

AN ACT concerning regulation.

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

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

(220 ILCS 75/22 new)

Sec. 22. Compensation for damages to the surface.

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

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

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

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

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

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

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

(3) compensation for damage to the productive capability of the soil resulting from compaction or rutting if the parties are incapable of reaching resolution for such issues under the mitigation agreement detailed in paragraph (6) of subsection (b) of Section 20. An applicant shall not access a property where excessively wet soil conditions would not allow normal farming operations due to increased risk of soil erosion, rutting, or compaction. The Department of Agriculture may temporarily halt construction or any other activities on a proposed pipeline upon a finding of an applicant's noncompliance with this paragraph. If there is a dispute between the applicant who has been granted a certificate of authority under this Act and the landowner regarding

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

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

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

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

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

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

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

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

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

(415 ILCS 185/15)

Sec. 15. Integration and unitization of ownership interests.

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

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

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

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

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

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

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

negotiate with each nonconsenting pore space owner;

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

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

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

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

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

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

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

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

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

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

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

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

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

Unknown or nonlocatable pore space owners that have not

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

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

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

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

Environmental Protection Agency;

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

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

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

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

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

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

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

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

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

(i) If groundwater monitoring required by a Class VI

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

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

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

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