



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

**SECTION III: NARRATIVE**

**BILL SUMMARY**

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<sub>2</sub>.

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 85% 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 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 10 allows mineral rights owners to drill through sequestration units and clarifies that enhanced oil recovery projects aren’t limited by the Act.

Section 11 establishes fee authority for the division.

Section 12 creates a new fund from the fees paid to develop and modernize the division's online application processing system, online case management system and online case file system and for other technical upgrades and hearing administration costs needed to support an underground injection control class VI program, including programmatic personnel.

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

***Summary of HENRC Amendment***

HB457, as amended clarifies in Section 3 that pore space ownership resides with the surface owner and is a severable interest. HB457a also requires applications to include “specific actionable

measurable community benefits plan.”

Both amendments clarify sections of the statute without impacting OCD’s implementation of the act.

### **FISCAL IMPLICATIONS**

HB 457 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<sub>2</sub> sequestration project. CO<sub>2</sub> 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.

HB 457 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<sub>2</sub> sequestration project proponents are able, under HB 457, to utilize a process administered by OCD to, once they have reached certain minimum thresholds, compel participation in such a project. HB 457 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 HB 457 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 HB 457 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.

### **SIGNIFICANT ISSUES**

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 a contract for this effort. 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.

### **PERFORMANCE IMPLICATIONS**

#### **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**

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

Section 10 is significant as it ensures clarification that CO<sub>2</sub> sequestration units will not interfere with production operations, including drilling through them for production. This clarification ensures the protection of correlative rights. Further the bill ensures the current CO<sub>2</sub> enhanced recovery units used to extract minerals under Class II UIC wells are also not impacted furthering the protection of correlative rights. It should be further noted that existing Division rules require separation of strata including the strata that will be addressed by this bill.

### **ALTERNATIVES**

### **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.

### **AMENDMENTS**