

1 ENGROSSED SENATE
2 BILL NO. 610

By: Myers of the Senate

3 and

4 Watson of the House

5
6
7 [geologic storage of carbon dioxide - Geologic
8 Storage of Carbon Dioxide Act - codification -
9 effective date]

10

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3-5-101 of Title 27A, unless
14 there is created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Geologic
16 Storage of Carbon Dioxide Act".

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3-5-102 of Title 27A, unless
19 there is created a duplication in numbering, reads as follows:

20 A. The Legislature declares that:

21 1. Carbon dioxide is a substance that occurs naturally in the
22 environment as a result of biological processes and that exists as a
23 gas at standard temperature and pressure;

24

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

5 3. Carbon dioxide is currently being released into the
6 atmosphere in substantial volumes;

7 4. For many years, technologies for the injection, use and
8 storage of carbon dioxide in underground geologic formations have
9 been developed and successfully utilized for the extraction of
10 underground natural resources such as oil and natural gas;

11 5. The storage of carbon dioxide in underground geological
12 formations can be an effective means for reducing the release of
13 carbon dioxide into the atmosphere from anthropogenic sources; and

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

21 B. The Legislature further declares that:

22 1. The transportation and geologic storage of carbon dioxide
23 will benefit the citizens of the state;

24

1 2. Carbon dioxide is a valuable commodity to the citizens of
2 the state, particularly for its value in enhancing the recovery of
3 oil and gas, and for its potential for use in other industrial and
4 commercial processes and applications;

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

10 4. Storage of carbon dioxide in geological formations is
11 believed to be an effective and feasible strategy to deposit large
12 volumes of carbon dioxide over long periods of time; and

13 5. It is the public policy of this state and the purpose of
14 this act to provide for a coordinated statewide program for the
15 transportation and storage of carbon dioxide in underground
16 geological formations and to also fulfill the state's primary
17 responsibility for assuring compliance with the federal Safe
18 Drinking Water Act, including any amendments thereto related to the
19 underground injection of carbon dioxide.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3-5-103 of Title 27A, unless
22 there is created a duplication in numbering, reads as follows:

23 As used in this act:

24 1. "Board" means the Environmental Quality Board;

1 2. "Carbon dioxide" means anthropogenically sourced carbon
2 dioxide including its derivatives and all mixtures, combinations and
3 phases thereof;

4 3. "Carbon dioxide transmission pipeline" means a pipeline,
5 compressors, meters and associated equipment and appurtenances used
6 for the purpose of transporting carbon dioxide in this state for
7 underground storage in this state or another state. Carbon dioxide
8 transmission pipeline shall not include carbon capture equipment
9 located at the generator of the carbon dioxide or pipelines that are
10 part of a storage facility. The Corporation Commission shall
11 establish the beginning point and ending point of a carbon dioxide
12 transmission pipeline;

13 4. "Commercial operator" means an entity that operates a
14 storage facility or carbon dioxide transmission pipeline, or both,
15 and that provides storage facility services or carbon dioxide
16 transmission pipeline services on an open-access, nondiscriminatory
17 basis pursuant to such rules and regulations and upon such rates and
18 terms and conditions of service as the Corporation Commission may
19 establish;

20 5. "Commission" means the Corporation Commission as established
21 by Article 9, Section 15, of the Oklahoma Constitution;

22 6. "Department" means the Department of Environmental Quality
23 as established by Title 27A, Section 2-3-101 et seq. of the Oklahoma
24 Statutes;

1 7. "Depleted" means that the production of oil or gas, coal,
2 coalbed methane, or any other underground natural resource is not or
3 is no longer commercially feasible in an area where carbon dioxide
4 will be stored;

5 8. "Oil or gas" or "oil and gas" means oil, natural gas,
6 coalbed methane or gas condensate;

7 9. "Pipeline operator" means an entity authorized by the
8 Corporation Commission to operate a carbon dioxide transmission
9 pipeline, including both commercial operators and private operators;

10 10. "Private operator" means an entity that is not a commercial
11 operator and, pursuant to state authorization, operates a storage
12 facility or carbon dioxide transmission pipeline for the purpose of
13 providing dedicated storage facility services or carbon dioxide
14 transmission pipeline services solely to one or more entities;

15 11. "Reservoir" means that portion of any underground
16 geological stratum, formation, aquifer, cavity or void (whether
17 natural or artificially created), depleted oil and gas formation,
18 and depleted coal or coalbed methane seam, having pore space which
19 is suitable for or capable of being made suitable for the injection
20 and storage therein of carbon dioxide, among other things;

21 12. "Storage" means placement of carbon dioxide in a reservoir;

22 13. "Storage facility" means the reservoir, the underground
23 equipment and pipelines internal to the storage operation, and
24 surface buildings and equipment utilized in the storage operation,

1 | excluding pipelines used to transport the carbon dioxide from one or
2 | more capture facilities to the storage injection site or sites. The
3 | reservoir component of the storage facility includes any necessary
4 | and reasonable areal buffer and subsurface monitoring zones
5 | designated by the Department of Environmental Quality for the
6 | purpose of ensuring the safe and efficient operation of the storage
7 | facility for the storage of carbon dioxide and to protect against
8 | pollution, invasion, and escape or migration of carbon dioxide. A
9 | storage facility shall not include carbon capture equipment located
10 | at the generator of the carbon dioxide;

11 | 14. "Storage operator" means any entity authorized by the
12 | Department of Environmental Quality to operate a storage facility,
13 | including both commercial operators and private operators; and

14 | 15. "Storage well" means a well drilled in a storage field for
15 | the purpose of injecting carbon.

16 | SECTION 4. NEW LAW A new section of law to be codified
17 | in the Oklahoma Statutes as Section 3-5-104 of Title 27A, unless
18 | there is created a duplication in numbering, reads as follows:

19 | A. Except as provided in subsections B and C of this section,
20 | the Department of Environmental Quality shall have sole and
21 | exclusive jurisdiction and authority over all entities and property
22 | necessary to issue or deny permits for the establishment of storage
23 | facilities in accordance with this act, to monitor and enforce
24 | compliance with permit conditions and the legal requirements

1 established in accordance with this act and to regulate any
2 subsequent withdrawal of stored carbon dioxide that is intended for
3 commercial, industrial or other uses. In exercising such
4 jurisdiction and authority, the Department may conduct hearings,
5 issue and enforce orders, and adopt, modify, repeal and enforce
6 procedural, interpretive and legislative rules concerning geologic
7 storage of carbon dioxide.

8 B. The jurisdiction of the Corporation Commission with respect
9 to carbon dioxide storage facilities and carbon dioxide transmission
10 pipelines shall be as follows:

11 1. Storage operators in this state and pipeline operators in
12 this state shall be deemed to be public utilities providing public
13 services and are subject to the general power of the commission to
14 regulate public utilities.

15 2. Commercial operators in this state shall be subject to the
16 general power of the Commission with respect to rates and terms and
17 conditions of service. A private operator shall not be subject to
18 the power of the Commission with respect to rates and terms and
19 conditions of service for the transportation or storage of carbon
20 dioxide. A commercial operator and a public utility utilizing the
21 services of a storage operator or a pipeline operator shall be
22 entitled to an opportunity to recover the reasonable and prudent
23 costs including a reasonable return on and associated with a storage

24

1 facility or carbon dioxide transmission pipeline in its rates
2 regulated by the Commission.

3 3. The Commission shall have the power and authority to
4 prescribe, enforce and implement safety standards for pipelines
5 subject to this act; provided, however, that no such standards shall
6 be more stringent than comparable federal requirements.

7 4. The Commission shall have the power and authority to grant
8 certificates of public convenience and necessity and to authorize
9 storage facilities as provided in section 5 of this act.

10 C. The provisions of this act shall not apply to:

11 1. The use of carbon dioxide as a part of or in conjunction
12 with any enhanced recovery operation where the sole purpose of the
13 project is enhanced oil, coalbed methane or natural gas recovery; or

14 2. A natural gas storage operation certificated by the Federal
15 Energy Regulatory Commission or the Commission. The Commission is
16 authorized to promulgate rules to allow conversion of any such
17 enhanced recovery operation or natural gas storage field into a
18 storage facility. Upon approval of the conversion of such an
19 operation, the provisions of this act shall apply.

20 D. No agency of state government or any political subdivision
21 may regulate any facility or activity for the purpose of the
22 transportation, storage or withdrawal of carbon dioxide except as
23 authorized by the provisions of this act.

24

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3-5-105 of Title 27A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. No entity shall begin construction of a storage facility or
5 carbon dioxide transmission pipeline unless and until such entity
6 shall have obtained from the Corporation Commission a certificate of
7 public convenience and necessity approving the construction and
8 proposed location of such facilities in accordance with this
9 section.

10 B. The application for such certificate shall be in such form
11 as the Commission may prescribe and shall contain:

12 1. The names of the owners and operators of the facility
13 including any officer, secretary, manager, person owning five
14 percent (5%) or more interest or any other person conducting or
15 managing the affairs of the applicant as to the proposed facility;

16 2. A description, in such detail as the Commission may
17 prescribe, of the general location and type of facilities which the
18 applicant proposes to construct;

19 3. A statement justifying the need for such facilities;

20 4. If the applicant seeks to become a private operator, an
21 explanation and justification, the identity of the entity or
22 entities to whom dedicated services will be provided, and copies of
23 the contracts under which services will be provided to such entity
24 or entities, and such data as the Commission shall require by rule

1 regarding the anticipated cost of constructing and operating the
2 proposed facilities;

3 5. With respect to any carbon dioxide transmission pipelines, a
4 statement of the environmental impact;

5 6. The average monthly tonnage of carbon dioxide anticipated to
6 be stored in the proposed storage facility or transported in the
7 proposed carbon dioxide transmission pipeline during the phase of
8 the project that is the subject of the application;

9 7. The anticipated life span and closure date of such
10 facilities and the period of time that is the subject of the
11 application in the case of a project that is being implemented in
12 multiple phases;

13 8. Proof of the financial ability of the applicant to construct
14 and operate the project; and

15 9. Such other information as the applicant may deem relevant or
16 the Commission may require by rule.

17 C. The Commission shall grant or deny a certificate of public
18 convenience and necessity in accordance with provisions set forth in
19 this section. If the Commission grants a certificate of public
20 convenience and necessity, the Commission may include reasonable
21 conditions required by the public convenience and necessity not
22 inconsistent with the criteria set forth in this act; provided,
23 however, that in matters within the jurisdiction of the Department
24

1 of Environmental Quality, the Commission shall defer to the
2 Department of Environmental Quality.

3 D. Upon the filing of such application, the applicant shall
4 publish, in such form as the Commission directs, the publication
5 area for such publication to be each county in which any portion of
6 the proposed storage facility or carbon dioxide transmission
7 pipeline is to be constructed, a notice of the filing of such
8 application and that the Commission may approve the same unless
9 within fifteen (15) days after completion of publication a written
10 request for a hearing thereon has been received by the Commission
11 from a person or persons alleging that the proposed storage facility
12 or carbon dioxide transmission pipeline is against the public
13 interest. If such request be timely received and the issues raised
14 cannot be dealt with by order of the Commission without a hearing,
15 the Commission shall set the matter for hearing on a date within
16 sixty (60) days from completion of the publication, and shall
17 require the applicant to publish notice of the time and place of
18 hearing in the same manner as is herein required for the publication
19 of notice of the filing of the application.

20 E. In considering whether to grant a certificate of public
21 convenience and necessity, the Commission shall consider, but is not
22 limited to considering, the following factors:

- 23 1. The demonstrated need for the project;
- 24 2. The economic reasonableness of the project;

1 3. The managerial and technical competence of the applicant to
2 effectively construct and manage the project; and

3 4. Such other criteria related to making the determinations
4 required by paragraph F of this subsection as the Commission
5 specifies in its duly promulgated rules.

6 F. Within sixty (60) days after the filing of the application,
7 or if hearing shall be held thereon, within ninety (90) days after
8 final submission on oral argument or brief, the Commission shall
9 approve the application if it shall find and determine:

10 1. That the proposed storage facility or carbon dioxide
11 transmission pipeline will economically, adequately and reliably
12 contribute to meeting the present and anticipated requirements for
13 storage or transportation of carbon dioxide;

14 2. That the proposed storage facility or carbon dioxide
15 transmission pipeline is in the public convenience and necessity;

16 3. The horizontal and vertical boundaries of the storage
17 facility;

18 4. That the storage facility and reservoir are suitable and
19 feasible for the injection, storage and, if proposed, withdrawal of
20 carbon dioxide;

21 5. That the use of the storage facility for the storage of
22 carbon dioxide will not contaminate other formations containing
23 fresh water or oil, gas (including stored natural gas), coal, or
24 coalbed methane;

1 6. That the storage field will not be used to inject carbon
2 dioxide into that part of a formation that is within the
3 certificated boundaries, including the protective area, of an
4 existing natural gas storage field certificated by the Federal
5 Energy Regulatory Commission or the Commission;

6 7. That the storage facility will be operated in such a manner
7 as to protect human health and the environment; and

8 8. That the quality of the carbon dioxide to be managed at the
9 storage facility will not compromise the safety and efficiency of
10 the reservoir.

11 G. The Commission shall deny a certificate of public
12 convenience and necessity upon one or more of the following
13 findings:

14 1. The proposed facilities are not reasonably cost effective in
15 light of alternative storage and transportation facilities that are
16 available at the time of the public service commission's decision;

17 2. The applicant is not qualified or financially capable of
18 performing;

19 3. The proposal, taken as a whole, is inconsistent with the
20 public convenience and necessity; or

21 4. The proposed storage facility is geologically or
22 operationally unsuitable.

23 H. The Commission's grant of authority for a storage facility
24 or carbon dioxide transmission pipeline shall be contingent upon

1 obtaining any necessary permits or authorizations from the
2 Department of Environmental Quality or other agencies prior to
3 commencing operation.

4 I. Any party aggrieved by a decision of the Commission granting
5 or denying a certificate of public convenience and necessity may
6 obtain judicial review thereof pursuant to Section 318 of Title 75
7 of the Oklahoma Statutes.

8 J. No person may sell, lease or transfer a certificate of
9 public convenience and necessity without first obtaining the consent
10 and approval of the Commission.

11 K. The Commission is authorized and empowered to adopt, modify,
12 repeal and enforce procedural, interpretive and legislative rules
13 relating to the certification of storage facilities and carbon
14 dioxide transmission pipelines authorized pursuant to this act and
15 shall define in such rule minor modifications that do not require an
16 amendment of an existing certificate of public convenience and
17 necessity.

18 L. A private operator that desires to become a commercial
19 operator shall file an application with the Commission for a
20 certificate of public convenience and necessity in the manner herein
21 provided, together with such other information as the Commission may
22 reasonably require by rule. In addition, the private operator shall
23 file proposed rates and terms and conditions of service. A private
24 operator shall not become a commercial operator until the Commission

1 has issued a certificate of public convenience and necessity and
2 accepted the initial rates and terms and conditions of service
3 subject to refund.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3-5-106 of Title 27A, unless
6 there is created a duplication in numbering, reads as follows:

7 A. The owner or operator of a storage facility shall obtain a
8 permit pursuant to this act from the Department of Environmental
9 Quality prior to the construction, operation or modification of a
10 storage facility. Any entity owning or operating a storage facility
11 in existence on the effective date of this act is hereby authorized
12 to continue operating until such time as the Department has
13 established operational and procedural requirements applicable to
14 such existing storage facilities and the entity owning or operating
15 such facility has had a reasonable opportunity to comply with those
16 requirements.

17 B. The use of a reservoir as a storage facility for carbon
18 dioxide is hereby authorized, provided that the Department shall
19 first issue a permit authorizing such proposed storage of carbon
20 dioxide after the applicant has obtained a certificate of public
21 convenience and necessity from the Corporation Commission pursuant
22 to this act.

23 C. Public notice required by this subsection shall be published
24 in a newspaper in general circulation in a county or counties where

1 the facility will be located. The applicant shall publish public
2 notice at the time of the filing of an application stating that such
3 an application has been filed and where the public can review the
4 application. The Department shall publish public notice upon
5 issuance of a draft permit stating where the public can review the
6 draft permit and the nature of the public's opportunity to comment
7 on the draft permit. The Department shall also issue a public
8 notice announcing any public hearing that may be held on the draft
9 permit. The Department shall allow at least thirty (30) days for
10 public comment on the draft permit. Upon request of the permit
11 applicant, the public comment period may be extended for an
12 additional thirty (30) days. Further extension of the comment
13 period may be granted by the Department for good cause shown but in
14 no case may the further extension exceed an additional thirty (30)
15 days. Public notice of a public hearing shall be given at least
16 thirty (30) days before the hearing. Public notice of the hearing
17 may be given at the same time as public notice of the draft permit,
18 and the two notices may be combined. The Department shall establish
19 by rule the procedures, including, but not limited to, the content
20 of public notices; the content of the public notice of hearing; and
21 the management of public comments filed.

22 D. The Department shall issue and enforce such orders, and
23 shall adopt, modify, repeal and enforce such rules, including
24 establishment of appropriate and sufficient financial sureties or

1 bonds, as may be necessary, for the purpose of regulating the
2 drilling of wells related to a storage facility, the injection and
3 withdrawal of carbon dioxide, the operation of the storage facility,
4 well plugging and abandonment, and removal of surface buildings and
5 equipment of the storage facility and as necessary to protect the
6 storage facility against pollution, invasion, and the escape or
7 migration of carbon dioxide.

8 E. In addition to all other powers and duties prescribed in
9 this article or otherwise by law, and unless otherwise specifically
10 set forth in this article, the Department shall perform any and all
11 acts necessary to carry out the purposes and requirements of the
12 federal Safe Drinking Water Act, as amended, relating to this
13 state's participation in the underground injection control program
14 established under that act with respect to the storage of carbon
15 dioxide. To that end, the Department is authorized and empowered to
16 adopt, modify, repeal and enforce procedural, interpretive and
17 legislative rules.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3-5-107 of Title 27A, unless
20 there is created a duplication in numbering, reads as follows:

21 A. Any storage operator or pipeline operator is hereby
22 authorized, after obtaining any permit from the Department of
23 Environmental Quality required by this article and any certificate
24 of public convenience and necessity from the Corporation Commission

1 required by this act, to exercise the power of eminent domain to
2 acquire surface and subsurface rights and property interests
3 necessary or useful for the purpose of constructing, operating or
4 modifying the storage facility or carbon dioxide transmission
5 pipeline, including easements and rights-of-way across lands for
6 pipelines transporting carbon dioxide to and among facilities
7 constituting the storage facility. The right of eminent domain
8 shall be exercised in the same manner and by like proceedings as
9 provided for railroad corporations by the laws of this state.

10 B. The exercise of the right of eminent domain granted in
11 Section 8 of this act shall not prevent entities having the right to
12 do so from drilling through the storage facility in such manner as
13 shall comply with the rules issued for the purpose of protecting the
14 storage facility against pollution or invasion and against the
15 escape or migration of carbon dioxide. Furthermore, the right of
16 eminent domain set out in this act shall not prejudice the rights of
17 the owners of the lands or other rights or interests therein as to
18 all other uses not acquired for the storage facility.

19 C. The eminent domain authority authorized under this act shall
20 be in addition to any other power of eminent domain authorized by
21 law.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3-5-108 of Title 27A, unless
24 there is created a duplication in numbering, reads as follows:

1 The right of condemnation and eminent domain hereby granted
2 shall be without prejudice to the rights of the owners of the lands
3 or of other rights or interests therein to drill or bore through the
4 underground stratum or formation so appropriated in such manner as
5 shall comply with orders and rules of the Corporation Commission
6 issued for the purpose of protecting underground storage strata or
7 formations against pollution and against the escape of natural gas
8 therefrom and shall be without prejudice to the rights of the owners
9 of the lands or other rights or interests therein as to all other
10 uses thereof. The additional cost of complying with such rules or
11 orders in order to protect the storage shall be paid by the public
12 utility.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3-5-109 of Title 27A, unless
15 there is created a duplication in numbering, reads as follows:

16 A. Any person who violates any provision of this act, any
17 permit or any rule or order issued pursuant to this act, is subject
18 to a civil penalty not to exceed One Thousand Dollars (\$1,000.00)
19 per violation, unless the violation involves a knowingly false
20 statement or misrepresentation in any application or other document
21 permitted or required to be filed under the provisions of this
22 article, in which case the civil penalty shall not exceed Five
23 Thousand Dollars (\$5,000.00) per violation. Civil penalties shall
24 be recovered in a civil action brought by the Attorney General in

1 the name of the State of Oklahoma in the district court of any
2 county wherein the person resides or is engaged in the activity
3 complained of.

4 B. The Attorney General may seek an injunction against any
5 person in violation of any provision of this act or any permit, rule
6 or order issued pursuant to this act. In seeking an injunction, it
7 is not necessary for the Attorney General to post bond nor to allege
8 or prove at any stage of the proceeding that irreparable damage will
9 occur if the injunction is not issued or that the remedy at law is
10 inadequate.

11 SECTION 10. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3-5-110 of Title 27A, unless
13 there is created a duplication in numbering, reads as follows:

14 A. The Environmental Quality Board and the Corporation
15 Commission are authorized to promulgate rules necessary to implement
16 the provisions of this act.

17 B. The Department of Environmental Quality and the Corporation
18 Commission are authorized to enter into cooperative agreements with
19 other governments or government entities for the purpose of
20 regulating carbon dioxide storage projects that extend beyond state
21 regulatory authority under the provisions of this act.

22 SECTION 11. This act shall become effective January 1, 2011.
23
24

1 Passed the Senate the 10th day of March, 2009.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2009.

7
8 _____
9 Presiding Officer of the House
10 of Representatives