



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2005

Introduced 2/26/2021, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.935 new

Creates the Carbon Dioxide Geologic Storage Act. Provides that the Act applies to carbon dioxide injections that commence on or after January 1, 2021. Provides that a storage operator may not operate a storage facility without a storage facility permit issued by the Department of Natural Resources. Includes provisions regarding: ownership and conveyance of pore space; ownership requirements; amalgamating property interests; mineral interests; title to carbon dioxide prior to certificate of completion; scope and remedy for claims of subsurface trespass; project completion and title transfer; enhanced recovery projects; Department powers and home rule; and restraint of trade. Limits home rule powers. Creates the Illinois Geologic Sequestration Special Fund. Makes a corresponding change in the State Finance Act.

LRB102 15992 LNS 21362 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

1 AN ACT concerning property.

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

4 Section 1. Short title. This Act may be cited as the Carbon
5 Dioxide Geologic Storage Act.

6 Section 5. Statement of policy. It is in the public
7 interest to promote the geologic storage of carbon dioxide.
8 Doing so will help ensure the viability of State industries
9 and will promote economic development in this State.

10 To be practical and effective, geologic storage of carbon
11 dioxide requires cooperative use of surface and subsurface
12 property interests often across large areas. It is therefore
13 in the public interest to employ procedures that promote, in a
14 manner fair to all interests, the use of all pore space in a
15 clearly defined reservoir to ensure comprehensive management
16 of the reservoir and the efficient use of natural resources.
17 It is important that rules governing the use and development
18 of subsurface pore space be consistent with both established
19 precedents and subsurface private property rights.

20 Section 10. Definitions. As used in this Act:

21 "Area of review" means the area of review as required to be
22 delineated in the storage operator's federal Underground

1 Injection Control (UIC) program Class VI permit.

2 "Carbon dioxide injection well" means a well that is used
3 to inject carbon dioxide into a reservoir for geologic
4 storage.

5 "Carbon dioxide plume" means the extent underground, in 3
6 dimensions, of an injected carbon dioxide stream.

7 "Department" means the Department of Natural Resources.

8 "Geologic storage" means the underground storage of carbon
9 dioxide in a reservoir.

10 "Mineral owner" means, as identified in the records of the
11 recorder of deeds for each county containing some portion of
12 the proposed reservoir, any owner of a whole or fractional
13 interest in any or all minerals in real property above, below,
14 or within the proposed reservoir that has been severed from
15 the surface estate by grant, exception, reservation, lease, or
16 other means.

17 "Pore space" means subsurface cavities or voids that can
18 be used as storage space for carbon dioxide.

19 "Pore space owner" means the person, trust, corporation,
20 or other entity who has title to the pore space.

21 "Storage facility" means the subsurface area consisting of
22 the extent of the modeled carbon dioxide plume, as required to
23 be delineated in the storage operator's federal UIC program
24 Class VI permit.

25 "Storage facility permit" means a permit issued by the
26 Department allowing a person to establish and operate a

1 storage facility.

2 "Storage operator" means a person holding or applying for
3 a storage facility permit under this Act and holding or
4 applying for a UIC permit for the injection of carbon dioxide.

5 "Surface owner" means, as identified in the records of the
6 recorder of deeds for each county containing any portion of
7 the proposed storage facility, any owner of a whole or
8 undivided fee simple interest or other freehold interest,
9 which may or may not include mineral rights, in the surface
10 above the proposed storage facility, but does not include an
11 owner of a right-of-way, easement, leasehold, or any other
12 lesser estate.

13 "UIC permit" means an Underground Injection Control permit
14 authorized under the federal Safe Drinking Water Act's
15 Underground Injection Control (UIC) Program that allows a
16 person to operate a carbon dioxide injection well.

17 Section 15. Applicability. This Act applies only to carbon
18 dioxide injections that commence on or after January 1, 2021.

19 Section 20. Storage facility permit.

20 (a) A storage operator may not operate a storage facility
21 in this State without a valid storage facility permit issued
22 by the Department. A storage facility permit may be
23 transferred or assigned from one storage operator to another.
24 Each permit is valid for 5 years after issuance.

1 (b) The Department shall issue or renew a storage facility
2 permit if the storage operator has paid the first year's
3 annual fee required by subsection (c) and has met the
4 requirements of Section 30. In addition, the Department shall
5 issue a storage facility permit following the public hearing
6 described in subsection (f) upon its determination that:

7 (1) the storage facility permit is in the public
8 interest; and

9 (2) to the extent the storage facility contains
10 commercially valuable minerals, the interests of the
11 mineral lessee or owner will not be adversely affected or
12 have been addressed in an arrangement between the interest
13 holder and the storage operator.

14 (c) The storage operator shall provide the Department an
15 estimate of the amount of carbon dioxide to be injected into a
16 storage facility for the period of the permit at the time of
17 application for a storage facility permit. On an annual basis,
18 a storage operator shall pay to the Department a fee of \$0.08
19 per ton of carbon dioxide estimated to be injected into a
20 storage facility. Each year the storage operator shall
21 reconcile the past year's payment with the volume of carbon
22 dioxide injected into a storage facility the previous year.
23 The storage operator shall submit payment for the amount
24 injected above the storage operator's estimate for the
25 previous year. If the amount of carbon dioxide injected into a
26 storage facility is less than the amount estimated, the

1 Department shall refund the storage operator any overpayment.

2 (d) The Department may require a storage operator to make
3 records available to the Department relating to the amount of
4 carbon dioxide injected into a storage facility to ensure
5 compliance with the fee requirements of subsection (c).

6 (e) The fees collected in subsection (c) shall be
7 deposited into the Illinois Geologic Sequestration Special
8 Fund.

9 (f) Prior to issuing a storage facility permit, the
10 Department shall hold a public hearing. At least 30 days prior
11 to the hearing, notice of the hearing shall first be published
12 in the official newspaper of the county or counties where the
13 area of review is proposed to be located and in other print or
14 online publications as required by the Department, consistent
15 with the requirements of the Notice By Publication Act. Notice
16 shall be published daily for 2 consecutive weeks. At least 30
17 days prior to the hearing, notice of the hearing must be given
18 to:

19 (1) each surface owner of land overlying the storage
20 facility and within one-half mile of the storage
21 facility's boundaries;

22 (2) each mineral lessee or mineral owner with property
23 interests within one-half mile of the storage facility's
24 boundaries; and

25 (3) any pore space owners within the storage facility
26 and within one-half mile of the storage facility's

1 boundaries.

2 Any objections to the issuance of the storage facility's
3 permit not raised at the public hearing shall be waived.

4 Section 25. Ownership and conveyance of pore space.

5 (a) For real property that was divided into a surface
6 estate and a mineral estate before the effective date of this
7 Act, nothing in this Section shall alter, amend, diminish, or
8 invalidate rights to the use of pore space that were
9 explicitly acquired by conveyance document. Any such rights to
10 the use of pore space that were not explicitly acquired remain
11 vested in the surface estate.

12 (b) For real property that is divided into a surface
13 estate and a mineral estate on or after the effective date of
14 this Act, rights to the use of pore space shall remain vested
15 in the surface estate unless such rights are explicitly
16 conveyed.

17 (c) Grants of an easement to use or a lease of pore space
18 for geologic storage shall be in perpetuity if so specified,
19 except to the extent the grantee relinquishes the easement or
20 lease because the pore space was not utilized for geologic
21 storage purposes.

22 (d) Any conveyance of rights pertaining to pore space
23 shall not confer any right to enter upon or otherwise use the
24 surface of the land unless the conveyance document expressly
25 so provides.

1 Section 30. Ownership requirements.

2 (a) No storage facility permit shall be issued unless the
3 storage operator owns, or has obtained grants of easements or
4 leaseholds for, all of the pore space in a storage facility.

5 (b) If a storage operator owns, or has obtained grants of
6 easement or leaseholds for, more than 50% but less than 100% of
7 the areal extent of pore space within a proposed storage
8 facility, the storage operator may apply to the Department to
9 amalgamate the remaining property interests.

10 Section 35. Amalgamating property interests.

11 (a) If a storage operator has applied to the Department to
12 amalgamate any remaining property interests in a storage
13 facility, the Department shall:

14 (1) notify any and all nonconsenting property owners
15 who own property interests to be amalgamated;

16 (2) within 120 days, but no less than 60 days after the
17 filing of the application, the Department shall conduct a
18 hearing to determine the fair market value of each
19 property owner's pore space to be amalgamated. The storage
20 operator and each property owner has the right to present
21 evidence as to the value of the pore space, including, but
22 not limited to, the economic benefits to the storage
23 operator, and to be represented by an attorney; and

24 (3) after the hearing, issue an order determining the

1 fair market value of each nonconsenting owner's pore
2 space.

3 (b) Upon payment by the storage operator to the Department
4 of the total fair market value of the pore space to be
5 amalgamated, the storage operator shall be granted a permanent
6 easement by the Department upon the pore space. The Department
7 shall record the easement with the appropriate county recorder
8 of deeds. The Department shall remit funds received from the
9 storage operator to each property owner consistent with the
10 Department's determination of fair market value.

11 (c) Any easement granted under this Section shall not
12 include the right to use the surface above a nonconsenting
13 property owner's pore space.

14 (d) The Department has the authority to grant a permanent
15 easement to State-owned pore space to a storage facility.

16 Section 40. Mineral interests. With the written consent of
17 the storage operator, a mineral owner may drill through or
18 near a storage facility to explore for or extract minerals if
19 the drilling, extraction, and related activities are conducted
20 in cooperation with the storage operator and in compliance
21 with:

22 (1) Department requirements that preserve the storage
23 facility's integrity; and

24 (2) all requirements of the storage operator's UIC permit.

1 Section 45. Title to carbon dioxide prior to certificate
2 of completion. Absent conveyance documents to the contrary,
3 the storage operator has title to the carbon dioxide injected
4 into and stored in a storage facility and holds title until the
5 Department issues a certificate of completion.

6 Section 50. Scope and remedy for claims of subsurface
7 trespass.

8 (a) A claim of subsurface trespass shall not be actionable
9 against a storage operator conducting geologic storage in
10 accordance with a valid UIC permit and storage facility permit
11 unless the injection or migration of carbon dioxide materially
12 impairs interests outside the storage facility.

13 (b) A surface or subsurface property interest holder shall
14 be permitted to recover money damages only for loss of a
15 nonspeculative value resulting from the injection and
16 migration of carbon dioxide beyond the storage facility.

17 (c) Punitive damages shall be barred if the storage
18 operator acts in all material respects in compliance with the
19 operational and monitoring requirements of the UIC permit.

20 Section 55. Project completion and title transfer.

21 (a) After carbon dioxide injections at a storage facility
22 permanently cease, the storage operator may apply for a
23 certificate of completion. Before issuing a certificate of
24 completion, the Department, in consultation with the issuer of

1 the UIC permit, shall find that:

2 (1) the storage operator is in full compliance with
3 all laws governing the storage facility, including any
4 ongoing UIC permit requirements;

5 (2) the storage operator addressed all pending claims,
6 if any, regarding escape, release, leakage, or any similar
7 migration of carbon dioxide outside the storage facility;

8 (3) all carbon dioxide injection wells are plugged,
9 associated equipment and facilities are removed, and
10 reclamation work is completed as required by the UIC
11 permit issuer or the Department;

12 (4) the carbon dioxide in the reservoir is stable,
13 which means that it is essentially stationary or, if it is
14 migrating or may migrate, any migration will be unlikely
15 to be outside of the storage facility, or to the extent
16 beyond the area of review, the plume does not pose a risk
17 of endangerment to underground sources of drinking water,
18 consistent with Class VI permit requirements; and

19 (5) all monitoring wells, equipment, and facilities to
20 be used in the post-closure period are in good condition
21 and retain mechanical integrity.

22 (b) If the Department does not complete the review of a
23 certificate of completion application within 90 days after
24 receipt, including the public notice and input deemed
25 appropriate by the Department, then the certificate of
26 completion shall be deemed issued at the end of the 90-day

1 period. If the Department does not find that the requirements
2 in subsection (a) are met, then it may decline the application
3 or require amendment to the application before granting the
4 certificate of completion. If the Department requires
5 amendment to the application, then the storage operator shall
6 have 30 days to submit an amended application. Upon receipt of
7 the amended application, the Department shall have 30 days to
8 either grant or decline to grant the certificate of completion
9 or the certificate of completion. The Department's failure to
10 timely issue a certificate of completion or denial of a
11 certificate of completion shall be considered final agency
12 action reviewable in the county court in the jurisdiction in
13 which the storage facility is located.

14 (c) The Department may charge a fee to the storage
15 operator for reviewing the certificate of completion
16 application. The fee shall be in the amount set by Department
17 rule. The amount shall be based on the Department's
18 anticipated expenses that it shall incur in reviewing the
19 certificate of completion application and shall not exceed
20 \$10,000.

21 (d) Once a certificate of completion is issued, the
22 following occurs:

23 (1) Title to the storage facility and to the stored
24 carbon dioxide transfers, without compensation, to the
25 State.

26 (2) Title acquired by the State includes all rights

1 and interests in, and all responsibilities, including
2 regulatory requirements associated with, the stored carbon
3 dioxide, so long as the State and the storage operator may
4 contractually agree that the storage operator shall
5 continue to comply with regulatory requirements associated
6 with the storage facility on the State's behalf.

7 (3) The storage operator and, to the extent the owner
8 is a separate entity from the storage operator, the owner
9 of the geologic storage site, including the owner of any
10 surface and subsurface infrastructure associated with the
11 storage facility, are released from and the State assumes
12 all regulatory requirements and liability associated with
13 the storage facility.

14 (4) Monitoring and managing the storage facility is
15 the State's responsibility to be overseen by the
16 Department unless and until the federal government assumes
17 responsibility for the long-term monitoring and management
18 of storage facilities. Upon federal government assumption
19 of responsibility, funds in the Illinois Geologic
20 Sequestration Special Fund shall be transferred to any
21 such parallel fund under federal law for purposes of
22 long-term monitoring and management of storage facilities.
23 To the extent such a fund does not exist, the State shall
24 refund the fees contributed by the storage operators to
25 each party.

26 (5) If the federal government has not assumed

1 responsibility for the long-term monitoring and management
2 of storage facilities, then the Illinois Geologic
3 Sequestration Special Fund shall be used for the purposes
4 of monitoring and managing the storage facilities and any
5 other responsibility associated with the stored carbon
6 dioxide.

7 Section 60. Enhanced recovery projects. This Act does not
8 apply to applications filed with the Department proposing to
9 use carbon dioxide for an enhanced oil or gas recovery
10 project. Such applications shall be processed pursuant the
11 Illinois Oil and Gas Act.

12 Section 65. Department powers; home rule. The Department
13 may adopt rules and issue orders to enforce this Act. The
14 Department may authorize its employees, qualified by training
15 and experience, to perform the powers and duties set forth in
16 this Act. No agency of State government or political
17 subdivision of the State may regulate geologic storage except
18 as expressly authorized under this Act; so long as nothing in
19 this Section 65 restricts or interferes with the Illinois
20 Environmental Protection Agency's authority to:

21 (1) issue any necessary permits for operation of
22 aboveground facilities associated with the geologic storage
23 project; or

24 (2) issue permits under the UIC program and inspect

1 geologic storage sites pursuant to Section 13.7 of the
2 Environmental Protection Act. To the extent there is any
3 inconsistency between this Act and Section 13.7 of the
4 Environmental Protection Act, this Act shall control.

5 This Section is a limitation under subsection (i) of
6 Section 6 of Article VII of the Illinois Constitution on the
7 concurrent exercise by home rule units of powers and functions
8 exercised by the State.

9 Section 70. Restraint of trade. None of the rights and
10 responsibilities pursuant to this Act shall be held or
11 construed to violate any of the statutes of this State
12 relating to trusts, monopolies, or contracts and combinations
13 in the restraint of trade.

14 Section 75. Illinois Geologic Sequestration Special Fund.
15 The Illinois Geologic Sequestration Special Fund is created as
16 a special fund in the State treasury. The Fund shall consist of
17 any money deposited into the Fund as provided in subsection
18 (e) of Section 20. Money in the Fund shall be used for the
19 administration of this Act and for no other purpose. All
20 interest earned on money in the Fund shall be deposited into
21 the Fund.

22 Section 97. Severability. The provisions of this Act are
23 severable under Section 1.31 of the Statute on Statutes.

1 Section 905. The State Finance Act is amended by adding
2 Section 5.935 as follows:

3 (30 ILCS 105/5.935 new)

4 Sec. 5.935. The Illinois Geologic Sequestration Special
5 Fund.