

FIFTY-SIXTH LEGISLATURE
SECOND SESSION

February 13, 2024

SENATE FLOOR AMENDMENT number _____ to HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILL
41

Amendment sponsored by Senator William E. Sharer

1. On page 1, line 13, after "STANDARD", insert "; ENACTING THE GEOLOGIC CARBON DIOXIDE SEQUESTRATION ACT; PROVIDING FOR THE UNITIZATION OF FORMATIONS FOR SUBSURFACE SEQUESTRATION OF CARBON DIOXIDE; LIMITING LIABILITY OF OWNERS OF SEQUESTRATION FACILITIES FOLLOWING TRANSFER OF INTERESTS TO THE STATE; ESTABLISHING FEES; CREATING THE CARBON DIOXIDE SEQUESTRATION FUND; MAKING AN APPROPRIATION".

2. On page 11, between lines 2 and 3, insert:

"SECTION 5. [NEW MATERIAL] SHORT TITLE.--Sections 5 through 18 of this act may be cited as the "Geologic Carbon Dioxide Sequestration Act".

SECTION 6. [NEW MATERIAL] DEFINITIONS.--As used in the Geologic Carbon Dioxide Sequestration Act:

A. "carbon dioxide" means carbon dioxide produced by anthropogenic sources or captured from the atmosphere, including "qualified carbon oxide" as defined pursuant to applicable federal law and "carbon dioxide stream" as may be defined in federal law and regulations pertaining to class VI carbon dioxide injection wells;

B. "commission" means the oil conservation commission;

C. "director" means the director of the division;

D. "division" means the oil conservation division of the energy, minerals and natural resources department;

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E. "geologic sequestration" means the long- or short-term underground sequestration of carbon dioxide within a geologic stratum, formation, aquifer, cavity or void, whether naturally or artificially created, including deep saline aquifers, oil and gas reservoirs and unminable coal seams, such that carbon dioxide does not escape to the atmosphere;

F. "operator" means a person who has the right to inject carbon dioxide for geologic sequestration into a sequestration facility, whether for the person's own account or for the account of others;

G. "sequestration facility" means carbon dioxide injection wells, monitoring wells, science wells and any other wells used for the injection of carbon dioxide in subsurface geologic formations, including the underground equipment, pipelines, roads and surface equipment and buildings used for the purpose of geologic sequestration of carbon dioxide. "Sequestration facility" includes a facility that injects carbon dioxide for secure geologic sequestration pursuant to applicable federal laws, including a geologic sequestration project as may be defined in federal regulations pertaining to federal environmental protection agency class VI underground injection control wells for carbon dioxide injection wells; and

H. "sequestration unit" means the geologic formation or formations proposed for the injection of carbon dioxide for geologic sequestration and the lands to be included within the unit. "Sequestration unit" does not include oil and gas units where carbon dioxide is injected for purposes of enhancing oil and gas production.

**SECTION 7. [NEW MATERIAL] APPLICABILITY--DIVISION AUTHORITY--
RULEMAKING.--**

A. Geologic sequestration of carbon dioxide shall be

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permitted pursuant to the Geologic Carbon Dioxide Sequestration Act.

B. The Geologic Carbon Dioxide Sequestration Act applies to sequestration facilities that commence injection of carbon dioxide after the effective date of this 2024 act; provided that sequestration facilities that commenced injection of carbon dioxide before the effective date of this 2024 act may apply to the division for unitization and a certificate of completion of injection operations and release of liability pursuant to the provisions of the Geologic Carbon Dioxide Sequestration Act.

C. The Geologic Carbon Dioxide Sequestration Act does not apply to the injection of the carbon dioxide in connection with the enhanced oil and gas production operations.

D. The division has the jurisdiction and authority necessary to enforce the provisions of the Geologic Carbon Dioxide Sequestration Act and may adopt and promulgate rules and issue orders for the implementation of the provisions of that act.

SECTION 8. [NEW MATERIAL] ACQUISITION OF LANDS FOR GEOLOGIC SEQUESTRATION.--

A. An operator that desires to form a sequestration unit shall attempt to acquire by option, lease, conveyance or other negotiated means the rights necessary for geologic sequestration within the proposed sequestration unit prior to resorting to the procedure for compulsory unitization of such interests pursuant to Section 9 of this 2024 act.

B. The lands to be included shall be the reasonably ascertained areal extent of migration of the sequestered carbon dioxide within the formation or formations based on known geologic information available at the time of the application. The sequestration unit shall also identify any necessary and reasonable areal buffer and subsurface monitoring zones as required by federal

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or state law, rules, regulation, order or permit.

C. The commissioner of public lands and any state agency may grant to an operator rights for geologic sequestration on lands subject to its jurisdiction on such terms as it finds are reasonable and that provide compensation equal to the fair market value of the rights.

D. The division may grant to an operator the right to form and to commence operations for the geologic sequestration of carbon dioxide in accordance with the Geologic Carbon Dioxide Sequestration Act.

SECTION 9. [NEW MATERIAL] COMPULSORY UNITIZATION OF SEQUESTRATION FACILITIES--CONTENTS OF APPLICATION.--

A. An operator may apply to the division for an order unitizing a geologic formation or formations for geologic sequestration of carbon dioxide to be included within the proposed sequestration unit. The division shall issue the order upon finding the requirements of this section and Section 10 of this 2024 act have been satisfied.

B. An application filed pursuant to this section shall contain:

(1) if required by the federal government, a copy of a permit or draft permit for injection of carbon dioxide pursuant to any applicable federal law;

(2) a description of the proposed geologic formation or formations and a plat of the surface lands proposed to be included in the proposed sequestration unit, including identification of the buffer and subsurface monitoring zones;

(3) the names and addresses of the owners of the

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surface estate within the proposed sequestration unit and of lands within one-half mile of the exterior boundary of the proposed sequestration unit as disclosed by:

(a) the records of the county assessor of each county in which the proposed sequestration unit is to be located with respect to privately owned land; and

(b) the bureau of land management with respect to federal lands, the commissioner of public lands with respect to state trust lands and the applicable state agency owning the surface estate with respect to lands owned by the state but not subject to the jurisdiction of the commissioner of public lands;

(4) the names and addresses of the owners of the mineral estate and mineral lessees within the proposed sequestration unit and for all lands within one-half mile of the exterior boundary of the proposed sequestration unit;

(5) evidence of the following:

(a) geologic evidence establishing the capability of the formation to accept and sequester carbon dioxide;

(b) an estimate of the quantity and volume of carbon dioxide that is reasonably believed to be capable of being sequestered in the sequestration unit;

(c) the anticipated pressure of each formation proposed for sequestration and the anticipated pressure required to inject carbon dioxide into the sequestration unit;

(d) if available, the proposed locations of wells, types of wells, anticipated total depth of the wells, the casing program for the wells and the proposed locations of sequestration facilities;

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(e) the depth of all fresh water aquifers and location of any water wells within the sequestration unit and buffer zone;

(f) the date the proposed plan is desired to become effective;

(g) the anticipated date of the commencement of development of sequestration facilities;

(h) the anticipated date of the commencement of injection operations;

(i) the estimated period of time it will take to complete the construction of the sequestration facility;

(j) the estimated life of the injection operations; and

(k) the estimated pressure in the formation at the end of the injection operations;

(6) information on each of the facts required to be found by the division pursuant to Section 10 of this 2024 act;

(7) the amount per acre or the amount per volume of carbon dioxide injected that the operator proposes to pay to compensate the owners of the surface estate and, if severed, the owners of the subsurface formation or formations within the sequestration unit in which the carbon dioxide is to be injected for sequestration. Each owner of the formation or formations shall be deemed for all purposes to have an equal amount of capacity to store sequestered carbon dioxide and shall be compensated on a surface acreage basis for such injection and storage; and

(8) the amount per acre that the operator proposes to

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pay to compensate the surface owners or, if severed, the owners of the formation or formations within the buffer and monitoring zones.

SECTION 10. [NEW MATERIAL] COMPULSORY UNITIZATION OF A SEQUESTRATION UNIT--FINDINGS--RATIFICATION--AMENDMENTS--PETITIONS FOR INCLUSION--RECORDING--LIEN FOR COSTS.--

A. Upon receipt of an application pursuant to Section 9 of this 2024 act, the division shall set the matter for hearing and, in addition to notice otherwise required by law or the division's rules, shall cause the applicant to give notice of the hearing, specifying the time and place of the hearing and describing briefly its purpose and the land and formations affected, to be mailed by certified mail at least thirty days prior to the hearing to all persons whose names and addresses are required to be listed in the application.

B. If the proposed unitization order concerns unknown or non-locatable owners and interest holders, the applicant shall publish notice once a week for two consecutive weeks in the newspaper of the largest circulation in each county in which the proposed sequestration unit is located and shall file proof of notice with the division concurrently with the application. The first notice shall appear at least thirty days prior to, and the second notice no more than twenty-five days from, the hearing on the application for a sequestration unit order. The notice shall:

(1) state that an application for a sequestration unit has been filed with the division;

(2) describe the formation or formations and land proposed to be unitized and the buffer area and any monitoring area;

(3) in the case of an unknown owner or interest holder, indicate the name of the last known owner or interest holder;

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(4) in the case of a non-locatable owner or interest holder, identify the name of the owner or interest holder and their last known address; and

(5) state that any person claiming an interest in the formations or lands proposed to be unitized should notify the director and the operator of the proposed sequestration facility at the published address within twenty days of the publication date of the most recent notice.

C. After considering the application and hearing the evidence offered regarding the application, the division may enter an order setting forth the following findings if established by the evidence presented:

(1) the underground stratum or formation sought to be unitized is suitable for the geologic sequestration of carbon dioxide and its use for such purposes is in the public interest;

(2) the use of the underground stratum or formation sought to be unitized will contain the carbon dioxide and will not contaminate fresh water or oil, gas, condensate, potash or other commercial mineral deposits capable of being produced in paying quantities, unless all the owners, mineral lessees and other parties owning interests in such oil, gas, condensate, potash or other commercial mineral deposits have consented to the sequestration unit;

(3) the use of the underground stratum or formation sought to be unitized will contain the carbon dioxide and will not interfere with existing or planned injection of produced water, carbon dioxide or other fluids from ongoing oil and gas or mineral operations;

(4) the application denotes the areal extent of migration of the injected carbon dioxide within the underground

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stratum or formation and that all lands reasonably determined to be within the migration zone are included within the sequestration unit;

(5) the anticipated volume or quantity of carbon dioxide capable of being sequestered in the sequestration unit;

(6) the compensation to be paid by the operator to the owners of the surface or, if severed, the owners of the formation or formations within the sequestration unit is fair, just and equitable;

(7) the compensation to be paid by the operator to the owners of the surface or, if severed, the owners of the formation or formations within the buffer area or any monitoring area is fair, just and equitable;

(8) the compensation to be paid by the operator to the owners of the surface where sequestration facilities are to be built on the surface, including roads and pipelines, is fair, just and equitable;

(9) no portion of the formation or stratum sought to be unitized is being used, or is currently being proposed to be used, for production of oil, natural gas, potash or any other mineral capable of being mined and marketed in paying quantities or for the geologic sequestration of carbon dioxide by others within three miles of the proposed sequestration unit, including its buffer and any monitoring area;

(10) the applicant has made a good faith effort to secure voluntary unitization and has secured voluntary agreements from owners of at least sixty percent of the lands within the proposed sequestration unit;

(11) the application sets forth the following

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information:

(a) the approximate anticipated date geologic sequestration would commence within the sequestration unit if approved;

(b) the approximate date of commencement of the sequestration facilities if approved;

(c) the anticipated pressures encountered within the formation or formations in which the sequestration is to occur;

(d) the anticipated pressure required to sequester the carbon dioxide into the formation or formations;

(e) the estimated duration of the sequestration operations; and

(f) the areal extent of the migration of carbon dioxide sequestered into the sequestration unit; and

(12) the application includes additional provisions found to be appropriate for the operation of the sequestration facility and the prevention of waste.

D. The division shall not issue an order approving the application until the applicant has received agreements in writing by persons owning at least sixty percent of the lands within the proposed sequestration unit. When the persons owning the required percentage of interest have approved the sequestration unit, the division may enter an order approving the application and unitizing the interests of all persons within the sequestration unit whether or not the persons have voluntarily agreed to the sequestration unit. If the required percentage of interest for a proposed sequestration facility does not approve the sequestration unit

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within a period of six months from the date of filing the application, the application shall be revoked by the division unless the division, for good cause shown, extends the time for ratification; provided that the time for ratification shall not be extended for more than six months.

E. An order entered by the division pursuant to this section may be amended by the division after notice and a hearing as follows:

(1) for amendments concerning an expansion of the sequestration unit, notice shall be in the same manner and subject to the same conditions as notice provided in Subsections A and B of this section and to include all the interests in the area in which the additional lands considered for expansion are located;

(2) for amendments dealing only with a modification of operations of the sequestration facility or sequestration unit, notice shall be sent to all owners of interests within the sequestration unit at the owners' last known address on file with the operator; and

(3) for all other amendments, notice shall be in the same manner and subject to the same conditions as notice provided in Subsections A and B of this section.

F. A certified copy of any order of the division entered pursuant to this section shall be recorded in the land records of the counties where a portion of the sequestration unit and attendant buffer and monitoring zones are located.

SECTION 11. [NEW MATERIAL] COMPULSORY UNITIZATION OF SEQUESTRATION UNIT--EFFECTS OF UNITIZATION ORDER.--

A. Except to the extent that the parties affected agree, no order providing for a sequestration unit shall be construed to

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result in a transfer of all or any part of the title or other rights in any tract in the sequestration unit, except for the right to inject carbon dioxide into the formation or formations subject to the sequestration unit, to sequester carbon dioxide in the formation or formations and the reasonable use of the surface for sequestration facilities. No agreement or order shall operate to violate the terms and requirements of any permit applicable to the formation or formations or the wells within the sequestration unit.

B. No order of the division issued pursuant to the Geologic Carbon Dioxide Sequestration Act shall be construed to confer on any person the right of eminent domain, beyond the forced unitization of the sequestration unit.

C. Each of the tracts of land within the sequestration unit shall be allocated a pro rata share of the proceeds for the sequestration of carbon dioxide on an acreage basis, with the numerator being the number of acres within the tract divided by the total number of acres in the sequestration unit. Upon an expansion or contraction of the sequestration unit, the tract allocation percentages shall change based on the new acreage in the expanded or contracted sequestration unit, effective the first day of the month following approval by the division of the expansion or contraction.

D. As to the tracts or persons where a private agreement is in place, each tract's share shall be allocated and paid to the surface owners or, if previously severed, the owners of the subsurface formation or formations or the voids within the formations within the sequestration unit into which the carbon dioxide is to be injected for sequestration, the operator and any other persons owning interests in the sequestration of carbon dioxide within the tract on the basis of the agreement or agreements.

E. With respect to the interest of any party who cannot be located or whose identity cannot be ascertained, the operator shall

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deposit the unlocatable or unknown owner's share in an interest-bearing account in a national or state-chartered bank with deposits insured by the federal deposit insurance corporation for a period of five years or until the owner is located and the share distributed to the owner, whichever is less. If the share is not distributed to the owner in five years, on the anniversary of the fifth year, as provided in Paragraph (15) of Subsection A of Section 7-8A-2 NMSA 1978, such sum shall be paid to the taxation and revenue department to be distributed pursuant to Section 7-1-6.43 NMSA 1978.

SECTION 12. [NEW MATERIAL] OWNERSHIP OF INJECTED CARBON DIOXIDE.--All carbon dioxide injected into geologic sequestration in a sequestration unit shall be deemed the property of the operator. During the term of the sequestration unit and for so long as the sequestration unit agreement remains in force and effect, no surface or mineral interest owner or lessee shall have the right to produce, capture, take, reduce to possession, waste or otherwise interfere with or exercise any control over such carbon dioxide within the sequestration unit unless approved by the operator and the division or except as to drilling operations through the formation subject to the sequestration unit for purposes of drilling to deeper depths and horizons for the extraction of oil, gas and other minerals.

SECTION 13. [NEW MATERIAL] CERTIFICATE OF COMPLETION OF INJECTION OPERATIONS--LIABILITY RELEASE.--

A. The division shall issue a certificate of completion of injection operations upon a showing by the operator of a sequestration facility that the requirements of Subsection D of this section have been satisfied.

B. Upon the issuance of a certificate of completion of injection operations:

(1) any right, title and interest in and to, and liability for, the sequestration facility, including the stored

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carbon dioxide, shall transfer to the state;

(2) the operator, owners and all persons who generated, transported or injected any carbon dioxide into the sequestration unit and all owners otherwise having any interest in the sequestration unit and sequestration facility or the injected carbon dioxide shall be released from any and all duties or obligations pursuant to the Geologic Carbon Dioxide Sequestration Act and all liability associated with or related to the sequestration unit and sequestration facility;

(3) any bonds posted by or on behalf of the operator shall be released; and

(4) the state shall succeed and be subject to the terms of all agreements, permits, rules, regulations and orders applicable to the operator and its successors and the sequestration facility, and any monitoring, repair and remediation required by law shall become the state's responsibility to be overseen by the division, unless and until the federal government assumes responsibility for the long-term monitoring and management of the sequestration unit and sequestration facility.

C. The release from liability provided pursuant to this section shall not apply to an operator or generators or transporters of injected carbon dioxide if it is demonstrated that such person knowingly concealed or misrepresented material facts relating to the mechanical integrity of the sequestration facility or the chemical composition of any injected carbon dioxide.

D. The certification of completion of injection operations shall be issued upon a showing by the operator that:

(1) it is in full compliance with all laws governing the sequestration unit and sequestration facility;

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(2) it has resolved all pending claims regarding the sequestration unit and sequestration facility;

(3) the sequestration unit is reasonably expected to retain the carbon dioxide stored in it;

(4) the carbon dioxide in the sequestration unit has become stable;

(5) all wells, equipment and facilities to be used following the cessation of injection are in good condition and retain mechanical integrity; and

(6) it has plugged all wells and removed all equipment and facilities, unless such are needed for use following the cessation of injection, and has completed all reclamation work required by law.

SECTION 14. [NEW MATERIAL] EFFECT OF CERTIFICATES AND ORDERS OF THE DIVISION.--A person acting pursuant to a certificate or order issued by the division pursuant to the Geologic Carbon Dioxide Sequestration Act, in compliance with the provisions of that act or with rules or orders issued by the division pursuant to that act, shall not be deemed to be a public utility subject to the provisions of the Public Utility Act or a common carrier as that term is used in the Oil and Gas Act solely because the person owns, controls or operates all or part of a carbon sequestration unit or carbon sequestration facility.

SECTION 15. [NEW MATERIAL] PRESERVATION OF RIGHTS.--Nothing in the Geologic Carbon Dioxide Sequestration Act shall:

A. prevent a mineral owner or lessee from drilling through the sequestration unit or near a sequestration facility so long as it uses reasonable measures to protect the facility against the escape of the carbon dioxide being stored and the drilling

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operations are conducted in accordance with all applicable drilling and casing rules; or

B. affect or limit any enhanced oil recovery or enhanced gas recovery project permitted by the division or commission or prohibit use of anthropogenic or naturally occurring carbon dioxide in such projects.

SECTION 16. [NEW MATERIAL] FEES.--The division may levy on operators the following fees, which shall be paid to the division and deposited in the carbon dioxide sequestration fund:

A. an annual regulatory fee for sequestration facilities approved and those that have not received a certificate of completion of injection operations. The annual regulatory fee shall be in an amount set by division rule, and the amount of the fee shall be based on the annual projected costs to the division for oversight and regulation of sequestration facilities;

B. application fees for applications for certificates or orders pursuant to the Geologic Carbon Dioxide Sequestration Act, the amounts of which shall be set by division rule; provided that the amount of the fee shall be based on the anticipated cost of processing the application for which the fee is levied; and

C. an annual fee of three dollars (\$3.00) per metric ton of carbon dioxide stored in a geologic carbon dioxide sequestration facility to provide funds for the ongoing costs related to the state's long-term liability for sequestration facilities once title has transferred to the state.

SECTION 17. [NEW MATERIAL] OWNERSHIP OF VOIDS WITHIN THE EARTH.--

A. Absent specific language in a severing instrument to the contrary, the surface estate includes the pore space, and the

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ownership of all pore space in all strata below the surface lands and waters of this state is declared to be vested in the several owners of the surface above the strata or formations.

B. To the extent the dominant mineral estate is reasonably utilizing the surface estate for the production of minerals located thereon and therein, the formations so used shall not be interfered with and are excluded from the provisions of the Geologic Carbon Dioxide Sequestration Act.

C. A conveyance of the surface ownership of real property shall be a conveyance of the pore space in all formations and strata below the surface of such real property unless the ownership interest in such pore space was previously severed from the surface ownership or is explicitly excluded in the conveyance.

D. The ownership of pore space in any formations or strata may be conveyed in the manner provided by law for the transfer of interests in real property. No agreement conveying minerals or other interests underlying the surface shall act to convey ownership of any pore space in the formations or stratum unless the agreement explicitly conveys that ownership interest.

E. No provision of law, including a lawfully adopted rule or regulation, requiring notice to be given to a surface owner, to an owner of the mineral interest or to both shall be construed to require notice to persons holding ownership interests in any pore space in the underlying formations or strata unless the law specifies notice to the persons is required.

F. As used in this section, "pore space" means subsurface space that can be used as storage space for carbon dioxide or other substances and includes the voids, microscopic or otherwise, in the earth.

SECTION 18. [NEW MATERIAL] CARBON DIOXIDE SEQUESTRATION

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FUND--CREATED.--The "carbon dioxide sequestration fund" is created in the state treasury. The fund consists of fees, appropriations, gifts, grants, donations and money received from the federal government. The energy, minerals and natural resources department shall administer the fund, and money in the fund is appropriated to the energy, minerals and natural resources department to provide funding for the long-term liability costs related to geologic carbon dioxide sequestration. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative. Balances remaining in the carbon dioxide sequestration fund at the end of a fiscal year shall not revert to any other fund."

William E. Sharer

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____