



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

**HB4465**

by Rep. André M. Thapedi

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.855 new

Creates the Climate Change and Emissions Management Act. Provides that, beginning in calendar year 2016, a facility that has direct greenhouse gas emissions totalling 1,000,000 metric tons or more shall reduce its greenhouse gas emission by a specified amount. Provides that the reduction may be accomplished by applying emission offsets and emission performance credits to the facility's total annual greenhouse gas emissions or by making payments to the Climate Change and Emissions Management Fund. Creates the Climate Change and Emissions Management Fund. Contains provisions concerning reports, records, penalties, and rulemaking. Effective immediately.

LRB098 15843 HLH 54791 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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 Climate Change and Emissions Management Act.

6 Section 5. Definitions. As used in this Act:

7 "Agency" means the Illinois Environmental Protection  
8 Agency.

9 "Baseline emissions intensity" is defined in Section 15 of  
10 this Act.

11 "CO<sub>2</sub>e" means the 100-year time horizon global warming  
12 potential of a specified gas expressed in terms of equivalency  
13 to carbon dioxide, as set forth by the Agency by rule.

14 "Direct emissions" means the release of specified gases  
15 from sources actually located at a facility.

16 "Director" means the Director of the Illinois  
17 Environmental Protection Agency.

18 "Emission offset" means a reduction in, geological  
19 sequestration of, or capture of specified gas emissions as  
20 provided in Section 27.

21 "Emission performance credit" means a reduction in the  
22 release of specified gases, expressed in metric tons, that  
23 meets the requirements of Section 20.

1 "Established facility" means:

2 (1) a facility that completed its first year of  
3 commercial operation prior to December 31, 2008; or

4 (2) a facility that has completed 8 years of commercial  
5 operation.

6 "Facility" means a privately-owned plant or other  
7 commercial or industrial structure located in Illinois.

8 "Facility" does not include government-owned or  
9 government-operated plants or other structures.

10 "Fund" means the Climate Change and Emissions Management  
11 Fund.

12 "Fund credit" means a contribution to the Climate Change  
13 and Emissions Management Fund as provided in Section 25.

14 "Metric ton" shall be expressed on a CO<sub>2</sub>e basis, unless the  
15 context clearly requires otherwise.

16 "Net emissions intensity" means: (i) the total direct  
17 emissions from the facility for the applicable calendar year  
18 minus the sum of (A) the facility's allowable emission offsets,  
19 (B) the allowable fund credits applied on behalf of the  
20 facility, and (C) the allowable emission performance credits  
21 applied on behalf of the facility, divided by (ii) the  
22 facility's production for the year.

23 "Net emissions intensity limit" means the specified gas  
24 emission targets established under Section 10.

25 "New facility" means:

26 (1) a facility that completed its first year of

1 commercial operation on December 31, 2008 or on December 31  
2 of a subsequent year and has completed less than 8 years of  
3 commercial operation; or

4 (2) a facility designated as a new facility by the  
5 Agency.

6 "Production" means the quantity, expressed in an  
7 applicable unit of production, of (i) end product produced by a  
8 facility or (ii) if the facility does not produce an end  
9 product, an input, output, or other standard of measurement  
10 specified by the Director as a standard measurement of  
11 production for the facility.

12 "Person responsible for the facility" means an owner,  
13 officer, or director of the facility designated in writing by  
14 the Agency as a person responsible for the facility.

15 "Specified gases" means carbon dioxide, methane, nitrous  
16 oxide, hydrofluorocarbons, perfluorocarbons, sulfur  
17 hexafluoride, and any other gas or compound specified as a  
18 greenhouse gas by the Agency by rule.

19 Section 10. Specified gas emission targets.

20 (a) This Section applies to facilities that are required to  
21 apply for the establishment of a baseline emissions intensity  
22 under Section 15.

23 (b) Beginning with calendar year 2016 or the first calendar  
24 year after the facility is required to apply for the  
25 establishment of a baseline emissions intensity, whichever is

1 later, a facility's net emissions intensity for a calendar year  
2 shall not exceed:

3 (1) for an established facility, 88% of the baseline  
4 emissions intensity for the facility; and

5 (2) for a new facility:

6 (A) 98% of the baseline emissions intensity in the  
7 fourth year of commercial operation of the facility;

8 (B) 96% of the baseline emissions intensity in the  
9 fifth year of commercial operations of the facility;

10 (C) 94% of the baseline emissions intensity in the  
11 sixth year of commercial operations of the facility;

12 (D) 92% of the baseline emissions intensity in the  
13 seventh year of commercial operations of the facility;

14 and

15 (E) 90% of the baseline emissions intensity in the  
16 eighth year of commercial operations of the facility;  
17 thereafter, the facility shall be classified as an  
18 established facility.

19 Section 15. Application; determination of baseline  
20 emission intensity.

21 (a) Each facility that had direct emissions totalling  
22 1,000,000 metric tons or more in calendar year 2011, 2012,  
23 2013, or 2014 shall apply to the Agency for the establishment  
24 of a baseline emissions intensity no later than December 31,  
25 2015.

1           (b) Each new facility that is not otherwise required to  
2 apply for the establishment of a baseline emissions intensity  
3 under subsection (a) that had direct emissions totalling  
4 1,000,000 metric tons or more in any of its first 3 years of  
5 commercial operation shall apply for the establishment of a  
6 baseline emissions intensity no later than June 1 of the  
7 facility's fourth year of commercial operation.

8           (c) Each facility that is not otherwise required to apply  
9 for the establishment of a baseline emissions intensity under  
10 subsection (a) or (b) of this Section shall apply for the  
11 establishment of a baseline emissions intensity no later than  
12 June 1 of the year following the year of commercial operation  
13 of a facility in which the facility first has direct emissions  
14 totalling 1,000,000 metric tons or more.

15           (d) An application for the establishment of a baseline  
16 emissions intensity for a facility shall:

17               (1) be submitted by an owner, officer, or director of  
18 the facility;

19               (2) be submitted on a form prescribed by the Agency;

20 and

21               (3) include a verification of the information provided  
22 on the form by a third party auditor qualified under  
23 Section 35.

24           (e) The baseline emissions intensity for a facility that is  
25 an established facility on January 1, 2015 shall be determined  
26 by one of the following methods:

1           (1) by calculating the average of the ratio of total  
2           annual emissions to production for calendar year 2012,  
3           2013, and 2014; or

4           (2) by using an alternative method approved in writing  
5           by the Director where the Director determines that the  
6           method in paragraph (1) is not appropriate.

7           (f) The baseline emissions intensity for a new facility  
8           shall be determined by one of the following methods:

9           (1) by calculating the ratio of total annual emissions  
10           to production for the third year of commercial operation of  
11           the facility; or

12           (2) by using an alternative method approved in writing  
13           by the Director where the Director determines that the  
14           method in paragraph (1) is not appropriate.

15           (g) The Director may establish a baseline emissions  
16           intensity that is different from the baseline emissions  
17           intensity specified in the application and may determine the  
18           unit of production for the facility. If the Director  
19           establishes a baseline emissions intensity that is different  
20           from the baseline emissions intensity specified in the  
21           application, then he or she shall notify the applicant in  
22           writing of his or her decision.

23           Section 20. Emission performance credits.

24           (a) When a facility's net emissions intensity for a  
25           calendar year is less than the facility's net emissions

1 intensity limit for that period, the reduction in specified gas  
2 emissions that is not used in meeting the net emissions  
3 intensity limit constitutes an emission performance credit.

4 (b) An emission performance credit created at a facility in  
5 a year may be used to meet net emissions intensity limits for  
6 that facility in any subsequent year.

7 (c) An emission performance credit may be used only once by  
8 a facility.

9 Section 25. Climate Change and Emissions Management Fund;  
10 creation; fund credits.

11 (a) The Climate Change and Emissions Management Fund is  
12 hereby created as a special fund in the State treasury. Moneys  
13 in the Fund shall be used only for purposes related to reducing  
14 emissions of specified gases or to improve the State's ability  
15 to adapt to climate change, including, without limitation, the  
16 following purposes:

17 (1) energy conservation and energy efficiency;

18 (2) demonstration and use of new technologies that  
19 emphasize reductions in specified gas emissions in the  
20 discovery, recovery, processing, transportation, and use  
21 of the State's energy resources;

22 (3) demonstration and use of new technologies that  
23 emphasize reductions in specified gas emissions through  
24 the use of alternative energy and renewable energy sources;

25 (4) demonstration and use of specified gas capture,



1 use, and storage technology;

2 (5) development of opportunities for removal of  
3 specified gases from the atmosphere through sequestration  
4 by sinks;

5 (6) measurement of the natural removal and storage of  
6 carbon; and

7 (7) climate change adaptation programs and measures.

8 (b) Any interest earned on moneys in the Climate Change and  
9 Emissions Management Fund shall be deposited into the Fund.

10 (c) Notwithstanding any other law to the contrary, the  
11 Climate Change and Emissions Management Fund is not subject to  
12 sweeps, administrative charge-backs, or any other fiscal or  
13 budgetary maneuver that would in any way transfer any amounts  
14 from the Climate Change and Emissions Management Fund into any  
15 other fund of the State.

16 (d) A person may obtain fund credits on behalf of a  
17 facility by contributing an amount equal to \$15 per metric ton  
18 of direct emissions to the Fund. A fund credit obtained on or  
19 before March 31 in a year may only be used in meeting net  
20 annual emissions intensity limits for the previous year. A fund  
21 credit obtained after March 31 in a year may only be used in  
22 meeting net annual emissions intensity limits for that year. A  
23 fund credit may not be used by more than one party.

24 Section 27. Emission offsets.

25 (a) The following requirements must be met in order for a

1 reduction in specified gas emissions to constitute one or more  
2 emission offsets:

3 (1) the specified gas emissions reduction must occur in  
4 Illinois;

5 (2) the specified gas emissions reduction must be from  
6 an action taken that is not otherwise required by law at  
7 the time the action is initiated;

8 (3) the specified gas emissions reduction must be real  
9 and demonstrable; and

10 (4) the specified gas emissions reduction must be  
11 quantifiable and measurable, directly or by accurate  
12 estimation, using replicable techniques.

13 (b) The following requirements must be met in order for a  
14 geological sequestration of specified gas to constitute one or  
15 more emission offsets:

16 (1) the specified gas that is geologically sequestered  
17 must be captured through a dedicated process from sources  
18 located at a facility in Illinois;

19 (2) the specified gas must be stored in a geological  
20 formation that is located wholly or partly in Illinois;

21 (3) the geological sequestration of the specified gas  
22 must not be required by law at the time geological  
23 sequestration of specified gas is initiated;

24 (4) the geological sequestration of the specified gas  
25 must be real and demonstrable; and

26 (5) the quantity of specified gas that is geologically

1 sequestered must be quantifiable and measurable, directly  
2 or by accurate estimation, using replicable techniques.

3 (c) The following requirements must be met in order for a  
4 capture of specified gas to constitute one or more emission  
5 offsets:

6 (1) the specified gas must be captured through a  
7 dedicated process from sources located at a facility  
8 upgrading or refining bitumen in Illinois;

9 (2) the capture of the specified gas must not be  
10 required by law at the time capture of specified gas is  
11 initiated;

12 (3) the specified gas must be captured by  
13 infrastructure capable of capturing, and stored in  
14 geological formations capable of storing, at least  
15 10,000,000 metric tons of specified gas per year;

16 (4) the quantity of specified gas that is captured must  
17 be quantifiable and measurable, directly or by accurate  
18 estimation using replicable techniques.

19 (d) A reduction in, geological sequestration of, or capture  
20 of specified gas emissions of one metric ton that meets the  
21 requirements of this Section constitutes one emission offset.

22 (e) If an emission offset is jointly held, each holder may  
23 use only a portion of the offset. The offset shall be  
24 distributed on a pro rata basis or according to any other  
25 formula set forth in an agreement between the parties.

1           Section 30. Exemptions. The Director may, on written  
2 application, exempt a facility from the provisions of this Act  
3 for a period not exceeding one year for each application if the  
4 Director determines that:

5           (1) the facility was operated under unusual conditions  
6 or was shut down for a prolonged period of time; and

7           (2) the conditions or shutdown caused a material  
8 reduction in the specified gas emission for the applicable  
9 period.

10          Section 35. Qualifications of third party auditors. A  
11 person is eligible to be a third party auditor if the person  
12 meets the following criteria:

13           (1) the person is a professional engineer registered  
14 under the Professional Engineering Practice Act of 1989 or  
15 a certified public accountant;

16           (2) the person has technical knowledge of specified gas  
17 emission quantification methodologies, audit practices,  
18 and other matters considered relevant by the Director; and

19           (3) the person is not a director, officer, employee, or  
20 owner of the facility or an employee or agent of the  
21 Agency.

22          Section 40. Reports. On or before December 31 of each year  
23 during which a facility is subject to Section 10 of this Act,  
24 the person responsible for the facility shall submit to the

1 Agency a compliance report with respect to that facility in the  
2 form and manner prescribed by the Agency by rule. Each  
3 compliance report shall include a verification of the  
4 information provided in the report by a third party auditor  
5 qualified under Section 35.

6 Section 45. Records. A person responsible for a facility  
7 shall retain all records, information, and data respecting  
8 emissions intensity for at least 7 years after the date of  
9 their creation.

10 Section 50. Investigations. The Agency shall cause  
11 investigations to be made upon receipt of information  
12 concerning an alleged violation of this Act or any rule or  
13 regulation adopted under this Act and may cause to be made such  
14 other investigations as it shall deem advisable.

15 Section 55. Orders where net emissions intensity limit  
16 exceeded.

17 (a) The Agency may issue an order to the person responsible  
18 for a facility requiring the person responsible to take the  
19 measures specified in the order to minimize or remedy the  
20 effects of the facility releasing specified gases into the  
21 environment in amounts in excess of those within the net  
22 emissions intensity limit for the facility where:

23 (1) a compliance report indicates that the net

1 emissions intensity limit for the facility has not been  
2 met;

3 (2) the Agency determines that the calculation of the  
4 net emissions intensity of the facility was incorrect or  
5 was based on inaccurate, incorrect or false information and  
6 that the net emissions intensity limit for the facility was  
7 exceeded; or

8 (3) the value for the emission offsets that was used to  
9 calculate the net emissions intensity of the facility for a  
10 year is no longer valid because some or all of the metric  
11 tons of specified gases which the emission offsets  
12 represented as not being released into the environment have  
13 subsequently been released.

14 (b) An order under this Section may require the person  
15 responsible to:

16 (1) obtain emission offsets or emission performance  
17 credits;

18 (2) make contributions to the Fund; or

19 (3) take any other measures that the director considers  
20 advisable.

21 (c) This Section applies whether or not a person has been  
22 required to pay an administrative penalty in relation to the  
23 matter with respect to which the order is made.

24 Section 60. Penalties.

25 (a) Any person that knowingly violates Section 10 of this

1 Act shall be liable for a civil penalty not to exceed \$200 for  
2 every metric ton by which the total release of specified gases  
3 exceeds the net emissions intensity limit for the facility.  
4 Such penalties may, upon order of the Agency or a court of  
5 competent jurisdiction, be made payable to the Climate Change  
6 and Emissions Management Fund, to be used in accordance with  
7 the provisions of this Act.

8 (b) Any person responsible for a facility who knowingly  
9 fails to file, in a timely manner, a compliance report under  
10 Section 40 shall be liable for a civil penalty of \$100 per day  
11 for each day the report is late, not to exceed a maximum total  
12 penalty of \$6,000. The penalty shall be paid to the Agency. All  
13 penalties collected by the Agency pursuant to this subsection  
14 shall be deposited into the Climate Change and Emissions  
15 Management Fund, to be used in accordance with the provisions  
16 of this Act.

17 (c) A person who knowingly (i) performs the functions of a  
18 third party auditor and does not meet the requirements set  
19 forth in Section 35 or (ii) retains a person as a third party  
20 auditor who does not meet the requirements set forth in Section  
21 35 is liable for a civil penalty of not more than \$50,000 in  
22 the case of an individual and not more than \$500,000 in the  
23 case of a corporation.

24 (d) All final orders imposing civil penalties pursuant to  
25 this Section shall prescribe the time for payment of such  
26 penalties. If any such penalty is not paid within the time

1 prescribed, interest on such penalty at the rate set forth in  
2 subsection (a) of Section 1003 of the Illinois Income Tax Act,  
3 shall be paid for the period from the date payment is due until  
4 the date payment is received. However, if the time for payment  
5 is stayed during the pendency of an appeal, interest shall not  
6 accrue during such stay.

7 (e) The State's Attorney of the county in which the  
8 violation occurred, or the Attorney General, may, at the  
9 request of the Agency or on his own motion, institute a civil  
10 action for an injunction, prohibitory or mandatory, to restrain  
11 violations of this Act or any rule or regulation adopted under  
12 this Act.

13 The State's Attorney of the county in which the violation  
14 occurred, or the Attorney General, shall bring such actions in  
15 the name of the people of the State of Illinois. Without  
16 limiting any other authority which may exist for the awarding  
17 of attorney's fees and costs, a court of competent jurisdiction  
18 may award costs and reasonable attorney's fees, including the  
19 reasonable costs of expert witnesses and consultants, to the  
20 State's Attorney or the Attorney General in a case where he has  
21 prevailed against a person who has committed a wilful, knowing,  
22 or repeated violation of this Act or any rule or regulation  
23 adopted under this Act.

24 (f) A person who voluntarily self-discloses non-compliance  
25 to the Agency, of which the Agency had been unaware, is  
26 entitled to a waiver of the penalties under this Section if the



1 person can establish the following:

2 (1) that the non-compliance was discovered through an  
3 environmental audit or a compliance management system  
4 documented by the regulated entity as reflecting the  
5 regulated entity's due diligence in preventing, detecting,  
6 and correcting violations;

7 (2) that the non-compliance was disclosed in writing  
8 within 30 days of the date on which the person discovered  
9 it;

10 (3) that the non-compliance was discovered and  
11 disclosed prior to:

12 (A) the commencement of an Agency inspection,  
13 investigation, or request for information;

14 (B) the filing of a complaint by the Illinois  
15 Attorney General or the State's Attorney of the county  
16 in which the violation occurred;

17 (C) the reporting of the non-compliance by an  
18 employee of the person without that person's  
19 knowledge; or

20 (D) imminent discovery of the non-compliance by  
21 the Agency;

22 (4) that the non-compliance is being corrected and any  
23 environmental harm is being remediated in a timely fashion;

24 (5) that the person agrees to prevent a recurrence of  
25 the non-compliance;

26 (6) that no related non-compliance events have

1 occurred in the past 3 years at the same facility or in the  
2 past 5 years as part of a pattern at multiple facilities  
3 owned or operated by the person;

4 (7) that the non-compliance did not result in serious  
5 actual harm or present an imminent and substantial  
6 endangerment to human health or the environment or violate  
7 the specific terms of any judicial or administrative order  
8 or consent agreement;

9 (8) that the person cooperates as reasonably requested  
10 by the Agency after the disclosure; and

11 (9) that the non-compliance was identified voluntarily  
12 and not through a monitoring, sampling, or auditing  
13 procedure that is required by statute, rule, permit,  
14 judicial or administrative order, or consent agreement.

15 If a person can establish all of the elements under this  
16 subsection except the element set forth in paragraph (1) of  
17 this subsection, the person is entitled to a 75% reduction in  
18 the amount of the penalty.

19 Section 65. Judicial review. A party may appeal any final  
20 decision of the Agency under this Act in the same manner set  
21 forth in Section 41 of the Environmental Protection Act.

22 Section 70. Rulemaking. The Agency shall adopt rules to  
23 implement this Act.

1 Section 90. The State Finance Act is amended by adding  
2 Section 5.855 as follows:

3 (30 ILCS 105/5.855 new)

4 Sec. 5.855. The Climate Change and Emissions Management  
5 Fund.

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