



Sen. John M. Sullivan

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1 AMENDMENT TO SENATE BILL 1821

2 AMENDMENT NO. _____. Amend Senate Bill 1821 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 Transportation and Sequestration Act.

6 Section 5. Legislative purpose. The transportation of
7 carbon dioxide by pipeline for sequestration, enhanced oil
8 recovery, and other purposes is declared to be a public use and
9 service, in the public interest, and a benefit to the welfare
10 of Illinois and the people of Illinois because it enables
11 efforts to reduce carbon dioxide emissions from "clean coal"
12 facilities and other Illinois sources, promotes the use of
13 Illinois coal, and also advances economic development,
14 environmental protection, and energy security in the State.

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

1 "Carbon dioxide pipeline" or "pipeline" means the in-state
2 portion of a pipeline, including appurtenant facilities,
3 property rights, and easements that are used exclusively for
4 the purpose of transporting carbon dioxide to a point of sale,
5 storage, or other carbon management application.

6 "Clean coal facility" has the meaning ascribed to that term
7 in Section 1-10 of the Illinois Power Agency Act.

8 "Clean coal SNG facility" has the meaning ascribed to that
9 term in Section 1-10 of the Illinois Power Agency Act.

10 "Commission" means the Illinois Commerce Commission.

11 "Sequester" has the meaning ascribed to that term in
12 Section 1-10 of the Illinois Power Agency Act.

13 "Transportation" means the physical movement of carbon
14 dioxide by pipeline conducted for a person's own use or account
15 or the use or account of another person or persons.

16 Section 15. Grant of an easement for a carbon dioxide
17 pipeline.

18 (a) This Section applies only to an owner or operator of a
19 pipeline designed, constructed, and operated to transport and
20 to sequester carbon dioxide produced by a clean coal facility,
21 by a clean coal SNG facility, or by any other source that will
22 result in the reduction of carbon dioxide emissions from that
23 source. Further, this Section applies only to a person or
24 entity authorized to do business in Illinois who is authorized
25 to transport carbon dioxide by pipeline and has obtained a

1 certificate of authority from the Commission pursuant to this
2 Act.

3 (b) An owner or operator described in subsection (a) may
4 engage in the acquisition of an easement to transport carbon
5 dioxide by pipeline.

6 (c) An owner or operator to which subsection (b) applies
7 has all accommodations, rights, and privileges necessary to
8 accomplish the use for which the easement is granted.

9 Section 20. Application.

10 (a) No person or entity may construct or operate a carbon
11 dioxide pipeline unless it obtains a certificate of authority
12 pursuant to this Act.

13 (b) A person or entity seeking to construct or operate a
14 carbon dioxide pipeline shall apply to the Commission for a
15 certificate of authority. It shall file an affidavit, signed by
16 an officer or general partner of the applicant, affirming all
17 of the following:

18 (1) That the applicant has filed or will timely file
19 with the Pipeline and Hazardous Materials Safety
20 Administration of the U.S. Department of Transportation
21 all forms required by that agency in advance of
22 constructing a carbon dioxide pipeline.

23 (2) That the applicant agrees to comply with all
24 applicable federal and State statutes and regulations.

25 (3) That the applicant agrees to comply with all

1 regulations and ordinances of applicable units of local
2 government.

3 (4) A description of the proposed carbon dioxide
4 pipeline's length, size, and location.

5 (5) The location and telephone number of the
6 applicant's principal place of business within this State
7 and the names of the applicant's principal executive
8 officers who are responsible for communications concerning
9 the application, the applicant's legal name, and any name
10 or names under which the applicant does or will do
11 business.

12 (6) A certification that the applicant has
13 concurrently delivered a copy of the application to all
14 units of local government through which any part of the
15 pipeline is proposed to be located.

16 (7) The expected date that the pipeline owner or
17 operator intends to commence construction of the pipeline.

18 (c) The application shall include adequate assurance that
19 the applicant possesses the financial, managerial, legal, and
20 technical qualifications necessary to construct and operate
21 the proposed pipeline and to promptly repair any damage to any
22 public right-of-way caused by the applicant. To accomplish
23 these requirements, the applicant may, at the time the
24 applicant seeks to use any public right-of-way in that
25 jurisdiction, be required by the State of Illinois or later be
26 required by the unit of local government, or both, to post a

1 bond, produce a certificate of insurance, or otherwise
2 demonstrate its financial responsibility.

3 (d) The applicant may designate information that it submits
4 in its application or subsequent reports as confidential or
5 proprietary, provided that the applicant states the reasons
6 that the confidential designation is necessary. If the
7 Commission, a unit of local government, or any other party
8 seeks public disclosure of information designated as
9 confidential, the Commission shall consider the confidential
10 designation in a proceeding under the Illinois Administrative
11 Procedure Act, and the burden of proof to demonstrate that the
12 designated information is confidential shall be upon the
13 applicant. Designated information shall remain confidential
14 pending the Commission's determination of whether the
15 information is entitled to confidential treatment. Information
16 designated as confidential shall be provided to units of local
17 government for purposes of assessing compliance with this Act
18 as permitted under a protective order issued by the Commission
19 pursuant to the Commission's rules and to the Attorney General
20 pursuant to Section 6.5 of the Attorney General Act.
21 Information designated as confidential under this Section or
22 determined to be confidential upon Commission review shall only
23 be disclosed pursuant to a valid and enforceable subpoena or
24 court order or as required by the Freedom of Information Act.
25 Nothing herein shall delay the application approval time frames
26 set forth in this Act.

1 (e) The Commission shall notify an applicant for a
2 certificate of authority whether the applicant's application
3 and affidavit are complete on or before the 30th business day
4 after the applicant submits the application. If the application
5 and affidavit are not complete, the Commission shall state in
6 its notice all of the reasons the application or affidavit are
7 incomplete, and the applicant shall resubmit a complete
8 application. The Commission shall have 60 days after submission
9 by the applicant of a complete application and affidavit to
10 issue the certificate of authority. If the Commission does not
11 notify the applicant regarding the completeness of the
12 application and affidavit or issue the certificate of authority
13 within the time periods required under this subsection, the
14 application and affidavit shall be considered complete and the
15 certificate of authority issued upon the expiration of the 60th
16 day.

17 (f) The certificate of authority issued by the Commission
18 shall contain or include all of the following:

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

22 (2) A grant of authority to use, occupy, and construct
23 facilities in any designated public right-of-way for the
24 construction and operation of the carbon dioxide pipeline
25 subject to the laws of this State.

26 (3) A limited grant of authority to take and acquire an

1 easement in any property or interest in property for the
2 construction, maintenance, or operation of a carbon
3 dioxide pipeline in the manner provided for the exercise of
4 the power of eminent domain under the Eminent Domain Act.
5 The limited grant of authority shall be restricted to, and
6 exercised solely for, the purpose of siting, rights of way,
7 and easements appurtenant, including construction and
8 maintenance. The applicant shall not exercise this power
9 until it has used reasonable and good faith efforts to
10 acquire the property or easement thereto. The applicant may
11 thereafter use this power when the applicant determines
12 that the easement is necessary to avoid unreasonable delay
13 or economic hardship to the progress of activities carried
14 out pursuant to the certificate of authority.

15 (4) A statement that the grant of authority is subject
16 to lawful operation of the carbon dioxide pipeline by the
17 applicant, its affiliated entities, or its
18 successors-in-interest.

19 (5) The Commission shall notify a unit of local
20 government within 7 business days after the grant of any
21 certificate of authority, if that authorization includes
22 any part of the unit of local government's jurisdictional
23 boundaries.

24 (g) The certificate of authority issued pursuant to this
25 Section by the Commission may be transferred to any
26 successor-in-interest to the applicant to which it is initially

1 granted without further Commission action, if the
2 successor-in-interest (i) submits an application and the
3 information required by subsection (b) of this Section for the
4 successor-in-interest and (ii) is not in violation of this Act
5 or of any federal, State, or local law, ordinance, rule, or
6 regulation.

7 (h) The Commission's authority to administer this Act is
8 limited to the powers and duties explicitly provided under this
9 Act. Its authority under this Act does not include or limit the
10 powers and duties that the Commission has under other Acts. The
11 Commission shall not have the authority to limit or expand the
12 obligations and requirements provided in this Section.

13 Section 25. Procedures. Notwithstanding any other
14 provision of this Act, any power granted pursuant to this Act
15 to acquire an easement is subject to, and shall be exercised in
16 accordance with, the Eminent Domain Act.

17 Section 30. Safety. A carbon dioxide pipeline owner shall
18 construct, maintain, and operate all of its pipelines, related
19 facilities, and equipment in this State in a manner that poses
20 no undue risk to its employees or the public. The Commission
21 shall adopt federal safety regulations governing the
22 construction, maintenance, and operations of carbon dioxide
23 pipelines, related facilities and equipment to ensure the
24 safety of pipeline employees and the public.

1 Section 90. The Eminent Domain Act is amended by changing
2 Section 5-5-5 and by adding Section 15-5-50 as follows:

3 (735 ILCS 30/5-5-5)

4 Sec. 5-5-5. Exercise of the power of eminent domain; public
5 use; blight.

6 (a) In addition to all other limitations and requirements,
7 a condemning authority may not take or damage property by the
8 exercise of the power of eminent domain unless it is for a
9 public use, as set forth in this Section.

10 (a-5) Subsections (b), (c), (d), (e), and (f) of this
11 Section do not apply to the acquisition of property under the
12 O'Hare Modernization Act. A condemning authority may exercise
13 the power of eminent domain for the acquisition or damaging of
14 property under the O'Hare Modernization Act as provided for by
15 law in effect prior to the effective date of this Act.

16 (a-10) Subsections (b), (c), (d), (e), and (f) of this
17 Section do not apply to the acquisition or damaging of property
18 in furtherance of the goals and objectives of an existing tax
19 increment allocation redevelopment plan. A condemning
20 authority may exercise the power of eminent domain for the
21 acquisition of property in furtherance of an existing tax
22 increment allocation redevelopment plan as provided for by law
23 in effect prior to the effective date of this Act.

24 As used in this subsection, "existing tax increment

1 allocation redevelopment plan" means a redevelopment plan that
2 was adopted under the Tax Increment Allocation Redevelopment
3 Act (Article 11, Division 74.4 of the Illinois Municipal Code)
4 prior to April 15, 2006 and for which property assembly costs
5 were, before that date, included as a budget line item in the
6 plan or described in the narrative portion of the plan as part
7 of the redevelopment project, but does not include (i) any
8 additional area added to the redevelopment project area on or
9 after April 15, 2006, (ii) any subsequent extension of the
10 completion date of a redevelopment plan beyond the estimated
11 completion date established in that plan prior to April 15,
12 2006, (iii) any acquisition of property in a conservation area
13 for which the condemnation complaint is filed more than 12
14 years after the effective date of this Act, or (iv) any
15 acquisition of property in an industrial park conservation
16 area.

17 As used in this subsection, "conservation area" and
18 "industrial park conservation area" have the same meanings as
19 under Section 11-74.4-3 of the Illinois Municipal Code.

20 (b) If the exercise of eminent domain authority is to
21 acquire property for public ownership and control, then the
22 condemning authority must prove that (i) the acquisition of the
23 property is necessary for a public purpose and (ii) the
24 acquired property will be owned and controlled by the
25 condemning authority or another governmental entity.

26 (c) Except when the acquisition is governed by subsection

1 (b) or is primarily for one of the purposes specified in
2 subsection (d), (e), or (f) and the condemning authority elects
3 to proceed under one of those subsections, if the exercise of
4 eminent domain authority is to acquire property for private
5 ownership or control, or both, then the condemning authority
6 must prove by clear and convincing evidence that the
7 acquisition of the property for private ownership or control is
8 (i) primarily for the benefit, use, or enjoyment of the public
9 and (ii) necessary for a public purpose.

10 An acquisition of property primarily for the purpose of the
11 elimination of blight is rebuttably presumed to be for a public
12 purpose and primarily for the benefit, use, or enjoyment of the
13 public under this subsection.

14 Any challenge to the existence of blighting factors alleged
15 in a complaint to condemn under this subsection shall be raised
16 within 6 months of the filing date of the complaint to condemn,
17 and if not raised within that time the right to challenge the
18 existence of those blighting factors shall be deemed waived.

19 Evidence that the Illinois Commerce Commission has granted
20 a certificate or otherwise made a finding of public convenience
21 and necessity for an acquisition of property (or any right or
22 interest in property) for private ownership or control
23 (including, without limitation, an acquisition for which the
24 use of eminent domain is authorized under the Public Utilities
25 Act, the Telephone Company Act, or the Electric Supplier Act)
26 to be used for utility purposes creates a rebuttable

1 presumption that such acquisition of that property (or right or
2 interest in property) is (i) primarily for the benefit, use, or
3 enjoyment of the public and (ii) necessary for a public
4 purpose.

5 In the case of an acquisition of property (or any right or
6 interest in property) for private ownership or control to be
7 used for utility, pipeline, or railroad purposes for which no
8 certificate or finding of public convenience and necessity by
9 the Illinois Commerce Commission is required, evidence that the
10 acquisition is one for which the use of eminent domain is
11 authorized under one of the following laws creates a rebuttable
12 presumption that the acquisition of that property (or right or
13 interest in property) is (i) primarily for the benefit, use, or
14 enjoyment of the public and (ii) necessary for a public
15 purpose:

- 16 (1) the Public Utilities Act,
- 17 (2) the Telephone Company Act,
- 18 (3) the Electric Supplier Act,
- 19 (4) the Railroad Terminal Authority Act,
- 20 (5) the Grand Avenue Railroad Relocation Authority
21 Act,
- 22 (6) the West Cook Railroad Relocation and Development
23 Authority Act,
- 24 (7) Section 4-505 of the Illinois Highway Code,
- 25 (8) Section 17 or 18 of the Railroad Incorporation Act,
- 26 (9) Section 18c-7501 of the Illinois Vehicle Code.

1 (10) the Carbon Dioxide Transportation and
2 Sequestration Act.

3 (d) If the exercise of eminent domain authority is to
4 acquire property for private ownership or control and if the
5 primary basis for the acquisition is the elimination of blight
6 and the condemning authority elects to proceed under this
7 subsection, then the condemning authority must: (i) prove by a
8 preponderance of the evidence that acquisition of the property
9 for private ownership or control is necessary for a public
10 purpose; (ii) prove by a preponderance of the evidence that the
11 property to be acquired is located in an area that is currently
12 designated as a blighted area or conservation area under an
13 applicable statute; (iii) if the existence of blight or
14 blighting factors is challenged in an appropriate motion filed
15 within 6 months after the date of filing of the complaint to
16 condemn, prove by a preponderance of the evidence that the
17 required blighting factors existed in the area so designated
18 (but not necessarily in the particular property to be acquired)
19 at the time of the designation under item (ii) or at any time
20 thereafter; and (iv) prove by a preponderance of the evidence
21 at least one of the following:

22 (A) that it has entered into an express written
23 agreement in which a private person or entity agrees to
24 undertake a development project within the blighted area
25 that specifically details the reasons for which the
26 property or rights in that property are necessary for the

1 development project;

2 (B) that the exercise of eminent domain power and the
3 proposed use of the property by the condemning authority
4 are consistent with a regional plan that has been adopted
5 within the past 5 years in accordance with Section 5-14001
6 of the Counties Code or Section 11-12-6 of the Illinois
7 Municipal Code or with a local land resource management
8 plan adopted under Section 4 of the Local Land Resource
9 Management Planning Act; or

10 (C) that (1) the acquired property will be used in the
11 development of a project that is consistent with the land
12 uses set forth in a comprehensive redevelopment plan
13 prepared in accordance with the applicable statute
14 authorizing the condemning authority to exercise the power
15 of eminent domain and is consistent with the goals and
16 purposes of that comprehensive redevelopment plan, and (2)
17 an enforceable written agreement, deed restriction, or
18 similar encumbrance has been or will be executed and
19 recorded against the acquired property to assure that the
20 project and the use of the property remain consistent with
21 those land uses, goals, and purposes for a period of at
22 least 40 years, which execution and recording shall be
23 included as a requirement in any final order entered in the
24 condemnation proceeding.

25 The existence of an ordinance, resolution, or other
26 official act designating an area as blighted is not prima facie

1 evidence of the existence of blight. A finding by the court in
2 a condemnation proceeding that a property or area has not been
3 proven to be blighted does not apply to any other case or
4 undermine the designation of a blighted area or conservation
5 area or the determination of the existence of blight for any
6 other purpose or under any other statute, including without
7 limitation under the Tax Increment Allocation Redevelopment
8 Act (Article 11, Division 74.4 of the Illinois Municipal Code).

9 Any challenge to the existence of blighting factors alleged
10 in a complaint to condemn under this subsection shall be raised
11 within 6 months of the filing date of the complaint to condemn,
12 and if not raised within that time the right to challenge the
13 existence of those blighting factors shall be deemed waived.

14 (e) If the exercise of eminent domain authority is to
15 acquire property for private ownership or control and if the
16 primary purpose of the acquisition is one of the purposes
17 specified in item (iii) of this subsection and the condemning
18 authority elects to proceed under this subsection, then the
19 condemning authority must prove by a preponderance of the
20 evidence that: (i) the acquisition of the property is necessary
21 for a public purpose; (ii) an enforceable written agreement,
22 deed restriction, or similar encumbrance has been or will be
23 executed and recorded against the acquired property to assure
24 that the project and the use of the property remain consistent
25 with the applicable purpose specified in item (iii) of this
26 subsection for a period of at least 40 years, which execution

1 and recording shall be included as a requirement in any final
2 order entered in the condemnation proceeding; and (iii) the
3 acquired property will be one of the following:

4 (1) included in the project site for a residential
5 project, or a mixed-use project including residential
6 units, where not less than 20% of the residential units in
7 the project are made available, for at least 15 years, by
8 deed restriction, long-term lease, regulatory agreement,
9 extended use agreement, or a comparable recorded
10 encumbrance, to low-income households and very low-income
11 households, as defined in Section 3 of the Illinois
12 Affordable Housing Act;

13 (2) used primarily for public airport, road, parking,
14 or mass transportation purposes and sold or leased to a
15 private party in a sale-leaseback, lease-leaseback, or
16 similar structured financing;

17 (3) owned or used by a public utility or electric
18 cooperative for utility purposes;

19 (4) owned or used by a railroad for passenger or
20 freight transportation purposes;

21 (5) sold or leased to a private party that operates a
22 water supply, waste water, recycling, waste disposal,
23 waste-to-energy, or similar facility;

24 (6) sold or leased to a not-for-profit corporation
25 whose purposes include the preservation of open space, the
26 operation of park space, and similar public purposes;

1 (7) used as a library, museum, or related facility, or
2 as infrastructure related to such a facility;

3 (8) used by a private party for the operation of a
4 charter school open to the general public; or

5 (9) a historic resource, as defined in Section 3 of the
6 Illinois State Agency Historic Resources Preservation Act,
7 a landmark designated as such under a local ordinance, or a
8 contributing structure within a local landmark district
9 listed on the National Register of Historic Places, that is
10 being acquired for purposes of preservation or
11 rehabilitation.

12 (f) If the exercise of eminent domain authority is to
13 acquire property for public ownership and private control and
14 if the primary purpose of the acquisition is one of the
15 purposes specified in item (iii) of this subsection and the
16 condemning authority elects to proceed under this subsection,
17 then the condemning authority must prove by a preponderance of
18 the evidence that: (i) the acquisition of the property is
19 necessary for a public purpose; (ii) the acquired property will
20 be owned by the condemning authority or another governmental
21 entity; and (iii) the acquired property will be controlled by a
22 private party that operates a business or facility related to
23 the condemning authority's operation of a university, medical
24 district, hospital, exposition or convention center, mass
25 transportation facility, or airport, including, but not
26 limited to, a medical clinic, research and development center,

1 food or commercial concession facility, social service
2 facility, maintenance or storage facility, cargo facility,
3 rental car facility, bus facility, taxi facility, flight
4 kitchen, fixed based operation, parking facility, refueling
5 facility, water supply facility, and railroad tracks and
6 stations.

7 (g) This Article is a limitation on the exercise of the
8 power of eminent domain, but is not an independent grant of
9 authority to exercise the power of eminent domain.

10 (Source: P.A. 94-1055, eff. 1-1-07.)

11 (735 ILCS 30/15-5-50 new)

12 Sec. 15-5-50. Eminent domain powers in new Acts. The
13 following provisions of law may include express grants of the
14 power to acquire property by condemnation or eminent domain:

15 Carbon Dioxide Transportation and Sequestration Act; owners or
16 operators of pipelines; for easements for transportation of
17 carbon dioxide by pipeline.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."