STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 629 By: Jolley of the Senate

and

Jackson of the House

COMMITTEE SUBSTITUTE

An Act relating to carbon sequestration; amending Section 2, Chapter 429, O.S.L. 2009 (27A O.S. Supp. 2010, Section 3-5-102), which relates to the Oklahoma Carbon Capture and Geologic Sequestration Act; defining term; amending 27A O.S. 2001, Sections 3-4-101, as amended by Section 1, Chapter 221, O.S.L. 2003, 3-4-102, as last amended by Section 2, Chapter 221, O.S.L. 2003, 3-4-103, as amended by Section 3, Chapter 221, O.S.L. 2003 and Section 2, Chapter 273, O.S.L. 2002, as amended by Section 4, Chapter 221, O.S.L. 2003 (27A O.S. Supp. 2010, Sections 3-4-101, 3-4-102, 3-4-103 and 3-4-105), which relate to the Oklahoma Carbon Sequestration Enhancement Act; modifying legislative findings; defining terms; eliminating the Carbon Sequestration Advisory Committee; modifying and deleting certain duties of the Oklahoma Conservation Commission; deleting certain assessment and reporting requirements; modifying purposes of the carbon sequestration certification program; requiring consultation with certain entities; requiring Commission to develop certain standards and criteria; modifying procedures and application requirements for certification; deleting certain definition; authorizing Commission to establish fees for program; amending 60 O.S. 2001, Section 6, which relates to property definitions; modifying definition; adding definition; specifying application to certain oil and gas ownership or rights; directing the Oklahoma Geological Survey to assess public property for carbon sequestration

potential; amending 27A O.S. 2001, Section 3-2-103, which relates to employees, experts and offices of the Oklahoma Conservation Commission; authorizing the Commission to employ or appoint attorneys or in-house counsel; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 429, O.S.L. 2009 (27A O.S. Supp. 2010, Section 3-5-102), is amended to read as follows:

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

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

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

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

b. separation of carbon dioxide from natural gas.

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

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

4. "Carbon dioxide" or "CO_2" means an inorganic compound containing one carbon atom and two oxygen atoms, and exists as a gas at standard temperature and pressure. Carbon dioxide is an inert, stable, colorless, odorless, ~~non-toxic~~ nontoxic, incombustible, inorganic gas that is dissolvable in water and is naturally present, such as in underground locations and in the atmosphere as a trace gas;

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

6. "CO_2 injection well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or another method and is used to inject or transmit anthropogenic carbon dioxide into one or more reservoirs;

7. "CO_2 capture and compression equipment" means the equipment, separation units, processing units, processing plants, pipe, buildings, pumps, compressors, meters, facilities, motors, fixtures, materials, and machinery, and all other improvements used in the operation of any of them, and property, real or personal, intangible or tangible, either attributable to or relating to, or located thereon, used for the purpose of:

a. capturing carbon dioxide from a source that produces anthropogenic carbon dioxide, and/or

b. compressing or otherwise increasing the pressure of anthropogenic carbon dioxide;

8. "CO_2 pipeline" means any pipeline, compressors, pumps, meters, facilities, valves, fittings, right-of-way markers, cathodic protection ground beds, anodes, rectifiers, and any other cathodic protection devices, and other associated equipment, appurtenances and fixtures located on, attributable to or used in connection with the same, and used for the purpose of transporting carbon dioxide for carbon sequestration in this state or another state, excluding:

a. CO_2 capture and compression equipment at the source of the carbon dioxide, and

b. pipelines that are part of a CO_2 sequestration facility;

9. "CO_2 sequestration facility" means the approved reservoir(s), and all associated underground equipment and pipelines, all associated surface buildings and equipment, and all associated CO_2 injection wells, utilized for carbon sequestration in a defined geographic boundary established by the Agency, excluding any:

a. CO_2 capture and compression equipment at the source of the carbon dioxide, and

b. CO_2 pipeline transporting carbon dioxide to the facility from a source located outside the geographic boundaries of the surface of the facility;

10. "CO_2 trunkline" means a CO_2 pipeline that both exceeds seventy-five (75) miles in distance and has a minimum pipe outside diameter of at least twelve (12) inches;

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

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

~~12.~~ 13. "Department" means the Department of Environmental Quality as established by Section 2-3-101 et seq. of ~~Title 27A of the Oklahoma Statutes~~ this title;

~~13.~~ 14. "Enhanced oil or gas recovery" means the increased recovery of hydrocarbons, including oil and gas, from a common source of supply achieved by artificial means or by the application of energy extrinsic to the common source of supply, such as pressuring, cycling, pressure maintenance or injection of a substance or form of energy, such as injection of water and/or carbon dioxide, including immiscible and miscible floods; provided that enhanced oil or gas recovery shall not include injection of a substance or form of energy for the sole purpose of either:

a. aiding in the lifting of fluids in the well, or

b. stimulation of the reservoir at or near the well by mechanical, chemical, thermal or explosive means;

~~14.~~ 15. "Facility operator" means any person authorized by the Agency to operate a CO_2 sequestration facility;

~~15.~~ 16. "Facility owner" means the person who owns the CO_2 sequestration facility;

~~16.~~ 17. "Gas" shall have the same meaning as in Section 86.1 of Title 52 of the Oklahoma Statutes;

~~17.~~ 18. "Governmental entity" means any department, commission, authority, council, board, bureau, committee, legislative body, agency, beneficial public trust, or other establishment of the executive, legislative or judicial branch of the United States, the State of Oklahoma, any other state in the United States, the District of Columbia, the Territories of the United States, and any similar entity of any foreign country;

~~18.~~ 19. "Oil" shall have the same meaning as in Section 86.1 of Title 52 of the Oklahoma Statutes;

~~19.~~ 20. "Person" means any individual, proprietorship, association, firm, corporation, company, partnership, limited partnership, limited liability company, joint venture, joint stock company, syndicate, trust, organization, committee, club, governmental entity, or other type of legal entity, or any group or combination thereof either acting in concert or as a unit;

~~20.~~ 21. "Private operator" means any person that is either a facility operator or an operator of a CO_2 pipeline, but that is neither a public utility nor a common carrier as such terms are defined by the Oklahoma ~~statutes~~ Statutes; and

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

SECTION 2. AMENDATORY 27A O.S. 2001, Section 3-4-101, as amended by Section 1, Chapter 221, O.S.L. 2003 (27A O.S. Supp. 2010, 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 trading in carbon dioxide credits or adoption of practices, technologies, or other measures which decrease the concentration of carbon dioxide in the atmosphere and improve air quality;

2. ~~Improved agricultural practices, including, but not limited to, soil and vegetation, improved natural resources conservation practices, including, but not limited to, vegetation, revegetation, forestation and reforestation on rangeland and other agricultural and nonagricultural lands, improved practices for the capture and sequestration of carbon dioxide emissions through carbon dioxide injection in marginally producing oil and/or gas wells and abandoned oil and/or gas wells and other improved methods of stewardship for Oklahoma's natural resources~~ Carbon sequestration practices have great potential to increase carbon sequestration and help offset the impact of carbon dioxide emissions on carbon dioxide concentrations in the atmosphere; and

3. It is in the interest of the citizens of this state that the Oklahoma Conservation Commission document and quantify carbon sequestration associated with ~~improved agricultural practices, improved natural resources conservation practices associated with other methods of improved stewardship of soil and vegetation for Oklahoma's natural resources, on rangeland, and other agricultural and nonagricultural lands, and associated with the capturing and sequestration of carbon dioxide emissions through carbon dioxide injection in marginally producing oil and/or gas wells and abandoned oil and/or gas wells~~ carbon sequestration practices.

C. It is the intent of the Legislature that such efforts to document and quantify carbon sequestration ~~on agricultural and~~

~~nonagricultural lands and the capturing and sequestration of carbon dioxide emissions through carbon dioxide injection in marginal oil and/or gas wells and abandoned oil and/or gas wells within the state~~ associated with carbon sequestration practices will enhance the ability of the state's landowners, well owners and mineral owners to participate in any system of carbon dioxide emissions marketing or trading that may be developed in the future.

D. For purposes of this act, "carbon sequestration practices" and "carbon capture and storage practices" shall mean and include:

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

2. Improved natural resources conservation practices, including, but not limited to, vegetation, revegetation, forestation, afforestation and reforestation on rangeland and other agricultural and nonagricultural lands;

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

4. Other improved methods of stewardship for the natural resources of Oklahoma; and

5. Other methods of sequestering, displacing or avoiding carbon dioxide emissions approved by the Oklahoma Conservation Commission.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 3-4-102, as last amended by Section 2, Chapter 221, O.S.L. 2003 (27A O.S. Supp. 2010, Section 3-4-102), is amended to read as follows:

Section 3-4-102. ~~A. There is hereby created the Carbon Sequestration Advisory Committee. The Committee shall consist of the following members appointed by the Governor:~~

~~1. The Director of the Department of Agriculture or designee;~~

~~2. The Director of the Department of Environmental Quality or designee;~~

~~3. The Director of the Oklahoma Conservation Commission or designee;~~

~~4. One member representing the Natural Resources Conservation Service of the United States Department of Agriculture;~~

~~5. One member representing Oklahoma State University;~~

~~6. One member representing the Oklahoma Energy Board;~~

~~7. One member representing an entity which generates electrical energy and operates facilities/equipment associated with the transmission and distribution of electrical energy;~~

~~8. Two members who are producers of field crops at least one of whom actively employs a minimum tillage management system in his or her farming operation;~~

~~9. Two members who are producers of livestock at least one of whom is actively involved in range management;~~

~~10. One member with expertise in carbon dioxide emissions marketing or trading;~~

~~11. One member representing an agri-business that does business and trading with farmers and ranchers and is involved with day to day merchandising in agricultural products;~~

~~12. One member representing conservation districts in this state;~~

~~13. One member representing the ethanol industry;~~

~~14. One member representing electric cooperatives in this state designated by the industry;~~

~~15. The Director of the Oklahoma Climatological Survey; and~~

~~16. One member representing production agriculture who is actively engaged in carbon-based energy and wildlife-related activities to be designated by the Director of the Conservation Commission.~~

~~B. Members of the Committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in the State Travel Reimbursement Act. The Oklahoma Conservation Commission shall, subject to availability of appropriations, provide space for meetings of the Committee and shall provide other assistance and staffing needs of the Committee.~~

~~C. The Carbon Sequestration Advisory Committee shall:~~

~~1. Advise and assist the Oklahoma Conservation Commission in preparing any reports required by this section and in conducting the assessment pursuant to Section 3-4-103 of this title;~~

~~2. Identify existing opportunities for Oklahoma agricultural and nonagricultural landowners, owners of marginally producing oil and/or gas wells and mineral owners to participate in any system of carbon dioxide emissions marketing or trading that may be developed in the future, and to optimize the economic benefits to Oklahoma agricultural and nonagricultural landowners, owners of marginally producing oil and/or gas wells and mineral owners who participate in such carbon dioxide emissions trading transactions. Such policies or programs may include, but are not limited to, identifying existing or new nonprofit organizations or other public or private entities capable of serving as assemblers of carbon dioxide emissions credits or as intermediaries on behalf of agricultural and nonagricultural landowners, owners of marginally producing oil and/or gas wells and mineral owners in any carbon dioxide emissions trading or marketing system that may be developed in the future;~~

~~3.~~ The Oklahoma Conservation Commission shall:

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

~~4.~~ 2. Identify ~~and recommend~~ areas of research needed to better understand and quantify ~~the processes of~~ carbon sequestration ~~on agricultural and nonagricultural lands and through the use of marginally producing oil and/or gas wells and abandoned oil and/or gas wells~~ and storage involved in carbon sequestration practices within the state.

~~D. On or before December 1, 2003, the Oklahoma Conservation Commission, in consultation with the Carbon Sequestration Advisory Committee, shall prepare an updated report to the Legislature. The updated report shall include, but not be limited to:~~

~~1. Any new potential economic impact from utilizations of a voluntary system of carbon dioxide emissions trading or marketing for carbon sequestered on agricultural or nonagricultural lands in the state and for capturing and sequestering carbon dioxide emissions through carbon dioxide injection in marginally producing wells and abandoned oil and/or gas wells that could be used in the event carbon dioxide emissions regulations are adopted in the future;~~

~~2. Improved agricultural practices, including, but not limited to, soil and vegetation, improved natural resources conservation practices, improved practices for the capture and sequestration of carbon dioxide emissions through carbon dioxide injection in marginal oil and/or gas wells and abandoned oil and/or gas wells, and other improved methods of stewardship for Oklahoma's natural~~

~~resources which increase stored soil carbon and/or minimize carbon dioxide emissions associated with practices and activities that may generate carbon dioxide emissions;~~

~~3. Methods for measuring and modeling net carbon sequestration associated with improved agricultural practices, improved natural resources conservation practices, improved practices for the capture and sequestration of carbon dioxide emissions through carbon dioxide injection in marginal and abandoned oil and/or gas wells and other improved methods of stewardship for Oklahoma's natural resources;~~

~~4. Areas of scientific uncertainty with respect to quantifying and understanding sequestration associated with improved agricultural practices, improved natural resources conservation practices, improved practices for the capture and sequestration of carbon dioxide emissions through carbon dioxide injection in marginal and abandoned oil and/or gas wells, and other methods of improved stewardship for natural resources; and~~

~~5. Any recommendations of the Carbon Sequestration Advisory Committee developed pursuant to the Oklahoma Carbon Sequestration Enhancement Act.~~

SECTION 4. AMENDATORY 27A O.S. 2001, Section 3-4-103, as amended by Section 3, Chapter 221, O.S.L. 2003 (27A O.S. Supp. 2010, Section 3-4-103), is amended to read as follows:

Section 3-4-103. ~~A. 1. The Oklahoma Conservation Commission shall, subject to availability of appropriations, in consultation~~

~~with the Carbon Sequestration Advisory Committee, assess agricultural and nonagricultural lands and marginally producing and abandoned oil and/or gas wells in this state for past carbon sequestration and future carbon sequestration potential.~~

~~2. The assessment shall seek to quantify carbon sequestration associated with improved agricultural practices, including, but not limited to, soil and vegetation, improved natural resources conservation practices, improved practices for capture and sequestration of carbon dioxide through carbon dioxide injection in marginally producing and abandoned oil and/or gas wells, and other improved methods of stewardship for natural resources.~~

~~3. On or before January 1, 2004, the Commission shall publish an updated report of the findings. The Commission may, from time to time, update such findings as advancements in understanding of the processes of carbon sequestration and new data become available.~~

~~B. The assessment required in subsection A of this section shall be conducted in a manner that provides a means for owners of land in this state to estimate past and future net carbon sequestration resulting from improved agricultural practices, improved natural resources conservation practices, improved practices for capture and sequestration of carbon dioxide through carbon dioxide injection in marginally producing and abandoned oil and/or gas wells, and other improved methods of stewardship of natural resources occurring on their property.~~

~~C. The Commission may contract and cooperate with the Natural Resources Conservation Service of the United States Department of Agriculture to conduct assessment activities provided for in this section.~~

~~D.~~ The Oklahoma Conservation Commission may apply for and accept grants, gifts, or other sources of public and private funds to carry out the purposes of the Oklahoma Carbon Sequestration Enhancement Act.

SECTION 5. AMENDATORY Section 2, Chapter 273, O.S.L. 2002, as amended by Section 4, Chapter 221, O.S.L. 2003 (27A O.S. Supp. 2010, Section 3-4-105), is amended to read as follows:

Section 3-4-105. A. The Oklahoma Conservation Commission is hereby authorized to establish and administer the carbon sequestration certification program. The ~~purpose~~ purposes of the program ~~is~~ are to provide a mechanism for creating and preserving carbon reserves in this state ~~produced as by products of best available resource management activities upon certified lands~~ by encouraging voluntary practices that protect or improve natural resources, to enable Oklahomans to participate in market-based programs for natural resource protection, to provide a mechanism for Oklahomans to benefit from the ecosystem services they provide, to verify carbon sequestration or storage associated with carbon sequestration practices, and to issue carbon sequestration

certificates associated with carbon sequestration practices that the Commission determines qualify for such certificates.

B. The Commission, in consultation with the Department of Environmental Quality and with the advice of the ~~Carbon Sequestration Committee~~ carbon sequestration stakeholder groups appointed by the Commission, shall develop and promulgate rules as necessary to administer, implement and enforce the provisions of this act, including, but not limited to, developing and implementing uniform standards and criteria for ~~the certification of existing or potential carbon sinks located in this state~~ verifying carbon sequestration and storage associated with carbon sequestration practices and issuing carbon sequestration certificates associated with approved carbon sequestration practices. In promulgating the rules, the Commission shall develop the program to be as consistent as possible with other governmental programs designed to create carbon reserves for the purpose of voluntarily reducing greenhouse gases or designed to certify carbon sequestration practices.

C. In order ~~to have land certified as an existing or potential carbon sink~~ for carbon sequestration to be verified and certified under this section, an applicant shall file an application with the Commission. Along with the application, the applicant shall submit a resource management plan, or a project plan as applicable, detailing activities ~~which~~ that will increase or maintain existing trapped carbon including, but not limited to, improved forest

management, alteration of or changes in silviculture practices, and growing of designated crops and any other such practices including, but not limited to, the capture and sequestration of carbon dioxide emissions through injection of carbon dioxide ~~in marginal and abandoned oil and/or gas wells which, based on best available information, will increase trapped carbon~~ underground.

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

E. ~~The~~ Prior to granting a carbon sequestration certificate, the Commission shall adopt ~~site certification conditions for each carbon sink~~ criteria associated with the approved carbon sequestration practice for which an application is submitted. In addition, the Commission shall determine, based upon compliance with ~~the site certification conditions~~ the site criteria, the volume or numerical amount of credits or offsets achievable by the specific carbon ~~sink~~ sequestration practice.

F. Applications for ~~certification of~~ a carbon ~~sink~~ sequestration certificate shall be approved or denied in accordance with criteria promulgated by the Commission.

G. ~~For purposes of this section, "carbon sink" means a geographical area that could be developed with reforestation, afforestation, growing agricultural crops or any existing vegetated area or marginally producing and/or abandoned oil and/or gas well~~

~~area in which carbon is or could be trapped or injected~~ The Commission is authorized to establish fees associated with the carbon sequestration certification program.

SECTION 6. AMENDATORY 60 O.S. 2001, Section 6, is amended to read as follows:

Section 6. A. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes any pore space.

B. 1. As used in this section, "pore space" means any interstitial space not occupied by soil or rock, within the solid material of the earth, and any cavity, hole, hollow or void space within the solid material of the earth.

2. As used in this section, pore space is real property and, until title to the pore space or rights, interests or estates in the pore space are separately transferred, pore space is property of the person or persons holding title to the land surface above it.

3. Notwithstanding the ownership of the pore space, nothing in this section shall alter or be construed to alter the ownership of, or rights associated with the oil or gas, as those terms are defined in Section 86.1 of Title 52 of the Oklahoma Statutes, that may be within the pore space.

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Oklahoma Geological Survey, a state agency created by the Oklahoma Constitution, shall, subject to availability of appropriations or other funding, assess publicly owned lands, minerals and other public property for carbon sequestration potential, including, but not limited to, determining suitable reservoirs for carbon dioxide injection underlying state surface and mineral property interests and estimating the volume capacity for CO_2 sequestration in such reservoirs, as such terms are used and defined in Section 3-5-102 of Title 27A of the Oklahoma Statutes.

SECTION 8. AMENDATORY 27A O.S. 2001, Section 3-2-103, is amended to read as follows:

Section 3-2-103. A. The Commission:

1. May employ an Executive Director and ~~such~~ <u>any</u> technical experts and ~~such~~ other agents and employees, permanent and temporary, as may be required, and shall determine their qualifications, duties, and compensation;

2. May call upon the Attorney General of the state for ~~such~~ <u>any</u> legal services as may be required<u>. In addition, the Commission, if it determines that it is needed, may employ or appoint attorneys or in-house counsel to advise or represent the Commission</u>; and

3. Shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, ~~such~~ <u>any</u> powers and duties as it may deem proper.

B. Offices shall be provided by the Department of Central Services in Oklahoma City. Upon request of the Commission for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning, shall, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the Commission members of the staff or personnel of ~~such~~ the agency or institution of learning, and make ~~such~~ any special reports, surveys, or studies as the Commission may request.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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