

## **BILL ANALYSIS**

Senate Research Center  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Energy and manufacturing industries across Texas and the world are undertaking to store carbon dioxide as part of their industrial process in making products that we all use every day. Texas law and policy must be updated to accommodate industry's ability to permanently store carbon. Twelve other states have already passed legislation to facilitate carbon storage. Texas is behind these states in the development of this emerging industry, which analysts estimate to be a multi-trillion dollar industry that also provides additional revenue opportunities for landowners. Texas is uniquely positioned to participate in this industry because of its wealth of expertise in well-drilling and reservoir modeling, ideal geology onshore and offshore to store carbon dioxide, and diverse industrial base that produces carbon dioxide. S.B. 2107 would bring Texas into a lead position to utilize this innovative technology in attracting jobs and investment to the Lone Star State. S.B. 2107 amends current law to define pore space ownership, address long-term responsibility of carbon storage projects, and address the process of acquiring land for a carbon storage project.

As proposed, S.B. 2107 amends current law relating to the ownership of the pore space underlying the surface of land and to the use of that space for the geologic storage of carbon dioxide and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 6 (Sections 124.005 and 125.005, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 14 (Section 27.047, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 382.502(d), Health and Safety Code, as follows:

(d) Requires a penalty collected under Section 382.502 (Rules; Enforcement) to be deposited to the credit of the carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code, rather than the anthropogenic carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code.

SECTION 2. Amends Section 91.802, Natural Resources Code, as follows:

Sec. 91.802. LAW APPLICABLE TO GEOLOGIC STORAGE FACILITIES AND ASSOCIATED INJECTION WELLS. (a) Defines "carbon dioxide injection well," rather than "anthropogenic carbon dioxide injection well."

(b)-(c) Makes conforming changes to these subsections.

SECTION 3. Amends the heading to Chapter 121, Natural Resources Code, to read as follows:

CHAPTER 121. OWNERSHIP AND STEWARDSHIP OF CARBON DIOXIDE

SECTION 4. Amends Section 121.001, Natural Resources Code, by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), and (2-a), to redefine "anthropogenic carbon dioxide" and to define "carbon dioxide," "carbon dioxide injection well," "geologic storage," and "geologic storage facility."

SECTION 5. Amends Sections 121.002, 121.003, and 121.004, Natural Resources Code, as follows:

Sec. 121.002. New heading: OWNERSHIP OF CARBON DIOXIDE. (a) Provides that this section does not apply to carbon dioxide, rather than to anthropogenic carbon dioxide, injected for the primary purpose of enhanced recovery operations.

(b) Provides that carbon dioxide, rather than anthropogenic carbon dioxide, stored in a geologic storage facility, except when title to the stored carbon dioxide and the geologic storage facility has been transferred to the state under Section 124.004(a) and unless otherwise expressly provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, is considered to be the property of the storage operator or the storage operator's heirs, successors, or assigns. Makes a nonsubstantive change.

(c) Provides that carbon dioxide, rather than anthropogenic carbon dioxide, stored in a geologic storage facility, unless otherwise expressly provided by contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, rather than absent a final judgment of wilful abandonment rendered by a court or a regulatory determination of closure or abandonment, is not considered to be the property of the owner of the surface or mineral estate in the land in which the carbon dioxide, rather than the anthropogenic carbon dioxide, is stored or of a person claiming under the owner of the surface or mineral estate.

(d) Authorizes the owner, as designated by Subsection (b), of the carbon dioxide stored in a geologic storage facility, or the owner's heirs, successors, or assigns, except when title to the stored carbon dioxide and the geologic storage facility has been transferred to the state under Section 124.004(a), to produce, take, extract, or otherwise possess carbon dioxide stored in the facility. Deletes existing text authorizing the owner, as designated by Subsection (b) or (c), of the anthropogenic carbon dioxide, stored in a geologic storage facility, or the owner's heirs, successors, or assigns, to produce, take, extract, or otherwise possess anthropogenic carbon dioxide stored in the facility.

Sec. 121.003. New heading: CARBON DIOXIDE STORAGE TRUST FUND. (a) Provides that the carbon dioxide storage trust fund, rather than the anthropogenic carbon dioxide storage trust fund, is created as a special fund in the state treasury.

(b) Makes a conforming change to this subsection.

(c) Requires that certain monies, including grants, donations, and amounts allocated from any source, public or private, for the purposes of this chapter, and fees for the transfer of title to the stored carbon dioxide and the geologic storage facilities to the state as described by Section 124.005, be deposited to the credit of the carbon dioxide storage trust fund, rather than the anthropogenic carbon dioxide storage trust fund.

(c-1) Makes a conforming change to this subsection.

(d) Authorizes the carbon dioxide storage trust fund, rather than the anthropogenic carbon dioxide storage trust fund, to be used by the Railroad Commission of Texas (RRC) only for:

(1)-(2) makes conforming changes to these subdivisions;

(3) remediation of geologic storage facilities and associated carbon dioxide injection wells, rather than remediation of mechanical problems associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(4) resolution of mechanical problems associated with, and repairing mechanical leaks at, geologic storage facilities and associated carbon dioxide injection wells;

(5) makes a conforming change to this subdivision;

(6)-(7) makes conforming and nonsubstantive changes to these subdivisions; and

(8) costs, expenses, or claims arising from the state's ownership of the stored carbon dioxide and the geologic storage facility after the transfer of title to the stored carbon dioxide and geologic storage facility to the state under Section 124.004(a).

Sec. 121.004. New heading: EXTRACTION OF STORED CARBON DIOXIDE. (a)-(b) Makes conforming changes to these subsections.

SECTION 6. Amends Subtitle D, Title 3, Natural Resources Code, by adding Chapters 124 and 125, as follows:

#### CHAPTER 124. STATE RESPONSIBILITY FOR LONG-TERM STORAGE OF CARBON DIOXIDE

Sec. 124.001. DEFINITIONS. Defines "carbon dioxide," "carbon dioxide injection well," "commission," "storage operator," "geologic storage," and "geologic storage facility."

Sec. 124.002. APPLICABILITY. (a) Provides that this chapter applies only to the permanent sequestration of carbon dioxide in a geologic storage facility.

(b) Provides that this chapter does not apply to a storage operator or geologic storage facility owner who provides written notice that the owner or operator does not intend to apply to RRC to transfer title to the stored carbon dioxide and the geologic storage facility to the state under Section 124.003(a).

Sec. 124.003. APPLICATION FOR TRANSFER OF TITLE AND CUSTODY TO STATE. (a) Authorizes a storage operator or geologic storage facility owner, after a storage operator or geologic storage facility owner receives a certificate of closure from RRC under rules adopted under Section 27.047(1)(I), Water Code, to apply to RRC to transfer title to the stored carbon dioxide and the geologic storage facility to the state.

(b) Requires RRC, not later than the 60th day after the date an application is received under this section, to consider the application and respond to the applicant. Requires RRC to approve the application if:

(1) a waiting period of at least 10 years has passed since the storage operator or geologic storage facility owner received a certificate of closure;

(2) the storage operator or geologic storage facility owner is in full compliance with all applicable laws governing the injection and geologic storage of the carbon dioxide, including any rules adopted under Section 27.047(1)(I), Water Code; and

(3) the stored carbon dioxide and the geologic storage facility are stable and not expected to endanger any underground source of drinking water.

(c) Authorizes RRC to require less than a 10-year waiting period under Subsection (b)(1) if RRC determines that period is not necessary.

Sec. 124.004. RELEASE; TRANSFER OF TITLE TO STATE. (a) Provides that title to the stored carbon dioxide and the geologic storage facility, on approval of the application by RRC under Section 124.003(b) and payment of the fee under Section 124.005, is immediately transferred to the state. Provides that title acquired by the state under this subsection includes all rights, interests in, and responsibilities associated with the stored carbon dioxide and the geologic storage facility. Prohibits a party from transferring to the state, and the state from accepting, any property interests or rights that the party does not own or have legal authority to transfer.

(b) Provides that all responsibility and potential liability associated with the stored carbon dioxide and the geologic storage facility, after title is acquired by the state under Subsection (a), is transferred to the state.

(c) Provides that the storage operator, the geologic storage facility owner, the person holding title to the carbon dioxide under Section 121.002, and all persons who generated any stored carbon dioxide, after title is acquired by the state under Subsection (a), are released from all regulatory requirements and liability associated with the stored carbon dioxide and the geologic storage facility.

(d) Provides that Subsections (b) and (c) do not apply if RRC determines, after notice and a hearing, that a person intentionally concealed or misrepresented material facts related to an application under Section 124.003(b).

(e) Requires that a performance bond or other form of financial security, if that performance bond or other form of financial security submitted under Section 27.073 (Financial Responsibility), Water Code, has a duration that extends beyond the date of the issuance of the certificate of closure, be released.

(f) Requires the state, through RRC, to assume responsibility for monitoring the stored carbon dioxide until the federal government assumes responsibility for the management and monitoring of the stored carbon dioxide.

Sec. 124.005. FEE FOR TRANSFER OF TITLE TO STORED CARBON DIOXIDE TO STATE. Requires the storage operator or geologic storage facility owner, on approval by RRC of an application under Section 124.003(b), to pay an additional per-ton fee for deposit to the credit of the carbon dioxide storage trust fund established under Section 121.003. Requires RRC by rule to determine the amount of the fee, which is prohibited from exceeding the amount of the costs, expenses, or claims described by Section 121.003(d)(8) reasonably expected to be incurred by or presented to the state.

Sec. 124.006. STATE ACCESS. Provides that the state, through RRC, after title to the stored carbon dioxide and the geologic storage facility is transferred to the state under Section 124.004(a), assumes all access and ancillary related rights the storage operator or geologic storage facility owner had to the geologic storage facility.

Sec. 124.007. LIMITATION OF STATE RESPONSIBILITY. (a) Provides that this chapter does not:

(1) alter or diminish RRC's defenses to liability already established under existing law; or

(2) create any liability or responsibility on the part of RRC to pay any costs under Section 121.003(d) from any source other than the carbon dioxide storage trust fund established under Section 121.003.

(b) Prohibits RRC from making payments for costs associated with the activities described by Section 121.003(d) if the amount of money in the carbon dioxide storage trust fund is insufficient to pay the costs.

## CHAPTER 125. INTEGRATION OF PORE SPACE FOR DEVELOPMENT OF GEOLOGIC STORAGE FACILITY

Sec. 125.001. PURPOSE. Provides that the purposes of this chapter are to protect correlative rights, conserve the natural resources of this state, and enforce compliance with all applicable state and federal laws in order to facilitate and optimize the use and production of energy resources in this state, including the use of the pore space within the state for carbon dioxide sequestration.

Sec. 125.002. APPLICABILITY. Provides that this chapter applies only to the permanent sequestration of carbon dioxide in a geologic storage facility.

Sec. 125.003. DEFINITIONS. Defines "carbon dioxide," "carbon dioxide injection well," "commission," "geologic storage," "geologic storage facility," "pore space," and "storage operator."

Sec. 125.004. INTEGRATION OF PORE SPACE FOR DEVELOPMENT OF GEOLOGIC STORAGE FACILITY. (a) Authorizes a pore space owner whose pore space is located in a proposed geologic storage facility to integrate the owner's interests to develop the pore space as a proposed geologic storage facility.

(b) Authorizes a pore space owner or proposed storage operator, if all of the owners of the pore space do not agree to the integration of their interests, to file an application with RRC requesting an order under this chapter for the integration of all interests and for the development of the pore space as a proposed geologic storage facility.

Sec. 125.005. RULES. Requires RRC to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter.

Sec. 125.006. HEARING REQUIRED. Requires RRC, promptly after receiving the completed application, to set the matter for hearing. Requires that the hearing be scheduled to be held on a date not later than the 60th day after the date the completed application is filed with RRC.

Sec. 125.007. NOTICE OF APPLICATION AND HEARING. (a) Requires that notice of the application and the time and place of the hearing on the application be mailed, postage prepaid, not later than the 31st day before the date of the hearing, to each owner of the surface estate, mineral estate, or pore space in the proposed geologic storage facility and to each owner of the surface estate, mineral estate, or pore space adjacent to the proposed geologic storage facility.

(b) Requires that notice of the application and the time and place of the hearing be published once a week for two consecutive weeks in a newspaper of general circulation authorized by law to publish legal notices in the county or counties in which the land involved is located. Requires that first publication be made not later than the 15th day before the date of the hearing.

(c) Provides that typographical errors in a notice that are not material to the purpose of the notice do not affect the validity of the notice.

Sec. 125.008. INTEGRATION ORDER; EFFECT OF OPERATIONS. (a) Requires RRC to issue an integration order if RRC finds that:

(1) the application meets all of the statutory and regulatory requirements for the issuance of the integration order;

(2) the geologic storage facility into which the carbon dioxide is injected is suitable for or capable of being made suitable for storing the carbon dioxide;

(3) with proper safeguards, both groundwater and surface water can be adequately protected;

(4) the injection of carbon dioxide into the geologic storage facility will not endanger or injure human health or safety;

(5) the injection and geologic storage of carbon dioxide will not endanger or injure any oil, gas, or other mineral formation in any material respect, or has been addressed in an arrangement between the applicant and the mineral lessee or mineral owner;

(6) the applicant has obtained the consent of the owners representing at least 60 percent of the ownership of the pore space, based on the surface acreage of the proposed geologic storage facility;

(7) the applicant has made a fair and reasonable offer to integrate the nonconsenting pore space owners' interests; and

(8) all pore space owners who did not consent to integrate their interests in order to develop the pore space as a proposed geologic storage facility but who are or will be subject to an integration order are or will be equitably compensated for the appurtenant and reasonable use of the pore space and surface.

(b) Requires the storage operator, to amend an integration order in order to change the size of a geologic storage facility, to demonstrate to RRC that the operator has obtained the consent of the owners representing at least 60 percent of the ownership of the pore space, based on the surface acreage of the proposed geologic storage facility as described in the amended order.

(c) Provides that an unknown or unlocatable pore space owner is considered to have consented to integrate the owner's interest, provided that the proposed storage operator complied with the notice requirements under Section 125.007(b). Provides that an unknown or unlocatable pore space owner is eligible for equitable compensation under Section 125.008(a)(8).

(d) Provides that an offer made to integrate the nonconsenting pore space owners' interests is considered fair and reasonable under Section 125.008(a)(7) if it is made in a similar manner as the offer made to the other owners of pore space in the geologic storage facility, taking into account any material differences in circumstances.

(e) Requires that a final integration order entered by RRC under this section, unless modified or overturned by a final order from a court, be considered final and conclusive as to all facts, findings, and conclusions contained in the order for all purposes and as to all parties notified and their heirs, successors, and assigns.

SECTION 7. Amends Subchapter A, Chapter 5, Property Code, by adding Section 5.0015, as follows:

Sec. 5.0015. OWNERSHIP OF PORE SPACE UNDERLYING THE SURFACE. (a) Provides that the ownership of the pore space underlying the surface of land, unless expressly modified, reserved, or altered by a deed, conveyance, lease, or contract, is declared to be vested in and owned by the owner or owners of the surface estate of the land.

(b) Provides that this section does not change the common law existing on the effective date of this section as it relates to the relationship between the mineral and surface estates.

SECTION 8. Amends Sections 27.002(19), (20), (22), and (23), Water Code, to define "carbon dioxide," rather than "anthropogenic carbon dioxide," and "carbon dioxide injection well," rather than "anthropogenic carbon dioxide injection well," and to redefine "geologic storage" and "geologic storage facility."

SECTION 9. Amends the heading to Subchapter C-1, Chapter 27, Water Code, to read as follows:

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

SECTION 10. Amends Section 27.043(a), Water Code, to make a conforming change.

SECTION 11. Amends Section 27.045, Water Code, as follows:

Sec. 27.045. FEES. (a)-(b) Makes conforming changes to these subsections.

SECTION 12. Amends Section 27.046(a), Water Code, to make a conforming change.

SECTION 13. Amends Section 27.0461, Water Code, as follows:

Sec. 27.0461. LETTER OF DETERMINATION FROM COMMISSION. Makes conforming and nonsubstantive changes to this section.

SECTION 14. Amends Section 27.047, Water Code, as follows:

Sec. 27.047. RULES. Requires RRC to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this subchapter, including rules for:

(1) the geologic storage and associated injection of carbon dioxide, rather than anthropogenic carbon dioxide, including:

(A)-(H) makes no change to these paragraphs;

(I) site closure, including issuance of a certificate of closure; and

(J) makes no changes to this paragraph; and

(2)-(3) makes no changes to these subdivisions.

SECTION 15. Amends Section 27.048, Water Code, as follows:

Sec. 27.048. CONSISTENCY WITH AND IMPLEMENTATION OF FEDERAL REQUIREMENTS. (a)-(b) Make conforming changes to these subsections.

SECTION 16. Amends Section 27.051(b-1), Water Code, to make conforming changes.

SECTION 17. Amends Sections 27.073(a) and (b-1), Water Code, to make conforming changes.

SECTION 18. Requires RRC, except as provided by Section 19 of this Act, not later than January 1, 2024, to adopt rules as necessary to implement Chapters 124 and 125, Natural Resources Code, as added by this Act.

SECTION 19. Authorizes RRC, not later than April 1, 2024, to adopt rules as necessary to allow RRC to assess a fee or fees in an amount sufficient to recover any costs incurred by RRC in implementing Chapter 121, Natural Resources Code, as amended by this Act, that are in addition to the costs incurred by RRC in performing its other functions. Provides that this section does not authorize RRC to assess a fee for performing any function that is not specific to the implementation of Chapter 121, Natural Resources Code.

SECTION 20. Effective date: upon passage or September 1, 2023.