

Regular Session, 2009

HOUSE BILL NO. 661

BY REPRESENTATIVE MORRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONSERVATION: Provides with respect to the geological sequestration of carbon dioxide

1 AN ACT

2 To enact R.S. 19:2(11) and Chapter 18 of Title 30 of the Louisiana Revised Statutes of 1950,
3 to be comprised of R.S. 30:2101 through 2111, relative to the storage of carbon
4 dioxide; to provide for expropriation; to provide for the duties and powers of the
5 commissioner of conservation; to provide for definitions; to provide for public
6 hearings; to provide for enforcement; to provide for compliance orders; to provide
7 for penalties; to provide for certificates of public convenience and necessity; to
8 provide for certificates of completion; to provide for liability; to provide for the
9 Geologic Storage Trust Fund; to provide for fees; to provide for uses of the fund; to
10 provide for accounting and reports of the fund; to provide for site-specific trust
11 accounts; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 19:2(11) is hereby enacted to read as follows:

14 §2. Expropriation by state or certain corporations and limited liability companies

15 Where a price cannot be agreed upon with the owner, any of the following
16 may expropriate needed property:

17 * * *

18 (11) Any domestic or foreign corporation or any partnership composed of
19 such corporations or wholly owned subsidiaries thereof engaged in the underground
20 storage of carbon dioxide approved by the commissioner of conservation. Property

1 located in Louisiana may be so expropriated for the underground storage of carbon
2 dioxide in connection with such projects located in Louisiana, including but not
3 limited to surface and subsurface rights, mineral rights, and other property interests
4 necessary or useful for the purpose of constructing, operating or modifying a carbon
5 dioxide facility.

6 Section 2. Chapter 18 of Title 30 of the Louisiana Revised Statutes of 1950,
7 comprised of R.S. 30:2101 through 2111, is hereby enacted to read as follows:

8 §2101. Short title

9 This Chapter shall be known and may be cited as the "Louisiana Geologic
10 Sequestration of Carbon Dioxide Act".

11 §2102. Policy; jurisdiction

12 A. It is declared to be in the public interest for a public purpose and the
13 policy of Louisiana that:

14 (1) The geologic storage of carbon dioxide will benefit the citizens of the
15 state and the state's environment by reducing greenhouse gas emissions.

16 (2) Carbon dioxide is a valuable commodity to the citizens of the state.

17 (3) Geologic storage of carbon dioxide gas may allow for the orderly
18 withdrawal as appropriate or necessary, thereby allowing carbon dioxide to be
19 available for commercial, industrial, or other uses, including the use of carbon
20 dioxide for enhanced recovery of oil and gas.

21 (4) It is the public policy of Louisiana and the purpose of this Chapter to
22 provide for a coordinated statewide program related to the storage of carbon dioxide
23 and to also fulfill the state's primary responsibility for assuring compliance with the
24 federal Safe Drinking Water Act, including any amendments thereto related to the
25 underground injection of carbon dioxide.

26 B. The commissioner of conservation shall have jurisdiction and authority
27 over all persons and property necessary to enforce effectively the provisions of this
28 Chapter and all other laws relating to the geologic storage of carbon dioxide and
29 subsequent withdrawal of stored carbon dioxide.

1 §2103. Definitions

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

4 (1) "Carbon dioxide" means anthropogenically sourced carbon dioxide
5 including its derivatives and all mixtures, combinations, and phases, whether liquid
6 or gaseous, thereof.

7 (2) "Commissioner" has the same meaning as provided in R.S. 30:3(2).

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

9 (4) "Geologic storage" means the permanent or short-term underground
10 storage of carbon dioxide in a reservoir.

11 (5) "Office" means the office of conservation, Department of Natural
12 Resources.

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

14 (7) "Person" means any natural person, corporation, association, partnership,
15 limited liability company, or other entity, receiver, tutor, curator, executor,
16 administrator, fiduciary, or representative of any kind.

17 (8) "Reservoir" means that portion of any underground geologic stratum,
18 formation, aquifer, or cavity or void, whether natural or artificially created, including
19 oil and gas reservoirs, salt domes or other saline formations and coal and coalbed
20 methane seams, suitable for or capable of being made suitable for the injection and
21 storage of natural gas, liquid hydrocarbons or carbon dioxide therein.

22 (9) "Storage facility" means the underground reservoir, underground
23 equipment, and surface buildings and equipment utilized in the storage operation,
24 including pipelines used to transport the carbon dioxide from one or more capture
25 facilities to the storage and injection site. The underground reservoir component of
26 the storage facility includes any necessary and reasonable aerial buffer and
27 subsurface monitoring zones designated by the commissioner for the purpose of
28 ensuring the safe and efficient operation of the storage facility for the storage of

1 carbon dioxide and shall be chosen to protect against pollution, invasion, and escape
2 or migration of carbon dioxide.

3 (10) "Storage operator" means any person authorized by the commissioner
4 to operate a storage facility.

5 (11) "Waste" in addition to its ordinary meaning, means "physical waste" as
6 that term is generally understood in the storage industry. The term includes the
7 inefficient sequestration of carbon dioxide to reduce greenhouse gas emissions and
8 for underground storage of carbon dioxide for enhanced hydrocarbon recovery, other
9 commercial or industrial uses, and long-term carbon dioxide storage.

10 §2104. Duties and powers of the commissioner; rules and regulations; permits

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

13 (1) Regulate the construction, design, and operation of storage facilities and
14 pipelines transmitting carbon dioxide to storage facilities or to serve secondary and
15 tertiary recovery projects for increasing the ultimate recovery of oil or gas, including
16 in accordance with the provision of R.S. 30:2107, the issuance of certificates of
17 public convenience and necessity for storage facilities and pipelines serving such
18 projects approved hereunder.

19 (2) Make, after notice and hearings as provided in this Chapter, any
20 reasonable rules, regulations, and orders that are necessary from time to time in the
21 proper administration and enforcement of this Chapter, including rules, regulations,
22 or orders for the following purposes:

23 (a) To require the drilling, casing, and plugging of wells to be done in such
24 a manner as to prevent the escape of carbon dioxide out of one stratum to another.

25 (b) To prevent the intrusion of water into oil or gas strata.

26 (c) To prevent the pollution of fresh water supplies by salt water or carbon
27 dioxide.

1 (d) To require the plugging of each abandoned well and the closure of
2 associated pits, the removal of equipment, structures, and trash, and to otherwise
3 require a general site cleanup of such abandoned wells.

4 (3) Make such inquiries as he thinks proper to determine whether or not
5 waste, over which he has jurisdiction, exists or is imminent. In the exercise of this
6 power the commissioner has the authority to collect data; to make investigations and
7 inspections; to examine properties, papers, books, and records; to examine, survey,
8 check, test, and gauge injection, withdrawal and other wells used in connection with
9 carbon storage; to examine, survey, check, test, and gauge tanks, and modes of
10 transportation; to hold hearings; to provide for the keeping of records and the making
11 of reports; to require the submission of an emergency phone number by which the
12 operator may be contacted in case of an emergency; and to take any action as
13 reasonably appears to him to be necessary to enforce this Chapter.

14 (4) Require the making of reports showing the location of all wells used in
15 connection with a storage facility, and the filing of logs, electrical surveys, and other
16 drilling records.

17 (5) Prevent wells from being drilled and operated in a manner to cause injury
18 to neighboring leases or property.

19 (6) Prevent blowouts, caving, and seepage in the sense that conditions
20 indicated by these terms are generally understood in the storage business.

21 (7) Identify the ownership of all wells used in connection with a storage
22 facility, tanks, plants, structures, and all other storage and transportation equipment
23 and facilities.

24 (8) Regulate secondary recovery methods using carbon dioxide as provided
25 in R.S. 30:4.

26 (9) Regulate conversion of an existing enhanced recovery operation into a
27 storage facility.

28 (10) Require interested persons to place uniform meters of a type approved
29 by the commissioner wherever the commissioner designates on all storage facilities,

1 pipelines, or other places necessary or proper to prevent waste. These meters shall
2 be under the supervision and control of the commissioner. It shall be a violation of
3 this Chapter for any person to refuse to attach or install a meter when ordered to do
4 so by the commissioner, or in any way to tamper with the meters so as to produce a
5 false or inaccurate reading.

6 (11) Regulate by rules, the drilling, casing, cementing, injection interval,
7 monitoring, plugging and permitting of injection, withdrawal and other wells which
8 are used in connection with a storage facility and to regulate all surface facilities
9 incidental to such storage operation.

10 (12) Require the plugging of each abandoned well or each well which is of
11 no further use and the closure of associated pits, the removal of equipment,
12 structures, and trash, and other general site cleanup of such abandoned or unused
13 well sites.

14 (13) Promulgate rules related to the setting and collection of fees and
15 penalties pursuant to this Chapter.

16 B. Only a storage operator as defined in R.S. 30:2103(10), shall be held or
17 deemed responsible for the performance of any actions required by the commissioner
18 under this Chapter.

19 C. Prior to the use of any reservoir for the storage of carbon dioxide and
20 prior to the exercise of eminent domain by any person, firm, or corporation having
21 such right under laws of the state of Louisiana, and as a condition precedent to such
22 use or to the exercise of such rights of eminent domain, the commissioner, after
23 public hearing pursuant to the provisions of R.S. 30.6, held in the parish where the
24 storage facility is to be located, shall have found all of the following:

25 (1) That the reservoir sought to be used for the injection, storage, and
26 withdrawal of carbon dioxide is suitable and feasible for such use, provided no
27 reservoir, any part of which is producing or is capable of producing oil, gas and
28 condensate content in paying quantities, shall be subject to such use, unless all

1 owners in such reservoir have agreed thereto. In addition, no reservoir shall be
2 subject to such use unless either:

3 (a) The volumes of original reservoir gas and condensate content therein
4 which are capable of being produced in paying quantities have all been produced.

5 (b) Such reservoir has a greater value or utility as a reservoir for storage than
6 for the production of the remaining volumes of original reservoir oil, gas and
7 condensate content, and at least three-fourths of the owners, in interest, exclusive of
8 any "lessor" defined in R.S. 30:148.1, have consented to such use in writing.

9 (2) That the use of the reservoir for the storage of carbon dioxide will not
10 contaminate other formations containing fresh water, oil, gas, or other commercial
11 mineral deposits.

12 (3) That the proposed storage will not endanger lives or property.

13 D. The commissioner shall determine with respect to any such reservoir
14 proposed to be used as a storage reservoir, whether or not such reservoir is fully
15 depleted of the original commercially recoverable natural gas, condensate, or liquid
16 hydrocarbon content therein. If the commissioner finds that such reservoir has not
17 been fully depleted, the commissioner shall determine the amount of the remaining
18 commercially recoverable natural gas, condensate, or liquid hydrocarbon content of
19 such reservoir.

20 E. The commissioner may issue any necessary order providing that all
21 carbon dioxide which has previously been reduced to possession and which is
22 subsequently injected into a storage reservoir shall at all times be deemed the
23 property of the injector, his successors and assigns; and in no event shall such carbon
24 dioxide be subject to the right of the owner of the surface of the lands or of any
25 mineral interest therein under which such storage reservoir shall lie or be adjacent
26 to or of any person other than the injector, his successors, and assigns to produce,
27 take, reduce to possession, waste, or otherwise interfere with or exercise any control
28 there over, provided that the injector, his successors, and assigns shall have no right
29 to gas or liquid hydrocarbons in any stratum or portion thereof not determined by the

1 commissioner to constitute an approved storage reservoir. The commissioner shall
2 issue such orders, rules, and regulations as may be necessary for the purpose of
3 protecting any such storage reservoir, strata, or formations against pollution or
4 against the escape of carbon dioxide therefrom, including such necessary rules and
5 regulations as may pertain to the drilling into or through such storage reservoir.

6 F. The commissioner is hereby authorized to promulgate rules and
7 regulations related to setting and collection of fees as authorized by this Chapter.

8 §2105. Hearings; notice; rules of procedures; emergency; service of process; public
9 records; request for hearings; orders and compliance orders

10 A. All public hearings under this part shall be conducted pursuant to the
11 provisions of R.S. 30:6.

12 B. All rules, regulations, and orders made by the commissioner under this
13 Chapter shall be in writing and shall be entered in full by him in a book kept for that
14 purpose. This book shall be a public record and shall be open for inspection at all
15 times during reasonable office hours. A copy of a rule, regulation, or order, certified
16 by the commissioner, shall be received in evidence in all courts of this state with the
17 same effect as the original.

18 C. Any interested person has the right to have the commissioner call a
19 hearing for the purpose of taking action in respect to a matter within the jurisdiction
20 of the commissioner as provided in this Section by making a request therefore in
21 writing and paying the hearing fee set by the commissioner, as provided by law for
22 hearing conducted pursuant to R.S. 30:6. Upon receiving the request and payment
23 of the required fees the commissioner shall promptly call a hearing. After the hearing
24 and with all convenient speed and in any event within thirty days after the conclusion
25 of the hearing, the commissioner shall take whatever action he deems appropriate
26 with regard to the subject matter.

27 §2106. Underground injection control

28 A. The commissioner shall have authority to perform any and all acts
29 necessary to carry out the purposes and requirements of the federal Safe Drinking

1 Water Act, as amended, relating to this state's participation in the underground
2 injection control program established under that act with respect to the storage of
3 carbon dioxide. To that end, the commissioner is authorized and empowered to
4 adopt, modify, repeal, and enforce procedural, interpretive, and administrative rules
5 in accordance with the provisions of this Chapter.

6 B. Whenever the commissioner or an authorized representative of the
7 commissioner determines that a violation of any requirement of this Chapter has
8 occurred or is about to occur, the commissioner or his authorized representative shall
9 either issue an order requiring compliance within a specified time period or shall
10 commence a civil action for appropriate relief, including a temporary or permanent
11 injunction.

12 C. Requirements of compliance orders. Any order issued under this Chapter
13 shall state with reasonable specificity the nature of the violation and specify a time
14 for compliance and, in the event of noncompliance, assess a civil penalty, if any,
15 which the commissioner determines is reasonable, taking into account the
16 seriousness of the violation and any good faith efforts to comply with the applicable
17 requirements.

18 D.(1) Except as otherwise provided by law, any person to whom a
19 compliance order or a cease and desist order is issued and who fails to take
20 corrective action within the time specified and said order or any person found by the
21 commissioner to be in violation of any requirement of this Section may be liable for
22 a civil penalty to be assessed by the commissioner or court, of not more than five
23 thousand dollars a day for each day of violation and for each act of violation. The
24 commissioner in order to enforce the provisions of this Section may suspend or
25 revoke any permit, compliance order, license, or variance that has been issued to said
26 person.

27 (2) No penalty shall be assessed until the person charged shall have been
28 given notice and an opportunity for a hearing on such charge. In determining whether
29 or not a civil penalty is to be assessed and in determining the amount of the penalty,

1 or the amount agreed upon in compromise, the gravity of the violation and the
2 demonstrated good faith of the person charged in attempting to achieve rapid
3 compliance, after notification of a violation, shall be considered. In the event that the
4 order with which the person failed to comply was an emergency cease and desist
5 order, no penalty shall be assessed if it appears, upon later hearing, that said order
6 was issued without reasonable cause.

7 E. The attorney general shall have charge of and shall prosecute all civil
8 cases arising out of violation of any provision of this Section including the recovery
9 of penalties.

10 F. Except as otherwise provided herein, the commissioner, with the
11 concurrence of the attorney general, may settle or resolve as he may deem
12 advantageous to the state any suits, disputes, or claims for any penalty under any
13 provisions of this Section or the regulations or permit license terms and conditions
14 applicable thereto.

15 §2107. Certificates of public convenience and necessity; certificate of completion
16 of injection operations

17 A. The commissioner shall issue a certificate of public convenience and
18 necessity or a certificate of completion of injection operations to each person
19 applying therefor if, after a public hearing pursuant to the provisions of R.S. 30.6,
20 held in the parish where the storage facility is to be located, he determines that it is
21 or will be in the present or future public interest to do so; however, if any person has
22 previously been issued a certificate of public convenience and necessity or a
23 certificate of completion of injection operations by the commissioner, that certificate
24 continues to remain valid and in force.

25 B. Anything in this Chapter, or in any rule, regulation, or order issued by the
26 commissioner under this Chapter to the contrary notwithstanding, accepting or acting
27 pursuant to a certificate of public convenience and necessity or a certificate of
28 completion of injection operations issued under this Chapter, compliance with the
29 provisions of this Chapter, or with rules, regulations, or orders issued by the

1 Commissioner under this Chapter, or voluntarily performing any act or acts which
2 could be required by the commissioner pursuant to this Chapter, or rules, regulations,
3 or orders issued by the commissioner under this Chapter, shall not have the following
4 consequences:

5 (1) Cause any storage operator or carbon dioxide transporter to become, or
6 be classified as, a common carrier or a public utility for any purpose whatsoever.

7 (2) Subject such storage operator or carbon dioxide transporter to any duties,
8 obligations, or liabilities as a common carrier or public utility, under the constitution
9 and laws of this state.

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

13 §2108. Eminent domain, expropriation

14 A. (1) Any storage operator is hereby authorized, after obtaining any permit
15 and any certificate of public convenience and necessity from the commissioner
16 required by this Chapter, to exercise the power of eminent domain and expropriate
17 needed property to acquire surface and subsurface rights and property interests
18 necessary or useful for the purpose of constructing, operating, or modifying a storage
19 facility or laying, maintaining, and operating pipelines for the transportation of
20 carbon dioxide, together with telegraph and telephone lines necessary and incidental
21 to the operation of these storage facilities and pipelines, over private property thus
22 expropriated; and have the further right to construct storage facilities and lay,
23 maintain, and operate pipelines along, across, over, and under any navigable stream
24 or public highway, street, bridge, or other public place; and also have the authority,
25 under the right of expropriation herein conferred, to cross railroads, street railways,
26 and other pipelines, by expropriating property necessary for the crossing under the
27 general expropriation laws of this state. The right to run along, across, over, or under
28 any public road, bridge, or highway, as before provided for, may be exercised only
29 upon condition that the traffic thereon is not interfered with, and that such road or

1 highway is promptly restored to its former condition of usefulness, at the expense of
2 the storage facility and pipeline owner, the restoration to be subject also to the
3 supervision and approval of the proper local authorities.

4 (2) In the exercise of the privilege herein conferred, owners or operators of
5 such storage facilities and pipelines shall compensate the parish, municipality or road
6 district, respectively, for any damage done to such public road, in the construction
7 of storage facilities, and the laying of pipelines, telegraph or telephone lines, along,
8 under, over or across the same. Nothing in this Chapter shall be construed to grant
9 any transporter the right to use any public street or alley of any parish, incorporated
10 city, town or village, except by express permission from the parish, city or other
11 governing authority.

12 B. The exercise of the right of eminent domain granted in this Chapter shall
13 not prevent entities having the right to do so from drilling through the storage facility
14 in such manner as shall comply with the rules of the commissioner issued for the
15 purpose of protecting the storage facility against pollution or invasion and against
16 the escape or migration of carbon dioxide. Furthermore, the right of eminent domain
17 set out in this Section shall not prejudice the rights of the owners of said lands or
18 other rights or interests therein as to all other uses not acquired for the storage
19 facility.

20 C. The eminent domain authority authorized under this Chapter shall be
21 exercised pursuant to the procedures found in R.S. 19:2, and shall be in addition to
22 any other power of eminent domain authorized by law.

23 D. The commissioner is neither a necessary nor indispensable party to an
24 eminent domain proceeding, and if named as a party or third party has an absolute
25 right to be dismissed from said action at the expense of the party who names the
26 commissioner. The commissioner shall recover all costs reasonably incurred to be
27 dismissed from said action, including attorney fees.

1 §2109. Cessation of storage operations; liability release

2 A.(1) Ten years, or any other time frame established by rule, after cessation
3 of storage operations, the commissioner shall issue a certificate of completion of
4 injection operations, upon a showing by the storage operator that the reservoir is
5 reasonably expected to retain mechanical integrity and remain emplaced, at which
6 time ownership to the remaining project including the stored carbon dioxide transfers
7 to the state. Upon the issuance of the certificate of completion of injection
8 operations, the storage operator and all generators of any injected carbon dioxide
9 shall be released from any and all duties or obligations under this Chapter and any
10 and all liability associated with or related to that storage facility which arises after
11 the issuance of the certificate of completion of injection operations.

12 (2) Provided the provisions applicable to site-specific trust funds are not
13 applicable, such release from liability will not apply to the owner or last operator of
14 record of a storage facility if the Carbon Dioxide Geologic Storage Trust Fund has
15 been depleted of funds such that it contains inadequate funds to address or remediate
16 any duty, obligation, or liability that may arise after issuance of the certificate of
17 completion of injection operations.

18 (3) Such release from liability will not apply to the owner or operator of a
19 storage facility, carbon dioxide transmission pipeline, or the generator of the carbon
20 dioxide being handled by either such facility or pipeline if it is demonstrated that any
21 such owner, operator, or generator intentionally and knowingly concealed or
22 intentionally and knowingly misrepresented material facts related to the mechanical
23 integrity of the storage facility or the chemical composition of any injected carbon
24 dioxide. In addition, upon the issuance of the certificate of completion of injection
25 operations, any performance bonds posted by the operator shall be released and
26 continued monitoring of the site, including remediation of any well leakage, shall
27 become the principle responsibility of the Carbon Dioxide Geologic Storage Trust
28 Fund.

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

4 B.(1) In any civil liability action against the owner or operator of a storage
5 facility, carbon dioxide transmission pipeline, or the generator of the carbon dioxide
6 being handled by either such facility or pipeline, the maximum amount recoverable
7 as compensatory damages for noneconomic loss shall not exceed two hundred fifty
8 thousand dollars per occurrence, except where the damages for noneconomic loss
9 suffered by the plaintiff were for wrongful death; permanent and substantial physical
10 deformity, loss of use of a limb or loss of a bodily organ system; or permanent
11 physical or mental functional injury that permanently prevents the injured person
12 from being able to independently care for himself or herself and perform life
13 sustaining activities. In such cases, the maximum amount recoverable as
14 compensatory damages for noneconomic loss shall not exceed five hundred thousand
15 dollars per occurrence.

16 (2) If Paragraph (1) of this Subsection, or the application thereof to any
17 person or circumstance, is finally determined by a court of law to be unconstitutional
18 or otherwise invalid, the maximum amount recoverable as damages for noneconomic
19 loss shall thereafter not exceed one million dollars per occurrence.

20 C. Nothing in this Chapter shall establish or create any liability or
21 responsibility on the part of the commissioner or the state to pay any costs associated
22 with site restoration from any source other than the funds or trusts created by R.S.
23 30:2110 or 2111, nor shall the commissioner or the state of Louisiana have any
24 liability or responsibility to make any payments for costs associated with site
25 restoration if the trusts created herein are insufficient to do so.

26 D. The commissioner or his agents, on proper identification, may enter the
27 land of another for purposes of site assessment or restoration.

1 E. The commissioner and his agents are not liable for any damages arising
2 from an act or omission if the act or omission is part of a good faith effort to carry
3 out the purpose of this Chapter.

4 F. No party contracting with the Department of Natural Resources, office of
5 conservation, or the commissioner under the provisions of this Chapter shall be
6 deemed to be a public employee or an employee otherwise subject to the provisions
7 of Parts I through IV of Chapter 15 of Title 42 of the Louisiana Revised Statutes of
8 1950.

9 §2110. Carbon Dioxide Geologic Storage Trust Fund

10 A.(1) There is hereby established a fund in the custody of the state treasurer
11 to be known as the Carbon Dioxide Geologic Storage Trust Fund, hereinafter
12 referred to as the "fund", which shall constitute a special custodial trust fund which
13 shall be administered by the commissioner, who shall make disbursements from the
14 fund solely in accordance with the purposes and uses authorized by this Chapter.

15 (2) After compliance with the requirements of Article VII, Section 9(B) of
16 the Constitution of Louisiana relative to the Bond Security and Redemption Fund,
17 and after a sufficient amount is allocated from that fund to pay all of the obligations
18 secured by the full faith and credit of the state which become due and payable within
19 any fiscal year, the treasurer shall pay into the fund, an amount equal to the monies
20 received by the state treasury. The monies in this fund shall be used solely as
21 provided in this Section and only in the amount appropriated by the legislature. All
22 unexpended and unencumbered monies remaining in this fund at the end of the fiscal
23 year shall remain in the fund. The monies in the fund shall be invested by the state
24 treasurer in the same manner as monies in the state general fund and all returns of
25 such investment shall be deposited to the fund. The funds received shall be placed
26 in the special trust fund in the custody of the state treasurer to be used only in
27 accordance with this Chapter and shall not be placed in the general fund. The funds
28 provided to the commissioner pursuant to this Section shall at all times be and
29 remain the property of the commissioner. The funds shall only be used for the

1 purposes set forth in this Chapter and for no other governmental purposes, nor shall
2 any portion hereof ever be available to borrow from by any branch of government.
3 It is the intent of the legislature that this fund and its increments shall remain intact
4 and inviolate.

5 B. The following monies shall be placed into the fund:

6 (1) Those fees, penalties, and bond forfeitures collected pursuant to this
7 Chapter. All fees and self-generated revenue remaining on deposit for the office of
8 conservation at the end of any fiscal year shall be deposited into the fund.

9 (2) Private contributions.

10 (3) Interest earned on the funds deposited in the fund.

11 (4) Civil penalties or costs recovered from responsible parties for geologic
12 storage facility restoration pursuant to this Section and R.S. 30:2104, 2105, and
13 2106.

14 (5) Any grants, donations, and sums allocated from any source, public or
15 private, for the purposes of this Chapter.

16 (6) Site-specific trust accounts; however, the monies of such accounts shall
17 not be used for any geologic storage facility other than that specified for each
18 respective account.

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

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

24 (a) $F \times 120 < M$

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

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

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

4 (e) The fee cannot not exceed five million dollars divided by one hundred
5 twenty divided by the total volume to be injected, (($\$5,000,000/120$)/ total injection
6 volume).

7 (f) Once a storage operator has contributed five million dollars to the trust
8 fund, the fee assessments to that storage operator under this section shall cease until
9 such time as funds begin to be expended for monitoring and caretaking of any
10 completed storage facility. The treasurer of the state of Louisiana shall certify, to the
11 commissioner, the date on which the balance in the fund for a storage operator equals
12 or exceeds five million dollars. The fund fees shall not be collected or required to
13 be paid on or after the first day of the second month following the certification,
14 except that the commissioner shall resume collecting the fees on receipt of a
15 certification from the treasurer that, based on the expenditures or commitments to
16 expend monies, the fund has fallen below four million dollars for the storage
17 operator. If at any time the balance in the trust fund exceeds an authorized amount
18 determined by multiplying five million dollars by the number of active and
19 completed storage facilities within the state, the collection of fees from the operators
20 of storage facilities that have already contributed five million dollars to the trust fund
21 will be suspended until such time as the balance in the trust fund falls below such
22 authorized amount, at which time they will be reinstated.

23 (g) At the end of each fiscal year, the fee may be redetermined by the
24 commissioner based upon the estimated cost of administering and enforcing this
25 Chapter for the upcoming year divided by the tonnage of carbon dioxide expected
26 to be injected during the upcoming year. The total fee assessed shall be sufficient
27 to assure a balance in the fund not to exceed five million dollars for any active
28 storage facility within the state at the beginning of each fiscal year. Any amount
29 received that exceeds the annual balance required shall be deposited in the fund.

1 D. An annual regulatory fee payable to the office of conservation, in a form
2 and schedule prescribed by the office of conservation, on Class VI wells and
3 injection and storage wells used for geologic storage of carbon dioxide in an amount
4 not to exceed two hundred fifty thousand dollars for Fiscal Year 2010-2011 and
5 thereafter.

6 E. An application fee payable to the office of conservation, in a form and
7 schedule prescribed by the office of conservation, by industries under the jurisdiction
8 of the office of conservation. The commissioner may, in accordance with the
9 Administrative Procedure Act, increase any application to an amount not in excess
10 of eight and one-half percent above the amount charged for the fee on July 1, 2010.

11 F. The provisions of the Louisiana Tax Code shall apply to the
12 administration, collection, and enforcement of the fees imposed herein, and the
13 penalties provided by that code shall apply to any person who fails to pay or report
14 the fees. Proceeds from the fees, including any penalties collected in connection
15 with the fees, shall be deposited into the fund.

16 G. The fund shall be utilized solely for the following purposes:

17 (1) Operational and long-term inspecting, testing, and monitoring of the site,
18 including remaining surface facilities and wells.

19 (2) Remediation of mechanical problems associated with remaining wells
20 and surface infrastructure.

21 (3) Repairing mechanical leaks at the site.

22 (4) Plugging and abandoning remaining wells for use as observation wells.

23 (5) Administration of this Chapter by the commissioner in an amount not to
24 exceed seven hundred fifty thousand dollars each fiscal year.

25 (6) Payment of fees and costs associated with the administration of the fund
26 or site-specific accounts.

27 H. The commissioner is authorized to enter into agreements and contracts
28 and to expend money in the fund for the following purposes:

1 (1) To fund research and development in connection with carbon
2 sequestration technology and methods.

3 (2) To monitor any remaining surface facilities and wells.

4 (3) To remediate mechanical problems associated with remaining wells or
5 site infrastructure.

6 (4) To repair mechanical leaks at the storage facility.

7 (5) To contract with a private legal entity pursuant to this Chapter.

8 (6) To plug and abandon remaining wells except for those wells to be used
9 as observation wells.

10 I. The commissioner shall keep accurate accounts of all receipts and
11 disbursements related to the administration of the fund and site-specific trust funds
12 and shall make a specific annual report addressing the administration of the funds to
13 the Senate Committee on Natural Resources, the House Committee on Natural
14 Resources and Environment, and the Senate Committee on Environmental Quality
15 before March first.

16 J. Every five years the commissioner shall submit a report to the Senate
17 Committee on Natural Resources, the House Committee on Natural Resources and
18 Environment, and the Senate Committee on Environmental Quality before March
19 first, that assesses the effectiveness of the fund and other related provisions in this
20 part and provides such other information as may be requested by the legislature to
21 allow the legislature to assess the effectiveness of this Chapter.

22 §2011. Site-specific trust accounts

23 A. If a storage facility site is transferred from one party to another, not
24 including a transfer to the state pursuant to R.S. 30:2109, a site-specific trust account
25 may be established to separately account for each such site for the purpose of
26 providing a source of funds for long-term maintenance and site restoration of that
27 storage facility site at such time in the future when restoration of that storage facility
28 site is required. For purposes of this Chapter, a transfer shall be deemed to have been
29 made once there is a change in ownership of any kind at a storage facility site. Once

1 established, the site-specific trust account shall survive until completion of site
2 restoration of the associated storage facility site.

3 B. In the event the parties to a transfer elect to establish a site-specific trust
4 account under this Section, the commissioner shall require a storage facility
5 long-term maintenance and site restoration assessment to be made to determine the
6 long-term maintenance and site restoration requirements existing at the time of the
7 transfer, or at the time the site-specific trust account is established. The storage
8 facility long-term maintenance and site restoration assessment shall be conducted by
9 approved site assessment contractors appearing on a list approved by the
10 commissioner or acceptable to the commissioner. The storage facility long-term
11 maintenance and site restoration assessment shall specifically detail the long-term
12 maintenance and site restoration needs and shall provide an estimate of the long-term
13 maintenance and site restoration costs needed to maintain and restore the storage
14 facility site based on the conditions existing at the time of transfer, or at the time the
15 site-specific trust account is established.

16 C. The party or parties to the transfer shall, based upon the long-term
17 maintenance and site restoration assessment, propose a funding schedule which will
18 provide for the site-specific trust account. The funding schedule shall consider the
19 uniqueness of each transfer, acquiring party, and storage facility site. Funding of the
20 site-specific trust account shall include some contribution to the account at the time
21 of transfer and at least quarterly payments to the account. Cash or bonds in a form
22 and of a type acceptable to the commissioner, or any combination thereof, may also
23 be considered for funding. The commissioner shall monitor each trust account to
24 assure that it is being properly funded. The funds in each trust account shall remain
25 the property of the commissioner.

26 D. The commissioner may approve the site-specific trust account for a
27 storage facility site upon review of the assessment and the site-specific trust account
28 that has been proposed for that storage facility site as provided in the regulations.
29 Such approval shall not be unreasonably withheld.

1 E. When transfers of storage facility sites occur subsequent to the formation
2 of site-specific trust accounts but prior to the end of their economic life, the
3 commissioner and the acquiring party shall, in the manner provided for in this
4 Section, again redetermine cost and agree upon a funding schedule. The balance of
5 any site-specific trust account at the time of subsequent transfer shall remain with the
6 storage facility site and shall be a factor in the redetermination.

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

13 G. The failure of a transferring party to make a good faith disclosure of all
14 storage facility site conditions existing at the time of the transfer may render that
15 party liable for the costs of restoration of such undisclosed conditions in excess of
16 the balance of the site-specific trust fund.

17 H. Except as provided in Subsection E of this Section, the parties to a
18 transfer may elect not to establish a site-specific trust account; however, in the
19 absence of such account, the parties shall not be exempt from liability as set forth in
20 Subsection F of this Section.

21 I. After site restoration has been completed and approved by the
22 commissioner, funds from a site-specific trust account shall be disbursed as follows:

23 (1) The balance of the account existing in the site-specific trust account will
24 be remitted to the responsible party.

25 (2) Such account shall thereafter be closed.

26 J. The provisions of this Chapter regarding the implementation of
27 site-specific trust accounts shall not be implemented until the rules and regulations
28 pertaining to such trust accounts are finally adopted.

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)]

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 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 secondary recovery methods and conversion of recovery operations.
- (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 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, and condensate content 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 injector, 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 attorney general shall prosecute all civil cases arising out of a violation of proposed law. Authorizes the commissioner with concurrence of the attorney general 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. 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 non-economic 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 non-economic 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 \$250,000 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.

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(11) and R.S. 30:2101-2111)