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H.B. No. 4557

Substitute the following for H.B. No. 4557:

By: Leach

C.S.H.B. No. 4557

A BILL TO BE ENTITLED

AN ACT

relating to liability for capturing and storing carbon dioxide.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. LIMITED LIABILITY FOR CAPTURING AND STORING CARBON
DIOXIDE

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Captured carbon dioxide" means carbon dioxide from any source that, through human effort or means, is seized for the purpose of sequestering the carbon dioxide with the intent of permanently preventing the carbon dioxide from being released into the atmosphere, including carbon dioxide that is:

(A) captured from the atmosphere;

(B) stripped, segregated, or divided from a fluid stream; or

(C) captured from an emissions source, including from:

(i) an advanced clean energy project as defined by Section 382.003, Health and Safety Code;

(ii) an electric generation facility; or

(iii) an industrial source of emissions.

(2) "Carbon dioxide" means the chemical compound composed of one carbon and two oxygen atoms. The term includes:

1 (A) anthropogenic carbon dioxide;

2 (B) naturally occurring carbon dioxide;

3 (C) carbon dioxide captured from the atmosphere;

4 and

5 (D) phases, mixtures, and combinations of carbon
6 dioxide that include:

7 (i) a substance incidentally derived from
8 the source materials for or process of capturing the carbon
9 dioxide;

10 (ii) a substance added to the carbon
11 dioxide stream to enable or improve storage of the carbon dioxide;

12 and

13 (iii) a substance incidentally captured
14 with carbon dioxide captured from the atmosphere.

15 (3) "Claimant" means a party seeking relief, including
16 a plaintiff, counterclaimant, or cross-claimant, in an action
17 described by this chapter and who is a land or mineral owner and
18 party to a written agreement with the defendant related to the
19 party's land or minerals or the defendant's activities regarding
20 captured or stored carbon dioxide.

21 (4) "Defendant" means a person against whom an action
22 described by this chapter is brought and who is:

23 (A) an owner or operator of:

24 (i) a facility used to store carbon
25 dioxide; or

26 (ii) a mechanism or instrumentality being
27 used to transport captured carbon dioxide, including a pipeline or

1 a tank or vessel carried by motor vehicle, watercraft, or rail; or

2 (B) a producer of captured carbon dioxide.

3 (5) "Geologic storage" means the underground storage
4 of carbon dioxide in a reservoir.

5 (6) "Geologic storage facility" means the underground
6 reservoir, underground equipment, injection wells, and surface
7 buildings and equipment used or to be used for the geologic storage
8 of carbon dioxide and all surface and subsurface rights and
9 appurtenances necessary to the operation of a facility for the
10 geologic storage of carbon dioxide. The term includes any
11 reasonable and necessary areal buffer and subsurface monitoring
12 zones, pressure fronts, and other areas as may be necessary for this
13 state to receive delegation of any federal underground injection
14 control program relating to the storage of carbon dioxide.

15 (7) "Legal requirement" means a statute, regulation,
16 rule, order, judgment, or permit controlling or directing conduct
17 or the design, construction, or use of a facility or equipment that
18 was enacted, adopted, promulgated, or issued by the federal
19 government, an agency of the federal government, a federal court,
20 this state, an agency or court of this state, or a local government
21 in this state.

22 (8) "Reservoir" has the meaning assigned by Section
23 [27.002](#), Water Code.

24 (9) "Stored carbon dioxide" means captured carbon
25 dioxide that is being transported or temporarily or permanently
26 stored.

27 Sec. 100B.002. CAPTURED OR STORED CARBON DIOXIDE NOT

1 ACTIONABLE AS NUISANCE. A claimant may not bring an action against
2 a defendant on the basis that captured carbon dioxide, stored
3 carbon dioxide, or a process associated with capturing or storing
4 carbon dioxide:

5 (1) is a pollutant;

6 (2) constitutes a nuisance, including a public
7 nuisance, under common law or the laws of this state, including
8 Chapter 125; or

9 (3) has caused a nuisance-related injury.

10 Sec. 100B.003. LIMITED LIABILITY FOR INJECTION, MIGRATION,
11 AND RELEASE OF CAPTURED CARBON DIOXIDE. (a) This section applies
12 to a civil action for damages for injury to a person or property,
13 including for interference with a possessory interest or an
14 ownership right or an injury to crops or an animal, resulting from:

15 (1) the transmission or injection of captured carbon
16 dioxide into a geologic storage facility, including an action for
17 damages caused by seismic activity;

18 (2) subsurface migration of stored carbon dioxide,
19 including a claim for trespass or conversion arising from the
20 subsurface migration of stored carbon dioxide into a pore space,
21 geologic formation, cavity, void, reservoir, aquifer, mineral
22 deposit, or other geologic formation; or

23 (3) captured or stored carbon dioxide being
24 inadvertently released, including an action alleging environmental
25 damage caused by the inadvertent release of captured or stored
26 carbon dioxide into the air or surface water.

27 (b) A claimant may not recover noneconomic damages in a

1 civil action described by Subsection (a) unless the claimant
2 establishes, in addition to other requirements of law, actual
3 damages and one of the following:

4 (1) that:

5 (A) the defendant concealed, withheld, or
6 misrepresented information relevant to a permitting authority's
7 decision to grant the defendant a permit to:

8 (i) transport, capture, or store carbon
9 dioxide; or

10 (ii) conduct the process or operate the
11 equipment or facility being used to transport, capture, or store
12 carbon dioxide;

13 (B) the information described by Paragraph (A),
14 as applicable:

15 (i) relates to the safety or propriety of
16 injecting carbon dioxide into the geologic storage facility; or

17 (ii) is relevant to determining whether the
18 stored carbon dioxide could migrate or escape in the manner in which
19 it migrated or escaped;

20 (C) the permitting authority, in granting the
21 defendant's permit:

22 (i) reasonably relied on the information
23 provided by the defendant; and

24 (ii) did not receive the relevant accurate
25 information from another source before granting the defendant's
26 permit;

27 (D) the information described by Paragraph (A) is

1 of sufficient importance that a reasonable person with the
2 permitting authority's knowledge and experience would consider the
3 information material to the permitting authority's decision to
4 grant the permit; and

5 (E) the permit was granted not more than five
6 years before the date the carbon dioxide was injected, migrated, or
7 escaped;

8 (2) that:

9 (A) at the time of the event that caused the
10 damage that is the basis of the action, the defendant was not in
11 compliance with a legal requirement that governs an aspect of the
12 defendant's conduct, including conduct regarding the defendant's
13 equipment or facility, relevant to the event;

14 (B) the legal requirement is intended to protect
15 a person or property from the kind of damage that occurred in the
16 event; and

17 (C) if the defendant had been in compliance with
18 the legal requirement, the event would not have occurred; or

19 (3) that, only if the aspect of the defendant's
20 conduct, including conduct regarding the defendant's equipment or
21 facility, that is the basis of the action was not subject to a
22 permitting process described by Subdivision (1) or a legal
23 requirement described by Subdivision (2):

24 (A) the defendant's actions or omissions were
25 contrary to a standard industry practice for the conduct relevant
26 to the damage-causing event;

27 (B) the defendant chose not to comply with the

1 standard industry practice solely for an economic reason; and

2 (C) if the defendant had acted in accordance with
3 the standard industry practice, the damage-causing event would not
4 have occurred.

5 Sec. 100B.004. LIMITED LIABILITY FOR INTERFERENCE WITH
6 ACCESS TO UNDERGROUND MINERALS AND WATER DUE TO STORAGE OF CAPTURED
7 CARBON DIOXIDE. (a) A claimant may not recover noneconomic damages
8 in a civil action for a claim that a defendant prevented or impeded
9 access to, or interfered with the production of, underground
10 minerals or water due to the storage of captured carbon dioxide in a
11 geologic storage facility unless the claimant establishes, in
12 addition to other requirements under the law, actual damages and
13 that:

14 (1) the defendant withheld from or misrepresented to
15 the permitting authority information relevant to the authority
16 determining if storage of captured carbon dioxide in the geologic
17 storage facility would prevent or impede the claimant's access to
18 underground minerals or water or interfere with the claimant's
19 production of the minerals or water;

20 (2) the permitting authority, in granting the
21 defendant's permit:

22 (A) reasonably relied on the information
23 provided by the defendant described by Subdivision (1); and

24 (B) did not receive the relevant accurate
25 information from another source before granting the defendant's
26 permit;

27 (3) the claimant did not know or receive notification

1 of the proceeding in which the defendant obtained a permit to
2 establish the geologic storage facility; and

3 (4) the information described by Subdivision (1) is of
4 sufficient importance that a reasonable person with the permitting
5 authority's knowledge and experience would consider the
6 information material to the permitting authority's decision to
7 grant the permit.

8 (b) A claimant who receives compensation, including through
9 a lease payment, a royalty payment, or the purchase of an easement,
10 in consideration of the possibility that a geologic storage
11 facility may prevent or impede access to or interfere with the
12 production of the claimant's underground minerals or water is not
13 entitled to recover damages from the owner or operator of the
14 facility if the facility prevents or impedes access to or
15 interferes with the production of the claimant's minerals or water.

16 (c) The economic damages available under this section to a
17 claimant not barred from recovering damages under Subsection (b)
18 are limited to:

19 (1) if the defendant's geologic storage facility
20 prevents or impedes access to the claimant's underground minerals
21 or water, the increased cost to access the minerals or water that
22 results from penetrating or circumventing the geologic storage
23 facility;

24 (2) if the defendant's geologic storage facility
25 interferes with the production of the claimant's underground
26 minerals or water, the:

27 (A) increased cost to produce the minerals or

1 water; and

2 (B) present value of the minerals or water that
3 the claimant cannot with reasonable probability produce because of
4 the interference; or

5 (3) if the defendant's geologic storage facility
6 prevents access to and the production of the claimant's underground
7 minerals or water, the present value of the minerals or water that
8 the claimant cannot with reasonable probability produce because of
9 the geologic storage facility.

10 Sec. 100B.005. EXEMPLARY DAMAGES. In a civil action to
11 which Section 100B.003 or 100B.004 applies, a claimant may not
12 recover exemplary damages unless the claimant:

13 (1) proves the elements described by Section 100B.003
14 or 100B.004, as applicable; and

15 (2) meets the requirements for recovery of exemplary
16 damages under Chapter 41.

17 Sec. 100B.006. AGREEMENTS NOT IMPAIRED; WAIVABLE BY
18 AGREEMENT. (a) This chapter may not be construed to impair, amend,
19 alter, negate, or otherwise affect any right, obligation, or other
20 term of an agreement.

21 (b) The provisions of this chapter may be voluntarily waived
22 by agreement.

23 SECTION 2. Chapter 100B, Civil Practice and Remedies Code,
24 as added by this Act, is an exercise of authority under Section
25 66(c), Article III, Texas Constitution, and takes effect only if
26 this Act receives a vote of three-fifths of all the members elected
27 to each house, as provided by Subsection (e) of that section.

1 SECTION 3. The changes in law made by this Act apply only to
2 a cause of action that accrues on or after the effective date of
3 this Act.

4 SECTION 4. The changes in law made by this Act may not be
5 construed to impair a party's right or obligation under a contract
6 entered into before the effective date of this Act.

7 SECTION 5. This Act takes effect September 1, 2023.