

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 3/3/2025

Check all that apply:

Bill Number: HB-457

Original
Amendment Correction
Substitute

Sponsor: Rep. Meredith Dixon, Sen.
William Sharer, Rep. Jack
Chatfield, Rep. Nathan Small,
Sen. Steve Lanier

**Agency Name and
Code Number:** 305 – New Mexico
Department of Justice

Person Writing

Analysis: Henry Chynoweth

**Short
Title:** Geologic Carbon Dioxide
Sequestration Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: HB-457 creates a regime for the unitization of geologic formations for purposes of sequestration of carbon dioxide, to be implemented by the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resource Department (EMNRD).

Amendment: Includes substituting language to convert roman numerals into regular numbers.

Section 1 of the bill provides a short title of “Geologic Carbon Dioxide Sequestration Act.”

Section 2 of the bill provides relevant definitions for the terms “carbon dioxide,” “commission,” “director,” “division,” “geologic sequestration,” “operator,” “pore space,” “sequestration facility,” and “sequestration unit.”

Section 3 of the bill authorizes the sequestration of carbon dioxide pursuant to the terms of the Act and makes the Act applicable to sequestration facilities commencing after its effective date, and allows facilities that commenced operation before the effective date to apply for coverage under the Act. The Act does not apply to injection of carbon dioxide in connection with enhanced oil and gas operations. Section 3 also delegates jurisdiction, enforcement, and rulemaking authority under the Act to the OCD empowering the agency with new powers.

Amendment: Provides more explicit language codifying that pore space ownership is separate from the mineral estate, is inherent in surface land ownership, but may be severed by the surface estate. Also amends language from “this 2025 act” to “that act.”

Section 4 of the bill provides that prospective sequestration unit operators must attempt to acquire necessary rights by option, lease, conveyance, or other negotiated means before resorting to compulsory unitization of interest under the act. It provides which affected lands shall be considered in the unitization process. It also provides that the state may grant rights under the Act for lands under the state’s control.

Section 5 of the bill authorizes operators to apply to OCD for an order unitizing a geologic formation for carbon dioxide sequestration, and specifies the contents of the

application, including but not limited to information on: injection permits under any applicable federal law; descriptions of the formation; identities of state, federal, and private holders of surface and mineral interests; evidence of multiple conditions affecting carbon dioxide sequestration; how much per acre or volume the operator proposes to compensate affected property owners.

Amendment: Replaces language requiring compliance with federal permitting laws to language requiring a specific, actionable, and measurable community benefits plan that provides for engagement and sharing benefits with affected, or potentially affected, members of the public, as well as compliance with state and federal permitting laws.

Section 6 of the bill sets the provisions governing hearings for compulsory unitization by the OCD. These include notice provisions for known and unknown landowners, factual findings for the OCD to make prior to issuing a unitization order, and other required contents of the order. Section 6 also provides that unitization orders shall not be issued until the unitization plan has been approved by the owners of the tracts comprising 85 percent of the lands within the proposed sequestration unit. Such approval must be obtained within 6 months of OCD's order, unless the ratification period is extended for good cause by the division by no more than an additional 6 months. Section 6 also provides for the amendment of such orders. The section also provides for recording of OCD orders in the land records of the relevant counties.

Section 7 of the bill provides that unitization order shall not be construed as transferring title or other rights in any tract in the unit, unless agreed to by affected parties, and prohibits operations that violate the terms of any permit applicable to the formation or wells in the unit. The section provides that OCD orders shall not be construed as conferring a right of eminent domain. The section also provides for how shares will be allocated to affected landowners, including presently unknown owners and what becomes of their shares if such owners are not discovered within five years.

Section 8 of the bill provides that the operators of carbon dioxide sequestration facilities shall have property rights in the carbon dioxide sequestered and the protections these rights provide regarding disruption of the sequestered carbon dioxide.

Section 9 of the bill provides that persons acting pursuant to certificates or orders from the commission regarding carbon dioxide sequestration shall not be considered public utilities solely because of their involvement in carbon sequestration.

Section 10 of the bill provides that no part of the Act shall be construed as preventing mineral owners or lessees from drilling as long as they take reasonable measures to prevent the escape of carbon dioxide and are in compliance with the law. The section also provides the Act shall not be construed as affecting enhanced oil and gas recovery projects approved by the division.

Section 11 authorizes OCD to levy certain fees on operators, to be deposited to the oil conservation division systems and hearings fund.

Section 12 creates the oil conservation division systems and hearings fund and prescribes which sources may add to this fund and to what uses it may go to.

Section 13 codifies that pore space is owned, unless previously severed, by the surface estate owner (as opposed to the mineral estate owner). The section also provides that dominant

mineral estates reasonably utilizing surface estates for operations shall not be interfered with under the Act. The section also provides for the conveyance of pore space ownership and provides that notice requirements under New Mexico law shall only be applied to pore space owners if such laws specifically state that notice to such owners is required.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

The oil conservation division (OCD) is authorized by law to prevent waste and protect correlative rights. NMSA 1978, § 70-2-6. This bill would greatly expand OCD's mandate and performance obligations.

Enforcement issues might arise in the absence of financial assurances such as those used in oil well regulation and HB-458. Without these OCD may not have adequate funds to handle the situation if a company partaking in carbon sequestration goes bankrupt or abandons their project.

There is some ambiguity as to whether or not the findings described in Section 6(C) are required in order for the division to approve an application and whether some or all of these would be required if so. This may not be resolved by the language of Section 5(A). More explicit language, such as the language offered below may be beneficial.

The language in Section 12 reading, "Money in the fund may be expended by the division for the purposes of the fund," may be overly ambiguous. What these purposes are or whether the division has discretion to decide such purposes may be helpful language to include.

The Act does not address the rights of owners of tracts and other interested parties to appeal orders issued by OCD under the Act.

It may be helpful to address competing uses of pore space, such as saltwater disposal and acid gas injection or limit the definition of pore space in the context of this statute to use for carbon sequestration.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

The NM Department of Justice provides counsel to the Oil Conservation Commission and brings suit on behalf of OCD, but the Act does not ascribe any particular duties to the Attorney General.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to HB-458, which gives New Mexico State stewardship over sequestered carbon dioxide at the completion of injection operations. HB-458 depends upon the establishment of a scheme governing the sequestration of carbon dioxide, and thus depends upon the passing of

HB-457. If HB-458 does not pass HB-457 does not address ownership once injection operations are complete and the sequestration unit agreements are no longer in force and effect. This could potentially open the door for other parties to take possession and interfere with sequestered carbon dioxide or require these agreements to be renewed in perpetuity.

Also related to HJM-4, which would request that New Mexico Tech study the costs and benefits of direct carbon dioxide capture and sequestration.

TECHNICAL ISSUES

There are minor formatting or grammatical differences between HB-457's definitions of "carbon dioxide," "geologic sequestration," and those of HB-458. Given the close relationship between the bills, resolving these differences for uniformity may be beneficial.

Some clarity may be brought by defining "unitization" within the bill.

OTHER SUBSTANTIVE ISSUES

Depending on the intent behind the fees within this bill and whether these fees are intended to function like taxes, these provisions may benefit from more detail as to the collection and administrative process regarding these fees. *See e.g.*, NMSA 1978, § 74-9-39 (1991).

HB-457 and HB-458 have multiple differences in their definitions of "sequestration facility," which may cause confusion. In particular, HB-457 excludes class II wells, while HB-458 excludes stratigraphic wells.

Section 7(D) seems to provide that surface owner, whose rights to relevant subsurface formations or voids have been previously severed, shall not receive any share of the proceeds for the sequestration of carbon dioxide below their lands. This is reasonable, given that they no longer have a property interest in these subsurface spaces. Additionally, such owners would still have legal remedies should carbon sequestration below their lands have some negative impact on their surface property rights. The language of Section 7(D) would only be problematic if another intention behind these shares was to compensate landowners for any risks inherent in carbon sequestration below their lands.

Amendment: The amendment to this bill may address potential issues with Section 7(D) by requiring a benefits plan that considers members of the public who may be affected by the sequestration unit or associated facilities.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will be maintained. HB-458 will likely not pass.

AMENDMENTS

Section 6(C) "After considering the application and hearing the evidence offered regarding the application, the division may only enter an order approving the application, if the

following findings are established by the evidence presented:”