| LFC Requester: | Helen Gaussoin |
|---|---|

**AGENCY BILL ANALYSIS**
**INSTRUCTIONS**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

***and***

**DFA@STATE.NM.US**

***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***

**SECTION I: GENERAL INFORMATION**
***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***

*Check all that apply:*
**Original** x **Amendment** ____
**Correction** ___ **Substitute** ____

**Date** 1/27/24
**Bill No**: SB 215

**Sponsor:** Sens. Sharer and Jaramillo/Reps. Dixon and Chatfield
**Short Title:** Geologic Carbon Dioxide Sequestration Act
**Agency Name and Code Number**: EMNRD 521
**Person Writing** Dylan Fuge
**Phone:** (505) 490-2551 **Email** dylan.fuge@emnrd.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| **FY23** | **FY24** | | |
| | | | |
| | | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|
| **FY23** | **FY24** | **FY25** | | |
| | | Indeterminate | Indeterminate | Unknown |
| | | | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | N/A | N/A | 180.0 | 180.0 | Recurring | General |
| | N/A | N/A | 20.0 | 20.0 | Nonrecurring | General |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

## SECTION III: NARRATIVE

### BILL SUMMARY

Synopsis:

Section 1 names the Act.

Section 2 includes the Definitions.

Section 3 gives the Oil Conservation Division ("OCD" or "Division") authority to regulate carbon sequestration, including the authority to establish necessary rules. It also clarifies that the Act does not apply to enhanced oil and gas recovery operations utilizing $CO_2$.

Section 4 establishes requirements and process necessary to acquire the pore space necessary to form a sequestration unit (defined term under the act) and establishes the prerequisites required before an operation initiates the compulsory unitization process under Section 5 and 6 of the Act.

Section 5 authorizes the division to approve a unitization application based on showings in Sections 5 and 6. The section includes various requirements regarding the scope of applications, including those related to scoping, notice, and operational plans.

Section 6 imposes additional requirements for compulsory unitization orders including hearings, notice for non-locatable owners, allowable findings for the division, and requiring that 60% of the lands within the proposed unit have agreed to the order in writing.

Section 7 establishes limitations on unitization orders, sets out tract share allocations, and outlines handling of shares for non-locatable owners.

Section 8 establishes ownership by the operator of the carbon injected into a sequestration unit.

Section 9 transfers right, title and liability for the injected carbon to the state on completion of injection operations and establishes requirements for showing completion of injection operations.

Section 10 exempts operators from classification as a public utility under the Public Utility Act

or as a common carrier under the Oil and Gas Act.

Section 11 allows mineral rights owners to drill through sequestration units and clarifies that enhanced oil recovery projects aren't limited by the Act.

Section 12 establishes fee authority for the division.

Section 13 clarifies that pore space is owned by the surface estate owner.

**FISCAL IMPLICATIONS**

SB 215 clarifies explicitly that pore space is owned, unless previously severed, by the owner of the surface estate, and for the first time in New Mexico establishes a framework for its utilization for the development of a $CO_2$ sequestration project. $CO_2$ sequestration projects, given the volume of gas injected and the relative mobility of the gas underground, require very large areas of pore around the injection. Absent a specific legal framework, this has historically required project operators to negotiate separate agreements with all potentially impacted landowners, a very time-consuming and expensive process. SB 215 establishes a framework for sequestration project proponents to assemble the necessary acreage more quickly. Modeled off the compulsory pooling process utilized in the oil and gas context, $CO_2$ sequestration project proponents are able, under SB 215, to utilize a process administered by OCD to, once they have reached certain minimum thresholds, compel participation in such a project. SB 215 also sets out a compensation framework for those who voluntarily participate and those who are compelled to participate.

While OCD is very familiar with these types of processes given its experience overseeing compulsory pooling for oil and gas operations, administering the new processes in SB 215 will require additional resources for the agency, given the limited capacity of our existing hearing examiners to support additional work alongside pending oil and gas pooling cases. Given the relative newness of the sequestration industry and some uncertainty about the extent of near-term workload, OCD estimates the Act, if passed, would require two FTEs – one for its hearings group and one for its underground injection control (UIC) group. These staff would help ensure any sequestration projects were not stuck behind compulsory pooling cases. To the extent such staff have additional capacity, or while sequestration project application numbers are low, they could be deployed to support processing of oil and gas compulsory pooling applications and other UIC group activities.

OCD would note that SB 215 is complementary to the steps it is talking to initiate the process to obtain Class VI primacy of carbon sequestration wells from the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act. The legislature has already provided the necessary one-time resources for that application process.

Consistent with precedent in other states, SB 215 transfers long term liability for any sequestered carbon to the state following the conclusion of injection activities. However, nothing in the bill provides a funding stream for the OCD to support the long-term monitoring costs associated with sequestration projection. Those costs can be significant. For example, EPA's Class VI rules suggest up to 50 years of monitoring post injection may be required. Unfortunately, SB 215 specifically requires that any bonds posted (presumably to limit exposure in the event of failure of the sequestration unit during injection) are to be returned to the operator once injection concludes and ownership transfers to the state. At this time, it is not possible for OCD to estimate the costs of long-term monitorig, but over 50 years we anticipate they will be

significant. In recognition of these issues, other states collect some form of fee or lump sum payment. The former occurs throughout the injection lifetime of a project, while the latter tends to occur towards the end of the injection period. While SB 215 allows OCD to charge a fee, as drafted it appears to only cover operational fees and not long-term maintenance of monitoring costs. OCD suggests the fee be expanded to include such costs or that it be authorized to also collect a long-term maintenance and monitoring fee.

Additionally, the novel nature of permanent sequestration raises legal issues regarding trespass liability for landowners down the road who may not have been included in the project because of misestimates about scope of spread and as a result may not have been notified properly. OCD is not suggesting this can be addressed now, but it may need to be revisited in the future.

**SIGNIFICANT ISSUES**

SB 215 does not address competing uses of the pore space. Underground pore space is currently the subject of multiple activities, most notably saltwater disposal and acid gas injection. The legislation would be improved by clarifying how the division should resolve these discrepancies – although such a change could wait for a future session given our anticipation the initial application rate for such projects will be slow.

As noted above, the success of the Division administering this Act will be enhanced upon completion of the Class VI Underground Injection Control primacy application to the Environmental Protection Agency. OCD has issued RFPs soliciting technical support for this effort. The response deadline for that RFP is January 31st, 2024. Prior to obtaining such primacy, OCD will have to sync its processes under the Act with EPA review of any associated Class VI well permits. Following primacy, OCD anticipates that such processes should be easier.

Finally, the bill directs any fees that are collected to the general fund. In OCD's experience a better model is to direct such fees to a special fund. This allows fund balance to accumulate and provides more stability in terms of funding. If the bill were to be amended to add a long-term monitoring fee, such a fund would be critical so that such funds were properly segregated.

**PERFORMANCE IMPLICATIONS**

The bill currently contains no appropriation for administration of this program by OCD.

**ADMINISTRATIVE IMPLICATIONS**

This bill will require a rulemaking process to establish additional procedures and forms for unitization orders, fee setting, notice requirement, etc.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**TECHNICAL ISSUES**

N/A

**OTHER SUBSTANTIVE ISSUES**

N/A

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Pore space ownership will not be clarified in statute, and there will not be process whereby sequestration project proponents can compulsorily pool pore space. As a result, they will be required to negotiate agreements with all impact landowners. Additionally, project proponents will not be able to transfer long-term liability for the carbon to the state, and therefore will retain all long-term monitoring requirements.

**AMENDMENTS**

N/A