

RÉSUMÉ DIGEST

ACT 378 (HB 571)

2023 Regular Session

Schexnayder

NOTICE REQUIREMENTS

Existing law provides procedures for notice and hearings by the office of conservation.

New law retains existing law and adds that the commissioner must notify the governing authority of any affected parish of completed applications for Class V or Class VI well permits related to the geologic sequestration of carbon dioxide at the same time that notice is required to be published and that such notice may be by email to the parish president, police jury president, or mayor-president, depending on the form of parish government.

New law further provides that any time notice is required under the La. Geologic Sequestration of Carbon Dioxide Act, notice must also be provided to the governing authority affected parishes and that such notice may be made by email to the parish president, police jury president, or mayor-president, depending on the form of parish government.

Existing law imposes requirements on the State Mineral and Energy Board to enter into operating agreements for the storage of carbon dioxide, including a public hearing in the affected parish.

New law adds a requirement that the governing authority of any affected parish be given notice, which may be made by email to the parish president, police jury president, or mayor-president, depending on the form of parish government. Further requires that a hearing be held in each parish affected, and provides that the assistant secretary for the office of mineral resources may appoint a hearing officer to conduct the required public hearings.

Existing law gives the La. Dept. of Wildlife and Fisheries authority to regulate geophysical and geological surveys.

New law requires an applicant seeking to conduct geophysical and geological surveys related to exploration for carbon dioxide sequestration to notify the governing authority of any parish where the proposed surveys would occur in accordance with rules promulgated by the department.

ENVIRONMENTAL ANALYSIS

New law requires the submission of an environmental analysis as part of the application for a Class VI injection well permit.

New law requires the environmental analysis to address the following questions:

- (1) Have the potential and real adverse environmental effects of the proposed permit activity been avoided to the maximum extent possible?
- (2) Does a cost-benefit analysis of the environmental impact costs versus the social and economic benefits of the proposed project demonstrate that the latter outweighs the former?
- (3) Are there alternative projects which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits?
- (4) Are there alternative sites which would offer more protection to the environment than the proposed site without unduly curtailing non-environmental benefits?
- (5) Are there mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits?

REPORTING AND RECORDKEEPING

New law requires the owner or operator of a Class VI injection well to provide quarterly reports on the following:

- (1) Any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data.
- (2) Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure.
- (3) The monthly volume or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project.
- (4) Additional reporting as required by applicable administrative rules.

New law requires the owner or operator of a Class VI injection well to report the following occurrences within 24 hours:

- (1) Evidence that the injected carbon dioxide stream or associated pressure front may endanger an underground source of drinking water.
- (2) Noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between underground sources of drinking water.
- (3) Failure to maintain mechanical integrity.

New law further requires owners and operators to retain records as required by administrative rules.

DISTRIBUTION OF FUNDS

New law provides for the following allocation of funds collected by the office of mineral resources from any contractual agreements for the storage of carbon dioxide on state-owned lands or water bottoms:

- (1) 30% will be remitted to the Mineral and Energy Operation Fund.
- (2) 30% will be remitted to parishes included in the agreement. If one or more parishes is included in the agreement, the 30% will be divided based on the amount of land in each parish included in the agreement.
- (3) The remaining funds will be deposited into the state general fund.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Existing law provides for certificates of public convenience and necessity for injection operations and establishes conditions for the issuance thereof.

Existing law precludes imposition of certain consequences against storage operators and carbon dioxide transporters, including classification as a common carrier or public utility, subjection to duties, obligations, or liabilities as a common carrier or public utility, or increase of tax liability, where the storage operator or carbon dioxide transporter acts in compliance with a certificate of public convenience and necessity or certificate of completion of injection or acts in compliance with statutes, rules, regulations, or orders issued by the commissioner of the Dept. of Natural Resources, office of conservation.

New law retains existing law.

LIABILITY

Existing law allows a storage facility operator to apply for a certificate of completion of injection operations 10 years after injection into a storage facility has ceased, or any other time frame established by rule.

New law changes the time period from 10 years to 50 years, or any other time frame established by rule, after the injection has ceased for a storage operator to apply for a certificate of completion of injection operations.

New law provides for additional criteria the storage operator must meet to receive the certificate of completion of injection operations.

Existing law provides that upon issuance of the certificate of completion of injection operations, all generators of any injected carbon dioxide, owners of carbon dioxide stored in the storage facility, and all owners otherwise having any interest in the storage facility, will be released from any and all duties or obligations under existing law and any and all liability associated with or related to that storage facility which arises after the issuance of the certificate of completion of injection operations.

Existing law provides exceptions to the liability release for the following circumstances:

- (1) Funds in the Carbon Dioxide Geologic Storage Trust Fund become inadequate.
- (2) Where an owner intentionally or knowingly conceals or misrepresents material facts related to the mechanical integrity of a storage facility or the chemical composition of any injected carbon dioxide.

New law adds that the liability release will not apply when the duties or obligations arise from any of the following:

- (1) Contractual obligations.
- (2) Criminal liability.
- (3) Noncompliance with applicable laws or regulations, including underground injection control regulations, prior to issuance of the certificate of completion of injection operations.
- (4) Where an operator is responsible for fluid migration that endangers an underground source of drinking water.
- (5) Where an operator provides deficient or erroneous information material to a decision on site closure or the issuance of a certificate of completion.

New law requires the commissioner to implement provisions of existing law and new law in accordance with the federal Safe Drinking Water Act.

CARBON DIOXIDE GEOLOGIC STORAGE TRUST FUND

Existing law establishes the Carbon Dioxide Geologic Storage Trust Fund and provides for fees to be collected by the commissioner for deposit into the fund.

Existing law authorizes the commissioner to levy a fee on each storage operator based on a rate of tonnage injected over a minimum of 144 months. Present law further provides that fee assessments will be suspended once the balance of the fund associated with that storage operator has reached \$5 million and will be resumed if the balance of the fund falls below \$4 million.

New law authorizes the commissioner to levy the fee under present law on each storage facility, rather than each storage operator, where payments will be suspended once \$5 million has been paid by each facility and resumed if the balance associated with that facility falls below \$4 million.

New law further provides that, regardless of the total number of storage facilities owned or operated by the storage operator, a storage operator's payments will be suspended when they have contributed a total of \$10 million and that the commissioner must resume collecting the fee if the balance of the fund attributable to that operator has fallen below \$8 million.

Existing law provides purposes for which the fund shall be used, including remediation of mechanical problems with wells and surface infrastructure.

New law retains the purposes provided under existing law and adds remediation associated with, arising from, or related to the site, including property remediation.

New law further provides that no additional uses of the fund may be added to new law purposes without a 2/3 vote of the elected members of each house of the legislature.

Existing law authorizes the commissioner to spend money in the fund for specified purposes, including remediation of mechanical problems with wells and surface infrastructure.

New law retains the purposes provided under existing law and adds remediation associated with, arising from, or related to the site, including property remediation.

RECORDATION

Existing law preserves the rights and obligations established in certain instruments related to immovable property against third parties if the instrument is filed in the appropriate mortgage or conveyance records.

New law retains existing law and provides the same protection to the rights and obligations in agreements for the geologic storage of carbon dioxide upon filing a notice thereof.

New law requires certain information to be contained in the notice. New law further requires the grantee to notify the governing authority in the parish in which the notice is recorded within 30 days after recordation and authorizes the notice to be made by email. Requires the notice be sent via email to the president of the political subdivision.

Effective upon signature of the governor (June 14, 2023).

(Amends the heading of Subpart A-3 of Part II of Chapter 2 of Subtitle I of Title 30, R.S. 30:209(4)(e)(intro. para.), 1105(A), 1107(C), 1109(A), 1110(C)(intro. para.) and (1)(intro. para.) and (f) and (g), (E)(2), (F), (G), and (H); Adds R.S. 30:6(H) and 149, the heading of Subpart A-4 of Part II of Chapter 2 of Subtitle I of Title 30, R.S. 30:209.2, 1104.1, 1107.1, 1109(G), 1110(C)(1)(h) and (I), and 1112, and R.S. 56:30.5)