

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1139

Introduced by Senator Rubio

February 21, 2012

An act to amend Section 659 of the Civil Code, to amend Section 51010.5 of the Government Code, to add Section 38572 to the Health and Safety Code, and to add Section 3239 to the Public Resources Code, relating to greenhouse gas.

LEGISLATIVE COUNSEL'S DIGEST

SB 1139, as amended, Rubio. Greenhouse gas: carbon capture and storage.

(1) Existing law requires the Division of Oil, Gas, and Geothermal Resources to regulate the construction and operation of wells. Under existing federal law, the division has been delegated with the responsibility of regulating class II wells under the federal Underground Injection Control program.

This bill would, upon the adoption by the State Air Resources Board of a final methodology for carbon capture and storage projects seeking to demonstrate geologic sequestration of greenhouse gases, specifically require the division to regulate carbon dioxide enhanced oil recovery projects that seek to demonstrate carbon sequestration under various laws providing for the reduction of greenhouse gas emissions.

(2) The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to establish regulations to achieve

specified greenhouse gas emissions reduction goals. The act authorizes the state board to include market-based compliance mechanisms in achieving those reduction goals.

This bill would require the state board, by January 1, 2016, to adopt a final methodology for carbon capture and storage projects seeking to demonstrate sequestration under various laws providing for the reduction of greenhouse gas emissions.

(3) The Elder California Pipeline Safety Act of 1981 vests the State Fire Marshal with the exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines and, to the extent authorized by an agreement between the State Fire Marshal and the United States Department of Transportation, interstate hazardous liquid pipelines.

This bill would additionally vest exclusive safety regulatory and enforcement authority over pipelines transporting a fluid consisting of more than 90% carbon dioxide compressed to a supercritical state.

(4) Existing law defines land as a material of earth and includes free or occupied space for an indefinite upward or downward distance for the purpose of prescribing ownership of land.

This bill would specify that free space includes pore space that can be possessed and used for the storage of greenhouse gas.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This measure shall be known and may be cited
2 as the Carbon Capture and Storage Act of 2012.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) California has established stringent short-term and long-term
6 greenhouse gas (GHG) reduction goals that are functionally similar
7 to the federal and international emission reduction goals. Executive
8 Order S-3-05 committed California to reduce the GHG emissions
9 to year 2000 levels by 2010 and to year 1990 levels by 2020, and
10 to 80 percent below the year 1990 levels by 2050, a level consistent
11 with the current scientific evidence regarding emission reductions
12 needed to stabilize the climate. The California Global Warming
13 Solutions Act of 2006 (Division 25.5 (commencing with Section
14 38500) of the Health and Safety Code) separately obligates

1 California to reduce GHG emissions to the year 1990 levels by
2 2020.

3 (2) The scoping plan adopted pursuant to the California Global
4 Warming Solutions Act of 2006 recognizes that carbon capture
5 and storage (CCS) can play a role in helping the state meet its
6 long-term GHG reduction goals. Cap-and-trade programs
7 worldwide, including the Kyoto Protocol to the United Nations
8 Framework Convention on Climate Change (UN Doc.
9 FCCC/CP/1997/7/Add.1, 37 ILM 22) and the European Union
10 Emissions Trading Scheme (Directive 2003/87/EC, as amended),
11 include CCS as a means for compliance. The 2010 Cancun
12 Agreements under the Kyoto Protocol (UN Doc.
13 FCCC/CP/2010/7/Add.1) envision that CCS will be able to
14 generate certified emissions reductions (CERs) under the clean
15 development mechanism (CDM). The 2011 Durban Platform under
16 the Kyoto Protocol (UN Doc. FCCC/CP/2011/L.10) provides
17 modalities and procedures regarding specifically how CCS projects
18 may generate CERs under the CDM.

19 (3) The geologic storage of carbon dioxide is expected to provide
20 an effective means of storing carbon dioxide over geologic time
21 periods. The Intergovernmental Panel on Climate Change (IPCC),
22 in its 2005 Special Report on Carbon Dioxide Capture and Storage,
23 states that “[o]bservations from engineered and natural analogues
24 as well as models suggest that the fraction retained in appropriately
25 selected and managed geological reservoirs is very likely to exceed
26 99% over 100 years and is likely to exceed 99% over 1,000 years.”

27 (4) The deployment of CCS can materially help California to
28 achieve its long term GHG emission reduction goals. The
29 International Energy Agency’s 2011 World Energy Outlook
30 describes CCS as a “key abatement option” that accounts for 18
31 percent of emission savings in a key modeled scenario. The
32 International Energy Agency further reports that CCS investment
33 must be made “now” if emission reductions are to be achieved
34 economically. The August 2010 report of the President’s
35 Interagency Task Force on CCS describes the technology as one
36 that can “greatly reduce” GHG emissions while playing an
37 “important role in achieving national and global” GHG reduction
38 goals. In its December 2010 report, the California Carbon Capture
39 and Storage Review Panel states that “[t]here is a public benefit
40 from long-term geologic storage of [carbon dioxide] as a strategy

1 for reducing GHG emissions to the atmosphere as required by
2 California laws and policies.”

3 (5) Despite the existence of comprehensive federal CCS
4 regulations, impediments to the deployment of CCS technology
5 in California remain, including specific gaps in California laws
6 and regulation. Many of these gaps are identified and discussed
7 by the California Carbon Capture and Storage Review Panel’s
8 December 2010 report. These gaps include clarifying ownership
9 of the pore space and clarifying regulatory responsibility for
10 permitting CCS projects.

11 (6) By exercising a leadership role in CCS technology,
12 California will position its economy, technology centers, financial
13 institutions, and businesses to benefit from efforts to reduce
14 emissions of GHGs through CCS.

15 (7) California has ample geologic storage capacity for carbon
16 dioxide. In a 2005 report, the United States Department of Energy
17 determined that the state has a “huge potential for geological
18 sequestration capacity.” The study estimated that the saline
19 formations have a storage capacity of 146 to 840 gigatons of carbon
20 dioxide. Moreover, those formations also have large numbers of
21 oil and gas fields and significant potential for carbon dioxide
22 enhanced oil recovery (CO2-EOR). The CO2-EOR technology is
23 a proven mature technology that can be used to sequester carbon
24 dioxide given adequate regulatory oversight.

25 (8) In another 2005 study, the United States Department of
26 Energy documented the potential energy production and GHG
27 storage potential of CO2-EOR technology for California. That
28 study reached several conclusions, including California has a large
29 “stranded oil” resource base that will be left in the ground
30 following the use of today’s oil recovery practices, much of
31 California’s large “stranded oil” resource base is amenable to
32 CO2-EOR, application of miscible and immiscible CO2-EOR
33 would enable a significant portion of the California’s “stranded
34 oil” to be recovered, and the successful introduction and wide scale
35 use of CO2-EOR in California would stimulate the economy,
36 provide new higher paying jobs, and lead to higher tax revenues
37 for the state.

38 (9) Carbon dioxide capture is subject to federal regulations. The
39 United States Environmental Protection Agency (USEPA) regulates
40 air emissions of GHGs through several regulatory programs,

1 including the Prevention of Significant Deterioration (PSD) and
2 Title V permitting programs under the federal Clean Air Act (42
3 U.S.C. Sec. 7401 et seq.). The USEPA's PSD and Title V
4 Permitting Guidance for Greenhouse Gases states that permit
5 writers must consider CCS technology to be "available" as part of
6 the five-step Best Available Control Technology assessment
7 process. Subpart PP (commencing with Section 98.420) of, subpart
8 RR (commencing with Section 98.440) of, and subpart UU
9 (commencing with Section 98.470) of, Part 98 of Title 40 of the
10 Code of Federal Regulations prescribing GHG reporting rules
11 separately require companies engaged in the injection of carbon
12 dioxide, geological sequestration of carbon dioxide, or other
13 CCS-related operations to report their atmospheric emission of
14 GHGs. These regulations apply in California.

15 (10) Carbon dioxide transport is subject to comprehensive
16 federal regulation by all modes, including pipeline, road, or ground.
17 These regulations apply in California.

18 (11) The pipeline transport of carbon dioxide is a proven mature
19 technology. In its 2005 special report of CCS, the IPCC states that
20 the "[p]ipeline transport of [carbon dioxide] operates as a mature
21 market technology (in the [United States], over 2,500 [kilometers]
22 of pipelines transport more than 40 [million metric tons of carbon
23 dioxide] per year)." Federal government data demonstrate that
24 carbon dioxide pipelines have been operated safely. Meanwhile,
25 the trucking industry has safely transported significant quantities
26 of carbon dioxide for decades for a variety of commercial end
27 users, including the carbonated beverage industry.

28 (12) Carbon dioxide injection and storage is subject to extensive
29 federal regulations. In December 2010, the USEPA finalized its
30 class VI regulations (76 Fed. Reg. 56982) under the Underground
31 Injection Control (UIC) program, and since that time the USEPA
32 has issued several detailed implementation guidance documents.
33 Those regulations do not apply unless carbon dioxide is being
34 injected for the primary purpose of long-term storage into an oil
35 and gas reservoir and there is an increased risk to underground
36 sources of drinking water compared to class II operations. The
37 UIC class VI well program regulations apply in California and are
38 implemented by the USEPA. The UIC class II well program
39 regulations apply in California and the USEPA has delegated its

1 implementation responsibilities to the Division of Oil, Gas, and
2 Geothermal Resources of the Department of Conservation.

3 (13) The goals of creating a regulatory framework that ensures
4 the safe deployment of CCS technology in a manner consistent
5 with the state's goals for GHG reduction can best be accomplished
6 by clarifying the ownership of the pore space and the regulatory
7 responsibility of permitting CCS projects.

8 (b) It is the intent of the Legislature to create a clear and
9 comprehensive permitting regime for CCS projects in California.

10 (c) In enacting this act, the Legislature does not intend to require
11 the deployment of CCS technology but only to provide a clear and
12 certain regulatory structure for CCS projects.

13 (d) In enacting this act, the Legislature intends to clarify the
14 Division of Oil, Gas, and Geothermal Resources' authority to
15 regulate carbon dioxide injection for enhanced oil recovery
16 projects, the State Fire Marshal's authority to regulate carbon
17 dioxide intrastate pipelines, that free space includes pore space
18 that can be possessed and used for the storage of greenhouse gas,
19 and that the remaining provision of this measure applies to CCS
20 projects and carbon dioxide enhanced oil recovery projects seeking
21 to reduce a compliance obligation pursuant to the California Global
22 Warming Solutions Act of 2006 (Division 25.5 (commencing with
23 Section 38500) of the Health and Safety Code) by demonstrating
24 simultaneous sequestration of injected carbon dioxide. The
25 Legislature does not intend to limit or supersede the division's
26 authority as it relates to existing or future carbon dioxide enhanced
27 oil recovery projects that do not seek to reduce a compliance
28 obligation pursuant to the California Global Warming Solutions
29 Act of 2006.

30 SEC. 3. Section 659 of the Civil Code is amended to read:

31 659. (a) Land is the material of the earth, whatever may be
32 the ingredients of which it is composed, whether soil, rock, or
33 other substance, and includes free or occupied space for an
34 indefinite distance upwards as well as downwards, subject to
35 limitations upon the use of airspace imposed, and rights in the use
36 of airspace granted, by law.

37 (b) (1) The free space specified in subdivision (a) includes pore
38 space that can be possessed and used for the storage of greenhouse
39 gas in the state.

(2) This subdivision does not change or alter the law as it relates to the rights belonging to, and the dominance of, the mineral estate, and does not change or alter the incidents of ownership or other rights of the owners of the mineral estate, including the right to mine, drill, complete, or abandon a well, the right to inject substances to facilitate production, the right to implement enhanced recovery for the purposes of recovery of oil, gas, or other minerals, or the dominance of the mineral estate.

SEC. 4. Section 51010.5 of the Government Code is amended to read:

51010.5. As used in this chapter, the following definitions apply:

(a) "Pipeline" includes every intrastate pipeline used for the transportation of hazardous liquid substances, carbon dioxide, or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility that is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five of these facilities in the state. "Pipeline" does not include the following:

(1) An interstate pipeline subject to Part 195 of Title 49 of the Code of Federal Regulations.

(2) A pipeline for the transportation of a hazardous liquid substance in a gaseous state.

(3) A pipeline for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.

(4) Transportation of petroleum in onshore gathering lines located in rural areas.

(5) A pipeline for the transportation of a hazardous liquid substance offshore located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream.

(6) Transportation of a hazardous liquid by a flow line.

(7) A pipeline for the transportation of a hazardous liquid substance through an onshore production, refining, or manufacturing facility, including a storage or inplant piping system associated with that facility.

(8) Transportation of a hazardous liquid substance by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids between those modes of transportation.

(b) “Flow line” means a pipeline that transports hazardous liquid substances from the well head to a treating facility or production storage facility.

(c) “Hydrostatic testing” means the application of internal pressure above the normal or maximum operating pressure to a segment of pipeline, under no-flow conditions for a fixed period of time, utilizing a liquid test medium.

(d) “Local agency” means a city, county, or fire protection district.

(e) “Rural area” means a location that lies outside the limits of any incorporated or unincorporated city or city and county, or other residential or commercial area, such as a subdivision, a business, a shopping center, or a community development.

(f) “Gathering line” means a pipeline eight inches or less in nominal diameter that transports petroleum from a production facility.

(g) “Production facility” means piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of petroleum or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting petroleum from the ground and transporting it by pipeline.)

(h) “Public drinking water well” means a wellhead that provides drinking water to a public water system as defined in Section 116275 of the Health and Safety Code, that is regulated by the State Department of Health Services and that is subject to Section 116455 of the Health and Safety Code.

(i) “GIS mapping system” means a geographical information system that will collect, store, retrieve, analyze, and display environmental geographical data in a database that is accessible to the public.

(j) “Motor vehicle fuel” includes gasoline, natural gasoline, blends of gasoline and alcohol, or gasoline and oxygenates, and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or is usable for propelling motor vehicles operated by the explosion type engine. It does not include

1 kerosene, liquefied petroleum gas, or natural gas in liquid or
2 gaseous form.

3 (k) “Oxygenate” means an organic compound containing oxygen
4 that has been approved by the United States Environmental
5 Protection Agency as a gasoline additive to meet the requirements
6 for an “oxygenated fuel” pursuant to Section 7545 of Title 42 of
7 the United States Code.

8 (l) “Carbon dioxide” means a fluid consisting of more than 90
9 percent carbon dioxide molecules.

10 SEC. 5. Section 38572 is added to the Health and Safety Code,
11 to read:

12 38572. (a) On or before January 1, 2016, the state board shall
13 adopt a final quantification methodology for carbon capture and
14 storage projects seeking to demonstrate geologic sequestration.

15 (b) The methodology adopted pursuant to subdivision (a) shall
16 be used for the quantification of emissions as part of compliance
17 obligations under either any of the following:

18 (1) The mandatory reporting requirements adopted pursuant to
19 Section 38530 of the Health and Safety Code.

20 (2) The demonstration of sequestration for the purposes of any
21 regulation implementing a market-based compliance mechanism
22 pursuant to this part.

23 ~~(c) The methodology adopted pursuant to subdivision (a) shall~~
24 ~~be suitable for use for the demonstration of sequestration under~~
25 ~~the greenhouse gas emission performance standard established~~
26 ~~pursuant to Chapter 3 (commencing with Section 8340) of Division~~
27 ~~4.1 of the Public Utilities Code.~~

28 *(3) The demonstration of sequestration under the greenhouse*
29 *gas emission performance standard established pursuant to*
30 *Chapter 3 (commencing with Section 8340) of Division 4.1 of the*
31 *Public Utilities Code.*

32 ~~(d)~~
33 (c) The state board shall consult with the Public Utilities
34 Commission and the State Energy Resources Conservation and
35 Development Commission on the development of the quantification
36 methodology, and, to the maximum extent possible, coordinate
37 the incorporation of the methodology into the emissions
38 performance standard ~~certification~~ *enforcement* processes of those
39 commissions.

40 (e)

(d) The quantification methodology shall include a methodology for carbon dioxide enhanced oil recovery projects seeking to demonstrate simultaneous sequestration of injected carbon dioxide. The methodology shall address multiple modes of carbon dioxide transportation, including pipeline, rail, and road transportation. The methodology shall do all of the following:

(1) Demonstrate that sites are capable of long-term containment of carbon dioxide.

(2) Identify and characterize potential natural and manmade leakage pathways, and provide implementation of appropriate risk management and corrective actions.

(3) Provide design, construction, and operation parameters to prevent, mitigate, and remediate the creation or activation of leakage pathways and the migration of carbon dioxide or fluids into any zone in a manner not authorized by the methodology.

(4) Minimize fugitive carbon dioxide emissions from carbon dioxide enhanced oil recovery projects seeking to demonstrate simultaneous sequestration of injected carbon dioxide.

(5) Provide for post injection closure and the long-term liability responsibility for carbon dioxide injected during operation; transition to class VI wells, and post closure sequestered.

(6) Verify, monitor, account for, and report carbon dioxide quantities sequestered, injected, recycled, leaked, vented, and in any other categories as deemed appropriate by the state board.

~~(f)~~

(e) The state board shall not quantify any carbon dioxide from an enhanced oil recovery project seeking to demonstrate simultaneous sequestration of injected carbon dioxide that is incapable of transitioning to a class VI well pursuant to in accordance with applicable requirements of the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).

~~(g)~~

(f) The methodology may, utilizing, to the extent possible, existing requirements under federal and state law, include any surface and subsurface characterization, monitoring, operational requirements, reporting, accounting, and verification requirements, and conditions to be administered by the state board or other agencies to ensure the accurate quantification of emissions.

~~(h)~~

(g) In adopting the methodology, the state board shall, to the maximum extent feasible, harmonize the adopted methodology with greenhouse gas storage or sequestration quantification methodologies used by other state, federal, or international greenhouse gas emission reduction programs if it does not compromise the ability of the methodology to verify sequestration or accurately quantify emissions.

(i)

(h) This section does not modify, limit, or supersede the operation of other laws applicable to carbon dioxide capture, transportation, or underground injection, or their application by the State Energy Resources Conservation and Development Commission, the Public Utilities Commission, the Division of Oil, Gas, and Geothermal Resources, or the California Environmental Protection Agency, and its boards, offices, and departments.

(j)

(i) In adopting the methodology, the state board shall consider the potential for direct, indirect, and cumulative emission impacts that may result from carbon capture and storage projects seeking to demonstrate geologic sequestration and ensure that emissions of criteria pollutants are not higher than would occur in the absence of the carbon capture and storage project.

SEC. 6. Section 3239 is added to the Public Resources Code, to read:

3239. (a) Upon the final adoption of a quantification methodology for carbon capture and storage projects seeking to demonstrate geologic sequestration of carbon greenhouse gases by the State Air Resources Board pursuant to Section 38572 of the Health and Safety Code, the division shall, under its regulatory authority to permit class II injection wells in the state pursuant to the authority delegated to the division pursuant to Section 1425 of the federal Safe Drinking Water Act (42 U.S.C. Sec. 311h-4), and pursuant to Section 38572 of the Health and Safety Code, regulate the injection of carbon dioxide at an enhanced oil recovery project, ~~including an enhanced oil recovery project~~ seeking to demonstrate simultaneous geologic sequestration of greenhouse gases pursuant to the greenhouse gas emission performance standard under Chapter 3 (commencing with Section 8340) of Division 4.1 of the Public Utilities Code, under the mandatory reporting of greenhouse gas emissions pursuant to Article 2

(commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 7 of the California Code of Regulations, or for any regulation implementing a cap-and-trade program or other market-based compliance mechanism, except for the creation of offset credit, that may be adopted pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(b) Pursuant to subdivision (a), the division and the State Air Resources Board shall execute an agreement using a coordinated and comprehensive regulatory approach, including oversight and short-term and long-term monitoring requirements and verification, for geologic sequestration of greenhouse gases during and following enhanced oil recovery operations.

(c) In developing the regulations pursuant to subdivision (a), the division shall consider, at a minimum, both of the following:

(1) ~~That Whether~~ long-term successful geologic sequestration may require adherence to standards and methods exceeding existing enhanced oil recovery and underground injection control practices and regulations.

(2) ~~That Whether~~ all hydrocarbon reservoirs, given the diversity of California's geology, well treatment, and production practices, may not be suitable for long-term successful geologic sequestration.

(d) This section does not modify, limit, or supersede any other law applicable to carbon dioxide capture, transportation, or underground injection, or its application by the State Energy Resources Conservation and Development Commission, the Public Utilities Commission, the division, or the California Environmental Protection Agency, and its boards, offices, and departments.