

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 210

By: Senator Irvin
By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING THE UNDERGROUND STORAGE OF GAS; TO AMEND THE UNDERGROUND STORAGE OF GAS LAW TO INCLUDE CERTAIN OTHER GASES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE UNDERGROUND STORAGE OF GAS LAW TO INCLUDE CERTAIN OTHER GASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §§ 15-72-602 through 15-72-607 are amended to read as follows:

15-72-602. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Commission" means the Oil and Gas Commission;
- (2) ~~"Native gas" means gas which has not been previously withdrawn from the earth;~~
- (3) "Natural Gas" means natural gas either while in its original state or after the natural gas has been processed by removal ~~therefrom~~ from the natural gas of component parts not essential to its use for light and fuel, or carbon oxides, ammonia, hydrogen, nitrogen, or noble gas;
- (3) "Gas storage facility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of capturing, producing, or storing gas;



(4) "Native gas" means gas which has not been previously withdrawn from the earth;

~~(4)(5)~~ "Natural gas public utility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of producing, transporting, or distributing natural gas by means of pipelines into, within, or through this state for ultimate public consumption; and

~~(5)(6)~~ "Underground storage" means storage in a subsurface stratum or formation of the earth~~+~~.

15-72-603. Public interest and welfare – Authority of commission.

(a) The underground storage of ~~natural~~ gas, which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available and economical our ~~natural~~ gas resources to the domestic, commercial, and industrial consumers of this state, and which provides a better year-round market to the various gas fields, ~~and~~ contributes to a healthier environment, and promotes the public interest and welfare of this state.

(b) Therefore, in the manner hereinafter provided, the Oil and Gas Commission may find and determine that the underground storage of ~~natural~~ gas as hereinbefore defined is in the public interest.

15-72-604. Condemnation of subsurface strata or formations – Limitations.

(a) Any natural gas public utility or gas storage facility may condemn for its use for the underground storage of ~~natural~~ gas any subsurface stratum or formation in any land which the Oil and Gas Commission ~~shall have found~~ finds to be suitable and in the public interest for the underground storage of ~~natural~~ gas and, in connection therewith, may condemn other interests in property as required to adequately examine, prepare, maintain, and operate the underground ~~natural~~ gas storage facilities. However, the right of condemnation of underground sands, formations, and strata granted hereby shall be limited as follows:

(1) If the commission affirmatively finds, based upon substantial evidence, that any sand, formation, or stratum is producing or is capable of producing oil, in paying quantities, through any known recovery

method, then the sand, formation, or stratum shall not be subject to appropriation hereunder;

(2) No gas-bearing sand, formation, or stratum shall be subject to appropriation hereunder, unless the sand, formation, or stratum has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of ~~natural~~ gas for any particular class or group of consumers of ~~natural~~ gas, or for the conservation of ~~natural~~ gas, than for the production of relatively small volumes of ~~natural~~ gas which remain therein. However, for as long as oil is produced in paying quantities in the secondary operations, no gas-bearing sand, formation, or stratum shall be condemned under the terms of this subchapter when the gas therein is being used for the secondary recovery of oil unless gas in a necessary and required amount is furnished to the operator or operators of the secondary recovery operations for the recovery of oil at the same cost as that at which the gas was being produced at the time of condemnation by the operator of the secondary recovery project or projects;

(3) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated hereunder; and

(4) No rights or interests in existing underground gas reservoirs being used for the injection, storage, and withdrawal of ~~natural~~ gas and owned or operated by others than the condemner shall be subject to appropriation hereunder.

(b) The right of condemnation granted in this section shall be without prejudice to the rights of the owner of the lands, or of other rights or interests therein, to drill or bore through the underground stratum or formation so appropriated in a manner as shall comply with orders and rules of the commission issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of ~~natural~~ gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses.

15-72-605. Prerequisite to eminent domain – Certificate.

Any natural gas public utility or gas storage facility desiring to exercise the right of eminent domain as to any property for use for underground storage of ~~natural~~ gas, as a condition precedent to the filing of

its petition in the circuit court, shall obtain from the Oil and Gas Commission a certificate setting out findings of the commission as to the following:

(1) That the underground stratum or formation sought to be acquired is suitable for the underground storage of ~~natural~~ gas and that its use for such purposes is in the public interest; and

(2) The amount of recoverable oil and native gas, if any, remaining therein. However, the commission shall issue no certificate until after public hearing is had on the application, pursuant to notice served in compliance with notice in civil actions in the circuit court, together with notice published at least once each week for two (2) successive weeks in some newspaper of general circulation in the county or counties where the gas is proposed to be stored. The first publication of the notice must be at least ten (10) days prior to the date of the hearing.

15-72-606. Petition for eminent domain – Subsequent proceedings.

(a) Any natural gas public utility or gas storage facility having first obtained a certificate from the Oil and Gas Commission as provided in § 15-72-605 desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of ~~natural~~ gas shall do so in the manner provided in this section.

(b) The natural gas public utility or gas storage facility shall present to the circuit court of the county wherein the land is situated, or to the judge thereof, a petition setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners thereof as shown by the records of the county.

(c) The petitioner shall file the certificate of the commission as a part of its petition and no order by the court granting the petition shall be entered without the certificate being filed therewith.

(d) The court or the judge thereof shall examine the petition and determine whether the property is necessary to its lawful purposes, and if found in the affirmative, the finding shall be entered of record and subsequent proceedings shall follow the procedure by law for the exercise of the right of eminent domain for rights-of-way for railroads as provided by § 18-15-1201 et seq.

15-72-607. Ownership of gas.

All ~~natural~~ gas which has been reduced to possession and which is subsequently injected into underground storage fields, sands, reservoirs, and facilities shall at all times be deemed the property of the injector, his or her heirs, successors, or assigns. In no event shall the gas be subject to the right of the owner of the surface of the lands or the owner of any mineral interest therein under which the gas storage fields, sands, reservoirs, and facilities lie or subject to the right of any person, other than the injector, his or her heirs, successors, and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover. However, the injector, his or her heirs, successors, and assigns shall have no right to gas in any stratum, or portion thereof, which has not been condemned under the provisions of this subchapter or otherwise purchased.

APPROVED: 2/24/23