

2020 Regular Session

SENATE BILL NO. 353

BY SENATOR HEWITT

ENVIRONMENTAL CONTROL. Provides for carbon sequestration. (8/1/20)

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AN ACT

To amend and reenact R.S. 30:1103(3), (6), and (9), 1104(A)(8) and (9), the introductory paragraph of (C), (C)(1), (E), 1105(C), 1108(A)(1) and (B), 1109(A), 1110(C)(1)(a) through (e), 1111(F), and R.S. 19:2(12), relative to the Louisiana Geologic Sequestration of Carbon Dioxide Act; to provide certain definitions, terms, procedures, conditions, requirements, and effects; to provide for the powers and duties of the commissioner of conservation; to provide relative to storage facilities and operations; to provide relative to certain liability; to provide relative to eminent domain and expropriation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:1103(3), (6), and (9), 1104(A)(8) and (9), the introductory paragraph of (C), (C)(1), (E), 1105(C), 1108(A)(1) and (B), 1109(A), 1110(C)(1)(a) through (e), and 1111(F), and R.S. 19:2(12) are hereby amended to read as follows:

§1103. Definitions

Unless the context otherwise requires, the words defined in this Section have the following meaning when found in this Chapter:

* * *

1 (3) "Gas" has the same meaning as provided in R.S. ~~30:3(5)~~ **30:3(3)**.

2 * * *

3 (6) "Oil" has the same meaning as provided in R.S. ~~30:3(4)~~ **30:3(7)**.

4 * * *

5 (9) "Storage facility" means the underground reservoir, carbon dioxide
6 injection wells, monitoring wells, underground equipment, and surface buildings and
7 equipment utilized in the storage operation; ~~including pipelines owned or operated~~
8 ~~by the storage operator used to transport the carbon dioxide from one or more~~
9 ~~capture facilities or sources to the storage and injection site.~~ The underground
10 reservoir component of the storage facility includes any necessary and reasonable
11 aerial buffer and subsurface monitoring zones designated by the commissioner for
12 the purpose of ensuring the safe and efficient operation of the storage facility for the
13 storage of carbon dioxide and shall be chosen to protect against pollution, and escape
14 or migration of carbon dioxide.

15 * * *

16 §1104. Duties and powers of the commissioner; rules and regulations;
17 permits

18 A. The office of conservation's actions under this Chapter shall be directed
19 and controlled by the commissioner. The commissioner shall have authority to:

20 * * *

21 (8) Nothing in this Chapter shall prevent an enhanced oil and gas recovery
22 project utilizing injection of carbon dioxide as approved under R.S. 30:4 **or prevent**
23 **the commissioner from approving, validating, or verifying the documentation**
24 **and quantification of carbon dioxide stored in association with the production**
25 **of hydrocarbons at an enhanced oil and gas recovery project.**

26 (9) Approve conversion of an ~~to~~ **geologic storage facilities of**
27 **hydrocarbon-bearing formations, including depleted oil formations as well as**
28 existing **or pre-existing** enhanced oil or gas recovery operation into a storage facility
29 **operations**, if necessary, taking into consideration prior approvals of the

1 commissioner regarding such enhanced oil recovery operations.

2 * * *

3 C. Prior to the use of any reservoir for the storage of carbon dioxide and prior
4 to the exercise of eminent domain by any person, firm, or corporation having such
5 right under laws of the state of Louisiana, and as a condition precedent to such use
6 or to the exercise of such rights of eminent domain, the commissioner, after public
7 hearing pursuant to the provisions of R.S. 30:6, held in the parish where the storage
8 facility is to be located, shall have found ~~all of~~ **at least one** the following:

9 (1) That the reservoir sought to be used for the injection, storage, and
10 withdrawal of carbon dioxide is suitable and feasible for such use, provided no
11 reservoir, any part of which is producing or is capable of producing oil, gas,
12 condensate, or other commercial mineral in paying quantities, shall be subject to
13 such use, unless ~~all owners in such reservoir have agreed thereto. In addition, no~~
14 ~~reservoir shall be subject to such use unless either:~~ **any of the following applies:**

15 (a) **The reservoir or any part thereof sought to be used for storage under**
16 **this Chapter is producing or is capable of producing oil, gas, condensate, or**
17 **other commercial mineral in paying quantities, and all owners in such reservoir**
18 **or relevant part thereof have agreed to such use.**

19 (b) The volumes of original reservoir, oil, gas, condensate, salt, or other
20 commercial mineral therein which are capable of being produced in paying quantities
21 have all been produced.

22 (b)(c) Such reservoir has a greater value or utility as a reservoir for carbon
23 dioxide storage than for the production of the remaining volumes of original
24 reservoir oil, gas, condensate, or other commercial mineral, and at least three-fourths
25 of the owners, in interest, exclusive of any "lessor" defined in R.S. 30:148.1, have
26 consented to such use in writing.

27 * * *

28 E. **The Upon request by the owner of the carbon dioxide which has**
29 **previously been reduced to possession and which is to be subsequently injected**

1 **into a storage reservoir, the** commissioner ~~may~~ **shall** issue any necessary order
2 providing that all **such** carbon dioxide ~~which has previously been reduced to~~
3 ~~possession and which is subsequently injected into a storage reservoir~~ shall at all
4 times be deemed the property of the party that owns such carbon dioxide, whether
5 at the time of injection or pursuant to a change of ownership by agreement while the
6 carbon dioxide is located in the storage facility, his successors and assigns; and in
7 no event shall such carbon dioxide be subject to the right of the owner of the surface
8 of the lands or of any mineral interest therein under which such storage reservoir
9 shall lie or be adjacent to or of any person other than the owner, his successors, and
10 assigns to produce, take, reduce to possession, waste, or otherwise interfere with or
11 exercise any control there over, provided that the owner, his successors, and assigns
12 shall have no right to gas, liquid hydrocarbons, salt, or other commercially
13 recoverable minerals in any stratum or portion thereof not determined by the
14 commissioner to constitute an approved storage reservoir. The commissioner shall
15 issue such orders, rules, and regulations as may be necessary for the purpose of
16 protecting any such storage reservoir, strata, or formations against pollution or
17 against the escape of carbon dioxide therefrom, including such necessary rules and
18 regulations as may pertain to the drilling into or through such storage reservoir.

* * *

20 §1105. Hearings; notice; rules of procedures; emergency; service of process; public
21 records; request for hearings; orders and compliance orders

* * *

23 C. **Any** **For purposes of this Chapter, any** interested person **alleging an**
24 **injury in fact that may result from a storage facility proposed for approval**
25 **under this Chapter** has the right to have the commissioner call a hearing for the
26 purpose of taking action in respect to a matter within the jurisdiction of the
27 commissioner as provided in this Section by making a request therefor in writing and
28 paying the hearing fee set by the commissioner, as provided by law for hearing
29 conducted pursuant to R.S. 30:6. Upon receiving the request and payment of the

1 required fees the commissioner shall promptly call a hearing. After the hearing and
 2 with all convenient speed and within thirty days after the conclusion of the hearing,
 3 the commissioner shall take whatever action he deems appropriate with regard to the
 4 subject matter.

* * *

6 §1108. Eminent domain, expropriation

7 A.(1) Any storage operator is hereby authorized, after obtaining any permit
 8 and any certificate of public convenience and necessity from the commissioner
 9 required by this Chapter, to exercise the power of eminent domain and expropriate
 10 needed property to acquire surface and subsurface rights and property interests
 11 necessary or useful for the purpose of constructing, operating, or modifying a storage
 12 facility and the necessary infrastructure including the laying, maintaining, and
 13 operating **of** pipelines for the transportation of carbon dioxide to a storage facility,
 14 together with **utility**, telegraph, and telephone lines necessary and incidental to the
 15 operation of these storage facilities and pipelines, over private property thus
 16 expropriated; and have the further right to construct and develop storage facilities
 17 and the necessary infrastructure, including the laying, maintaining, and operating of
 18 pipelines along, across, over, and under any navigable stream or public highway,
 19 street, bridge, or other public place; and also have the authority, under the right of
 20 expropriation herein conferred, to cross railroads, street railways, and other
 21 pipelines, by expropriating property necessary for the crossing under the general
 22 expropriation laws of this state. The right to run along, across, over, or under any
 23 public road, bridge, or highway, as before provided for, may be exercised only upon
 24 condition that the traffic thereon is not interfered with, and that such road or highway
 25 is promptly restored to its former condition of usefulness, at the expense of the
 26 storage facility and the pipeline owner if different from the storage operator, the
 27 restoration to be subject also to the supervision and approval of the proper local
 28 authorities.

* * *

1 record of a storage facility if the Carbon Dioxide Geologic Storage Trust Fund has
2 been depleted of funds such that it contains inadequate funds to address or remediate
3 any duty, obligation, or liability that may arise after issuance of the certificate of
4 completion of injection operations.

5 ~~(3)~~**(2)** Such release from liability will not apply to the owner or operator of
6 a storage facility, carbon dioxide transmission pipeline, or the generator of the
7 carbon dioxide being handled by either the facility or pipeline if it is demonstrated
8 that any such owner, operator, or generator intentionally and knowingly concealed
9 or intentionally and knowingly misrepresented material facts related to the
10 mechanical integrity of the storage facility or the chemical composition of any
11 injected carbon dioxide. In addition, upon the issuance of the certificate of
12 completion of injection operations, any performance bonds posted by the operator
13 shall be released and continued monitoring of the site, including remediation of any
14 well leakage, shall become the principal responsibility of the Carbon Dioxide
15 Geologic Storage Trust Fund.

16 ~~(4)~~**(3)** It is the intent of this Section that the state shall not assume or have
17 any liability by the mere act of assuming ownership of a storage facility after
18 issuance of a certificate of completion of injection operations.

19 * * *

20 §1110. Carbon Dioxide Geologic Storage Trust Fund

21 * * *

22 C. The commissioner is hereby authorized to levy on storage operators the
23 following fees or costs for the purpose of funding the fund:

24 (1) A fee payable to the office of conservation, in a form and schedule
25 prescribed by the office of conservation, for each ton of carbon dioxide injected for
26 storage. This fee is to be determined based upon the following formula:

- 27 (a) $F \times \del{120}**144** < M.$
- 28 (b) "F" is a per unit fee in dollars per ton set by the office of conservation.
- 29 (c) "~~120~~"**144**" is the minimum number of months over which a fee is to be

1 collected.

2 (d) "M" is the Maximum Payment of five million dollars and is the total
3 amount of fees to be collected before the payment of the fee can be suspended as
4 provided in this Section.

5 (e) The fee cannot exceed five million dollars divided by one hundred ~~twenty~~
6 **forty-four** divided by the total tonnage of carbon dioxide to be injected,
7 (($\$5,000,000/120$)/ total injection tonnage of carbon dioxide).

8 * * *

9 §1111. Site-specific trust accounts

10 * * *

11 F. Once the commissioner has approved the site-specific trust account, and
12 the account is fully funded, the party transferring the storage facility site and all prior
13 owners, operators, and working interest owners shall not thereafter be held liable ~~by~~
14 ~~the state~~ for any site closure costs or actions associated with the transferred storage
15 facility site. The party acquiring the storage facility site shall thereafter be the
16 responsible party for the purposes of this Part.

17 * * *

18 Section 2. R.S. 19:2(12) is hereby amended to read as follows:

19 §2. Expropriation by state or certain corporations, limited liability
20 companies, or other legal entities

21 Prior to filing an expropriation suit, an expropriating authority shall attempt
22 in good faith to reach an agreement as to compensation with the owner of the
23 property sought to be taken and comply with all of the requirements of R.S. 19:2.2.
24 If unable to reach an agreement with the owner as to compensation, any of the
25 following may expropriate needed property:

26 * * *

27 (12) Any domestic or foreign corporation, limited liability company, or other
28 legal entity composed of such corporations or wholly owned subsidiaries thereof
29 engaged in the injection of carbon dioxide for the underground storage of carbon

1 dioxide approved by the commissioner of conservation. Property located in
 2 Louisiana may be so expropriated for the underground storage of carbon dioxide in
 3 connection with such storage facility projects located in Louisiana, including but not
 4 limited to surface and subsurface rights, mineral rights, and other property interests
 5 necessary or useful for the purpose of constructing, operating, or modifying a carbon
 6 dioxide **storage** facility **or transporting carbon dioxide by pipeline to such**
 7 **storage facility**. This Paragraph shall have no effect on nor does it grant
 8 expropriation of the mineral rights or other property rights associated with the
 9 approvals required for injection of carbon dioxide into enhanced recovery projects
 10 approved by the commissioner under R.S. 30:4.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Tyler S. McCloud.

DIGEST

SB 353 Original

2020 Regular Session

Hewitt

Present law defines a storage facility. Proposed law removes from that definition pipelines owned or operated by the storage operator used to transport the carbon dioxide from one or more capture facilities or sources to the storage and injection site.

Present law provides that present law does not prevent an enhanced oil and gas recovery project using injected carbon dioxide. Proposed law retains present law and adds nor does present law prevent the commissioner from approving, validating or verifying the documentation and quantification of carbon dioxide stored in association with the production of hydrocarbons at an enhanced oil and gas recovery project.

Present law authorizes the commissioner to approve conversion of an existing enhanced oil or gas recovery operation into a storage facility, if necessary, taking into consideration prior approvals of the commissioner regarding such enhanced oil recovery operations. Proposed law authorizes the approval of a conversion to geologic storage facilities of hydrocarbon-bearing formations, including depleted oil formations as well as existing or pre-existing enhanced oil or gas recovery operations.

Present law provides that prior to using a reservoir and prior to the exercise of eminent domain the commissioner shall have a hearing and find that such use is suitable and feasible; will not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits; and will not endanger lives or property. Proposed law retains present law.

Present law provides that a reservoir is suitable and feasible for use as carbon dioxide storage when that either of the following conditions exists:

- (1) The volumes of original oil, gas, condensate, salt, or other commercial mineral are capable of being produced in paying quantities have all been produced.
- (2) The reservoir has a greater value or utility as carbon dioxide storage than mineral production and at least 3/4 of the owners consent in writing.

Proposed law retains present law and adds that the a reservoir is also suitable and feasible if a reservoir is capable of producing mineral in paying quantities and all the owners have agreed to such use.

Present law authorizes the commissioner to issue orders to ensure that carbon dioxide reduced to possession and then injected into such a reservoir remains the property of the owner of the carbon dioxide, not the surface or mineral rights owner, and to issue orders to protect the reservoir. Proposed law requires the commissioner issue such order upon the request of the owner of the carbon dioxide.

Present law requires a public hearing to be conducted as provided by present law and to require such hearings when requested by an interested person and within 30 days after hearing, the commissioner shall take whatever action he deems appropriate. Proposed law requires the interested person requesting a hearing allege an injury in fact that may result from the proposed storage facility.

Present law authorizes a storage operator that has been issued a permit and a certificate of public necessity to exercise eminent domain to construct, operate, and modify a storage facility or lay, maintain, and operate pipelines for the transportation of carbon dioxide to storage. Present law requires the exercise of eminent domain in accordance with present law. Proposed law retains present law and adds to the purposes of exercising the authority for utilities necessary to the operation of storage facility.

Present law prohibits the right of eminent domain in present law from prejudicing the rights of the owners of the lands, minerals, or other rights or interests not acquired for the storage facility. Proposed law prohibits the right of eminent domain from prejudicing landowner rights or mineral rights not reasonably necessary for the use of the acquired property.

Present law provides that after 10 years, or other time established by rule, after cessation of operations the commissioner shall issue a certificate of completion of injection operations by showing the reservoir is expected to retain integrity, at which time ownership is transferred to the state and the storage operator and all generators of the carbon dioxide shall be released from any and all duties under present law and any and all liability.

Proposed law authorizes a time shorter than 10 years if established by rule. Proposed law requires the storage operator show substantial evidence of completion and the associated facilities have been decommissioned. Proposed law authorizes the ownership of the project to transfer to a party that has established a site-specific trust account rather than to the state.

Present law provides that the release from liability applies to liability which arises after the issuance of the certificate of completion. Proposed law removes the limitation of when the liabilities arise.

Present law provides that the last operator or owner shall not be released of liability if the Carbon Dioxide Geologic Trust Fund has been depleted. Proposed law removes present law limitation on release of liability.

Present law authorizes the commissioner to levy per tonnage of carbon dioxide stored fee on operators up to a maximum of \$5,000,000. The rate of collecting the fee shall be determined by the commissioner based on the formula $F \times 120 < M$, where "F" is the per unit fee, "120" is the minimum number of months over which the fee is collected, and "M" is the maximum payment of \$5,000,000. Proposed law increases the minimum number of months from 120 to 144, thereby changing the formula from $F \times 120 < M$ to $F \times 144 < M$.

Present law provides for site-specific accounts that are established for long-term maintenance and restoration when a storage facility is transferred from one party to another. Present law provides that once the site-specific fund is fully funded, the owners, operators, and working interest owners are prohibited from being held liable by the state. Proposed law

removes the limitation of liability from only the state.

Present law authorizes the expropriation of property by any domestic or foreign corporation, limited liability company, or other legal entity composed of such corporations or wholly owned subsidiaries of such entities engaged in the injection of carbon dioxide for the underground storage of carbon dioxide approved by the commissioner of conservation. Proposed law extends that expropriation authority for the purpose of transporting carbon dioxide by pipeline to a carbon dioxide storage facility.

Effective August 1, 2020.

(Amends R.S. 30:1103(3), (6), and (9), 1104(A)(8) and (9), (C) (intro para) and (C)(1), (E), 1105(C), 1108(A)(1) and (B), 1109(A), 1110(C)(1)(a)-(e), 1111(F), and R.S. 19:2(12))