detailed in subsection (a) of this Section, then  
2 the Department may either decline the application or require  
3 amendment to the application before granting the certificate of  
4 unit designation. If the Department requires amendment to the  
5 application, then the Department shall have 30 days after the  
6 storage operator amends the application to either grant or  
7 decline to grant the certificate of unit designation or the  
8 certificate of unit designation shall be issued.

9 (c) The Department may charge a fee to the storage operator  
10 for review of the unit designation application. The Department  
11 shall set the fee amount by rule, but the amount must be based  
12 on the Department's anticipated expenses that it will incur in  
13 reviewing the unit designation application and shall not exceed  
14 \$10,000.

15 Section 35. Amalgamating property interests.

16 (a) If a storage operator does not own, or has not obtained  
17 grants of easement or leaseholds from persons who own, all of  
18 the pore space within the reservoir boundary, then the  
19 Department shall require that the pore space owned by  
20 nonconsenting pore space owners be included in a storage  
21 facility and subject to geologic storage for the purposes of  
22 administering the reservoir permit. Any amalgamation of pore  
23 space shall not include the right to use the surface above  
24 nonconsenting pore space owners' pore space.

25 (b) Each nonconsenting pore space owner shall be entitled

1 to compensation for the use of their pore space in the  
2 reservoir equal to 4% of gross revenues multiplied by a  
3 fraction, the numerator of which is the number of surface acres  
4 within the reservoir boundary that are owned by the  
5 nonconsenting pore space owner and the denominator of which is  
6 the total number of surface acres within the reservoir  
7 boundary.

8 (c) The Department shall have the authority to commit  
9 State-owned pore space within the reservoir boundary to the  
10 storage facility on the terms described in subsection (b) of  
11 this Section.

12 Section 40. Mineral interests.

13 (a) A reservoir permit may not be issued if the interests  
14 of mineral owners would be adversely affected. For purposes of  
15 this Section, "adversely affected" means that the Department  
16 finds that:

17 (1) the reservoir contains a commercially valuable  
18 mineral that a mineral owner has verifiable plans to  
19 extract and that such extraction would be precluded by  
20 operation of the reservoir;

21 (2) the cost of mineral extraction of a commercially  
22 valuable mineral that the mineral owner has verifiable  
23 plans to extract would be significantly increased by the  
24 operation of the reservoir; or

25 (3) the extraction rate of a commercially valuable

1 mineral that the mineral owner has verifiable plans to  
2 extract would be significantly reduced by the operation of  
3 the reservoir.

4 (b) Mineral owners may drill through or near a reservoir to  
5 explore for or extract minerals, provided the drilling,  
6 extraction, and related activities are conducted in  
7 cooperation with the storage operator and comply with  
8 Department requirements that preserve the storage facility's  
9 integrity.

10 (c) A storage operator may drill through or near a mineral  
11 producing area to operate the storage facility, provided the  
12 drilling, carbon dioxide storage, and related activities are  
13 conducted in cooperation with the mineral owners and comply  
14 with Department requirements that ensure no adverse effect on  
15 mineral extraction.

16 (d) Mineral owners shall provide the storage operator  
17 reasonable access to wells and other equipment, as necessary,  
18 to ensure that mineral production equipment does not provide a  
19 leakage pathway for stored carbon dioxide. Storage operators  
20 shall compensate mineral owners for any losses associated with  
21 loss of production or business interruption due to such  
22 activities.

23 Section 45. Title to carbon dioxide; liability. The storage  
24 operator has title to the carbon dioxide injected into and  
25 stored in a reservoir and holds title until the Department

1 issues a certificate of completion. While the storage operator  
2 holds title, the operator is liable for any damage the carbon  
3 dioxide may cause, including damage caused by carbon dioxide  
4 that escapes from the storage facility. The pore space owner  
5 shall have no liability associated with operation of a storage  
6 facility, unless the storage operator is the pore space owner.

7 Section 55. Project completion and title transfer.

8 (a) After carbon dioxide injections at a storage facility  
9 cease, the storage operator may apply for a certificate of  
10 completion. Before issuing a certificate of completion, the  
11 Department, in consultation with the issuer of the UIC permit,  
12 must find that:

13 (1) the storage operator is in full compliance with all  
14 laws governing the storage facility, including any ongoing  
15 UIC permit requirements;

16 (2) the storage operator has addressed all pending  
17 claims, if any, regarding the storage facility's  
18 operation;

19 (3) all carbon dioxide injection wells have been  
20 plugged, equipment and facilities has been removed, and  
21 reclamation work has been completed as required by the UIC  
22 permit issuer or the Department;

23 (4) the carbon dioxide in the reservoir has become  
24 stable; stored carbon dioxide is stable if it is  
25 essentially stationary or, if it is migrating or may

1 migrate, that any migration will be unlikely to cross the  
2 reservoir boundary;

3 (5) all monitoring wells, equipment, and facilities to  
4 be used in the post-closure period are in good condition  
5 and retain mechanical integrity; and

6 (6) the storage operator has transferred to the  
7 Department a carbon storage project fund that contains  
8 sufficient funds to carry out the site care and monitoring  
9 activities required by the UIC permit, if applicable.

10 (b) If the Department does not complete the review of a  
11 certificate of completion application within 90 days after  
12 receipt, including the public notice and input deemed  
13 appropriate by the Department, then the certificate of  
14 completion shall be issued. If the Department does not find  
15 that the requirements detailed in subsection (a) of this  
16 Section have been met, then it may either decline the  
17 application or require amendment to the application before  
18 granting the certificate of completion. If the Department  
19 requires amendment to the application, then the storage  
20 operator shall have 30 days to amend the application.  
21 Thereafter, the Department shall have 30 days to either grant  
22 or decline to grant the certificate of completion or the  
23 certificate of completion shall be issued.

24 (c) The Department may charge a fee to the storage operator  
25 for reviewing the certificate of completion application. The  
26 fee must be in the amount set by Department rule. The amount

1 must be based on the Department's anticipated expenses that it  
2 shall incur in reviewing the certificate of completion  
3 application and shall not exceed \$10,000.

4 (d) Once a certificate of completion is issued the  
5 following occurs:

6 (1) Title to the storage facility and to the stored  
7 carbon dioxide transfers, without compensation, to the  
8 State.

9 (2) Title acquired by the State includes all rights and  
10 interests in, and all responsibilities associated with,  
11 the stored carbon dioxide.

12 (3) The storage operator is released from all  
13 regulatory requirements associated with the storage  
14 facility.

15 (4) Monitoring and managing the storage facility is the  
16 State's responsibility to be overseen by the Department  
17 until such time as the federal government assumes  
18 responsibility for the long-term monitoring and management  
19 of storage facilities.

20 (5) If the federal government has not assumed  
21 responsibility for the long-term monitoring and management  
22 of storage facilities, then the carbon storage project fund  
23 shall be used for the purposes of monitoring and managing  
24 the storage facility. If the federal government has assumed  
25 responsibility for the long-term monitoring and management  
26 of storage facilities, then the carbon storage project fund



1 shall be refunded to the storage operator.

2 Section 60. Enhanced recovery projects.

3 (a) This Act does not apply to applications filed with the  
4 Department proposing to use carbon dioxide for an enhanced oil  
5 or gas recovery project. Such applications shall be processed  
6 pursuant the Illinois Oil and Gas Act.

7 (b) The Department may allow an enhanced oil or gas  
8 recovery project to be converted to a storage facility. In  
9 considering whether to approve a conversion, and upon  
10 conversion, the provisions of this Act and its implementing  
11 rules apply, but if during the conversion process unique  
12 circumstances arise, then the Department, may waive such  
13 provisions or impose additional ones to better ensure that the  
14 Act's objectives are fulfilled.

15 Section 65. Memorandum of Understanding. The Department  
16 and the Illinois Environmental Protection Agency shall enter  
17 into a Memorandum of Understanding with respect to their  
18 respective roles under this Act and the UIC program, if  
19 applicable. The Memorandum of Understanding shall provide for  
20 procedures to ensure a streamlined and concurrent permitting  
21 process for storage facilities.

22 Section 70. Department; home rule. The Department may adopt  
23 rules and issue orders to enforce this Act. The Department may

1 authorize its employees, qualified by training and experience,  
2 to perform the powers and duties set forth in this Act. No  
3 agency of State government or political subdivision of the  
4 State may regulate a storage facility except as expressly  
5 authorized under this Act.

6 Section 75. Restraint of trade. None of the rights and  
7 responsibilities pursuant to this Act shall be held or  
8 construed to violate any of the statutes of this State relating  
9 to trusts, monopolies, or contracts and combinations in the  
10 restraint of trade.

11 Section 97. Severability. The provisions of this Act are  
12 severable under Section 1.31 of the Statute on Statutes."