

STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 610

By: Myers of the Senate

and

Watson of the House

COMMITTEE SUBSTITUTE

An Act relating to geologic storage of carbon dioxide; creating the Geologic Storage of Carbon Dioxide Act; providing short title; stating legislative findings and public policy; defining terms; stating regulatory jurisdiction of state agencies; stating exceptions; requiring Corporation Commission to issue certificate of convenience and necessity for storage or transmission of carbon dioxide; stating procedures for application; requiring notice and publication within certain time period; stating criteria for consideration of applications; requiring denial of certificate upon certain findings; providing for judicial review; stating contingencies for certain permits; requiring Department of Environmental Quality to issue permits for construction, operation or modification of storage facilities; requiring notice and publication; granting power of eminent domain and condemnation for certain purposes; making right of eminent domain subject to certain rights; stating penalties; authorizing the Environmental Quality Board and Corporation Commission to promulgate rules implementing act; providing for codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 3-5-101 of Title 27A, unless
4 there is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Geologic
6 Storage of Carbon Dioxide Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3-5-102 of Title 27A, unless
9 there is created a duplication in numbering, reads as follows:

10 A. The Legislature declares that:

11 1. Carbon dioxide is a substance that occurs naturally in the
12 environment as a result of biological processes and that exists as a
13 gas at standard temperature and pressure;

14 2. Carbon dioxide is released from the combustion of any
15 material that contains carbon including coal, natural gas, oil and
16 wood, all of which exist in abundance, and the production and use of
17 which form one of the foundations of our state's economy;

18 3. Carbon dioxide is currently being released into the
19 atmosphere in substantial volumes;

20 4. For many years, technologies for the injection, use and
21 storage of carbon dioxide in underground geologic formations have
22 been developed and successfully utilized for the extraction of
23 underground natural resources such as oil and natural gas;

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1 5. The storage of carbon dioxide in underground geological
2 formations can be an effective means for reducing the release of
3 carbon dioxide into the atmosphere from anthropogenic sources; and

4 6. The transportation and storage of carbon dioxide in
5 underground geological formations for beneficial use or reuse in
6 industrial and commercial applications is expected to increase in
7 the United States and in Oklahoma due to initiatives by federal,
8 state and local governments, industry and commerce, and other
9 interested persons, and may present an opportunity for economic
10 growth and development for the state.

11 B. The Legislature further declares that:

12 1. The transportation and geologic storage of carbon dioxide
13 will benefit the citizens of the state;

14 2. Carbon dioxide is a valuable commodity to the citizens of
15 the state, particularly for its value in enhancing the recovery of
16 oil and gas, and for its potential for use in other industrial and
17 commercial processes and applications;

18 3. Transportation and geologic storage of carbon dioxide gas
19 may allow for the orderly withdrawal and use or reuse as appropriate
20 or necessary, thereby allowing carbon dioxide to be available for
21 commercial, industrial, or other uses, including the use of carbon
22 dioxide for enhanced recovery of oil and gas;

1 4. Storage of carbon dioxide in geological formations is
2 believed to be an effective and feasible strategy to deposit large
3 volumes of carbon dioxide over long periods of time; and

4 5. It is the public policy of this state and the purpose of
5 this act to provide for a coordinated statewide program for the
6 transportation and storage of carbon dioxide in underground
7 geological formations and to also fulfill the state's primary
8 responsibility for assuring compliance with the federal Safe
9 Drinking Water Act, including any amendments thereto related to the
10 underground injection of carbon dioxide.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3-5-103 of Title 27A, unless
13 there is created a duplication in numbering, reads as follows:

14 As used in this act:

15 1. "Board" means the Environmental Quality Board;

16 2. "Carbon dioxide" means anthropogenically sourced carbon
17 dioxide including its derivatives and all mixtures, combinations and
18 phases thereof;

19 3. "Carbon dioxide transmission pipeline" means a pipeline,
20 compressors, meters and associated equipment and appurtenances used
21 for the purpose of transporting carbon dioxide in this state for
22 underground storage in this state or another state. Carbon dioxide
23 transmission pipeline shall not include carbon capture equipment
24 located at the generator of the carbon dioxide or pipelines that are

1 part of a storage facility. The Corporation Commission shall
2 establish the beginning point and ending point of a carbon dioxide
3 transmission pipeline;

4 4. "Commercial operator" means an entity that operates a
5 storage facility or carbon dioxide transmission pipeline, or both,
6 and that provides storage facility services or carbon dioxide
7 transmission pipeline services on an open-access, nondiscriminatory
8 basis pursuant to such rules and regulations and upon such rates and
9 terms and conditions of service as the Corporation Commission may
10 establish;

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

13 6. "Department" means the Department of Environmental Quality
14 as established by Section 2-3-101 et seq. of Title 27A of the
15 Oklahoma Statutes;

16 7. "Depleted" means that the production of oil or gas, coal,
17 coalbed methane, or any other underground natural resource is not or
18 is no longer commercially feasible in an area where carbon dioxide
19 will be stored;

20 8. "Oil or gas" or "oil and gas" means oil, natural gas,
21 coalbed methane or gas condensate;

22 9. "Pipeline operator" means an entity authorized by the
23 Corporation Commission to operate a carbon dioxide transmission
24 pipeline, including both commercial operators and private operators;

1 10. "Private operator" means an entity that is not a commercial
2 operator and, pursuant to state authorization, operates a storage
3 facility or carbon dioxide transmission pipeline for the purpose of
4 providing dedicated storage facility services or carbon dioxide
5 transmission pipeline services solely to one or more entities;

6 11. "Reservoir" means that portion of any underground
7 geological stratum, formation, aquifer that does not contain
8 treatable or fresh water, cavity or void (whether natural or
9 artificially created), depleted oil and gas formation, and depleted
10 coal or coalbed methane seam, having pore space which is suitable
11 for or capable of being made suitable for the injection and storage
12 therein of carbon dioxide, among other things;

13 12. "Storage" means placement of carbon dioxide in a reservoir;

14 13. "Storage facility" means the reservoir, the underground
15 equipment and pipelines internal to the storage operation, and
16 surface buildings and equipment utilized in the storage operation,
17 excluding pipelines used to transport the carbon dioxide from one or
18 more capture facilities to the storage injection site or sites. The
19 reservoir component of the storage facility includes any necessary
20 and reasonable areal buffer and subsurface monitoring zones
21 designated by the Department of Environmental Quality for the
22 purpose of ensuring the safe and efficient operation of the storage
23 facility for the storage of carbon dioxide and to protect against
24 pollution, invasion, and escape or migration of carbon dioxide. A

1 storage facility shall not include carbon capture equipment located
2 at the generator of the carbon dioxide;

3 14. "Storage operator" means any entity authorized by the
4 Department of Environmental Quality to operate a storage facility,
5 including both commercial operators and private operators; and

6 15. "Storage well" means a well drilled in a storage field for
7 the purpose of injecting carbon.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3-5-104 of Title 27A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Except as provided in subsections B and C of this section,
12 the Department of Environmental Quality shall have sole and
13 exclusive jurisdiction and authority over all entities and property
14 necessary to issue or deny permits for the establishment of storage
15 facilities in accordance with the Geologic Storage of Carbon Dioxide
16 Act, to monitor and enforce compliance with permit conditions and
17 the legal requirements established in accordance with this act and
18 to regulate any subsequent withdrawal of stored carbon dioxide that
19 is intended for commercial, industrial or other uses. In exercising
20 such jurisdiction and authority, the Department may conduct
21 hearings, issue and enforce orders, and adopt, modify, repeal and
22 enforce procedural, interpretive and legislative rules concerning
23 geologic storage of carbon dioxide.

1 B. The jurisdiction of the Corporation Commission with respect
2 to carbon dioxide storage facilities and carbon dioxide transmission
3 pipelines shall be as follows:

4 1. Storage operators in this state and pipeline operators in
5 this state shall be deemed to be public utilities providing public
6 services and are subject to the general power of the commission to
7 regulate public utilities;

8 2. Commercial operators in this state shall be subject to the
9 general power of the Commission with respect to rates and terms and
10 conditions of service. A private operator shall not be subject to
11 the power of the Commission with respect to rates and terms and
12 conditions of service for the transportation or storage of carbon
13 dioxide. A commercial operator and a public utility utilizing the
14 services of a storage operator or a pipeline operator shall be
15 entitled to an opportunity to recover the reasonable and prudent
16 costs including a reasonable return on and associated with a storage
17 facility or carbon dioxide transmission pipeline in its rates
18 regulated by the Commission;

19 3. The Commission shall have the power and authority to
20 prescribe, enforce and implement safety standards for pipelines
21 subject to this act; provided, however, that no standards shall be
22 more stringent than comparable federal requirements; and
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1 4. The Commission shall have the power and authority to grant
2 certificates of public convenience and necessity and to authorize
3 storage facilities as provided in Section 5 of this act.

4 C. The provisions of this act shall not apply to:

5 1. The use of carbon dioxide as a part of or in conjunction
6 with any enhanced recovery operation where the sole purpose of the
7 project is enhanced oil, coalbed methane or natural gas recovery; or

8 2. A natural gas storage operation certificated by the Federal
9 Energy Regulatory Commission or the Commission. The Commission is
10 authorized to promulgate rules to allow conversion of any enhanced
11 recovery operation or natural gas storage field into a storage
12 facility. Upon approval of the conversion of an operation, the
13 provisions of this act shall apply.

14 D. No agency of state government or any political subdivision
15 may regulate any facility or activity for the purpose of the
16 transportation, storage or withdrawal of carbon dioxide except as
17 authorized by the provisions of this act or the Oklahoma Carbon
18 Sequestration Enhancement Act.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3-5-105 of Title 27A, unless
21 there is created a duplication in numbering, reads as follows:

22 A. No entity shall begin construction of a storage facility or
23 carbon dioxide transmission pipeline unless and until the entity
24 shall have obtained from the Corporation Commission a certificate of

1 public convenience and necessity approving the construction and
2 proposed location of the facilities in accordance with this section.

3 B. The application for a certificate shall be in a form as the
4 Commission may prescribe and shall contain:

5 1. The names of the owners and operators of the facility
6 including any officer, secretary, manager, person owning five
7 percent (5%) or more interest or any other person conducting or
8 managing the affairs of the applicant as to the proposed facility;

9 2. A description, in as much detail as the Commission may
10 prescribe, of the general location and type of facilities which the
11 applicant proposes to construct;

12 3. A statement justifying the need for the facilities;

13 4. If the applicant seeks to become a private operator, an
14 explanation and justification, the identity of the entity or
15 entities to whom dedicated services will be provided, and copies of
16 the contracts under which services will be provided to the entity or
17 entities, and any data as the Commission shall require by rule
18 regarding the anticipated cost of constructing and operating the
19 proposed facilities;

20 5. With respect to any carbon dioxide transmission pipelines, a
21 statement of the environmental impact;

22 6. The average monthly tonnage of carbon dioxide anticipated to
23 be stored in the proposed storage facility or transported in the
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1 proposed carbon dioxide transmission pipeline during the phase of
2 the project that is the subject of the application;

3 7. The anticipated life span and closure date of the facilities
4 and the period of time that is the subject of the application in the
5 case of a project that is being implemented in multiple phases;

6 8. Proof of the financial ability of the applicant to construct
7 and operate the project; and

8 9. Any other information as the applicant may deem relevant or
9 the Commission may require by rule.

10 C. The Commission shall grant or deny a certificate of public
11 convenience and necessity in accordance with provisions set forth in
12 this section. If the Commission grants a certificate of public
13 convenience and necessity, the Commission may include reasonable
14 conditions required by the public convenience and necessity not
15 inconsistent with the criteria set forth in the Geologic Storage of
16 Carbon Dioxide Act; provided, however, that in matters within the
17 jurisdiction of the Department of Environmental Quality, the
18 Commission shall defer to the Department of Environmental Quality.

19 D. Upon the filing of an application, the applicant shall
20 publish, in a form as the Commission directs, the publication area
21 for the publication to be each county in which any portion of the
22 proposed storage facility or carbon dioxide transmission pipeline is
23 to be constructed, a notice of the filing of the application and
24 that the Commission may approve the same unless within fifteen (15)

1 days after completion of publication a written request for a hearing
2 thereon has been received by the Commission from a person or persons
3 alleging that the proposed storage facility or carbon dioxide
4 transmission pipeline is against the public interest. If a request
5 for hearing is timely received and the issues raised cannot be dealt
6 with by order of the Commission without a hearing, the Commission
7 shall set the matter for hearing on a date within sixty (60) days
8 from completion of the publication, and shall require the applicant
9 to publish notice of the time and place of hearing in the same
10 manner as is herein required for the publication of notice of the
11 filing of the application.

12 E. In considering whether to grant a certificate of public
13 convenience and necessity, the Commission shall consider, but is not
14 limited to considering, the following factors:

- 15 1. The demonstrated need for the project;
- 16 2. The economic reasonableness of the project;
- 17 3. The managerial and technical competence of the applicant to
18 effectively construct and manage the project; and
- 19 4. Other criteria related to making the determinations required
20 by paragraph F of this subsection as the Commission specifies in its
21 duly promulgated rules.

22 F. Within sixty (60) days after the filing of the application,
23 or if hearing shall be held thereon, within ninety (90) days after
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1 final submission on oral argument or brief, the Commission shall
2 approve the application if it shall find and determine:

3 1. That the proposed storage facility or carbon dioxide
4 transmission pipeline will economically, adequately and reliably
5 contribute to meeting the present and anticipated requirements for
6 storage or transportation of carbon dioxide;

7 2. That the proposed storage facility or carbon dioxide
8 transmission pipeline is in the public convenience and necessity;

9 3. The horizontal and vertical boundaries of the storage
10 facility;

11 4. That the storage facility and reservoir are suitable and
12 feasible for the injection, storage and, if proposed, withdrawal of
13 carbon dioxide;

14 5. That the use of the storage facility for the storage of
15 carbon dioxide will not contaminate other formations containing
16 fresh water or oil, gas (including stored natural gas), coal, or
17 coalbed methane;

18 6. That the storage field will not be used to inject carbon
19 dioxide into that part of a formation that is within the
20 certificated boundaries, including the protective area, of an
21 existing natural gas storage field certificated by the Federal
22 Energy Regulatory Commission or the Commission;

23 7. That the storage facility will be operated in a manner as to
24 protect human health and the environment; and

1 8. That the quality of the carbon dioxide to be managed at the
2 storage facility will not compromise the safety and efficiency of
3 the reservoir.

4 G. The Commission shall deny a certificate of public
5 convenience and necessity upon one or more of the following
6 findings:

7 1. The proposed facilities are not reasonably cost effective in
8 light of alternative storage and transportation facilities that are
9 available at the time of the decision;

10 2. The applicant is not qualified or financially capable of
11 performing;

12 3. The proposal, taken as a whole, is inconsistent with the
13 public convenience and necessity; or

14 4. The proposed storage facility is geologically or
15 operationally unsuitable.

16 H. The grant of authority by the Commission for a storage
17 facility or carbon dioxide transmission pipeline shall be contingent
18 upon obtaining any necessary permits or authorizations from the
19 Department of Environmental Quality or other agencies prior to
20 commencing operation.

21 I. Any party aggrieved by a decision of the Commission granting
22 or denying a certificate of public convenience and necessity may
23 obtain judicial review thereof pursuant to Section 318 of Title 75
24 of the Oklahoma Statutes.

1 J. No person may sell, lease or transfer a certificate of
2 public convenience and necessity without first obtaining the consent
3 and approval of the Commission.

4 K. The Commission is authorized and empowered to adopt, modify,
5 repeal and enforce procedural, interpretive and legislative rules
6 relating to the certification of storage facilities and carbon
7 dioxide transmission pipelines authorized pursuant to this act and
8 shall define in such rule minor modifications that do not require an
9 amendment of an existing certificate of public convenience and
10 necessity.

11 L. A private operator that desires to become a commercial
12 operator shall file an application with the Commission for a
13 certificate of public convenience and necessity in the manner herein
14 provided, together with any other information as the Commission may
15 reasonably require by rule. In addition, the private operator shall
16 file proposed rates and terms and conditions of service. A private
17 operator shall not become a commercial operator until the Commission
18 has issued a certificate of public convenience and necessity and
19 accepted the initial rates and terms and conditions of service
20 subject to refund.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3-5-106 of Title 27A, unless
23 there is created a duplication in numbering, reads as follows:
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1 A. The owner or operator of a storage facility shall obtain a
2 permit pursuant to the Geologic Storage of Carbon Dioxide Act from
3 the Department of Environmental Quality prior to the construction,
4 operation or modification of a storage facility. Any entity owning
5 or operating a storage facility in existence on the effective date
6 of this act is hereby authorized to continue operating until such
7 time as the Department has established operational and procedural
8 requirements applicable to existing storage facilities and the
9 entity owning or operating the facility has had a reasonable
10 opportunity to comply with those requirements.

11 B. The use of a reservoir as a storage facility for carbon
12 dioxide is hereby authorized, provided that the Department shall
13 first issue a permit authorizing the proposed storage of carbon
14 dioxide after the applicant has obtained a certificate of public
15 convenience and necessity from the Corporation Commission pursuant
16 to this act.

17 C. Public notice required by this subsection shall be published
18 in a newspaper in general circulation in a county or counties where
19 the facility will be located. The applicant shall publish public
20 notice at the time of the filing of an application stating that an
21 application has been filed and where the public can review the
22 application. The Department shall publish public notice upon
23 issuance of a draft permit stating where the public can review the
24 draft permit and the nature of the opportunity of the public to

1 comment on the draft permit. The Department shall also issue a
2 public notice announcing any public hearing that may be held on the
3 draft permit. The Department shall allow at least thirty (30) days
4 for public comment on the draft permit. Upon request of the permit
5 applicant, the public comment period may be extended for an
6 additional thirty (30) days. Further extension of the comment
7 period may be granted by the Department for good cause shown but in
8 no case may the further extension exceed an additional thirty (30)
9 days. Public notice of a public hearing shall be given at least
10 thirty (30) days before the hearing. Public notice of the hearing
11 may be given at the same time as public notice of the draft permit,
12 and the two notices may be combined. The Department shall establish
13 by rule the procedures, including, but not limited to, the content
14 of public notices; the content of the public notice of hearing; and
15 the management of public comments filed.

16 D. The Department shall issue and enforce any orders, and shall
17 adopt, modify, repeal and enforce any rules, including establishment
18 of appropriate and sufficient financial sureties or bonds, as may be
19 necessary, for the purpose of regulating the drilling of wells
20 related to a storage facility, the injection and withdrawal of
21 carbon dioxide, the operation of the storage facility, well plugging
22 and abandonment, and removal of surface buildings and equipment of
23 the storage facility and as necessary to protect the storage
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1 facility against pollution, invasion, and the escape or migration of
2 carbon dioxide.

3 E. In addition to all other powers and duties prescribed in
4 this act or otherwise by law, and unless otherwise specifically set
5 forth in this act, the Department shall perform any and all acts
6 necessary to carry out the purposes and requirements of the federal
7 Safe Drinking Water Act, as amended, relating to participation of
8 this state in the underground injection control program established
9 under that act with respect to the storage of carbon dioxide. To
10 that end, the Department is authorized and empowered to adopt,
11 modify, repeal and enforce procedural, interpretive and legislative
12 rules.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3-5-107 of Title 27A, unless
15 there is created a duplication in numbering, reads as follows:

16 A. Any storage operator or pipeline operator is hereby
17 authorized, after obtaining any permit from the Department of
18 Environmental Quality required by the Geologic Storage of Carbon
19 Dioxide Act and any certificate of public convenience and necessity
20 from the Corporation Commission required by this act, to exercise
21 the power of eminent domain to acquire surface and subsurface rights
22 and property interests necessary or useful for the purpose of
23 constructing, operating or modifying the storage facility or carbon
24 dioxide transmission pipeline, including easements and rights-of-way

1 across lands for pipelines transporting carbon dioxide to and among
2 facilities constituting the storage facility. The right of eminent
3 domain shall be exercised in the same manner and by like proceedings
4 as provided for railroad corporations by the laws of this state.

5 B. The exercise of the right of eminent domain granted in this
6 act shall not prevent entities having the right to do so from
7 drilling through the storage facility in a manner as shall comply
8 with the rules issued for the purpose of protecting the storage
9 facility against pollution or invasion and against the escape or
10 migration of carbon dioxide. Furthermore, the right of eminent
11 domain set out in this act shall not prejudice the rights of the
12 owners of the lands or other rights or interests therein as to all
13 other uses not acquired for the storage facility.

14 C. The eminent domain authority authorized under this act shall
15 be in addition to any other power of eminent domain authorized by
16 law.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3-5-108 of Title 27A, unless
19 there is created a duplication in numbering, reads as follows:

20 The right of condemnation and eminent domain in the Geologic
21 Storage of Carbon Dioxide Act granted shall be without prejudice to
22 the rights of the owners of the lands or of other rights or
23 interests therein to drill or bore through the underground stratum
24 or formation so appropriated in a manner as shall comply with orders

1 and rules of the Corporation Commission issued for the purpose of
2 protecting underground storage strata or formations against
3 pollution and against the escape of natural gas therefrom and shall
4 be without prejudice to the rights of the owners of the lands or
5 other rights or interests therein as to all other uses thereof. The
6 additional cost of complying with such rules or orders in order to
7 protect the storage shall be paid by the public utility.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3-5-109 of Title 27A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Any person who violates any provision of this act, any
12 permit or any rule or order issued pursuant to this act, is subject
13 to a civil penalty not to exceed One Thousand Dollars (\$1,000.00)
14 per violation, unless the violation involves a knowingly false
15 statement or misrepresentation in any application or other document
16 permitted or required to be filed under the provisions of the
17 Geologic Storage of Carbon Dioxide Act, in which case the civil
18 penalty shall not exceed Five Thousand Dollars (\$5,000.00) per
19 violation. Civil penalties shall be recovered in a civil action
20 brought by the Attorney General in the name of the State of Oklahoma
21 in the district court of any county wherein the person resides or is
22 engaged in the activity complained of.

23 B. The Attorney General may seek an injunction against any
24 person in violation of any provision of this act or any permit, rule

1 or order issued pursuant to this act. In seeking an injunction, it
2 is not necessary for the Attorney General to post bond nor to allege
3 or prove at any stage of the proceeding that irreparable damage will
4 occur if the injunction is not issued or that the remedy at law is
5 inadequate.

6 SECTION 10. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3-5-110 of Title 27A, unless
8 there is created a duplication in numbering, reads as follows:

9 A. The Environmental Quality Board and the Corporation
10 Commission are authorized to promulgate rules necessary to implement
11 the provisions of the Geologic Storage of Carbon Dioxide Act.

12 B. The Department of Environmental Quality and the Corporation
13 Commission are authorized to enter into cooperative agreements with
14 other governments or government entities for the purpose of
15 regulating carbon dioxide storage projects that extend beyond state
16 regulatory authority under the provisions of this act.

17 SECTION 11. This act shall become effective January 1, 2011.

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