

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 210

5 By: Senator Irvin
6 By: Representative Gazaway
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING THE UNDERGROUND
10 STORAGE OF GAS; TO AMEND THE UNDERGROUND STORAGE OF
11 GAS LAW TO INCLUDE CERTAIN OTHER GASES; AND FOR OTHER
12 PURPOSES.
13

Subtitle

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16 TO AMEND THE UNDERGROUND STORAGE OF GAS
17 LAW TO INCLUDE CERTAIN OTHER GASES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code §§ 15-72-602 through 15-72-607 are amended to
23 read as follows:

24 15-72-602. Definitions.

25 As used in this subchapter, unless the context otherwise requires:

26 (1) "Commission" means the Oil and Gas Commission;

27 (2) ~~"Native gas" means gas which has not been previously~~
28 ~~withdrawn from the earth;~~

29 (3) ~~"Natural gas Gas"~~ means natural gas either while in its
30 original state or after the natural gas has been processed by removal
31 ~~therefrom~~ from the natural gas of component parts not essential to its use
32 for light and fuel, or carbon oxides, ammonia, hydrogen, nitrogen, or noble
33 gas;

34 (3) "Gas storage facility" means any person, firm, or
35 corporation authorized to do business in this state and engaged in the
36 business of capturing, producing, or storing gas;



1 (4) "Native gas" means gas which has not been previously
2 withdrawn from the earth;

3 ~~(4)~~(5) "Natural gas public utility" means any person, firm, or
4 corporation authorized to do business in this state and engaged in the
5 business of producing, transporting, or distributing natural gas by means of
6 pipelines into, within, or through this state for ultimate public
7 consumption; and

8 ~~(5)~~(6) "Underground storage" means storage in a subsurface
9 stratum or formation of the earth+.

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11 15-72-603. Public interest and welfare – Authority of commission.

12 (a) The underground storage of ~~natural~~ gas, which promotes
13 conservation thereof, which permits the building of reserves for orderly
14 withdrawal in periods of peak demand, which makes more readily available and
15 economical our ~~natural~~ gas resources to the domestic, commercial, and
16 industrial consumers of this state, and which provides a better year-round
17 market to the various gas fields, ~~and~~ contributes to a healthier environment,
18 and promotes the public interest and welfare of this state.

19 (b) Therefore, in the manner hereinafter provided, the Oil and Gas
20 Commission may find and determine that the underground storage of ~~natural~~ gas
21 as hereinbefore defined is in the public interest.

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23 15-72-604. Condemnation of subsurface strata or formations –
24 Limitations.

25 (a) Any natural gas public utility or gas storage facility may condemn
26 for its use for the underground storage of ~~natural~~ gas any subsurface stratum
27 or formation in any land which the Oil and Gas Commission ~~shall have found~~
28 finds to be suitable and in the public interest for the underground storage
29 of ~~natural~~ gas and, in connection therewith, may condemn other interests in
30 property as required to adequately examine, prepare, maintain, and operate
31 the underground ~~natural~~ gas storage facilities. However, the right of
32 condemnation of underground sands, formations, and strata granted hereby
33 shall be limited as follows:

34 (1) If the commission affirmatively finds, based upon
35 substantial evidence, that any sand, formation, or stratum is producing or is
36 capable of producing oil, in paying quantities, through any known recovery

1 method, then the sand, formation, or stratum shall not be subject to
2 appropriation hereunder;

3 (2) No gas-bearing sand, formation, or stratum shall be subject
4 to appropriation hereunder, unless the sand, formation, or stratum has a
5 greater value or utility as a gas storage reservoir for the purpose of
6 insuring an adequate supply of ~~natural~~ gas for any particular class or group
7 of consumers of ~~natural~~ gas, or for the conservation of ~~natural~~ gas, than for
8 the production of relatively small volumes of ~~natural~~ gas which remain
9 therein. However, for as long as oil is produced in paying quantities in the
10 secondary operations, no gas-bearing sand, formation, or stratum shall be
11 condemned under the terms of this subchapter when the gas therein is being
12 used for the secondary recovery of oil unless gas in a necessary and required
13 amount is furnished to the operator or operators of the secondary recovery
14 operations for the recovery of oil at the same cost as that at which the gas
15 was being produced at the time of condemnation by the operator of the
16 secondary recovery project or projects;

17 (3) Only the area of the underground sand, formation, or stratum
18 as may reasonably be expected to be penetrated by gas displaced or injected
19 into the underground gas storage reservoir may be appropriated hereunder; and

20 (4) No rights or interests in existing underground gas
21 reservoirs being used for the injection, storage, and withdrawal of ~~natural~~
22 gas and owned or operated by others than the condemner shall be subject to
23 appropriation hereunder.

24 (b) The right of condemnation granted in this section shall be without
25 prejudice to the rights of the owner of the lands, or of other rights or
26 interests therein, to drill or bore through the underground stratum or
27 formation so appropriated in a manner as shall comply with orders and rules
28 of the commission issued for the purpose of protecting underground storage
29 strata or formations against pollution and against the escape of ~~natural~~ gas
30 therefrom and shall be without prejudice to the rights of the owner of the
31 lands or other rights or interests therein as to all other uses.

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33 15-72-605. Prerequisite to eminent domain – Certificate.

34 Any natural gas public utility or gas storage facility desiring to
35 exercise the right of eminent domain as to any property for use for
36 underground storage of ~~natural~~ gas, as a condition precedent to the filing of

1 its petition in the circuit court, shall obtain from the Oil and Gas
2 Commission a certificate setting out findings of the commission as to the
3 following:

4 (1) That the underground stratum or formation sought to be
5 acquired is suitable for the underground storage of ~~natural~~ gas and that its
6 use for such purposes is in the public interest; and

7 (2) The amount of recoverable oil and native gas, if any,
8 remaining therein. However, the commission shall issue no certificate until
9 after public hearing is had on the application, pursuant to notice served in
10 compliance with notice in civil actions in the circuit court, together with
11 notice published at least once each week for two (2) successive weeks in some
12 newspaper of general circulation in the county or counties where the gas is
13 proposed to be stored. The first publication of the notice must be at least
14 ten (10) days prior to the date of the hearing.

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16 15-72-606. Petition for eminent domain – Subsequent proceedings.

17 (a) Any natural gas public utility or gas storage facility having
18 first obtained a certificate from the Oil and Gas Commission as provided in §
19 15-72-605 desiring to exercise the right of eminent domain for the purpose of
20 acquiring property for the underground storage of ~~natural~~ gas shall do so in
21 the manner provided in this section.

22 (b) The natural gas public utility or gas storage facility shall
23 present to the circuit court of the county wherein the land is situated, or
24 to the judge thereof, a petition setting forth the purpose for which the
25 property is sought to be acquired, a description of the property sought to be
26 appropriated, and the names of the owners thereof as shown by the records of
27 the county.

28 (c) The petitioner shall file the certificate of the commission as a
29 part of its petition and no order by the court granting the petition shall be
30 entered without the certificate being filed therewith.

31 (d) The court or the judge thereof shall examine the petition and
32 determine whether the property is necessary to its lawful purposes, and if
33 found in the affirmative, the finding shall be entered of record and
34 subsequent proceedings shall follow the procedure by law for the exercise of
35 the right of eminent domain for rights-of-way for railroads as provided by §
36 18-15-1201 et seq.

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15-72-607. Ownership of gas.

All ~~natural~~ gas which has been reduced to possession and which is subsequently injected into underground storage fields, sands, reservoirs, and facilities shall at all times be deemed the property of the injector, his or her heirs, successors, or assigns. In no event shall the gas be subject to the right of the owner of the surface of the lands or the owner of any mineral interest therein under which the gas storage fields, sands, reservoirs, and facilities lie or subject to the right of any person, other than the injector, his or her heirs, successors, and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover. However, the injector, his or her heirs, successors, and assigns shall have no right to gas in any stratum, or portion thereof, which has not been condemned under the provisions of this subchapter or otherwise purchased.

APPROVED: 2/24/23