

SB2860



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2860

Introduced 1/19/2024, by Sen. Steve McClure

SYNOPSIS AS INTRODUCED:

220 ILCS 75/20
220 ILCS 75/25 rep.

Amends the Carbon Dioxide Transportation and Sequestration Act. Provides that a certificate of authority does not grant an owner or operator of a carbon dioxide pipeline the authority to take and acquire an easement in any property or interest in property for the construction, maintenance, or operation of a carbon dioxide pipeline through the exercise of the power of eminent domain. Removes corresponding provisions concerning eminent domain. Repeals a provision that provides procedures for acquiring easements.

LRB103 35410 SPS 65476 b

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Carbon Dioxide Transportation and
5 Sequestration Act is amended by changing Section 20 as
6 follows:

7 (220 ILCS 75/20)

8 Sec. 20. Application.

9 (a) No person or entity may construct, operate, or repair
10 a carbon dioxide pipeline unless the person or entity
11 possesses a certificate of authority.

12 (b) The Commission, after a hearing, may grant an
13 application for a certificate of authority authorizing the
14 construction and operation of a carbon dioxide pipeline if it
15 makes a specific written finding as to each of the following:

16 (1) the application was properly filed;

17 (2) the applicant is fit, willing, and able to
18 construct and operate the pipeline in compliance with this
19 Act and with Commission regulations and orders of the
20 Commission or any applicable federal agencies;

21 (3) the applicant has entered into an agreement with a
22 clean coal facility, a clean coal SNG facility, or any
23 other source that will result in the reduction of carbon

1 dioxide emissions from that source;

2 (4) the applicant has filed with the Pipeline and
3 Hazardous Materials Safety Administration of the U.S.
4 Department of Transportation all forms required by that
5 agency in advance of constructing a carbon dioxide
6 pipeline;

7 (5) the applicant has filed with the U.S. Army Corps
8 of Engineers all applications for permits required by that
9 agency in advance of constructing a carbon dioxide
10 pipeline;

11 (6) the applicant has entered into an agreement with
12 the Illinois Department of Agriculture that governs the
13 mitigation of agricultural impacts associated with the
14 construction of the proposed pipeline;

15 (7) the applicant possesses the financial, managerial,
16 legal, and technical qualifications necessary to construct
17 and operate the proposed carbon dioxide pipeline; and

18 (8) the proposed pipeline is consistent with the
19 public interest, public benefit, and legislative purpose
20 as set forth in this Act. In addition to any other evidence
21 the Commission may consider on this specific finding, the
22 Commission shall consider the following:

23 (A) any evidence of the effect of the pipeline
24 upon the economy, infrastructure, and public safety
25 presented by local governmental units that will be
26 affected by the proposed pipeline route;

1 (B) any evidence of the effect of the pipeline
2 upon property values presented by property owners who
3 will be affected by the proposed pipeline or facility,
4 ~~provided that the Commission need not hear evidence as~~
5 ~~to the actual valuation of property such as that as~~
6 ~~would be presented to and determined by the courts~~
7 ~~under the Eminent Domain Act;~~

8 (C) any evidence presented by the Department of
9 Commerce and Economic Opportunity regarding the
10 current and future local, State-wide, or regional
11 economic effect, direct or indirect, of the proposed
12 pipeline or facility including, but not limited to,
13 ability of the State to attract economic growth, meet
14 future energy requirements, and ensure compliance with
15 environmental requirements and goals;

16 (D) any evidence addressing the factors described
17 in items (1) through (8) of this subsection (b) or
18 other relevant factors that is presented by any other
19 State agency, the applicant, a party, or other entity
20 that participates in the proceeding, including
21 evidence presented by the Commission's staff; and

22 (E) any evidence presented by any State or federal
23 governmental entity as to how the proposed pipeline
24 will affect the security, stability, and reliability
25 of energy.

26 In its written order, the Commission shall address all of

1 the evidence presented, and if the order is contrary to any of
2 the evidence, the Commission shall state the reasons for its
3 determination with regard to that evidence.

4 (c) When an applicant files its application for a
5 certificate of authority with the Commission, it shall provide
6 notice to each local government where the proposed pipeline
7 will be located and include a map of the proposed pipeline
8 route. The applicant shall also publish notice in a newspaper
9 of general circulation in each county where the proposed
10 pipeline is located.

11 (d) An application for a certificate of authority filed
12 pursuant to this Section shall request either that the
13 Commission review and approve a specific route for a carbon
14 dioxide pipeline, or that the Commission review and approve a
15 project route width that identifies the areas in which the
16 pipeline would be located, with such width ranging from the
17 minimum width required for a pipeline right-of-way up to 200
18 feet in width. A map of the route or route width shall be
19 included in the application. The purpose for allowing the
20 option of review and approval of a project route width is to
21 provide increased flexibility during the construction process
22 to accommodate specific landowner requests, avoid
23 environmentally sensitive areas, or address special
24 environmental permitting requirements.

25 (e) The Commission's rules shall ensure that notice of an
26 application for a certificate of authority is provided within

1 30 days after filing to the landowners along a proposed
2 project route, or to the potentially affected landowners
3 within a proposed project route width, using the notification
4 procedures set forth in the Commission's rules. If the
5 Commission grants approval of a project route width as opposed
6 to a specific project route, then the applicant must, as it
7 finalizes the actual pipeline alignment within the project
8 route width, file its final list of affected landowners with
9 the Commission at least 14 days in advance of beginning
10 construction on any tract within the project route width ~~and~~
11 ~~also provide the Commission with at least 14 days' notice~~
12 ~~before filing a complaint for eminent domain in the circuit~~
13 ~~court with regard to any tract within the project route width.~~

14 (f) The Commission shall make its determination on any
15 application for a certificate of authority filed pursuant to
16 this Section and issue its final order within 11 months after
17 the date that the application is filed. The Commission's
18 failure to act within this time period shall not be deemed an
19 approval or denial of the application.

20 (g) A final order of the Commission granting a certificate
21 of authority pursuant to this Act shall be conditioned upon
22 the applicant obtaining all required permits or approvals from
23 the Pipeline and Hazardous Materials Safety Administration of
24 the U.S. Department of Transportation, U.S. Army Corps of
25 Engineers, and Illinois Department of Agriculture, in addition
26 to all other permits and approvals necessary for the

1 construction and operation of the pipeline prior to the start
2 of any construction. The final order must specifically
3 prohibit the start of any construction until all such permits
4 and approvals have been obtained.

5 (h) Within 6 months after the Commission's entry of an
6 order approving either a specific route or a project route
7 width under this Section, the owner or operator of the carbon
8 dioxide pipeline that receives that order may file
9 supplemental applications for minor route deviations outside
10 the approved project route width, allowing for additions or
11 changes to the approved route to address environmental
12 concerns encountered during construction or to accommodate
13 landowner requests. The supplemental application shall
14 specifically detail the environmental concerns or landowner
15 requests prompting the route changes, including the names of
16 any landowners or entities involved. Notice of a supplemental
17 application shall be provided to any State agency or unit of
18 local government that appeared in the original proceeding and
19 to any landowner affected by the proposed route deviation at
20 the time that supplemental application is filed. The route
21 deviations shall be approved by the Commission no sooner than
22 90 days after all interested parties receive notice of the
23 supplemental application, unless a written objection is filed
24 to the supplemental application within 45 days after such
25 notice is received. If a written objection is filed, then the
26 Commission shall issue an order either granting or denying the

1 route deviation within 90 days after the filing of the
2 objection. Hearings on any such supplemental application shall
3 be limited to the reasonableness of the specific variance
4 proposed, and the issues of the public interest and benefit of
5 the project or fitness of the applicant shall be considered
6 only to the extent that the route deviation has raised new
7 concerns with regard to those issues.

8 (i) A certificate of authority to construct and operate a
9 carbon dioxide pipeline issued by the Commission shall contain
10 a grant of authority to construct and operate a carbon dioxide
11 pipeline as requested in the application, subject to the laws
12 of this State. A certificate of authority does not grant an
13 owner or operator of a carbon dioxide pipeline the authority
14 to take and acquire an easement in any property or interest in
15 property for the construction, maintenance, or operation of a
16 carbon dioxide pipeline through the exercise of the power of
17 eminent domain. and include all of the following:

18 ~~(1) a grant of authority to construct and operate a~~
19 ~~carbon dioxide pipeline as requested in the application,~~
20 ~~subject to the laws of this State; and~~

21 ~~(2) a limited grant of authority to take and acquire~~
22 ~~an easement in any property or interest in property for~~
23 ~~the construction, maintenance, or operation of a carbon~~
24 ~~dioxide pipeline in the manner provided for the exercise~~
25 ~~of the power of eminent domain under the Eminent Domain~~
26 ~~Act. The limited grant of authority shall be restricted~~

1 ~~to, and exercised solely for, the purpose of siting,~~
2 ~~rights of way, and easements appurtenant, including~~
3 ~~construction and maintenance. The applicant shall not~~
4 ~~exercise this power until it has used reasonable and good~~
5 ~~faith efforts to acquire the property or easement thereto.~~
6 ~~The applicant may thereafter use this power when the~~
7 ~~applicant determines that the easement is necessary to~~
8 ~~avoid unreasonable delay or economic hardship to the~~
9 ~~progress of activities carried out pursuant to the~~
10 ~~certificate of authority.~~

11 (Source: P.A. 97-534, eff. 8-23-11.)

12 (220 ILCS 75/25 rep.)

13 Section 10. The Carbon Dioxide Transportation and
14 Sequestration Act is amended by repealing Section 25.