

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 650

Introduced by Flood, 19.

Read first time January 20, 2021

Committee:

- 1 A BILL FOR AN ACT relating to carbon dioxide; to adopt the Nebraska
- 2 Geologic Storage of Carbon Dioxide Act; to create funds; and to
- 3 provide penalties.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 24 of this act shall be known and may be
2 cited as the Nebraska Geologic Storage of Carbon Dioxide Act.

3 Sec. 2. The Legislature finds, recognizes, and declares that it is
4 in the public interest to promote the geologic storage of carbon dioxide.
5 Doing so will benefit the state and the global environment by reducing
6 greenhouse gas emissions and will help ensure the viability of the
7 state's energy and power industries, to the economic benefit of Nebraska
8 and its citizens. Further, geologic storage of carbon dioxide, a
9 potentially valuable commodity, may allow for its ready availability if
10 needed for commercial, industrial, or other uses. Geologic storage,
11 however, to be practical and effective, requires cooperative use of
12 surface and subsurface property interests and the collaboration of
13 property owners. Obtaining consent from all owners may not be feasible,
14 requiring procedures that promote, in a manner fair to all interests,
15 cooperative management, thereby ensuring the maximum use of natural
16 resources. Use of any subsurface stratum and any materials and fluids
17 contained therein for geologic storage of carbon dioxide is a reasonable
18 and beneficial use.

19 Sec. 3. For purposes of the Nebraska Geologic Storage of Carbon
20 Dioxide Act:

21 (1) Applicable underground injection control program for each class
22 of injection well to be used within the storage facility means the
23 program, or most recent amendment thereof, for that class of well in
24 Nebraska as provided by federal law;

25 (2) Carbon dioxide stream means carbon dioxide from anthropogenic
26 sources, plus incidental associated substances derived from the source
27 materials and the production or capture process, and any substances added
28 to the stream to enable or improve the injection process if such
29 substances will not compromise the safety of geologic storage and will
30 not compromise those properties of a storage reservoir which allow the
31 reservoir to effectively enclose and contain the stored carbon dioxide

1 stream;

2 (3) Commission means the Nebraska Oil and Gas Conservation
3 Commission;

4 (4) Geologic storage means the permanent or short-term underground
5 storage of carbon dioxide streams in a storage reservoir;

6 (5) Permit means a permit issued by the commission allowing a person
7 to operate a storage facility;

8 (6) Reservoir means a subsurface stratum, formation, cavity, or
9 void, whether natural or artificially created, suitable for or capable of
10 receiving through a well and geologically storing a carbon dioxide
11 stream;

12 (7) Reservoir estate means ownership of any portion of a storage
13 reservoir;

14 (8) Storage facility means the storage reservoir, underground
15 equipment, and surface facilities and equipment used or proposed to be
16 used in a geologic storage operation. The term does not include pipelines
17 used to transport carbon dioxide to the storage facility;

18 (9) Storage operator means a person holding or applying for a permit
19 under the act; and

20 (10) Storage reservoir means the reservoir proposed, authorized, or
21 used for storing one or more carbon dioxide streams pursuant to a permit.
22 The term does not include reservoirs used for purposes other than storage
23 of carbon dioxide streams.

24 Sec. 4. (1) Title to any reservoir estate underlying the surface of
25 lands and waters is vested in the owner of the overlying surface estate
26 unless it has been severed and separately conveyed.

27 (2) A conveyance of the surface ownership of real property shall be
28 a conveyance of the reservoir estate ownership in all strata below the
29 surface of such real property unless the ownership interest in such
30 reservoir estate previously has been severed from the surface ownership
31 or is explicitly excluded in the conveyance. The ownership of reservoir

1 estates may be conveyed in the manner provided by law for the transfer of
2 mineral interests in real property. No agreement or instrument conveying
3 mineral or other interests underlying the surface shall act to convey
4 ownership of any reservoir estate unless the agreement explicitly conveys
5 that ownership interest.

6 (3) No provision of law, including a lawfully adopted rule or
7 regulation, requiring notice to be given to a surface owner, to an owner
8 of a mineral interest, or to both, shall be construed to require notice
9 to persons holding ownership interest in any underlying reservoir estate
10 unless the law specifies notice to such persons is required.

11 (4) Nothing in this section shall be construed to change or alter
12 the common law existing as of the effective date of this act as it
13 relates to the rights belonging to, or the dominance of, the mineral
14 estate. For the purpose of determining the priority of subsurface uses
15 between a severed mineral estate and reservoir estate as described in
16 this section, the severed mineral estate is dominant regardless of
17 whether ownership of the reservoir estate is vested in the several owners
18 of the surface or is owned separately from the surface.

19 (5) All instruments which transfer the rights to reservoir estates
20 under this section shall describe the scope of any right of the owner of
21 the reservoir estate to use the surface estate. The owner of any
22 reservoir estate right shall have no right to use the surface estate
23 beyond that set out in a properly recorded instrument.

24 (6) Transfers of reservoir estate rights made after the effective
25 date of this act are null and void at the option of the owner of the
26 surface estate if the transfer instrument does not contain a specific
27 description of the location of the reservoir estate being transferred.
28 The description may include but is not limited to a subsurface geologic
29 or seismic survey or a metes and bounds description of the surface lying
30 over the transferred reservoir estate. In the event a description of the
31 surface is used, the transfer shall be deemed to include the reservoir

1 estate at all depths underlying the described surface area unless
2 specifically excluded. The validity of reservoir estate rights under this
3 subsection shall not affect the respective liabilities of any party, and
4 such liabilities shall operate in the same manner as if the reservoir
5 estate transfer were valid.

6 (7) Nothing in this section shall alter, amend, diminish, or
7 invalidate rights to the use of subsurface reservoir estates that were
8 acquired by contract or lease prior to the effective date of this act.

9 Sec. 5. The commission has authority:

10 (1) Over all persons and property necessary to administer and
11 enforce the Nebraska Geologic Storage of Carbon Dioxide Act and its
12 objectives;

13 (2) To regulate activities relating to a storage facility, including
14 construction, operation, and closure;

15 (3) To enter, at a reasonable time and in a reasonable manner, a
16 storage facility to inspect equipment and facilities, to observe,
17 monitor, and investigate operations, and to inspect records required to
18 be maintained at the facility;

19 (4) To require that storage operators provide assurance, including
20 bonds, that money is available to fulfill the storage operator's duties;

21 (5) To exercise continuing jurisdiction over storage operators and
22 storage facilities, including the authority, after notice and hearing, to
23 amend provisions in a permit and to revoke a permit;

24 (6) To dissolve or change the boundaries of any commission-
25 established oil or gas field or unit that is within or near a storage
26 reservoir's boundaries; and

27 (7) To grant, for good cause, exceptions to the act's requirements
28 and the requirements of any implementing rules and regulations.

29 Sec. 6. Geologic storage is allowed if a permit has been obtained
30 from both the commission and the Underground Injection Control program
31 permitting authority. A permit may be transferred if the commission and

1 the Underground Injection Control program permitting authority consent.

2 Sec. 7. (1) A person applying for a permit shall:

3 (a) Comply with application requirements set by the commission;

4 (b) Pay a fee in an amount set by the commission. The amount of the
5 fee shall be set by rule and regulation and shall be based on the
6 commission's anticipated cost of processing the application. The fee
7 shall be deposited in the Carbon Dioxide Storage Facility Administrative
8 Fund; and

9 (c) Pay to the commission the costs the commission incurs in
10 publishing notices for hearings and holding hearings on permit
11 applications.

12 (2) In processing permit applications, the commission shall give
13 priority to storage operators who intend to store carbon dioxide produced
14 in Nebraska.

15 Sec. 8. (1) The commission shall hold a public hearing before
16 issuing a permit.

17 (2) Notice of the hearing shall be provided in accordance with
18 section 57-911 and commission rules and regulations adopted and
19 promulgated thereunder.

20 (3) Notice of the hearing shall be given to each mineral lessee,
21 mineral owner, and reservoir estate owner within the storage reservoir
22 and within one-half mile of the storage reservoir's boundaries.

23 (4) Notice of the hearing shall be given to each surface owner of
24 land overlying the storage reservoir and within one-half mile of the
25 storage reservoir's boundaries.

26 (5) Notice of the hearing shall be given to any additional persons
27 that the commission requires.

28 (6) Hearing notices required by this section shall comply with
29 deadlines set by the commission and shall contain the information the
30 commission requires.

31 Sec. 9. Before issuing a permit, the commission shall consult with

1 the Department of Environment and Energy and the Underground Injection
2 Control program permitting authority.

3 Sec. 10. Before issuing a permit, the commission shall find:

4 (1) That the storage operator has complied with all requirements set
5 by the commission;

6 (2) That the storage facility is suitable and feasible for carbon
7 dioxide injection and storage;

8 (3) That the carbon dioxide to be stored is of a quality that allows
9 it to be safely and efficiently stored in the storage reservoir;

10 (4) That the proposed storage facility will not endanger surface
11 waters or underground sources of drinking water;

12 (5) That carbon dioxide will not escape into the atmosphere or
13 surface waters from the storage reservoir;

14 (6) That the storage facility will not endanger human health or
15 unduly endanger the environment;

16 (7) That the horizontal and vertical boundaries of the storage
17 reservoir are defined;

18 (8) That the storage operator will establish a testing and
19 monitoring plan to assess the location and migration of carbon dioxide
20 injected for storage and to ensure compliance with all permit, statutory,
21 and administrative requirements;

22 (9) That the storage operator has satisfied all of the requirements
23 in subdivisions (2) through (8) of this section if the storage operator
24 has obtained all permits required by the applicable underground injection
25 control program permitting authority for each storage facility injection
26 well;

27 (10) That the storage facility is in the public interest;

28 (11) That the storage operator has made a good-faith effort to
29 obtain the consent of all persons who own reservoir estates within the
30 storage reservoir;

31 (12) That the storage operator has obtained the consent of persons

1 who own reservoir estates comprising at least sixty percent of the
2 physical volume contained within the defined storage reservoir;

3 (13) Whether the storage reservoir contains commercially valuable
4 minerals. If it does, a permit may be issued only if the commission is
5 satisfied that the interests of the mineral owners or mineral lessees
6 will not be adversely affected or have been addressed in an arrangement
7 entered into by the mineral owners or mineral lessees and the storage
8 operator; and

9 (14) That all nonconsenting reservoir estate owners are or will be
10 equitably compensated.

11 Sec. 11. The commission may include in a permit or order all things
12 necessary to carry out the objectives of the Nebraska Geologic Storage of
13 Carbon Dioxide Act and to protect and adjust the respective rights and
14 obligations of persons affected by geologic storage.

15 Sec. 12. If a storage operator does not obtain the consent of all
16 persons who own a reservoir estate within the storage reservoir, the
17 commission may require that any reservoir estates owned by nonconsenting
18 owners be included in a storage facility and subject to geologic storage.

19 Sec. 13. When the commission issues a permit, it shall also issue a
20 certificate stating that the permit has been issued, describing the area
21 covered, and containing other information the commission deems
22 appropriate. The commission shall file a copy of the certificate with the
23 register of deeds in the county or counties where the storage facility is
24 located.

25 Sec. 14. (1) The commission shall take action to ensure that a
26 storage facility does not cause pollution or create a nuisance. For the
27 purposes of this provision and in applying other laws, carbon dioxide
28 streams stored, and which remain in storage under a commission permit,
29 are not a pollutant and do not constitute a nuisance.

30 (2) The commission's authority in subsection (1) of this section
31 does not limit the jurisdiction held by the Department of Environment and

1 Energy. Nothing else in the Nebraska Geologic Storage of Carbon Dioxide
2 Act limits the jurisdiction held by the Department of Environment and
3 Energy.

4 (3) The commission shall take action to ensure that substances that
5 compromise the objectives of the act or the integrity of a storage
6 reservoir do not enter a storage reservoir.

7 (4) The commission shall take action to ensure that carbon dioxide
8 does not escape from a storage facility.

9 Sec. 15. The Nebraska Geologic Storage of Carbon Dioxide Act and
10 any issuance of a permit under the act shall not be construed to:

11 (1) Prejudice the rights of property owners within a storage
12 facility to exercise rights that have not been committed to a storage
13 facility; or

14 (2) Prevent a mineral owner or mineral lessee from drilling through
15 or near a storage reservoir to explore for and develop minerals if the
16 drilling, production, and related activities comply with commission
17 requirements that preserve the storage facility's integrity and protect
18 the objectives of the act.

19 Sec. 16. (1) Storage operators shall pay the commission a fee on
20 each ton of carbon dioxide injected for storage. The fee shall be in an
21 amount set by the commission in rules and regulations adopted and
22 promulgated by the commission. The amount shall be based on the
23 commission's anticipated expenses in regulating storage facilities during
24 their construction, operational, and preclosure phases.

25 (2) Any fees collected pursuant to this section shall be remitted to
26 the State Treasurer for credit to the Carbon Dioxide Storage Facility
27 Administrative Fund, which is hereby created. The fund shall be
28 administered by the commission and shall be used only for defraying the
29 commission's expenses in processing permit applications, regulating
30 storage facilities during their construction, operational, and preclosure
31 phases, and making storage amount determinations under section 24 of this

1 act. The commission, however, through a cooperative or interlocal
2 cooperation agreement with another state agency, may use the fund to
3 compensate the cooperating agency for expenses the cooperating agency
4 incurs in carrying out regulatory responsibilities such agency may have
5 over a storage facility. Interest earned by the fund shall be deposited
6 in the fund. Any money in the fund available for investment shall be
7 invested by the state investment officer pursuant to the Nebraska Capital
8 Expansion Act and the Nebraska State Funds Investment Act. Transfers from
9 the fund are not permitted.

10 Sec. 17. (1) In addition to the fee required under section 16 of
11 this act, storage operators shall pay the commission a fee on each ton of
12 carbon dioxide injected for storage. The fee shall be in an amount set by
13 the commission in rules and regulations adopted and promulgated by the
14 commission. The amount shall be based on the commission's anticipated
15 expenses associated with long-term monitoring and management of the
16 storage facility following issuance of the certificate of project
17 completion under section 19 of this act.

18 (2) Any fees collected pursuant to this section shall be remitted to
19 the State Treasurer for credit to the Carbon Dioxide Storage Facility
20 Trust Fund, which is hereby created. The fund shall be administered by
21 the commission and shall be used only for defraying expenses the
22 commission incurs in long-term monitoring and management of a closed
23 storage facility. The commission, however, through a cooperative or
24 interlocal cooperation agreement with another state agency, may use the
25 fund to compensate the cooperating agency for expenses the cooperating
26 agency incurs in carrying out regulatory responsibilities such agency may
27 have over a storage facility. Interest earned by the fund shall be
28 deposited in the fund. Any money in the fund available for investment
29 shall be invested by the state investment officer pursuant to the
30 Nebraska Capital Expansion Act and the Nebraska State Funds Investment
31 Act. Transfers from the fund are not permitted.

1 Sec. 18. The storage operator has title to the carbon dioxide
2 injected into and stored in a storage reservoir and holds title until the
3 commission issues a certificate of project completion under section 19 of
4 this act. While the storage operator holds title, the operator is liable
5 for any damage the carbon dioxide may cause, including damage caused by
6 carbon dioxide that escapes from the storage facility.

7 Sec. 19. (1) After carbon dioxide injections into a reservoir end
8 and upon application by the storage operator, the commission shall
9 consider issuing a certificate of project completion.

10 (2) The certificate may only be issued after public notice and
11 hearing. The commission shall establish notice requirements for such
12 hearing.

13 (3) The certificate may only be issued after the commission has
14 consulted with the Department of Environment and Energy and the
15 Underground Injection Control program permitting authority.

16 (4) The certificate may only be issued if the storage operator:

17 (a) Is in full compliance with all laws governing the storage
18 facility;

19 (b) Shows that it has addressed all pending claims regarding the
20 storage facility's operation;

21 (c) Shows that it has received an authorization of site closure from
22 the applicable underground injection control program permitting authority
23 for each storage facility injection well; and

24 (d) Shows that any wells, equipment, and facilities to be used in
25 the post-closure period are in good condition and retain mechanical
26 integrity;

27 (5) Once a certificate is issued:

28 (a) Title to the storage facility and to the stored carbon dioxide
29 transfers, without payment of any compensation, to the State of Nebraska;

30 (b) Title acquired by the state includes all rights and interests
31 in, and all responsibilities associated with, the stored carbon dioxide;

1 (c) The storage operator and all persons who generated any injected
2 carbon dioxide streams are released from all regulatory requirements
3 associated with the storage facility;

4 (d) Any financial assurance provided by the storage operator shall
5 be released; and

6 (e) Monitoring and managing the storage facility is the state's
7 responsibility to be overseen by the commission.

8 Sec. 20. (1) Any person who violates any provision of the Nebraska
9 Geologic Storage of Carbon Dioxide Act or any rule, regulation, or order
10 of the commission under the act shall be guilty of a Class II
11 misdemeanor. Each day that such violation continues shall constitute a
12 separate offense.

13 (2) If any person, for the purpose of evading the provisions of the
14 act or any rule, regulation, or order of the commission under the act,
15 makes or causes to be made any false entry or statement in a report
16 required by the act or by any such rule, regulation, or order, makes or
17 causes to be made any false entry in any record, account, or memorandum
18 required by the act or by any such rule, regulation, or order, or removes
19 from this state or destroys, mutilates, alters, or falsifies any such
20 record, account, or memorandum, such person shall be guilty of a Class II
21 misdemeanor.

22 (3) Any person who knowingly aids or abets any other person in the
23 violation of any provision of the act or any rule, regulation, or order
24 of the commission under the act shall be subject to the same penalty as
25 that prescribed by the act for the violation by such other person.

26 (4) The penalties provided in this section shall be recoverable by
27 suit filed by the Attorney General in the name and on behalf of the
28 commission, in the district court of the county in which the defendant
29 resides, or in which any defendant resides if there be more than one
30 defendant, or in the district court of any county in which the violation
31 occurred. The payment of any such penalty shall not operate to relieve a

1 person on whom the penalty is imposed from liability to any other person
2 for damages arising out of such violation.

3 (5) In determining the amount of the penalty, the court shall
4 consider:

5 (a) The nature of the violation, including its circumstances and
6 gravity, and the hazard or potential hazard to the public's or a private
7 person's health, safety, and economic welfare;

8 (b) The economic or environmental harm caused by the violation;

9 (c) The economic value or other advantage gained by the person
10 committing the violation;

11 (d) The history of previous violations;

12 (e) The amount necessary to deter future violations;

13 (f) Efforts to correct the violation; and

14 (g) Other matters justice requires.

15 Sec. 21. (1) The commission may enter into agreements with other
16 government entities and state agencies for the purpose of carrying out
17 the objectives of the Nebraska Geologic Storage of Carbon Dioxide Act,
18 including agreements under the Interlocal Cooperation Act when
19 applicable.

20 (2) The commission may enter into contracts with private persons to
21 assist it in carrying out the objectives of the act.

22 Sec. 22. Cooperative operation of a storage facility under a permit
23 issued by the commission does not violate Nebraska statutes relating to
24 trusts, monopolies, or restraint of trade.

25 Sec. 23. State agencies and political subdivisions are authorized
26 to consent to and participate in a geologic storage project.

27 Sec. 24. (1) The commission, under procedures and criteria it may
28 adopt, shall determine the amount of injected carbon dioxide stored in a
29 reservoir.

30 (2) The purpose for determining storage amounts is to facilitate
31 using the stored carbon dioxide for such matters as carbon credits,

1 allowances, trading, emissions allocations, and offsets, and for other
2 similar purposes.

3 (3) The commission may charge a reasonable fee to the person
4 requesting a storage determination. Any such fee shall be set by the
5 commission in rules and regulations adopted and promulgated by the
6 commission.

7 (4) Any fees received by the commission under this section for
8 storage determinations shall be remitted to the State Treasurer for
9 credit to the Carbon Dioxide Storage Facility Administrative Fund.