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10400SB1697sam002

LRB104 09225 AAS 26415 a

1 AMENDMENT TO SENATE BILL 1697

2 AMENDMENT NO. _____. Amend Senate Bill 1697, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 (220 ILCS 75/22 new)

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

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

15 (1) compensation for damage to growing crops, trees,
16 shrubs, fences, roads, structures, improvements, personal

1 property, and livestock thereon and compensation for the
2 loss of the value of a commercial crop impacted by
3 pipeline installation; the value of the crop shall be
4 calculated based on local market price by:

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

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

9 (C) determining the acreage of the area impacted
10 by pipeline activities and applying the determined
11 price; and

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

16 (2) compensation to return the surface estate,
17 including soil conservation practices, such as terraces,
18 grassed waterways, and other conservation practices, to
19 the condition of the surface prior to accessing the
20 property;

21 (3) compensation for damage to the productive
22 capability of the soil resulting from compaction or
23 rutting if the parties are incapable of reaching
24 resolution for such issues under the mitigation agreement
25 detailed in paragraph (6) of subsection (b) of Section 20.

26 An applicant shall not access a property where excessively

1 wet soil conditions would not allow normal farming
2 operations due to increased risk of soil erosion, rutting,
3 or compaction. The Department of Agriculture may
4 temporarily halt construction or any other activities on a
5 proposed pipeline upon a finding of an applicant's
6 noncompliance with this paragraph. If there is a dispute
7 between the applicant who has been granted a certificate
8 of authority under this Act and the landowner regarding
9 the value of the damage to the productive capability of
10 the soil, the applicant who has been granted a certificate
11 of authority under this Act and the landowner shall
12 consult with a representative of the soil and water
13 conservation district in the respective county where the
14 parcel of property is located for recommendations to
15 restore the productive capability of the soil; and

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

18 (A) compensation in that the applicant who has
19 been granted a certificate of authority under this Act
20 shall perform immediate and temporary repairs for
21 damage that occurs to subsurface drainage tiles that
22 have water actively flowing through them at the time
23 of damage; and

24 (B) compensation such that the applicant who has
25 been granted a certificate of authority under this Act
26 shall compensate the affected landowner to permanently

1 restore drainage to the condition of the drainage
2 prior to accessing the property.

3 (b) The compensation for damages required by subsection
4 (a) shall be paid in any manner mutually agreed upon by the
5 applicant who has been granted a certificate of authority
6 under this Act and the affected landowners. Unless otherwise
7 agreed, the applicant who has been granted a certificate of
8 authority under this Act shall tender to the landowner payment
9 by check or draft no later than 60 days after completing the
10 required activities under the application if the occurrence or
11 value of damages is not disputed. The landowner's remedy for
12 unpaid or disputed compensation shall be an action for damages
13 in any court of competent jurisdiction for the parcel of
14 property or the greater part thereof on which the activities
15 were conducted, and the landowner shall be entitled to recover
16 reasonable damages and attorney's fees if the landowner
17 prevails.

18 (c) If any landowner prevails in litigation seeking
19 compensation for damages under this Section, the applicant who
20 has been granted a certificate of authority under this Act
21 shall be responsible for such reasonable attorney's fees and
22 costs as the court may allow and a judgment may be entered
23 therefor in favor of the plaintiff if the attorney's fees and
24 costs are not paid as provided by the court.

25 (d) Nothing in this Section shall have any impact on an
26 applicant's fulfillment of the requirement to enter into an

1 agreement with the Department of Agriculture that governs the
2 mitigation of agricultural impacts associated with the
3 construction of the proposed pipeline as detailed in paragraph
4 (6) of subsection (b) of Section 20. An applicant shall comply
5 with the requirements of the agreement that governs the
6 mitigation of agricultural impacts as detailed in paragraph
7 (6) of subsection (b) of Section 20.

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

11 (415 ILCS 185/15)

12 Sec. 15. Integration and unitization of ownership
13 interests.

14 (a) If at least 2 pore space owners own pore space located
15 within a proposed sequestration facility, the owners may agree
16 to integrate the owners' interests to develop the pore space
17 as a proposed sequestration facility for the underground
18 sequestration of carbon dioxide.

19 (b) If all of the pore space owners within a proposed or
20 permitted sequestration facility do not agree to integrate the
21 pore space owners' interests, the sequestration operator may
22 petition the Department of Natural Resources to issue an order
23 requiring the pore space owners to integrate their interests
24 and authorizing the sequestration operator or sequestration

1 facility permit holder to develop and use the integrated pore
2 space as a sequestration facility for carbon sequestration.
3 Such an order for unitization and integration of pore space
4 may only be issued if the sequestration operator has obtained
5 the rights from pore space owners of pore space underlying at
6 least 75% of the surface area above the proposed sequestration
7 facility. The petition shall include, but is not limited to:

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

9 (2) the property index numbers or legal descriptions
10 for the parcels of property and a geologic description of
11 the pore space within the proposed or permitted
12 sequestration facility;

13 (3) a disclosure of any parcels of property overlying
14 the pore space to be integrated, identified by property
15 index numbers or legal descriptions, in which the
16 applicant, any of its owners, officers, corporate
17 subsidiaries, or parents, sister companies, or affiliates,
18 at the time of submission of the application or within 10
19 years prior to the submission of the application, have or
20 had any real or personal interest, whether direct or
21 indirect;

22 (4) the names and addresses of all pore space owners
23 owning property within the proposed or permitted
24 sequestration facility as disclosed by the records of the
25 office of the recorder for the county or counties in which
26 the proposed or permitted sequestration facility is

1 situated and a list of consenting and nonconsenting pore
2 space owners, as well as a list of all properties for which
3 a pore space owner is unknown or nonlocatable;

4 (5) a statement that the petitioner has exercised due
5 diligence to locate each pore space owner and to seek an
6 agreement with each for pore space rights for the
7 sequestration facility, including a description of the
8 good faith efforts taken to identify, contact, and
9 negotiate with each nonconsenting pore space owner;

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

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

18 (8) the method by which pore space owners will be
19 compensated for use of the pore space, and a copy of all
20 agreements entered into with consenting pore space owners
21 regarding the compensation paid to a consenting pore space
22 owner;

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

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

26 The application fee shall be deposited into the Oil and

1 Gas Resource Management Fund for the Department of Natural
2 Resources' costs related to administration of this Act.

3 (c) If the petition for a unitization order concerns
4 unknown or nonlocatable pore space owners, the applicant shall
5 provide public notice once a week for 2 consecutive weeks in
6 the newspaper of the largest circulation in each county in
7 which the proposed sequestration facility is located within 30
8 days prior to submission of the petition for a unitization and
9 integration order. The petitioner shall file proof of such
10 notice with the Department of Natural Resources with the
11 petition. The petitioner shall also provide public notice of
12 the public hearing described in subsection (d) in the same
13 manner within 30 days prior to the hearing on the petition for
14 a unitization order. The petitioner shall also send notice of
15 the filing of the petition and the notice of the public hearing
16 via certified mail to the last known address of each
17 nonlocatable pore space owner and provide copies of those
18 notices to the Department of Natural Resources. The notice
19 shall:

20 (1) state that a petition for a unitization and
21 integration order has been filed with the Department of
22 Natural Resources;

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

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

1 (4) in the case of a nonlocatable pore space owner,
2 identify the pore space owner and the owner's last known
3 address; and

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

8 Unknown or nonlocatable pore space owners that have not
9 claimed an interest by the time of the Department of Natural
10 Resources' public notice in subsection (d) shall be deemed to
11 have consented to unitization and integration of their pore
12 space.

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

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

4 (1) the petitioner has obtained a Class VI well permit
5 or, if the well permit application is still pending at
6 least one year from the date the petition has been filed,
7 that the petitioner has received a Finding of
8 Administrative Completeness from the United States
9 Environmental Protection Agency;

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

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

16 (4) all nonconsenting pore space owners have received
17 or will receive just compensation for use of the pore
18 space and use of the surface for Class VI well permit
19 required activities. Additionally, a nonconsenting pore
20 space owner's ~~such~~ compensation shall be no less than the
21 average total payment package, considered as a whole with
22 respect to an individual owner, provided in agreements
23 ~~during the previous 365 days~~ to similarly situated
24 consenting pore space owners for use of their pore space
25 by the same sequestration operator for the same
26 sequestration project. The nonconsenting pore space

1 owner's compensation shall include just compensation and
2 any operations term or injection term payments made upon
3 or after the initiation of injection provided to
4 consenting pore space owners in consideration of allowing
5 use of their pore space for sequestration of carbon
6 dioxide, but ~~Such compensation shall exclude any~~
7 incentives, such as signing bonuses, provided to
8 consenting pore space owners prior to the initiation of
9 injection. ~~Such compensation shall include any operations~~
10 ~~term or injection term payments made upon or after the~~
11 ~~initiation of injection provided to consenting pore space~~
12 ~~owners in consideration of allowing use of their pore~~
13 ~~space for sequestration of carbon dioxide.~~ In determining
14 if pore space owners are similarly situated, the
15 Department of Natural Resources shall take into account:
16 the size, location, and proximity of the pore space; the
17 geologic characteristics of the pore space; the
18 restrictions on the use of the surface; the actual use of
19 the surface; the relevant law applicable at the time the
20 consenting pore space agreement was signed; title defects
21 and title warranties; the proximity of the pore space
22 owners' property to any carbon sequestration
23 infrastructure on the surface; whether the injection
24 interferes with any known mineral rights; and the fair
25 market value of pore space when entering into a commercial
26 contract. When evaluating the compensation provided to a

1 similarly situated pore space owner, the Department of
2 Natural Resources shall exclude any compensation provided
3 to a pore space owner of a property identified by the
4 applicant in paragraph (3) of subsection (b) and any
5 compensation that was not provided as part of an arm's
6 length transaction.

7 Unknown or nonlocatable pore space owners shall also
8 receive just compensation in the same manner as provided
9 to the other nonconsenting pore space owners that must be
10 held in a separate escrow account for 20 years for future
11 payment to the previously unknown or nonlocatable pore
12 space owner upon discovery of that owner. After 20 years,
13 the compensation shall be transferred to the State
14 Treasurer under the Revised Uniform Unclaimed Property
15 Act.

16 (f) The Department of Natural Resources' order for
17 unitization and integration of pore space under this Section
18 is not effective until the petitioner has been issued a Class
19 VI well permit from the United States Environmental Protection
20 Agency and the carbon sequestration permit from the Illinois
21 Environmental Protection Agency.

22 (g) An order for integration and unitization under this
23 Section shall: provide for the unitization of the pore space
24 identified in the petition; authorize the integration of pore
25 space of nonconsenting pore space owners in the pore space
26 identified; provide for who may unitize the pore space to

1 establish a sequestration facility to be permitted by the
2 Illinois Environmental Protection Agency; and make provision
3 for payment of just compensation to nonconsenting pore space
4 owner under the integration order.

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

8 (i) If groundwater monitoring required by a Class VI
9 permit indicates that the source of drinking water has been
10 rendered unsafe to drink or to provide to livestock, the
11 sequestration operator shall provide an alternate supply of
12 potable drinking water within 24 hours of the monitoring
13 results becoming available and an alternate supply of water
14 that is safe for other uses necessary within 30 days of the
15 monitoring results becoming available. The alternate supplies
16 of both potable water and water that is safe for other uses
17 shall continue until additional monitoring by the
18 sequestration operator shows that the water is safe for
19 drinking and other uses.

20 (j) After an order for unitization and integration of pore
21 space is issued, the petitioner shall request that the
22 Department of Natural Resources issue separate orders
23 establishing the amount of just compensation to be provided to
24 each nonconsenting pore space owner. When submitting this
25 request, the petitioner shall provide information
26 demonstrating the good faith efforts taken to negotiate an

1 agreement with the nonconsenting pore space owner, including,
2 but not limited to, the number and extent of the petitioner's
3 contacts with the pore space owner, whether the petitioner
4 explained the compensation offer to the pore space owner,
5 whether the compensation offer was comparable to similarly
6 situated pore space owners, what efforts were made to address
7 the pore space owner's concerns, and the likelihood that
8 further negotiations would be successful. All orders requiring
9 the provision of just compensation shall be made after notice
10 and hearing in which the Department of Natural Resources shall
11 determine the appropriate amount of just compensation to be
12 provided to each nonconsenting pore space owner as described
13 in this Section. The Department shall adopt reasonable rules
14 governing such hearings as may be necessary. In such a
15 hearing, the burden shall be on the petitioner to prove the
16 appropriate amount of just compensation consistent with this
17 Section. Both the petitioner and the pore space owner shall be
18 permitted to provide testimony and evidence regarding the
19 appropriateness of the amount of just compensation proposed by
20 the sequestration operator. An order by the Department of
21 Natural Resources establishing the appropriate amount of just
22 compensation to be provided to a nonconsenting pore space
23 owner shall be a final agency decision subject to judicial
24 review under the Administrative Review Law. Such proceedings
25 for judicial review may be commenced in the circuit court of
26 the county in which any part of the pore space is situated. The

1 Department of Natural Resources shall not be required to
2 certify any record to the court or file any answer in court or
3 otherwise appear in any court in a judicial review proceeding,
4 unless there is filed in the court with the complaint a receipt
5 from the Department of Natural Resources acknowledging payment
6 of the costs of furnishing and certifying the record. Failure
7 on the part of the plaintiff to file such receipt in court
8 shall be grounds for dismissal of the action.

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