

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 11 of Title 30 of the Louisiana Revised Statutes of 1950,
3 to be comprised of R.S. 30:1101 through 1111, 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 injection of
20 carbon dioxide for the underground storage of carbon dioxide approved by the

1 commissioner of conservation. Property located in Louisiana may be so expropriated
2 for the underground storage of carbon dioxide in connection with such storage
3 facility projects located in Louisiana, including but not limited to surface and
4 subsurface rights, mineral rights, and other property interests necessary or useful for
5 the purpose of constructing, operating, or modifying a carbon dioxide facility. This
6 Paragraph has no effect, nor does it grant expropriation of the mineral rights, or other
7 property rights associated with the approvals required for injection of carbon dioxide
8 into enhanced recovery projects approved by the commissioner under R.S. 30:4.

9 Section 2. Chapter 11 of Title 30 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 30:1101 through 1111, is hereby enacted to read as follows:

11 CHAPTER 11. LOUISIANA GEOLOGIC SEQUESTRATION OF CARBON

12 DIOXIDE ACT.

13 §1101. Short title

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

16 §1102. Policy; jurisdiction

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

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

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

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

26 (4) It is the public policy of Louisiana and the purpose of this Chapter to
27 provide for a coordinated statewide program related to the storage of carbon dioxide
28 and to also fulfill the state's primary responsibility for assuring compliance with the

1 federal Safe Drinking Water Act, including any amendments thereto related to the
2 underground injection of carbon dioxide.

3 B. The commissioner of conservation shall have jurisdiction and authority
4 over all persons and property necessary to enforce effectively the provisions of this
5 Chapter relating to the geologic storage of carbon dioxide and subsequent
6 withdrawal of stored carbon dioxide.

7 §1103. Definitions

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

10 (1) "Carbon dioxide" means naturally occurring, geologically sourced, or
11 anthropogenically sourced carbon dioxide including its derivatives and all mixtures,
12 combinations, and phases, whether liquid or gaseous, stripped, segregated, or divided
13 from any other fluid stream thereof.

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

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

16 (4) "Geologic storage" means the long-or short-term underground storage of
17 carbon dioxide in a reservoir.

18 (5) "Office" means the office of conservation, Department of Natural
19 Resources.

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

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

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

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

11 (10) "Storage operator" means the person authorized by the commissioner
12 to operate a storage facility. A storage operator can, but need not be the owner of
13 carbon dioxide injected into a storage facility. Ownership of carbon dioxide and use
14 of geologic storage is a matter of private contract between the storage operator and
15 owner, shipper or generator of carbon dioxide, as applicable.

16 (11) "Waste" in addition to its ordinary meaning, means "physical waste" as
17 that term is generally understood in the storage industry. The term includes the
18 inefficient sequestration of carbon dioxide to reduce greenhouse gas emissions to
19 preserve such carbon dioxide for other commercial or industrial uses, and long-term
20 carbon dioxide storage.

21 §1104. Duties and powers of the commissioner; rules and regulations; permits

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

24 (1) Regulate the development and operation of storage facilities and
25 pipelines transmitting carbon dioxide to storage facilities, including in accordance
26 with the provision of R.S. 30:1107, the issuance of certificates of public convenience
27 and necessity for storage facilities and pipelines serving such projects approved
28 hereunder.

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

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

7 (b) To prevent the intrusion of carbon dioxide into oil, gas, salt formation,
8 or other commercial mineral strata.

9 (c) To prevent the pollution of fresh water supplies by oil, gas, salt water, or
10 carbon dioxide.

11 (d) To require the plugging of each abandoned well and the closure of
12 associated surface facilities, the removal of equipment, structures, and trash, and to
13 otherwise require a general site cleanup of such abandoned wells.

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

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

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

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

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

6 (8) Nothing in this Chapter shall prevent an enhanced oil and gas recovery
7 project utilizing injection of carbon dioxide as approved under R.S. 30:4.

8 (9) Approve conversion of an existing enhanced oil or gas recovery operation
9 into a storage facility, if necessary, taking into consideration prior approvals of the
10 commissioner regarding such enhanced oil recovery operations.

11 (10) Promulgate rules and regulations requiring interested persons to place
12 monitoring equipment of a type approved by the commissioner on all storage
13 facilities, and ancillary equipment necessary and proper to monitor, verify carbon
14 dioxide injections, and to prevent waste. It shall be a violation of this Chapter for
15 any person to refuse to attach or install a monitor within a reasonable period of time
16 when ordered to do so by the commissioner, or in any way to tamper with the
17 monitors so as to produce a false or inaccurate reading.

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

22 (12) Require the plugging of each abandoned well or each well which is of
23 no further use and the closure of associated surface facilities, the removal of
24 equipment, structures, and trash, and other general site cleanup of such abandoned
25 or unused well sites.

26 (13) Promulgate rules related to the setting and collection of fees and civil
27 penalties pursuant to this Chapter.

1 B. Only a storage operator as defined in R.S. 30:1103(10) shall be held or
2 deemed responsible for the performance of any actions required by the commissioner
3 under this Chapter.

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

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

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

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

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

27 (3) That the proposed storage will not endanger human lives or cause a
28 hazardous condition to property.

1 D. The commissioner shall determine with respect to any such reservoir
2 proposed to be used as a storage reservoir, whether or not such reservoir is fully
3 depleted of the original commercially recoverable natural gas, condensate, or other
4 commercial mineral therein. If the commissioner finds that such reservoir has not
5 been fully depleted, the commissioner shall determine the amount of the remaining
6 commercially recoverable natural gas, condensate, or other commercial mineral of
7 such reservoir.

8 E. The commissioner may issue any necessary order providing that all
9 carbon dioxide which has previously been reduced to possession and which is
10 subsequently injected into a storage reservoir shall at all times be deemed the
11 property of the party that owns such carbon dioxide, whether at the time of injection
12 or pursuant to a change of ownership by agreement while the carbon dioxide is
13 located in the storage facility, his successors and assigns; and in no event shall such
14 carbon dioxide be subject to the right of the owner of the surface of the lands or of
15 any mineral interest therein under which such storage reservoir shall lie or be
16 adjacent to or of any person other than the owner, his successors, and assigns to
17 produce, take, reduce to possession, waste, or otherwise interfere with or exercise
18 any control there over, provided that the owner, his successors, and assigns shall
19 have no right to gas, liquid hydrocarbons, salt, or other commercially recoverable
20 minerals in any stratum or portion thereof not determined by the commissioner to
21 constitute an approved storage reservoir. The commissioner shall issue such orders,
22 rules, and regulations as may be necessary for the purpose of protecting any such
23 storage reservoir, strata, or formations against pollution or against the escape of
24 carbon dioxide therefrom, including such necessary rules and regulations as may
25 pertain to the drilling into or through such storage reservoir.

26 §1105. Hearings; notice; rules of procedures; emergency; service of process; public
27 records; request for hearings; orders and compliance orders

28 A. All public hearings under this Part shall be conducted pursuant to the
29 provisions of R.S. 30.6.

1 B. All rules, regulations, and orders made by the commissioner under this
2 Chapter shall be in writing and shall be entered in full by him in a book kept for that
3 purpose. This book shall be a public record and shall be open for inspection at all
4 times during reasonable office hours and shall be available on the Department of
5 Natural Resources website. A copy of a rule, regulation, or order, certified by the
6 commissioner, shall be received in evidence in all courts of this state with the same
7 effect as the original.

8 C. Any interested person has the right to have the commissioner call a
9 hearing for the purpose of taking action in respect to a matter within the jurisdiction
10 of the commissioner as provided in this Section by making a request therefore in
11 writing and paying the hearing fee set by the commissioner, as provided by law for
12 hearing conducted pursuant to R.S. 30:6. Upon receiving the request and payment
13 of the required fees the commissioner shall promptly call a hearing. After the hearing
14 and with all convenient speed and in any event within thirty days after the conclusion
15 of the hearing, the commissioner shall take whatever action he deems appropriate
16 with regard to the subject matter.

17 §1106. Underground injection control

18 A. The commissioner shall have authority to perform any and all acts
19 necessary to carry out the purposes and requirements of the federal Safe Drinking
20 Water Act, as amended, relating to this state's participation in the underground
21 injection control program established under that act with respect to the storage and
22 sequestration of carbon dioxide. To that end, the commissioner is authorized and
23 empowered to adopt, modify, repeal, and enforce procedural, interpretive, and
24 administrative rules in accordance with the provisions of this Chapter.

25 B. Whenever the commissioner or an authorized representative of the
26 commissioner determines that a violation of any requirement of this Chapter has
27 occurred or is about to occur, the commissioner or his authorized representative shall
28 either issue an order requiring compliance within a specified time period or shall

1 commence a civil action for appropriate relief, including a temporary or permanent
2 injunction.

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

9 D.(1) Except as otherwise provided by law, any person to whom a
10 compliance order is issued and who fails to take corrective action within the time
11 specified and said order or any person found by the commissioner to be in violation
12 of any requirement of this Section may be liable for a civil penalty to be assessed by
13 the commissioner or court, of not more than five thousand dollars a day for each day
14 of violation and for each act of violation. The commissioner in order to enforce the
15 provisions of this Section may suspend or revoke any permit, compliance order,
16 license, or variance that has been issued to said person in accordance with law.

17 (2) No penalty shall be assessed until the person charged shall have been
18 given notice and an opportunity for a hearing on such charge. In determining whether
19 or not a civil penalty is to be assessed and in determining the amount of the penalty,
20 or the amount agreed upon in compromise, the gravity of the violation and the
21 demonstrated good faith of the person charged in attempting to achieve rapid
22 compliance, after notification of a violation, shall be considered.

23 E. The commissioner, or attorney general if requested by the commissioner
24 shall have charge of and shall prosecute all civil cases arising out of violation of any
25 provision of this Section including the recovery of penalties.

26 F. Except as otherwise provided herein, the commissioner may settle or
27 resolve as he may deem advantageous to the state any suits, disputes, or claims for
28 any penalty under any provisions of this Section or the regulations or permit license
29 terms and conditions applicable thereto.

1 §1107. Certificates of public convenience and necessity; certificate of completion
2 of injection operations

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

14 B. The commissioner shall issue a certificate of completion of injection
15 operations to the operator applying therefore, if after a public hearing pursuant to
16 R.S. 30:6, it is determined that such operator has met all of the conditions required
17 for such certificate, including the requirements of R.S. 30:1109.

18 C. Anything in this Chapter, or in any rule, regulation, or order issued by the
19 commissioner under this Chapter to the contrary notwithstanding, accepting or acting
20 pursuant to a certificate of public convenience and necessity or a certificate of
21 completion of injection operations issued under this Chapter, compliance with the
22 provisions of this Chapter, or with rules, regulations, or orders issued by the
23 commissioner under this Chapter, or voluntarily performing any act or acts which
24 could be required by the commissioner pursuant to this Chapter, or rules, regulations,
25 or orders issued by the commissioner under this Chapter, shall not have the following
26 consequences:

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

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

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

7 §1108. Eminent domain, expropriation

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

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

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

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

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

25 §1109. Cessation of storage operations; liability release

26 A.(1) Ten years, or any other time frame established by rule, after cessation
27 of injection into a storage facility, the commissioner shall issue a certificate of
28 completion of injection operations, upon a showing by the storage operator that the
29 reservoir is reasonably expected to retain mechanical integrity and the carbon

1 dioxide will reasonably remain emplaced, at which time ownership to the remaining
2 project including the stored carbon dioxide transfers to the state. Upon the issuance
3 of the certificate of completion of injection operations, the storage operator, all
4 generators of any injected carbon dioxide, all owners of carbon dioxide stored in the
5 storage facility, and all owners otherwise having any interest in the storage facility,
6 shall be released from any and all duties or obligations under this Chapter and any
7 and all liability associated with or related to that storage facility which arises after
8 the issuance of the certificate of completion of injection operations.

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

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

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

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

13 (2) If Paragraph (1) of this Subsection, or the application thereof to any
14 person or circumstance, is finally determined by a court of law to be unconstitutional
15 or otherwise invalid, the maximum amount recoverable as damages for noneconomic
16 loss shall thereafter not exceed one million dollars per occurrence. This provision
17 shall not supersede any contractual agreement with respect to liability between a
18 plaintiff and an owner or operator of a storage facility, a carbon dioxide transmission
19 pipeline, or the generator of the carbon dioxide.

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 the
23 Chapter, nor shall the commissioner or the state of Louisiana have any liability or
24 responsibility to make any payments for costs associated with site restoration if the
25 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 §1110. 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 pursuant to this Chapter. The monies in this fund shall
21 be used solely as provided in this Section and only in the amount appropriated by the
22 legislature. All unexpended and unencumbered monies remaining in this fund at the
23 end of the fiscal year shall remain in the fund. The monies in the fund shall be
24 invested by the state treasurer in the same manner as monies in the state general fund
25 and all returns of such investment shall be deposited to the fund. The funds received
26 shall be placed in the special trust fund in the custody of the state treasurer to be used
27 only in accordance with this Chapter and shall not be placed in the general fund. The
28 funds 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 for violation of any rules or permit conditions imposed
12 under this Chapter or costs recovered from responsible parties for geologic storage
13 facility closure or remediation pursuant to this Section and R.S. 30:1104, 1105, and
14 1106.

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

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

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

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

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

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

27 (c) "120" is the minimum number of months over which a fee is to be
28 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, but

1 appropriate credits shall be given against future fees or fees associated with other
2 storage facilities operated by the same storage operator.

3 D. An annual regulatory fee for storage facilities that have not received a
4 certificate of completion of injection operations payable to the office of
5 conservation, in a form and schedule prescribed by the office of conservation, on the
6 carbon dioxide storage facility in an amount not to exceed fifty thousand dollars for
7 Fiscal Year 2010-2011 and thereafter. Such fee shall be based upon the annual
8 projected costs to the office of conservation for oversight and regulation of such
9 storage facilities.

10 E. An application fee payable to the office of conservation, in a form and
11 schedule prescribed by the office of conservation, by industries under the jurisdiction
12 of the office of conservation. The commissioner may, by rule in accordance with the
13 Administrative Procedure Act, increase any application fee to an amount not in
14 excess of eight and one-half percent above the amount charged for the fee on July
15 1, 2010.

16 F. The provisions of the Louisiana Tax Code shall apply to the
17 administration, collection, and enforcement of the fees imposed herein, and the
18 penalties provided by that code shall apply to any person who fails to pay or report
19 the fees. Proceeds from the fees, including any penalties and interest collected in
20 connection with the fees, shall be deposited into the fund.

21 G. The fund shall be used solely for the following purposes:

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

24 (2) Remediation of mechanical problems associated with remaining wells
25 and surface infrastructure.

26 (3) Repairing mechanical leaks at the site.

27 (4) Plugging and abandoning remaining wells or conversion for use as
28 observation wells.

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

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

5 (7) Payment of fees and costs associated with the acquisition of appropriate
6 insurance for future storage facility liability if such should become available, either
7 commercially or through government funding.

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

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

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

13 (3) To remediate mechanical problems associated with remaining wells or
14 site infrastructure.

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

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

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

19 I. The commissioner shall keep accurate accounts of all receipts and
20 disbursements related to the administration of the fund and site-specific trust funds
21 and shall make a specific annual report addressing the administration of the funds to
22 the Senate Committee on Natural Resources, the House Committee on Natural
23 Resources and Environment, and the Senate Committee on Environmental Quality
24 before March first.

25 J. Every five years the commissioner shall submit a report to the Senate
26 Committee on Natural Resources, the House Committee on Natural Resources and
27 Environment, and the Senate Committee on Environmental Quality before March
28 first, that assesses the effectiveness of the fund and other related provisions in this

1 Part and provides such other information as may be requested by the legislature to
2 allow the legislature to assess the effectiveness of this Chapter.

3 §1111. Site-specific trust accounts

4 A. If a storage facility site is transferred from one party to another, not
5 including a transfer to the state pursuant to R.S. 30:1109, a site-specific trust account
6 may be established to separately account for each such site for the purpose of
7 providing a source of funds for long-term maintenance, monitoring, and site closure
8 or remediation of that storage facility site at such time in the future when closure or
9 remediation of that storage facility site is required. For purposes of this Chapter, a
10 transfer shall be deemed to have been made once there may be a change in
11 ownership of any kind at a storage facility site. Once established, the site-specific
12 trust account shall survive until completion of site closure or remediation of the
13 associated storage facility site.

14 B. In the event the parties to a transfer elect to establish a site-specific trust
15 account under this Section, the commissioner shall require a storage facility
16 long-term maintenance, monitoring, and site closure assessment to be made to
17 determine the long-term maintenance, monitoring, and site closure requirements
18 existing at the time of the transfer, or at the time the site-specific trust account is
19 established. The storage facility long-term maintenance, monitoring, and site closure
20 assessment shall be conducted by approved site assessment contractors appearing on
21 a list approved by the commissioner or acceptable to the commissioner. The storage
22 facility long-term maintenance, monitoring, and site closure assessment shall
23 specifically detail the long-term maintenance, monitoring, and site closure needs and
24 shall provide an estimate of the long-term maintenance, monitoring and site closure
25 costs needed to maintain and restore the storage facility site based on the conditions
26 existing at the time of transfer, or at the time the site-specific trust account is
27 established.

28 C. The party or parties to the transfer shall, based upon the long-term
29 maintenance and site restoration assessment, propose a funding schedule which will

1 provide for the site-specific trust account. The funding schedule shall consider the
2 uniqueness of each transfer, acquiring party, and storage facility site. Funding of the
3 site-specific trust account shall include some contribution to the account at the time
4 of transfer and at least quarterly payments to the account. Cash or bonds in a form
5 and of a type acceptable to the commissioner, or any combination thereof, may also
6 be considered for funding. The commissioner shall monitor each trust account to
7 assure that it is being properly funded. The funds in each trust account shall remain
8 the property of the commissioner.

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

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

19 F. Once the commissioner has approved the site-specific trust account, and
20 the account is fully funded, the party transferring the storage facility site and all prior
21 owners, operators, and working interest owners shall not thereafter be held liable by
22 the state for any site closure costs or actions associated with the transferred storage
23 facility site. The party acquiring the storage facility site shall thereafter be the
24 responsible party for the purposes of this Part.

25 G. The failure of a transferring party to make a good faith disclosure of all
26 material storage facility site conditions existing at the time of the transfer may render
27 that party liable for the costs to address such undisclosed conditions to regulatory
28 standards in excess of the balance of the site-specific trust fund.

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

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

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

9 (2) Such account shall thereafter be closed.

10 J. The provisions of this Chapter regarding the implementation of
 11 site-specific trust accounts shall not be implemented until the rules and regulations
 12 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 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 8-½% 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 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. 30:1101-1111)

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 commissioners 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.