



Rep. Thomas M. Bennett

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LRB102 04060 LNS 23698 a

1 AMENDMENT TO HOUSE BILL 166

2 AMENDMENT NO. _____. Amend House Bill 166 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Carbon 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 and will promote economic development in this State.

10 To be practical and effective, geologic storage of carbon
11 dioxide requires cooperative use of surface and subsurface
12 property interests often across large areas. It is therefore
13 in the public interest to employ procedures that promote, in a
14 manner fair to all interests, the use of all pore space in a
15 clearly defined reservoir to ensure comprehensive management
16 of the reservoir and the efficient use of natural resources.

1 It is important that rules governing the use and development
2 of subsurface pore space be consistent with both established
3 precedents and subsurface private property rights.

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

5 "Area of review" means the area of review as required to be
6 delineated in the storage operator's federal Underground
7 Injection Control (UIC) program Class VI permit.

8 "Carbon dioxide injection well" means a well that is used
9 to inject carbon dioxide into a reservoir for geologic
10 storage.

11 "Carbon dioxide plume" means the extent underground, in 3
12 dimensions, of an injected carbon dioxide stream.

13 "Department" means the Department of Natural Resources.

14 "Geologic storage" means the underground storage of carbon
15 dioxide in a reservoir.

16 "Mineral owner" means, as identified in the records of the
17 recorder of deeds for each county containing some portion of
18 the proposed reservoir, any owner of a whole or fractional
19 interest in any or all minerals in real property above, below,
20 or within the proposed reservoir that has been severed from
21 the surface estate by grant, exception, reservation, lease, or
22 other means.

23 "Pore space" means subsurface cavities or voids that can
24 be used as storage space for carbon dioxide.

25 "Pore space owner" means the person, trust, corporation,

1 or other entity who has title to the pore space.

2 "Storage facility" means the subsurface area consisting of
3 the extent of the modeled carbon dioxide plume, as required to
4 be delineated in the storage operator's federal UIC program
5 Class VI permit.

6 "Storage facility permit" means a permit issued by the
7 Department allowing a person to establish and operate a
8 storage facility.

9 "Storage operator" means a person holding or applying for
10 a storage facility permit under this Act and holding or
11 applying for a UIC permit for the injection of carbon dioxide.

12 "Surface owner" means, as identified in the records of the
13 recorder of deeds for each county containing any portion of
14 the proposed storage facility, any owner of a whole or
15 undivided fee simple interest or other freehold interest,
16 which may or may not include mineral rights, in the surface
17 above the proposed storage facility, but does not include an
18 owner of a right-of-way, easement, leasehold, or any other
19 lesser estate.

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

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

1 Section 20. Storage facility permit.

2 (a) A storage operator may not operate a storage facility
3 in this State without a valid storage facility permit issued
4 by the Department. A storage facility permit may be
5 transferred or assigned from one storage operator to another.
6 Each permit is valid for 5 years after issuance.

7 (b) The Department shall issue or renew a storage facility
8 permit if the storage operator has paid the first year's
9 annual fee required by subsection (c) and has met the
10 requirements of Section 30. In addition, the Department shall
11 issue a storage facility permit following the public hearing
12 described in subsection (f) upon its determination that:

13 (1) the storage facility permit is in the public
14 interest; and

15 (2) to the extent the storage facility contains
16 commercially valuable minerals, the interests of the
17 mineral lessee or owner will not be adversely affected or
18 have been addressed in an arrangement between the interest
19 holder and the storage operator.

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

1 storage facility. Each year the storage operator shall
2 reconcile the past year's payment with the volume of carbon
3 dioxide injected into a storage facility the previous year.
4 The storage operator shall submit payment for the amount
5 injected above the storage operator's estimate for the
6 previous year. If the amount of carbon dioxide injected into a
7 storage facility is less than the amount estimated, the
8 Department shall refund the storage operator any overpayment.

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

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

16 (f) Prior to issuing a storage facility permit, the
17 Department shall hold a public hearing. At least 30 days prior
18 to the hearing, notice of the hearing shall first be published
19 in the official newspaper of the county or counties where the
20 area of review is proposed to be located and in other print or
21 online publications as required by the Department, consistent
22 with the requirements of the Notice By Publication Act. Notice
23 shall be published daily for 2 consecutive weeks. At least 30
24 days prior to the hearing, notice of the hearing must be given
25 to:

26 (1) each surface owner of land overlying the storage

1 facility and within one-half mile of the storage
2 facility's boundaries;

3 (2) each mineral lessee or mineral owner with property
4 interests within one-half mile of the storage facility's
5 boundaries; and

6 (3) any pore space owners within the storage facility
7 and within one-half mile of the storage facility's
8 boundaries.

9 Any objections to the issuance of the storage facility's
10 permit not raised at the public hearing shall be waived.

11 Section 25. Ownership and conveyance of pore space.

12 (a) For real property that was divided into a surface
13 estate and a mineral estate before the effective date of this
14 Act, nothing in this Section shall alter, amend, diminish, or
15 invalidate rights to the use of pore space that were
16 explicitly acquired by conveyance document. Any such rights to
17 the use of pore space that were not explicitly acquired remain
18 vested in the surface estate.

19 (b) For real property that is divided into a surface
20 estate and a mineral estate on or after the effective date of
21 this Act, rights to the use of pore space shall remain vested
22 in the surface estate unless such rights are explicitly
23 conveyed.

24 (c) Grants of an easement to use or a lease of pore space
25 for geologic storage shall be in perpetuity if so specified,

1 except to the extent the grantee relinquishes the easement or
2 lease because the pore space was not utilized for geologic
3 storage purposes.

4 (d) Any conveyance of rights pertaining to pore space
5 shall not confer any right to enter upon or otherwise use the
6 surface of the land unless the conveyance document expressly
7 so provides.

8 Section 30. Ownership requirements.

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

12 (b) If a storage operator owns, or has obtained grants of
13 easement or leaseholds for, more than 50% but less than 100% of
14 the areal extent of pore space within a proposed storage
15 facility, the storage operator may apply to the Department to
16 amalgamate the remaining property interests.

17 Section 35. Amalgamating property interests.

18 (a) If a storage operator has applied to the Department to
19 amalgamate any remaining property interests in a storage
20 facility, the Department shall:

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

23 (2) within 120 days, but no less than 60 days after the
24 filing of the application, the Department shall conduct a

1 hearing to determine the fair market value of each
2 property owner's pore space to be amalgamated. The storage
3 operator and each property owner has the right to present
4 evidence as to the value of the pore space, including, but
5 not limited to, the economic benefits to the storage
6 operator, and to be represented by an attorney; and

7 (3) after the hearing, issue an order determining the
8 fair market value of each nonconsenting owner's pore
9 space.

10 (b) Upon payment by the storage operator to the Department
11 of the total fair market value of the pore space to be
12 amalgamated, the storage operator shall be granted a permanent
13 easement by the Department upon the pore space. The Department
14 shall record the easement with the appropriate county recorder
15 of deeds. The Department shall remit funds received from the
16 storage operator to each property owner consistent with the
17 Department's determination of fair market value.

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

21 (d) The Department has the authority to grant a permanent
22 easement to State-owned pore space to a storage facility.

23 Section 40. Mineral interests. With the written consent of
24 the storage operator, a mineral owner may drill through or
25 near a storage facility to explore for or extract minerals if

1 the drilling, extraction, and related activities are conducted
2 in cooperation with the storage operator and in compliance
3 with:

4 (1) Department requirements that preserve the storage
5 facility's integrity; and

6 (2) all requirements of the storage operator's UIC permit.

7 Section 45. Title to carbon dioxide prior to certificate
8 of completion. Absent conveyance documents to the contrary,
9 the storage operator has title to the carbon dioxide injected
10 into and stored in a storage facility and holds title until the
11 Department issues a certificate of completion.

12 Section 50. Scope and remedy for claims of subsurface
13 trespass.

14 (a) A claim of subsurface trespass shall not be actionable
15 against a storage operator conducting geologic storage in
16 accordance with a valid UIC permit and storage facility permit
17 unless the injection or migration of carbon dioxide materially
18 impairs interests outside the storage facility.

19 (b) A surface or subsurface property interest holder shall
20 be permitted to recover money damages only for loss of a
21 nonspeculative value resulting from the injection and
22 migration of carbon dioxide beyond the storage facility.

23 (c) Punitive damages shall be barred if the storage
24 operator acts in all material respects in compliance with the

1 operational and monitoring requirements of the UIC permit.

2 Section 55. Project completion and title transfer.

3 (a) After carbon dioxide injections at a storage facility
4 permanently cease, the storage operator may apply for a
5 certificate of completion. Before issuing a certificate of
6 completion, the Department, in consultation with the issuer of
7 the UIC permit, shall find that:

8 (1) the storage operator is in full compliance with
9 all laws governing the storage facility, including any
10 ongoing UIC permit requirements;

11 (2) the storage operator addressed all pending claims,
12 if any, regarding escape, release, leakage, or any similar
13 migration of carbon dioxide outside the storage facility;

14 (3) all carbon dioxide injection wells are plugged,
15 associated equipment and facilities are removed, and
16 reclamation work is completed as required by the UIC
17 permit issuer or the Department;

18 (4) the carbon dioxide in the reservoir is stable,
19 which means that it is essentially stationary or, if it is
20 migrating or may migrate, any migration will be unlikely
21 to be outside of the storage facility, or to the extent
22 beyond the area of review, the plume does not pose a risk
23 of endangerment to underground sources of drinking water,
24 consistent with Class VI permit requirements; and

25 (5) all monitoring wells, equipment, and facilities to

1 be used in the post-closure period are in good condition
2 and retain mechanical integrity.

3 (b) If the Department does not complete the review of a
4 certificate of completion application within 90 days after
5 receipt, including the public notice and input deemed
6 appropriate by the Department, then the certificate of
7 completion shall be deemed issued at the end of the 90-day
8 period. If the Department does not find that the requirements
9 in subsection (a) are met, then it may decline the application
10 or require amendment to the application before granting the
11 certificate of completion. If the Department requires
12 amendment to the application, then the storage operator shall
13 have 30 days to submit an amended application. Upon receipt of
14 the amended application, the Department shall have 30 days to
15 either grant or decline to grant the certificate of completion
16 or the certificate of completion. The Department's failure to
17 timely issue a certificate of completion or denial of a
18 certificate of completion shall be considered final agency
19 action reviewable in the county court in the jurisdiction in
20 which the storage facility is located.

21 (c) The Department may charge a fee to the storage
22 operator for reviewing the certificate of completion
23 application. The fee shall be in the amount set by Department
24 rule. The amount shall be based on the Department's
25 anticipated expenses that it shall incur in reviewing the
26 certificate of completion application and shall not exceed

1 \$10,000.

2 (d) Once a certificate of completion is issued, the
3 following occurs:

4 (1) Title to the storage facility and to the stored
5 carbon dioxide transfers, without compensation, to the
6 State.

7 (2) Title acquired by the State includes all rights
8 and interests in, and all responsibilities, including
9 regulatory requirements associated with, the stored carbon
10 dioxide, so long as the State and the storage operator may
11 contractually agree that the storage operator shall
12 continue to comply with regulatory requirements associated
13 with the storage facility on the State's behalf.

14 (3) The storage operator and, to the extent the owner
15 is a separate entity from the storage operator, the owner
16 of the geologic storage site, including the owner of any
17 surface and subsurface infrastructure associated with the
18 storage facility, are released from and the State assumes
19 all regulatory requirements and liability associated with
20 the storage facility.

21 (4) Monitoring and managing the storage facility is
22 the State's responsibility to be overseen by the
23 Department unless and until the federal government assumes
24 responsibility for the long-term monitoring and management
25 of storage facilities. Upon federal government assumption
26 of responsibility, funds in the Illinois Geologic

1 Sequestration Special Fund shall be transferred to any
2 such parallel fund under federal law for purposes of
3 long-term monitoring and management of storage facilities.
4 To the extent such a fund does not exist, the State shall
5 refund the fees contributed by the storage operators to
6 each party.

7 (5) If the federal government has not assumed
8 responsibility for the long-term monitoring and management
9 of storage facilities, then the Illinois Geologic
10 Sequestration Special Fund shall be used for the purposes
11 of monitoring and managing the storage facilities and any
12 other responsibility associated with the stored carbon
13 dioxide.

14 Section 60. Enhanced recovery projects. This Act does not
15 apply to applications filed with the Department proposing to
16 use carbon dioxide for an enhanced oil or gas recovery
17 project. Such applications shall be processed pursuant the
18 Illinois Oil and Gas Act.

19 Section 65. Department powers; home rule. The Department
20 may adopt rules and issue orders to enforce this Act. The
21 Department may authorize its employees, qualified by training
22 and experience, to perform the powers and duties set forth in
23 this Act. No agency of State government or political
24 subdivision of the State may regulate geologic storage except

1 as expressly authorized under this Act; so long as nothing in
2 this Section 65 restricts or interferes with the Illinois
3 Environmental Protection Agency's authority to:

4 (1) issue any necessary permits for operation of
5 aboveground facilities associated with the geologic storage
6 project; or

7 (2) issue permits under the UIC program and inspect
8 geologic storage sites pursuant to Section 13.7 of the
9 Environmental Protection Act. To the extent there is any
10 inconsistency between this Act and Section 13.7 of the
11 Environmental Protection Act, this Act shall control.

12 This Section is a limitation under subsection (i) of
13 Section 6 of Article VII of the Illinois Constitution on the
14 concurrent exercise by home rule units of powers and functions
15 exercised by the State.

16 Section 70. Restraint of trade. None of the rights and
17 responsibilities pursuant to this Act shall be held or
18 construed to violate any of the statutes of this State
19 relating to trusts, monopolies, or contracts and combinations
20 in the restraint of trade.

21 Section 75. Illinois Geologic Sequestration Special Fund.
22 The Illinois Geologic Sequestration Special Fund is created as
23 a special fund in the State treasury. The Fund shall consist of
24 any money deposited into the Fund as provided in subsection

1 (e) of Section 20. Money in the Fund shall be used for the
2 administration of this Act and for no other purpose. All
3 interest earned on money in the Fund shall be deposited into
4 the Fund.

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

7 Section 905. The State Finance Act is amended by adding
8 Section 5.935 as follows:

9 (30 ILCS 105/5.935 new)

10 Sec. 5.935. The Illinois Geologic Sequestration Special
11 Fund."