

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Carbon Dioxide Transportation and  
5 Sequestration Act is amended by adding Section 22 as follows:

6 (220 ILCS 75/22 new)

7 Sec. 22. Compensation for damages to the surface.

8 (a) An affected landowner is entitled to reasonable  
9 compensation from an applicant who has been granted a  
10 certificate of authority under this Act for damages resulting  
11 from access to the landowner's property for required  
12 activities taken to construct the pipeline, including, but not  
13 limited to, the following:

14 (1) compensation for damage to growing crops, trees,  
15 shrubs, fences, roads, structures, improvements, personal  
16 property, and livestock thereon and compensation for the  
17 loss of the value of a commercial crop impacted by  
18 pipeline installation; the value of the crop shall be  
19 calculated based on local market price by:

20 (A) determining the average per acre yield for the  
21 same crop on comparable adjacent acreage;

22 (B) determining the price received for the sale of  
23 the same crop on comparable adjacent acreage;

1           (C) determining the acreage of the area impacted  
2           by pipeline activities and applying the determined  
3           price; and

4           (D) making an initial determination of the value  
5           of the crop, which shall be determined by the affected  
6           landowner and submitted to the applicant who has been  
7           granted a certificate of authority under this Act;

8           (2) compensation to return the surface estate,  
9           including soil conservation practices, such as terraces,  
10           grassed waterways, and other conservation practices, to  
11           the condition of the surface prior to accessing the  
12           property;

13           (3) compensation for damage to the productive  
14           capability of the soil resulting from compaction or  
15           rutting if the parties are incapable of reaching  
16           resolution for such issues under the mitigation agreement  
17           detailed in paragraph (6) of subsection (b) of Section 20.

18           An applicant shall not access a property where excessively  
19           wet soil conditions would not allow normal farming  
20           operations due to increased risk of soil erosion, rutting,  
21           or compaction. The Department of Agriculture may  
22           temporarily halt construction or any other activities on a  
23           proposed pipeline upon a finding of an applicant's  
24           noncompliance with this paragraph. If there is a dispute  
25           between the applicant who has been granted a certificate  
26           of authority under this Act and the landowner regarding

1 the value of the damage to the productive capability of  
2 the soil, the applicant who has been granted a certificate  
3 of authority under this Act and the landowner shall  
4 consult with a representative of the soil and water  
5 conservation district in the respective county where the  
6 parcel of property is located for recommendations to  
7 restore the productive capability of the soil; and

8 (4) compensation for damage to surface and subsurface  
9 drainage, including, but not limited to:

10 (A) compensation in that the applicant who has  
11 been granted a certificate of authority under this Act  
12 shall perform immediate and temporary repairs for  
13 damage that occurs to subsurface drainage tiles that  
14 have water actively flowing through them at the time  
15 of damage; and

16 (B) compensation such that the applicant who has  
17 been granted a certificate of authority under this Act  
18 shall compensate the affected landowner to permanently  
19 restore drainage to the condition of the drainage  
20 prior to accessing the property.

21 (b) The compensation for damages required by subsection  
22 (a) shall be paid in any manner mutually agreed upon by the  
23 applicant who has been granted a certificate of authority  
24 under this Act and the affected landowners. Unless otherwise  
25 agreed, the applicant who has been granted a certificate of  
26 authority under this Act shall tender to the landowner payment

1 by check or draft no later than 60 days after completing the  
2 required activities under the application if the occurrence or  
3 value of damages is not disputed. The landowner's remedy for  
4 unpaid or disputed compensation shall be an action for damages  
5 in any court of competent jurisdiction for the parcel of  
6 property or the greater part thereof on which the activities  
7 were conducted, and the landowner shall be entitled to recover  
8 reasonable damages and attorney's fees if the landowner  
9 prevails.

10 (c) If any landowner prevails in litigation seeking  
11 compensation for damages under this Section, the applicant who  
12 has been granted a certificate of authority under this Act  
13 shall be responsible for such reasonable attorney's fees and  
14 costs as the court may allow and a judgment may be entered  
15 therefor in favor of the plaintiff if the attorney's fees and  
16 costs are not paid as provided by the court.

17 (d) Nothing in this Section shall have any impact on an  
18 applicant's fulfillment of the requirement to enter into an  
19 agreement with the Department of Agriculture that governs the  
20 mitigation of agricultural impacts associated with the  
21 construction of the proposed pipeline as detailed in paragraph  
22 (6) of subsection (b) of Section 20. An applicant shall comply  
23 with the requirements of the agreement that governs the  
24 mitigation of agricultural impacts as detailed in paragraph  
25 (6) of subsection (b) of Section 20.

1           Section 10. The Safety and Aid for the Environment in  
2 Carbon Capture and Sequestration Act is amended by changing  
3 Section 15 as follows:

4           (415 ILCS 185/15)

5           Sec. 15. Integration and unitization of ownership  
6 interests.

7           (a) If at least 2 pore space owners own pore space located  
8 within a proposed sequestration facility, the owners may agree  
9 to integrate the owners' interests to develop the pore space  
10 as a proposed sequestration facility for the underground  
11 sequestration of carbon dioxide.

12           (b) If all of the pore space owners within a proposed or  
13 permitted sequestration facility do not agree to integrate the  
14 pore space owners' interests, the sequestration operator may  
15 petition the Department of Natural Resources to issue an order  
16 requiring the pore space owners to integrate their interests  
17 and authorizing the sequestration operator or sequestration  
18 facility permit holder to develop and use the integrated pore  
19 space as a sequestration facility for carbon sequestration.  
20 Such an order for unitization and integration of pore space  
21 may only be issued if the sequestration operator has obtained  
22 the rights from pore space owners of pore space underlying at  
23 least 75% of the surface area above the proposed sequestration  
24 facility. The petition shall include, but is not limited to:

25           (1) the name and address of the petitioners;

1           (2) the property index numbers or legal descriptions  
2           for the parcels of property and a geologic description of  
3           the pore space within the proposed or permitted  
4           sequestration facility;

5           (3) a disclosure of any parcels of property overlying  
6           the pore space to be integrated, identified by property  
7           index numbers or legal descriptions, in which the  
8           applicant, any of its owners, officers, corporate  
9           subsidiaries, or parents, sister companies, or affiliates,  
10          at the time of submission of the application or within 10  
11          years prior to the submission of the application, have or  
12          had any real or personal interest, whether direct or  
13          indirect;

14          (4) the names and addresses of all pore space owners  
15          owning property within the proposed or permitted  
16          sequestration facility as disclosed by the records of the  
17          office of the recorder for the county or counties in which  
18          the proposed or permitted sequestration facility is  
19          situated and a list of consenting and nonconsenting pore  
20          space owners, as well as a list of all properties for which  
21          a pore space owner is unknown or nonlocatable;

22          (5) a statement that the petitioner has exercised due  
23          diligence to locate each pore space owner and to seek an  
24          agreement with each for pore space rights for the  
25          sequestration facility, including a description of the  
26          good faith efforts taken to identify, contact, and

1 negotiate with each nonconsenting pore space owner;

2 (6) a statement of the type of operations for the  
3 proposed or permitted sequestration facility;

4 (7) a plan for determining the quantity of pore space  
5 sequestration capacity to be assigned to each separately  
6 owned parcel of property based on the surface area acreage  
7 overlying the proposed or permitted sequestration facility  
8 and for using the surface for Class VI well permit  
9 required activities under Section 35;

10 (8) the method by which pore space owners will be  
11 compensated for use of the pore space, and a copy of all  
12 agreements entered into with consenting pore space owners  
13 regarding the compensation paid to a consenting pore space  
14 owner;

15 (9) the method by which nonconsenting pore space  
16 owners will receive just compensation; and

17 (10) a nonrefundable application fee of \$250,000.

18 The application fee shall be deposited into the Oil and  
19 Gas Resource Management Fund for the Department of Natural  
20 Resources' costs related to administration of this Act.

21 (c) If the petition for a unitization order concerns  
22 unknown or nonlocatable pore space owners, the applicant shall  
23 provide public notice once a week for 2 consecutive weeks in  
24 the newspaper of the largest circulation in each county in  
25 which the proposed sequestration facility is located within 30  
26 days prior to submission of the petition for a unitization and

1 integration order. The petitioner shall file proof of such  
2 notice with the Department of Natural Resources with the  
3 petition. The petitioner shall also provide public notice of  
4 the public hearing described in subsection (d) in the same  
5 manner within 30 days prior to the hearing on the petition for  
6 a unitization order. The petitioner shall also send notice of  
7 the filing of the petition and the notice of the public hearing  
8 via certified mail to the last known address of each  
9 nonlocatable pore space owner and provide copies of those  
10 notices to the Department of Natural Resources. The notice  
11 shall:

12 (1) state that a petition for a unitization and  
13 integration order has been filed with the Department of  
14 Natural Resources;

15 (2) describe the formation or formations and pore  
16 space proposed to be unitized;

17 (3) in the case of an unknown pore space owner,  
18 indicate the name of the last known pore space owner;

19 (4) in the case of a nonlocatable pore space owner,  
20 identify the pore space owner and the owner's last known  
21 address; and

22 (5) state that any person claiming an interest in the  
23 properties proposed to be unitized should notify the  
24 operator of the proposed sequestration facility at the  
25 published address within 20 days of the publication date.

26 Unknown or nonlocatable pore space owners that have not

1 claimed an interest by the time of the Department of Natural  
2 Resources' public notice in subsection (d) shall be deemed to  
3 have consented to unitization and integration of their pore  
4 space.

5 (d) Prior to issuing an order to unitize and integrate  
6 pore space, the Department of Natural Resources shall issue a  
7 public notice of the petition and shall hold a public hearing  
8 on the petition. The public notice shall include copies of the  
9 petition and all included attachments that are not protected  
10 under the Freedom of Information Act. The public notice shall  
11 include an opportunity for public comments and shall contain  
12 the date, time, and location of the public hearing as decided  
13 by the Department. At the public hearing, the Department shall  
14 allow interested persons to present views and comments on the  
15 petition. The hearings must be open to the public and recorded  
16 by stenographic or mechanical means. The Department of Natural  
17 Resources will make available on its website copies of all  
18 comments received.

19 (e) The Department of Natural Resources shall issue an  
20 order unitizing and integrating pore space under subsection  
21 (b) within 60 days after the hearing upon a showing that:

22 (1) the petitioner has obtained a Class VI well permit  
23 or, if the well permit application is still pending at  
24 least one year from the date the petition has been filed,  
25 that the petitioner has received a Finding of  
26 Administrative Completeness from the United States

1 Environmental Protection Agency;

2 (2) the petitioner has made a good faith effort to  
3 seek an agreement with all pore space owners located  
4 within the proposed or permitted sequestration facility;

5 (3) the petitioner has obtained the rights from pore  
6 space owners of at least 75% of the surface area above the  
7 proposed sequestration facility; and

8 (4) all nonconsenting pore space owners have received  
9 or will receive just compensation for use of the pore  
10 space and use of the surface for Class VI well permit  
11 required activities. Additionally, a nonconsenting pore  
12 space owner's ~~such~~ compensation shall be no less than the  
13 average total payment package, considered as a whole with  
14 respect to an individual owner, provided in agreements  
15 ~~during the previous 365 days~~ to similarly situated  
16 consenting pore space owners for use of their pore space  
17 by the same sequestration operator for the same  
18 sequestration project. The nonconsenting pore space  
19 owner's compensation shall include just compensation and  
20 any operations term or injection term payments made upon  
21 or after the initiation of injection provided to  
22 consenting pore space owners in consideration of allowing  
23 use of their pore space for sequestration of carbon  
24 dioxide, but ~~Such compensation~~ shall exclude any  
25 incentives, such as signing bonuses, provided to  
26 consenting pore space owners prior to the initiation of

1        ~~injection. Such compensation shall include any operations~~  
2        ~~term or injection term payments made upon or after the~~  
3        ~~initiation of injection provided to consenting pore space~~  
4        ~~owners in consideration of allowing use of their pore~~  
5        ~~space for sequestration of carbon dioxide.~~ In determining  
6        if pore space owners are similarly situated, the  
7        Department of Natural Resources shall take into account:  
8        the size, location, and proximity of the pore space; the  
9        geologic characteristics of the pore space; the  
10       restrictions on the use of the surface; the actual use of  
11       the surface; the relevant law applicable at the time the  
12       consenting pore space agreement was signed; title defects  
13       and title warranties; the proximity of the pore space  
14       owners' property to any carbon sequestration  
15       infrastructure on the surface; whether the injection  
16       interferes with any known mineral rights; and the fair  
17       market value of pore space when entering into a commercial  
18       contract. When evaluating the compensation provided to a  
19       similarly situated pore space owner, the Department of  
20       Natural Resources shall exclude any compensation provided  
21       to a pore space owner of a property identified by the  
22       applicant in paragraph (3) of subsection (b) and any  
23       compensation that was not provided as part of an arm's  
24       length transaction.

25       Unknown or nonlocatable pore space owners shall also  
26       receive just compensation in the same manner as provided

1 to the other nonconsenting pore space owners that must be  
2 held in a separate escrow account for 20 years for future  
3 payment to the previously unknown or nonlocatable pore  
4 space owner upon discovery of that owner. After 20 years,  
5 the compensation shall be transferred to the State  
6 Treasurer under the Revised Uniform Unclaimed Property  
7 Act.

8 (f) The Department of Natural Resources' order for  
9 unitization and integration of pore space under this Section  
10 is not effective until the petitioner has been issued a Class  
11 VI well permit from the United States Environmental Protection  
12 Agency and the carbon sequestration permit from the Illinois  
13 Environmental Protection Agency.

14 (g) An order for integration and unitization under this  
15 Section shall: provide for the unitization of the pore space  
16 identified in the petition; authorize the integration of pore  
17 space of nonconsenting pore space owners in the pore space  
18 identified; provide for who may unitize the pore space to  
19 establish a sequestration facility to be permitted by the  
20 Illinois Environmental Protection Agency; and make provision  
21 for payment of just compensation to nonconsenting pore space  
22 owner under the integration order.

23 (h) A petitioner shall provide a copy of any order for  
24 unitization and integration of pore space to the Illinois  
25 Environmental Protection Agency.

26 (i) If groundwater monitoring required by a Class VI

1 permit indicates that the source of drinking water has been  
2 rendered unsafe to drink or to provide to livestock, the  
3 sequestration operator shall provide an alternate supply of  
4 potable drinking water within 24 hours of the monitoring  
5 results becoming available and an alternate supply of water  
6 that is safe for other uses necessary within 30 days of the  
7 monitoring results becoming available. The alternate supplies  
8 of both potable water and water that is safe for other uses  
9 shall continue until additional monitoring by the  
10 sequestration operator shows that the water is safe for  
11 drinking and other uses.

12 (j) After an order for unitization and integration of pore  
13 space is issued, the petitioner shall request that the  
14 Department of Natural Resources issue separate orders  
15 establishing the amount of just compensation to be provided to  
16 each nonconsenting pore space owner. When submitting this  
17 request, the petitioner shall provide information  
18 demonstrating the good faith efforts taken to negotiate an  
19 agreement with the nonconsenting pore space owner, including,  
20 but not limited to, the number and extent of the petitioner's  
21 contacts with the pore space owner, whether the petitioner  
22 explained the compensation offer to the pore space owner,  
23 whether the compensation offer was comparable to similarly  
24 situated pore space owners, what efforts were made to address  
25 the pore space owner's concerns, and the likelihood that  
26 further negotiations would be successful. All orders requiring

1 the provision of just compensation shall be made after notice  
2 and hearing in which the Department of Natural Resources shall  
3 determine the appropriate amount of just compensation to be  
4 provided to each nonconsenting pore space owner as described  
5 in this Section. The Department shall adopt reasonable rules  
6 governing such hearings as may be necessary. In such a  
7 hearing, the burden shall be on the petitioner to prove the  
8 appropriate amount of just compensation consistent with this  
9 Section. Both the petitioner and the pore space owner shall be  
10 permitted to provide testimony and evidence regarding the  
11 appropriateness of the amount of just compensation proposed by  
12 the sequestration operator. An order by the Department of  
13 Natural Resources establishing the appropriate amount of just  
14 compensation to be provided to a nonconsenting pore space  
15 owner shall be a final agency decision subject to judicial  
16 review under the Administrative Review Law. Such proceedings  
17 for judicial review may be commenced in the circuit court of  
18 the county in which any part of the pore space is situated. The  
19 Department of Natural Resources shall not be required to  
20 certify any record to the court or file any answer in court or  
21 otherwise appear in any court in a judicial review proceeding,  
22 unless there is filed in the court with the complaint a receipt  
23 from the Department of Natural Resources acknowledging payment  
24 of the costs of furnishing and certifying the record. Failure  
25 on the part of the plaintiff to file such receipt in court  
26 shall be grounds for dismissal of the action.

1 (Source: P.A. 103-651, eff. 7-18-24.)