

LFC Requester:	Austin Davidson
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Feb 20, 2025 *Check all that apply:*
Bill Number: HB458 Original Correction
 Amendment Substitute

Sponsor: Lanier **Agency Name and Code** State Land Office - 539
 Rep. Dixon, Sen. Sharer, Rep. Chatfield, Rep. Small, Sen. **Number:** _____
CARBON DIOXIDE STORAGE **Person Writing** Sunalei Stewart
STEWARDSHIP ACT **Phone:** 505-827-5755 **Email** sstewart@nmslo.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	Unknown	Unknown	Recurring	Land Maintenance Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Unknown	Unknown	Unknown	Recurring	Land Maintenance Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB 457
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 458 explicitly permits, and attempts to regulate, aspects of the geologic sequestration of carbon dioxide – that is, injection of CO₂ deep underground into “a geological stratum, formation, aquifer, cavity or void ... including deep saline aquifers, oil and gas reservoirs and unminable coal seams, such that carbon dioxide does not escape to the atmosphere.” The bill would confer some regulatory authority over CO₂ sequestration on the Oil Conservation Division (OCD) of the Department of Energy, Minerals and Natural Resources and authorizes OCD to engage in rulemaking to implement the bill, including over “carbon sequestration facilities” (a term that includes injection wells but also undefined or ambiguous activities such as “geologic sequestration project[s]” and “a facility that injects carbon dioxide”).

The bill does not require persons or entities who operate carbon sequestration facilities (operators) to obtain permits from OCD, but it does provide that operators who do obtain permits from OCD must obtain “certificates of closure” after completion of injection activities.

The bill authorizes the Commissioner of Public Lands and other state agencies that own land to also grant certificates of closure to operators “on such terms as the agency finds are reasonable.”

The bill transfers liability for environmental or other harms, or remediation/repair costs, from the operator to the State of New Mexico, upon the issuance of a certificate of closure. The bill creates a fund for plugging abandoned injection wells, remediation of surface facilities, training, oversight, emergency response, and related activities. Operators pay into the fund at a rate of \$0.10 per metric ton of carbon dioxide injection “pursuant to applicable statutes and rules, distributions, appropriations, gifts, grants and donations.”

FISCAL IMPLICATIONS

The intended purpose of the legislation appears to be to create a framework for large-scale carbon sequestration projects, in particular the closure and liability aspect of such projects. The New Mexico State Land Office (NMSLO) does not currently have leasing instruments, financial assurances or other required instruments to perform this type of leasing activity (large-scale CO₂ sequestration projects). Creation of, and management of, these types of projects may require additional personnel and resources.

With regard to revenue, there could be a positive revenue impact from any new leasing activities that occur that would have not otherwise happened without the legislation. There may also be a negative revenue impact to the extent that CO₂ sequestration competes with or interferes with other subsurface activities, such as salt-water injection wells, acid gas injection,

or oil and gas development.

HB 458 could also have significant but undetermined fiscal implications for the “State” after the completion of CO₂ injection operations. Once a certificate of closure is issued by OCD or a land-managing agency, the operator is absolved of liability (absent certain defined special circumstances, such as fraudulent misrepresentation by the operator), with liability shifting instead to the State, i.e., New Mexico taxpayers. The bill does not indicate which specific agency or other entity must bear the financial costs of long-term legacy issues, to the extent monies from the Long-Term Storage Stewardship Fund are insufficient or unavailable. To the extent that the State Land Office would be forced to carry any costs on behalf of the “State” for harms or liabilities associated with CO₂ sequestration facilities on or near state trust land, revenue from state land trust beneficiaries (public schools, universities, hospitals and other public institutions) would be impaired.

SIGNIFICANT ISSUES

Under the direction of the Commissioner of Public Lands, the New Mexico State Land Office manages about nine million acres of surface estate and 13 million acres of minerals. The statutory NMSLO oil and gas lease includes the right to produce CO₂, *see* NMSA 1978, § 19-10-2, and operators under NMSLO oil and gas leases frequently use CO₂ for enhanced oil and gas recovery. The statutes pertaining to state trust lands include the State Carbon Dioxide Act, which provides for certain kinds of disposition of CO₂ produced under an NMSLO oil and gas lease.

The NMSLO has not yet issued leases for CO₂ sequestration but already has the authority to do so. Other than statutory oil and gas leases and a handful of other forms of mining leases, the Commissioner generally has authority to enter into leases at her discretion (on terms consistent with the Enabling Act) that she finds beneficial to the public schools and other beneficiaries on whose behalf she acts. The Enabling Act, federal law consented to by the State of New Mexico as a condition of statehood, controls the use of state trust lands and includes specific requirements conditioning their use, such as public auctions for leases with terms over a period of five years.

The bill would specifically authorize the Commissioner of Public Lands and other state agencies to grant CO₂ sequestration operators “certificates of closure,” but does not require that CO₂ sequestration projects be permitted by any agency.

The bill also lacks clarity regarding which entity or agency could be held financially responsible for legacy issues, simply making the “State” responsible. If taxpayers are going to assume these long-term costs for permanent sequestration after operators’ complete injections – since it is unclear whether the Fund would be sufficient to cover all costs, or if the Commissioner of Public Lands or other state agencies would have access to the Fund, there should be clarity regarding how the state’s financial costs will be dealt with and a clear understanding of the extent of the costs that could be incurred over many decades.

The bill does not itself require operators of carbon sequestration facilities to provide emergency response plans, mitigate leaks, or submit financial assurance for their commercial activities, although it does indicate that fees operators pay into the Fund do not relieve them of any financial assurance obligations they might otherwise have. In the absence of appropriate environmental and financial protections, New Mexicans may be left to absorb the cost and other

consequences of leaks, accidents, water contamination, increased seismicity, and other adverse events that might arise out of carbon sequestration activities.

A requirement for emergency planning is important given past and recent CO₂ pipeline accidents such as one that hospitalized 45 people in Mississippi in 2020, leaving some people with serious long-term injuries and disability, and forced the evacuation of 200 others.¹ And while the bill, in Section 3(B), states the OCD will make rules to implement the provisions of HB 457, that bill does not address certain provisions that would be essential (e.g. safety plans, leaks, emergency response, etc.). Section 3(B) should be amended to allow the OCD promulgate a broader scope of rules to related to carbon sequestration and this law. “The division ...may adopt and promulgate rules and issue orders for the implementation of the provision of that act and related rules the division deems necessary for the implementation of the act.”

The bill explicitly shifts liability, including responsibility for long-term monitoring and remediation, to the State based largely on an operator’s statement that injection operations are complete. Although there are limited exceptions that would allow redress from an operator (such as in the case of fraud or violation of applicable laws), under the bill the State would be required to assume duties on behalf of private parties without acquiring anything of value in return. For these reasons the liability-shifting provision of the bill may violate the Anti-Donation Clause of the New Mexico Constitution, Art. IX, Sec. 14.

The bill does not contain safeguards (such as a testing or reporting regime) to ensure that CO₂ injected into carbon sequestration facilities is not contaminated with VOCs (volatile organic compounds) or other impurities often commingled with captured CO₂.

EPA regulates class VI injection wells for carbon sequestration. New Mexico could gain primacy to regulate these wells but has not yet done so at this point. It is unclear how the bill’s provisions giving OCD authority over CO₂ sequestration units and other approvals does or does not fit into the pre-existing EPA regulatory structure.

The bill, in Section 5(B), details how money in the Fund may be used. Subpart 1 references the use of the Fund for “long-term monitoring of geologic sequestration facilities...”. It should be incumbent on the operator, prior to obtaining a certificate of closure, to install a long-term monitoring well and not use the Fund for said purpose. The Fund should only be used when a solvent entity is not locatable and this should be made clear.

The use of the Fund, in Section 5, is broad, and allows the it to be used by OCD for training and for personnel. The Fund’s purpose could be limited to addressing remediation, plugging, emergency response, repairing leaks, and monitoring. Without limitation, there is a possibility that the Fund could be depleted and not available when actually needed, and as the bill is unclear as who the “State” is in terms of liability.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

¹ <https://www.npr.org/2023/05/21/1172679786/carbon-capture-carbon-dioxide-pipeline>

TECHNICAL ISSUES

Section 4(D) states the OCD may grant a certificate of closure and then allow a transfer of stewardship to the State. This section should make clear that, prior to the OCD granting the certificate in this section, the operator must *first* receive, if NMSLO lands are included, a certificate of closure from the NMSLO.

OTHER SUBSTANTIVE ISSUES

Section 5(A) sets the fee level for the long-term storage Fund for each metric ton injected. The proposed fee is \$0.10 per metric ton. There is no inflationary increase built into this bill. The bill could be amended to provide that the rate per metric ton be reset every three years based on inflation, with such schedule being maintained by the OCD.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

As noted above.