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A Bill

HOUSE BILL 1450

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15

For An Act To Be Entitled

16 AN ACT CONCERNING THE TRANSPORTATION AND UNDERGROUND
17 STORAGE OF CARBON DIOXIDE; AND FOR OTHER PURPOSES.
18
19

Subtitle

20 THE ARKANSAS CARBON DIOXIDE STORAGE ACT.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 15, Chapter 72 is amended to add an
28 additional subchapter to read as follows:

29 Subchapter 11 – Carbon Dioxide Storage

30 15-72-1101. Title.

31 This subchapter shall be known and may be cited as the “Arkansas Carbon
32 Dioxide Storage Act”.
33

34 15-72-1102. Legislative finding.

35 (a) The General Assembly finds that:

36 (1) Carbon dioxide is a substance that occurs naturally in the



1 environment as a result of biological processes and that exists as a gas at
2 standard temperature and pressure;

3 (2) Carbon dioxide is released during combustion of any material
4 that contains carbon including coal, natural gas, oil, and wood, all of which
5 exist in abundance and the production and use of which is one of the
6 foundations of our state's economy;

7 (3) Carbon dioxide is currently being released into the
8 atmosphere in substantial volumes through the combustion of such materials as
9 coal, natural gas, oil, and wood;

10 (4) For many years, technologies for the injection, use, and
11 storage of carbon dioxide in underground geologic formations have been
12 developed and successfully used for the extraction of underground natural
13 resources such as oil and natural gas;

14 (5) The storage of carbon dioxide in underground geologic
15 formations can be an effective means for reducing the release of carbon
16 dioxide into the atmosphere from anthropogenic sources;

17 (6) The transportation and storage of carbon dioxide in
18 underground geological formations and for beneficial use or reuse in
19 industrial and commercial applications is expected to increase in the United
20 States and in Arkansas due to initiatives by federal, state, and local
21 governments, industry and commerce, and other interested persons and may
22 present an opportunity for economic growth and development for the state; and

23 (7) The United States Environmental Protection Agency is moving
24 forward with regulations that may require industry to address carbon dioxide
25 emissions, and recent federal regulatory developments, including the United
26 States Environmental Protection Agency Underground Injection Control Program
27 for Carbon Dioxide Geologic Sequestration Wells, make it prudent and
28 appropriate to allow for the transportation of carbon dioxide and the storage
29 of carbon dioxide in underground geologic formations as an alternative to its
30 release into the atmosphere.

31 (b) The General Assembly also finds that:

32 (1) The transportation and storage of carbon dioxide will
33 benefit the citizens of the state by reducing carbon dioxide emissions;

34 (2) Carbon dioxide is a valuable commodity to the citizens of
35 the state, particularly for its value in enhancing the recovery of oil and
36 gas and for its potential for use in other industrial and commercial

1 processes and applications;

2 (3) Transportation and storage of carbon dioxide may allow for
3 the orderly withdrawal and use or reuse as appropriate or necessary, thereby
4 allowing carbon dioxide to be available for commercial, industrial, or other
5 uses, including the use of carbon dioxide for enhanced recovery of oil and
6 gas;

7 (4) Storage of carbon dioxide in geological formations is
8 believed to be an effective and feasible strategy to deposit large volumes of
9 carbon dioxide over long periods of time; and

10 (5) It is the public policy of this state and the purpose of
11 this subchapter to provide for a coordinated statewide program for the
12 transportation and storage of carbon dioxide in underground geological
13 formations and also to fulfill the state's primary responsibility for
14 ensuring compliance with the federal Safe Drinking Water Act, 42 U.S.C. §
15 300f et seq., including recent regulations concerning the underground
16 injection of carbon dioxide.

17 (c) The General Assembly further finds that:

18 (1) Liability issues surrounding long-term storage of carbon
19 dioxide must be addressed in order to encourage the development of projects
20 under this subchapter;

21 (2) Liability insurance is a key component of the injury
22 compensation structure contemplated in this subchapter;

23 (3) An important component of protection concerning liability
24 for injury is the ability to obtain reasonably priced and extensive liability
25 insurance coverage;

26 (4) To accomplish the objectives outlined in this section,
27 reforms to existing laws must be enacted in order to encourage the
28 availability of insurance coverage to adequately protect the state's
29 citizens;

30 (5) A vital component of the development and management of
31 carbon dioxide storage facilities is the transfer of title to the state of
32 the storage facility and stored carbon dioxide following closure of a project
33 in order to provide for the reliable and consistent long-term care of
34 projects under this subchapter; and

35 (6) Reforms to existing laws must also be enacted to protect the
36 state as the ultimate owner of storage facilities.

1
2 15-72-1103. Definitions.

3 As used in this act:

4 (1) "Carbon dioxide" means naturally occurring, geologically
5 sourced, or anthropogenically sourced carbon dioxide, including without
6 limitation its derivatives and all mixtures, combinations, and phases of
7 carbon dioxide, whether liquid or gaseous, stripped, segregated, or divided
8 from any other fluid stream, material, or substance;

9 (2)(A) "Carbon dioxide transmission pipeline" means a pipeline,
10 a compressor, a meter and associated equipment and appurtenances used for the
11 purpose of transporting carbon dioxide in this state for underground storage
12 in this state or another state.

13 (B) "Carbon dioxide transmission pipeline" does not
14 include carbon capture equipment located at the generator of the carbon
15 dioxide or a pipeline that is part of a storage facility;

16 (3) "Commercial operator" means a person that operates a storage
17 facility or carbon dioxide transmission pipeline, or both, and that offers
18 storage facility services or carbon dioxide transmission pipeline services,
19 or both, to the public;

20 (4) "Oil or gas" means oil, natural gas, coalbed methane, or gas
21 condensate;

22 (5) "Person" means an individual, corporation, company, firm,
23 partnership, association, trust, joint-stock company or trust, venture,
24 municipal, state, or federal government or agency, or any other legal entity,
25 however organized;

26 (6) "Pipeline operator" means a person to whom a certificate of
27 public convenience and necessity has been issued by the Oil and Gas
28 Commission under this subchapter to construct and operate a carbon dioxide
29 transmission pipeline, and includes both commercial operators and private
30 operators;

31 (7) "Private operator" means a person that is not a commercial
32 operator and under commission authorization operates a storage facility or
33 carbon dioxide transmission pipeline for the purpose of providing storage
34 facility services or carbon dioxide transmission pipeline services;

35 (8)(A) "Public liability" means any claim for civil legal
36 liability asserted against the state that arises from a storage facility

1 after the issuance of the certificate of completion of injection operations,
2 under this subchapter, and resulting from or in connection with the storage,
3 escape, release, or migration of geologically stored carbon dioxide.

4 (B) "Public liability" does not include any legal
5 liability arising from the storage facility before the issuance of a
6 certificate of completion of injection operations;

7 (9) "Public liability action" means a written demand, lawsuit,
8 or claim seeking a remedy or alleging liability resulting from any public
9 liability;

10 (10) "Reservoir" means that portion of any underground geologic
11 stratum, formation, aquifer, cavity, or void, whether natural or artificially
12 created, including without limitation oil and gas reservoirs, salt domes, or
13 other saline formations, oil and gas formations, or coal and coalbed methane
14 seams that are suitable for or capable of being made suitable for the
15 injection and storage of carbon dioxide;

16 (11) "Storage" means the placement and long-term or short-term
17 underground storage of carbon dioxide in a reservoir;

18 (12)(A) "Storage facility" means the reservoir, the underground
19 equipment and pipelines internal to the storage operation, storage wells,
20 monitoring wells, and surface buildings and equipment utilized in the storage
21 operation, including pipelines owned or operated by the storage operator used
22 to transport carbon dioxide from one (1) or more capture facilities or
23 sources to the storage and injection site or sites.

24 (B) "Storage facility" does not include carbon capture
25 equipment located at the generator of the carbon dioxide;

26 (13)(A) "Storage operator" means a person to whom a certificate
27 of public convenience and necessity has been issued by the commission under
28 this subchapter to operate a storage facility, and includes both commercial
29 operators and private operators.

30 (B) "Storage operator" may also be the owner of carbon
31 dioxide injected into a storage facility, ownership of carbon dioxide and use
32 of storage being a matter of contract between a storage operator and an
33 owner, shipper, or generator of carbon dioxide; and

34 (14) "Storage well" means a well drilled for purposes of
35 injecting carbon dioxide into or withdrawing carbon dioxide from a storage
36 facility.

1
2 15-72-1104. Jurisdiction.

3 (a) Except as provided in this section, sole and exclusive
4 jurisdiction and authority is vested in the Oil and Gas Commission over:

5 (1) All persons and property necessary for the establishment of
6 storage facilities and carbon dioxide transmission pipelines;

7 (2) Issuance of certificates of public convenience and necessity
8 for the establishment of storage facilities and carbon dioxide transmission
9 pipelines;

10 (3) Issuance of permits for the construction, operation, and
11 modification of storage facilities;

12 (4) Monitoring and enforcement of compliance with permit
13 conditions and the legal requirements under this subchapter; and

14 (5) Regulation of any subsequent withdrawal of stored carbon
15 dioxide that is intended for commercial, industrial, or other uses.

16 (b) In exercising jurisdiction and authority under this section, the
17 Oil and Gas Commission may:

18 (1) Conduct hearings;

19 (2) Issue and enforce orders; and

20 (3) Adopt, modify, repeal, and enforce rules reasonably
21 necessary for the proper administration and enforcement of this subchapter.

22 (c) The Arkansas Public Service Commission may prescribe, enforce, and
23 implement safety standards for carbon dioxide transmission pipelines subject
24 to this subchapter in accordance with and to the extent that the pipelines
25 are subject to the Arkansas Natural Gas Pipeline Safety Act of 1971, § 23-15-
26 201 et seq.

27 (d)(1) This subchapter does not apply to:

28 (A) The use of carbon dioxide as a part of or in
29 conjunction with any enhanced recovery operation where the sole purpose of
30 the project is enhanced oil, coalbed methane, brine, or natural gas recovery;
31 or

32 (B) A natural gas storage operation certificated by the
33 Federal Energy Regulatory Commission or the Oil and Gas Commission.

34 (2)(A) The Oil and Gas Commission may develop rules to allow
35 conversion of an enhanced recovery operation or a natural gas storage field
36 into a storage facility.

1 (B) Upon approval of the conversion of an operation or
2 field by the Oil and Gas Commission, this subchapter shall apply.

3 (e)(1) This subchapter does not amend the Arkansas Water and Air
4 Pollution Control Act, § 8-4-101 et seq.

5 (2)(A) This subchapter does not affect the jurisdiction of the
6 Arkansas Pollution Control and Ecology Commission or the Arkansas Department
7 of Environmental Quality with respect to water and air pollution control or
8 other matters within their respective jurisdictions.

9 (B) This subchapter does not affect the requirement that a
10 person apply for and obtain a permit as provided by the Arkansas Water and
11 Air Pollution Control Act, § 8-4-101 et seq.

12 (f)(1) The Arkansas Department of Environmental Quality may administer
13 on behalf of the state, subject to the approval of the Governor, its own
14 program for the underground injection of carbon dioxide for the purpose of
15 geologic sequestration within its jurisdiction in lieu of that of the United
16 States Environmental Protection Agency under the federal Safe Drinking Water
17 Act, 42 U.S.C. § 300f et seq., as it existed on February 1, 2011.

18 (2) The Arkansas Department of Environmental Quality may submit
19 to the Administrator of the United States Environmental Protection Agency an
20 application for approval of a program that the Arkansas Department of
21 Environmental Quality proposes to establish and administer for the
22 underground injection of carbon dioxide for the purpose of geologic
23 sequestration as provided in Section 1422 of the federal Safe Drinking Water
24 Act , 42 U.S.C. § 300f et seq., as it existed on February 1, 2011.

25 (3) The Department, the Arkansas Pollution Control & Ecology
26 Commission and the Oil and Gas Commission may:

27 (A) Meet the requirements of Section 1422 of the federal
28 Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as it existed on February
29 1, 2011, relating to the underground injection of carbon dioxide for the
30 purpose of geologic sequestration; and

31 (B) Enter into interagency written agreements or
32 understandings that may be necessary or convenient for the delegation or
33 sharing of responsibility or administration relating to the underground
34 injection of carbon dioxide for the purpose of geologic sequestration.

35 (g) Neither this subchapter nor a rule, order, certificate, or permit
36 issued under this subchapter, or compliance with this subchapter or a rule,

1 order, certificate, or permit issued under this subchapter, or voluntarily
2 performing an act that could be required under this subchapter or a rule,
3 regulation, order, certificate, or permit issued under this subchapter shall
4 cause a storage operator or pipeline operator to become or be classified as a
5 common carrier or a public utility for any purpose whatsoever, or to make a
6 storage operator or pipeline operator subject to any duties, obligations, or
7 liabilities as a common carrier or public utility.

8 (h) No agency of state government or political subdivision of the
9 state may regulate a facility or activity for the purpose of the
10 transportation, storage, or withdrawal of carbon dioxide for the purpose of
11 storage in underground geologic formations except as expressly authorized
12 under this subchapter.

13
14 15-72-1105. Requirement for certificate of public convenience and
15 necessity – Application – Notice – Hearing – Granting or denying certificate
16 – Rates – Rules.

17 (a) A person shall not begin construction of a storage facility or
18 carbon dioxide transmission pipeline unless the person has obtained from the
19 Oil and Gas Commission a certificate of public convenience and necessity
20 approving the construction and proposed location of the facility.

21 (b) An application for a certificate of public convenience and
22 necessity shall be in a form determined by the commission and shall contain:

23 (1) The names of the owners and operators of the facility
24 including any officer, secretary, manager, or other person owning a five
25 percent (5%) or greater interest in the applicant and any other person
26 conducting or managing the affairs of the applicant regarding the proposed
27 facility;

28 (2) A description in such detail as the commission may prescribe
29 of the general location and type of facility that the applicant proposes to
30 construct;

31 (3) A statement justifying the need for the facility;

32 (4)(A) If the applicant seeks to become a commercial operator,
33 the proposed rates and terms and conditions of service; or

34 (B) If the applicant seeks to become a private operator:

35 (i) An explanation and justification of the need for
36 the proposed facility;

1 (ii) The identity of the entity to whom services
2 will be provided;

3 (iii) A copy of each contract under which services
4 will be provided to the entity; and

5 (iv) Data that the commission may require by rule
6 regarding the anticipated cost of constructing and operating the proposed
7 facility;

8 (5) With respect to any carbon dioxide transmission pipeline, a
9 statement of the environmental impact;

10 (6) The average monthly tonnage of carbon dioxide anticipated to
11 be stored in the proposed storage facility or transported in the proposed
12 carbon dioxide transmission pipeline during the phase of the project that is
13 the subject of the application;

14 (7) The anticipated life span and closure date of the facility,
15 and in the case of a project that is being implemented in multiple phases,
16 the period of time that is the subject of the application;

17 (8) Proof of the financial ability of the applicant to construct
18 and operate the facility or project; and

19 (9) Other information the applicant may deem relevant or that
20 the commission may require by rule.

21 (c)(1) The commission may grant or deny a certificate of public
22 convenience and necessity under this subchapter.

23 (2) If the commission grants a certificate of public convenience
24 and necessity, the commission may include reasonable conditions to protect
25 public convenience and necessity not inconsistent with this subchapter.

26 (d)(1) Upon the filing of an application under this section, the
27 applicant shall publish in a form the commission shall specify a notice of
28 the filing of the application.

29 (2)(A)(i) The notice required under subdivision (d)(1) of this
30 section shall include a statement that the commission may approve the
31 application unless within ninety (90) days after publication of the notice,
32 the commission has received a written request for a hearing on the
33 application from a person or persons alleging that the proposed storage
34 facility or carbon dioxide transmission pipeline is against the public
35 interest.

36 (ii) The notice required under subdivision

1 (d)(2)(A)(i) of this section shall be published at least two (2) times in the
2 largest newspaper published in each county in which any portion of the
3 proposed storage facility or carbon dioxide transmission pipeline is to be
4 constructed or operated and at least two (2) times in a newspaper of general
5 circulation throughout the state.

6 (B)(i) If the commission timely receives a written request
7 under subdivision (d)(2)(A) of this section and the issues raised cannot be
8 dealt with by an order of the commission without a hearing, the commission
9 shall set the matter for hearing on a date within on hundred eighty (180)
10 days after the publication of notice required under subdivision (d)(1) of
11 this section.

12 (ii) If the commission schedules a hearing under
13 subdivision (d)(2)(B)(i) of this section, the applicant shall publish at
14 least one (1) time in the largest newspaper published in each county in which
15 any portion of the proposed storage facility or carbon dioxide transmission
16 pipeline is to be constructed or operated and at least one (1) time in a
17 newspaper of general circulation throughout the state and no less than sixty
18 (60) days before the hearing a notice of the time and place of hearing.

19 (iii) The commission may require that notice under
20 this section be given in a manner additional to those required under this
21 subsection.

22 (e)(1) The commission shall determine with respect to a reservoir
23 proposed to be used as a storage reservoir whether or not the reservoir is
24 fully depleted of the original commercially recoverable oil, natural gas,
25 condensate, or other minerals.

26 (2) If the commission finds that the reservoir has not been
27 fully depleted, the commission shall determine the amount of the remaining
28 commercially recoverable oil, natural gas, condensate, or other minerals in
29 the reservoir.

30 (f) In considering whether to grant a certificate of public
31 convenience and necessity, the commission shall consider without limitation
32 the following factors:

- 33 (1) The demonstrated need for the project;
34 (2) The economic reasonableness of the project;
35 (3) The managerial and technical competence of the applicant to
36 effectively construct and manage the project; and

1 (4) Other criteria related to making the determinations required
2 under subsection (g) of this section as the commission specifies by rule.

3 (g) Within one (1) calendar year after the filing of an application
4 under this section or if a hearing shall be held under this section within
5 ninety (90) days after final submission of a brief or through hearing of oral
6 arguments, the commission shall approve the application if the commission
7 finds that the proposed storage facility or carbon dioxide transmission
8 pipeline:

9 (1) Will economically, adequately, and reliably contribute to
10 meeting the present and anticipated requirements for storage or
11 transportation of carbon dioxide;

12 (2) Comports with the public convenience and necessity; and

13 (3) With respect to the proposed reservoir, the original volumes
14 of oil, gas, condensate, or other minerals in the reservoir that are capable
15 of being produced in paying quantities have all been produced; or

16 (4) The proposed reservoir or any part of the proposed reservoir
17 is producing or capable of producing oil, gas, condensate or other minerals
18 in paying quantities and all owners in the reservoir have consented in
19 writing to the use of the reservoir as a storage facility; or

20 (5) The proposed reservoir has a greater value or utility as a
21 storage facility than for the production of the remaining volumes of original
22 oil, gas, condensate, or other minerals and at least three-fourths (3/4) of
23 the owners of the reservoir in interest have consented in writing to the use
24 of the reservoir as a storage facility.

25 (h) The commission shall deny a certificate of public convenience and
26 necessity upon one (1) or more of the following findings:

27 (1) The proposed facilities are not reasonably cost effective in
28 light of alternative storage and transportation facilities that are available
29 at the time of the commission's decision;

30 (2) The applicant is not qualified or financially capable of
31 performing; or

32 (3) The proposal taken as a whole is inconsistent with the
33 public convenience and necessity.

34 (i)(1) Only the applicant or another person aggrieved by a decision of
35 the commission granting or denying a certificate of public convenience and
36 necessity who also has filed a timely request for a hearing under this

1 section has standing to seek judicial review of the commission's decision.

2 (2) Judicial review of the granting or denial of a certificate
3 of public convenience and necessity under this section may be obtained as
4 provided in § 25-15-212.

5 (j) A person shall not sell, lease, or transfer a certificate of
6 public convenience and necessity granted under this section without first
7 obtaining the consent and approval of the commission.

8 (k)(1) The commission may adopt, modify, repeal and enforce rules
9 relating to the certification of storage facilities and carbon dioxide
10 transmission pipelines under this subchapter.

11 (2) Rules adopted under subdivision (k)(1) of this section shall
12 include a specification of minor modifications that do not require an
13 amendment of an existing certificate of public convenience and necessity.

14 (l)(1) A private operator that desires to become a commercial operator
15 shall file proposed rates and terms and conditions of service with the
16 commission.

17 (2) A private operator shall not become a commercial operator
18 until the commission has accepted the proposed rates and terms and conditions
19 of service filed under subdivision (l)(1) of this section.

20
21 15-72-1106. Permit to operate storage facility – Protection against
22 pollution and escape of carbon dioxide.

23 (a) An owner or operator of a storage facility shall obtain a permit
24 under this section from the Oil and Gas Commission before beginning
25 construction, operation, or modification of a storage facility.

26 (b) The reservoir component of a storage facility includes a necessary
27 and reasonable area buffer zone and subsurface monitoring zone designated to
28 ensure the safe and efficient operation of a storage facility for the storage
29 of carbon dioxide and to protect against pollution and escape or migration of
30 carbon dioxide.

31 (c)(1) A reservoir may be used as a storage facility for carbon
32 dioxide after the Oil and Gas Commission issues a permit authorizing the
33 proposed storage of carbon dioxide and designating the horizontal and
34 vertical boundaries of the storage facility.

35 (2) In deciding whether to issue a permit for the use of a
36 reservoir as a storage facility for carbon dioxide, the Oil and Gas

1 Commission shall find that:

2 (A) An applicant has obtained or applied for a certificate
3 of public convenience and necessity from the Oil and Gas Commission;

4 (B) The storage facility and reservoir are suitable and
5 feasible for the injection, storage and, if proposed, withdrawal of carbon
6 dioxide taking into account, without limitation, the anticipated length of
7 the storage and the geology of the proposed reservoir;

8 (C) The use of the storage facility for the storage of
9 carbon dioxide will not contaminate other formations containing fresh water
10 or oil, gas, including stored natural gas, brine, coal, or coalbed methane;

11 (D) The storage field will not be used to inject carbon
12 dioxide into that part of a formation that is within the certificated
13 boundaries, including the protective area, of an existing natural gas storage
14 field certificated by the Federal Energy Regulatory Commission or the Oil and
15 Gas Commission;

16 (E) The storage facility will be operated in a manner
17 calculated to reasonably protect human health and the environment and that
18 the applicant has obtained or applied for all necessary permits or
19 authorizations related to the protection of human health or the environment,
20 including permits or authorizations required under the federal Safe Drinking
21 Water Act, 42 U.S.C. § 300f et seq., program for underground injection of
22 carbon dioxide for the purpose of geologic sequestration; and

23 (F) The quality of the carbon dioxide to be managed at the
24 storage facility will not compromise the safety and efficiency of the
25 reservoir.

26 (d)(1) An applicant for a permit under this section shall publish
27 notice upon the filing of the application stating that the application has
28 been filed and where the public can review the application.

29 (2) The notice required under subdivision (d)(1) of this section
30 shall be published at least two (2) time in the largest newspaper in each
31 county in which any portion of the proposed storage facility is to be
32 constructed or operated and at least two (2) time in a newspaper of general
33 circulation throughout the state.

34 (e)(1) Upon issuance of a draft permit, the Oil and Gas Commission
35 shall publish notice in the same manner as under subdivision (d)(2) of this
36 section stating where the public can review the draft permit and the nature

1 of the public's opportunity to comment on the draft permit.

2 (2)(A) The Oil and Gas Commission shall allow ninety (90) days
3 after completion of publication of notice for public comment on the draft
4 permit.

5 (B) Upon request of the permit applicant, the public
6 comment period may be extended for an additional sixty (60) days.

7 (C) Further extension of the comment period may be granted
8 by the Oil and Gas Commission for good cause shown but in no case may the
9 further extension exceed an additional thirty (30) days.

10 (3)(A) After consideration of the comments received during the
11 public comment period under subdivision (e)(2) of this section, the Oil and
12 Gas Commission, in its discretion, may determine that a public hearing on the
13 draft permitting decision should be held.

14 (B) If the Oil and Gas Commission determines to hold a
15 hearing, it shall also publish notice of the hearing in the same manner as
16 under subdivision (d)(2) of this section announcing the public hearing.

17 (C)(i) Notice of a public hearing shall be completed at
18 least thirty (30) days before the hearing.

19 (ii) However, the public notice of the hearing on a
20 draft permit under this section may be given at the same time as public
21 notice of the draft permit under this section and the two (2) notices may be
22 combined.

23 (f)(1) Hearings under this subchapter shall be conducted under the
24 Arkansas Administrative Procedure Act § 25-15-201 et seq.

25 (2) However, only the applicant or permittee and a person who
26 submitted a public comment under this section on the record shall have
27 standing to seek judicial review of the Oil and Gas Commission's decision.

28 (g) The Oil and Gas Commission may combine in a single proceeding the
29 consideration of an application for a certificate of public convenience and
30 necessity under § 15-72-1105 with consideration of an application for a
31 permit under this section.

32 (h) The Oil and Gas Commission shall issue and enforce orders and
33 shall adopt, modify, repeal, and enforce rules, including establishment of
34 appropriate and sufficient financial sureties or bonds as may be necessary
35 for regulating the drilling of wells related to a storage facility, the
36 injection and withdrawal of carbon dioxide, the operation of the storage

1 facility, well plugging and abandonment, and removal of surface buildings and
2 equipment of the storage facility as necessary to protect the storage
3 facility against pollution, invasion, and the escape or migration of carbon
4 dioxide.

5 (i) The Oil and Gas Commission may require as a condition to the
6 effectiveness of a permit issued under this section the final issuance of any
7 other environmental permit or authorization necessary for the construction,
8 operation, or modification of the storage facility, including without
9 limitation, any permit or authorization required under the federal Safe
10 Drinking Water Act, 42 U.S.C. § 300f et seq., program for underground
11 injection of carbon dioxide for the purpose of geologic sequestration.

12
13 15-72-1107. Eminent domain.

14 (a) A storage operator or pipeline operator that has obtained a
15 certificate of public convenience and necessity from the Oil and Gas
16 Commission under this subchapter may exercise the state's power of eminent
17 domain to acquire surface and subsurface rights and property interests
18 necessary or useful for the purpose of constructing, operating, or modifying
19 the operator's storage facility or carbon dioxide transmission pipeline and
20 necessary infrastructure, including easements and rights-of-way across lands
21 for pipelines transporting carbon dioxide to and among facilities
22 constituting the storage facility or for transporting carbon dioxide for
23 storage or use inside or outside the state.

24 (b)(1) Subject to subsection (e) of this section, the exercise of the
25 power of eminent domain granted in this subchapter shall not prevent a person
26 who has the authority to exercise the power of eminent domain from drilling
27 through the storage facility in a manner that complies with a rule of the
28 commission that protects the storage facility against pollution or invasion
29 and against the escape or migration of carbon dioxide.

30 (2) The power of eminent domain set out in this subchapter does
31 not prejudice the rights of the owners of the lands or other rights or
32 interests in the land as to all other uses not acquired for the storage
33 facility.

34 (c) The eminent domain authority under this subchapter shall be in
35 addition to any other power of eminent domain authorized by law.

36 (d)(1) A storage operator or pipeline operator that has obtained a

1 certificate from the commission under § 15-72-1105 may exercise the power of
2 eminent domain to acquire property for the construction, operation, or
3 modification of a storage facility or a carbon dioxide transmission pipeline
4 under this section.

5 (2) A storage operator or pipeline operator shall present to the
6 circuit court of the county in which the land is situated a petition setting
7 forth:

8 (A) The purpose for which the property is sought to be
9 acquired;

10 (B) A description of the property sought to be acquired;
11 and

12 (C) The name of the owner of the record title of the
13 property sought to be acquired as reflected by the deed records.

14 (3) The petitioner shall file the certificate as a part of its
15 petition and no order by the court granting the petition shall be entered
16 without the certificate having been filed.

17 (4)(A) The court shall examine the petition and determine
18 whether the property is necessary or useful to its lawful purposes.

19 (B) If the court finds that the property is necessary or
20 useful to its lawful purposes, the court shall enter the finding on the
21 record and subsequent proceedings shall follow the procedure by law for the
22 exercise of the power of eminent domain for rights-of-way for railroads under
23 § 18-15-1201 et seq.

24 (e) Rights for the underground geologic storage of carbon dioxide
25 under this subchapter shall not be taken by the power of eminent domain
26 unless the commission, upon application by an affected party, reopens an
27 earlier order or orders granting a certificate of public convenience and
28 necessity under this subchapter and determines that the public interest is
29 served by realigning the boundaries of the storage facilities and permitting
30 the exercise of the power of eminent domain.

31
32 15-72-1108. Fees.

33 (a)(1) There is imposed on the operator of each storage facility a fee
34 on each ton of carbon dioxide injected for storage in an amount to be
35 determined by the Oil and Gas Commission to fund the Carbon Dioxide Storage
36 Facility Trust Fund, § 19-5-1139.

1 (2) The commission shall charge the same fee rate to each
2 storage facility operator.

3 (b)(1) Once a storage facility operator has contributed five million
4 dollars (\$5,000,000) to the trust fund, the fee assessments to that storage
5 facility operator shall cease until:

6 (A) The funds begin to be expended for monitoring and
7 caretaking of a completed storage facility; or

8 (B) The Oil and Gas Commission determines that additional
9 assessments above the five million dollars (\$5,000,000) per storage facility
10 required under this subchapter are necessary for the Carbon Dioxide Storage
11 Facility Trust Fund, § 19-5-1139, to remain adequately funded to carry out
12 the activities required under this section.

13 (2) Once trust fund money begins to be expended, any suspended
14 fees shall be reinstated.

15 (3) At least every fifth year after injection operations
16 commence, the commission shall evaluate the amount of the fees assessed under
17 this section to assure that the trust fund remains adequately funded.

18 (4)(A) If at any time the balance in the trust fund exceeds an
19 authorized amount determined by multiplying five million dollars (\$5,000,000)
20 or another amount that the commission may determine by the number of active
21 and completed storage facilities within the state, the collection of fees
22 from each operator of a storage facility that have already contributed five
23 million dollars (\$5,000,000) or another amount that the commission may
24 determine to the trust fund shall be suspended until the balance in the trust
25 fund falls below the authorized amount.

26 (B) If at any time the balance in the trust fund falls
27 below the authorized amount, the collection of fees shall be reinstated.

28 (c)(1) An unexpended balance in the trust fund, including the accrued
29 interest, shall not be transferred to the state's General Revenue Fund
30 Account of the State Apportionment Fund, § 19-5-202 or elsewhere.

31 (2) All unexpended money shall at all times remain in the trust
32 fund for use in connection with this subchapter.

33 (d) The commission may enter into agreements and contracts and expend
34 money in the trust fund to:

35 (1) Monitor any remaining surface facilities and wells;

36 (2) Remediate mechanical problems associated with remaining

1 wells or site infrastructure, or both;

2 (3) Repair mechanical leaks at the storage facility;

3 (4) Plug and abandon remaining wells except for those wells to
4 be used as observation wells;

5 (5) Pay premiums and deductibles under any insurance policy
6 purchased under this subchapter; and

7 (6)(A) Pay the portion of any public liability claim as
8 authorized by this subchapter.

9 (B) However, no portion of the money in the trust fund
10 shall be used to defray the costs of administering this subchapter.

11 (e) The commission shall adopt rules related to setting and collecting
12 fees under this section.

13
14 15-72-1109. Oil and Gas Commission – Administrative expenses.

15 (a)(1) To fund the Oil and Gas Commission's administrative and
16 enforcement expenses and expenses for the compliance inspections, including
17 the expense of inspecting, testing, and monitoring storage facilities under
18 this subchapter, there is imposed on the storage operator a fee on each ton
19 of carbon dioxide injected for storage in an amount to be determined by the
20 commission to be deposited in the Carbon Dioxide Storage Administration Trust
21 Fund, § 19-5-1140.

22 (2) The commission shall charge the same fee rate to each
23 storage facility operator.

24 (3) All permit fees and the net proceeds of all fines,
25 penalties, and bond forfeitures collected under this subchapter and any rules
26 under this subchapter shall be paid into the Carbon Dioxide Storage
27 Administration Trust Fund, § 19-5-1140.

28 (b)(1) At the end of each fiscal year, the per-ton fee imposed under
29 this section shall be redetermined by the commission based upon the estimated
30 cost of administering and enforcing this subchapter for the upcoming year
31 divided by the tonnage of carbon dioxide expected to be injected during the
32 upcoming year.

33 (2) The total fee assessed shall be sufficient to assure a
34 balance in the Carbon Dioxide Storage Administration Trust Fund, § 19-5-1140,
35 not to exceed fifty thousand dollars (\$50,000) for each active storage
36 facility within the state at the beginning of each fiscal year.

1 (c)(1) Any amount received under subsection (b) of this section that
2 exceeds the annual balance required in subsection (b) of this section shall
3 be deposited in the Carbon Dioxide Storage Facility Trust Fund, § 19-5-1139.

4 (2) In no event shall money in the Carbon Dioxide Storage
5 Administration Fund be transferred to the General Revenue Fund Account of the
6 State Apportionment Fund, § 19-5-202 or elsewhere.

7 (d) The commission shall adopt rules to set and collect fees under
8 this section.

9
10 15-72-1110. Transfer of ownership.

11 (a) Unless the Oil and Gas Commission by order or rule allows for an
12 earlier filing, the owner or operator of a storage facility may apply for a
13 certificate of completion of injection operations no earlier than ten (10)
14 years after the cessation of operations related to the injection of carbon
15 dioxide into the storage facility.

16 (b) The commission shall issue a certificate of completion of
17 injection operations upon a showing by the storage operator that the storage
18 facility has been closed in accordance with a closure plan approved by the
19 commission or otherwise approved under Section 1422 of the federal Safe
20 Drinking Water Act, 42 U.S.C. § 300f et seq., and that the reservoir is
21 reasonably expected to retain mechanical integrity and the carbon dioxide
22 will remain emplaced for a reasonable period of time.

23 (c) Upon the issuance of the certificate of completion, ownership of
24 the storage facility, including the stored carbon dioxide, shall transfer to
25 the state; provided, however, that if the United States of America, or an
26 instrumentality or agency thereof, is authorized to accept ownership of and
27 responsibility for a storage facility, the Oil and Gas Commission is
28 authorized, subject to the approval of the Governor, to transfer ownership of
29 a storage facility to such federal instrumentality or agency.

30
31 15-72-1111. Liability release – Jurisdiction for public liability
32 actions – Payment of public liability claims.

33 (a)(1) Upon the issuance of the certificate of completion of injection
34 operations, the following shall be released from all duties or obligations
35 under this subchapter and all liability associated with or related to that
36 storage facility that arises after the issuance of the certificate of

1 completion of operations:

2 (A) The storage operator of a storage facility;

3 (B) The pipeline operator;

4 (C) The generators of any carbon dioxide injected or
5 handled by either:

6 (i) The storage facility; or

7 (ii) The carbon dioxide transmission pipeline;

8 (D) The owners of carbon dioxide stored in the storage
9 facility; and

10 (E) All owners otherwise having an interest in the storage
11 facility or carbon dioxide transmission pipeline.

12 (2) If it is demonstrated by clear and convincing evidence that
13 the owner, operator, or generator knowingly and intentionally concealed or
14 knowingly and intentionally misrepresented material facts related to the
15 mechanical integrity of the storage facility or the chemical composition of
16 any injected carbon dioxide, a release from liability under subdivision
17 (a)(1) of this section shall not apply to:

18 (A) Such owner or operator of a storage facility or carbon
19 dioxide transmission pipeline; or

20 (B) Such generator of the carbon dioxide being handled by
21 either the facility or the pipeline.

22 (3) Upon the issuance of the certificate of completion of
23 injection operations:

24 (A) A performance bond posted by the storage operator
25 shall be released; and

26 (B) Continued monitoring of the site, including
27 remediation of any well leakage, shall become the responsibility of the
28 commission and shall be funded through the Carbon Dioxide Storage Facility
29 Trust Fund, § 19-5-1139, and any insurance purchased by the state to cover
30 remediation.

31 (b) The Oil and Gas Commission shall procure insurance coverage in an
32 amount to be determined by the commission for each storage facility owned by
33 the state, if and to the extent an appropriate insurance policy is available
34 that insures against losses stemming from a public liability action arising
35 from that storage facility.

36 (c) The state shall pay any insurance premiums and deductibles on the

1 insurance policies procured under this section from the Carbon Dioxide
2 Storage Facility Trust Fund, § 19-5-1139.

3 (d)(1) It is the intent of this subchapter that the state shall retain
4 its sovereign immunity from civil liability.

5 (2) However, a public liability claim may be paid up to the
6 limits of any applicable insurance policy procured under this section plus
7 that portion of the money in the Carbon Dioxide Storage Facility Trust Fund,
8 § 19-5-1139 that was contributed by the storage operator of the facility from
9 which the public liability claim arose.

10
11 15-72-1112. Limitations on claims.

12 (a)(1)(A) A cause of action alleging injury to a person or property
13 from a storage facility or a carbon dioxide transmission pipeline arises as
14 of the date of injury and shall be commenced within three (3) years of the
15 date of the injury or within three (3) years of the date when the person
16 discovers or with the exercise of reasonable diligence should have discovered
17 the injury, whichever last occurs.

18 (B) However, a cause of action shall not be commenced more
19 than ten (10) years after the date of injury.

20 (2) The periods of limitation set forth in this subsection shall
21 be tolled as to any owner or operator of a storage facility, carbon dioxide
22 transmission pipeline, or the generator of the carbon dioxide being handled
23 by either the facility or the pipeline for any period during which it is
24 demonstrated by clear and convincing evidence that such owner, operator, or
25 generator knowingly and intentionally concealed or knowingly and
26 intentionally misrepresented material facts related to the mechanical
27 integrity of the storage facility, the chemical composition of any injected
28 carbon dioxide, or the injury.

29 (b) If the trier of fact renders a verdict for the plaintiff, the
30 court shall enter judgment of several, but not joint, liability against each
31 defendant in accordance with the percentage of fault attributed to the
32 defendant by the trier of fact.

33
34 15-72-1113. Cooperative agreements.

35 (a) The Oil and Gas Commission may enter into cooperative agreements
36 with other governments or government entities for the purpose of regulating

1 carbon dioxide storage projects that extend beyond state regulatory authority
2 under this subchapter.

3 (b)(1) Agreements under this section may include without limitation
4 reciprocity agreements with other states and government entities for
5 regulating carbon dioxide storage projects that extend across state
6 boundaries.

7 (2) A reciprocity agreement under this section may provide that
8 each state or governmental entity shall give full faith and credit to a
9 permit, certificate of public convenience and necessity, or other
10 authorization issued by a state in which a major areal extent of a carbon
11 dioxide storage project may lie as if the permit, certificate of public
12 convenience and necessity, or other authorization had been issued by the
13 commission.

14 (3) If the commission enters into a reciprocity agreement with
15 another state or government entity under this section, a person holding a
16 permit, certificate of public convenience and necessity, or other
17 authorization for a carbon dioxide storage project issued by the other state
18 or government entity may exercise the power of eminent domain under § 15-72-
19 1107 with respect to the portion of the project in this state.

20
21 15-72-1114. Ownership of reservoir and pore space.

22 (a)(1) A conveyance of the surface ownership of real property shall be
23 deemed to be a conveyance of the reservoir and pore space in all strata below
24 the surface of the real property, except in the following circumstances:

25 (A) The ownership interest in the reservoir and pore space
26 has been previously severed from the surface ownership;

27 (B) The ownership interest in the reservoir and pore space
28 has been explicitly reserved from the conveyance of the surface ownership; or

29 (C) The ownership interest in the reservoir and pore space
30 has been implicitly reserved from the conveyance of the surface ownership by
31 the placement of a restriction or limitation on the use of the surface
32 estate.

33 (2)(A) A conveyance of the surface only in an original severance
34 deed shall be sufficient to reserve to the grantor the reservoir and pore
35 space.

36 (B) A conveyance or reservation of coal, oil, gas, coalbed

1 methane, and other minerals shall not be sufficient as a conveyance or
2 reservation of the reservoir and pore space.

3 (b) If, notwithstanding subsection (a) of this section, prior
4 agreements and conveyances remain uncertain as to the ownership of the
5 reservoir and pore space, ownership of the reservoir and pore space in the
6 strata below the surface is vested in the owner of the surface above the
7 strata.

8 (c) This section is not intended to change, impinge upon, or impair
9 any existing rights to store underground, extract, mine or otherwise produce
10 coal, oil, gas, coalbed methane, or other mineral interests, including rights
11 under the Underground Storage of Gas Law, § 15-72-601 et seq., or to prevent
12 any party from asserting adverse possession of the reservoir and pore space.

13
14 15-72-1115. Civil penalties – Criminal penalties – Injunctive relief.

15 (a)(1) A person who violates this subchapter or a permit or a rule or
16 order issued under this subchapter is subject to a civil penalty not to
17 exceed one thousand dollars (\$1,000) for each violation.

18 (2) However, if the violation involves a knowingly false
19 statement or misrepresentation in any application or other document permitted
20 or required to be filed under this subchapter, the civil penalty shall not
21 exceed five thousand dollars (\$5,000) for each violation.

22 (3)(A) A civil penalty shall be recovered in a civil action
23 brought by the Oil and Gas Commission or by the Attorney General if requested
24 by the commission in the circuit court of any county in which the person
25 resides or is engaged in the activity complained of or in the Pulaski County
26 Circuit Court.

27 (B) The amount of the penalty under subdivision (3)(A) of
28 this section shall be fixed by the court without a jury.

29 (b)(1) Any person who violates this subchapter or any permit, rule, or
30 order issued under this subchapter is guilty of an unclassified misdemeanor
31 and upon conviction shall be fined not more than one thousand dollars
32 (\$1,000) for each violation;

33 (2) However, a person who with the intention of evading this
34 subchapter or any permit, rule, or order issued under this subchapter
35 knowingly makes or causes to be made any false statement or misrepresentation
36 in any application or other document permitted or required to be filed under

1 this subchapter is guilty of an unclassified misdemeanor, and upon conviction
2 shall be fined not more than five thousand dollars (\$5,000) for each
3 violation or shall be imprisoned not more than six (6) months, or both.

4 (c)(1) The commission may seek an injunction against a person who
5 violates this subchapter or any permit, rule, or order issued under this
6 subchapter.

7 (2) In seeking an injunction under subdivision (c)(1) of this
8 section, it is not necessary for the commission to post bond or to allege or
9 prove at any stage of the proceeding that irreparable damage will occur if
10 the injunction is not issued or that the remedy at law is inadequate.

11
12 15-72-1116. Annual report on administration of funds – Report to
13 General Assembly.

14 (a) The Oil and Gas Commission shall keep accurate accounts of all
15 receipts and disbursements related to the administration of the Carbon
16 Dioxide Storage Facility Trust Fund, § 19-5-1139 and the Carbon Dioxide
17 Storage Administration Fund, § 19-5-1140 and shall make a specific annual
18 report addressing the administration of those funds.

19 (b) Every five (5) years, the commission shall submit a report to the
20 General Assembly that assesses the effectiveness of this subchapter and
21 provides other information as may be requested by the General Assembly to
22 allow the General Assembly to assess the effectiveness of this subchapter.

23
24 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 9 is amended
25 to add two additional sections to read as follows:

26 19-5-1139. Carbon Dioxide Storage Facility Trust Fund.

27 (a) There is created on the books of the Treasurer of State, the
28 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to
29 be known as the “Carbon Dioxide Storage Facility Trust Fund”.

30 (b) The fund shall consist of Carbon Dioxide Storage Facility Trust
31 Fund funds generated under the Arkansas Carbon Dioxide Storage Act, § 15-72-
32 1101 et seq.

33 (c) The fund shall be used solely for the long-term monitoring and
34 care-taking of storage facilities after the completion of injection.

35
36 19-5-1140. Carbon Dioxide Storage Administration Trust Fund.

1 (a) There is created on the books of the Treasurer of State, the
2 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to
3 be known as the "Carbon Dioxide Storage Administration Trust Fund".

4 (b) This fund shall consist of Carbon Dioxide Storage Administration
5 Trust Fund funds generated under the Arkansas Carbon Dioxide Storage Act, §
6 15-72-1101 et seq.

7 (c) The fund shall be used solely for administering and enforcing the
8 Arkansas Carbon Dioxide Storage Act, § 15-72-1101 et seq.

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