Rep. Lawrence Walsh, Jr.

Filed: 4/7/2022

AMENDMENT TO SENATE BILL 3866

AMENDMENT NO. _____. Amend Senate Bill 3866, AS AMENDED, by inserting the following in its proper numeric sequence:

"Article 3.

Section 3-1. Short title. This Article may be cited as the Carbon Dioxide Geologic Storage Act. References in this Article to "this Act" mean this Article.

Section 3-5. Findings. The General Assembly finds that it is in the public interest to promote the geologic storage of carbon dioxide. Doing so will benefit the State and the global environment by reducing greenhouse gas emissions and will help ensure the viability and implementation of Public Act 102-662, also known as the Climate and Equitable Jobs Act, and of the State's energy and power industries, to the economic benefit of the State and its citizens. Further, geologic storage of

carbon dioxide, a potentially valuable commodity, may allow for its ready availability if needed for commercial, industrial, or other uses. Geologic storage, however, to be practical and effective, requires cooperative use of surface and subsurface property interests and the collaboration of property owners. Use of any subsurface stratum and any materials and fluids contained therein for geologic storage of carbon dioxide is a reasonable and beneficial use.

Section 3-10. Definitions. As used in this Act:

"Applicable underground injection control program for each class of storage facility injection well" means the program, or most recent amendment thereof, for that class of well in the State as provided by federal law.

"Carbon dioxide stream" means carbon dioxide plus incidental associated substances derived from the source materials and the production or capture process, and any substances added to the stream to enable or improve the injection process if such substances will not compromise the safety of geologic storage and will not compromise those properties which allow the pore space to effectively enclose and contain the stored carbon dioxide.

"Class VI Well Program" means the federal Environmental Protection Agency's Underground Injection Control Class VI program "Wells used for Geological Sequestration of Carbon Dioxide".

"Geologic storage" means the permanent or short-term underground storage of carbon dioxide streams in a storage pore space.

"Pore space" means subsurface space which can be used as storage space for carbon dioxide or other substances.

"Storage facility" means the storage reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. "Storage facility" includes the injection well and equipment used to connect the surface facility and equipment to the storage reservoir and underground equipment. "Storage facility" does not include pipelines used to transport carbon dioxide to the storage facility from pipelines on other properties and pipelines longer than 5 miles.

"Storage operator" means a person holding or applying for a permit under this Act.

"Storage pore space" means the pore space proposed, authorized, or used for storing one or more carbon dioxide streams pursuant to a permit. "Storage pore space" does not include reservoirs used for purposes other than the storage of carbon dioxide streams.

Section 3-15. Ownership and conveyance.

(a) Title to any pore space underlying the surface of lands and waters is vested in the owner of the overlying surface estate unless it has been severed and separately

conveyed.

(b) A conveyance of the surface ownership of real property shall be a conveyance of the pore space ownership in all strata below the surface of such real property unless the ownership interest in the pore space previously has been severed from the surface ownership or is explicitly excluded in the conveyance. The ownership of pore space may be conveyed or leased in the manner provided by law for the transfer of mineral interests in real property. No agreement or instrument conveying mineral or other interests underlying the surface shall act to convey ownership of any pore space unless the agreement explicitly conveys the ownership interest.

(c) No provision of law, including a lawfully adopted rule or regulation, requiring notice to be given to a surface owner, to an owner of a mineral interest, or to both shall be construed to require notice to a person holding ownership interest in any underlying pore space unless the law specifies notice to the person is required.

(d) Nothing in this Section shall be construed to change or alter the common law existing as of the effective date of this Act as it relates to the rights belonging to, or the dominance of, the mineral estate. For the purpose of determining the priority of subsurface uses between a severed mineral estate and pore space as described in this Section, the severed mineral estate is dominant.

(e) All instruments which transfer the rights to pore

space under this Section shall describe the scope of any right of the owner of the pore space to use the surface estate. The owner of any pore space right shall have no right to use the surface estate beyond that set out in a properly recorded instrument.

(f) A transfer of pore space rights made after the effective date of this Act is null and void at the option of the owner of the surface estate if the transfer instrument does not contain a specific description of the location of the pore space being transferred. The description may include, but is not limited to, a subsurface geologic or seismic survey or a metes and bounds description of the surface lying over the transferred pore space. If a description of the surface is used, the transfer shall be deemed to include the pore space at all depths underlying the described surface area unless specifically excluded. The validity of pore space rights under this subsection shall not affect the respective liabilities of any party, and the liabilities shall operate in the same manner as if the pore space transfer was valid.

(g) Nothing in this Section shall alter, amend, diminish, or invalidate the right to the use of subsurface pore space that was acquired by contract or lease prior to the effective date of this Act.".