S T A T E O F N E W Y O R K

6163

2009-2010 Regular Sessions

I N S E N A T E

September 10, 2009

Introduced by Sen. AUBERTINE -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public service law, in relation to a pilot program to enable the capture and storage of carbon dioxide; and to enact the "carbon capture and sequestration act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 2 and 4 of section 120 of the public service law, subdivision 2 as amended and subdivision 4 as added by chapter 538 of the laws of 1981, are amended and a new subdivision 5 is added to read as follows:

2. "Major utility transmission facility" means: (a) an electric transmission line of a design capacity of one hundred twenty-five kilovolts or more extending a distance of one mile or more, or of one hundred kilovolts or more and less than one hundred twenty-five kilovolts, extending a distance of ten miles or more, including associated equipment, but shall not include any such transmission line located wholly underground in a city with a population in excess of one hundred twenty-five thousand or a primary transmission line approved by the federal energy regulatory commission in connection with a hydro-electric facility; [and] (b) a fuel gas transmission line extending a distance of one thousand feet or more to be used to transport fuel gas at pressures of one hundred twenty-five pounds per square inch or more, excluding appurtenant facilities, but shall not include any such transmission line which is located wholly underground in a city or wholly within the right of way of a state, county or town highway or village street as those terms are defined in article one of the highway law and article six of the village law, or which replaces an existing transmission line, including appurtenant facilities, and extends a distance of less than one mile; AND (C) A CAPTURED CARBON TRANSMISSION LINE EXTENDING A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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DISTANCE OF ONE THOUSAND FEET OR MORE TO BE USED TO TRANSPORT CAPTURED CARBON AT PRESSURES OF ONE HUNDRED TWENTY-FIVE POUNDS PER SQUARE INCH OR MORE, EXCLUDING APPURTENANT FACILITIES, BUT SHALL NOT INCLUDE ANY SUCH TRANSMISSION LINE WHICH IS LOCATED WHOLLY UNDERGROUND IN A CITY OR WHOLLY WITHIN THE RIGHT OF WAY OF A STATE, COUNTY OR TOWN HIGHWAY OR VILLAGE STREET AS THOSE TERMS ARE DEFINED IN ARTICLE ONE OF THE HIGHWAY LAW AND ARTICLE SIX OF THE VILLAGE LAW. CAPTURED CARBON DISPERSAL LINES, INJECTION WELLS AND UNDERGROUND WELL FIELDS ARE NOT INCLUDED IN THE MEANING OF THE TERM "MAJOR UTILITY TRANSMISSION FACILITY".

4. "Appurtenant facilities" means installations (excluding gas compressors) which are merely auxiliary or appurtenant to a fuel gas OR CAPTURED CARBON transmission line such as: valves; drips; measuring and regulating equipment; yard and station piping; cathodic protection equipment; gas cleaning; cooling and dehydration equipment; residual refining equipment; water pumping; treatment and cooling equipment; electrical and communication equipment; and buildings.

5. "CAPTURED CARBON" MEANS CARBON DIOXIDE IN ANY STATE AND ASSOCIATED CONSTITUENTS EXTRACTED FROM THE EMISSIONS OF AN ELECTRIC GENERATING FACILITY OR AN INDUSTRIAL FACILITY FOR THE PURPOSES OF SEQUESTRATION.

S 2. Subdivision 1 of section 123 of the public service law, as amended by chapter 538 of the laws of 1981, is amended to read as follows:

1. Upon the receipt of an application with respect to an electric transmission line that complies with section one hundred twenty-two OF THIS ARTICLE, the commission shall promptly fix a date for the commencement of a public hearing thereon not less than sixty nor more than ninety days after such receipt. Except as otherwise provided in section one hundred twenty-one-a of this article upon the receipt of an application with respect to a fuel gas transmission line that complies with section one hundred twenty-two OF THIS ARTICLE, the commission shall promptly fix a date for the commencement of a public hearing thereon not less than twenty nor more than sixty days after such receipt. UPON THE RECEIPT OF AN APPLICATION WITH RESPECT TO A CAPTURED CARBON TRANSMISSION LINE THAT COMPLIES WITH SECTION ONE HUNDRED TWENTY-TWO OF THIS ARTICLE, THE COMMISSION SHALL PROMPTLY FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC HEARING THEREON NOT LESS THAN SIXTY NOR MORE THAN NINETY DAYS AFTER SUCH RECEIPT. The testimony presented at such hearing may be presented in writing or orally, provided that the commission may make rules designed to exclude repetitive, redundant or irrelevant testimony. The commission shall make a record of all testimony in all contested hearings.

S 3. Paragraph (e) of subdivision 1 of section 126 of the public service law, as added by chapter 272 of the laws of 1970, is amended to read as follows:

(e) in the case of a gas OR CAPTURED CARBON transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

S 4. The carbon capture and sequestration act is hereby enacted to read as follows:

Carbon Capture and Sequestration Act

Section: 1. Short title.
2. Legislative findings.
3. Definitions.
4. Administration.
5. Powers and duties of the commissioner and the department.
6. Procedure for obtaining carbon sequestration lease.

7. Procedure for obtaining carbon sequestration permit.
8. Authority to acquire property.
9. Procedure for closure of carbon sequestration reservoir.
10. Ownership of captured carbon and reservoir pore space.
11. Imposition of fee for application for permit to drill, deepen, plug back or convert a well.

S 1. Short title. This act shall be known and may be cited as the "carbon capture and sequestration act."

S 2. Legislative findings. The legislature finds that the earth's climate is changing as a result of global warming, due in part to emissions of carbon dioxide and other greenhouse gases. The legislature further finds that it is in the public interest to encourage the research and development of technology to facilitate the capture, transport and underground storage of carbon dioxide emissions from anthropogenic sources, and that the public health and the environment of the state would be served by a carbon capture and sequestration demonstration project and the authorization and regulation of the siting and operation of such a project.

S 3. Definitions. Terms used in this act shall have the same meaning as defined in title 1 of article 23 of the environmental conservation law, except that for purposes of this act:

1. "Buffer zone" means all that area outside and surrounding the carbon sequestration reservoir which the department approves as appropriate to protect the integrity of such reservoir, no part of which shall be more than 3,500 linear feet from the boundary of such reservoir.

2. "Captured carbon" means carbon dioxide in any state and associated constituents which have been extracted from the emissions of an electric generating facility or an industrial facility for the purpose of sequestration pursuant to this act.

3. "Carbon sequestration permit" means a permit to utilize and operate a reservoir for carbon sequestration or modify a carbon sequestration reservoir, which may include the injection of captured carbon into a reservoir, and the observation and monitoring of the carbon sequestration reservoir and its buffer zone boundaries, as authorized in the permit.

4. "Department" means the department of environmental conservation and "commissioner" means the state commissioner of environmental conservation.

5. "Owner" means the person who possesses any well subject to this act or who has the right to drill into and inject captured carbon into a reservoir.

6. "Operator" means any person engaged in the business of drilling or operating wells for the purpose of injecting captured carbon for storage or utilizing and operating a reservoir for carbon sequestration.

7. "Reservoir" means any underground reservoir, natural or artificial cavern, or geologic feature, formation or unit, whether or not previously occupied by or containing oil, gas or brine.

8. "Sequestration" or "carbon sequestration" means the long-term storage of captured carbon in a reservoir.

9. "Waste" means:

(a) the inefficient, excessive or improper use of reservoir space; and

(b) the escape, release, seepage or migration of captured carbon from a carbon sequestration reservoir.

S 4. Administration. 1. Except to the extent that the administration of this act is specifically entrusted to other agencies or officers of

the state by its provisions, the administration of this act shall be by the department.

2. The provisions of this act shall supersede all local laws or ordinances relating to the regulation of carbon sequestration including any pertaining to wells and storage reservoirs but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.

S 5. Powers and duties of the commissioner and the department. In addition to the powers specified in subdivisions 1 through 7 of section 23-0305 of the environmental conservation law, with respect to carbon sequestration reservoirs the department shall have the power to:

1. Make such investigations or require an owner or operator to make investigations as the department deems proper to determine whether waste exists or is imminent.

2. Require identification of ownership of carbon sequestration leases, wells and well sites, and any equipment such as structures, tanks, gathering systems and facilities for the capture, collection, transportation, injection and sequestration of captured carbon.

3. Classify geologic reservoirs as carbon sequestration reservoirs and buffer zones, including the delineation of boundaries of such reservoirs and buffer zones, for purposes material to the interpretation or administration of this act.

4. Classify wells as injection, observation or monitoring wells.

5. Require the drilling, casing, operation and plugging of wells in accordance with rules and regulations of the department in such a manner as to prevent the loss or escape of captured carbon to the surface or to other strata, the intrusion of water into the strata sequestering the captured carbon, the pollution of fresh water supplies and other environmental impacts.

6. Give notice or require an owner or operator to give notice to persons engaging in mining operations of the commencement of any phase of carbon sequestration which may affect the safety of such underground mining operations or of the mining properties involved. Rules and regulations of the department may specify the distance from such underground mining operations within which such notice shall be given and shall contain such other provisions as in the judgment of the department shall be necessary in the interest of safety. The department shall not be required to furnish any notice unless the person or persons engaged in underground mining operations or having rights in mining properties have notified the department of the existence and location of the underground mining operations or properties.

7. Enter, take temporary possession of, plug or replug any abandoned well as provided in the rules and regulations of the department, whenever any owner or operator neglects or refuses to comply with the rules and regulations. Any plugging or replugging by the department shall be at the expense of the owner or operator whose duty it may be to plug the well and the state of New York shall be held harmless for all accounts, damages, costs and judgments arising from the plugging or replugging of the well and the surface restoration of the affected land. Primary liability for the expense of plugging or replugging and first recourse for the recovery of expenses shall be to the operator unless a contract for the working of the well shall place liability on the owner or on the owner of another interest in the land on which the well is situated. When an operator violates any provision of this act or any order issued pursuant to this act in reference to plugging or replugging an abandoned

well, the operator may not transfer the operator's responsibility by surrendering the lease.

8. Require the operator to furnish to the department, prior to the commencement of drilling of any well, and to continuously maintain, a bond acceptable to the department conditioned upon the performance of the operator's plugging responsibilities with respect to the well. The amount of financial security shall be determined by the department based on a written plugging estimate provided by the operator and acceptable to the department. Upon the approval of the department, in lieu of a bond, the operator may deposit cash or negotiable bonds of the United States government of like amount in an escrow account conditioned upon the performance of the operator's plugging responsibilities with respect to the well. Any interest accruing as a result of the escrow deposit shall be the exclusive property of the operator. This bonding requirement shall remain the obligation of the original operator regardless of changes in operators unless a subsequent operator has furnished the appropriate bond or substitute acceptable to the department and approval for the transfer of the well plugging responsibility to the subsequent operator has been granted by the department. The failure of any operator to maintain a bond or other acceptable financial security shall be deemed a breach of plugging responsibilities and entitle the department to claim the proceeds of the bond or other financial security. The cost of plugging or replugging any well, where such action is necessary or incident to the commencing or carrying on of storage operations pursuant to this act shall be borne by the operator of the carbon sequestration reservoir.

9. Require that every person who captures, transports, injects or sequesters captured carbon in this state keep and maintain complete and accurate records of the quantities of carbon captured, transported or injected. True copies or duplicates shall be kept or made available for examination within this state by the department or its agents at all reasonable times and every person shall file with the department such reports concerning collection, transportation, injection, storage or sequestration on a form provided by the department or approved by the department prior to submittal.

10. In addition to the powers provided for in titles 1, 3, 5 and 13 of article 71 of the environmental conservation law, order an immediate suspension of drilling, injection or sequestration operations whenever such operations are being carried on in violation of this act or any rule or regulation promulgated pursuant to article 23 of the environmental conservation law or order issued pursuant thereto. Any order issued pursuant to this subdivision may be reviewed upon application of an aggrieved party by means of an order to show cause which order shall be issued by any justice of the supreme court in the judicial district in which any order applies and shall be returnable on the third succeeding business day following the issuance of such order. Service of such show cause order shall be made upon the regional office of the department for the region in which such order applies, and upon the attorney general by delivery of such order to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. Except as specified in this subdivision, the proceeding to review an order under this subdivision shall be governed by article 78 of the civil practice law and rules.

11. Require the immediate reporting of any non-routine incident including but not limited to casing and drill pipe failures, casing cement failures, fishing jobs, fires, seepages, blowouts and other incidents during drilling, completion, injection, sequestration, plugging or replugging operations, and monitoring or observation that may affect the health, safety, welfare or property of any person. The department may require the operator, or any agent thereof, to record any data which the department believes may be of subsequent use for adequate evaluation of a non-routine incident.

12. Require the taking and making of well logs, well samples, directional surveys and reports on well locations and elevations, drilling, injection, sequestration, plugging or replugging operations and further require their filing pursuant to the provisions of this act. Upon the request of the state geologist, the department shall cause such duplicate samples or copies of records and reports as may be required pursuant to this act to be furnished to the state geologist.

13. Require the operator to furnish to the department, prior to the commencement of any injection of captured carbon, and to continuously maintain for a period specified by the department of at least ten years following cessation of injection, a bond acceptable to the department conditioned upon the performance of the operator's observation and monitoring responsibilities as specified in a carbon sequestration permit, and to protect against pollution, invasion, or the escape, discharge, seepage or migration of captured carbon. This bond shall be in addition to any bond or financial security required in subdivision 8 of this section for well plugging responsibilities.

S 6. Procedure for obtaining carbon sequestration lease. 1. The department may make leases on behalf of the state for the exploration and development of carbon sequestration reservoirs and the sequestration of captured carbon in state-owned lands, upon such terms and conditions including consideration as the department deems just and proper.

2. All carbon sequestration leases shall:

(a) Provide for payment to the agency having jurisdiction over the leased lands of adequate and reasonable consideration;

(b) Be invalid unless they shall have the prior approval of such agency or the appropriate department, division or bureau thereof, having jurisdiction over the land in question; and authority to give such consent is hereby conferred upon the head of any such agency or the appropriate department, or a division or bureau thereof, and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the commissioner of general services;

(c) Be inapplicable to any state park lands and to any lands the leasing of which is prohibited by the state Constitution; and

(d) Contain such other terms and provisions as may be necessary or appropriate to promote the purposes of this act and the public policy of the state.

S 7. Procedure for obtaining carbon sequestration permit. 1. No person shall utilize, operate or modify the capacity or boundaries of a reservoir for the sequestration of captured carbon, or of a buffer zone, unless such person has received from the department, after approval in writing of the state geologist, a carbon sequestration permit. The application for a carbon sequestration permit shall include the following:

(a) A map showing the location, acreage and boundaries of the proposed carbon sequestration reservoir and its buffer zone, the surface and

bottom hole locations of any well or wells proposed to be drilled into the reservoir and buffer, the location of any existing wellbore or wellbores in the proposed reservoir and buffer, and the location of any abandoned or unplugged wells in the proposed reservoir and buffer, regardless of well type or depth.

(b) A report containing sufficient engineering, geological, geophysical, observation, monitoring and operational data to show that the reservoir and the buffer zone are adaptable and suitable for the sequestration of captured carbon.

(c) An affidavit signed by the prospective owner or operator to the effect that the owner or operator has acquired by grant, lease or other agreement at least 75 percent of the storage rights in the proposed reservoir and in the buffer zone established to protect the reservoir as approved by the department, calculated on the basis of surface acreage. The affidavit shall also set forth that the applicant will agree as a condition to the issuance of a permit that the applicant will, within a reasonable time, either acquire by negotiation, or file and proceed with condemnation proceedings to acquire, any outstanding storage and sequestration rights in the remaining portion of the reservoir and buffer zone acreage.

(d) Any other information that the department may require.

2. No person shall commence operations to drill, deepen, plug back or convert a well for use in the operation of a carbon sequestration reservoir unless such person has obtained a permit to drill from the department. An application for a permit to drill shall be on forms prescribed by the department.

3. The department shall grant an application for a carbon sequestration permit, and any application for a permit to drill, within 90 days of application unless the department finds that the application and the information submitted with it do not meet the requirements of this section. The department may revoke or suspend any carbon sequestration permit for failure to comply with any of its provisions or for failure to comply with this section.

4. Every owner or operator shall file with the department on or before March 31 of each year, a report for the prior period on the status of each carbon sequestration reservoir and buffer zone, and the present limits of any sequestered or injected captured carbon. The report shall be on a form prescribed by the department and shall include at least the following:

(a) The size in surface acreage or shape of the reservoir and the buffer zone;

(b) An estimate of total capacity of the reservoir; and

(c) Any other engineering, geological, geophysical, observation, monitoring, or operational data that the department may request.

5. The applicant for a carbon sequestration permit shall submit with the application the following fees:

(a) For a new carbon sequestration reservoir: $10,000.

(b) For a modification of the capacity or boundaries of an existing carbon sequestration reservoir: $5,000.

6. No permit issued under this section and no provision of this act shall be construed to diminish or impair the jurisdiction of the state public service commission with respect to regulation of the manufacture, collection, capture or transportation of captured carbon.

S 8. Authority to acquire property. 1. Any owner or operator empowered to capture, transport, inject, store or sequester captured carbon within this state for ultimate public use or benefit, which holds

a carbon sequestration permit from the department, and which after reasonable effort is unable to obtain rights in real property and wells thereon necessary for activation, including siting of any pipeline within and outside the carbon sequestration reservoir and buffer zone, operation, or protection of the carbon sequestration reservoir and its buffer zone shall, subject to the applicable provisions of the eminent domain procedure law, have the authority to acquire such rights as may be required adequately to examine, prepare, maintain, operate and protect, and for access to such reservoir and its buffer zone; provided that no right of acquisition under this section shall extend to any lands or interests therein which have been acquired, or, in the hands of the present holder, could have been acquired by acquisition; and, provided further, that any acquisition of cemetery lands or burial grounds shall be in the sound discretion of the court and with due provision for the relocation of human remains.

2. Owners or operators authorized by this section to maintain acquisition proceedings before filing a suit for such acquisition shall have filed with the department a map showing the location, boundaries and size of surface acreage of the carbon sequestration reservoir and its buffer zone.

3. Any owner or operator of a carbon sequestration reservoir who at any time controls less than 100 percent of the rights within that reservoir and its buffer zone and is authorized by this section to maintain a proceeding shall acquire the rights remaining in the reservoir and its buffer zone acreage and rights needed for pipeline siting by negotiation or file and proceed with acquisition proceedings within a reasonable time but not to exceed a 2 year period after the first injection of captured carbon, or within any extension granted by the department.

4. Any owner or operator who seeks to acquire rights as authorized by this section shall name as parties defendant all the owners of all the parcels of property located within the boundaries of the reservoir and its buffer zone from whom storage and sequestration rights have not previously been legally acquired by grant, lease, or other voluntary agreement; provided, however, that a failure to join the owners of any parcel in the reservoir and its buffer zone due to inadvertence shall not constitute a jurisdictional defect in any proceeding of acquisition.

5. Except for lands needed for any pipeline siting which are located outside the boundaries of the reservoir and its buffer zone, the value of any property acquired pursuant to this section shall include the value of any commercially recoverable native oil and gas in place to the extent that the holder of the property interest being acquired has a right thereto. The same provision shall apply to the holder of salt rights.

6. The cost of, or possible necessity for, plugging any well or wells, when such plugging or replugging is or may be made necessary by reason of the storage use made possible or facilitated by acquisition shall not be considered in computing the value of property or any interest therein taken under this section.

S 9. Procedure for closure of carbon sequestration reservoir. 1. In connection with the closure of any carbon sequestration reservoir for which a permit has been granted pursuant to this act or in connection with the revocation of any such permit, the owner or operator is responsible for placing the premises in a condition which, to the extent practicable, assures the continuance of the premises in a condition which does not constitute a menace to the present or future health, safety or welfare of persons, or safety or value of property. In case the owner or

operator shall fail to put the premises in a satisfactory condition prior to any such closure or immediately upon revocation of a permit, the department may do or cause to be done all things necessary to place the premises in satisfactory condition and the owner and operator shall be liable for the cost.

2. The owner or operator shall monitor the premises and the carbon sequestration reservoir, through utilization of observation and monitoring wells and by other appropriate means, for a period specified by the department of at least ten years following the cessation of injection.

S 10. Ownership of captured carbon and reservoir pore space. 1. All captured carbon which has previously been reduced to possession, and which is lawfully injected into a carbon sequestration reservoir, shall be deemed the property of the operator, the operator's heirs, successors or assigns. The operator, the operator's heirs, successors or assigns shall have no right to reserves of native gas or oil remaining in any stratum or portion thereof which have not been condemned hereunder or otherwise acquired by such operator, operator's heirs, successors or assigns. Nothing contained in this subdivision shall be construed to confer on any owner or operator any storage or sequestration rights not otherwise acquired or held by the owner or operator.

2. No production lease shall be construed to include rights to sequester captured carbon unless the lease includes a provision granting such storage rights.

3. The ownership of all pore space in all strata below the surface lands and waters of this state is declared to be vested in the several owners of the surface lands above the strata.

S 11. Imposition of fee for application for permit to drill, deepen, plug back or convert a well. When a person files an application for a permit to drill a well or converts a well to one subject to this act, the person shall pay to the department a fee of $3,000, provided that for any application to plug back or deepen a well previously permitted by the department pursuant to this act, the person shall pay to the department a fee of $1,000.

S 5. This act shall take effect immediately and shall only apply to a municipally-owned electric generating facility that has submitted a complete application to the department of environmental conservation by December 31, 2010.