

2024 Regular Session

HOUSE BILL NO. 492

BY REPRESENTATIVE GEYMANN

PROPERTY/EXPROPRIATION: Provides relative to eminent domain

1 AN ACT

2 To amend and reenact R.S. 19:2(9) through (12) and R.S. 30:1103(12),
3 1104(C)(introductory paragraph), 1107, 1108(A)(2) and (B)(1) and to enact R.S.
4 30:1108(A)(3), relative to expropriation; to clarify the rights of owners of land as it
5 relates to eminent domain; to provide for expropriation by certain legal entities; to
6 provide for duties and powers of the commissioner; to provide for certificates of
7 public convenience and necessity; to prohibit the expropriation of reservoir storage
8 rights for geologic storage; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 19:2(9) through (12) are hereby amended and reenacted to read as
11 follows:

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

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

19 * * *

1 (9) Any domestic or foreign corporation, limited liability company, or other
2 legal entity created for the purpose of, or engaged in, piping or marketing of coal or
3 lignite in whatever form or mixture convenient for transportation within a pipeline
4 as otherwise provided for in R.S. 30:721 through 723.

5 (10) Any domestic or foreign corporation, limited liability company, or other
6 legal entity ~~composed of such corporations or wholly owned subsidiaries thereof~~
7 created for the purpose of, or engaged in, the piping or marketing of carbon dioxide
8 for use in connection with a secondary or tertiary recovery project for the enhanced
9 recovery of liquid or gaseous hydrocarbons approved by the commissioner of
10 conservation, or created for the purpose of, or engaged in the transportation of
11 carbon dioxide by pipeline for underground storage, including but not limited to
12 through connecting to an existing pipeline transporting carbon dioxide for
13 underground storage, whether owned or operated by the same entity, and which has
14 received a certificate of public convenience and necessity pursuant to the provisions
15 of R.S. 30:1107(B). Property located in Louisiana may be so expropriated for the
16 transportation of carbon dioxide for underground injection in connection with such
17 projects located in Louisiana or in other states or jurisdictions.

18 (11) ~~Any domestic or foreign corporation, limited liability company, or other~~
19 ~~legal entity engaged in any of the activities otherwise provided for in this Section.~~

20 ~~(12)~~ Any domestic or foreign corporation, limited liability company, or other
21 legal entity ~~composed of such corporations or wholly owned subsidiaries thereof~~
22 created for the purpose of, or engaged in, the injection of carbon dioxide for the
23 underground storage of carbon dioxide and that has received a certificate of public
24 convenience and necessity pursuant to the provisions of R.S. 30:1107(A) ~~approved~~
25 ~~by the commissioner of conservation.~~ Property located in Louisiana may be so
26 expropriated for the underground storage of carbon dioxide in connection with such
27 storage facility projects located in Louisiana, including but not limited to surface and
28 subsurface rights, mineral rights, and other property interests necessary or useful for
29 the purpose of constructing, operating, or modifying a carbon dioxide storage facility

1 ~~or transporting carbon dioxide by pipeline to such storage facility.~~ This Paragraph
 2 shall not allow for the expropriation of reservoir storage rights for geologic storage
 3 of carbon dioxide, except in connection with any project as to which R.S.
 4 30:1108(B)(2) is applicable. This Paragraph shall have no effect on nor does it grant
 5 expropriation of the mineral rights or other property rights associated with the
 6 approvals required for injection of carbon dioxide into enhanced recovery projects
 7 approved by the commissioner under R.S. 30:4.

8 (12) Any domestic or foreign corporation, limited liability company, or other
 9 legal entity created for the purpose of, or engaged in, any of the activities otherwise
 10 provided for in this Section.

11 Section 2. R.S. 30:1103(12), 1104(C)(introductory paragraph), 1107, 1108(A)(2) and
 12 (B)(1) are hereby amended and reenacted and R.S. 30:1108(A)(3) is hereby enacted to read
 13 as follows:

14 §1103. Definitions

15 * * *

16 (12) "Storage operator" means the person ~~authorized~~ recognized by the
 17 commissioner ~~to operate a~~ as the operator of a proposed or existing storage facility.
 18 A storage operator can, but need not be, the owner of carbon dioxide injected into
 19 a storage facility. Ownership of carbon dioxide and use of geologic storage is a
 20 matter of private contract between the storage operator and owner, shipper, or
 21 generator of carbon dioxide, as applicable.

22 * * *

23 §1104. Duties and powers of the commissioner; rules and regulations; permits

24 * * *

25 C. Prior to the use of any reservoir for the storage of carbon dioxide and
 26 prior to the exercise of eminent domain pursuant to the provisions of R.S. 19:2(11)
 27 and R.S. 30:1108 by any person, firm, or corporation having such right under laws
 28 of the state of Louisiana, and as a condition precedent to such use or to the exercise
 29 of such rights of eminent domain pursuant to the provisions of R.S. 19:2(11) and

1 R.S. 30:1108, the commissioner, after public hearing pursuant to the provisions of
2 R.S. 30:6, held in the parish where the storage facility is to be located, shall have
3 found at least one of the following:

4 * * *

5 §1107. Certificates of public convenience and necessity; certificate of completion
6 of injection operations

7 A. The commissioner shall issue a certificate of public convenience and
8 necessity or a certificate of completion of injection operations to each person
9 applying therefor if, after a public hearing pursuant to the provisions of R.S. ~~30:6~~
10 30:6, held in the parish where the storage facility is to be located, he determines that
11 it is required by the present or future public convenience and necessity, and such
12 decision is based upon the following criteria: (1) the proposed storage facility meets
13 the requirements of R.S. 30:1104(C) and (2) the proposed storage facility meets the
14 requirements of any rules adopted under this Chapter. However, if any person has
15 previously been issued a certificate of public convenience and necessity or a
16 certificate of completion of injection operations by the commissioner, that certificate
17 continues to remain valid and in force.

18 B. The commissioner shall issue a certificate of public convenience and
19 necessity to each transporter of carbon dioxide applying therefore, whether or not
20 such transporter is also the storage operator for the laying, maintaining, and
21 operating of a pipeline for the transportation of carbon dioxide to a storage facility,
22 and such rights necessary and incidental thereto, if after a public hearing pursuant
23 to the provisions of R.S. 30:6, he determines that it is or will be in the present or
24 future public interest to do so.

25 ~~B. C.~~ C. The commissioner shall issue a certificate of completion of injection
26 operations to the operator applying therefor, if after a public hearing pursuant to R.S.
27 30:6, it is determined that such operator has met all of the conditions required for
28 such certificate, including the requirements of R.S. 30:1109.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ~~C. D.~~ Notwithstanding any provision of this Chapter or any rule, regulation,
 2 or order issued by the commissioner under this Chapter to the contrary, accepting or
 3 acting pursuant to a certificate of public convenience and necessity or a certificate
 4 of completion of injection operations issued under this Chapter, compliance with the
 5 provisions of this Chapter or with rules, regulations, or orders issued by the
 6 commissioner under this Chapter or voluntarily performing any act which could be
 7 required by the commissioner pursuant to this Chapter or rules, regulations, or orders
 8 issued by the commissioner under this Chapter shall not have the following
 9 consequences:

10 (1) Cause any storage operator or transporter of carbon dioxide for storage
 11 to become or be classified as a common carrier or a public utility for any purpose
 12 whatsoever.

13 (2) Subject any storage operator or transporter of carbon dioxide for storage
 14 to any duties, obligations, or liabilities as a common carrier or public utility under
 15 the constitution and laws of this state.

16 (3) Increase the liability of any storage operator or transporter of carbon
 17 dioxide for storage for any taxes otherwise due to the state of Louisiana in the
 18 absence of any additions or amendments to any tax laws of this state.

19 * * *

20 §1108. Eminent domain; expropriation

21 A.

22 * * *

23 (2) The exercise of eminent domain or expropriation powers under this
 24 Section shall not allow for the expropriation of reservoir storage rights for geologic
 25 storage. This prohibition against the use of expropriation of reservoir storage rights
 26 for geologic storage shall not apply to the exercise of expropriation powers in
 27 connection with any parish as to which Paragraph (B)(2) of this Section is applicable.

28 ~~(2)~~ (3) In the exercise of the privilege herein conferred, owners or operators
 29 of such storage facilities and pipelines shall compensate the parish, municipality, or

1 road district, respectively, for any damage done to a public road, in the construction
2 of storage facilities, and the laying of pipelines, utility, telegraph, or telephone lines,
3 along, under, over, or across the road. Nothing in this Chapter shall be construed to
4 grant any transporter the right to use any public street or alley of any parish,
5 incorporated city, town, or village, except by express permission from the parish,
6 city, or other governing authority.

7 B.(1) Except as provided in Paragraph (2) of this Subsection, the exercise of
8 the right of eminent domain granted in this Chapter shall not prevent persons having
9 the right to do so from drilling through the storage facility in such manner as shall
10 comply with the rules of the commissioner issued for the purpose of protecting the
11 storage facility against pollution or invasion and against the escape or migration of
12 carbon dioxide. Furthermore, the right of eminent domain set out in this Section
13 shall not prejudice the rights of the owners of the lands or minerals as to all other
14 uses not acquired for the storage facility and not reasonably necessary for the use of
15 the acquired property.

16 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 492 Reengrossed 2024 Regular Session Geymann

Abstract: Clarifies the rights of land owners relative to eminent domain.

Present law specifies that the right of eminent domain cannot prejudice an owner's land or mineral rights not acquired for a storage facility or necessary for use of acquired property.

Proposed law clarifies that the protections afforded land owners in present law extend to all other uses not acquired for a storage facility or necessary for use of acquired property.

Present law provides for expropriation by state or certain corporations, limited liability companies, or other legal entities. Proposed law adds to the provisions of present law by providing for expropriation by legal entities, certain legal entities created for the purpose of, or engaged in the transportation of carbon dioxide by pipeline for underground storage, including but not limited to through connecting to an existing pipeline transporting carbon dioxide for underground storage, whether owned or operated by the same entity, and which has received a certificate of public convenience and necessity pursuant to the provisions of proposed law (R.S. 30:1107(B)).

Present law authorizes any domestic or foreign corporation, limited liability company, or other legal entity engaged in activities provided in present law to expropriate needed property.

Proposed law removes present law.

Proposed law provides that for a prohibition on the expropriation of reservoir storage rights for geologic storage of carbon dioxide, except in connection with any project as to which present law (R.S. 30:1108(B)(2)) is applicable.

Proposed law adds to the definition of "storage operator" by defining it as the person authorized by the commissioner as the operator of a proposed or existing storage facility.

Proposed law clarifies the duties and powers of the commissioner as they relate to eminent domain proceedings.

Proposed law provides for issuance of certificates of public convenience and necessity to each transporter of carbon dioxide applying therefore, whether or not such transporter is also the storage operator for the laying, maintaining, and operating of a pipeline for the transportation of carbon dioxide to a storage facility, and such rights necessary and incidental thereto, if after a public hearing pursuant to the provisions of present law, the commissioner determines that it is or will be in the present or future public interest to do so.

Proposed law provides that the exercise of eminent domain or expropriation powers under present law shall not allow for the expropriation of reservoir storage rights for geologic storage. This prohibition against the use of expropriation of reservoir storage rights for geologic storage shall not apply to the exercise of expropriation powers in connection with any parish as to which present law is applicable.

(Amends R.S. 19:2(9) - (12) and R.S. 30:1103(12), 1104(C)(intro. para.), 1107, 1108(A)(2) and (B)(1); Adds R.S. 30:1108(A)(3))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Add to present law providing for expropriation by legal entities, certain legal entities created for the purpose of, or engaged in the transportation of carbon dioxide by pipeline for underground storage, including but not limited to through connecting to an existing pipeline transporting carbon dioxide for underground storage, whether owned or operated by the same entity, and which has received a certificate of public convenience and necessity pursuant to the provisions of proposed law (R.S. 30:1107(B)).
2. Specify that proposed law does not allow for the expropriation of reservoir storage rights for geologic storage of carbon dioxide, except in connection with any project as to which present law (R.S. 30:1108(B)(2)) is applicable.
3. Remove expropriation powers granted in present law to any domestic or foreign corporation, limited liability company, or other legal entity engaged in any activities provided in present law.
4. Clarify the definition of "storage operator".
5. Specify the duties and powers of the commissioner as it relates to eminent domain.

6. Provide for issuance of certificates of public convenience and necessity to each transporter of carbon dioxide applying therefore, whether or not such transporter is also the storage operator for the laying, maintaining, and operating of a pipeline for the transportation of carbon dioxide to a storage facility, and such rights necessary and incidental thereto, if after a public hearing pursuant to the provisions of present law, he determines that it is or will be in the present or future public interest to do so.
7. Specify that the exercise of eminent domain or expropriation powers under present law does not allow for the expropriation of reservoir storage rights for geologic storage. This prohibition against the use of expropriation of reservoir storage rights for geologic storage shall not apply to the exercise of expropriation powers in connection with any parish as to which Paragraph (B)(2) of present law is applicable.
8. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.