

AN ACT concerning regulation.

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

Section 1. Short title. This Act may be cited as the Carbon Dioxide Transportation and Sequestration Act.

Section 5. Legislative purpose. Pipeline transportation of carbon dioxide for sequestration, enhanced oil recovery, and other purposes is declared to be a public use and service, in the public interest, and a benefit to the welfare of Illinois and the people of Illinois because pipeline transportation is necessary for sequestration, enhanced oil recovery, or other carbon management purposes and thus is an essential component to compliance with required or voluntary plans to reduce carbon dioxide emissions from "clean coal" facilities and other sources. Carbon dioxide pipelines are critical to the promotion and use of Illinois coal and also advance economic development, environmental protection, and energy security in the State.

Section 10. Definitions. As used in this Act:

"Carbon dioxide pipeline" or "pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that are used exclusively for the purpose of transporting carbon dioxide to a point of sale,

storage, enhanced oil recovery, or other carbon management application.

"Clean coal facility" has the meaning ascribed to that term in Section 1-10 of the Illinois Power Agency Act.

"Clean coal SNG facility" has the meaning ascribed to that term in Section 1-10 of the Illinois Power Agency Act.

"Commission" means the Illinois Commerce Commission.

"Sequester" has the meaning ascribed to that term in Section 1-10 of the Illinois Power Agency Act.

"Transportation" means the physical movement of carbon dioxide by pipeline conducted for a person's own use or account or the use or account of another person or persons.

Section 15. Scope. This Act applies to the application process for the issuance of a certificate of authority by an owner or operator of a pipeline designed, constructed, and operated to transport and to sequester carbon dioxide produced by a clean coal facility, by a clean coal SNG facility, or by any other source that will result in the reduction of carbon dioxide emissions from that source.

Section 20. Application.

(a) No person or entity may construct, operate, or repair a carbon dioxide pipeline unless the person or entity possesses a certificate of authority.

(b) The Commission, after a hearing, may grant an

application for a certificate of authority authorizing the construction and operation of a carbon dioxide pipeline if it makes a specific written finding as to each of the following:

(1) the application was properly filed;

(2) the applicant is fit, willing, and able to construct and operate the pipeline in compliance with this Act and with Commission regulations and orders of the Commission or any applicable federal agencies;

(3) the applicant has entered into an agreement with a clean coal facility, a clean coal SNG facility, or any other source that will result in the reduction of carbon dioxide emissions from that source;

(4) the applicant has filed with the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation all forms required by that agency in advance of constructing a carbon dioxide pipeline;

(5) the applicant has filed with the U.S. Army Corps of Engineers all applications for permits required by that agency in advance of constructing a carbon dioxide pipeline;

(6) the applicant has entered into an agreement with the Illinois Department of Agriculture that governs the mitigation of agricultural impacts associated with the construction of the proposed pipeline;

(7) the applicant possesses the financial, managerial,

legal, and technical qualifications necessary to construct and operate the proposed carbon dioxide pipeline; and

(8) the proposed pipeline is consistent with the public interest, public benefit, and legislative purpose as set forth in this Act. In addition to any other evidence the Commission may consider on this specific finding, the Commission shall consider the following:

(A) any evidence of the effect of the pipeline upon the economy, infrastructure, and public safety presented by local governmental units that will be affected by the proposed pipeline route;

(B) any evidence of the effect of the pipeline upon property values presented by property owners who will be affected by the proposed pipeline or facility, provided that the Commission need not hear evidence as to the actual valuation of property such as that as would be presented to and determined by the courts under the Eminent Domain Act;

(C) any evidence presented by the Department of Commerce and Economic Opportunity regarding the current and future local, State-wide, or regional economic effect, direct or indirect, of the proposed pipeline or facility including, but not limited to, ability of the State to attract economic growth, meet future energy requirements, and ensure compliance with environmental requirements and goals;

(D) any evidence addressing the factors described in items (1) through (8) of this subsection (b) or other relevant factors that is presented by any other State agency, the applicant, a party, or other entity that participates in the proceeding, including evidence presented by the Commission's staff; and

(E) any evidence presented by any State or federal governmental entity as to how the proposed pipeline will affect the security, stability, and reliability of energy.

In its written order, the Commission shall address all of the evidence presented, and if the order is contrary to any of the evidence, the Commission shall state the reasons for its determination with regard to that evidence.

(c) When an applicant files its application for a certificate of authority with the Commission, it shall provide notice to each local government where the proposed pipeline will be located and include a map of the proposed pipeline route. The applicant shall also publish notice in a newspaper of general circulation in each county where the proposed pipeline is located.

(d) An application for a certificate of authority filed pursuant to this Section shall request either that the Commission review and approve a specific route for a carbon dioxide pipeline, or that the Commission review and approve a project route width that identifies the areas in which the

pipeline would be located, with such width ranging from the minimum width required for a pipeline right-of-way up to 200 feet in width. A map of the route or route width shall be included in the application. The purpose for allowing the option of review and approval of a project route width is to provide increased flexibility during the construction process to accommodate specific landowner requests, avoid environmentally sensitive areas, or address special environmental permitting requirements.

(e) The Commission's rules shall ensure that notice of an application for a certificate of authority is provided within 30 days after filing to the landowners along a proposed project route, or to the potentially affected landowners within a proposed project route width, using the notification procedures set forth in the Commission's rules. If the Commission grants approval of a project route width as opposed to a specific project route, then the applicant must, as it finalizes the actual pipeline alignment within the project route width, file its final list of affected landowners with the Commission at least 14 days in advance of beginning construction on any tract within the project route width and also provide the Commission with at least 14 days' notice before filing a complaint for eminent domain in the circuit court with regard to any tract within the project route width.

(f) The Commission shall make its determination on any application for a certificate of authority filed pursuant to

this Section and issue its final order within 11 months after the date that the application is filed. The Commission's failure to act within this time period shall not be deemed an approval or denial of the application.

(g) A final order of the Commission granting a certificate of authority pursuant to this Act shall be conditioned upon the applicant obtaining all required permits or approvals from the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, U.S. Army Corps of Engineers, and Illinois Department of Agriculture, in addition to all other permits and approvals necessary for the construction and operation of the pipeline prior to the start of any construction. The final order must specifically prohibit the start of any construction until all such permits and approvals have been obtained.

(h) Within 6 months after the Commission's entry of an order approving either a specific route or a project route width under this Section, the owner or operator of the carbon dioxide pipeline that receives that order may file supplemental applications for minor route deviations outside the approved project route width, allowing for additions or changes to the approved route to address environmental concerns encountered during construction or to accommodate landowner requests. The supplemental application shall specifically detail the environmental concerns or landowner requests prompting the route changes, including the names of any landowners or

entities involved. Notice of a supplemental application shall be provided to any State agency or unit of local government that appeared in the original proceeding and to any landowner affected by the proposed route deviation at the time that supplemental application is filed. The route deviations shall be approved by the Commission no sooner than 90 days after all interested parties receive notice of the supplemental application, unless a written objection is filed to the supplemental application within 45 days after such notice is received. If a written objection is filed, then the Commission shall issue an order either granting or denying the route deviation within 90 days after the filing of the objection. Hearings on any such supplemental application shall be limited to the reasonableness of the specific variance proposed, and the issues of the public interest and benefit of the project or fitness of the applicant shall be considered only to the extent that the route deviation has raised new concerns with regard to those issues.

(i) A certificate of authority to construct and operate a carbon dioxide pipeline issued by the Commission shall contain and include all of the following:

(1) a grant of authority to construct and operate a carbon dioxide pipeline as requested in the application, subject to the laws of this State; and

(2) a limited grant of authority to take and acquire an easement in any property or interest in property for the

construction, maintenance, or operation of a carbon dioxide pipeline in the manner provided for the exercise of the power of eminent domain under the Eminent Domain Act. The limited grant of authority shall be restricted to, and exercised solely for, the purpose of siting, rights-of-way, and easements appurtenant, including construction and maintenance. The applicant shall not exercise this power until it has used reasonable and good faith efforts to acquire the property or easement thereto. The applicant may thereafter use this power when the applicant determines that the easement is necessary to avoid unreasonable delay or economic hardship to the progress of activities carried out pursuant to the certificate of authority.

Section 25. Procedures. Notwithstanding any other provision of this Act, any power granted pursuant to this Act to acquire an easement is subject to, and shall be exercised in accordance with, the Eminent Domain Act.

Section 30. Safety. A carbon dioxide pipeline owner shall construct, maintain, and operate all of its pipelines, related facilities, and equipment in this State in a manner that poses no undue risk to its employees or the public. The Commission shall not issue any certificates or permits allowing the construction of a carbon dioxide pipeline until it has adopted

Public Act 097-0534

SB1821 Enrolled

LRB097 08782 ASK 48912 b

federal safety regulations governing the construction, maintenance, and operations of carbon dioxide pipelines, related facilities, and equipment to ensure the safety of pipeline employees and the public.

Section 99. Effective date. This Act takes effect upon becoming law.