

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

BILL NO. Senate Bill 831

PRINTER NO. 1434

AMOUNT

See Fiscal Impact

FUND

Carbon Dioxide Storage Facility Fund

DATE INTRODUCED

June 20, 2023

PRIME SPONSOR

Senator Yaw

DESCRIPTION

Senate Bill 831 creates the Carbon Capture and Sequestration Act to establish the statutory framework for carbon dioxide capture, utilization and sequestration (i.e., storage) in the Commonwealth. The legislation also establishes the Carbon Dioxide Storage Facility Fund.

Definitions

Senate Bill 831 defines many key terms necessary to implement the Carbon Capture and Sequestration Act (act), including terms such as "carbon dioxide injection well", "carbon sequestration project", "department", "storage facility", "storage operator" and "UIC Class VI permit."

The legislation defines "subsurface property interest owner" as a property interest owner identified by the records of the recorder of deeds for each county containing a portion of the proposed storage facility who holds a fee simple interest, other freehold interest or leasehold interest in the subsurface of the property, which may include minerals, including coal or oil and gas rights. The term does not include the owner of a right-of-way or an easement.

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Ownership of Pore Space

The legislation defines "pore space" as subsurface strata, formations, cavities or voids, whether natural or artificially created, that can be used as storage space for carbon dioxide or other media. With regard to the ownership of pore space, the legislation provides a general rule that the ownership of all pore space in all strata below the surface lands and waters of the Commonwealth shall be vested in the surface property interest owner above the pore space. A conveyance of the surface ownership of real property shall be a conveyance of the pore space unless the ownership interest in the pore space previously has been expressly severed from the

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

surface ownership. Furthermore, the legislation clarifies that no agreement conveying minerals, including coal, oil and gas or other interests underlying the surface shall act to convey pore space in the stratum unless the agreement expressly includes conveyance of the pore space.

Senate Bill 831 directs that the legislation shall not be construed to change or alter the existing common law as of its effective date with respect to rights belonging to, or the dominance of, the mineral estate (including coal) or oil and gas estate. Nothing shall alter, amend, diminish or invalidate rights to the use of subsurface pore space that were acquired by contract or lease prior to the effective date of the legislation.

Instruments that transfer the rights to pore space are required to describe the scope of any right to use the surface estate. The owner of a pore space right shall have no right to use the surface estate beyond that set out in a properly recorded instrument. Following enactment of the legislation, a transfer instrument must include a specific description of the location of the pore space being transferred.

Ownership of Pore Space by Multiple Cotenants and Collective Storage

In instances where a storage operator does not obtain the consent of all persons that own the storage facility's pore space to the construction and operation of a storage facility, Senate Bill 831 authorizes the Secretary of the Department of Environmental Protection (secretary) to require that the pore space owned by nonconsenting owners be included in a storage facility and subject to geologic storage. In such instances, the permit applicant and prospective storage operator must negotiate with the pore space owners and acquire rights needed to access the pore space; however, if, after good-faith negotiation, the applicant or storage operator cannot locate or cannot reach an agreement with all necessary pore space owners but has secured written consent or agreement from the owners of at least sixty percent of the ownership interest in the pore space for the storage facility, all of the pore space for which an agreement has not been reached shall be declared to be included within the proposed storage facility if the secretary finds that the applicable requirements have been met.

The legislation stipulates that an unknown or non-locatable owner shall be deemed to have consented to the use of the pore space, provided that the storage operator complies with the publication requirements contained in the act.

Further with regard to collective storage, Senate Bill 831 requires a storage operator to provide a list to the secretary of all persons reasonably known to own an interest in the pore space proposed to be collectively used. A collective storage order shall be made by the secretary only after the secretary provides notice to all pore space owners proposed to be included within the order.

A collective storage order authorizes the long-term storage of CO₂ beneath the tract or portion, and the order must specify, where necessary, the location of and how to access carbon dioxide injection wells, outbuildings, roads and monitoring equipment. The collective storage order shall identify the compensation to be paid to unknown, non-locatable and nonconsenting pore space owners and the basis for fair market valuation of the collective interest of the pore space owners. A copy of the collective

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

storage order and a survey of the storage field must be recorded in the office of the county clerk in which all or a portion of the collective tract is located.

Seismic Exploration

Senate Bill 831 requires a storage operator to prepare a seismic activity review in accordance with existing requirements for a UIC Class VI permit, which is a federal permit issued under 40 CFR Pt. 144 (relating to underground injection control program) that allows the operation of a carbon dioxide injection and storage well. Prior to application for a similar permit to be developed by the Department of Environmental Protection (department), a storage operator may conduct a seismic survey or assessment across the vicinity of a potential storage facility, and the secretary may issue an order for entry onto the lands by the storage operator, if necessary.

Carbon Sequestration Projects

Senate Bill 831 authorizes carbon sequestration projects in the Commonwealth for the purpose of injecting CO₂ into the pore space of an underground storage facility through at least one carbon dioxide injection well under a UIC Class VI permit and for the purpose of employing the underground storage of CO₂. Upon application to the department, the storage operator shall notify the surface property interest owners and subsurface property interest owners in the vicinity of the storage facility.

To operate a carbon sequestration project under this act, a storage operator must design the project to isolate any existing or future production from the mineral, including of the coal, or oil and gas estate from the carbon dioxide plume, and the storage operator must indicate whether the storage facility contains commercially valuable mineral, coal or oil and gas estates. If it does, a permit may be issued only if the department is satisfied that these estates will not be adversely affected and have been addressed in an agreement with the subsurface property interest owners.

Ownership of, and Liability for, Material Injected into Storage Facilities

All CO₂ and other substances injected into a storage facility shall be presumed to be owned by the storage operator, and all rights, benefits, burdens and liabilities of the ownership shall belong to the storage operator, subject to rebuttal by an individual claiming contrary ownership.

Senate Bill 831 indemnifies from liability an owner of pore space or other property owners from the effects of injecting CO₂ or other substances for carbon sequestration activities solely by virtue of their interest in the pore space or surface or subsurface rights. Moreover, claims for damages are not actionable against a storage operator unless the claimant proves that the injection or migration of CO₂:

1. Is injurious to health, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property; or
2. Has caused injury to an individual, animal or real or personal property.

A surface or subsurface property interest owner or lessee may seek recovery for appropriate civil or equitable relief as specified in the act.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Operation and Storage Fees

Senate Bill 831 requires storage operators to pay to the department a fee on each ton of carbon dioxide injected for storage in an amount set by the Environmental Quality Board. The fee shall be based on the department's anticipated expenses associated with the following: (1) regulating storage facilities during their construction, operation and pre-closure phases; and (2) long-term monitoring and management of the storage facility following issuance of a certificate of project completion.

Fees imposed by the department under this act shall be segregated as follows:

1. Fifty percent of fees imposed for the purpose of administering the act and regulating pre-closure phases shall be deposited into the newly established Carbon Dioxide Storage Facility Fund (fund), and fifty percent of the fees shall be held in escrow by the storage operator pursuant to rules promulgated by the department, provided that such rules permit investment of the escrowed funds.
2. One hundred percent of the fees imposed for the purpose of long-term monitoring and management of a closed storage facility shall be held in escrow by the storage operator pursuant to rules promulgated by the Environmental Quality Board, provided that such rules permit investment of the escrowed funds.

Penalties and money received by the department from financial responsibility mechanisms included in the act shall also be remitted to the fund. Money in the fund may not be transferred to the General Fund or another fund. All money accumulated in escrow by a storage operator, subject to certain limitations, shall be credited to the fund at the time a certificate of project completion is issued by the department.

Certificate of Project Completion and Transfer to the Commonwealth

The legislation authorizes the department to issue a certificate of project completion after all CO₂ injections underground or into pore space are completed, following application for a certificate by a storage operator. A certificate of project completion shall not be issued until at least ten years after carbon dioxide injections end and only after a storage operator establishes the following criteria with a degree of certainty:

1. The storage operator is in full compliance with all laws governing the injection and storage of the carbon dioxide;
2. The storage operator has addressed pending claims regarding the injection and storage of the carbon dioxide;
3. The carbon dioxide that has been injected underground for storage is not expected to expand vertically or horizontally and poses no threat to human health, human safety, the environment or underground sources of drinking water;
4. The carbon dioxide that has been injected underground for storage is unlikely to cross any underground or pore space boundary and is not expected to

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

5. endanger any underground source of drinking water or otherwise endanger human health, human safety or the environment;
6. All wells, equipment and facilities to be used in maintaining and managing the stored carbon dioxide are in good condition and will retain mechanical integrity; and
7. The storage operator has plugged injection wells and has completed all reclamation required by the department.

Upon issuance of a certificate of project completion, title to the stored carbon dioxide and related facilities shall be transferred to the Commonwealth without payment of compensation. Such title includes all rights and interests in, and all responsibilities associated with, the stored or injected CO₂, subject to certain limitations stipulated in the legislation.

Primary responsibility and liability for the stored or injected carbon dioxide shall be transferred to the Commonwealth, except in certain situations specified in the legislation, and, except as provided, the storage operator and all individuals who generated, injected or stored carbon dioxide shall be forever released from all regulatory requirements associated with the continued storage and maintenance of the injected CO₂. The department shall assume responsibility to manage and monitor the stored carbon dioxide until a time when the federal government assumes such responsibility.

Nothing in the section relating to certificate of project completion shall be construed as a waiver of sovereign immunity by the Commonwealth.

This act shall take effect immediately.

FISCAL IMPACT

Senate Bill 831 will have no fiscal impact on the Commonwealth's General Fund, and the legislation is designed to cover the costs associated with its implementation and administration through a fee structure contained in the bill.

The legislation establishes the Carbon Dioxide Storage Facility Fund to receive fees and other associated money necessary to implement and administer the Carbon Capture and Sequestration Act. The legislation tasks the Environmental Quality Board with setting the fee based on the Department of Environmental Protection's anticipated expenses associated with the regulation and long-term monitoring and management of storage facilities.

For informational purposes, the Department of Environmental Protection's General Government Operations appropriation for Fiscal Year 2023-24 is \$20.2 million. Funding for the department's Environmental Program Management and Environmental Protection Operations appropriations collectively totals an additional \$156.2 million in FY 2023-24.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

The cost associated with the Environmental Quality Board's duty to set the fee should be minimal and capable of being accomplished within its available budget and resources.