

SUBJECT: Limiting liability associated with capturing and storing carbon dioxide

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Leach, Murr, Schofield, Slawson, Vasut

3 nays — Julie Johnson, Flores, Moody

1 absent — Davis

WITNESSES: For — Corbin Robertson, Carbon Neutral Coalition; Philip Riley, Riley Exploration Permian, Inc. and the Carbon Neutral Coalition; Lee Parsley, Texans for Lawsuit Reform; Jonathan Grammer, US Carbon Capture (*Registered, but did not testify*: Ray Sullivan, American Property and Casualty Insurance Association; Reed Clay, Next Decade; Ashley Morgan, Port of Corpus Christi; George Christian, Texas Civil Justice League)

Against — Colin Leyden, Environmental Defense Fund; Charles Maley, South Texans' Property Rights Association; Arthur Uhl, Texas & Southwestern Cattle Raisers Association; Nicholas Miller, Texas Land and Mineral Owners Association; Jack Walker, Texas Trial Lawyers Association; Sara Konstantine; Ashley Watt (*Registered, but did not testify*: Bruce Gates, Ageron Energy, LLC; Virginia Palacios, Commission Shift; Cyrus Reed, Lone Star Chapter Sierra Club; Jennifer Bremer, Texas Land & Mineral Owners Association; D.B. Banach; Calvin Tillman; Al Zito)

On — (*Registered, but did not testify*: Sarah Stogner)

BACKGROUND: Some have suggested that providing liability protections for companies engaged in Carbon Capture, Utilization, and Storage (CCUS) may help to prevent unwarranted litigation and attract investment in the Texas CCUS industry.

DIGEST: CSHB 4557 would define "claimant" as a party seeking relief in an action

described by the bill who was a land or mineral owner and party to a written agreement with the defendant related to the party's land or minerals or the defendant's activities regarding captured or stored carbon.

The bill would define "defendant" as a person against whom an applicable action was brought who was a producer of captured carbon dioxide or an owner or operator of a facility used to store carbon dioxide or the means used to transport captured carbon dioxide.

The bill would prohibit a civil action against a defendant on the basis that the captured or stored carbon dioxide, or a process associated with such capturing and storing was a pollutant, constituted a nuisance, or caused a nuisance-related injury.

A claimant would not be able to recover noneconomic damages in a civil action against a defendant for damages or injury to a person or property that resulted from any of the following:

- the transmission or injection of captured carbon dioxide into a geologic storage facility, including damages caused by seismic activity;
- subsurface migration of stored carbon dioxide into certain geologic formations; or
- inadvertent release of stored carbon dioxide.

The bill would create exceptions to this prohibition if the claimant established, in addition to other requirements of law, actual damages and that:

- the defendant concealed, withheld or misrepresented certain information relevant to a permitting authority's decision to grant an applicable permit, subject to information requirements and time limitations specified by the bill;
- the defendant was not in compliance with certain legal requirements at the time of the event that caused the damage, and that the event would not have occurred if the defendant were in

- compliance with the applicable legal requirements; or
- only if the defendant's conduct was not subject to a permitting process or a legal requirement specified in the bill, the defendant's actions or omissions were contrary to a standard industry practice, the defendant chose not to comply with the standard practice solely for an economic reason, and the damage-causing-event would not have occurred if the defendant had complied with the standard practice.

The bill would prohibit a claimant from recovering noneconomic damages in a civil action for a claim that a defendant prevented or impeded access to, or interfered with the production of, underground minerals or water due to the storage of captured carbon dioxide in a geologic storage facility.

Exceptions to this prohibition would only be considered if the claimant established, in addition to other requirements under law, actual damages and that:

- the defendant withheld or misrepresented certain information relevant to a permitting authority's determination of whether the storage of captured carbon in that facility would prevent or impede the claimant's access to underground minerals or water, or interfere with the claimant's production thereof;
- the permitting authority reasonably relied on the relevant information from the defendant in granting the defendant's permit, and did not receive the relevant accurate information before granting the permit;
- the claimant did not know or receive notification of the proceeding in which the defendant obtained the relevant permit; and
- the information was of sufficient importance to be considered material in the permitting authority's decision to grant the permit.

A claimant who received compensation in consideration of the possibility that a geologic storage facility could prevent or impede access to or production of certain minerals or water would not be entitled to recover

damages from a defendant if the facility prevented or impeded the applicable access or production of minerals or water.

The economic damages available to eligible claimants would be limited to:

- the increased cost to access the underground minerals or water that resulted from the defendant's geologic storage facility, if the facility prevented or impeded access to such resources;
- the increased cost to produce the relevant underground resources, as well as their present value, if the claimant could not produce the resources due to the geologic facility's interference; or
- the present value of the underground resources, if the geologic facility both prevented access to and the production of those resources.

The bill would prohibit a claimant in a relevant civil action to recover exemplary damages unless the claimant proved certain information required by the bill and met the statutory requirements for the recovery of such damages.

The bill could not be construed to impair, amend, alter, negate, or otherwise affect any right, obligation, or other term of agreement, and the bill's provisions could be voluntarily waived by an agreement.

The bill only would take effect if finally passed by a three-fifths record vote of the membership of each house, and would apply only to a cause of action that accrued on or after the effective date of the bill. The bill would take effect September 1, 2023.