

CHAPTER 24

(HB 259)

AN ACT relating to economic development.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

- (1) *"Cabinet" means the Energy and Environment Cabinet;*
- (2) *"Carbon dioxide" means anthropogenic carbon dioxide of sufficient purity and quality as to not compromise the safety and efficiency of the reservoir to securely contain it;*
- (3) *"Carbon injection well" means a well drilled or converted and operated for the purpose of injecting carbon dioxide into subsurface rock formations for geologic storage;*
- (4) *"Division" means the Division of Oil and Gas within the Department for Natural Resources;*
- (5) *"Geologic storage" means permanent or temporary underground storage of carbon dioxide in a reservoir;*
- (6) *"Permeability" means a measure of the capacity of reservoir strata to accept and transmit fluids, including carbon dioxide;*
- (7) *"Pore space" means the voids in subsurface reservoir strata suitable to contain stored carbon dioxide;*
- (8) *"Pore space owner" means the surface owner unless the pore space has been severed from the surface estate, in which case the pore space owner shall include all persons reasonably known to own an interest in the pore space;*
- (9) *"Reservoir" means a subsurface volume of rock with sufficient porosity and permeability to be suitable for the injection and storage of carbon dioxide, and that has adequate seals to prevent leakage of carbon dioxide;*
- (10) *"Seal" means a subsurface stratum or formation sufficiently impermeable to prevent vertical or lateral movement of injected carbon dioxide out of the storage reservoir;*
- (11) *"Secretary" means the secretary of the Energy and Environment Cabinet;*
- (12) *"Storage facility" means the underground reservoir, underground equipment, and surface buildings and equipment utilized in the storage operation, excluding pipelines used to transport the carbon dioxide to the storage and injection site. The reservoir component of the storage facility shall include a necessary and reasonable areal buffer and subsurface monitoring zones as required by the permit issued by the USEPA for the demonstration carbon injection well;*
- (13) *"Storage operator" means any person holding a permit from the USEPA to operate a storage facility; and*
- (14) *"USEPA" means the United States Environmental Protection Agency.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that:

- (1) *The geologic storage of carbon dioxide will benefit the environment and the citizens of the Commonwealth;*
- (2) *It is vital that long-term geologic storage of carbon dioxide in the Commonwealth be accomplished without disturbance of surface, mineral, or water resources and that public safety is ensured;*
- (3) *Carbon dioxide has current and potential value and its geologic storage may allow for its orderly withdrawal as necessary for commercial, industrial, or other uses, including for enhanced oil and gas recovery;*
- (4) *Development and deployment of carbon capture and storage technology in the Commonwealth will allow industries to utilize diverse fuel sources, create jobs, contribute to state and local tax bases, and enable Kentucky industries to remain competitive in the global economy; and*

- (5) *Attracting demonstration or pilot scale projects that incorporate carbon storage or projects that integrate carbon capture and storage is an economic development priority that will create jobs for Kentuckians and favorably position the Commonwealth for future leadership and growth in the field of carbon storage.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The division is authorized to seek primary jurisdiction and authority over matters relating to the geologic storage of carbon dioxide in the Commonwealth once these programs have been developed at the federal level.*
- (2) *The cabinet shall seek one (1) to five (5) demonstration projects for location in the Commonwealth. Projects shall be approved by the secretary or a designee. To be approved, a project shall inject carbon dioxide into pore space that contains no economically recoverable minerals at the time of the injection and shall:*
- (a) *Incorporate carbon storage or integrate carbon capture and storage technology; or*
- (b) *Be a carbon capture and storage project that is associated with a project that has otherwise qualified and been approved for incentives under KRS 154.27-010 to 154.27-090, the Incentives for Energy Independence Act.*
- (3) *Within eighteen (18) months of obtaining approval of a demonstration project from the cabinet, the applicant shall file the necessary application for a Class V well with Region 4, U.S. Environmental Protection Agency (USEPA), The applicant must begin work on the demonstration project within eighteen (18) months of the date the Class V well permit is granted by the USEPA. The applicant may request an extension of time from the cabinet. If the requirements of this subsection have not been met within the time allowed and the cabinet has not granted an extension of time, the cabinet may revoke its approval of the demonstration project.*
- (4) *The cabinet shall provide testimony on the program's development annually, beginning in 2012, at meetings of the Interim Joint Committee on Natural Resources and Environment and the Special Subcommittee on Energy unless the chairs of the committees direct otherwise. The testimony shall include specific recommendations for legislative action, including necessary appropriations.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The storage operator shall negotiate with the pore space owners and acquire rights needed to access the pore space.*
- (2) *If, after good-faith negotiation, the storage operator cannot locate or cannot reach an agreement with all necessary pore space owners, but has secured written consent or agreement from the owners of at least fifty-one percent (51%) of the interest in the pore space for the storage facility, the division shall order the pooling of all pore space included within the proposed storage facility if the division:*
- (a) *Holds a hearing after notice pursuant to KRS Chapter 13B; and*
- (b) *Finds that the requirements of this section and Section 5 of this Act have been met.*

For the purposes of this section, any unknown or nonlocatable owners shall be deemed to have consented or agreed to the pooling, provided that the storage operator has complied with the publication requirements of Section 5 of this Act.

- (3) *A carbon injection well shall be exempt from the provisions of KRS 353.651 and 353.652 and 805 KAR 1:100, regardless of the depth of the well.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The storage operator shall provide a list to the division of all persons reasonably known to own an interest in pore space proposed to be pooled in an application to the division for a pooling order. A pooling order shall be made only after the division provides notice to all pore space owners proposed to be pooled and after a hearing has been held.*
- (2) *The division shall set and collect a fee adequate to pay expenses associated with the conduct of administrative hearings for pooling of pore space.*
- (3) *If the proposed pooling order concerns pore space with unknown or nonlocatable owners, the storage operator shall publish one (1) notice in the newspaper of the largest circulation in each county in which the pore space is located. The notice shall appear at least twenty (20) days prior to the hearing on the application for the pooling order. The notice shall:*

- (a) *State that an application for a pooling order has been filed with the Division of Oil and Gas in the Department for Natural Resources;*
 - (b) *Describe the pore space proposed to be pooled;*
 - (c) *In the case of an unknown pore space owner, indicate the name of the last known owner;*
 - (d) *In the case of a nonlocatable pore space owner, identify the owner and the owner's last known address;*
 - (e) *State that any person claiming an interest in the pore space proposed to be pooled should notify the director of the division and the storage operator at the published address within twenty (20) days of the publication date; and*
 - (f) *Give the date, time, and location of the hearing.*
- (4) *A pooling order shall authorize the long-term storage of carbon dioxide beneath the tract or portion. The order shall also authorize, where necessary, the location of carbon injection wells, outbuildings, roads, monitoring equipment, and access to them. The pooling order shall identify the compensation to be paid to unknown, nonlocatable, and nonconsenting pore space owners and the basis for valuation of the pooled interest.*
- (5) *A certified copy of any pooling order shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located. Recordation of the order shall be notice of the order to all persons.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon completion of active injection, the storage operator shall notify the division of the completion and close and plug the carbon injection wells as required by the permit issued by USEPA for the demonstration carbon injection wells.*
- (2) *The storage operator shall monitor the storage facility for leakage and migration for the time period and by the methods required by the permit for the carbon injection wells after completion of active injection and plugging of the carbon injection wells.*
- (3) *The ownership and liability for a storage facility may be transferred to:*
 - (a) *The federal government if a federal program exists; or*
 - (b) *The Finance and Administration Cabinet pursuant to subsections (4) to (6) of this section if a federal program does not exist.*
- (4) *If no federal program exists, and the storage operator seeks to transfer the ownership and liability of a storage facility to the Finance and Administration Cabinet, after completion of the required period of monitoring following completion and plugging, the storage operator shall notify the division of its intent to transfer ownership of the stored carbon dioxide and associated liability to the Finance and Administration Cabinet. The storage operator shall provide evidence to the division of the satisfactory completion of all permit conditions pertaining to the demonstration carbon injection well. Upon receipt and evaluation of satisfactory evidence, the division shall forward the evidence to the Finance and Administration Cabinet with a recommendation for the transfer of ownership of the stored carbon dioxide and liability. The storage operator may then apply to the Finance and Administration Cabinet for the transfer of ownership and liability for the stored carbon dioxide.*
- (5) *Ownership of and liability for the stored carbon dioxide shall remain with the storage operator until the transfer is completed.*
- (6) *Upon receipt of the evidence and recommendation of the division and the application for transfer by the storage operator, the Finance and Administration Cabinet shall take appropriate action to effect a transfer.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary of the cabinet shall take affirmative steps to initiate discussions with surrounding states to develop a coordinated and unified approach to subsurface migration of stored carbon dioxide and may enter into reciprocal agreements with states that share a border with Kentucky that:*
 - (a) *Affirm that accidental or unforeseen migration of subsurface stored carbon dioxide across state lines shall not be treated by the states as trespass;*

- (b) Provide a mechanism for resolution and compensation for unforeseen migration incidents, including necessary monitoring arrangements to track or arrest future migration; or*
 - (c) Establish a process whereby reservoirs that cross state lines can be created where it is geologically and mutually advantageous to do so.*
- (2) The cabinet shall report to the Governor and the Legislative Research Commission on the progress of discussions held under this section. The report shall be presented in writing and through testimony to the Special Subcommittee on Energy and the Interim Joint Committee on Natural Resources and the Environment annually unless the chairs of these committees direct otherwise. Reporting shall begin in 2012 and continue until the cabinet is satisfied that all necessary agreements have been reached and has reported that conclusion.*

Signed by Governor March 16, 2011.