

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(2), (3), (6), and (9), 1104(A)(9), the introductory paragraph of (C), (C)(1), 1108(A)(1) and (B), 1110(C)(1)(a) through (e), and R.S. 19:2(12), and to enact R.S. 30:1103(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 eminent domain and expropriation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:1103(2), (3), (6), and (9), 1104(A)(9), the introductory paragraph of (C), (C)(1), 1108(A)(1) and (B), 1110(C)(1)(a) through (e), are hereby amended and reenacted and R.S. 30:1103(12) is hereby enacted 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 (2) "Commissioner" has the same meaning as provided in R.S. 30:3~~(2)~~**(1)**.

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

3 * * *

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

5 * * *

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

16 * * *

17 **(12) "Interested person" means any person who presently owns an**
18 **interest within the area of, or proximate to, the tracts directly affected by the**
19 **storage facility.**

20 §1104. Duties and powers of the commissioner; rules and regulations; permits

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

23 * * *

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

29 * * *

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

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

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

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

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

25 * * *

26 §1108. Eminent domain, expropriation

27 A.(1) Any storage operator is hereby authorized, after obtaining any permit
 28 and any certificate of public convenience and necessity from the commissioner
 29 required by this Chapter, to exercise the power of eminent domain and expropriate

1 needed property to acquire surface and subsurface rights and property interests
2 necessary or useful for the purpose of constructing, operating, or modifying a storage
3 facility and the necessary infrastructure including the laying, maintaining, and
4 operating of pipelines for the transportation of carbon dioxide to a storage facility,
5 together with utility, telegraph, and telephone lines necessary and incidental to the
6 operation of these storage facilities and pipelines, over private property thus
7 expropriated; and have the further right to construct and develop storage facilities
8 and the necessary infrastructure, including the laying, maintaining, and operating of
9 pipelines along, across, over, and under any navigable stream or public highway,
10 street, bridge, or other public place; and also have the authority, under the right of
11 expropriation herein conferred, to cross railroads, street railways, and other
12 pipelines, by expropriating property necessary for the crossing under the general
13 expropriation laws of this state. The right to run along, across, over, or under any
14 public road, bridge, or highway, as before provided for, may be exercised only upon
15 condition that the traffic thereon is not interfered with, and that such road or highway
16 is promptly restored to its former condition of usefulness, at the expense of the
17 storage facility and the pipeline owner if different from the storage operator, the
18 restoration to be subject also to the supervision and approval of the proper local
19 authorities.

20 * * *

21 B. The exercise of the right of eminent domain granted in this Chapter shall
22 not prevent persons having the right to do so from drilling through the storage
23 facility in such manner as shall comply with the rules of the commissioner issued for
24 the purpose of protecting the storage facility against pollution or invasion and against
25 the escape or migration of carbon dioxide. Furthermore, the right of eminent domain
26 set out in this Section shall not prejudice the rights of the owners of the lands; or
27 ~~minerals, or other rights or interests therein as to all other uses~~ not acquired for the
28 storage facility and not reasonably necessary for the use of the acquired
29 property.

* * *

§1110. Carbon Dioxide Geologic Storage Trust Fund

* * *

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

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

(a) $F \times \frac{120}{144} < M$,

(b) "F" is a per unit fee in dollars per ton set by the office of conservation.

(c) "~~120~~"144" is the minimum number of months over which a fee is to be collected.

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

(e) The fee cannot exceed five million dollars divided by one hundred ~~twenty~~ **forty-four** divided by the total tonnage of carbon dioxide to be injected, ($\frac{\$5,000,000}{\del{120} \ 144}$) / total injection tonnage of carbon dioxide).

* * *

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

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

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

* * *

(12) Any domestic or foreign corporation, limited liability company, or other

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

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.

Proposed law defines interested person as any person who presently owns an interest within the area of, or proximate to, the tracts directly affected by the storage facility.

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 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 owner's consent in writing.

Proposed law retains present law and adds 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 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 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 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(2), (3), (6), and (9), 1104(A)(9), (C) (intro para) and (C)(1), 1108(A)(1) and (B), 1110(C)(1)(a)-(e), and R.S. 19:2(12); adds R.S. 30:1103(12))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Adds definition for interested person.
2. Removes language preventing the commissioner from disapproving documentation and quantification of carbon dioxide stored in association with an enhanced oil and gas recovery project.
3. Removes language requiring the commissioner to issue an order at the request of the owner on the ownership of CO₂ that has been reduced to possession and injected into a storage facility.
4. Removes language relative to liability and release from liability.
5. Technical amendments