

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 650**

FINAL READING

Introduced by Flood, 19; Lowe, 37.

Read first time January 20, 2021

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to carbon dioxide; to adopt the Nebraska
- 2 Geologic Storage of Carbon Dioxide Act; to create funds; to provide
- 3 penalties; and to provide severability.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 24 of this act shall be known and may be  
2 cited as the Nebraska Geologic Storage of Carbon Dioxide Act.

3           Sec. 2. The Legislature finds, recognizes, and declares that it is  
4 in the public interest to promote the geologic storage of carbon dioxide.  
5 Doing so will benefit the state and the global environment by reducing  
6 greenhouse gas emissions and will help ensure the viability of the  
7 state's energy and power industries, to the economic benefit of Nebraska  
8 and its citizens. Further, geologic storage of carbon dioxide, a  
9 potentially valuable commodity, may allow for its ready availability if  
10 needed for commercial, industrial, or other uses. Geologic storage,  
11 however, to be practical and effective, requires cooperative use of  
12 surface and subsurface property interests and the collaboration of  
13 property owners. Obtaining consent from all owners may not be feasible,  
14 requiring procedures that promote, in a manner fair to all interests,  
15 cooperative management, thereby ensuring the maximum use of natural  
16 resources. Use of any subsurface stratum and any materials and fluids  
17 contained therein for geologic storage of carbon dioxide is a reasonable  
18 and beneficial use.

19           Sec. 3. For purposes of the Nebraska Geologic Storage of Carbon  
20 Dioxide Act:

21           (1) Applicable underground injection control program for each class  
22 of storage facility injection well means the program, or most recent  
23 amendment thereof, for that class of well in Nebraska as provided by  
24 federal law;

25           (2) Carbon dioxide stream means carbon dioxide from anthropogenic  
26 sources, plus incidental associated substances derived from the source  
27 materials and the production or capture process, and any substances added  
28 to the stream to enable or improve the injection process if such  
29 substances will not compromise the safety of geologic storage and will  
30 not compromise those properties of a storage reservoir which allow the  
31 reservoir to effectively enclose and contain the stored carbon dioxide

1 stream;

2 (3) Commission means the Nebraska Oil and Gas Conservation  
3 Commission;

4 (4) Geologic storage means the permanent or short-term underground  
5 storage of carbon dioxide streams in a storage reservoir;

6 (5) Permit means a permit issued by the commission under the  
7 Nebraska Geologic Storage of Carbon Dioxide Act allowing a person to  
8 operate a storage facility;

9 (6) Reservoir means a subsurface stratum, formation, cavity, or  
10 void, whether natural or artificially created, suitable for or capable of  
11 receiving through a well and geologically storing a carbon dioxide  
12 stream;

13 (7) Reservoir estate means ownership of any portion of a storage  
14 reservoir;

15 (8) Storage facility means the storage reservoir, underground  
16 equipment, and surface facilities and equipment used or proposed to be  
17 used in a geologic storage operation. The term includes the injection  
18 well and equipment used to connect the surface facility and equipment to  
19 the storage reservoir and underground equipment. The term does not  
20 include pipelines used to transport carbon dioxide to the storage  
21 facility;

22 (9) Storage operator means a person holding or applying for a permit  
23 under the act; and

24 (10) Storage reservoir means the reservoir proposed, authorized, or  
25 used for storing one or more carbon dioxide streams pursuant to a permit.  
26 The term does not include reservoirs used for purposes other than storage  
27 of carbon dioxide streams.

28 Sec. 4. (1) Title to any reservoir estate underlying the surface of  
29 lands and waters is vested in the owner of the overlying surface estate  
30 unless it has been severed and separately conveyed.

31 (2) A conveyance of the surface ownership of real property shall be

1 a conveyance of the reservoir estate ownership in all strata below the  
2 surface of such real property unless the ownership interest in such  
3 reservoir estate previously has been severed from the surface ownership  
4 or is explicitly excluded in the conveyance. The ownership of reservoir  
5 estates may be conveyed in the manner provided by law for the transfer of  
6 mineral interests in real property. No agreement or instrument conveying  
7 mineral or other interests underlying the surface shall act to convey  
8 ownership of any reservoir estate unless the agreement explicitly conveys  
9 that ownership interest.

10 (3) No provision of law, including a lawfully adopted rule or  
11 regulation, requiring notice to be given to a surface owner, to an owner  
12 of a mineral interest, or to both, shall be construed to require notice  
13 to persons holding ownership interest in any underlying reservoir estate  
14 unless the law specifies notice to such persons is required.

15 (4) Nothing in this section shall be construed to change or alter  
16 the common law existing as of the effective date of this act as it  
17 relates to the rights belonging to, or the dominance of, the mineral  
18 estate. For the purpose of determining the priority of subsurface uses  
19 between a severed mineral estate and reservoir estate as described in  
20 this section, the severed mineral estate is dominant regardless of  
21 whether ownership of the reservoir estate is vested in the several owners  
22 of the surface or is owned separately from the surface.

23 (5) All instruments which transfer the rights to reservoir estates  
24 under this section shall describe the scope of any right of the owner of  
25 the reservoir estate to use the surface estate. The owner of any  
26 reservoir estate right shall have no right to use the surface estate  
27 beyond that set out in a properly recorded instrument.

28 (6) Transfers of reservoir estate rights made after the effective  
29 date of this act are null and void at the option of the owner of the  
30 surface estate if the transfer instrument does not contain a specific  
31 description of the location of the reservoir estate being transferred.

1 The description may include but is not limited to a subsurface geologic  
2 or seismic survey or a metes and bounds description of the surface lying  
3 over the transferred reservoir estate. In the event a description of the  
4 surface is used, the transfer shall be deemed to include the reservoir  
5 estate at all depths underlying the described surface area unless  
6 specifically excluded. The validity of reservoir estate rights under this  
7 subsection shall not affect the respective liabilities of any party, and  
8 such liabilities shall operate in the same manner as if the reservoir  
9 estate transfer were valid.

10 (7) Nothing in this section shall alter, amend, diminish, or  
11 invalidate rights to the use of subsurface reservoir estates that were  
12 acquired by contract or lease prior to the effective date of this act.

13 Sec. 5. The commission has authority:

14 (1) Over all persons and property necessary to administer and  
15 enforce the Nebraska Geologic Storage of Carbon Dioxide Act and its  
16 objectives;

17 (2) To regulate activities relating to a storage facility, including  
18 construction, operation, and closure;

19 (3) To enter, at a reasonable time and in a reasonable manner, a  
20 storage facility to inspect equipment and facilities, to observe,  
21 monitor, and investigate operations, and to inspect records required to  
22 be maintained at the facility;

23 (4) To require that storage operators provide assurance, including  
24 bonds, that money is available to fulfill the storage operator's duties;

25 (5) To exercise continuing jurisdiction over storage operators and  
26 storage facilities, including the authority, after notice and hearing, to  
27 amend provisions in a permit and to revoke a permit; and

28 (6) To grant, for good cause, exceptions to the act's requirements  
29 and the requirements of any implementing rules and regulations.

30 Sec. 6. Geologic storage is allowed if a permit has been obtained  
31 from both the commission and the Underground Injection Control program

1 permitting authority. A permit may be transferred if the commission and  
2 the Underground Injection Control program permitting authority consent.

3 Sec. 7. (1) A person applying for a permit shall:

4 (a) Comply with application requirements set by the commission;

5 (b) Pay a fee in an amount set by the commission. The amount of the  
6 fee shall be set by rule and regulation and shall be based on the  
7 commission's anticipated cost of processing the application. The fee  
8 shall be deposited in the Carbon Dioxide Storage Facility Administrative  
9 Fund; and

10 (c) Pay to the commission the costs the commission incurs in  
11 publishing notices for hearings and holding hearings on permit  
12 applications.

13 (2) In processing permit applications, the commission shall give  
14 priority to storage operators who intend to store carbon dioxide produced  
15 in Nebraska.

16 Sec. 8. (1) The commission shall hold a public hearing before  
17 issuing a permit.

18 (2) Notice of the hearing shall be provided in accordance with  
19 section 57-911 and commission rules and regulations adopted and  
20 promulgated thereunder.

21 (3) Notice of the hearing shall be given to each mineral lessee,  
22 mineral owner, and reservoir estate owner within the storage reservoir  
23 and within one-half mile of the storage reservoir's boundaries.

24 (4) Notice of the hearing shall be given to each surface owner of  
25 land overlying the storage reservoir and within one-half mile of the  
26 storage reservoir's boundaries.

27 (5) Notice of the hearing shall be given to any additional persons  
28 that the commission requires.

29 (6) Hearing notices required by this section shall comply with  
30 deadlines set by the commission and shall contain the information the  
31 commission requires.

1           Sec. 9. Before issuing a permit, the commission shall consult with  
2 the Department of Environment and Energy and the Underground Injection  
3 Control program permitting authority.

4           Sec. 10. Before issuing a permit, the commission shall find:

5           (1) That the storage operator has complied with all requirements set  
6 by the commission;

7           (2) That the storage facility is suitable and feasible for carbon  
8 dioxide injection and storage;

9           (3) That the carbon dioxide to be stored is of a quality that allows  
10 it to be safely and efficiently stored in the storage reservoir;

11           (4) That the proposed storage facility will not endanger surface  
12 waters or underground sources of drinking water;

13           (5) That carbon dioxide will not escape into the atmosphere or  
14 surface waters from the storage reservoir;

15           (6) That the storage facility will not endanger human health or  
16 unduly endanger the environment;

17           (7) That the horizontal and vertical boundaries of the storage  
18 reservoir are defined;

19           (8) That the storage operator will establish a testing and  
20 monitoring plan to assess the location and migration of carbon dioxide  
21 injected for storage and to ensure compliance with all permit, statutory,  
22 and administrative requirements;

23           (9) That the storage operator has satisfied all of the requirements  
24 in subdivisions (2) through (8) of this section if the storage operator  
25 has obtained all permits required by the applicable underground injection  
26 control program permitting authority for each storage facility injection  
27 well;

28           (10) That the storage facility is in the public interest;

29           (11) In accordance with the United States Environmental Protection  
30 Agency Underground Injection Control Program, that the storage operator  
31 has completed a comprehensive geologic study which includes a seismic

1 risk assessment;

2 (12) That the storage operator has made a good-faith effort to  
3 obtain the consent of all persons who own reservoir estates within the  
4 storage reservoir;

5 (13) That the storage operator has obtained the consent of persons  
6 who own reservoir estates comprising at least sixty percent of the  
7 physical volume contained within the defined storage reservoir;

8 (14) Whether the storage reservoir contains commercially valuable  
9 minerals. If it does, a permit may be issued only if the commission is  
10 satisfied that the interests of the mineral owners or mineral lessees  
11 will not be adversely affected or have been addressed in an arrangement  
12 entered into by the mineral owners or mineral lessees and the storage  
13 operator; and

14 (15) That all nonconsenting reservoir estate owners are or will be  
15 equitably compensated.

16 Sec. 11. The commission may include in a permit or order all things  
17 necessary to carry out the objectives of the Nebraska Geologic Storage of  
18 Carbon Dioxide Act and to protect and adjust the respective rights and  
19 obligations of persons affected by geologic storage.

20 Sec. 12. If a storage operator does not obtain the consent of all  
21 persons who own a reservoir estate within the storage reservoir, the  
22 commission may require that any reservoir estates owned by nonconsenting  
23 owners be included in a storage facility and subject to geologic storage.

24 Sec. 13. When the commission issues a permit, it shall also issue a  
25 certificate stating that the permit has been issued, describing the area  
26 covered, and containing other information the commission deems  
27 appropriate. The commission shall file a copy of the certificate with the  
28 register of deeds in the county or counties where the storage facility is  
29 located.

30 Sec. 14. (1) The commission shall take action to ensure that a  
31 storage facility does not cause pollution or create a nuisance. For the

1 purposes of this provision and in applying other laws, carbon dioxide  
2 streams stored, and which remain in storage under a commission permit,  
3 are not a pollutant and do not constitute a nuisance.

4 (2) The commission's authority in subsection (1) of this section  
5 does not limit the jurisdiction held by the Department of Environment and  
6 Energy. Nothing else in the Nebraska Geologic Storage of Carbon Dioxide  
7 Act limits the jurisdiction held by the Department of Environment and  
8 Energy.

9 (3) The commission shall take action to ensure that substances that  
10 compromise the objectives of the act or the integrity of a storage  
11 reservoir do not enter a storage reservoir.

12 (4) The commission shall take action to ensure that carbon dioxide  
13 does not escape from a storage facility.

14 Sec. 15. The Nebraska Geologic Storage of Carbon Dioxide Act and  
15 any issuance of a permit under the act shall not be construed to:

16 (1) Prejudice the rights of property owners within a storage  
17 facility to exercise rights that have not been committed to a storage  
18 facility;

19 (2) Prevent a mineral owner or mineral lessee from drilling through  
20 or near a storage reservoir to explore for and develop minerals if the  
21 drilling, production, and related activities comply with commission  
22 requirements that preserve the storage facility's integrity and protect  
23 the objectives of the act; or

24 (3) Amend or alter any statute, rule, or regulation in effect on the  
25 effective date of this act which relates to the commission's authority to  
26 regulate operations to increase ultimate recovery from a pool as defined  
27 in section 57-903, including, but not limited to, the introduction of  
28 carbon dioxide into a pool.

29 Sec. 16. (1) Storage operators shall pay the commission a fee on  
30 each ton of carbon dioxide injected for storage. The fee shall be in an  
31 amount set by the commission in rules and regulations adopted and

1 promulgated by the commission. The amount shall be based on the  
2 commission's anticipated expenses in regulating storage facilities during  
3 their construction, operational, and preclosure phases.

4 (2) Any fees collected pursuant to this section shall be remitted to  
5 the State Treasurer for credit to the Carbon Dioxide Storage Facility  
6 Administrative Fund, which is hereby created. The fund shall be  
7 administered by the commission and shall be used only for defraying the  
8 commission's expenses in processing permit applications, regulating  
9 storage facilities during their construction, operational, and preclosure  
10 phases, and making storage amount determinations under section 24 of this  
11 act. The commission, however, through a cooperative or interlocal  
12 cooperation agreement with another state agency, may use the fund to  
13 compensate the cooperating agency for expenses the cooperating agency  
14 incurs in carrying out regulatory responsibilities such agency may have  
15 over a storage facility. Interest earned by the fund shall be deposited  
16 in the fund. Any money in the fund available for investment shall be  
17 invested by the state investment officer pursuant to the Nebraska Capital  
18 Expansion Act and the Nebraska State Funds Investment Act. Transfers from  
19 the fund are not permitted.

20 Sec. 17. (1) In addition to the fee required under section 16 of  
21 this act, storage operators shall pay the commission a fee on each ton of  
22 carbon dioxide injected for storage. The fee shall be in an amount set by  
23 the commission in rules and regulations adopted and promulgated by the  
24 commission. The amount shall be based on the commission's anticipated  
25 expenses associated with long-term monitoring and management of the  
26 storage facility following issuance of the certificate of project  
27 completion under section 19 of this act.

28 (2) Any fees collected pursuant to this section shall be remitted to  
29 the State Treasurer for credit to the Carbon Dioxide Storage Facility  
30 Trust Fund, which is hereby created. The fund shall be administered by  
31 the commission and shall be used only for defraying expenses the

1 commission incurs in long-term monitoring and management of a closed  
2 storage facility. The commission, however, through a cooperative or  
3 interlocal cooperation agreement with another state agency, may use the  
4 fund to compensate the cooperating agency for expenses the cooperating  
5 agency incurs in carrying out regulatory responsibilities such agency may  
6 have over a storage facility. Interest earned by the fund shall be  
7 deposited in the fund. Any money in the fund available for investment  
8 shall be invested by the state investment officer pursuant to the  
9 Nebraska Capital Expansion Act and the Nebraska State Funds Investment  
10 Act. Transfers from the fund are not permitted.

11       Sec. 18. The storage operator has title to the carbon dioxide  
12 injected into and stored in a storage reservoir and holds title until the  
13 commission issues a certificate of project completion under section 19 of  
14 this act. While the storage operator holds title, the operator is liable  
15 for any damage the carbon dioxide may cause, including damage caused by  
16 carbon dioxide that escapes from the storage facility.

17       Sec. 19. (1) After carbon dioxide injections into a reservoir end  
18 and upon application by the storage operator, the commission shall  
19 consider issuing a certificate of project completion.

20       (2) The certificate may only be issued after public notice and  
21 hearing. The commission shall establish notice requirements for such  
22 hearing.

23       (3) The certificate may only be issued after the commission has  
24 consulted with the Department of Environment and Energy and the  
25 Underground Injection Control program permitting authority.

26       (4) The certificate may only be issued if the storage operator:

27       (a) Is in full compliance with all laws governing the storage  
28 facility;

29       (b) Shows that it has addressed all pending claims regarding the  
30 storage facility's operation;

31       (c) Shows that it has received an authorization of site closure from

1 the applicable underground injection control program permitting authority  
2 for each storage facility injection well; and

3 (d) Shows that any wells, equipment, and facilities to be used in  
4 the post-closure period are in good condition and retain mechanical  
5 integrity.

6 (5) Once a certificate is issued:

7 (a) Title to the storage facility and to the stored carbon dioxide  
8 transfers, without payment of any compensation, to the State of Nebraska;

9 (b) Title acquired by the state includes all rights and interests  
10 in, and all responsibilities associated with, the stored carbon dioxide;

11 (c) The storage operator and all persons who generated any injected  
12 carbon dioxide streams are released from all regulatory requirements  
13 associated with the storage facility;

14 (d) Any financial assurance provided by the storage operator shall  
15 be released; and

16 (e) Monitoring and managing the storage facility is the state's  
17 responsibility to be overseen by the commission.

18 Sec. 20. (1) Any person who violates any provision of the Nebraska  
19 Geologic Storage of Carbon Dioxide Act or any rule, regulation, or order  
20 of the commission under the act shall be guilty of a Class II  
21 misdemeanor. Each day that such violation continues shall constitute a  
22 separate offense.

23 (2) If any person, for the purpose of evading the provisions of the  
24 act or any rule, regulation, or order of the commission under the act,  
25 makes or causes to be made any false entry or statement in a report  
26 required by the act or by any such rule, regulation, or order, makes or  
27 causes to be made any false entry in any record, account, or memorandum  
28 required by the act or by any such rule, regulation, or order, or removes  
29 from this state or destroys, mutilates, alters, or falsifies any such  
30 record, account, or memorandum, such person shall be guilty of a Class II  
31 misdemeanor.

1       (3) Any person who knowingly aids or abets any other person in the  
2 violation of any provision of the act or any rule, regulation, or order  
3 of the commission under the act shall be subject to the same penalty as  
4 that prescribed by the act for the violation by such other person.

5       (4) The penalties provided in this section shall be recoverable by  
6 suit filed by the Attorney General in the name and on behalf of the  
7 commission, in the district court of the county in which the defendant  
8 resides, or in which any defendant resides if there be more than one  
9 defendant, or in the district court of any county in which the violation  
10 occurred. The payment of any such penalty shall not operate to relieve a  
11 person on whom the penalty is imposed from liability to any other person  
12 for damages arising out of such violation.

13       (5) In determining the amount of the penalty, the court shall  
14 consider:

15       (a) The nature of the violation, including its circumstances and  
16 gravity, and the hazard or potential hazard to the public's or a private  
17 person's health, safety, and economic welfare;

18       (b) The economic or environmental harm caused by the violation;

19       (c) The economic value or other advantage gained by the person  
20 committing the violation;

21       (d) The history of previous violations;

22       (e) The amount necessary to deter future violations;

23       (f) Efforts to correct the violation; and

24       (g) Other matters justice requires.

25       Sec. 21. (1) The commission may enter into agreements with other  
26 government entities and state agencies for the purpose of carrying out  
27 the objectives of the Nebraska Geologic Storage of Carbon Dioxide Act,  
28 including agreements under the Interlocal Cooperation Act when  
29 applicable.

30       (2) The commission may enter into contracts with private persons to  
31 assist it in carrying out the objectives of the act.

1           Sec. 22. Cooperative operation of a storage facility under a permit  
2 issued by the commission does not violate Nebraska statutes relating to  
3 trusts, monopolies, or restraint of trade.

4           Sec. 23. State agencies and political subdivisions are authorized  
5 to consent to and participate in a geologic storage project.

6           Sec. 24. (1) The commission, under procedures and criteria it may  
7 adopt, shall determine the amount of injected carbon dioxide stored in a  
8 storage reservoir.

9           (2) The purpose for determining storage amounts is to facilitate  
10 using the stored carbon dioxide for such matters as carbon credits,  
11 allowances, trading, emissions allocations, and offsets, and for other  
12 similar purposes.

13           (3) The commission may charge a reasonable fee to the person  
14 requesting a storage determination. Any such fee shall be set by the  
15 commission in rules and regulations adopted and promulgated by the  
16 commission.

17           (4) Any fees received by the commission under this section for  
18 storage determinations shall be remitted to the State Treasurer for  
19 credit to the Carbon Dioxide Storage Facility Administrative Fund.

20           Sec. 25. If any section in this act or any part of any section is  
21 declared invalid or unconstitutional, the declaration shall not affect  
22 the validity or constitutionality of the remaining portions.