



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4370

Introduced 1/29/2020, by Rep. Thomas M. Bennett

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.930 new

Creates the Carbon Dioxide Geologic Storage Act. Provides that the Act applies to carbon dioxide injections that commence on or after January 1, 2021. Provides that a storage operator may not operate a storage facility without a reservoir permit issued by the Department of Natural Resources. Provides that a permit shall be issued if the storage operator: pays a fee to the Department of \$0.08 per ton of carbon dioxide estimated to be injected into a storage facility; and owns all of the pore space in a storage facility, or owns more than 50%, but less than 100% of the pore space within a storage facility and an application to the Department to amalgamate the remaining property interests has been granted. Provides that after carbon dioxide injections at a storage facility cease, the storage operator may apply for a certificate of completion. Provides requirements the Department shall find before issuing a certificate of completion. Provides that the Department may adopt rules and issue orders to enforce the Act. Limits home rule powers. Provides for ownership and conveyance of pore space, mineral interests, title to carbon dioxide and liability, enhanced recovery projects, and restraint of trade. Creates the Illinois Geologic Sequestration Special Fund. Makes a corresponding change in the State Finance Act.

LRB101 16519 LNS 69148 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Carbon
5 Dioxide Geologic Storage Act.

6 Section 5. Statement of policy. It is in the public
7 interest to promote the geologic storage of carbon dioxide.
8 Doing so will help ensure the viability of State industries
9 under a spectrum of potential environmental regulations and
10 will promote economic development in this State.

11 To be practical and effective, geologic storage of carbon
12 dioxide requires cooperative use of surface and subsurface
13 property interests often across large areas. It is therefore in
14 the public interest to employ procedures that promote, in a
15 manner fair to all interests, the use of all pore space in a
16 clearly defined reservoir to ensure comprehensive management
17 of the reservoir and the efficient use of natural resources. It
18 is important that rules governing the use and development of
19 subsurface pore space be consistent with both established
20 precedents and subsurface private property rights.

21 Section 10. Definitions. As used in this Act:

22 "Carbon dioxide injection well" means a well that is used

1 to inject carbon dioxide into a reservoir for geologic storage.

2 "Department" means the Department of Natural Resources.

3 "Geologic storage" means the underground storage of carbon
4 dioxide in a reservoir.

5 "Mineral owner" means, as identified in the records of the
6 recorder of deeds for each county containing some portion of
7 the proposed reservoir, any owner of a whole or fractional
8 interest in any or all minerals in real property above, below,
9 or within the proposed reservoir that has been severed from the
10 surface estate by grant, exception, reservation, lease, or
11 other means.

12 "Pore space" means naturally created subsurface cavities
13 or voids that can be used as storage space for carbon dioxide.

14 "Pore space owner" means the person, trust, corporation, or
15 other entity who has title to the pore space.

16 "Reservoir permit" means a permit issued by the Department
17 allowing a person to establish and operate a storage facility.

18 "Storage facility" means the area of review as delineated
19 in the storage operator's federal UIC program Class VI permit.

20 "Storage operator" means a person holding a reservoir
21 permit under this Act and holding or applying for a UIC permit
22 for the injection of carbon dioxide.

23 "Surface owners" means, as identified in the records of the
24 recorder of deeds for each county containing some portion of
25 the proposed reservoir, any owner of a whole or undivided fee
26 simple interest or other freehold interest, which may or may

1 not include mineral rights, in the surface above the proposed
2 reservoir, but does not include an owner of a right-of-way,
3 easement, leasehold, or any other lesser estate.

4 "UIC permit" means an Underground Injection Control permit
5 authorized under the federal Safe Drinking Water Act's
6 Underground Injection Control (UIC) Program that allows a
7 person to operate a carbon dioxide injection well.

8 Section 15. Applicability. This Act applies only to carbon
9 dioxide injections that commence on or after January 1, 2021.

10 Section 20. Reservoir permit.

11 (a) A storage operator may not operate a storage facility
12 in this State without a valid reservoir permit issued by the
13 Department. A reservoir permit may be transferred or assigned
14 from one storage operator to another. Each permit is valid for
15 one year after issuance.

16 (b) The Department shall issue or renew a reservoir permit
17 if the storage operator has paid the fee required by subsection
18 (c) and has meet the requirements of Section 30.

19 (c) The storage operator shall provide the Department an
20 estimate of the amount of carbon dioxide to be injected into a
21 storage facility for the period of the permit at the time of
22 application for a reservoir permit. A storage operator shall
23 pay to the Department a fee of \$0.08 per ton of carbon dioxide
24 estimated to be injected into a storage facility. Prior to any

1 renewal, the storage operator shall pay a fee of \$0.08 per ton
2 for carbon dioxide injected into a storage facility beyond the
3 amount contained in the storage operator's estimate for the
4 previous year. If the amount of carbon dioxide injected into a
5 storage facility is less than the amount estimated, the
6 Department shall refund the storage operator any overpayment.

7 (d) The Department may require a storage operator to make
8 records available to the Department relating to the amount of
9 carbon dioxide injected into a storage facility to ensure
10 compliance with the fee requirements of subsection (c).

11 (e) The fees collected in subsection (c) shall be deposited
12 into the Illinois Geologic Sequestration Special Fund.

13 Section 25. Ownership and conveyance of pore space.

14 (a) Title to pore space is vested in the owner of the
15 overlying surface estate.

16 (b) A conveyance of title to the surface estate conveys the
17 pore space in all strata underlying the surface estate.

18 (c) Title to pore space may not be severed from the surface
19 estate.

20 (d) Grants of easement to use or leasing of pore space is
21 not a severance prohibited by this Section.

22 (e) The grants of easement or leasing of pore space shall
23 not confer any right to enter upon or otherwise use the surface
24 of the land unless the grant of easement or lease expressly so
25 provides.

1 Section 30. Ownership requirements.

2 (a) No reservoir permit shall be issued unless the storage
3 operator owns, or has obtained grants of easements or
4 leaseholds for, all of the pore space in a storage facility.

5 (b) If a storage operator owns, or has obtained grants of
6 easement or leaseholds for, more than 50% but less than 100% of
7 the pore space within a proposed storage facility, the storage
8 operator may apply to the Department to amalgamate the
9 remaining property interests.

10 Section 35. Amalgamating property interests.

11 (a) If a storage operator has applied to the Department to
12 amalgamate any remaining property interests in a storage
13 facility, the Department shall:

14 (1) notify any and all nonconsenting property owners
15 who own property interests to be amalgamated;

16 (2) within 120 days, but no less than 60 days after the
17 filing of the application, the Department shall conduct a
18 hearing to determine the fair market value of each property
19 owner's pore space to be amalgamated. The storage operator
20 and each property owner has the right to present evidence
21 as to the value of the pore space, including, but not
22 limited to, the economic benefits to the storage operator,
23 and to be represented by an attorney; and

24 (3) after the hearing, issue an order determining the

1 fair market value of each nonconsenting owner's pore space.

2 (b) Upon payment by the storage operator to the Department
3 of the total fair market value of the pore space to be
4 amalgamated, the storage operator shall be granted an easement
5 by the Department upon the pore space. The Department shall
6 record the easement with the appropriate county recorder of
7 deeds. The Department shall remit funds received from the
8 storage operator to each property owner consistent with the
9 Department's determination of fair market value.

10 (c) Any easement granted under this Section shall not
11 include the right to use the surface above a nonconsenting
12 property owner's pore space.

13 (d) The Department has the authority to commit State-owned
14 pore space to a storage facility.

15 Section 40. Mineral interests. A mineral owner may drill
16 through or near a reservoir to explore for or extract minerals
17 if the drilling, extraction, and related activities are
18 conducted in cooperation with the storage operator and comply
19 with Department requirements that preserve the storage
20 facility's integrity.

21 Section 45. Title to carbon dioxide; liability. The storage
22 operator has title to the carbon dioxide injected into and
23 stored in a reservoir and holds title until the Department
24 issues a certificate of completion. While the storage operator

1 holds title, the storage operator is liable for any damage the
2 carbon dioxide may cause, including damage caused by carbon
3 dioxide that escapes from the storage facility. The pore space
4 owner has no liability associated with the operation of a
5 storage facility unless the storage operator is the pore space
6 owner.

7 Section 55. Project completion and title transfer.

8 (a) After carbon dioxide injections at a storage facility
9 cease, the storage operator may apply for a certificate of
10 completion. Before issuing a certificate of completion, the
11 Department, in consultation with the issuer of the UIC permit,
12 shall find that:

13 (1) the storage operator is in full compliance with all
14 laws governing the storage facility, including any ongoing
15 UIC permit requirements;

16 (2) the storage operator addressed all pending claims,
17 if any, regarding the storage facility's operation;

18 (3) all carbon dioxide injection wells are plugged,
19 equipment and facilities are removed, and reclamation work
20 is completed as required by the UIC permit issuer or the
21 Department;

22 (4) the carbon dioxide in the reservoir is stable,
23 which means that it is essentially stationary or, if it is
24 migrating or may migrate, any migration will be unlikely to
25 be outside of the storage facility; and

1 (5) all monitoring wells, equipment, and facilities to
2 be used in the post-closure period are in good condition
3 and retain mechanical integrity.

4 (b) If the Department does not complete the review of a
5 certificate of completion application within 90 days after
6 receipt, including the public notice and input deemed
7 appropriate by the Department, then the certificate of
8 completion shall be issued. If the Department does not find
9 that the requirements in subsection (a) are met, then it may
10 decline the application or require amendment to the application
11 before granting the certificate of completion. If the
12 Department requires amendment to the application, then the
13 storage operator shall have 30 days to amend the application.
14 Thereafter, the Department shall have 30 days to either grant
15 or decline to grant the certificate of completion or the
16 certificate of completion shall be issued.

17 (c) The Department may charge a fee to the storage operator
18 for reviewing the certificate of completion application. The
19 fee shall be in the amount set by Department rule. The amount
20 shall be based on the Department's anticipated expenses that it
21 shall incur in reviewing the certificate of completion
22 application and shall not exceed \$10,000.

23 (d) Once a certificate of completion is issued, the
24 following occurs:

25 (1) Title to the storage facility and to the stored
26 carbon dioxide transfers, without compensation, to the

1 State.

2 (2) Title acquired by the State includes all rights and
3 interests in, and all responsibilities associated with,
4 the stored carbon dioxide.

5 (3) The storage operator is released from all
6 regulatory requirements associated with the storage
7 facility.

8 (4) Monitoring and managing the storage facility is the
9 State's responsibility to be overseen by the Department
10 until the federal government assumes responsibility for
11 the long-term monitoring and management of storage
12 facilities.

13 (5) If the federal government has not assumed
14 responsibility for the long-term monitoring and management
15 of storage facilities, then the Illinois Geologic
16 Sequestration Special Fund shall be used for the purposes
17 of monitoring and managing the storage facility and any
18 other responsibility associated with the stored carbon
19 dioxide.

20 Section 60. Enhanced recovery projects. This Act does not
21 apply to applications filed with the Department proposing to
22 use carbon dioxide for an enhanced oil or gas recovery project.
23 Such applications shall be processed pursuant the Illinois Oil
24 and Gas Act.

1 Section 65. Department powers; home rule. The Department
2 may adopt rules and issue orders to enforce this Act. The
3 Department may authorize its employees, qualified by training
4 and experience, to perform the powers and duties set forth in
5 this Act. No agency of State government or political
6 subdivision of the State may regulate geologic storage except
7 as expressly authorized under this Act. This Section is a
8 limitation under subsection (i) of Section 6 of Article VII of
9 the Illinois Constitution on the concurrent exercise by home
10 rule units of powers and functions exercised by the State.

11 Section 70. Restraint of trade. None of the rights and
12 responsibilities pursuant to this Act shall be held or
13 construed to violate any of the statutes of this State relating
14 to trusts, monopolies, or contracts and combinations in the
15 restraint of trade.

16 Section 75. Illinois Geologic Sequestration Special Fund.
17 The Illinois Geologic Sequestration Special Fund is created as
18 a special fund in the State treasury. The Fund shall consist of
19 any money deposited into the Fund as provided in subsection (e)
20 of Section 20. Money in the Fund shall be used for the
21 administration of this Act and for no other purpose. All
22 interest earned on money in the Fund shall be deposited into
23 the Fund.

1 Section 97. Severability. The provisions of this Act are
2 severable under Section 1.31 of the Statute on Statutes.

3 Section 905. The State Finance Act is amended by adding
4 Section 5.930 as follows:

5 (30 ILCS 105/5.930 new)

6 Sec. 5.930. The Illinois Geologic Sequestration Special
7 Fund.