A BILL TO BE ENTITLED

AN ACT

relating to the injection and geologic storage of anthropogenic carbon dioxide.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 27.002, Water Code, is amended by adding Subdivisions (19) through (25) to read as follows:

(19) "Anthropogenic carbon dioxide" means carbon dioxide that would otherwise have been released to the atmosphere that has been:

(A) stripped, segregated, or divided from any other fluid stream; or

(B) captured from an emission source, such as:

(i) an advanced clean energy project as defined by Section 382.003, Health and Safety Code, or another type of electric generation facility;

(ii) an industrial source of emissions, together with any incidental associated substance derived from the source material for, or from the process of capturing, the carbon dioxide; and

(iii) any substance added to the carbon dioxide to enable or improve the process of injecting the carbon dioxide.

(20) "Anthropogenic carbon dioxide injection well" means an artificial excavation or opening in the ground made by

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digging, boring, drilling, jetting, driving, or another method and
used to inject or transmit anthropogenic carbon dioxide into a
reservoir.

(21) "Enhanced recovery operation" means the use of
any process for the displacement of hydrocarbons from the reservoir
other than primary recovery and includes the use of an immiscible,
miscible, chemical, thermal, or biological process. The term does
not include pressure maintenance or a water disposal project.

(22) "Geologic storage" means underground storage of
anthropogenic carbon dioxide in a reservoir.

(23) "Geologic storage facility" means the
underground reservoir, underground equipment, and surface
buildings and equipment used or to be used for the geologic storage
of anthropogenic carbon dioxide and all surface and subsurface
rights and appurtenances necessary to the operation of a facility
for the geologic storage of anthropogenic carbon dioxide. The term
includes any reasonable and necessary areal buffer and subsurface
monitoring zones required to ensure the safe and efficient
operation of the facility. The term does not include a pipeline
used to transport carbon dioxide from the facility at which the
carbon dioxide is captured to the injection and geologic storage
facility site.

(24) "Oil or gas" means oil, natural gas, or gas
condensate.

(25) "Reservoir" means a natural or artificially
created subsurface sedimentary stratum, formation, aquifer, or
cavity or void, including an oil or gas reservoir, saline
formation, or coal seam, that is suitable for or capable of being
made suitable for protecting against the escape or migration of
anthropogenic carbon dioxide from the reservoir.

SECTION 2. Subchapter B, Chapter 27, Water Code, is amended
by amending Section 27.022 and adding Section 27.0221 to read as
follows:

Sec. 27.022. JURISDICTION OVER ANTHROPOGENIC CARBON
DIOXIDE INJECTION. (a) The commission has jurisdiction over the
injection of anthropogenic carbon dioxide except as provided by
Subchapter C-1.

(b) The commission shall adopt rules and procedures
reasonably required for the performance of its powers, duties, and
functions under this section [produced by a clean coal project, to
the extent authorized by federal law, into a zone that is below the
base of usable quality water and that is not productive of oil, gas,
or geothermal resources by a Class II injection well, or by a Class
I injection well if required by federal law].

Sec. 27.0221. LETTER FROM RAILROAD COMMISSION. (a) A
person making application to the commission for a permit to drill
and operate an anthropogenic carbon dioxide injection well or
operate a geologic storage facility shall submit with the
application a letter from the railroad commission concluding that
drilling or using the anthropogenic carbon dioxide injection well
and injecting anthropogenic carbon dioxide into the subsurface
stratum will not endanger or injure any known oil or gas reservoir.

(b) In a hearing on an application for a permit under this
section, the commission may not proceed to hearing on any issues
other than preliminary matters such as notice until the letter
required from the railroad commission under Subsection (a) is
provided to the commission.

(c) The commission shall find that there will be no
impairment of oil or gas mineral rights if the railroad commission
has issued a letter under Subsection (a) that concludes that
drilling and using the anthropogenic carbon dioxide injection well
will not endanger or injure any known oil or gas reservoir.

SECTION 3. Chapter 27, Water Code, is amended by adding
Subchapter C-1 to read as follows:

SUBCHAPTER C-1. INJECTION AND GEOLOGIC STORAGE OF ANTHROPOGENIC
CARBON DIOXIDE

Sec. 27.041. JURISDICTION. (a) The railroad commission
has jurisdiction over injection of anthropogenic carbon dioxide
into a reservoir that is initially productive of oil, gas, or
geothermal resources or a saline formation directly above or below
that reservoir. Any well initially completed under the
jurisdiction of the railroad commission shall remain under the
jurisdiction of the railroad commission, notwithstanding the
well's subsequent use for the injection of anthropogenic carbon
dioxide.

(b) This subchapter does not apply to the injection of fluid
through the use of a Class II injection well as defined by 40 C.F.R.
Section 144.6(b) for the sole purpose of the enhanced recovery of
oil or gas.

Sec. 27.042. PERMIT FROM RAILROAD COMMISSION. A person may
not begin drilling or operating an anthropogenic carbon dioxide
injection well or constructing or operating a geologic storage
facility regulated under this subchapter without first obtaining a
permit from the railroad commission.

Sec. 27.043. INFORMATION REQUIRED OF APPLICANT. The
railroad commission shall require an applicant to provide any
information the railroad commission considers necessary to
discharge its duties under this subchapter.

Sec. 27.044. FEES. (a) The railroad commission may impose
fees to cover the cost of:

(1) permitting, monitoring, and inspecting
anthropogenic carbon dioxide injection wells and geologic storage
facilities; and

(2) enforcing this subchapter and rules adopted by the
railroad commission under this subchapter.

(b) Fees collected by the railroad commission under this
section shall be deposited to the credit of the anthropogenic
carbon dioxide storage trust fund established under Section
120.003, Natural Resources Code.

Sec. 27.045. LETTER FROM EXECUTIVE DIRECTOR. (a) An
application to the railroad commission for a permit under this
subchapter must include a letter from the executive director
stating that drilling and operating the anthropogenic carbon
dioxide injection well or operating the geologic storage facility
will not endanger any freshwater strata in that area and that the
formation or stratum to be used for the geologic storage facility is
not freshwater sand.

(b) To make the determination required by Subsection (a),
the executive director shall review:

1. the area of review and corrective action plans;
2. any subsurface monitoring plans required during injection or post injection;
3. any postinjection site care plans; and
4. any other elements of the application reasonably required in order for the executive director to make the determination required by Subsection (a).

(c) The commission shall adopt rules to implement and administer this section.

Sec. 27.046. RULES. The railroad commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this subchapter, including rules for:

1. the injection and geologic storage of anthropogenic carbon dioxide, including:
   
   A. geologic site characterization, including acquisition of property rights;
   B. area of review and corrective action;
   C. well construction;
   D. operation;
   E. mechanical integrity testing;
   F. monitoring;
   G. well plugging;
   H. postinjection site care;
   I. site closure; and
   J. long-term stewardship;
(2) the enforcement of this subchapter and rules adopted by the railroad commission under this subchapter; and

(3) the collection and administration of:

(A) fees imposed under Section 27.044; and

(B) penalties imposed for a violation of this subchapter or rules adopted by the railroad commission under this subchapter.

Sec. 27.047. CONSISTENCY WITH AND IMPLEMENTATION OF FEDERAL REQUIREMENTS. (a) Rules adopted by the railroad commission under this subchapter must be consistent with and not more stringent than rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage of anthropogenic carbon dioxide.

(b) If rules or regulations adopted to govern the injection and geologic storage of anthropogenic carbon dioxide under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) allow the state to seek primary enforcement authority under the underground injection control program, the commission and the railroad commission may seek primacy to administer and enforce the program subject to the jurisdiction of each agency under state law.

Sec. 27.048. MEMORANDUM OF UNDERSTANDING. The commission and the railroad commission by rule shall amend as necessary the memorandum of understanding recorded in 16 T.A.C. Section 3.30 or shall enter into a new memorandum of understanding as necessary to comply with the provisions of this subchapter.

Sec. 27.049. FINANCIAL RESPONSIBILITY. A person to whom a permit is issued under this subchapter must provide to the railroad
Commission annually evidence of financial responsibility that is satisfactory to the railroad commission.

SECTION 4. Section 27.051, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The railroad commission may grant an application for a permit under Subchapter C in whole or part and may issue the permit if it finds:

(1) that the use or installation of the injection well is in the public interest;
(2) that the use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;
(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and
(4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 [of this code].

(b-1) The railroad commission may issue a permit under Subchapter C-1 if it finds that:

(1) the injection and geologic storage of anthropogenic carbon dioxide will not endanger or injure any oil, gas, or other mineral formation;
(2) with proper safeguards, both groundwater and surface fresh water can be adequately protected from pollution;
(3) the injection of anthropogenic carbon dioxide will not endanger human health and safety; and
(4) the applicant for the permit meets all of the other statutory and regulatory requirements for the issuance of the permit.

SECTION 5. Sections 27.071 and 27.072, Water Code, are amended to read as follows:

Sec. 27.071. POWER TO ENTER PROPERTY. Members of the commission and the railroad commission and employees of the commission and the railroad commission may enter public or private property to inspect and investigate conditions relating to injection well, monitoring well, disposal well, production well, anthropogenic carbon dioxide injection well, or geologic storage activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of the commission or railroad commission. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Sec. 27.072. POWER TO EXAMINE RECORDS. Members of the commission and the railroad commission and employees of the commission and railroad commission may examine and copy those records or memoranda of a business they are investigating as provided by Section 27.071 [of this code] that relate to the operation of an injection well, monitoring well, disposal well, production well, anthropogenic carbon dioxide injection well, or geologic storage facility, or any other records required to be maintained by law.

SECTION 6. Subsections (a) and (b), Section 27.073, Water
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Code, are amended to read as follows:

(a) A person to whom an injection well or anthropogenic carbon dioxide injection well permit is issued may be required by the commission or railroad commission to maintain a performance bond or other form of financial security to ensure that:

(1) an abandoned injection well is properly plugged;

or

(2) funds are available for plugging, postinjection site care, and closure of an anthropogenic carbon dioxide injection well.

(b) Each state agency is authorized to receive funds as the beneficiary of a financial responsibility mechanism established under this section for the proper plugging of an injection well or proper management of an anthropogenic carbon dioxide injection well or geologic storage facility. Each state agency is authorized to expend such funds from a financial responsibility mechanism for the plugging of wells covered by that mechanism.

SECTION 7. Chapter 91, Natural Resources Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. CONVERSION OF PURPOSE OF WELLS

Sec. 91.801. CONVERSION OF WELL TO NEW OR ADDITIONAL PURPOSE. (a) The commission shall adopt rules allowing:

(1) a person to obtain an injection well permit for multiple purposes; and

(2) an operator of a well authorized by a permit issued by the commission to convert the well from its authorized purpose to a new or additional purpose.
If a well is converted to or authorized as an anthropogenic carbon dioxide injection well as defined by Section 27.002, Water Code, Subchapter C-1, Chapter 27, Water Code, applies to the well.

SECTION 8. Subtitle D, Title 3, Natural Resources Code, is amended by adding Chapter 120 to read as follows:

CHAPTER 120. OWNERSHIP AND STEWARDSHIP OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well," and "geologic storage facility" have the meanings assigned by Section 27.002, Water Code.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Storage operator" means a person authorized by the commission to operate a geologic storage facility.

Sec. 120.002. OWNERSHIP OF ANTHROPOGENIC CARBON DIOXIDE.

(a) Unless otherwise expressly provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, anthropogenic carbon dioxide stored in a geologic storage facility is considered to be the personal property of the storage operator or the storage operator's heirs, successors, or assigns.

(b) Absent a final judgment of wilful abandonment rendered by a court or a regulatory determination of closure or abandonment, anthropogenic carbon dioxide stored in a geologic storage facility is not considered to be the property of the owner of the surface or...

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mineral estate in the land in which the anthropogenic carbon
dioxide is stored or of a person claiming under the owner of the
surface or mineral estate.

(c) The owner, as designated by Subsection (a) or (b), of
the anthropogenic carbon dioxide stored in a geologic storage
facility, or the owner's heirs, successors, or assigns, may
produce, take, or reduce to possession anthropogenic carbon dioxide
stored in a geologic storage facility.

Sec. 120.003. ANTHROPOGENIC CARBON DIOXIDE STORAGE TRUST
FUND. (a) The anthropogenic carbon dioxide storage trust fund is
created as a special fund in the state treasury.

(b) The anthropogenic carbon dioxide storage trust fund is
an interest-bearing fund. Interest earned on money in the fund
shall be deposited to the credit of the fund.

(c) Fees collected by the commission under Subchapter C-1,
Chapter 27, Water Code, and penalties imposed for violations of
that subchapter or rules adopted under that subchapter shall be
deposited to the credit of the anthropogenic carbon dioxide storage
trust fund.

(d) The anthropogenic carbon dioxide storage trust fund may
be used by the commission only for:

(1) inspecting, monitoring, investigating, recording,
and reporting on anthropogenic carbon dioxide injection wells and
geologic storage facilities;

(2) long-term monitoring of anthropogenic carbon
dioxide injection wells and geologic storage facilities, including
surface facilities and wells;
remediation of mechanical problems associated with anthropogenic carbon dioxide injection wells and surface infrastructure;

(4) repairing mechanical leaks at geologic storage facilities;

(5) plugging abandoned anthropogenic carbon dioxide injection wells;

(6) training and technology transfer related to anthropogenic carbon dioxide injection and geologic storage; and

(7) compliance and enforcement activities related to anthropogenic carbon dioxide injection and geologic storage.

Sec. 120.004. EXTRACTION OF STORED ANTHROPOGENIC CARBON DIOXIDE. (a) The commission shall adopt rules allowing anthropogenic carbon dioxide stored in a geologic storage facility to be extracted for a commercial or industrial use.

(b) The commission has jurisdiction over the extraction of anthropogenic carbon dioxide stored in a geologic storage facility.

SECTION 9. (a) In this section, "anthropogenic carbon dioxide," "geologic storage," and "geologic storage facility" have the meanings assigned by Section 27.002, Water Code.

(b) Not later than December 1, 2010, the Commissioner of the General Land Office shall file with the legislature a report on a recommended framework for managing activities related to geologic storage on state-owned land. The report shall include:

(1) recommended criteria for identifying candidate geologic storage sites in each of the following types of geological settings:
operating oil and gas fields;

(B) depleted oil and gas fields;

(C) unminable coal seams;

(D) deep saline formations;

(E) deep geological systems that may be used as engineered reservoirs to extract economical quantities of heat from geothermal resources of low permeability or porosity;

(F) deep geological systems containing igneous formations; and

(G) coal beds being used for methane recovery;

(2) a proposed regulatory framework for leasing state-owned land for geologic storage, including an assessment of options to ensure that the state receives fair market value for using state-owned land for the geologic storage;

(3) a proposed procedure for:

(A) providing an opportunity for public review of, and the presentation of comments by interested persons regarding, any activities related to geologic storage on state-owned land; and

(B) ensuring that the quality of the natural and cultural resources of state-owned land overlying the site of a geologic storage facility are protected from any geologic storage activities at the site;

(4) a description of the status of leasehold or mineral estate liability issues related to the geological subsurface trespass of, or caused by, anthropogenic carbon dioxide stored in state-owned land, including any relevant experience from...
enhanced oil recovery using carbon dioxide on state-owned land;

(5) recommendations for additional legislation that may be required to ensure that public land management and leasing laws are adequate to accommodate geologic storage;

(6) an identification of the legal and regulatory issues specific to geologic storage in cases in which title to the mineral estate is held by the state but title to the surface estate is not held by the state;

(7) an identification of the issues specific to the issuance of pipeline rights-of-way on state-owned land; and

(8) recommendations for additional legislation that may be required to clarify the appropriate framework for issuing rights-of-way for anthropogenic carbon dioxide pipelines on public land.

(c) In preparing the report under Subsection (b) of this section, the Commissioner of the General Land Office shall coordinate with:

(1) the Bureau of Economic Geology of The University of Texas at Austin;

(2) the Railroad Commission of Texas;

(3) the Texas Commission on Environmental Quality; and

(4) the heads of other appropriate agencies.

(d) This section expires December 31, 2010.

SECTION 10. (a) Not later than January 1 of every odd-numbered year, the Texas Commission on Environmental Quality and the Railroad Commission of Texas shall issue a joint report to the legislature providing an assessment of the permitting process.
for anthropogenic carbon dioxide injection wells and geologic storage facilities and the status of compliance with any federal rules regulating the injection and storage of anthropogenic carbon dioxide.

(b) The report shall include:

(1) the status of any applications for permits that have been received since the prior report;

(2) an update on the exchange of information between the Texas Commission on Environmental Quality and the Railroad Commission of Texas as required by the memorandum of understanding and Sections 27.0221 and 27.045, Water Code, as added by this Act;

(3) the status of any request for primary enforcement authority for the underground injection and geologic storage of anthropogenic carbon dioxide under the underground injection control program; and

(4) any recommendations for additional legislation, modifications to the memorandum of understanding, or new rules for regulating the injection and storage of anthropogenic carbon dioxide.

(c) This section expires January 1, 2019.

SECTION 11. Section 27.038, Water Code, is repealed.

SECTION 12. (a) Not later than January 1, 2010, the Railroad Commission of Texas shall adopt rules under Section 27.046, Water Code, as added by this Act.

(b) The Texas Commission on Environmental Quality and the Railroad Commission of Texas shall adopt rules under Section 27.048, Water Code, as added by this Act, as soon as practicable.
after the effective date of this Act.

(c) The Railroad Commission of Texas shall adopt rules under Sections 91.801 and 120.004, Natural Resources Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 13. This Act takes effect September 1, 2009.