ENROLLED

Regular Session, 2009

HOUSE BILL NO. 661

BY REPRESENTATIVE MORRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To enact R.S. 19:2(12) and Chapter 11 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:1101 through 1111, relative to the storage of carbon dioxide; to provide for expropriation; to provide for the duties and powers of the commissioner of conservation; to provide for definitions; to provide for public hearings; to provide for enforcement; to provide for compliance orders; to provide for penalties; to provide for certificates of public convenience and necessity; to provide for certificates of completion; to provide for liability; to provide for the Geologic Storage Trust Fund; to provide for fees; to provide for uses of the fund; to provide for accounting and reports of the fund; to provide for site-specific trust accounts; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 19:2(12) is hereby enacted to read as follows:

§2. Expropriation by state or certain corporations and limited liability companies

Where a price cannot be agreed upon with the owner, any of the following may expropriate needed property:

* * *

(12) Any domestic or foreign corporation or any partnership composed of such corporations or wholly owned subsidiaries thereof engaged in the injection of carbon dioxide for the underground storage of carbon dioxide approved by the commissioner of conservation. Property located in Louisiana may be so expropriated for the underground storage of carbon dioxide in connection with such storage facility projects located in Louisiana, including but not limited to surface and subsurface rights, mineral rights, and other property interests necessary or useful for

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the purpose of constructing, operating, or modifying a carbon dioxide facility. This Paragraph has no effect on nor does it grant expropriation of the mineral rights or other property rights associated with the approvals required for injection of carbon dioxide into enhanced recovery projects approved by the commissioner under R.S. 30:4.

Section 2. Chapter 11 of Title 30 of the Louisiana Revised Statutes of 1950, comprised of R.S. 30:1101 through 1111, is hereby enacted to read as follows:

CHAPTER 11. LOUISIANA GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE ACT

§1101. Short title

This Chapter shall be known and may be cited as the "Louisiana Geologic Sequestration of Carbon Dioxide Act".

§1102. Policy; jurisdiction

A. It is declared to be in the public interest for a public purpose and the policy of Louisiana that:

(1) The geologic storage of carbon dioxide will benefit the citizens of the state and the state's environment by reducing greenhouse gas emissions.

(2) Carbon dioxide is a valuable commodity to the citizens of the state.

(3) Geologic storage of carbon dioxide may allow for the orderly withdrawal as appropriate or necessary, thereby allowing carbon dioxide to be available for commercial, industrial, or other uses, including the use of carbon dioxide for enhanced recovery of oil and gas.

(4) It is the public policy of Louisiana and the purpose of this Chapter to provide for a coordinated statewide program related to the storage of carbon dioxide and to also fulfill the state's primary responsibility for assuring compliance with the federal Safe Drinking Water Act, including any amendments thereto related to the underground injection of carbon dioxide.

B. The commissioner of conservation shall have jurisdiction and authority over all persons and property necessary to enforce effectively the provisions of this

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aerial buffer and subsurface monitoring zones designated by the commissioner for the purpose of ensuring the safe and efficient operation of the storage facility for the storage of carbon dioxide and shall be chosen to protect against pollution, and escape or migration of carbon dioxide.

(10) "Storage operator" means the person authorized by the commissioner to operate a storage facility. A storage operator can, but need not be, the owner of carbon dioxide injected into a storage facility. Ownership of carbon dioxide and use of geologic storage is a matter of private contract between the storage operator and owner, shipper or generator of carbon dioxide, as applicable.

(11) "Waste" in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the storage industry.

§1104. Duties and powers of the commissioner; rules and regulations; permits

A. The office of conservation's actions under this Chapter shall be directed and controlled by the commissioner. The commissioner shall have authority to:

(1) Regulate the development and operation of storage facilities and pipelines transmitting carbon dioxide to storage facilities, including in accordance with the provisions of R.S. 30:1107, the issuance of certificates of public convenience and necessity for storage facilities and pipelines serving such projects approved hereunder.

(2) Make, after notice and hearings as provided in this Chapter, any reasonable rules, regulations, and orders that are necessary from time to time in the proper administration and enforcement of this Chapter, including rules, regulations, or orders for the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of carbon dioxide out of one stratum to another.

(b) To prevent the intrusion of carbon dioxide into oil, gas, salt formation, or other commercial mineral strata.

(c) To prevent the pollution of fresh water supplies by oil, gas, salt water, or carbon dioxide.

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(d) To require the plugging of each abandoned well and the closure of associated surface facilities, the removal of equipment, structures, and trash, and to otherwise require a general site cleanup of such abandoned wells.

(3) Make such inquiries as he deems proper to determine whether or not waste, over which he has jurisdiction, exists or is imminent. In the exercise of this power the commissioner has the authority to collect data; to make investigations and inspections; to examine properties, papers, books, and records; to examine, survey, check, test, and gauge injection, withdrawal and other wells used in connection with carbon storage; to examine, survey, check, test, and gauge tanks, and modes of transportation; to hold hearings; to provide for the keeping of records and the making of reports; to require the submission of an emergency phone number by which the operator may be contacted in case of an emergency; and to take any action as reasonably appears to him to be necessary to enforce this Chapter.

(4) Require the making of reports showing the location of all wells used in connection with a storage facility, and the filing of logs, electrical surveys, and other drilling records.

(5) Prevent wells from being drilled and operated in a manner which may cause injury to neighboring leases or property.

(6) Prevent blowouts, caving, and seepage in the sense that conditions indicated by these terms are generally understood in the storage business.

(7) Identify the ownership of all wells used in connection with a storage facility, tanks, plants, structures, and all other storage and transportation equipment and facilities.

(8) Nothing in this Chapter shall prevent an enhanced oil and gas recovery project utilizing injection of carbon dioxide as approved under R.S. 30:4.

(9) Approve conversion of an existing enhanced oil or gas recovery operation into a storage facility, if necessary, taking into consideration prior approvals of the commissioner regarding such enhanced oil recovery operations.

(10) Promulgate rules and regulations requiring interested persons to place monitoring equipment of a type approved by the commissioner on all storage

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facilities, and ancillary equipment necessary and proper to monitor, verify carbon dioxide injections, and to prevent waste. It shall be a violation of this Chapter for any person to refuse to attach or install a monitor within a reasonable period of time when ordered to do so by the commissioner, or in any way to tamper with the monitors so as to produce a false or inaccurate reading.

(11) Regulate by rules, the drilling, casing, cementing, injection interval, monitoring, plugging and permitting of injection, withdrawal and other wells which are used in connection with a storage facility and to regulate all surface facilities incidental to such storage operation.

(12) Require the plugging of each abandoned well or each well which is of no further use and the closure of associated surface facilities, the removal of equipment, structures, and trash, and other general site cleanup of such abandoned or unused well sites.

(13) Promulgate rules related to the setting and collection of fees and civil penalties pursuant to this Chapter.

B. Only a storage operator as defined in R.S. 30:1103(10) shall be held or deemed responsible for the performance of any actions required by the commissioner under this Chapter.

C. Prior to the use of any reservoir for the storage of carbon dioxide and prior to the exercise of eminent domain by any person, firm, or corporation having such right under laws of the state of Louisiana, and as a condition precedent to such use or to the exercise of such rights of eminent domain, the commissioner, after public hearing pursuant to the provisions of R.S. 30:6, held in the parish where the storage facility is to be located, shall have found all of the following:

(1) That the reservoir sought to be used for the injection, storage, and withdrawal of carbon dioxide is suitable and feasible for such use, provided no reservoir, any part of which is producing or is capable of producing oil, gas, condensate, or other commercial mineral in paying quantities, shall be subject to such use, unless all owners in such reservoir have agreed thereto. In addition, no reservoir shall be subject to such use unless either:

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(a) The volumes of original reservoir, oil, gas, condensate, salt, or other commercial mineral therein which are capable of being produced in paying quantities have all been produced.

(b) Such reservoir has a greater value or utility as a reservoir for carbon dioxide storage than for the production of the remaining volumes of original reservoir oil, gas, condensate, or other commercial mineral, and at least three-fourths of the owners, in interest, exclusive of any "lessor" defined in R.S. 30:148.1, have consented to such use in writing.

(2) That the use of the reservoir for the storage of carbon dioxide will not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits.

(3) That the proposed storage will not endanger human lives or cause a hazardous condition to property.

D. The commissioner shall determine with respect to any such reservoir proposed to be used as a storage reservoir, whether or not such reservoir is fully depleted of the original commercially recoverable natural gas, condensate, or other commercial mineral therein. If the commissioner finds that such reservoir has not been fully depleted, the commissioner shall determine the amount of the remaining commercially recoverable natural gas, condensate, or other commercial mineral of such reservoir.

E. The commissioner may issue any necessary order providing that all carbon dioxide which has previously been reduced to possession and which is subsequently injected into a storage reservoir shall at all times be deemed the property of the party that owns such carbon dioxide, whether at the time of injection or pursuant to a change of ownership by agreement while the carbon dioxide is located in the storage facility, his successors and assigns; and in no event shall such carbon dioxide be subject to the right of the owner of the surface of the lands or of any mineral interest therein under which such storage reservoir shall lie or be adjacent to or of any person other than the owner, his successors, and assigns to produce, take, reduce to possession, waste, or otherwise interfere with or exercise

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any control there over, provided that the owner, his successors, and assigns shall have no right to gas, liquid hydrocarbons, salt, or other commercially recoverable minerals in any stratum or portion thereof not determined by the commissioner to constitute an approved storage reservoir. The commissioner shall issue such orders, rules, and regulations as may be necessary for the purpose of protecting any such storage reservoir, strata, or formations against pollution or against the escape of carbon dioxide therefrom, including such necessary rules and regulations as may pertain to the drilling into or through such storage reservoir.

§1105. Hearings; notice; rules of procedures; emergency; service of process; public records; request for hearings; orders and compliance orders

A. All public hearings under this Part shall be conducted pursuant to the provisions of R.S. 30:6.

B. All rules, regulations, and orders made by the commissioner under this Chapter shall be in writing and shall be entered in full by him in a book kept for that purpose. This book shall be a public record and shall be open for inspection at all times during reasonable office hours and shall be available on the Department of Natural Resources website. A copy of a rule, regulation, or order, certified by the commissioner, shall be received in evidence in all courts of this state with the same effect as the original.

C. Any interested person has the right to have the commissioner call a hearing for the purpose of taking action in respect to a matter within the jurisdiction of the commissioner as provided in this Section by making a request therefor in writing and paying the hearing fee set by the commissioner, as provided by law for hearing conducted pursuant to R.S. 30:6. Upon receiving the request and payment of the required fees the commissioner shall promptly call a hearing. After the hearing and with all convenient speed and within thirty days after the conclusion of the hearing, the commissioner shall take whatever action he deems appropriate with regard to the subject matter.

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§1106. Underground injection control

A. The commissioner shall have authority to perform any and all acts necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, relating to this state's participation in the underground injection control program established under that act with respect to the storage and sequestration of carbon dioxide. To that end, the commissioner is authorized and empowered to adopt, modify, repeal, and enforce procedural, interpretive, and administrative rules in accordance with the provisions of this Chapter.

B. Whenever the commissioner or an authorized representative of the commissioner determines that a violation of any requirement of this Chapter has occurred or is about to occur, the commissioner or his authorized representative shall either issue an order requiring compliance within a specified time period or shall commence a civil action for appropriate relief, including a temporary or permanent injunction.

C. Any compliance order issued under this Chapter shall state with reasonable specificity the nature of the violation and specify a time for compliance and, in the event of noncompliance, assess a civil penalty, if any, which the commissioner determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

D.(1) Except as otherwise provided by law, any person to whom a compliance order is issued and who fails to take corrective action within the time specified in the order or any person found by the commissioner to be in violation of any requirement of this Section may be liable for a civil penalty to be assessed by the commissioner or court, of not more than five thousand dollars a day for each day of violation and for each act of violation. The commissioner in order to enforce the provisions of this Section may suspend or revoke any permit, compliance order, license, or variance that has been issued to said person in accordance with law.

(2) No penalty shall be assessed until the person charged has been given notice and an opportunity for a hearing on such charge. In determining whether or not a civil penalty is to be assessed and in determining the amount of the penalty, or

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the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

E. The commissioner, or attorney general if requested by the commissioner, shall have charge of and shall prosecute all civil cases arising out of violation of any provision of this Section including the recovery of penalties.

F. Except as otherwise provided herein, the commissioner may settle or resolve as he may deem advantageous to the state any suits, disputes, or claims for any penalty under any provisions of this Section or the regulations or permit license terms and conditions applicable thereto.

§1107. Certificates of public convenience and necessity; certificate of completion of injection operations

A. The commissioner shall issue a certificate of public convenience and necessity or a certificate of completion of injection operations to each person applying therefor if, after a public hearing pursuant to the provisions of R.S. 30.6, held in the parish where the storage facility is to be located, he determines that it is required by the present or future public convenience and necessity, and such decision is based upon the following criteria; (1) the proposed storage facility meets the requirements of R.S. 30:1104(C) and (2) the proposed storage facility meets the requirements of any rules adopted under this Chapter. However, if any person has previously been issued a certificate of public convenience and necessity or a certificate of completion of injection operations by the commissioner, that certificate continues to remain valid and in force.

B. The commissioner shall issue a certificate of completion of injection operations to the operator applying therefor, if after a public hearing pursuant to R.S. 30:6, it is determined that such operator has met all of the conditions required for such certificate, including the requirements of R.S. 30:1109.

C. Anything in this Chapter, or in any rule, regulation, or order issued by the commissioner under this Chapter to the contrary notwithstanding, accepting or acting pursuant to a certificate of public convenience and necessity or a certificate of

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completion of injection operations issued under this Chapter, compliance with the provisions of this Chapter, or with rules, regulations, or orders issued by the commissioner under this Chapter, or voluntarily performing any act or acts which could be required by the commissioner pursuant to this Chapter, or rules, regulations, or orders issued by the commissioner under this Chapter, shall not have the following consequences:

(1) Cause any storage operator or carbon dioxide transporter of carbon dioxide for storage to become, or be classified as, a common carrier or a public utility for any purpose whatsoever.

(2) Subject such storage operator or such carbon dioxide to storage transporter to any duties, obligations, or liabilities as a common carrier or public utility, under the constitution and laws of this state.

(3) Increase the liability of any storage operator or carbon dioxide for storage transporter for any taxes otherwise due to the state of Louisiana in the absence of any additions or amendments to any tax laws of this state.

§1108. Eminent domain, expropriation

A.(1) Any storage operator is hereby authorized, after obtaining any permit and any certificate of public convenience and necessity from the commissioner required by this Chapter, to exercise the power of eminent domain and expropriate needed property to acquire surface and subsurface rights and property interests necessary or useful for the purpose of constructing, operating, or modifying a storage facility and the necessary infrastructure including the laying, maintaining, and operating pipelines for the transportation of carbon dioxide to a storage facility, together with telegraph and telephone lines necessary and incidental to the operation of these storage facilities and pipelines, over private property thus expropriated; and have the further right to construct and develop storage facilities and the necessary infrastructure, including the laying, maintaining, and operating of pipelines along, across, over, and under any navigable stream or public highway, street, bridge, or other public place; and also have the authority, under the right of expropriation herein conferred, to cross railroads, street railways, and other pipelines, by

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expropriating property necessary for the crossing under the general expropriation laws of this state. The right to run along, across, over, or under any public road, bridge, or highway, as before provided for, may be exercised only upon condition that the traffic thereon is not interfered with, and that such road or highway is promptly restored to its former condition of usefulness, at the expense of the storage facility and the pipeline owner if different from the storage operator, the restoration to be subject also to the supervision and approval of the proper local authorities.

(2) In the exercise of the privilege herein conferred, owners or operators of such storage facilities and pipelines shall compensate the parish, municipality, or road district, respectively, for any damage done to a public road, in the construction of storage facilities, and the laying of pipelines, telegraph or telephone lines, along, under, over, or across the road. Nothing in this Chapter shall be construed to grant any transporter the right to use any public street or alley of any parish, incorporated city, town, or village, except by express permission from the parish, city, or other governing authority.

B. The exercise of the right of eminent domain granted in this Chapter shall not prevent persons having the right to do so from drilling through the storage facility in such manner as shall comply with the rules of the commissioner issued for the purpose of protecting the storage facility against pollution or invasion and against the escape or migration of carbon dioxide. Furthermore, the right of eminent domain set out in this Section shall not prejudice the rights of the owners of the lands, minerals, or other rights or interests therein as to all other uses not acquired for the storage facility.

C. The eminent domain authority authorized under this Chapter shall be exercised pursuant to the procedures found in R.S. 19:2, and shall be in addition to any other power of eminent domain authorized by law.

D. The commissioner is neither a necessary nor indispensable party to an eminent domain proceeding, and if named as a party or third party has an absolute right to be dismissed from said action at the expense of the party who names the

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commissioner. The commissioner shall recover all costs reasonably incurred to be dismissed from the action, including attorney fees.

§1109. Cessation of storage operations; liability release

A.(1) Ten years, or any other time frame established by rule, after cessation of injection into a storage facility, the commissioner shall issue a certificate of completion of injection operations, upon a showing by the storage operator that the reservoir is reasonably expected to retain mechanical integrity and the carbon dioxide will reasonably remain emplaced, at which time ownership to the remaining project including the stored carbon dioxide transfers to the state. Upon the issuance of the certificate of completion of injection operations, the storage operator, all generators of any injected carbon dioxide, all owners of carbon dioxide stored in the storage facility, and all owners otherwise having any interest in the storage facility, shall be released from any and all duties or obligations under this Chapter and any and all liability associated with or related to that storage facility which arises after the issuance of the certificate of completion of injection operations.

(2) Provided the provisions pertaining to site-specific trust accounts are not applicable, such release from liability will not apply to the owner or last operator of record of a storage facility if the Carbon Dioxide Geologic Storage Trust Fund has been depleted of funds such that it contains inadequate funds to address or remediate any duty, obligation, or liability that may arise after issuance of the certificate of completion of injection operations.

(3) Such release from liability will not apply to the owner or operator of a storage facility, carbon dioxide transmission pipeline, or the generator of the carbon dioxide being handled by either the facility or pipeline if it is demonstrated that any such owner, operator, or generator intentionally and knowingly concealed or intentionally and knowingly misrepresented material facts related to the mechanical integrity of the storage facility or the chemical composition of any injected carbon dioxide. In addition, upon the issuance of the certificate of completion of injection operations, any performance bonds posted by the operator shall be released and continued monitoring of the site, including remediation of any well leakage, shall

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become the principal responsibility of the Carbon Dioxide Geologic Storage Trust Fund.

(4) It is the intent of this Section that the state shall not assume or have any liability by the mere act of assuming ownership of a storage facility after issuance of a certificate of completion of injection operations.

B.(1) In any civil liability action against the owner or operator of a storage facility, carbon dioxide transmission pipeline, or the generator of the carbon dioxide being handled by either the facility or pipeline, the maximum amount recoverable as compensatory damages for noneconomic loss shall not exceed two hundred fifty thousand dollars per occurrence, except where the damages for noneconomic loss suffered by the plaintiff were for wrongful death; permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities. In such cases, the maximum amount recoverable as compensatory damages for noneconomic loss shall not exceed five hundred thousand dollars per occurrence.

(2) If Paragraph (1) of this Subsection, or the application thereof to any person or circumstance, is finally determined by a court of law to be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for noneconomic loss shall thereafter not exceed one million dollars per occurrence. This provision shall not supersede any contractual agreement with respect to liability between a plaintiff and an owner or operator of a storage facility, a carbon dioxide transmission pipeline, or the generator of the carbon dioxide.

C. Nothing in this Chapter shall establish or create any liability or responsibility on the part of the commissioner or the state to pay any costs associated with site restoration from any source other than the funds or trusts created by this Chapter, nor shall the commissioner or the state of Louisiana have any liability or responsibility to make any payments for costs associated with site restoration if the trusts created herein are insufficient to do so.

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D. The commissioner or his agents, on proper identification, may enter the land of another for purposes of site assessment or restoration.

E. The commissioner and his agents are not liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Chapter.

F. No party contracting with the Department of Natural Resources, office of conservation, or the commissioner under the provisions of this Chapter shall be deemed to be a public employee or an employee otherwise subject to the provisions of Parts I through IV of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950.

§1110. Carbon Dioxide Geologic Storage Trust Fund

A.(1) There is hereby established a fund in the custody of the state treasurer to be known as the Carbon Dioxide Geologic Storage Trust Fund, hereinafter referred to as the "fund", which shall constitute a special custodial trust fund which shall be administered by the commissioner, who shall make disbursements from the fund solely in accordance with the purposes and uses authorized by this Chapter.

(2) After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay into the fund, an amount equal to the monies received by the state treasury pursuant to this Chapter. The monies in this fund shall be used solely as provided in this Section and only in the amount appropriated by the legislature. All unexpended and unencumbered monies remaining in this fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund and all returns of such investment shall be deposited to the fund. The funds received shall be placed in the special trust fund in the custody of the state treasurer to be used only in accordance with this Chapter and shall not be placed in the general fund. The funds provided to the commissioner pursuant to this Section shall at all times be and

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remain the property of the commissioner. The funds shall be used only for the purposes set forth in this Chapter and for no other governmental purposes, nor shall any branch of government be allowed to borrow any portion of the funds. It is the intent of the legislature that this fund and its increments shall remain intact and inviolate.

B. The following monies shall be placed into the fund:

(1) The fees, penalties, and bond forfeitures collected pursuant to this Chapter. All fees and self-generated revenue remaining on deposit for the office of conservation at the end of any fiscal year shall be deposited into the fund.

(2) Private contributions.

(3) Interest earned on the funds deposited in the fund.

(4) Civil penalties for violation of any rules or permit conditions imposed under this Chapter, or costs recovered from responsible parties for geologic storage facility closure or remediation pursuant to this Section and R.S. 30:1104, 1105, and 1106.

(5) Any grants, donations, and sums allocated from any source, public or private, for the purposes of this Chapter.

(6) Site-specific trust accounts; however, the monies of such accounts shall not be used for any geologic storage facility other than that specified for each respective account.

C. The commissioner is hereby authorized to levy on storage operators the following fees or costs for the purpose of funding the fund:

(1) A fee payable to the office of conservation, in a form and schedule prescribed by the office of conservation, for each ton of carbon dioxide injected for storage. This fee is to be determined based upon the following formula:

(a) $F \times 120 < M$

(b) "F" is a per unit fee in dollars per ton set by the office of conservation.

(c) "120" is the minimum number of months over which a fee is to be collected.

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(d) "M" is the Maximum Payment of five million dollars and is the total amount of fees to be collected before the payment of the fee can be suspended as provided in this Section.

(e) The fee cannot exceed five million dollars divided by one hundred twenty divided by the total tonnage of carbon dioxide to be injected, (($5,000,000/120)/ total injection tonnage of carbon dioxide).

(f) Once a storage operator has contributed five million dollars to the trust fund, the fee assessments to that storage operator under this Section shall cease until such time as funds begin to be expended for monitoring and caretaking of any completed storage facility. The treasurer of the state of Louisiana shall certify, to the commissioner, the date on which the balance in the fund for a storage operator equals or exceeds five million dollars. The fund fees shall not be collected or required to be paid on or after the first day of the second month following the certification, except that the commissioner shall resume collecting the fees on receipt of a certification from the treasurer that, based on the expenditures or commitments to expend monies, the fund has fallen below four million dollars for the storage operator. If at any time the balance in the trust fund exceeds an authorized amount determined by multiplying five million dollars by the number of active and completed storage facilities within the state, the collection of fees from the operators of storage facilities that have already contributed five million dollars to the trust fund will be suspended until such time as the balance in the trust fund falls below such authorized amount, at which time they will be reinstated.

(g) At the end of each fiscal year, the fee may be redetermined by the commissioner based upon the estimated cost of administering and enforcing this Chapter for the upcoming year divided by the tonnage of carbon dioxide expected to be injected during the upcoming year. The total fee assessed shall be sufficient to assure a balance in the fund not to exceed five million dollars for any active storage facility within the state at the beginning of each fiscal year. Any amount received that exceeds the annual balance required shall be deposited in the fund, but

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appropriate credits shall be given against future fees or fees associated with other storage facilities operated by the same storage operator.

(2) An annual regulatory fee for storage facilities that have not received a certificate of completion of injection operations payable to the office of conservation, in a form and schedule prescribed by the office of conservation, on the carbon dioxide storage facility in an amount not to exceed fifty thousand dollars for Fiscal Year 2010-2011 and thereafter. Such fee shall be based upon the annual projected costs to the office of conservation for oversight and regulation of such storage facilities.

(3) An application fee payable to the office of conservation, in a form and schedule prescribed by the office of conservation, by industries under the jurisdiction of the office of conservation. The commissioner may, by rule in accordance with the Administrative Procedure Act, increase any application fee to an amount not in excess of eight and one-half percent above the amount charged for the fee on July 1, 2010.

D. The provisions of the Louisiana Tax Code shall apply to the administration, collection, and enforcement of the fees imposed herein, and the penalties provided by that code shall apply to any person who fails to pay or report the fees. Proceeds from the fees, including any penalties and interest collected in connection with the fees, shall be deposited into the fund.

E. The fund shall be used solely for the following purposes:

(1) Operational and long-term inspecting, testing, and monitoring of the site, including remaining surface facilities and wells.

(2) Remediation of mechanical problems associated with remaining wells and surface infrastructure.

(3) Repairing mechanical leaks at the site.

(4) Plugging and abandoning remaining wells or conversion for use as observation wells.

(5)(a) Administration of this Chapter by the commissioner in an amount not to exceed seven hundred fifty thousand dollars each fiscal year.

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(b) The Oil and Gas Regulatory Fund created by R.S. 30:21 may be used for the administration of this Chapter as authorized by this Paragraph until June 30, 2014. Any such payments from the Oil and Gas Regulatory Fund shall be repaid from the Carbon Dioxide Storage Trust Fund by June 30, 2018.

(6) Payment of fees and costs associated with the administration of the fund or site-specific accounts.

(7) Payment of fees and costs associated with the acquisition of appropriate insurance for future storage facility liability if it should become available, either commercially or through government funding.

F. The commissioner is authorized to enter into agreements and contracts and to expend money in the fund for the following purposes:

(1) To fund research and development in connection with carbon sequestration technology and methods.

(2) To monitor any remaining surface facilities and wells.

(3) To remediate mechanical problems associated with remaining wells or site infrastructure.

(4) To repair mechanical leaks at the storage facility.

(5) To contract with a private legal entity pursuant to this Chapter.

(6) To plug and abandon remaining wells except for those wells to be used as observation wells.

G. The commissioner shall keep accurate accounts of all receipts and disbursements related to the administration of the fund and site-specific trust funds and shall make a specific annual report addressing the administration of the funds to the Senate Committee on Natural Resources, the House Committee on Natural Resources and Environment, and the Senate Committee on Environmental Quality before March first.

H. Every five years the commissioner shall submit a report to the Senate Committee on Natural Resources, the House Committee on Natural Resources and Environment, and the Senate Committee on Environmental Quality before March first, that assesses the effectiveness of the fund and other related provisions in this

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Part and provides such other information as may be requested by the legislature to allow the legislature to assess the effectiveness of this Chapter.

§1111. Site-specific trust accounts

A. If a storage facility site is transferred from one party to another, not including a transfer to the state pursuant to R.S. 30:1109, a site-specific trust account may be established to separately account for each such site for the purpose of providing a source of funds for long-term maintenance, monitoring, and site closure or remediation of that storage facility site at such time in the future when closure or remediation of that storage facility site is required. For purposes of this Chapter, a transfer shall be deemed to have been made once there is a change in ownership of any kind at a storage facility site. Once established, the site-specific trust account shall survive until completion of site closure or remediation of the associated storage facility site.

B. In the event the parties to a transfer elect to establish a site-specific trust account under this Section, the commissioner shall require a storage facility long-term maintenance, monitoring, and site closure assessment to be made to determine the long-term maintenance, monitoring, and site closure requirements existing at the time of the transfer, or at the time the site-specific trust account is established. The storage facility long-term maintenance, monitoring, and site closure assessment shall be conducted by approved site assessment contractors appearing on a list approved by the commissioner or acceptable to the commissioner. The storage facility long-term maintenance, monitoring, and site closure assessment shall specifically detail the long-term maintenance, monitoring, and site closure needs and shall provide an estimate of the long-term maintenance, monitoring and site closure costs needed to maintain and restore the storage facility site based on the conditions existing at the time of transfer, or at the time the site-specific trust account is established.

C. The party or parties to the transfer shall, based upon the long-term maintenance and site restoration assessment, propose a funding schedule which will provide for the site-specific trust account. The funding schedule shall consider the

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uniqueness of each transfer, acquiring party, and storage facility site. Funding of the site-specific trust account shall include some contribution to the account at the time of transfer and at least quarterly payments to the account. Cash or bonds in a form and of a type acceptable to the commissioner, or any combination thereof, may also be considered for funding. The commissioner shall monitor each trust account to assure that it is being properly funded. The funds in each trust account shall remain the property of the commissioner.

D. The commissioner may approve the site-specific trust account for a storage facility site upon review of the assessment and the site-specific trust account that has been proposed for that storage facility site as provided in the regulations. Such approval shall not be unreasonably withheld.

E. When transfers of storage facility sites occur subsequent to the formation of site-specific trust accounts but prior to the end of their economic life, the commissioner and the acquiring party shall, in the manner provided for in this Section, again redetermine cost and agree upon a funding schedule. The balance of any site-specific trust account at the time of subsequent transfer shall remain with the storage facility site and shall be a factor in the redetermination.

F. Once the commissioner has approved the site-specific trust account, and the account is fully funded, the party transferring the storage facility site and all prior owners, operators, and working interest owners shall not thereafter be held liable by the state for any site closure costs or actions associated with the transferred storage facility site. The party acquiring the storage facility site shall thereafter be the responsible party for the purposes of this Part.

G. The failure of a transferring party to make a good faith disclosure of all material storage facility site conditions existing at the time of the transfer may render that party liable for the costs to address such undisclosed conditions to regulatory standards in excess of the balance of the site-specific trust fund.

H. Except as provided in Subsection E of this Section, the parties to a transfer may elect not to establish a site-specific trust account; however, in the

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absence of such account, the parties shall not be exempt from liability as set forth in Subsection F of this Section.

I. After site closure has been completed and approved by the commissioner, funds from a site-specific trust account shall be disbursed as follows:

(1) The balance of the account existing in the site-specific trust account will be remitted to the responsible party.

(2) Such account shall thereafter be closed.

J. The provisions of this Chapter regarding the implementation of site-specific trust accounts shall not be implemented until the rules and regulations pertaining to such trust accounts are finally adopted.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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