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Chapter No. 437
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SENATE BILL NO. 2723

Originated in Senate [signature] Secretary

SENATE BILL NO. 2723

AN ACT TO CREATE THE MISSISSIPPI GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE ACT; TO ARTICULATE LEGISLATIVE INTENT; TO ENACT DEFINITIONS; TO SPECIFY DUTIES AND POWERS OF THE OIL AND GAS BOARD IN RESPECT TO GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE; TO REQUIRE BOARD APPROVAL FOR USE OF A RESERVOIR FOR CARBON DIOXIDE STORAGE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 53-11-1, Mississippi Code of 1972:

53-11-1. **Short title.** This chapter shall be known and may be cited as the "Mississippi Geologic Sequestration of Carbon Dioxide Act."

SECTION 2. The following shall be codified as Section 53-11-3, Mississippi Code of 1972:

53-11-3. **Legislative findings; jurisdiction.** (1) It is declared to be in the public interest for a public purpose and the policy of Mississippi that:

(a) The geologic sequestration of carbon dioxide will benefit the citizens of the state and the state's environment.

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

(c) Geologic sequestration of carbon dioxide may allow for 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.

(d) The state has substantial and valuable oil and gas reserves not producible by traditional recovery techniques, but which may be producible by enhanced recovery methods.

(e) The enhanced recovery of oil and gas by the injection of carbon dioxide into oil and gas reservoirs is a proven enhanced recovery method which results in additional production of oil and gas in the State of Mississippi and the sequestration of carbon dioxide.

(f) It is for the public benefit and in the public interest that the maximum amount of the state's oil and gas reserves be produced to the extent that it is economically and technologically feasible.

(g) It is for the public benefit and in the public interest that, to the extent that it is economically and technologically feasible, carbon dioxide be injected into and stored in oil and gas reservoirs and other geologic formations in a manner protective of waters of the state as defined in Section 49-17-5(f).

(h) Providing at the election of the operator for a current or former enhanced oil or gas recovery project to qualify as a geologic sequestration project for the incidental storage of carbon dioxide will encourage enhanced oil or gas recovery projects and geologic sequestration projects and will be beneficial to the citizens of this state and will serve the public interest.

(i) Geologic sequestration of carbon dioxide is an emerging industry that has the potential to provide jobs, investment, and other economic opportunities for the people of Mississippi, and is a valuable incentive for Mississippi to attract new industry.

(j) It is the public policy of Mississippi and the purpose of this chapter to provide for a coordinated statewide program related to the geologic sequestration of carbon dioxide in

reservoirs defined in this chapter 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 for geologic sequestration.

(2) The commission and permit board shall have jurisdiction and authority over all persons and property necessary to enforce effectively the provisions of this chapter relating to the geologic sequestration of carbon dioxide streams and subsequent withdrawal of stored carbon dioxide streams. The department, as staff of the commission and the permit board and on behalf of the State of Mississippi, shall seek primacy from the U.S. Environmental Protection Agency for Class VI underground injection control wells. The commission shall enforce the law pursuant to Sections 49-17-1, et seq. Except for Class VI underground injection control wells for which the board shall be the permitting agency: (a) the permit board shall serve as the permitting agency for Class VI underground injection control wells pursuant to Sections 49-17-28 and 49-17-29; and (b) the commission and permit board are authorized to promulgate such rules and regulations as are necessary for the development and administration of the Class VI underground injection control well program consistent with federal statutes, rules and regulations pertaining to geologic sequestration of carbon dioxide streams and assessment of fees for the development and administration of the Class VI underground injection control well program. Underground formations or strata not included in the term "reservoir" as defined in this chapter shall be subject to the jurisdiction of the commission and the permit board. Notwithstanding the foregoing, the board has primacy for Class II underground injection control wells and, through a written memorandum of understanding with the department, the board will have jurisdiction and authority over Class II underground injection

control wells converted to Class VI underground injection control wells and Class VI underground injection control wells within reservoirs as defined in this chapter. All rules, regulations and standards promulgated by the commission, permit board and the board shall be consistent with the requirements of federal statutes, rules and regulations related to Class VI underground injection control wells.

SECTION 3. The following shall be codified as Section 53-11-5, Mississippi Code of 1972:

53-11-5. **Definitions.** As used in this chapter, the following terms shall have the meanings ascribed unless the context clearly indicates otherwise:

(a) "Board" means the State Oil and Gas Board created by Section 53-1-5.

(b) "Carbon dioxide" means: (i) naturally occurring carbon dioxide; (ii) geologically sourced carbon dioxide; (iii) anthropogenic carbon dioxide; or (iv) carbon dioxide stream. The term includes phases of carbon dioxide, whether fluid, liquid or gaseous, stripped, segregated, or divided from any other fluid stream thereof.

(c) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This paragraph (c) does not apply to any carbon dioxide stream that meets the definition of hazardous waste under federal environmental laws and regulations.

(d) "Class VI underground injection control wells" means wells that are not experimental in nature, that are used for geologic sequestration of a carbon dioxide stream, either alone or in combination with injection of carbon dioxide in other forms,

and which inject beneath the lowermost formation containing an underground source of drinking water.

(e) "Commission" means the Mississippi Commission on Environmental Quality created by Section 49-2-5.

(f) "Department" means the Mississippi Department of Environmental Quality created by Section 49-2-4.

(g) "Enhanced oil or gas recovery project" means secondary recovery, pressure maintenance, repressuring operations, cycling operations, water flooding operations, injection of carbon dioxide or other gaseous substances or any combination thereof, or any other form of effort calculated to increase the ultimate recovery of oil or gas or both from a reservoir.

(h) "Gas" has the same meaning as provided in Section 53-1-3(d).

(i) "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. For purposes of this chapter, "storage" and "sequestration" have the same meaning. This term does not apply to carbon dioxide capture or transport.

(j) "Geologic sequestration facility" means a facility that receives and contains or sequesters carbon dioxide, or has done so, including:

(i) The reservoir into which carbon dioxide is injected;

(ii) Sequestration wells, monitoring wells, underground equipment, and surface buildings and equipment utilized in geologic sequestration, owned by or under the control of the storage operator; and

(iii) Other property identified by the board or the commission, as applicable, as part of the facility.

The reservoir component of the geologic sequestration facility includes any necessary and reasonable buffer and subsurface monitoring zones designated by the board for the

purpose of ensuring the safe and efficient operation of the geologic sequestration facility for the containment or sequestration of carbon dioxide and shall be chosen to protect against escape or migration of carbon dioxide. Nothing in this definition shall prevent orderly withdrawal of the contained carbon dioxide as appropriate or necessary to allow carbon dioxide to be available for enhanced oil or gas recovery projects or other authorized commercial, and industrial uses.

(k) "Oil" has the same meaning as provided in Section 53-1-3(c).

(l) "Oil and gas reservoir" shall mean a pool or field as defined in Section 53-1-3(e) and (f).

(m) "Owner," except when used in the phrases "working owner" or "royalty owner," shall have its ordinary, accepted meaning.

(n) "Permit board" means the Mississippi Environmental Permit Board created by Section 49-17-28.

(o) "Person" means any natural person, corporation, association, partnership, limited liability company, or other entity, receiver, executor, administrator, fiduciary or representative of any kind.

(p) "Reservoir" means oil and gas reservoirs and formations above and below oil and gas reservoirs suitable for or capable of being made suitable for the injection and storage of carbon dioxide therein, but only those formations for which the boundaries have been or can be delineated as provided in this chapter.

(q) "Royalty owner" means any person who possesses an interest in production of oil, gas or other commercial minerals, but who is not a "working owner" as defined in this section.

(r) "Safe Drinking Water Act" means the Safe Drinking Water Act, as amended, Title 42, Chapter 6A, Subchapter XII (42 USCS Section 300(f) et seq.).

(s) "Sequestration" means geologic sequestration as used in this chapter and may include the incidental storage of carbon dioxide associated with enhanced oil recovery or gas recovery project operations.

(t) "State" means the State of Mississippi.

(u) "Storage operator" means the person authorized by the board to operate a geologic sequestration facility.

(v) "Underground source of drinking water" means an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of ground water to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than ten thousand (10,000) milligrams per liter total dissolved solids and is not an exempted aquifer.

(w) "Working owner" means the person who has the right to drill into and produce from any pool of oil, gas or other commercial minerals, and to appropriate the production either for himself or for himself and another or others.

SECTION 4. The following shall be codified as Section 53-11-7, Mississippi Code of 1972:

53-11-7. **Duties and powers of the board; rules and regulations; permits.** (1) The board shall have authority to regulate and promulgate rules and regulations governing geologic sequestration of carbon dioxide and underground injection wells under this chapter within reservoirs. Rules and regulations governing injection wells for geologic sequestration not regulated under the board's authority for Class II wells shall be subject to approval of the commission to be included in a memorandum of understanding between the board and the commission.

(2) The board shall have authority to:

(a) Approve geologic sequestration of carbon dioxide and the operation of a geologic sequestration facility within a reservoir as defined in this chapter.

(b) Regulate the development and operation of geologic sequestration facilities and pipelines within geologic sequestration facilities, provided those pipelines serving such facilities approved hereunder are not otherwise covered under applicable law.

(c) Perform any and all acts necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, with respect to the sequestration of carbon dioxide within reservoirs.

(d) Approve conversion of an existing enhanced oil or gas recovery operation into a geologic sequestration facility and continuing of the authority and prior approvals of the board regarding unit operations.

(e) Approve use of carbon dioxide for enhanced oil or gas recovery and for simultaneous geologic sequestration within a reservoir.

(f) Establish requirements for reasonable performance bonds, deposits, or other assurances of performance consistent with federal statutes, rules and regulations connected with Class VI underground injection control wells to be posted as a condition to or requirement for approving an application by the storage operator, and requirements for the sufficiency and character of the surety and guarantors of performance bonds, deposits, or other assurances of performance and reasonable conditions under which the bonds or deposits shall be released.

(g) Make, after notice and hearings as provided in Sections 53-1-19 through 53-1-37, any reasonable rules, regulations and orders that are necessary from time to time in the proper administration and enforcement of this chapter. To that end, the board is authorized and empowered to adopt, modify, repeal and enforce procedural, interpretive and administrative rules in accordance with the provisions of this chapter.

(3) Only a storage operator shall be held or deemed responsible for the performance of any actions required by the board under this chapter.

(4) The board shall issue such orders, rules and regulations as may be necessary for the purpose of protecting any reservoir, strata, or formation against the escape of carbon dioxide therefrom, including any necessary rules and regulations as may pertain to the drilling into or through a geologic sequestration reservoir within the board's jurisdiction.

SECTION 5. The following shall be codified as Section 53-11-9, Mississippi Code of 1972:

53-11-9. **Approval of reservoir storage; title to carbon dioxide.** (1) The board may enter an order, after notice and hearing pursuant to the provisions of Sections 53-1-19 through 53-1-37, approving any proposed geologic sequestration of carbon dioxide. The board shall be authorized to issue an order upon finding the following:

(a) That the reservoir sought to be used as a reservoir for the injection, storage and withdrawal of carbon dioxide is suitable and feasible for such use and in the public interest;

(b) That a majority interest, as provided in this chapter, have consented to such use in writing;

(c) That there is no reasonable risk that the use of the reservoir for the storage of carbon dioxide will injure or endanger other formations containing fresh water, oil, gas or other commercial mineral deposits;

(d) That there is no reasonable risk that the proposed storage will endanger human lives or cause a hazardous condition to property; and

(e) In the case of a reservoir that may contain oil, gas or other commercial minerals, that either:

(i) The reservoir has been substantially depleted of all volumes of reservoir oil, gas or other commercial minerals

and the requirements of Sections 53-11-11 and 53-11-13 have been satisfied; or

(ii) The reservoir has a greater value or utility as a reservoir for carbon dioxide storage than for the production of the remaining volumes of reservoir oil, gas, condensate or other commercial mineral, if any, and the requirements of Sections 53-11-11 and 53-11-13 have been satisfied. Approval of a geologic sequestration facility by the board shall provide full and complete authority for the construction, equipping and operation of the geologic sequestration facility without need of further action or grant by any person.

(2) Neither injection nor an order of the board shall affect ownership of the carbon dioxide or inhibit the voluntary conveyance of title to the carbon dioxide by the owner. The board may issue any necessary order to protect the title of an owner to carbon dioxide injected into a geologic sequestration facility. The carbon dioxide shall not be subject to the right of any person other than the owner of the carbon dioxide to produce, take, reduce to possession, or otherwise interfere with or exercise any control thereover. The owner of the carbon dioxide shall have no right to gas, liquid hydrocarbons, salt or other commercial minerals in any stratum or portion thereof not determined by the board to constitute an approved sequestration reservoir which are not otherwise owned or leased by the owner.

SECTION 6. The following shall be codified as Section 53-11-11, Mississippi Code of 1972:

53-11-11. **Protection of correlative rights.** (1) Upon application by an operator to unitize for a geologic sequestration facility in an oil or gas reservoir that is not unitized either under this chapter or by board order under the provisions of Sections 53-3-103 or 53-3-155, after notice as provided in Section 53-3-115, the board shall hold a hearing to consider the operation of the reservoir for the storage of carbon dioxide to determine

whether the predominant result of the injection operations will be the storage of carbon dioxide or will result in an increase in the ultimate recovery of oil or gas, or both, from the proposed geologic sequestration facility. After the hearing the board may:

(a) Determine from the evidence that the reservoir has more value as a geologic sequestration facility than as an enhanced oil or gas recovery project, and as a result, the board shall enter an order for the operation of the unit as a geologic sequestration facility upon making the additional findings set forth in Section 53-11-13.

(b) Determine from the evidence that the predominant result of the injection operations will be an increase in the ultimate recovery of oil or gas or both, and as a result, the board shall not approve the application for a geologic sequestration facility. However, this shall not prevent the board, upon application of the operator, from approving operation of an existing enhanced oil or gas recovery project simultaneously as a geologic sequestration project, recognizing the incidental storage of carbon dioxide under the provisions set forth in Section 53-11-15(1)(d).

(2) Upon application by an operator to unitize for a geologic sequestration facility in any other nonoil, nongas or noncommercial mineral-bearing reservoir that needs to be unitized, after notice as provided, the board shall hold a hearing to consider the evidence, and shall enter an order for the operation of the reservoir as a geologic sequestration facility upon making the findings set forth in Sections 53-11-9(1) and 53-11-13.

(3) An order requiring unit operations of a geologic sequestration facility shall be effective only when the unit for the geologic sequestration facility and the agreements incorporating the pertinent provisions of Section 53-11-15 have been signed, ratified, adopted or approved in writing by a majority interest of the surface interest, on the basis of, and in

proportion to, the surface acreage content of the unit area, and, if separately owned, a majority interest of all rights of the subsurface reservoir, on the basis of and in proportion to the surface acreage content of the unit area, and the board has made a finding to that effect, either in the order or in a supplemental order.

(4) If the board finds under Section 53-11-9(1)(e) that a reservoir has been substantially depleted of commercially recoverable quantities of oil or gas or other commercial minerals or that the reservoir has greater utility as a reservoir for carbon dioxide storage and that the remaining conditions of Section 53-11-9(1) have been satisfied; or if the board finds that a nonoil, nongas or noncommercial mineral-bearing reservoir satisfies the conditions of Section 53-11-9(1)(a) through (d) and all other conditions the board shall require have been satisfied, the board shall issue an order approving the reservoir for the injection and storage of carbon dioxide in connection with operation of a geologic sequestration facility. An order approving any geologic sequestration facility shall be effective only when the storage rights agreement has been signed, ratified, adopted or approved in writing by a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area under the terms of the order; and, if separately owned, a majority interest of all rights in the underground reservoir, on the basis of, and in proportion to, the surface acreage content of the unit area. If oil, gas or commercial minerals are expected to be produced and sold or used in connection with the geologic sequestration facility in a depleted oil, gas or commercial mineral-bearing reservoir, or such a reservoir that has greater utility as a geologic sequestration facility, then a majority interest of all working owners of such oil, gas or commercial minerals, on the basis of, and in proportion to, the surface acreage content of the unit area under

the terms of the order, must also consent to the allocation of the production in writing before an order approving the geologic sequestration facility shall be effective.

(5) In the event the required percentages set forth in this section have not signed, ratified or approved the respective agreements within twelve (12) months from and after the date of the order, the order requiring unit operation shall be automatically revoked.

SECTION 7. The following shall be codified as Section 53-11-13, Mississippi Code of 1972:

53-11-13. **Order requiring unit operation of a geologic sequestration facility.** If the board finds pursuant to Section 53-11-9(1) that a reservoir shall be operated as a unit for a geologic sequestration facility, the board may issue an order requiring such unit operation, if it finds that:

(a) Unit operation of the reservoir is reasonably necessary in order to create and operate an approved geologic sequestration facility in the reservoir;

(b) The unit for the geologic sequestration facility and the agreements effectuating the unit are fair and reasonable under all of the circumstances and protect the rights of all interests in the oil, gas or other commercial minerals where applicable, and the owners of interests in the surface acreage of the unit area, and owners of interests in the carbon dioxide injected or to be injected in the reservoir;

(c) The correlative rights of all owners of interests in the oil, gas or other commercial minerals where applicable, and the owners of interests in the surface acreage of the unit area, and owners of interests in the carbon dioxide injected or to be injected in the reservoir will be protected;

(d) The cost incident to conducting the geologic sequestration operation will not be borne by the royalty owners of the oil, gas or other commercial minerals except for

post-production treating, processing, transportation, and marketing expenses when concurrent production occurs with the geologic sequestration operation; and

(e) The storage operator or a predecessor operator of a proposed sequestration facility has demonstrated the boundaries of the unit as may be necessary for the board to approve the unit by the drilling of wells to sufficient depths and locations, or by other geological or engineering interpretations which may include those from logging, coring, modeling or monitoring.

SECTION 8. The following shall be codified as Section 53-11-15, Mississippi Code of 1972:

53-11-15. **Board order provisions.** (1) The order issued by the State Oil and Gas Board shall be fair and reasonable under all of the circumstances and shall protect the rights of interested parties and shall include:

(a) A description of the geographical area and a description of the reservoirs or of any portion or portions or combinations thereof affected which together constitute and are herein termed the "unit area" of the geologic storage facility.

(b) A statement of the nature of the operations contemplated.

(c) A provision for: (i) access to and use of a reasonable amount of the surface area within the unit area by the storage operator and his agents in connection with constructing, equipping, operating, maintaining and terminating operations of the geologic sequestration facility; and (ii) payment of the reasonable costs of compensable damages to the surface and reasonable consideration for use of the surface area.

(d) If oil or gas or both are expected to be produced in connection with operating a unit area as a geologic sequestration facility and the reservoir is being operated under a board order obtained pursuant to the requirements of Section 53-3-101 et seq., the geologic sequestration facility may be

operated under the existing plan of unitization approved by the owners therein provided that the unit operator: (i) provides a method approved by the board for winding down oil and gas operations for the transition to a carbon dioxide injection only operation; and (ii) obtains the approval of a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area, prior to the termination of oil and gas production.

(e) If oil or gas or both are expected to be produced in connection with operating the geologic sequestration facility and the reservoir has not formerly been unitized by board order under Sections 53-3-101 et seq., the order shall include:

(i) A formula for the allocation among the separately owned tracts in the geologic sequestration unit area of all the oil or gas, or both, produced and saved from the geologic sequestration unit area, and not required in the conduct of such operation, which formula must expressly be found reasonably to permit persons otherwise entitled to share in or benefit by the production from the separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production. A separately owned tract's fair, equitable and reasonable share of the unit production shall be that proportionate part of unit production that the contributing value of the tract for oil and gas purposes in the geologic sequestration unit area and its contributing value to the unit bears to the total of all like values of all tracts in the unit, taking into account all pertinent engineering, geological and operating factors that are reasonably susceptible of determination.

(ii) A provision for adjustment among the owners of the geologic sequestration unit area, not including royalty owners, of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of

value attributable to the unit operations. The amount to be charged to unit operations for any such item shall be determined by a majority of the owners of the geologic sequestration unit area and a majority of the working owners of the oil and/or gas interests in the geologic sequestration unit area, not including royalty owners, but if the owners of the geologic sequestration unit area and working owners of the oil or gas, or both oil and gas interests, not including royalty owners, are unable to agree upon the amount of the charges, or to agree upon the correctness thereof, the board shall determine the charges after due notice and hearing upon the application of any interested party. The amount charged against the owner of a separately owned tract shall be considered an expense of unit operation chargeable against the tract. The adjustments provided for in this subparagraph (ii) may be treated separately and handled by agreements separate from the unitization agreement.

(iii) A provision that the costs and expenses of unit operations dedicated to producing oil and gas, including investment past and prospective, shall be borne by the working owners of each tract, who in the absence of unit operation would be responsible for the expenses of developing and operating the oil and gas pools or reservoirs, in the same proportion that the tracts share in unit production. Each working owner's interest in the oil or gas or both expected to be produced in connection with operating the geologic sequestration unit area shall be responsible for the working owner's proportionate share thereof, and the unit operator shall have a lien thereon to secure payment of the working owner's share together with interest at the legal rate. A transfer or conversion of any working owner's interest or any portion thereof, however accomplished after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations, past or prospective.

(iv) The designation of, or a provision for the selection of a successor to, the storage operator.

(v) A provision that the conduct of all unit operations by the storage operator and the selection of a successor to the storage operator shall be governed by the terms and provisions of the geologic sequestration facility agreements.

(vi) A determination of, or a provision for determining, the time the oil and gas unit operation is to become effective.

(vii) A determination of, or a provision for determining, the manner in which, and the circumstances under which, the unit oil and gas operation shall terminate and the geologic sequestration facility will no longer be considered productive of oil and gas or other commercial minerals and the geologic sequestration facility will be operated solely for the injection of carbon dioxide.

(viii) A requirement that all oil or gas, or both oil and gas, contained in a unit area shall be produced and sold as rapidly as possible without decreasing the ultimate recovery of oil or gas, or both, or causing damage to the reservoir.

(2) If oil or gas, or both, are being produced as an enhanced recovery project operating under a board order obtained pursuant to the requirements of Section 53-3-101 et seq., utilizing the injection of carbon dioxide for enhanced oil or gas recovery, the board, upon application by the unit operator, may make an order recognizing the incidental sequestration of carbon dioxide that is occurring during its enhanced oil or gas recovery project without requiring the project to qualify as a geologic sequestration facility or otherwise be subject to the provisions of this chapter.

SECTION 9. The following shall be codified as Section 53-11-17, Mississippi Code of 1972:

53-11-17. **Hearings before the board; notice; rules of procedures; emergency; service of process; public records; request for hearings; orders and compliance orders.** All public hearings before the board under this chapter shall be conducted pursuant to the provisions of Sections 53-1-19 through 53-1-37.

SECTION 10. The following shall be codified as Section 53-11-19, Mississippi Code of 1972:

53-11-19. **Compliance and enforcement.** (1) Whenever the board or an authorized representative of the board determines that a violation of any requirement of this chapter has occurred or is threatened, the board shall be authorized to either issue an order requiring compliance within a specified time period or commence a civil action for appropriate relief, including a temporary or permanent injunction.

(2) Any compliance order issued by the board 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 board determines is reasonable of not more than Five Thousand Dollars ($5,000.00) a day for each day of violation and for each act of violation, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(3) 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 board to be in violation of any requirement of this section may be liable for a civil penalty, to be assessed by the board or court, of not more than Five Thousand Dollars ($5,000.00) per day for each day of violation and for each act of violation. In order to enforce the provisions of this section, the board may suspend or revoke any permit, compliance order, license, or variance that has been issued to a person in accordance with law. No penalty

shall be assessed by the board until the person charged has been given notice and an opportunity for a hearing on the charge. In determining whether a civil penalty is to be assessed and in determining the amount of the penalty, or 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.

(4) The board, or Attorney General if requested by the board, 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.

(5) Except as otherwise provided by law, the board may settle or resolve as the board may deem advantageous to the state any suits, disputes or claims within the jurisdiction of the board for any penalty under any provisions of this section or the regulations or permit license terms and conditions applicable thereto.

SECTION 11. The following shall be codified as Section 53-11-21, Mississippi Code of 1972:

53-11-21. **Effect of acting as storage operator.** Any provision in this chapter, or in any rule, regulation or order issued by the board under this chapter to the contrary notwithstanding, acting as a storage operator pursuant to this chapter in compliance with the provisions of this chapter, or with rules, regulations or orders issued by the board under this chapter, or voluntarily performing any act or acts which could be required by the board pursuant to this chapter, or rules, regulations or orders issued by the board under this chapter, shall not:

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

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

SECTION 12. The following shall be codified as Section 53-11-23, Mississippi Code of 1972:

53-11-23. **Fees; creation of Carbon Dioxide Storage Fund.** (1) (a) The board is authorized to adopt regulations within its jurisdiction to assess sequestration fees that shall be subject to the approval of the Legislature.

(b) Any monies collected shall be used exclusively: (i) to pay the expenses and other costs connected with administration and enforcement of this chapter and the rules, regulations and orders of the board pursuant to this chapter; and (ii) to fund the Carbon Dioxide Storage Fund established in this chapter.

(c) Any per-ton fee shall first be applied to the administration and enforcement costs of the board's activities required or authorized by this chapter, and any amount exceeding those costs shall be transferred to a separate special fund of the State Oil and Gas Board which is hereby created and is to be known as the Carbon Dioxide Storage Fund.

(d) Transfers to the Carbon Dioxide Storage Fund from the per-ton fees shall be made monthly. Transfers from excess funds collected under subsection (1)(c) of this section may be made at any time in the fiscal year that the board shall determine appropriate. At the beginning of the following fiscal year after the transfer of the excess funds, the rate or rates to be collected under subsection (1)(c) of this section shall be reduced to reflect the excess from the prior year.

(e) When the balance in the Carbon Dioxide Storage Fund reaches or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility, the board

shall abate the per-ton fee, and may adjust the annual regulatory fee as prescribed herein. The abatement shall be effective at the beginning of the ensuing fiscal year. When the Carbon Dioxide Storage Fund is reduced below Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility, the per-ton fee shall again be imposed on all geologic storage operators until such time as the fund shall reach or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility. The imposition of the per-ton fee shall be effective at the beginning of the ensuing fiscal year.

(f) Monies in the Carbon Dioxide Storage Fund created in this chapter may be used in the board's discretion but only if inadequate funds are available from responsible parties including the financial assurance funds provided in Section 53-11-27(2). Monies in the Carbon Dioxide Storage Fund shall only be used for oversight of geologic storage facilities after cessation of injection at the facility and release of the facility's performance bond or other assurance of performance and as shall be necessary or appropriate to satisfy the requirements of the federal Safe Drinking Water Act, including, without limitation, matters with respect to closed facilities such as: (i) inspecting, testing and monitoring of the facility, including remaining surface facilities and wells; (ii) repairing mechanical problems associated with remaining wells and surface infrastructure; and (iii) repairing mechanical leaks at the facility.

(g) The Carbon Dioxide Storage Fund shall be used for the purposes set forth in this chapter and for no other governmental purposes, nor shall any portion of the fund ever be available to borrow from by any branch of government, it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate. Any interest earned on monies in

this fund shall remain in this fund and shall not lapse into the General Fund.

(2) To facilitate the proper administration of the Class VI underground injection control program within its jurisdiction, the commission is authorized to assess and collect fees from Class VI permit applicants for Class VI underground injection control wells permitted by the permit board. The commission is further authorized to promulgate rules and regulations for the assessment and collection of permit fees for Class VI underground injection control wells within its jurisdiction.

SECTION 13. The following shall be codified as Section 53-11-25, Mississippi Code of 1972:

53-11-25. **Cessation of storage operations.** (1) After cessation of injection into a geologic sequestration facility and upon application by the storage operator, the board shall be authorized to 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 that carbon dioxide will reasonably remain emplaced.

(2) Nothing in this chapter shall establish or create any liability or responsibility on the part of the board or the state to pay any costs associated with facility restoration from any source other than the performance bond, deposit, other assurance of performance, or financial assurances posted or required pursuant to this chapter, nor shall the board or the state have any liability or responsibility to make any payments for costs associated with facility restoration.

(3) The board or its agents, on proper identification, may enter the land of another for purposes of facility assessment or restoration.

(4) The board and its 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.

(5) No party contracting with the state or any of its political subdivisions under the provisions of this chapter shall be deemed to be a public employee or agent of the State of Mississippi or any of its political subdivisions.

SECTION 14. The following shall be codified as Section 53-11-27, Mississippi Code of 1972:

53-11-27. **Release of performance bond, deposit, or other assurance of performance.** (1) The storage operator may file an application with the board for the release of the performance bond, deposit or other assurance of performance on or after the third anniversary of the date the board issued a certificate of completion for the geologic sequestration facility. An application for a release shall require a description of the status of the carbon dioxide plume development or migration compared to models previously provided to the board, and any other information the board may reasonably require in accordance with this chapter. The board shall give notice of the pending release application by publication as provided in Section 53-3-115.

(2) Before the board's release of all or any portion of a storage operator's performance bond, deposit or other assurance of performance, the board shall require that the storage operator satisfy, in the reasonable determination of the board, the financial assurance requirements of the federal Safe Drinking Water Act and regulations promulgated thereunder. If the financial assurance has as any component a trust or standby trust, the board and the state shall be named as trust beneficiaries. The trust situs shall be located in the state, and at least one (1) trustee shall be a legal resident of the state.

(3) The board may release, in whole or in part, the performance bond, deposit or other assurance of performance if it is satisfied that plume migration has stabilized or is developing in the manner anticipated in models previously filed with the

board and the geologic sequestration facility has met all necessary mechanical integrity requirements.

(4) When the storage operator has successfully completed any necessary remedial actions required by the board, but not more than two (2) years beyond the date of the board's initial, partial release of the performance bond, deposit or other assurance of performance, the board shall release the remaining portion of the performance bond, deposit or other assurance of performance. However, no performance bond, deposit or other assurance of performance shall be fully released until all requirements of this chapter are fully met.

(5) If the board denies the application for release of the performance bond, deposit or other assurance of performance or portion thereof, it shall notify the storage operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure the release.

(6) Full release by the board of the performance bond, deposit or other assurance of performance of the storage operator or any other party holding title to the stored carbon dioxide, shall not affect, either to enlarge or diminish in any way, any legal obligations of the owner of the carbon dioxide or an owner or operator of any carbon dioxide sequestration facility resulting from the actions authorized pursuant to this chapter.

(7) Substantial compliance with this chapter shall in no way be construed to be an absolute defense to civil liability.

SECTION 15. The following shall be codified as Section 53-11-29, Mississippi Code of 1972:

53-11-29. **Refusing to monitor or producing false or inaccurate readings.** 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 board, or in any way to tamper with the monitors so as to produce a false or inaccurate reading.

SECTION 16. The following shall be codified as Section 53-11-31, Mississippi Code of 1972:

53-11-31. **Appeal to chancery court.** Any interested person adversely affected by any provision or section of this chapter within the jurisdiction of the board or by any rule, regulation or order made by the board thereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county in which the land involved, or any part thereof, is situated. The term "interested person" shall be interpreted broadly and liberally and shall include all mineral and royalty owners, mineral lessees, if any, and the owners of surface on which injection or re-injection wells and other surface equipment connected with a geologic sequestration facility is or will be situated. Any interested party may appeal to the chancery court of the county in which the land involved or any part thereof is situated, if appeal is demanded within thirty (30) days from the date that the rule, regulation or order of the board is filed for record in the office of the board.

The appeal may be taken by filing notice of the appeal with the board, whereupon the board shall, under its certificate, transmit to the court appealed to all documents and papers on file in the matter, together with a transcript of the record, which documents and papers together with said transcript of the record shall be transmitted to the clerk of the chancery court of the county to which the appeal is taken.

Except as otherwise provided in this section, the appeal otherwise shall be made in accordance with the provisions of Sections 53-1-39 and 53-1-41.

SECTION 17. The following shall be codified as Section 53-11-33, Mississippi Code of 1972:

53-11-33. **No effect upon enhanced oil or gas recovery operations.** Notwithstanding anything to the contrary in this chapter, nothing in this chapter shall prevent an enhanced oil or gas recovery project utilizing injection of carbon dioxide as approved by the board under Section 53-1-17 or require compliance with all or part of this chapter by any enhanced oil or gas recovery project that is not a geologic sequestration facility. An operator of an enhanced oil or gas recovery project utilizing injection of carbon dioxide may request that the board approve such a project as a geologic sequestration facility under this chapter or that the board determine that injection activities constitute the sequestration of carbon dioxide, but nothing in this chapter shall require that such a request be made. No provision of this chapter shall affect or govern any aspect of an enhanced oil or gas recovery project utilizing injection of carbon dioxide unless and until the operator of such project has requested that a particular project be approved by the board as a geologic sequestration facility and the board has granted that request.

SECTION 18. This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE
February 3, 2011

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 2, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/23/11 4:20p