

SB 610

Senate Bill No. 610
As Amended

SENATE BILL NO. 610 - By: Myers of the Senate and Watson of the House.

[geologic storage of carbon dioxide - Geologic Storage of Carbon Dioxide Act - noncodification - effective date]

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

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

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

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

A. The Legislature declares that:

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

2. Carbon dioxide is released from the combustion of any material that contains carbon including coal, natural gas, oil and

1 wood, all of which exist in abundance, and the production and use of
2 which form one of the foundations of our state's economy;

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

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

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

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

19 B. The Legislature further declares that:

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

22 2. Carbon dioxide is a valuable commodity to the citizens of
23 the state, particularly for its value in enhancing the recovery of

1 oil and gas, and for its potential for use in other industrial and
2 commercial processes and applications;

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

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

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

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

21 As used in this act:

22 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;

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

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

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

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

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

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

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

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

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

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

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

1 A. Except as provided in subsections B and C of this section,
2 the Department of Environmental Quality shall have sole and
3 exclusive jurisdiction and authority over all entities and property
4 necessary to issue or deny permits for the establishment of storage
5 facilities in accordance with this act, to monitor and enforce
6 compliance with permit conditions and the legal requirements
7 established in accordance with this act and to regulate any
8 subsequent withdrawal of stored carbon dioxide that is intended for
9 commercial, industrial or other uses. In exercising such
10 jurisdiction and authority, the Department may conduct hearings,
11 issue and enforce orders, and adopt, modify, repeal and enforce
12 procedural, interpretive and legislative rules concerning geologic
13 storage of carbon dioxide.

14 B. The jurisdiction of the Corporation Commission with respect
15 to carbon dioxide storage facilities and carbon dioxide transmission
16 pipelines shall be as follows:

17 1. Storage operators in this state and pipeline operators in
18 this state shall be deemed to be public utilities providing public
19 services and are subject to the general power of the commission to
20 regulate public utilities.

21 2. Commercial operators in this state shall be subject to the
22 general power of the Commission with respect to rates and terms and
23 conditions of service. A private operator shall not be subject to

1 the power of the Commission with respect to rates and terms and
2 conditions of service for the transportation or storage of carbon
3 dioxide. A commercial operator and a public utility utilizing the
4 services of a storage operator or a pipeline operator shall be
5 entitled to an opportunity to recover the reasonable and prudent
6 costs including a reasonable return on and associated with a storage
7 facility or carbon dioxide transmission pipeline in its rates
8 regulated by the Commission.

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

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

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

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

20 2. A natural gas storage operation certificated by the Federal
21 Energy Regulatory Commission or the Commission. The Commission is
22 authorized to promulgate rules to allow conversion of any such
23 enhanced recovery operation or natural gas storage field into a

1 storage facility. Upon approval of the conversion of such an
2 operation, the provisions of this act shall apply.

3 D. No agency of state government or any political subdivision
4 may regulate any facility or activity for the purpose of the
5 transportation, storage or withdrawal of carbon dioxide except as
6 authorized by the provisions of this act.

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

10 A. No entity shall begin construction of a storage facility or
11 carbon dioxide transmission pipeline unless and until such entity
12 shall have obtained from the Corporation Commission a certificate of
13 public convenience and necessity approving the construction and
14 proposed location of such facilities in accordance with this
15 section.

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

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

- 1 2. A description, in such detail as the Commission may
2 prescribe, of the general location and type of facilities which the
3 applicant proposes to construct;
- 4 3. A statement justifying the need for such facilities;
- 5 4. If the applicant seeks to become a private operator, an
6 explanation and justification, the identity of the entity or
7 entities to whom dedicated services will be provided, and copies of
8 the contracts under which services will be provided to such entity
9 or entities, and such data as the Commission shall require by rule
10 regarding the anticipated cost of constructing and operating the
11 proposed facilities;
- 12 5. With respect to any carbon dioxide transmission pipelines, a
13 statement of the environmental impact;
- 14 6. The average monthly tonnage of carbon dioxide anticipated to
15 be stored in the proposed storage facility or transported in the
16 proposed carbon dioxide transmission pipeline during the phase of
17 the project that is the subject of the application;
- 18 7. The anticipated life span and closure date of such
19 facilities and the period of time that is the subject of the
20 application in the case of a project that is being implemented in
21 multiple phases;
- 22 8. Proof of the financial ability of the applicant to construct
23 and operate the project; and

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

3 C. The Commission shall grant or deny a certificate of public
4 convenience and necessity in accordance with provisions set forth in
5 this section. If the Commission grants a certificate of public
6 convenience and necessity, the Commission may include reasonable
7 conditions required by the public convenience and necessity not
8 inconsistent with the criteria set forth in this act; provided,
9 however, that in matters within the jurisdiction of the Department
10 of Environmental Quality, the Commission shall defer to the
11 Department of Environmental Quality.

12 D. Upon the filing of such application, the applicant shall
13 publish, in such form as the Commission directs, the publication
14 area for such publication to be each county in which any portion of
15 the proposed storage facility or carbon dioxide transmission
16 pipeline is to be constructed, a notice of the filing of such
17 application and that the Commission may approve the same unless
18 within fifteen (15) days after completion of publication a written
19 request for a hearing thereon has been received by the Commission
20 from a person or persons alleging that the proposed storage facility
21 or carbon dioxide transmission pipeline is against the public
22 interest. If such request be timely received and the issues raised
23 cannot be dealt with by order of the Commission without a hearing,

1 the Commission shall set the matter for hearing on a date within
2 sixty (60) days from completion of the publication, and shall
3 require the applicant to publish notice of the time and place of
4 hearing in the same manner as is herein required for the publication
5 of notice of the filing of the application.

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

- 9 1. The demonstrated need for the project;
- 10 2. The economic reasonableness of the project;
- 11 3. The managerial and technical competence of the applicant to
12 effectively construct and manage the project; and
- 13 4. Such other criteria related to making the determinations
14 required by paragraph F of this subsection as the Commission
15 specifies in its duly promulgated rules.

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

- 20 1. That the proposed storage facility or carbon dioxide
21 transmission pipeline will economically, adequately and reliably
22 contribute to meeting the present and anticipated requirements for
23 storage or transportation of carbon dioxide;

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

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

5 4. That the storage facility and reservoir are suitable and
6 feasible for the injection, storage and, if proposed, withdrawal of
7 carbon dioxide;

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

12 6. That the storage field will not be used to inject carbon
13 dioxide into that part of a formation that is within the
14 certificated boundaries, including the protective area, of an
15 existing natural gas storage field certificated by the Federal
16 Energy Regulatory Commission or the Commission;

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

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

1 G. The Commission shall deny a certificate of public
2 convenience and necessity upon one or more of the following
3 findings:

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

7 2. The applicant is not qualified or financially capable of
8 performing;

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

11 4. The proposed storage facility is geologically or
12 operationally unsuitable.

13 H. The Commission's grant of authority for a storage facility
14 or carbon dioxide transmission pipeline shall be contingent upon
15 obtaining any necessary permits or authorizations from the
16 Department of Environmental Quality or other agencies prior to
17 commencing operation.

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

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

4 K. The Commission is authorized and empowered to adopt, modify,
5 repeal and enforce procedural, interpretive and legislative rules
6 relating to the certification of storage facilities and carbon
7 dioxide transmission pipelines authorized pursuant to this act and
8 shall define in such rule minor modifications that do not require an
9 amendment of an existing certificate of public convenience and
10 necessity.

11 L. A private operator that desires to become a commercial
12 operator shall file an application with the Commission for a
13 certificate of public convenience and necessity in the manner herein
14 provided, together with such other information as the Commission may
15 reasonably require by rule. In addition, the private operator shall
16 file proposed rates and terms and conditions of service. A private
17 operator shall not become a commercial operator until the Commission
18 has issued a certificate of public convenience and necessity and
19 accepted the initial rates and terms and conditions of service
20 subject to refund.

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

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

11 B. The use of a reservoir as a storage facility for carbon
12 dioxide is hereby authorized, provided that the Department shall
13 first issue a permit authorizing such proposed storage of carbon
14 dioxide after the applicant has obtained a certificate of public
15 convenience and necessity from the Corporation Commission pursuant
16 to this act.

17 C. Public notice required by this subsection shall be published
18 in a newspaper in general circulation in a county or counties where
19 the facility will be located. The applicant shall publish public
20 notice at the time of the filing of an application stating that such
21 an application has been filed and where the public can review the
22 application. The Department shall publish public notice upon
23 issuance of a draft permit stating where the public can review the

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

17 D. The Department shall issue and enforce such orders, and
18 shall adopt, modify, repeal and enforce such rules, including
19 establishment of appropriate and sufficient financial sureties or
20 bonds, as may be necessary, for the purpose of regulating the
21 drilling of wells related to a storage facility, the injection and
22 withdrawal of carbon dioxide, the operation of the storage facility,
23 well plugging and abandonment, and removal of surface buildings and

1 equipment of the storage facility and as necessary to protect the
2 storage facility against pollution, invasion, and the escape or
3 migration of carbon dioxide.

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

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

17 A. Any storage operator or pipeline operator is hereby
18 authorized, after obtaining any permit from the Department of
19 Environmental Quality required by this article and any certificate
20 of public convenience and necessity from the Corporation Commission
21 required by this act, to exercise the power of eminent domain to
22 acquire surface and subsurface rights and property interests
23 necessary or useful for the purpose of constructing, operating or

1 modifying the storage facility or carbon dioxide transmission
2 pipeline, including easements and rights-of-way across lands for
3 pipelines transporting carbon dioxide to and among facilities
4 constituting the storage facility. The right of eminent domain
5 shall be exercised in the same manner and by like proceedings as
6 provided for railroad corporations by the laws of this state.

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

16 C. The eminent domain authority authorized under this act shall
17 be in addition to any other power of eminent domain authorized by
18 law.

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

22 The right of condemnation and eminent domain hereby granted
23 shall be without prejudice to the rights of the owners of the lands

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

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

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

1 county wherein the person resides or is engaged in the activity
2 complained of.

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

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

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

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

21 SECTION 11. This act shall become effective January 1, 2011.

22 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated
23 2-12-09 - DO PASS, As Amended and Coauthored.