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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Reps. Dixon, Chatfield, and Small/Sens. Sharer and Lanier	<b>LAST UPDATED</b>	3/10/2025
		<b>ORIGINAL DATE</b>	2/20/2025
		<b>BILL NUMBER</b>	House Bill 458/aHENRC/aHA FC
<b>SHORT TITLE</b>	Carbon Dioxide Storage Stewardship Act	<b>ANALYST</b>	Davidson

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Metric ton storage fee revenue		At least \$675.0	At least \$1,175.0	At least \$1,675.0	At least \$2,175.0	Recurring	Geologic carbon dioxide long-term stewardship fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

Companion to House Bill 457

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Attorney General (NMAG)

Energy, Minerals and Natural Resources Department (EMNRD)

State Land Office (SLO)

New Mexico Institute of Mining and Technology (NMIMT)

#### Agency Declined to Respond

New Mexico Environment Department (NMED)

## SUMMARY

### Synopsis for HAFC Amendment to House Bill 458

The House Appropriations and Finance Committee amendment to House Bill 458 amends the fee collected, adding “not less than” before the \$.10 flat rate initially proposed. In addition to the this, the amendment enables the Oil Conservation Commission to establish a fee schedule which would be sufficient to meet the projected needs of the geologic carbon dioxide long-term stewardship fund for the long-term stewardship of geologic carbon sequestration.

### Synopsis for HENRC Amendment to House Bill 458

The House Energy, Environment and Natural Resources Committee amendment to House Bill

458 amends certification standards for sequestration units, adding provisions that the Oil Conservation Division (OCD) may grant to an operator certification of a closure “not less than five years” after completion of injection activities.

### **Synopsis of House Bill 458**

House Bill 458 (HB458) proposes to create the Geologic Carbon Dioxide Long-Term Stewardship Act and fund, with the act outlining how the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD) would promulgate rules for the enforcement of the proposed act and regulation of geologic carbon sequestration.

The bill also institutes a 10 cent fee for each metric ton of carbon stored. The fee revenue would be deposited into the fund the bill creates for long-term stewardship of the sequestered carbon dioxide (CO<sub>2</sub>).

The bill further enables the State Land Office (SLO) and other state agencies that own land to grant certifications of closure of sequestration projects.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

### **FISCAL IMPLICATIONS**

House Bill 458 creates a new fee of 10 cents per metric ton of carbon dioxide injected for storage, with the fee paid by operators of sequestration projects. LFC’s estimated revenue from House Bill 458 is based on information provided by the New Mexico Institute of Mining and Technology.

According to the Petroleum Recovery Research Center at the New Mexico Institute of Mining and Technology (NMIMT), four operators in the state have combined federal permits for up to 6.75 million tons per year of CO<sub>2</sub> sequestration. Analysis from NMIMT notes there is already 15 million tons per year of CO<sub>2</sub> storage identified or in development in the San Juan Basin.

LFC estimates, using the amounts for the four operators, initial revenue from the passage of HB258 could be up to \$675 thousand. This could increase as more operators and more sequestration projects begin. LFC’s longer term estimate, based on all 15 million tons of CO<sub>2</sub> storage identified or in development in the San Juan Basin, sets revenue at up to \$2.2 million a year. Due to this development realistically happening over an extended period, LFC’s estimate for the revenue is based on an additional 5 million tons of CO<sub>2</sub> stored per year rolling scale, with the full 15 million of storage estimate reached in FY29.

Petroleum Recovery Research Center notes that, if the projected fee revenue is roughly \$2 million a year, considering that most carbon sequestration projects run 30 years with an additional five years of post-project work before stewardship by the state begins the fund corpus could grow to roughly \$197 million after 35 years (with the aid of 5 percent interest year over year). The research center notes the fund total could grow even larger, depending on how many projects and then how many metric tons of carbon are stored. The center notes if the fund were to grow to either \$197 million or beyond, these funds should cover the costs of stewardship the state would inherit if the bill were passed.

HAFC's amendment to the bill creates more flexibility for the stability and growth of the geologic carbon dioxide long-term storage stewardship fund, setting the \$0.10 initially proposed fee as a floor while also enabling the Oil Conservation Commission (OCC) to create a fee schedule to "meet the projected needs of the fund," allowing for the fee to grow higher than \$0.10 if determined by OCC to be necessary for stewardship costs. LFC's revenue estimate for the fund is based on the \$0.10 floor; if OCC increases fees, revenue would also increase.

The State Land Office (SLO) notes the agency does not have the leasing instruments, financial assurances, or other instruments to perform the leasing activity the bill discusses. Due to this, SLO reports it would need additional personnel and resources. Its analysis did not provide an estimate of the quantity of additional personnel or resources the agency would need. Due to this, LFC estimates SLO could need two additional positions at the agency's average salary of \$118 thousand to implement the bill.

SLO analysis further notes the bill could have significant fiscal implications to the state after completion of CO2 injection operations. SLO indicates:

Once a certificate of closure is issued by OCD or a land-managing agency, the operator is absolved of liability (absent certain defined special circumstances, such as fraudulent misrepresentation by the operator), with liability shifting instead to the state, i.e., New Mexico taxpayers. The bill does not indicate which specific agency or other entity must bear the financial costs of long-term legacy issues, to the extent monies from the long-term storage stewardship fund are insufficient or unavailable. To the extent that the State Land Office would be forced to carry any costs on behalf of the "state" for harms or liabilities associated with CO2 sequestration facilities on or near state trust land, revenue from state land trust beneficiaries (public schools, universities, hospitals and other public institutions) would be impaired.

## SIGNIFICANT ISSUES

NMIMT's Petroleum Recovery Research Center notes the primary goal of storage is to sequester CO2 in the earth rather than have it emitted to the atmosphere, or in the case of direct air capture, to remove CO2 already emitted.

Analysis from NMIMT provides a breakdown of when CO2 is sequestered in the earth:

When CO2 is put into the earth, it is put into pores that contain very salty water (in New Mexico, at least as salty as the ocean and as much as 6 times saltier). When CO2 meets this salty water in the pores, roughly 1/3 of it soon becomes dissolved into the water, effecting a dramatic reduction in mobility of the CO2. Over decades and centuries, another 1/3 of the CO2 will mineralize and turn into rocks, also removing its mobility. The remaining free CO2 is what could potentially leak during stewardship. In order for free CO2 to move, an opening to the surface, or another formation must form. The most likely way this could occur is a well failure while the well is actively injecting. This risk is moderated by comprehensive monitoring of well-bore health, and if a failure were to occur during operations it would be the responsibility of the operator to repair the well.

NMIMT notes stewardship typically starts at either a minimum of five years after injection ceases, or the wells are permanently closed, or monitoring has shown no signs of movement for at least five years. NMIMT notes this results in the risk potentially being heavily mitigated before stewardship comes into play. Most stewardship funds will be used to continue regular monitoring of sites, with a reserve for any remediation efforts that could occur in the future.

EMNRD suggests House Bill 458 is one of the steps necessary for the state to obtain Class VI “primacy,” essentially enabling the state the ability to enforce existing federal regulations, in this case regarding the federal Safe Drinking Water Act. Another aspect of this is the long-term liability for any sequestered carbon dioxide (CO<sub>2</sub>) would become the liability, i.e. the stewardship obligation, of the state.

To administer a CO<sub>2</sub> sequestration project requires OCD to gain Class VI Underground Injection Control Primacy, an application it must send to the U. S. Environmental Protection Agency (EPA). The application is currently under review by EPA, so in the interim OCD will mirror its process with the current federal review process. Once OCD’s application for Class VI primacy is approved, OCD anticipates review of CO<sub>2</sub> sequestration projects will be faster.

Analysis from the New Mexico Attorney General (NMAG) notes House Bill 457 would greatly expand OCD’s authority and performance obligations. This has the potential to increase the agency’s legal exposure as well.

SLO notes HB458 authorizes the agency and other applicable state agencies to grant CO<sub>2</sub> sequestration operators “certificates of closure” but does not require CO<sub>2</sub> sequestration projects be permitted by any agency. SLO notes the bill does not clarify which entity or agency could be held financially responsible for legacy issues, which would imply the obligation would fall onto the state. As a result, SLO suggests the bill should clarify the potential impact these legacy issues could have on the state and who would ostensibly deal with the potential litigation and financial issues.

SLO reports the bill does not require operators of sequestration facilities to create or provide emergency response plans in their applications. SLO notes plans of that nature are standard practice in applications for acid gas injection wells, which OCD reviews, and the agency notes such a requirement should be included in the bill. SLO further notes pipeline ruptures have the potential to cause serious injury.

SLO notes the bill deliberately shifts liability and long-term responsibility for monitoring and remediation of sequestration projects to the state. SLO notes this obligation is largely based solely on the operators’ statement that the injections are complete, which SLO contends would the state responsible for long-term duties and liabilities on behalf of private parties without necessarily acquiring anything of value in return. Due to this, SLO notes this bill and this specific provision may be in violation of the state’s Anti-Donation Clause.

SLO expresses concern due to the bill not containing safeguards to ensure CO<sub>2</sub> injected into sequestration facilities is not contaminated by impurities such as volatile organic compounds.

SLO notes uses of the fund created by the bill include the long-term monitoring of geologic sequestration facilities, an obligation SLO believes should be incumbent on the operator, not the state. SLO notes use of the fund in this manner should be only when an entity cannot be located. SLO also notes the uses of the fund by OCD for training and personnel should be removed, limiting the use of the fund for remediation, plugging, emergency response, leaks, and monitoring. Without this, SLO believes the fund could be depleted and not available when needed.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 458 is a companion to House Bill 457, with the regulatory framework created in House Bill 458 in essence dependent on passage of House Bill 457.

House Bill 458 relates to House Joint Memorial 4, which requests the New Mexico Institute of Mining and Technology to study the costs and benefits of CO<sub>2</sub> capture and sequestration.

House Bill 458 relates to Senate Bill 215 from the 2024 legislative session, with both bills aiming to create a framework for sequestration projects.

## TECHNICAL ISSUES

NMAG notes minor formatting and grammatical differences between the definitions of carbon dioxide and geologic sequestration used in HB457 and HB458. Due to the companionship of the two bills, consistency between the two would improve implementation. NMAG further notes HB457 and HB458 have key differences between each bill's definition of sequestration facility. In particular, HB457 excludes class II wells, while HB458 excludes stratigraphic wells.

SLO notes the bill should ensure that, prior to OCD granting certification of closure and then transfer of stewardship to the state, the operator must initially receive, if state lands are part of the sequestration project, a certificate of closure from SLO.

NMAG notes HB458 grants SLO the ability to grant an operator a certificate of closure for a sequestration project on lands subject to the agency's jurisdiction and, if "the storage has demonstrated long-term security [and] monitoring of the site has not shown significant risk of future leakage." NMAG analysis expresses concern due to the bill not being clear as to who would hold stewardship responsibilities in this scenario. NMAG also notes the bill is unclear whether agencies other than SLO or OCD "have the authority to issue a certificate of closure with terms allowing for the transfer of stewardship to the state."

NMAG also notes the bill defines both certificate of closure and certification of completion of injection operations, with possible confusion due to the bill using the terms interchangeably. NMAG questions whether these are in fact different conclusions to a sequestration project or if a certificate of completion is then followed by a certificate of completion of injection or vice versa. Clearly defining the differences and usage would alleviate confusion.

NMAG analysis further notes payment and management of the geologic carbon dioxide long-term stewardship fund is unclear. NMAG questions if the State Treasurer remits the fees or if it is operators directly, or whether OCD collects from the operators and then remits the proceeds into the fund. NMAG also notes it is not clear which party is responsible for monitoring the amount of CO<sub>2</sub> injected and, thus, collecting the correct fee amount.

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