

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 852

By: Rader

AS INTRODUCED

An Act relating to carbon sequestration; amending 27A O.S. 2021, Sections 3-4-101, 3-4-102, 3-4-103, 3-4-104, 3-4-105, 3-5-102, 3-5-103, 3-5-104, 3-5-105, and 3-5-106, which relate to the Oklahoma Carbon Sequestration Enhancement Act and the Oklahoma Carbon Capture and Geologic Sequestration Act; modifying agency of jurisdiction for certain permitting and oversight; modifying definitions; conforming language; updating statutory language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 27A O.S. 2021, Section 3-4-101, is amended to read as follows:

Section 3-4-101. A. This article shall be known and may be cited as the "Oklahoma Carbon Sequestration Enhancement Act".

B. The ~~Oklahoma~~ Legislature finds that:

1. Increasing levels of carbon dioxide and other gases in the atmosphere have led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. These measures may include, but are not limited to, the establishment of systems of

1 trading in carbon dioxide credits or adoption of practices,
2 technologies, or other measures which decrease the concentration of
3 carbon dioxide in the atmosphere and improve air quality;

4 2. Carbon sequestration practices have great potential to
5 increase carbon sequestration and help offset the impact of carbon
6 dioxide emissions on carbon dioxide concentrations in the
7 atmosphere; and

8 3. It is in the interest of the citizens of this state that the
9 ~~Oklahoma Conservation~~ Corporation Commission document and quantify
10 carbon sequestration associated with carbon sequestration practices.

11 C. It is the intent of the Legislature that such efforts to
12 document and quantify carbon sequestration associated with carbon
13 sequestration practices will enhance the ability of the state's
14 landowners, well owners and mineral owners to participate in any
15 system of carbon dioxide emissions marketing or trading that may be
16 developed in the future.

17 D. For purposes of ~~this act~~ the Oklahoma Carbon Sequestration
18 Enhancement Act, "carbon sequestration practices" and "carbon
19 capture and storage practices" shall mean and include:

20 1. Improved agricultural practices, including, but not limited
21 to, decreasing soil tillage, planting and managing vegetation,
22 growing agricultural crops or managing any existing vegetated area;

23 2. Improved natural resources conservation practices,
24 including, but not limited to, vegetation, revegetation,

1 forestation, afforestation and reforestation on rangeland and other
2 agricultural and nonagricultural lands;

3 3. Practices involving the capture and sequestration or storage
4 of carbon dioxide emissions through carbon dioxide injection in
5 producing oil or gas wells, abandoned oil or gas wells, or other
6 wells;

7 4. Other improved methods of stewardship for the natural
8 resources of ~~Oklahoma~~ this state; and

9 5. Other methods of sequestering, displacing or avoiding carbon
10 dioxide emissions approved by the ~~Oklahoma Conservation~~ Corporation
11 Commission.

12 SECTION 2. AMENDATORY 27A O.S. 2021, Section 3-4-102, is
13 amended to read as follows:

14 Section 3-4-102. The ~~Oklahoma Conservation~~ Corporation
15 Commission shall:

16 1. Encourage the production of educational and advisory
17 materials regarding carbon sequestration and storage and the
18 opportunities to participate in any system of carbon dioxide
19 emissions trading or marketing that may be developed in the future;
20 and

21 2. Identify areas of research needed to better understand and
22 quantify carbon sequestration and storage involved in carbon
23 sequestration practices within the state.

1 SECTION 3. AMENDATORY 27A O.S. 2021, Section 3-4-103, is
2 amended to read as follows:

3 Section 3-4-103. The ~~Oklahoma Conservation~~ Corporation
4 Commission may apply for and accept grants, gifts, or other sources
5 of public and private funds to carry out the purposes of the
6 Oklahoma Carbon Sequestration Enhancement Act.

7 SECTION 4. AMENDATORY 27A O.S. 2021, Section 3-4-104, is
8 amended to read as follows:

9 Section 3-4-104. The "Carbon Sequestration Assessment Cash
10 Fund" is hereby created. The fund shall be used by the ~~Oklahoma~~
11 ~~Conservation~~ Corporation Commission to carry out the Oklahoma Carbon
12 Sequestration Enhancement Act. The State Treasurer shall credit to
13 the fund any money appropriated to the fund by the Legislature and
14 any money received as gifts, grants, or other contributions from
15 public or private sources obtained for the purposes of the Oklahoma
16 Carbon Sequestration Enhancement Act.

17 SECTION 5. AMENDATORY 27A O.S. 2021, Section 3-4-105, is
18 amended to read as follows:

19 Section 3-4-105. A. The ~~Oklahoma Conservation~~ Corporation
20 Commission is hereby authorized to establish and administer the
21 carbon sequestration certification program. The purposes of the
22 program are to provide a mechanism for creating and preserving
23 carbon reserves in this state by encouraging voluntary practices
24 that protect or improve natural resources, to enable Oklahomans to

1 participate in market-based programs for natural resource
2 protection, to provide a mechanism for Oklahomans to benefit from
3 the ecosystem services they provide, to verify carbon sequestration
4 or storage associated with carbon sequestration practices, and to
5 issue carbon sequestration certificates associated with carbon
6 sequestration practices that the Commission determines qualify for
7 such certificates.

8 B. The Commission, in consultation with the Department of
9 Environmental Quality and with the advice of the carbon
10 sequestration stakeholder groups appointed by the Commission, shall
11 develop and promulgate rules as necessary to administer, implement
12 and enforce the provisions of ~~this act~~ Section 3-4-101 et seq. of
13 this title, including, but not limited to, developing and
14 implementing uniform standards and criteria for verifying carbon
15 sequestration and storage associated with carbon sequestration
16 practices and issuing carbon sequestration certificates associated
17 with approved carbon sequestration practices. In promulgating the
18 rules, the Commission shall develop the program to be as consistent
19 as possible with other governmental programs designed to create
20 carbon reserves for the purpose of voluntarily reducing greenhouse
21 gases or designed to certify carbon sequestration practices.

22 C. In order for carbon sequestration to be verified and
23 certified under this section, an applicant shall file an application
24 with the Commission. Along with the application, the applicant

1 shall submit a resource management plan, or a project plan as
2 applicable, detailing activities that will increase or maintain
3 existing trapped carbon including, but not limited to, improved
4 forest management, alteration of or changes in silviculture
5 practices, and growing of designated crops and any other such
6 practices including, but not limited to, the capture and
7 sequestration of carbon dioxide emissions through injection of
8 carbon dioxide underground.

9 D. The Commission shall require applicants to submit such
10 information, forms, and reports as are necessary to properly and
11 efficiently administer the program.

12 E. Prior to granting a carbon sequestration certificate, the
13 Commission shall adopt criteria associated with the approved carbon
14 sequestration practice for which an application is submitted. In
15 addition, the Commission shall determine, based upon compliance with
16 the site criteria, the volume or numerical amount of credits or
17 offsets achievable by the specific carbon sequestration practice.

18 F. Applications for a carbon sequestration certificate shall be
19 approved or denied in accordance with criteria promulgated by the
20 Commission.

21 G. The Commission is authorized to establish fees associated
22 with the carbon sequestration certification program.

23 SECTION 6. AMENDATORY 27A O.S. 2021, Section 3-5-102, is
24 amended to read as follows:

1 Section 3-5-102. As used in the Oklahoma Carbon Capture and
2 Geologic Sequestration Act:

3 1. ~~"Agency" means the Corporation Commission or the Department~~
4 ~~of Environmental Quality, as the case may be and as described in~~
5 ~~Section 3-5-103 of this title;~~

6 2. "Anthropogenic carbon dioxide" or "man-made carbon dioxide"
7 means the carbon dioxide compound manufactured, mechanically formed
8 or otherwise caused to occur, as a result of either:

9 a. a chemical process performed by or involving efforts
10 of a person, or

11 b. separation of carbon dioxide from natural gas.

12 The term shall not include carbon dioxide that is naturally present
13 in underground locations;

14 3. ~~2.~~ "Approved reservoir" means a reservoir that is determined
15 by the ~~Agency with jurisdiction~~ Commission to be suitable for the
16 receipt, storage and/or sequestration of injected carbon dioxide
17 therein;

18 4. ~~3.~~ "Carbon dioxide" or "CO₂" means an inorganic compound
19 containing one carbon atom and two oxygen atoms, and exists as a gas
20 at standard temperature and pressure. Carbon dioxide is an inert,
21 stable, colorless, odorless, nontoxic, incombustible, inorganic gas
22 that is dissolvable in water and is naturally present, such as in
23 underground locations and in the atmosphere as a trace gas;

1 ~~5.~~ 4. "Carbon sequestration" means long-term or short-term
2 underground storage or sequestration of anthropogenic carbon dioxide
3 in one or more reservoirs;

4 ~~6.~~ 5. "CO₂ injection well" means an artificial excavation or
5 opening in the ground made by digging, boring, drilling, jetting,
6 driving, or another method and is used to inject or transmit
7 anthropogenic carbon dioxide into one or more reservoirs;

8 ~~7.~~ 6. "CO₂ capture and compression equipment" means the
9 equipment, separation units, processing units, processing plants,
10 pipe, buildings, pumps, compressors, meters, facilities, motors,
11 fixtures, materials, and machinery, and all other improvements used
12 in the operation of any of them, and property, real or personal,
13 intangible or tangible, either attributable to or relating to, or
14 located thereon, used for the purpose of:

- 15 a. capturing carbon dioxide from a source that produces
16 anthropogenic carbon dioxide, and/or
17 b. compressing or otherwise increasing the pressure of
18 anthropogenic carbon dioxide;

19 ~~8.~~ 7. "CO₂ pipeline" means any pipeline, compressors, pumps,
20 meters, facilities, valves, fittings, right-of-way markers, cathodic
21 protection ground beds, anodes, rectifiers, and any other cathodic
22 protection devices, and other associated equipment, appurtenances
23 and fixtures located on, attributable to or used in connection with
24

1 the same, and used for the purpose of transporting carbon dioxide
2 for carbon sequestration in this state or another state, excluding:

- 3 a. CO₂ capture and compression equipment at the source of
4 the carbon dioxide, and
- 5 b. pipelines that are part of a CO₂ sequestration
6 facility;

7 ~~9.~~ 8. "CO₂ sequestration facility" means the approved
8 reservoir(s), and all associated underground equipment and
9 pipelines, all associated surface buildings and equipment, and all
10 associated CO₂ injection wells, utilized for carbon sequestration in
11 a defined geographic boundary established by the ~~Agency~~ Commission,
12 excluding any:

- 13 a. CO₂ capture and compression equipment at the source of
14 the carbon dioxide, and
- 15 b. CO₂ pipeline transporting carbon dioxide to the
16 facility from a source located outside the geographic
17 boundaries of the surface of the facility;

18 ~~10.~~ 9. "CO₂ trunkline" means a CO₂ pipeline that both exceeds
19 seventy-five (75) miles in distance and has a minimum pipe outside
20 diameter of at least twelve (12) inches;

21 ~~11.~~ 10. "Commission" means the Corporation Commission as
22 established by Section 15 of Article 9 of the Oklahoma Constitution;

23 ~~12.~~ 11. "Common source of supply" shall have the same meaning
24 as in Section 86.1 of Title 52 of the Oklahoma Statutes;

1 ~~13.~~ "Department" means the Department of Environmental Quality
2 as established by Section ~~2-3-101~~ et seq. of this title;

3 ~~14.~~ 12. "Enhanced oil or gas recovery" means the increased
4 recovery of hydrocarbons, including oil and gas, from a common
5 source of supply achieved by artificial means or by the application
6 of energy extrinsic to the common source of supply, such as
7 pressuring, cycling, pressure maintenance or injection of a
8 substance or form of energy, such as injection of water and/or
9 carbon dioxide, including immiscible and miscible floods; provided
10 that enhanced oil or gas recovery shall not include injection of a
11 substance or form of energy for the sole purpose of either:

- 12 a. aiding in the lifting of fluids in the well, or
- 13 b. stimulation of the reservoir at or near the well by
14 mechanical, chemical, thermal or explosive means;

15 ~~15.~~ 13. "Facility operator" means any person authorized by the
16 ~~Agency~~ Commission to operate a CO₂ sequestration facility;

17 ~~16.~~ 14. "Facility owner" means the person who owns the CO₂
18 sequestration facility;

19 ~~17.~~ 15. "Gas" shall have the same meaning as in Section 86.1 of
20 Title 52 of the Oklahoma Statutes;

21 ~~18.~~ 16. "Governmental entity" means any department, commission,
22 authority, council, board, bureau, committee, legislative body,
23 agency, beneficial public trust, or other establishment of the
24 executive, legislative or judicial branch of the United States, the

1 State of Oklahoma, any other state in the United States, the
2 District of Columbia, the Territories of the United States, and any
3 similar entity of any foreign country;

4 ~~19.~~ 17. "Oil" shall have the same meaning as in Section 86.1 of
5 Title 52 of the Oklahoma Statutes;

6 ~~20.~~ 18. "Person" means any individual, proprietorship,
7 association, firm, corporation, company, partnership, limited
8 partnership, limited liability company, joint venture, joint stock
9 company, syndicate, trust, organization, committee, club,
10 governmental entity, or other type of legal entity, or any group or
11 combination thereof either acting in concert or as a unit;

12 ~~21.~~ 19. "Private operator" means any person that is either a
13 facility operator or an operator of a CO₂ pipeline, but that is
14 neither a public utility nor a common carrier as such terms are
15 defined by the Oklahoma Statutes; and

16 ~~22.~~ 20. "Reservoir" means any portion of a separate and
17 distinct geologic or subsurface sedimentary stratum, formation,
18 aquifer, cavity or void, whether naturally occurring or artificially
19 created, including an oil or gas formation, saline formation, or
20 coal seam.

21 SECTION 7. AMENDATORY 27A O.S. 2021, Section 3-5-103, is
22 amended to read as follows:

23 Section 3-5-103. ~~A.~~ The Corporation Commission shall ~~be the~~
24 ~~"Agency" for, and shall~~ have exclusive jurisdiction over CO₂

1 sequestration facilities involving, and injection of CO₂ for carbon
2 sequestration into, oil reservoirs, gas reservoirs, coal-bed methane
3 reservoirs, ~~and mineral brine reservoirs,~~ deep saline formations,
4 unmineable coal seams where methane is not produced, basalt
5 reservoirs, salt domes, and non-mineral bearing shales. The
6 Commission shall have such jurisdiction regardless of whether such
7 CO₂ sequestration facility or other injection of carbon dioxide
8 involves enhanced oil or gas recovery.

9 ~~B. The Department of Environmental Quality shall be the~~
10 ~~"Agency" for, and shall have exclusive jurisdiction over CO₂~~
11 ~~sequestration facilities involving, and injection of CO₂ for carbon~~
12 ~~sequestration into all reservoirs other than those described in~~
13 ~~subsection A of this section, which shall include, but not be~~
14 ~~limited to, deep saline formations, unmineable coal seams where~~
15 ~~methane is not produced, basalt reservoirs, salt domes, and non-~~
16 ~~mineral bearing shales.~~

17 SECTION 8. AMENDATORY 27A O.S. 2021, Section 3-5-104, is
18 amended to read as follows:

19 Section 3-5-104. A. The Corporation Commission and the
20 Department of Environmental Quality shall execute a Memorandum of
21 Understanding to address areas in which the implementation of ~~this~~
22 ~~act~~ Section 3-5-101 et seq. of this title will require interagency
23 cooperation or interaction, including procedures for directing
24 applicants through the application process.

1 B. The operator of a CO₂ sequestration facility shall obtain a
2 permit pursuant to ~~this act~~ Section 3-5-101 et seq. of this title
3 from the ~~Agency having jurisdiction~~ Commission prior to the
4 operation of a CO₂ sequestration facility, after the Operator
5 provides notice of the application for such permit pursuant to
6 subsection D of this section, and the ~~Agency~~ Commission has a
7 hearing thereon upon request; provided that no permit pursuant to
8 ~~this act~~ Section 3-5-101 et seq. of this title is required if the
9 facility operator obtains permission, by permit or order, by the
10 ~~Agency~~ Commission pursuant to the rules and regulations of the
11 state's federally approved Underground Injection Control Program and
12 such permission authorizes carbon sequestration or injection of
13 carbon dioxide underground and incorporates any additional
14 requirements adopted pursuant to subsection C of this section.

15 C. To the extent not already authorized by laws governing the
16 state's federally approved Underground Injection Control Program,
17 the ~~Agency having jurisdiction~~ Commission may issue and enforce such
18 orders, and may adopt, modify, repeal and enforce such rules,
19 including establishment of appropriate and sufficient fees,
20 financial sureties or bonds, and monitoring at CO₂ sequestration
21 facilities, as may be necessary, for the purpose of regulating the
22 drilling of CO₂ injection wells related to a CO₂ sequestration
23 facility, the injection and withdrawal of carbon dioxide, the
24 operation of the CO₂ sequestration facility, CO₂ injection well

1 plugging and abandonment, removal of surface buildings and equipment
2 of the CO₂ sequestration facility and for any other purpose necessary
3 to implement the provisions of ~~this act~~ Section 3-5-101 et seq. of
4 this title.

5 D. The applicant for any permit to be issued pursuant to ~~this~~
6 ~~act~~ Section 3-5-101 et seq. of this title shall give all surface
7 owners and mineral owners, including working interest and royalty
8 owners, of the land to be encompassed within the defined geographic
9 boundary of the CO₂ sequestration facility as established by the
10 ~~Agency~~ Commission, and whose addresses are known or could be known
11 through the exercise of due diligence, at least fifteen (15) days'
12 notice of the hearing by mail, return receipt requested. The
13 applicant shall also give notice by one publication, at least
14 fifteen (15) days prior to the hearing, in some newspaper of general
15 circulation published in Oklahoma County, and by one publication, at
16 least fifteen (15) days prior to the date of the hearing, in some
17 newspaper published in the county, or in each county, if there be
18 more than one, in which the defined geographic boundary of the CO₂
19 sequestration facility, as established by the ~~Agency~~ Commission, is
20 situated. The applicant shall file proof of publication and an
21 affidavit of mailing with the ~~Agency~~ Commission prior to the
22 hearing.

23 E. In addition to all other powers and duties prescribed in
24 ~~this act~~ Section 3-5-101 et seq. of this title or otherwise by law,

1 and unless otherwise specifically set forth in ~~this act~~ Section 3-5-
2 101 et seq. of this title, the ~~Agency having jurisdiction~~ Commission
3 shall have the authority to perform any and all acts necessary to
4 carry out the purposes and requirements of the federal Safe Drinking
5 Water Act, as amended, relating to this state's participation in the
6 federal Underground Injection Control Program established under that
7 act with respect to the storage and/or sequestration of carbon
8 dioxide.

9 SECTION 9. AMENDATORY 27A O.S. 2021, Section 3-5-105, is
10 amended to read as follows:

11 Section 3-5-105. A. Unless otherwise expressly provided by a
12 contract, bill of sale, deed, mortgage, deed of trust, or other
13 legally binding document or by other law, carbon dioxide injected
14 into a CO₂ sequestration facility is considered to be the personal
15 property of the facility owner.

16 B. Absent a final judgment of willful abandonment rendered by a
17 court of competent jurisdiction, or a regulatory determination of
18 willful abandonment, carbon dioxide injected into a CO₂ sequestration
19 facility is not considered to be the property of the owner of the
20 surface or mineral estate in the land encompassing the geographic
21 boundary of the CO₂ sequestration facility, or any person claiming
22 under the owner of the surface or mineral estate.

23 C. The facility operator, with permission of the facility
24 owner, may produce, take, extract or reduce to possession any carbon
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1 dioxide injected, stored or sequestered in a CO₂ sequestration
2 facility. In the event an operator informs the Corporation
3 Commission that it intends to conduct enhanced oil or gas recovery
4 operations on a compulsory unit formed pursuant to Section 287.1 et
5 seq. of Title 52 of the Oklahoma statutes, or its predecessor
6 unitization act, then during the time that such unit is in
7 operation, such operator shall be relieved of any obligation to
8 either:

9 1. Plug and abandon any injection or production well within
10 such unit that is intended to be used in such enhanced oil or gas
11 recovery operations, unless required by the Commission pursuant to
12 Section 53 of Title 17 of the Oklahoma Statutes; or

13 2. Remove any surface equipment that is associated with any
14 such well and intended to be used in such enhanced oil or gas
15 recovery operations, or both.

16 D. ~~The Agency having jurisdiction over the injection of carbon~~
17 ~~dioxide under this act~~ Commission shall also have jurisdiction over
18 a facility operator that produces, takes, extracts or reduces to
19 possession any injected, stored or sequestered carbon dioxide in a
20 CO₂ sequestration facility.

21 SECTION 10. AMENDATORY 27A O.S. 2021, Section 3-5-106,
22 is amended to read as follows:

23 Section 3-5-106. A. Nothing in ~~this act~~ Section 3-5-101 et
24 seq. of this title shall supersede the provisions of the Oklahoma

1 Carbon Sequestration Enhancement Act, Section 3-4-101 et seq. of
2 Title 27A of the Oklahoma Statutes.

3 B. Nothing in ~~this act~~ Section 3-5-101 et seq. of this title
4 shall alter the incidents of ownership, or other rights, of the
5 owners of the mineral estate or adversely affect enhanced oil or gas
6 recovery efforts in the state.

7 C. Any right granted to a facility operator pursuant to ~~this~~
8 ~~act~~ Section 3-5-101 et seq. of this title shall be without prejudice
9 to the rights of any surface owner or mineral owner, including
10 working interest and royalty owner, of the land encompassed within
11 the defined geographic boundary of the CO₂ sequestration facility, as
12 established by the Agency Commission, to drill or bore through the
13 approved reservoir in a manner as shall comply with orders, rules
14 and regulations issued for the purpose of protecting the approved
15 reservoir against the escape of CO₂. ~~For purposes of this~~
16 ~~subsection, the Agency with jurisdiction under other state law for~~
17 ~~regulating the well being drilled or bored through the approved~~
18 ~~reservoir is the Agency having jurisdiction to adopt orders and~~
19 ~~rules for such well in order to protect the CO₂ sequestration~~
20 ~~facility, regardless of which Agency has jurisdiction to permit the~~
21 ~~CO₂ sequestration facility pursuant to Section 3 of this act. If the~~
22 ~~Agency with jurisdiction under other state law for regulating the~~
23 ~~well being drilled or bored through the approved reservoir is not~~
24 ~~the Agency that has jurisdiction to permit the CO₂ sequestration~~

1 ~~facility pursuant to Section 3 of this act, then the former shall~~
2 ~~promptly notify the latter in writing of the receipt of an~~
3 ~~application for the drilling or boring of such a well and shall~~
4 ~~consider all timely submitted comments of the latter in approving,~~
5 ~~denying, or setting conditions for the well being drilled or bored.~~

6 The additional cost of complying with such orders, rules or
7 regulations in order to protect the CO₂ sequestration facility shall
8 be borne by the facility operator.

9 D. Nothing in ~~this act~~ Section 3-5-101 et seq. of this title
10 shall grant a private operator the right of condemnation or eminent
11 domain for any purpose.

12 SECTION 11. This act shall become effective November 1, 2023.

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