
DIGEST

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Morris

HB No. 661

Abstract: Creates the La. Geologic Sequestration of Carbon Dioxide Act.

Proposed law provides for policy and jurisdiction of the commissioner of conservation over the geologic storage and withdrawal of carbon dioxide.

Proposed law provides for definitions.

Proposed law authorizes the commissioner of conservation to do the following:

- (1) Regulate the storage of carbon dioxide and the transmission of carbon dioxide to such storage facilities.
- (2) Issue certificates of public convenience and necessity for such facilities and associated pipelines.
- (3) To adopt rules, regulations, or orders to prevent the escape of carbon dioxide into other strata; to prevent the pollution of fresh water by oil, gas, salt water or carbon dioxide; to provide for closure of abandoned wells.
- (4) To make inquires, investigations, and inspection and take such actions that are necessary to enforce proposed law.
- (5) To make drilling records.
- (6) To prevent blowouts, caving, and seepage or from operations that may cause injury to leases or property.
- (7) To identify ownership of wells used in the storage or transportation of carbon dioxide.
- (8) Regulate conversion of recovery operations to storage facilities.
- (9) Require the placement of meters to prevent waste.
- (10) To require closure of abandoned or unused sites.
- (11) To adopt rules and regulations to collect fees.

Proposed law provides that only a storage operator is responsible for performance required by proposed law.

Proposed 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 provides that no reservoir or any part of which is producing or is capable of

producing oil, gas, condensate, or other commercial mineral in paying quantities, shall be subject to such use, unless all owners have agreed to the use.

Proposed law provides that no reservoir shall be subject to such use unless either, the volumes of original reservoir gas and condensate content therein which are capable of being produced in paying quantities have all been produced or such reservoir has a greater value or utility as a reservoir for storage, and at least three-fourths of the owners have consented to such use in writing.

Proposed law provides that if the commissioner finds that a proposed reservoir has not been fully depleted of commercially recoverable hydrocarbons, the commissioner shall determine the amount.

Proposed 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 a public hearing to be conducted as provided by present law and to require such hearings when requested by an interested person. 30 days after such requested hearing, the commissioner shall take whatever action he deems appropriate.

Proposed law provides that for violations of proposed law, the commissioner shall issue a compliance order or commence a civil action.

Proposed law requires compliance orders to state with specificity the nature of the violation, a time for compliance and, in the event of noncompliance, assess a civil penalty. The civil penalty may be no more the \$5,000 per day per violation. No penalty may be assessed until the violator has been give notice and an opportunity to respond.

Proposed law provides that the commissioner, or if requested, attorney general shall prosecute all civil cases arising out of a violation of proposed law. Authorizes the commissioner to settle any suits arising out of present law.

Proposed law authorizes the commissioner to issue certificates of public convenience and necessity or certificates of completion of injection operations after a public hearing.

Proposed law provides that proposed law shall not cause any storage operator or carbon dioxide transmitter to become, or subject to the duties, liabilities, or obligations of, a common carrier or public utility or increase their tax liability absent a change in present law.

Proposed 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. Proposed law requires the exercise of eminent domain in accordance with present law.

Proposed law provides that the commissioner is not a necessary or indispensable party to an eminent domain proceeding and has the right to be dismissed at the expense and cost of the party that named the commissioner.

Proposed 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 proposed law and any and all liability.

Proposed 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 provides that such release of liability shall not apply to any such owner, operator, or generator that intentionally and knowingly concealed or misrepresented material facts related to the integrity of the storage facility or composition of any injected carbon dioxide.

Proposed law provides that after issuance of the certificate of completion of injection operations any performance bonds shall be released and the monitoring or remediation of the site shall become the responsibility of the Carbon Dioxide Geologic Storage Trust Fund.

Proposed law provides that the state shall not assume or have any liability by the act of assuming ownership of a storage facility after the issuance of the certificate of completion of injection operations.

Proposed law limits the civil liability of an owner or operator of a storage facility or such transmission pipeline, or generator of the carbon dioxide for noneconomic damages to \$250,000 per occurrence; however, in an action for wrongful death, permanent and substantial physical deformity, loss of use of limb or organ systems; or permanent physical or mental injury that prevents independent care and prevents life-sustaining activities noneconomic damages shall not exceed \$500,000.

Proposed law provides that if liability caps provided for in proposed law are found unconstitutional, such damages shall not exceed \$1,000,000.

Proposed law establishes the Carbon Dioxide Geologic Storage Trust Fund which shall be funded by fees, penalties, bond forfeitures, private contributions, interest on deposited funds, civil penalties, costs recovered from responsible parties, grants, donations, and site-specific trust accounts.

Proposed law provides that the commissioner shall 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 provides that the commissioner shall suspend the collection of the fee once the storage operator's balance in the fund equals \$5,000,000 and will resume once the balance falls below that amount.

Proposed law provides for a regulatory fee payable to the commissioner in the form and schedule set by the commissioner not to exceed \$50,000 for FY 2010-2011 and thereafter.

Proposed law provides for an application fee in the form and schedule set by the commissioner not to exceed 8-1/2% above the amount charged on July 1, 2010.

Proposed law provides that the provision of the La. Tax Code shall apply to the administration, collection, and enforcement of the fees imposed in proposed law.

Proposed law provides for the following uses of the Fund:

- (1) Operational and long-term inspecting, testing, and monitoring of sites.
- (2) Remediation of mechanical problems associated with remaining wells and surface infrastructure.
- (3) Repairing mechanical leaks.
- (4) Administrative cost of the commissioner not to exceed \$750,000 per year.
- (5) Payment of fees and cost associated with site specific accounts.
- (6) Payments of fees and cost to acquire insurance.

Proposed law provides that the administrative costs of proposed law may be paid from the Oil and Gas Regulatory Fund until June 30, 2014. Also, requires any such payment be repaid by the Carbon Dioxide Storage Trust Fund by June 30, 2018.

Proposed law authorizes the commissioner to enter into agreements and contracts for the following purposes:

- (1) Research and development in carbon sequestration technology and methods.
- (2) To monitor sites.
- (3) To remediate mechanical problems.
- (4) To repair leaks.
- (5) To contract with a private legal entity.

Proposed law requires the commissioner to keep an accurate accounting of the fund and to report annually the legislative oversight committees. Every five years the commissioner shall report to the oversight committees on the effectiveness of the fund and the program.

Proposed 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.

(Adds R.S. 19:2(12) and R.S. 30:1101-1111)

Summary of Amendments Adopted by House

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

1. Limits expropriation authority to certain artificial entities engaged in the injection of carbon dioxide for underground storage.
2. Provides that proposed law does not affect grant expropriation of mineral rights or other property rights associated with the injection of carbon dioxide into enhanced recovery projects.
3. Includes in the definition of carbon dioxide naturally occurring and geologically sourced carbon dioxide and carbon dioxide stripped, segregated, or divided from any other fluid stream.
4. Includes in the definition of storage facility carbon dioxide storage injection wells and monitoring wells.
5. Provides ownership of the carbon dioxide is a matter of private contract.
6. Provides that authority of the commissioner to regulate recovery projects shall be governed by present law.
7. Adds authority to make rules, regulations, or orders to prevent carbon dioxide intrusion into oil, gas, salt formation, or other commercial mineral strata and to prevent pollution of fresh water by oil and gas.
8. Changes commissioner's authority to require meters to the authority to adopt rules and regulations on the placement of monitoring equipment.
9. Includes in the other commercial minerals in paying quantities in evaluating reservoirs to be used as storage facilities.
10. Provides that the commissioner has the authority to prosecute civil cases for violations and may request the attorney general to do so.
11. Removes the requirement of concurrence of the attorney general to settle cases.
12. Provides for criteria to determine public convenience and necessity.
13. Provides that proposed law shall not supersede contractual agreements as to liability between a plaintiff and an owner or operator of a carbon dioxide storage facility, pipeline, or generator.

14. Requires credits on future fees for amounts paid above the required annual balance.
15. Limits the annual regulatory fee to storage facilities that have not received a certificate of completion of injection operations.
16. Requires the annual regulatory fee to be based upon the annual project costs of oversight and regulation.
17. Authorizes the payment of fees and costs associated with insurance from the Carbon Dioxide Geologic Storage Trust Fund.
18. Changes requirements of long-term maintenance and site restoration assessment to long-term maintenance, monitoring, and site closure assessments.

House Floor Amendments to the reengrossed bill.

1. Allows costs for administering proposed law to be paid from the Oil and Gas Regulatory Fund until June 30, 2014, and requires any such payment be repaid by the Carbon Dioxide Storage Trust Fund by June 30, 2018.