

1 HOUSE BILL 205

2 55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; ENACTING THE GEOLOGIC CARBON
12 DIOXIDE SEQUESTRATION ACT; PROVIDING FOR THE UNITIZATION OF
13 FORMATIONS FOR SUBSURFACE SEQUESTRATION OF CARBON DIOXIDE;
14 LIMITING LIABILITY OF OWNERS OF SEQUESTRATION FACILITIES
15 FOLLOWING TRANSFER TO STATE OWNERSHIP; ESTABLISHING FEES;
16 DECLARING AN EMERGENCY.
17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
20 cited as the "Geologic Carbon Dioxide Sequestration Act".

21 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
22 Geologic Carbon Dioxide Sequestration Act:

23 A. "carbon dioxide" means carbon dioxide produced
24 by anthropogenic sources or captured from the atmosphere,
25 including "qualified carbon oxide" as defined pursuant to 26

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1 U.S.C. Section 45Q and "carbon dioxide stream" as defined in 40
2 C.F.R. Part 146 Subpart H pertaining to class VI carbon dioxide
3 injection wells;

4 B. "commission" means the oil conservation
5 commission;

6 C. "director" means the director of the oil
7 conservation division of the energy, minerals and natural
8 resources department;

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

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

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

21 G. "sequestration facility" means carbon dioxide
22 injection wells, monitoring wells, science wells, stratigraphic
23 wells, underground equipment, underground geologic strata and
24 formations and surface equipment and buildings utilized for the
25 purpose of geologic sequestration of carbon dioxide. The

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1 subsurface component of a sequestration facility shall include
2 any necessary and reasonable areal buffer and subsurface
3 monitoring zones as required by federal or state law, rules,
4 regulation, order or permit. "Sequestration facility" includes
5 a facility that injects carbon dioxide for secure geologic
6 sequestration pursuant to 26 U.S.C. Section 45Q, including a
7 geologic sequestration project as defined in 40 C.F.R. Part
8 146.81(d) pertaining to federal environmental protection agency
9 class VI underground injection control wells for carbon dioxide
10 injection wells; and

11 H. "sequestration unit" means the geologic
12 formation or formations proposed for the injection of carbon
13 dioxide for geologic sequestration and the lands to be included
14 within the unit, including any buffer area, but does not
15 include oil and gas units where carbon dioxide is injected for
16 purposes of enhancing oil and gas production.

17 SECTION 3. [NEW MATERIAL] DIVISION AUTHORITY--
18 PROCEDURE.--

19 A. Finding that the public interest would be served
20 by the geologic sequestration of carbon dioxide in an orderly
21 manner that would protect the health and safety of the public
22 and the integrity of the state's natural resources, geologic
23 sequestration of carbon dioxide shall be permitted pursuant to
24 the Geologic Carbon Dioxide Sequestration Act. That act shall
25 apply to sequestration facilities that commence injection of

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1 carbon dioxide after the effective date of that act; provided
2 that sequestration facilities that commence injection of carbon
3 dioxide before the effective date of that act may apply to the
4 division for unitization and a certificate of completion of
5 injection operations and release of liability pursuant to that
6 act. The Geologic Carbon Dioxide Sequestration Act does not
7 apply to the injection of the carbon dioxide in connection with
8 enhanced oil and gas production operations.

9 B. The division shall have jurisdiction and
10 authority necessary to enforce the provisions of the Geologic
11 Carbon Dioxide Sequestration Act and may adopt and promulgate
12 rules and issue orders for the implementation of the provisions
13 of that act in accordance with Sections 70-2-7 and 70-2-12.2
14 NMSA 1978.

15 SECTION 4. [NEW MATERIAL] ACQUISITION OF LANDS FOR
16 GEOLOGIC SEQUESTRATION.--An operator that desires to form a
17 sequestration unit for the injection of carbon dioxide into the
18 earth for geologic sequestration shall attempt to acquire by
19 option, lease, conveyance or other negotiated means the rights
20 necessary for geologic sequestration prior to resorting to the
21 procedure for compulsory unitization of such interests pursuant
22 to Section 5 of the Geologic Carbon Dioxide Sequestration Act.
23 The state is authorized to grant to an operator rights for
24 geologic sequestration in lands subject to its jurisdiction or
25 control in the same manner as provided for entering into oil

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1 and gas leases.

2 SECTION 5. [NEW MATERIAL] COMPULSORY UNITIZATION OF
3 SEQUESTRATION FACILITIES--CONTENTS OF APPLICATION.--

4 A. An operator shall apply to the division for an
5 order unitizing a geologic formation or formations for geologic
6 sequestration of carbon dioxide to be included within the
7 proposed sequestration facility and forming a sequestration
8 unit, whether or not the state has granted consent. The
9 division shall issue such order upon finding the requirements
10 of this section and Section 6 of the Geologic Carbon Dioxide
11 Sequestration Act have been satisfied.

12 B. An application filed pursuant to this section
13 shall contain the following, together with such other
14 information as may be required by the division:

15 (1) a copy of a permit or draft permit for
16 injection of carbon dioxide in a class VI well pursuant to the
17 federal Safe Drinking Water Act;

18 (2) a description of the proposed geologic
19 formation or formations and surface lands proposed to be
20 included in the proposed sequestration unit;

21 (3) the names and addresses as disclosed by
22 the real property records of the county or counties in which
23 the proposed sequestration unit is to be located, the records
24 of the bureau of land management with respect to federal lands
25 and the records of the commissioner of public lands with

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1 respect to state lands, as applicable, of all persons owning:

2 (a) the surface estate within the
3 proposed sequestration unit;

4 (b) the surface estate not included
5 within the proposed sequestration unit but within one-half mile
6 of the proposed sequestration unit; and

7 (c) mineral interests and mineral
8 lessees within the proposed sequestration unit and within one-
9 half mile of the proposed sequestration unit;

10 (4) a proposed plan of unitization applicable
11 to the proposed sequestration facility, which the applicant
12 considers fair, reasonable and equitable, for:

13 (a) determining the capability of the
14 formation to accept and sequester carbon dioxide;

15 (b) estimating the quantity and volume
16 of carbon dioxide that will be capable of being sequestered in
17 each separately owned tract of land within the sequestration
18 unit;

19 (c) the proposed formula or method by
20 which the owners of tracts within the proposed sequestration
21 unit shall be compensated, or by which economic benefits
22 generated will be allocated to each tract within the unit and
23 how the costs and expenses in the management of the
24 sequestration facility will be allocated among the tracts,
25 including any reasonable charge for risk; and

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

(5) information on each of the facts required to be found by the division pursuant to Section 6 of the Geologic Carbon Dioxide Sequestration Act; and

(6) the proposed formula or method by which the owners of tracts within the proposed sequestration unit shall be compensated, or by which economic benefits generated will be allocated to each tract within the unit, and how the costs and expenses in the management of the sequestration facility will be allocated among the tracts, including any reasonable charge for risk.

SECTION 6. [NEW MATERIAL] COMPULSORY UNITIZATION OF A SEQUESTRATION UNIT--NECESSARY FINDINGS--CONTENTS OF DIVISION SEQUESTRATION UNITIZATION ORDER--RATIFICATION--AMENDMENTS-- PETITIONS FOR INCLUSION--RECORDING--LIEN FOR COSTS.--

A. Upon receipt of an application pursuant to Section 5 of the Geologic Carbon Dioxide Sequestration 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 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

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1 the application.

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

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

14 (2) describe the formation or formations and
15 land proposed to be unitized;

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

19 (4) in the case of a non-locatable owner or
20 interest holder, identify the owner or interest holder and the
21 owner or interest holder's last known address; and

22 (5) state that any person claiming an interest
23 in the formations or lands proposed to be unitized should
24 notify the director and the operator of the proposed
25 sequestration facility at the published address within twenty

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1 days of the publication date.

2 C. After considering the application and hearing
3 the evidence offered regarding the application, the division
4 shall enter an order setting forth the following findings if
5 established by the findings:

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

10 (2) the use of the underground stratum or
11 formation sought to be unitized will not contaminate fresh
12 water or oil, gas, condensate, potash or other commercial
13 mineral deposits capable of being produced in paying
14 quantities, unless all the owners and mineral lessees of such
15 oil, gas, condensate, potash or other commercial mineral
16 deposits have consented to the sequestration unit;

17 (3) the proposed plan denotes the aerial
18 extent of migration of the injected carbon dioxide within the
19 underground stratum or formation;

20 (4) the proposed plan specifies the volume or
21 quantity of carbon dioxide capable of being sequestered in the
22 sequestration unit;

23 (5) the method used to determine:

24 (a) the volume or quantity capable of
25 being sequestered in the sequestration unit;

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1 (b) the capacity of each separately
2 owned tract of land within the sequestration unit to receive
3 and sequester the injected carbon dioxide; and

4 (c) so far as can be practically
5 determined, each tract's actual share of the total volume or
6 quantity to be sequestered in the sequestration unit;

7 (6) the proposed formula or method by which
8 the owners of tracts within the proposed sequestration unit
9 shall be compensated, or by which economic benefits generated
10 will be allocated to each tract within the unit, and how the
11 costs and expenses in the management of the sequestration
12 facility will be allocated among the tracts, including any
13 reasonable charge for risk;

14 (7) the formula or method utilized is fair,
15 just and equitable;

16 (8) no portion of the formation or stratum
17 sought to be unitized has been appropriated or unitized or is
18 being utilized for the injection, sequestration and commercial
19 withdrawal of oil, natural gas or the geologic sequestration of
20 carbon dioxide by others within three miles of the
21 sequestration unit;

22 (9) the applicant has made a good faith effort
23 to secure voluntary unitization;

24 (10) the proposed plan states:

25 (a) the approximate anticipated date

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1 geologic sequestration would commence within the sequestration
2 unit if approved;

3 (b) the manner in which and the
4 circumstances under which the operations shall terminate; and

5 (c) the manner and time for the
6 settlement of accounts upon termination; and

7 (11) the proposed plan includes such
8 additional provisions as are found to be appropriate for the
9 operation of the sequestration facility and for the protection
10 of correlative rights and the prevention of waste.

11 D. No order of the division issued pursuant to this
12 section shall become effective until the plan of unitization
13 has been approved in writing by persons owning tracts within
14 the sequestration unit comprising a minimum of sixty percent of
15 the sequestration capacity within the sequestration unit. When
16 the persons owning the required percentage of interest have
17 approved the plan of unitization, the interests of all persons
18 within the sequestration unit are unitized whether or not such
19 persons have approved the plan of unitization in writing. If
20 the required percentage of interest for a proposed
21 sequestration facility does not approve the plan of unitization
22 within a period of six months from the date on which the order
23 providing for unitization of the sequestration facility is
24 made, such order shall cease to be of further force and effect
25 and shall be revoked by the division, unless the division, for

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1 good cause shown, extends the time for ratification, but no
2 more than a period of six months.

3 E. An order entered by the division pursuant to
4 this section may be amended in the same manner and subject to
5 the same conditions as an original order providing for a
6 sequestration unit; provided, however, that no amendatory order
7 shall change the allocation of the economic benefits and costs
8 and expenses. The allocation of the economic benefits and
9 costs and expenses may be amended by agreement of all owners
10 within the sequestration unit or by expanding or contracting
11 the sequestration unit going through the same procedures as if
12 it is a new sequestration unit, except Paragraph (8) of
13 Subsection C of this section shall not be applicable in this
14 instance.

15 F. Any owner of or holder of an interest who has
16 not been included within a unitization application or order
17 pursuant to this section may petition for inclusion in the
18 sequestration facility. The petition shall be filed with the
19 division and shall describe the petitioner's legal entitlement,
20 the location of the owner's property and the reasons for
21 inclusion in the sequestration facility. The petition shall be
22 accompanied by a deposit of money sufficient to pay all
23 reasonable costs of the inclusion proceedings. The division
24 shall require the petitioner to publish a notice of filing of
25 the petition, which notice shall state the filing of the

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1 petition, the name of the petitioner, the location of the
2 owner's land and the request of the petitioner. The notice
3 shall notify all interested persons to appear at a specified
4 time and place and to show cause, in writing, why the petition
5 should not be granted. The division shall further require the
6 petitioner to mail a copy of such notice to all owners of
7 interest within the sequestration unit as well as the operator
8 of the sequestration facility. The division, at the time and
9 place mentioned in the notice, shall proceed to hear the
10 petition and all objections thereto and shall thereafter grant
11 or deny the petition. The filing of the petition shall be
12 deemed as an assent by all petitioners to the inclusion in the
13 sequestration unit mentioned in the petition or any part
14 thereof and to the plan of unitization. If the petition is
15 granted, the allocation of benefits and costs and expenses
16 shall be adjusted to address the new interest, and the
17 petitioner shall be considered to have been a member of the
18 sequestration unit as of the date of the filing of the petition
19 and, upon the payment of its share of costs of the
20 sequestration facilities as recalculated, the petitioner shall
21 be entitled to all economic benefits received by the owners and
22 interest holders as of that date and may be subject to a
23 reasonable charge for risk. The division shall adopt rules
24 providing for the fair and equitable determination of the
25 sequestration capacity for each successful petitioner and the

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1 means by which successful petitioners shall be paid the
2 economic benefits to which they are entitled under this
3 subsection, including, if necessary, a reallocation of economic
4 benefits among the owners and interest holders.

5 G. A certified copy of any order of the division
6 entered pursuant to this section shall be recorded in the land
7 records of the counties where all or any portion of the
8 sequestration facility is located.

9 H. In order to secure the payment of the
10 sequestration facility costs and expenses charged to and
11 assessed against each separately owned tract of land within the
12 sequestration unit, and subject to such reasonable limitations
13 as may be set out in the sequestration unit agreement, the
14 owner of the sequestration facility shall have a first and
15 prior lien upon:

- 16 (1) each separately owned tract;
17 (2) the interest of the owners of the lands
18 identified in Paragraph (1) of this subsection in the economic
19 benefits generated by the sequestration facility; and
20 (3) all equipment in, appurtenant to or
21 directly used by the sequestration facility.

22 SECTION 7. [NEW MATERIAL] COMPULSORY UNITIZATION OF
23 SEQUESTRATION UNIT--EFFECTS OF UNITIZATION ORDER.--

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

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1 construed to result in a transfer of all or any part of the
2 title or other rights in any tract in the sequestration unit,
3 and no agreement or order shall operate to violate the terms
4 and requirements of any permit applicable to the formation or
5 formations or the wells within the sequestration facility.

6 B. Cooperative operation of a sequestration unit
7 and a sequestration facility pursuant to a division order shall
8 not violate New Mexico statutes or laws relating to trusts,
9 monopolies or restraint of trade.

10 C. No order of the division issued pursuant to the
11 Geologic Carbon Dioxide Sequestration Act shall be construed to
12 confer on any person the right of eminent domain, and no order
13 issued pursuant to this section shall act so as to grant any
14 person the right of eminent domain.

15 SECTION 8. [NEW MATERIAL] OWNERSHIP OF INJECTED CARBON
16 DIOXIDE.--All carbon dioxide injected into geologic
17 sequestration in a sequestration unit shall be deemed the
18 property of the owners and their heirs, successors or assigns.
19 During the term of the sequestration unit and for so long as
20 the sequestration unit agreement remains in force and effect,
21 no surface or mineral interest owner or lessee shall have the
22 right to produce, capture, take, reduce to possession, waste or
23 otherwise interfere with or exercise any control over such
24 carbon dioxide within the sequestration unit unless approved by
25 the operator and the division.

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1 SECTION 9. ~~[NEW MATERIAL]~~ CERTIFICATE OF COMPLETION OF
2 INJECTION OPERATIONS--LIABILITY RELEASE.--

3 A. Because the geologic sequestration of carbon
4 dioxide will provide a benefit to the people of New Mexico by
5 reducing greenhouse gas emissions, providing significant
6 economic benefits and employment opportunities, generating tax
7 revenues and securing a source of carbon dioxide for its
8 potential value for commercial and industrial purposes in the
9 future, the public interest would be served by the state
10 succeeding to the rights and liabilities of an operator five
11 years after cessation of carbon dioxide injection in a
12 sequestration facility. The division shall issue a certificate
13 of completion of injection operations upon a showing by the
14 operator of a sequestration facility that the requirements of
15 Subsection D of this section have been satisfied.

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

18 (1) any right, title and interest in and to,
19 and liability for, the sequestration facility, including the
20 stored carbon dioxide, shall transfer to the state;

21 (2) the operator, owners and all persons who
22 generated, transported or injected any carbon dioxide into the
23 sequestration unit and all owners otherwise having any interest
24 in the sequestration facility or the injected carbon dioxide
25 shall be released from any and all duties or obligations

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1 pursuant to the Geologic Carbon Dioxide Sequestration Act and
2 all liability associated with or related to that sequestration
3 facility;

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

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

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

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

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

25 (2) it has resolved all pending claims

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1 regarding the sequestration facility;

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

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

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

9 (6) it has plugged all wells, removed all
10 equipment and facilities and completed all reclamation work
11 required by law.

12 SECTION 10. [NEW MATERIAL] EFFECT OF CERTIFICATES AND
13 ORDERS OF THE DIVISION.--Anything in the Geologic Carbon
14 Dioxide Sequestration Act, or in any rule promulgated or order
15 issued pursuant to that act to the contrary notwithstanding,
16 accepting or acting pursuant to a certificate or order issued
17 by the division pursuant to that act, in compliance with the
18 provisions of that act or with rules, regulations or orders
19 issued by the division pursuant to that act, shall not alone
20 cause any operator, or any generator or transporter of carbon
21 dioxide for geologic sequestration, to become or be classified
22 as a common carrier or a public utility for any purpose
23 whatsoever or increase the liability of such person for any
24 taxes otherwise due to the state.

25 SECTION 11. [NEW MATERIAL] PRESERVATION OF RIGHTS.--

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1 Nothing in the Geologic Carbon Dioxide Sequestration Act shall:

2 A. prejudice the rights of property owners within a
3 sequestration unit whose rights have not been committed to that
4 unit;

5 B. prevent a mineral owner or lessee from drilling
6 through the sequestration unit or near a sequestration facility
7 in such a manner as will protect such facility against the
8 escape of the carbon dioxide being stored; provided that such
9 drilling operations are conducted in accordance with all
10 applicable drilling and casing rules; or

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

15 SECTION 12. [NEW MATERIAL] FEES.--The division is
16 authorized to levy on operators the following fees, which shall
17 be paid to the division and deposited in the general fund:

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

25 B. application fees for applications for

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1 certificates or orders pursuant to the Geologic Carbon Dioxide
2 Sequestration Act, the amounts of which shall be set by
3 division rule; the amount of any such fee shall be based on the
4 anticipated cost of processing the application for which the
5 fee is levied.

6 SECTION 13. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.