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FISCAL IMPACT REPORT

SPONSOR Sens. Sharer and Jaramillo/Reps. Dixon and Chatfield **LAST UPDATED** _____
ORIGINAL DATE 1/31/24
BILL
SHORT TITLE Geologic Carbon Dioxide Sequestration Act **NUMBER** Senate Bill 215
ANALYST Wan Smith

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Fees			Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD		At least \$180.0	At least \$180.0	At least \$360.0	Recurring	General Fund
SLO		Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	Other state funds
Total		At least \$180.0	At least \$180.0	At least \$360.0	Recurring	

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Energy, Minerals and Natural Resources Department (ENMRD)

State Land Office (SLO)

New Mexico Institute of Mining and Technology

Agency Analysis was Solicited but Not Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 215

Senate Bill 215 (SB215) creates a new section of law that permits the geologic sequestration of carbon dioxide. The bill creates a regulatory framework for carbon sequestration under the jurisdiction of the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD).

SB215 defines several key terms:

- Carbon dioxide: 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;
- Geologic sequestration: 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;
- Sequestration facility: 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; explicitly includes a geologic sequestration project as may be defined in federal regulations pertaining to federal Environmental Protection Agency (EPA) Class VI underground injection control wells for carbon dioxide injection wells; and
- Sequestration unit: the geologic formation or formations proposed for the injection of carbon dioxide for geologic sequestration and the lands to be included within the unit.

OCD is given the authority to enforce the provisions of the legislation, including establishing rules and issuing orders. SB215 clearly states its provisions do not apply to enhanced oil and gas recovery operations utilizing carbon dioxide. The legislation also gives OCD the authority to levy an annual regulatory fee for sequestration facilities and application fees on operators. The fee amounts are not set by law but determined by OCD and based on anticipated costs of sequestration facility oversight and application processing. The fees shall be deposited in the general fund.

In Section 4, the bill establishes requirements for acquiring the rights and lands necessary to form a sequestration unit. It permits the State Land Office and any state agency the ability to grant an operator rights for geologic sequestration on lands subject to their jurisdiction on such terms they find are reasonable and that provide compensation equal to the fair market value of the rights.

If an operator has met the prerequisites identified in Section 4, it may apply to OCD for a compulsory unitization order of a geologic formation for carbon dioxide sequestration according to the process laid out in Section 5. Section 6 further details the necessary procedures related to the receipt and assessment of an application for a unitization order for applicants and OCD. Section 7 sets limitations on unitization orders, sets out tract share allocations, and outlines handling of shares for non-locatable owners.

SB215 provides that geologically sequestered carbon dioxide is the property of the operator conducting sequestration activities. Once injection operations are complete and the operator demonstrates compliance with Section 9, Subsection D, OCD will issue a certificate of completion, at which point ownership and associated liabilities are transferred to the State.

Operators of sequestration facilities are exempt from classification as a public utility and the provisions of the Public Utility Act. The bill also clarifies that mineral owners or lessees are not prohibited from drilling through a sequestration unit or near a sequestration facility, so long as

“reasonable measures to protect the facility against the escape of the carbon dioxide being stored” are taken. Neither does the bill limit any enhanced oil or gas recovery project permitted by OCD.

Finally, SB215 addresses the meaning and ownership of “pore space” in Section 13. It identifies “pore space,” as used in that section, as 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. The bill declares that ownership of all pore space in all strata below the surface lands and waters of the state is vested in the several owners of the surface above the strata or formations. As such, a conveyance of surface ownership of real property shall include the pore space below the surface, unless it has been previously severed.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

EMNRD states additional resources would be needed to administer the new rules and processes required by SB215 because existing hearing examiners have capacity only to support pending oil and gas cases. The agency estimates that adding at least 2 FTE in OCD—one for hearings and one for underground injection control—would be necessary. These positions have an annual cost of \$180 thousand.

The State Land Office (SLO) does not currently have leasing instruments, financial assurances, or other required instruments to perform the type of leasing activity that would be required for large-scale carbon sequestration projects. Development and management of such projects may require additional resources, including personnel, but SLO did not provide a dollar amount or FTE estimate.

SLO states SB215 could have a positive revenue impact on the state from new pore space leasing activities, or it could have a negative impact if carbon sequestration projects compete or interfere with other subsurface activities, such as salt-water injection wells or oil and gas development. The state could also suffer negative fiscal implications because of assuming liability for completed sequestration facilities. If any monitoring, repair, or remediation is required at a facility after operations are complete, OCD would be responsible, unless and until the federal government assumed responsibility. OCD reports it is unable to estimate the cost of long-term monitoring at this time but would expect it to be significant. EPA Class VI rules suggest up to 50 years of post-injection monitoring may be necessary.

While SB215 allows OCD to charge operating and application fees for sequestration units, OCD notes those fees do not cover long-term maintenance and monitoring costs. A fee structure that would create a revenue stream specifically for dealing with legacy issues would lessen the potential financial liability to the state.

SIGNIFICANT ISSUES

If enacted, SB215 would codify for the first time in New Mexico law that pore space is owned, unless previously severed, by the surface estate owner (as opposed to the mineral estate owner).

This follows both the prevailing rule in the United States and the opinion of the state Supreme Court in *Jones-Noland Drilling Co. v. Bixby* (1929-NMSC-091, 34 N.M. 413, 282 P. 382). The creation of a legal and regulatory framework for utilization of pore space for carbon sequestration will allow this type of project to proceed with greater efficiency, as operators will no longer need to negotiate separate agreements with each landowner potentially affected by a proposed project.

However, both OCD and SLO point out that SB215 does not address nor provide guidance for agencies regarding the competing uses of pore space, such as saltwater disposal and acid gas injection. SLO also notes the general definition of pore space provided by the bill is not limited to use for carbon sequestration and, thus, has implications for more than 4 million acres of state trust mineral estate severed from the surface estate.

CWS/hg/ss