

Carbon Sequestration

The SSL Committee published a draft of [Wyoming Chapter 30 of 2008](#) about Carbon Sequestration in the 2010 *SSL* Volume. This draft Act expands upon the Wyoming legislation by including eminent domain provisions about construction and operation of such a facility, including installation of pipelines to transport carbon dioxide. This Act also addresses long term liability by transferring ownership of such facilities to the state 10 years (or other time period adopted by rule) after a facility closes. Finally, the Act establishes a Carbon Dioxide Geologic Storage Trust Fund, funded by fees and penalties, to provide for long-term operation and maintenance of facilities.

This draft Act is based on Louisiana Act 517, which, in turn, was based on model legislation proposed by the Interstate Oil and Gas Compact Commission (“IOGCC”), as modified to fit the state’s regulatory structure and other existing legislation. Significant facets of the Act are as follows:

- The Act treats CO₂ not as a waste, but as a commodity;
- The Act is drafted in broad terms and grants the Commissioner of Conservation jurisdiction over “all persons and property necessary to administer and enforce effectively the provisions concerning geologic storage of carbon dioxide;”
- The Act grants permitting authority to the state regulatory agency for the purpose of regulating the facility and protecting against CO₂ pollution or migration; and
- The Act empowers a storage operator, after obtaining approval from the state regulatory agency, to exercise the right of eminent domain in order to acquire all surface and subsurface rights necessary for the operation of the storage facility.

This Act provides for policy and jurisdiction of the commissioner of conservation over the geologic storage and withdrawal of carbon dioxide. The Act authorizes the state commissioner of conservation to do the following:

- regulate the storage of carbon dioxide and the transmission of carbon dioxide to such storage facilities;
- issue certificates of public convenience and necessity for such facilities and associated pipelines;
- adopt rules, regulations, or orders to prevent the escape of carbon dioxide into other strata; to prevent the pollution of fresh water by oil, gas, salt water or carbon dioxide;
- provide for closure of abandoned wells;
- make inquiries, investigations, and inspection and take such actions that are necessary to enforce new law;
- make drilling records;
- take steps to prevent blowouts, caving, and seepage;
- identify ownership of wells used in the storage or transportation of carbon dioxide;
- regulate conversion of recovery operations to storage facilities;
- require the placement of meters to prevent waste;
- require closure of abandoned or unused sites; and
- adopt rules and regulations to collect fees.

This draft legislation provides that only a storage operator is responsible for performance required by the Act. The Act generally provides that the injected carbon dioxide will “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...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....” This generally occurs ten years after the cessation of injection operations, unless a different time period is specified in the rules. At such time, the commissioner will 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. Upon issuance of the certificate, both liability for, and ownership of, the remaining project, including the stored carbon dioxide, transfers to the state.

The legislation provides that prior to using a reservoir and prior to the exercise of eminent domain the commissioner shall have a hearing and find that such use is suitable and feasible; will not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits; and will not endanger lives or property. It provides that no reservoir or 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 have agreed to the use. It provides that no reservoir shall be subject to such use unless either the volumes of original reservoir gas and condensate content therein which are capable of being produced in paying quantities have all been produced or such reservoir has a greater value or utility as a reservoir for storage, and at least three-fourths of the owners have consented to such use in writing. If the commissioner finds that a proposed reservoir has not been fully depleted of commercially recoverable hydrocarbons, the commissioner shall determine the amount.

The Act authorizes the commissioner to issue orders to ensure that carbon dioxide reduced to possession and then injected into such a reservoir remains the property of the owner of the carbon dioxide, not the surface or mineral rights owner, and to issue orders to protect the reservoir.

The Act directs the commissioner to issue a compliance order or commence a civil action for violations of the Act. Compliance orders must state with specificity the nature of the violation, a time for compliance and, in the event of noncompliance, assess a civil penalty. The civil penalty may be no more than \$5,000 per day per violation. No penalty may be assessed until the violator has been given notice and an opportunity to respond. The commissioner or, if requested, attorney general shall prosecute all civil cases arising out of a violation of new law.

This Act authorizes the commissioner to issue certificates of public convenience and necessity or certificates of completion of injection operations after a public hearing.

The Act provides that it shall not cause any storage operator or carbon dioxide transmitter to become, or subject to the duties, liabilities, or obligations of, a common carrier or public utility or increase their tax liability absent a change in existing law.

The Act authorizes a storage operator that has been issued a permit and a certificate of public necessity to exercise eminent domain to construct, operate, and modify a storage facility or lay, maintain, and operate pipelines for the transportation of carbon dioxide to storage, “including but not limited to surface and subsurface rights, mineral rights, and other property interests necessary or useful for the purpose of constructing, operating, or modifying a carbon dioxide facility.” However, as a condition precedent, the commissioner, must have determined that the reservoir sought to be used is suitable and feasible for such use and meets all regulatory requirements after public hearing in the parish where the facility is to be located. The eminent domain authority is to be exercised pursuant to the procedures found in existing law. The legislation provides that the commissioner is not a necessary or indispensable party to an eminent domain proceeding and has the right to be dismissed at the expense and cost of the party that named the commissioner.

As mentioned above, this Act provides that after 10 years, or other time established by rule, after cessation of operations the commissioner shall issue a certificate of completion of injection operations by showing the reservoir is expected to retain integrity, at which time

ownership is transferred to the state and the storage operator and all generators of the carbon dioxide shall be released from any and all duties under new law and any and all liability. However, the Act directs that the last operator or owner shall not be released of liability if a Carbon Dioxide Geologic Trust Fund has been depleted. The last operator liability can avoid liability if a Site Specific Trust Fund is established. Such release of liability shall not apply to any such owner, operator, or generator that intentionally and knowingly concealed or misrepresented material facts related to the integrity of the storage facility or composition of any injected carbon dioxide. The legislation directs that after issuance of the certificate of completion of injection operation any performance bonds shall be released and the monitoring or remediation of the site shall become the responsibility of a Carbon Dioxide Geologic Storage Trust Fund.

This Act provides that the state shall not assume or have any liability by the act of assuming ownership of a storage facility after the issuance of the certificate of completion of injection operations. It limits the civil liability of an owner or operator of a storage facility or such transmission pipeline, or generator of the carbon dioxide for non-economic damages to \$250,000 per occurrence; however, in an action for wrongful death, permanent and substantial physical deformity, loss of use of limb or organ systems; or permanent physical or mental injury that prevents independent care and prevents life-sustaining activities non-economic damages shall not exceed \$500,000. If the liability caps provided for in the Act are found unconstitutional, such damages shall not exceed \$1,000,000.

The Act directs the commissioner to levy a per tonnage of carbon dioxide stored fee on operators up to a maximum of \$5,000,000. The rate of collecting the fee shall be determined by the commissioner based on the formula $F \times 120 < M$, where "F" is the per unit fee, "120" is the minimum number of months over which the fee is collected, and "M" is the maximum payment of \$5,000,000. The commissioner shall suspend the collection of the fee once the storage operator's balance in the fund equals \$5,000,000 and will resume once the balance falls below that amount. It provides for a regulatory fee payable to the commissioner in the form and schedule set by the commissioner not to exceed \$50,000 for FY 2010-2011 and thereafter. The Act provides for an application fee in the form and schedule set by the commissioner not to exceed 8½% above the amount charged on July 1, 2010.

The Act provides for the following uses of the Fund:

- operational and long-term inspecting, testing, and monitoring of sites;
- remediation of mechanical problems associated with remaining wells and surface infrastructure;
- repairing mechanical leaks;
- administrative cost of the commissioner not to exceed \$750,000 per year;
- payment of fees and cost associated with site specific accounts; and
- payments of fees and cost to acquire insurance

This Act authorizes the commissioner to enter into agreements and contracts for the following purposes:

- research and development in carbon sequestration technology and methods;
- monitor sites;
- remediate mechanical problems;
- repair leaks; and
- contract with a private legal entity.

The legislation directs the commissioner to keep an accurate accounting of the Fund and to report to the legislature about effectiveness of the Fund and the program.

The Act also provides for site-specific accounts that are established for long-term maintenance and restoration when a storage facility is transferred from one party to another.

Submitted as:
Louisiana
[Act 517 of 2009](#)
Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Geologic Sequestration of Carbon
2 Dioxide Act.”

3
4 Section 2. [*Policy and Jurisdiction.*]

5 (A) It is declared to be in the public interest for a public purpose and the policy of [state]
6 that:

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

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

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

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

18 (B) The [commissioner of conservation] shall have jurisdiction and authority over all
19 people and property necessary to enforce effectively the provisions of this Act relating to the
20 geologic storage of carbon dioxide and subsequent withdrawal of stored carbon dioxide.

21
22 Section 3. [*Definitions.*] Unless the context otherwise requires, the words defined in this
23 Section have the following meaning when found in this Act:

24 (1) “Carbon dioxide” means naturally occurring, geologically sourced, or
25 anthropogenically sourced carbon dioxide including its derivatives and all mixtures,
26 combinations, and phases, whether liquid or gaseous, stripped, segregated, or divided from any
27 other fluid stream thereof.

28 (2) “Commissioner” has the same meaning as provided in [insert citation].

29 (3) “Gas” has the same meaning as provided in [insert citation].

30 (4) “Geologic storage” means the long- or short-term underground storage of
31 carbon dioxide in a reservoir.

32 (5) “Office” means the [office of conservation, department of natural resources].

33 (6) “Oil” has the same meaning as provided in [insert citation].

34 (7) “Person” means any natural person, corporation, association, partnership,
35 limited liability company, or other entity, receiver, tutor, curator, executor, administrator,
36 fiduciary, or representative of any kind.

37 (8) “Reservoir” means that portion of any underground geologic stratum,
38 formation, aquifer, or cavity or void, whether natural or artificially created, including oil and gas
39 reservoirs, salt domes or other saline formations, and coal and coalbed methane seams, suitable

40 for or capable of being made suitable for the injection and storage of carbon dioxide therein.

41 (9) “Storage facility” means the underground reservoir, carbon dioxide injection
42 wells, monitoring wells, underground equipment, and surface buildings and equipment utilized in
43 the storage operation, including pipelines owned or operated by the storage operator used to
44 transport the carbon dioxide from one or more capture facilities or sources to the storage and
45 injection site. The underground reservoir component of the storage facility includes any
46 necessary and reasonable aerial buffer and subsurface monitoring zones designated by the
47 [commissioner] for the purpose of ensuring the safe and efficient operation of the storage facility
48 for the storage of carbon dioxide and shall be chosen to protect against pollution, and escape or
49 migration of carbon dioxide.

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

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

57
58 Section 4. *[Duties and Powers of the Commissioner; Rules and Regulations; Permits.]*

59 (A) The [office of conservation's] actions under this Act shall be directed and controlled
60 by the [commissioner]. The [commissioner] shall have authority to:

61 (1) Regulate the development and operation of storage facilities and pipelines
62 transmitting carbon dioxide to storage facilities, including in accordance with the provisions of
63 Section 7 of this Act, the issuance of certificates of public convenience and necessity for storage
64 facilities and pipelines serving such projects approved hereunder.

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

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

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

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

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

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

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

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

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

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

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

98 (9) Promulgate rules and regulations requiring interested persons to place
99 monitoring equipment of a type approved by the [commissioner] on all storage facilities, and
100 ancillary equipment necessary and proper to monitor, verify carbon dioxide injections, and to
101 prevent waste. It shall be a violation of this Act for any person to refuse to attach or install a
102 monitor within a reasonable period of time when ordered to do so by the [commissioner], or in
103 any way to tamper with the monitors so as to produce a false or inaccurate reading.

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

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

111 (12) Promulgate rules related to the setting and collection of fees and civil
112 penalties pursuant to this Act.

113 (B) Only a storage operator as defined in Section 3 (10) of this Act shall be held or
114 deemed responsible for the performance of any actions required by the [commissioner] under
115 this Act.

116 (C) Prior to the use of any reservoir for the storage of carbon dioxide and prior to the
117 exercise of eminent domain by any person, firm, or corporation having such right under laws of
118 this state, and as a condition precedent to such use or to the exercise of such rights of eminent
119 domain, the [commissioner], after public hearing pursuant to the provisions of [insert citation],
120 held in the [parish] where the storage facility is to be located, shall have found all of the
121 following:

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

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

130 (b) such reservoir has a greater value or utility as a reservoir for carbon
131 dioxide storage than for the production of the remaining volumes of original reservoir oil, gas,
132 condensate, or other commercial mineral, and at least three-fourths of the owners, in interest,
133 exclusive of any "lessor" defined in [insert citation], have consented to such use in writing.

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

137 (3) That the proposed storage will not endanger human lives or cause a hazardous

138 condition to property.

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

145 (E) The [commissioner] may issue any necessary order providing that all carbon dioxide
146 which has previously been reduced to possession and which is subsequently injected into a
147 storage reservoir shall at all times be deemed the property of the party that owns such carbon
148 dioxide, whether at the time of injection or pursuant to a change of ownership by agreement
149 while the carbon dioxide is located in the storage facility, [his] successors and assigns; and in no
150 event shall such carbon dioxide be subject to the right of the owner of the surface of the lands or
151 of any mineral interest therein under which such storage reservoir shall lie or be adjacent to or of
152 any person other than the owner, [his] successors, and assigns to produce, take, reduce to
153 possession, waste, or otherwise interfere with or exercise any control there over, provided that
154 the owner, [his] successors, and assigns shall have no right to gas, liquid hydrocarbons, salt, or
155 other commercially recoverable minerals in any stratum or portion thereof not determined by the
156 [commissioner] to constitute an approved storage reservoir. The [commissioner] shall issue such
157 orders, rules, and regulations as may be necessary for the purpose of protecting any such storage
158 reservoir, strata, or formations against pollution or against the escape of carbon dioxide
159 therefrom, including such necessary rules and regulations as may pertain to the drilling into or
160 through such storage reservoir.

161 (F) Nothing in this Act shall prevent an enhanced oil and gas recovery project utilizing
162 injection of carbon dioxide as approved under [insert citation].

163

164 Section 5. [*Hearings; Notice; Rules of Procedures; Emergency; Service of Process;*
165 *Public Records; Request for Hearings; Orders and Compliance Orders.*]

166 (A) All public hearings under this Part shall be conducted pursuant to the provisions of
167 [insert citation].

168 (B) All rules, regulations, and orders made by the [commissioner] under this Act shall be
169 in writing and shall be entered in full by [him] in a book kept for that purpose. This book shall be
170 a public record and shall be open for inspection at all times during reasonable office hours and
171 shall be available on the [department of natural resources] website. A copy of a rule, regulation,
172 or order, certified by the [commissioner], shall be received in evidence in all courts of this state
173 with the same effect as the original.

174 (C) Any interested person has the right to have the [commissioner] call a hearing for the
175 purpose of taking action in respect to a matter within the jurisdiction of the [commissioner] as
176 provided in this Section by making a request therefor in writing and paying the hearing fee set by
177 the [commissioner], as provided by law for hearing conducted pursuant to [insert citation]. Upon
178 receiving the request and payment of the required fees the [commissioner] shall promptly call a
179 hearing. After the hearing and with all convenient speed and within [thirty days] after the
180 conclusion of the hearing, the [commissioner] shall take whatever action [he] deems appropriate
181 with regard to the subject matter.

182

183 Section 6. [*Underground Injection Control.*]

184 (A) The [commissioner] shall have authority to perform any and all acts necessary to
185 carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended,
186 relating to this state's participation in the underground injection control program established

187 under that act with respect to the storage and sequestration of carbon dioxide. To that end, the
188 [commissioner] is authorized and empowered to adopt, modify, repeal, and enforce procedural,
189 interpretive, and administrative rules in accordance with the provisions of this Act.

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

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

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

208 (2) No penalty shall be assessed until the person charged has been given notice
209 and an opportunity for a hearing on such charge. In determining whether or not a civil penalty is
210 to be assessed and in determining the amount of the penalty, or the amount agreed upon in
211 compromise, the gravity of the violation and the demonstrated good faith of the person charged
212 in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

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

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

220

221 Section 7. [*Certificates of Public Convenience and Necessity; Certificate of Completion*
222 *of Injection Operations.*]

223 (A) The [commissioner] shall issue a certificate of public convenience and necessity or a
224 certificate of completion of injection operations to each person applying therefor if, after a public
225 hearing pursuant to the provisions of [insert citation], held in the [parish] where the storage
226 facility is to be located, [he] determines that it is required by the present or future public
227 convenience and necessity, and such decision is based upon the following criteria;

228 (1) the proposed storage facility meets the requirements of Section 4 (C) of the
229 Act; and

230 (2) the proposed storage facility meets the requirements of any rules adopted
231 under this Act. However, if any person has previously been issued a certificate of public
232 convenience and necessity or a certificate of completion of injection operations by the
233 [commissioner], that certificate continues to remain valid and in force.

234 (B) The [commissioner] shall issue a certificate of completion of injection operations to
235 the operator applying therefor, if after a public hearing pursuant to [insert citation], it is

236 determined that such operator has met all of the conditions required for such certificate,
237 including the requirements of Section 9 of this Act.

238 (C) Anything in this Act, or in any rule, regulation, or order issued by the [commissioner]
239 under this Act to the contrary notwithstanding, accepting or acting pursuant to a certificate of
240 public convenience and necessity or a certificate of completion of injection operations issued
241 under this Act, compliance with the provisions of this Act, or with rules, regulations, or orders
242 issued by the [commissioner] under this Act, or voluntarily performing any act or acts which
243 could be required by the [commissioner] pursuant to this Act, or rules, regulations, or orders
244 issued by the [commissioner] under this Act, shall not have the following consequences:

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

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

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

254

255 Section 8. [*Eminent Domain, Expropriation.*]

256 (A) (1) Any storage operator is hereby authorized, after obtaining any permit and any
257 certificate of public convenience and necessity from the [commissioner] required by this Act, to
258 exercise the power of eminent domain and expropriate needed property to acquire surface and
259 subsurface rights and property interests necessary or useful for the purpose of constructing,
260 operating, or modifying a storage facility and the necessary infrastructure including the laying,
261 maintaining, and operating pipelines for the transportation of carbon dioxide to a storage facility,
262 together with telegraph and telephone lines necessary and incidental to the operation of these
263 storage facilities and pipelines, over private property thus expropriated; and have the further right
264 to construct and develop storage facilities and the necessary infrastructure, including the laying,
265 maintaining, and operating of pipelines along, across, over, and under any navigable stream or
266 public highway, street, bridge, or other public place; and also have the authority, under the right
267 of expropriation herein conferred, to cross railroads, street railways, and other pipelines, by
268 expropriating property necessary for the crossing under the general expropriation laws of this
269 state. The right to run along, across, over, or under any public road, bridge, or highway, as before
270 provided for, may be exercised only upon condition that the traffic thereon is not interfered with,
271 and that such road or highway is promptly restored to its former condition of usefulness, at the
272 expense of the storage facility and the pipeline owner if different from the storage operator, the
273 restoration to be subject also to the supervision and approval of the proper local authorities.

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

281 (B) The exercise of the right of eminent domain granted in this Act shall not prevent
282 persons having the right to do so from drilling through the storage facility in such manner as
283 shall comply with the rules of the [commissioner] issued for the purpose of protecting the storage
284 facility against pollution or invasion and against the escape or migration of carbon dioxide.

285 Furthermore, the right of eminent domain set out in this Section shall not prejudice the rights of
286 the owners of the lands, minerals, or other rights or interests therein as to all other uses not
287 acquired for the storage facility.

288 (C) The eminent domain authority authorized under this Act shall be exercised pursuant
289 to the procedures found in [insert citation], and shall be in addition to any other power of
290 eminent domain authorized by law.

291 (D) The [commissioner] is neither a necessary nor indispensable party to an eminent
292 domain proceeding, and if named as a party or third party has an absolute right to be dismissed
293 from said action at the expense of the party who names the [commissioner]. The [commissioner]
294 shall recover all costs reasonably incurred to be dismissed from the action, including attorney
295 fees.

296

297 Section 9. [*Cessation of Storage Operations; Liability Release.*]

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

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

314 (3) Such release from liability will not apply to the owner or operator of a storage
315 facility, carbon dioxide transmission pipeline, or the generator of the carbon dioxide being
316 handled by either the facility or pipeline if it is demonstrated that any such owner, operator, or
317 generator intentionally and knowingly concealed or intentionally and knowingly misrepresented
318 material facts related to the mechanical integrity of the storage facility or the chemical
319 composition of any injected carbon dioxide. In addition, upon the issuance of the certificate of
320 completion of injection operations, any performance bonds posted by the operator shall be
321 released and continued monitoring of the site, including remediation of any well leakage, shall
322 become the principal responsibility of the [Carbon Dioxide Geologic Storage Trust Fund].

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

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

334 activities. In such cases, the maximum amount recoverable as compensatory damages for
335 noneconomic loss shall not exceed [five hundred thousand dollars] per occurrence.

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

342 (C) Nothing in this Act shall establish or create any liability or responsibility on the part
343 of the [commissioner] or the state to pay any costs associated with site restoration from any
344 source other than the funds or trusts created by this Act, nor shall the [commissioner] or this state
345 have any liability or responsibility to make any payments for costs associated with site
346 restoration if the trusts created herein are insufficient to do so.

347 (D) The [commissioner] or [his] agents, on proper identification, may enter the land of
348 another for purposes of site assessment or restoration.

349 (E) The [commissioner] and [his] agents are not liable for any damages arising from an
350 act or omission if the act or omission is part of a good faith effort to carry out the purpose of this
351 Act.

352 (F) No party contracting with the [department of natural resources, office of
353 conservation], or the [commissioner] under the provisions of this Act shall be deemed to be a
354 public employee or an employee otherwise subject to the provisions of [insert citation].
355

355

356 Section 10. [*Carbon Dioxide Geologic Storage Trust Fund.*]

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

362 (2) After compliance with the requirements of [insert citation] relative to the
363 [Bond Security and Redemption Fund], and after a sufficient amount is allocated from that fund
364 to pay all of the obligations secured by the full faith and credit of the state which become due
365 and payable within any fiscal year, the [treasurer] shall pay into the fund, an amount equal to the
366 monies received by the [state treasury] pursuant to this Act. The monies in this fund shall be used
367 solely as provided in this Section and only in the amount appropriated by the [legislature]. All
368 unexpended and unencumbered monies remaining in this fund at the end of the fiscal year shall
369 remain in the fund. The monies in the fund shall be invested by the [state treasurer] in the same
370 manner as monies in the [state general fund] and all returns of such investment shall be deposited
371 to the fund. The funds received shall be placed in the special trust fund in the custody of the
372 [state treasurer] to be used only in accordance with this Act and shall not be placed in the
373 [general fund]. The funds provided to the [commissioner] pursuant to this Section shall at all
374 times be and remain the property of the [commissioner]. The funds shall be used only for the
375 purposes set forth in this Act and for no other governmental purposes, nor shall any branch of
376 government be allowed to borrow any portion of the funds. It is the intent of the [legislature] that
377 this fund and its increments shall remain intact and inviolate.

378 (B) The following monies shall be placed into the fund:

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

382 (2) Private contributions.

383 (3) Interest earned on the funds deposited in the fund.
384 (4) Civil penalties for violation of any rules or permit conditions imposed under
385 this Act, or costs recovered from responsible parties for geologic storage facility closure or
386 remediation pursuant to this Section and Sections 4, 5, and 6 of this Act.
387 (5) Any grants, donations, and sums allocated from any source, public or private,
388 for the purposes of this Act.
389 (6) Site-specific trust accounts; however, the monies of such accounts shall not be
390 used for any geologic storage facility other than that specified for each respective account.
391 (C) The [commissioner] is hereby authorized to levy on storage operators the following
392 fees or costs for the purpose of funding the fund:
393 (1) A fee payable to the [office of conservation], in a form and schedule
394 prescribed by the [office of conservation], for each ton of carbon dioxide injected for storage.
395 (a) This fee is to be determined based upon the following formula:
396 (I) $F \times 120 < M$
397 (II) "F" is a per unit fee in dollars per ton set by the [office of
398 conservation].
399 (III) "120" is the minimum number of months over which a fee is
400 to be collected.
401 (IV) "M" is the Maximum Payment of [five million dollars] and is
402 the total amount of fees to be collected before the payment of the fee can be suspended as
403 provided in this Section.
404 (b) The fee cannot exceed [five million dollars divided by one hundred
405 twenty divided by the total tonnage of carbon dioxide to be injected], $[\$5,000,000/120]/$ total
406 injection tonnage of carbon dioxide].
407 (c) Once a storage operator has contributed [five million dollars] to the
408 trust fund, the fee assessments to that storage operator under this Section shall cease until such
409 time as funds begin to be expended for monitoring and caretaking of any completed storage
410 facility. The [treasurer of this state] shall certify to the [commissioner], the date on which the
411 balance in the fund for a storage operator equals or exceeds [five million dollars]. The fund fees
412 shall not be collected or required to be paid on or after the [first day of the second month
413 following the certification], except that the [commissioner] shall resume collecting the fees on
414 receipt of a certification from the [treasurer] that, based on the expenditures or commitments to
415 expend monies, the fund has fallen below [four million dollars] for the storage operator. If at any
416 time the balance in the trust fund exceeds an authorized amount determined by multiplying [five
417 million dollars] by the number of active and completed storage facilities within the state, the
418 collection of fees from the operators of storage facilities that have already contributed [five
419 million dollars] to the trust fund will be suspended until such time as the balance in the trust fund
420 falls below such authorized amount, at which time they will be reinstated.
421 (d) At the end of each fiscal year, the fee may be redetermined by the
422 [commissioner] based upon the estimated cost of administering and enforcing this Act for the
423 upcoming year divided by the tonnage of carbon dioxide expected to be injected during the
424 upcoming year. The total fee assessed shall be sufficient to assure a balance in the fund not to
425 exceed [five million dollars] for any active storage facility within the state at the beginning of
426 each fiscal year. Any amount received that exceeds the annual balance required shall be
427 deposited in the fund, but appropriate credits shall be given against future fees or fees associated
428 with other storage facilities operated by the same storage operator.
429 (2) An annual regulatory fee for storage facilities that have not received a
430 certificate of completion of injection operations payable to the [office of conservation], in a form
431 and schedule prescribed by the [office of conservation], on the carbon dioxide storage facility in

432 an amount not to exceed [fifty thousand dollars for Fiscal Year 2010-2011] and thereafter. Such
433 fee shall be based upon the annual projected costs to the [office of conservation] for oversight
434 and regulation of such storage facilities.

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

440 (D) The provisions of the [state tax code] shall apply to the administration, collection,
441 and enforcement of the fees imposed herein, and the penalties provided by that code shall apply
442 to any person who fails to pay or report the fees. Proceeds from the fees, including any penalties
443 and interest collected in connection with the fees, shall be deposited into the fund.

444 (E) The fund shall be used solely for the following purposes:

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

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

449 (3) Repairing mechanical leaks at the site.

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

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

454 (b) The [Oil and Gas Regulatory Fund] created by [insert citation] may be
455 used for the administration of this Act as authorized by this Paragraph until [June 30, 2014]. Any
456 such payments from the [Oil and Gas Regulatory Fund] shall be repaid from the [Carbon
457 Dioxide Storage Trust Fund] by [June 30, 2018].

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

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

463 (F) The [commissioner] is authorized to enter into agreements and contracts and to
464 expend money in the fund for the following purposes:

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

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

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

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

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

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

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

479 (H) Every [five years] the [commissioner] shall submit a report to the [Senate Committee
480 on Natural Resources, the House Committee on Natural Resources and Environment, and the

481 Senate Committee on Environmental Quality] before [March first], that assesses the
482 effectiveness of the fund and other related provisions in this Section and provides such other
483 information as may be requested by the [legislature] to allow the [legislature] to assess the
484 effectiveness of this Act.

485

486 Section 11. [*Site-Specific Trust Accounts.*]

487 (A) If a storage facility site is transferred from one party to another, not including a
488 transfer to the state pursuant to Section 9 of this Act, a site-specific trust account may be
489 established to separately account for each such site for the purpose of providing a source of funds
490 for long-term maintenance, monitoring, and site closure or remediation of that storage facility
491 site at such time in the future when closure or remediation of that storage facility site is required.
492 For purposes of this Act, a transfer shall be deemed to have been made once there is a change in
493 ownership of any kind at a storage facility site. Once established, the site-specific trust account
494 shall survive until completion of site closure or remediation of the associated storage facility site.

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

507 (C) The party or parties to the transfer shall, based upon the long-term maintenance and
508 site restoration assessment, propose a funding schedule which will provide for the site-specific
509 trust account. The funding schedule shall consider the uniqueness of each transfer, acquiring
510 party, and storage facility site. Funding of the site-specific trust account shall include some
511 contribution to the account at the time of transfer and at least [quarterly] payments to the
512 account. Cash or bonds in a form and of a type acceptable to the [commissioner], or any
513 combination thereof, may also be considered for funding. The [commissioner] shall monitor each
514 trust account to assure that it is being properly funded. The funds in each trust account shall
515 remain the property of the [commissioner].

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

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

526 (F) Once the [commissioner] has approved the site-specific trust account, and the account
527 is fully funded, the party transferring the storage facility site and all prior owners, operators, and
528 working interest owners shall not thereafter be held liable by the state for any site closure costs
529 or actions associated with the transferred storage facility site. The party acquiring the storage

530 facility site shall thereafter be the responsible party for the purposes of this Part.

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

535 (H) Except as provided in Subsection E of this Section, the parties to a transfer may elect
536 not to establish a site-specific trust account; however, in the absence of such account, the parties
537 shall not be exempt from liability as set forth in Subsection F of this Section.

538 (I) After site closure has been completed and approved by the [commissioner], funds
539 from a site-specific trust account shall be disbursed as follows:

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

542 (2) Such account shall thereafter be closed.

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

546

547 Section 12. [*Severability.*] [Insert severability clause.]

548

549 Section 13. [*Repealer.*] [Insert repealer clause.]

550

551 Section 14. [*Effective Date.*] [Insert effective date.]