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BILL ANALYSIS

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Senate Bills 1131 through 1133 (as introduced 11-14-24)
Sponsor: Senator Sean McCann (S.B. 1131)
Senator Joseph Bellino Jr. (S.B. 1132)
Senator John Cherry (S.B. 1133)
Committee: Energy and Environment

Date Completed: 12-5-24

INTRODUCTION

The bills would establish a regulatory framework and permitting process for carbon sequestration in the State. To operate a carbon sequestration project, a person would have to apply to the Department of Environment, Great Lakes, and Energy (EGLE) for a permit and provide notice of the proposed project to all surface owners of land overlying the portion of the storage reservoir underlying the area covered by the proposed project. The bills prescribe duties of EGLE's Oil, Gas, and Minerals Division in the regulation of carbon sequestration projects. Application fees, annual carbon sequestration fees, and fines for regulatory violations would have to be deposited in the Carbon Sequestration Fund created by the bills. The bills also would provide for pooling of interests in pore space used for carbon sequestration.

The bills are tie-barred.

BRIEF FISCAL IMPACT

These bills would have an indeterminate but limited fiscal impact on EGLE, with permit application fees and additional annual fees for carbon sequestration projects offsetting administrative costs. Revenue from new misdemeanor and civil fines would benefit local libraries and the State Justice System Fund, though the exact amount is indeterminate. Increased litigation expenses for the Department of Attorney General would be possible but likely absorbable, with any impact on circuit courts depending on the volume of violations prosecuted. There are no anticipated fiscal impacts associated with Senate Bill 1132 and 1133.

MCL 324.1301 (S.B. 1131)
483.1 (S.B. 1132)

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CONTENT

Senate Bill 1131 would add Subchapter 6 (Carbon Sequestration), which would include Part 651 (Carbon Sequestration Regulation) and Part 653 (Carbon Sequestration Unitization), to the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Prohibit a person from engaging in geologic storage of carbon or constructing or operating a carbon sequestration project unless that person had been issued a carbon sequestration permit by the Oil, Gas, and Minerals Division of EGLE or by the United States Environmental Protection Agency (EPA).**
- **Require a permit applicant to give notice of the intended carbon sequestration project to all mineral rights holders and surface owners of land overlying the portion of the storage reservoir underlying the area covered by the proposed project.**
- **Require EGLE to hold a public hearing on a permit application within 60 days after the application was considered.**
- **Create the Carbon Sequestration Fund and require application fees, annual carbon sequestration fees, and civil fines from the administration of carbon sequestration projects to be deposited into the Fund.**
- **Provide for the pooling of interests in pore space used for carbon sequestration.**
- **Require the State to assume responsibility and liability for carbon sequestration projects upon their completion.**

Senate Bill 1132 would amend Public Act 16 of 1929, which regulates the buying and selling of petroleum products, to specify that its prohibition against storing carbon dioxide would not apply to a carbon sequestration well under Part 651 of NREPA.

Senate Bill 1133 would enact the "Subsurface Pore Space Act" to govern the ownership of pore space in all strata underlying the surface lands and waters in the State and vest such pore space in the owner of the overlying surface of the real property, unless severed from the surface as prescribed by the Act.

Senate Bill 1131

Definitions

"Carbon dioxide" would mean carbon dioxide that is produced by anthropogenic sources and is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

"Carbon sequestration project" would mean one or more nonexperimental injection wells, a storage reservoir, and underground and surface facilities and equipment used or proposed to be used in geologic storage. Carbon sequestration project would not include an enhanced oil recovery well or pipelines used to transport carbon dioxide to a carbon sequestration project.

"Carbon sequestration project operator" would mean a person that holds or is an applicant for a permit.

"Geologic storage" would mean the permanent or short-term underground storage of carbon dioxide in a storage reservoir. "Reservoir" would mean a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including, but not limited to, oil and gas reservoirs, saline formations, and coal seams, suitable for or capable

of being made suitable for injecting and storing carbon dioxide. "Storage reservoir" would mean a reservoir proposed, authorized, or used for storing carbon dioxide beneath the lowermost formation containing an underground source of drinking water as part of a carbon sequestration project. Storage reservoir would include the proposed and actual subsurface three-dimensional extent of the carbon dioxide plume, associated area of elevated pressure, and displaced fluids.

"Unit area" would mean the pore space and surface lands included in a carbon sequestration project.

Carbon Sequestration Permit & Application Process

Under Part 651, a person could not engage in geologic storage or construct or operate a carbon sequestration project unless that person had been issued a carbon sequestration permit by the Oil, Gas, And Minerals Division of EGLE or by the EPA. Any owner or operator of the carbon sequestration project could apply for a permit.

Before the submission of an application for a permit, an applicant would have to submit information required by Federal regulations to the Oil, Gas, And Minerals Division.

If an electric provider or independent power producer submitted an application for a permit to EGLE, the electric provider or independent power producer would have to simultaneously submit a copy of the application to the Michigan Public Service Commission for informational purposes.

The owner of a carbon sequestration project or a carbon sequestration project operator would be exempt from obtaining a carbon sequestration permit under Part 625 (Mineral Wells) but would not be exempt from obtaining any other permit or approval required under Part 651. Part 651 would not exempt an electric provider or independent power producer to which a permit was issued from obtaining any other permit, a license, or an authorization for the recovery of costs that was required by Federal law, by Part 651 or any other law of the State, or by a rule promulgated under a law of the State.

A carbon sequestration permit applicant or a carbon sequestration project operator could claim information submitted to EGLE under part 651 as confidential business information. Any such claims would have to be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions to EGLE, by placing the words "confidential business information" on each page containing the information. The Department would have to deny a claim of confidential business information if confidentiality were prohibited by Federal regulations or State law.

A permit applicant would have to provide all the names and addresses of record for all of the following persons that were within the portion of the storage reservoir underlying the area covered by the carbon sequestration project and within a half mile of the boundaries of such portion of the storage reservoir:

-- Oil, gas, and mineral lessees.
-- Oil, gas, and mineral owner.
-- Holders of permits to drill and operate under Part 615 (Supervisor of Wells).
-- Pore space owners.

The Department could enter into cooperative agreements with other governments or government entities to regulate carbon sequestration projects that extend beyond the State's regulatory authority. The Oil, Gas, and Minerals Division could charge a fee for a permit

application in an amount that did not exceed the actual reasonable cost of processing the application.

The Oil, Gas, and Minerals Division would have to hold a public hearing on a permit application within 60 days after the application was considered to be administratively complete under NREPA. The Department could prepare a draft permit under Federal regulations. The Oil, Gas, And Minerals Division would have to provide notice of the purpose, time, and location of a public hearing at least 30 days before the public hearing. The notice would have to be provided as follows:

-- By publication in one or more newspapers of general circulation in each county in which all or part of the proposed carbon sequestration project would be located.
-- By posting the notice on the Division's website.

The notice also would have to be sent by first class mail with proof of delivery to persons that were within the portion of the storage reservoir underlying the area covered by the carbon sequestration project and within a half mile of the boundaries of that portion of the storage reservoir, using information provided by the applicant:

-- Oil, gas, and mineral lessees.
-- Oil, gas, and mineral owners.
-- Holders of permits to drill and operate under Part 615.
-- Pore space owners.
-- Owners and lessees of subsurface geological formations and cap rock.

The notice also would have to be sent by first class mail with proof of delivery to surface owners of land overlying the portion of the storage reservoir underlying the area covered by the applicable carbon sequestration project and within a half mile of the boundaries of that portion of the storage reservoir. If substantial compliance with the notice requirements in Part 651 were achieved, inadvertent mistakes in compliance would not bar processing the permit.

A person with an interest associated with the mineral estate could request a hearing with EGLE during the permit processing period to present evidence that the mineral interest would be damaged by the project as proposed in the permit application. The Department would have to attempt to mediate the dispute, request modifications to drilling and construction plans as necessary to ensure the mineral interest is not damaged, and consider the evidence presented when making the final permit decision.

Carbon Sequestration Permit Issuance and Certificate of Project Completion

The Oil, Gas, And Minerals Division would have to issue a carbon sequestration permit if it determined all the following:

-- The carbon sequestration project operator had complied with Part 651 in relation to the application.
-- The carbon sequestration project operator had submitted to the Division all information required under Federal regulations.
-- The carbon sequestration project would comply with Federal regulations, including, but not limited to, requirements to protect underground sources of drinking water.
-- If the drilling and installation of a well and subsequent injection of carbon dioxide into the storage reservoir would endanger or damage any oil, gas, or other mineral resource or formation in any material respect, the endangerment or damage was addressed in an arrangement between the applicant and the mineral lessee or mineral owners within the unit area.

-- The carbon sequestration project operator had submitted to the Oil, Gas, And Minerals Division information to demonstrate that the project operator would comply with Federal regulations necessary to receive tax credits for carbon oxide sequestration as provided by the Internal Revenue Code.

The Division would also have to determine that the carbon sequestration project operator obtained all legal rights or authorizations associated with the project that were necessary to operate the project, as demonstrated by one or more of the following:

-- Documentation that the project operator owned some or all the property necessary to operate the proposed carbon sequestration project.
-- Written approval of the persons holding some or all the legal rights in the property necessary to operate the proposed carbon sequestration project.
-- An order for unit operations under Part 653 (Stream Corridor Restoration Principles, Processes, and Practices) of NREPA, but the Division could issue a permit contingent on the applicant obtaining an order for unit operations under Part 653.

The Division would have to incorporate in permit conditions required by Federal regulations financial responsibility requirements and requirements to report monitoring results. The Division could include in a permit a schedule of compliance or alternative schedule of compliance permitted under Federal regulations.

An applicant would have to maintain records of all data used to complete permit applications and any supplemental information submitted under Federal regulations for at least ten years after the Division issued a certificate of project completion.

All permit applications, reports, or changes to authorization would have to be signed in the manner required under Federal regulations. A person that signed an application or report would have to include the certification required under Federal regulations.

The duration of a permit issued under Part 651 would have to comply with Federal regulations.

When the Division issued a permit, it also would have to issue a certificate stating that the permit had been issued. The certificate would have to describe the area covered and include other information the Division considered appropriate. The carbon sequestration project operator would have to file a copy of the certificate with the county register of deeds of each county where the storage facility was located.

Unless otherwise expressly provided by contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other applicable law, a carbon sequestration project operator would hold the title to or control of the carbon dioxide injected into and stored in a storage reservoir until the Division issued a certificate of project completion.

A carbon sequestration project operator would not be liable for the presence of or pressure from injected carbon dioxide substances if the State had assumed any potential liability associated with the carbon dioxide injected into the storage reservoir. Otherwise, a carbon sequestration project operator would not be liable for the presence of or pressure from injected carbon dioxide substances unless the person asserting that the carbon sequestration project operator was liable established that the carbon dioxide substance had caused any of the following:

-- A substantial interference with the reasonable use of the person's real property.
-- A direct physical injury to the person or the person's tangible property.

-- A substantial interference with the recovery of oil or gas from the person's producing oil and gas reservoir.

A permit could be transferred to a new carbon sequestration project operator or owner only if the permit had been modified or revoked and reissued, or a minor modification made, to identify that new project operator and incorporate other requirements as would be necessary under part 651.

The Division would be required to review a permit issued under part 651 as required by Federal regulations. Pursuant to Federal regulations, a permit could be modified, revoked and reissued, or terminated at the request of the permittee or upon the Division's initiative.

A carbon sequestration project operator could submit to the Division an application for a certificate of project completion. If the Division determined that the application for a certificate of project completion was incomplete or inaccurate, the Division would have to return the application to the carbon sequestration project operator with a written statement of the deficiencies of the application and the right to submit a corrected application with EGLE.

The Division would be required to hold a public hearing on an application for a certificate of project completion within 60 days after receiving a complete and accurate application. The Division would have to provide notice of the purpose, time, and location of the public hearing required for the permit application.

Within 180 days after receiving a complete and accurate application, the Division would have to issue or deny a certificate of project completion and notify the carbon sequestration project operator of the reasons for denial. The Division would have to issue a certificate of project completion if the Division determined the project operator had done all the following:

-- Submitted to the Division a well plugging plan and notice of intent to plug required under Federal regulations.
-- Plugged the wells, removed equipment and facilities, and completed any reclamation work required by the division.
-- Within 60 days after plugging, submitted to the division a plugging report required under Federal regulations.
-- Prepared, maintained, and complied with a plan for post-injection site care and site closure required under federal regulations.
-- Submitted to the Division all other notices and reports required under Federal regulations.
-- Complied with any other Federal regulations regarding post-injection site care and closure.
-- Submitted to the Division all other notices and reports required under Federal regulations.

The Division also would have to determine that the carbon sequestration project operator followed all laws governing the carbon sequestration project.

A carbon sequestration project operator that was denied a certificate of project completion could submit a new application.

State Assumption of Sequestration Projects, Reservoirs, and Associated Liability

When a certificate of project completion was issued, all the following would apply:

-- The State would assume title to and ownership of and responsibility for the carbon sequestration project and carbon dioxide injected into the storage reservoir.
-- The State would assume responsibility for all regulatory requirements associated with the carbon sequestration project, and the carbon sequestration project operator and the

owner of the carbon sequestration project would be released from responsibility for all regulatory requirements associated with the carbon sequestration project.

-- The State would assume any potential liability associated with the carbon sequestration project and carbon dioxide injected into the storage reservoir, and the carbon sequestration project operator, the owner of the carbon sequestration project, and the owner of the carbon dioxide injected into the storage reservoir would be released from all liability associated with the carbon sequestration project and the carbon dioxide.

-- If a performance bond or other form of financial responsibility required to be provided by the carbon sequestration project operator or the owner of the carbon dioxide injected into the storage reservoir had a duration that extended beyond the date of the issuance of the certificate of completion, that performance bond or other form of financial responsibility would no longer required and would have to be released.

Civil Actions and Violations Under Part 651

The Division could request the Attorney General to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of Part 651 or a permit or order issued or rule promulgated under Part 651. This action could be brought in the circuit court for Ingham County or for the county in which the defendant was located, resided, or was doing business. The court would have jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under Part 651, the court could impose a civil fine of at least $2,500 for each violation and, if the violation were continuous, no more than $2,500 for each day of violation.

A person who willfully violated Part 651 or a permit or order issued or rule promulgated under Part 651 would be guilty of a misdemeanor punishable by a fine of at least $5,000 for each instance of violation and, if the violation were continuous, no more than $5,000 for each day of violation.

Division Requirements

Within one year after the bill's effective date, the Division would be required to submit to the EPA an application to administer a class VI well program. The application would have to include a complete program description, a letter from the Governor, and a statement from the Attorney General, to the EPA administrator under Federal regulations. The Division could enter into a memorandum of agreement with the regional administrator of the EPA as permitted by Federal regulations. The Division would have to implement part 651 in a manner that complied with Federal regulations. To comply with Federal regulations or otherwise implement part 651, the Division could promulgate rules pursuant to the Administrative Procedures Act.

Part 651 would not prohibit an oil, gas, or mineral owner or lessee, or a prospective carbon sequestration project operator from drilling through or near a storage reservoir, a disposal well project, or an oil and gas producing reservoir, or through an enhanced oil recovery project, to explore for and develop minerals if the drilling activities, including completion activities on previously drilled wells, met the following requirements:

-- Complied with the requirements of NREPA for drilling to strata beneath gas storage reservoirs, disposal well projects, or oil and gas producing reservoirs, or drilling through existing enhanced recovery projects.

-- Preserved the integrity of any storage reservoir.

Carbon Sequestration Fees

Each calendar year, by a date specified by the Division, a carbon sequestration project operator would be required to pay the division a fee set by the Division for each ton of carbon dioxide injected for storage in the preceding calendar year. The fee would have to be based on EGLE's anticipated expenses associated with long-term monitoring and management of the carbon sequestration project after issuing a certificate of project completion.

The fee under Part 651 could not exceed eight cents per ton of carbon dioxide injected. The State Treasurer would have to adjust this maximum amount annually by the inflation rate. The fees would have to be remitted to the State Treasurer for deposit in the Carbon Sequestration Fund.

Carbon Sequestration Fund

The bill would create the Fund in the State Treasury. The State Treasurer would be required to deposit into the Fund all fees received under Part 651 and revenue from any other source designated for the Fund. The State Treasurer would have to direct the investment of money in the Fund and credit interest and earnings from investments to the Fund. The Division would be the administrator of the Fund for audits of the Fund.

The Division would have to money from the Fund, upon appropriation, only for the following purposes:

-- To pay expenses the Division incurred in long-term monitoring and management of a closed carbon sequestration project after issuance of a certificate of project completion.
-- To pay expenses that were incurred to perform regulatory responsibilities with respect to a carbon sequestration project that were not paid for by any other fee under Part 651.

Carbon Sequestration Unitization Petition (Part 653)

Subject to the limitations of Part 653, the Division would have to make and enforce such orders, rules, and regulations and do such things as could be necessary or proper to carry out the purposes of Part 653. This duty would include the adoption of a schedule of fees to be paid upon the filing of petitions, amendments to petitions, and other instruments in connection with petitions that bore reasonable relation to the cost of examination, inspection, and supervision required under Part 653.

Any applicant or prospective applicant for a permit under Part 651 could file with the Division a verified petition requesting an order for unit operations of the carbon sequestration project or parts of the project and for pooling of interests in pore space in the applicable portion of the storage reservoir. The petition would have to contain all the following:

-- A copy of any permit, draft permit, or application for a permit under Part 651 for the carbon sequestration project or any part thereof.
-- A description of the proposed unit area.
-- A statement of the type of operations proposed to comply with part 653 and part 651.
-- A verified statement indicating in detail what action the petitioner has taken to contact and obtain the approval of each person of record that owns or has an interest in the proposed unit area and that had not approved the proposed plan for unitization; if the plan for unitization would be considered at a supplemental hearing before the supervisor, the verified statement could be filed separately before the supplemental hearing rather than as part of the petition.

-- An appraisal setting forth the proposed compensation to be paid to a person that owns or otherwise has an interest in pore space and that had not approved the proposed plan for unitization.
-- A copy of any written agreements between the applicant and owners of pore space within the portion of the storage reservoir proposed to be included in a carbon sequestration project.
-- A proposed plan for unitization applicable to the proposed unit area that the petitioner considered fair, reasonable, and equitable.

The proposed plan would have to include provisions for determining all the following:

-- The pore space to be used within the unit area.
-- The quantity of pore space storage capacity that would be assigned to each separately owned parcel within the unit area.
-- The appointment of a unit operator.
-- The effective date of the plan for unitization.
-- The manner in which the unit area would be supervised and managed.

The petition also would have to include the names, as disclosed by the records in the office of the register of deeds for each county in which the proposed unit area was located, of the following:

-- Each person that owns or had an interest in the surface estate or pore space within the proposed unit area, including mortgagees and the owners of other liens or encumbrances.
-- Each person that owned or had an interest in the surface estate or pore space not within but immediately adjoining the proposed unit area.
-- Each oil, gas, and mineral owner and lessee within these identified areas.

The petition also would have to include the address of each person identified, if known. If the name and address of any person were unknown, the petition would have to indicate that.

Upon the filing of a petition for unitization under Part 653, the petitioner would be required to provide notice by first class mail, with proof of delivery, to the following persons at their last known address:

-- The last owner of record of the pore space interests underlying the lands or areas directly affected by the proposed action; the surface owners; oil, gas, and mineral owners and lessees; and the owners and lessees of the subsurface geological formations and cap rock included under the Subsurface Pore Space Act.
-- The last owner of record of the pore space interests underlying the lands or areas immediately adjacent to, and contiguous to, the lands or areas directly affected by the proposed action, and the surface owners.

The notice would have to include all the following:

-- The procedure required to file a protest against the petition.
-- The name, address, and phone number of a representative of the petitioner who was available to discuss the petition.
-- A statement that the Division could issue an order approving the petition without a hearing if a protest were not received in the required time period.
-- For the notice to pore space and surface owners who had not approved the plan for unitization, a copy of the petition, except that the petitioner could omit from the notice names and addresses of individuals already included in the petition.

The failure of a petitioner to give notice to a person entitled to notice would not be a bar to holding a hearing or issuing an order under Part 653 if the petitioner substantially complied with the notice requirements of Part 653.

To protest the petition, a person would have to submit to the Division a written notice of the protest and the reason or reasons for the protest no more than 15 days after the publication of notice. If such a notice of protest were timely submitted, the Division would have to hold a hearing on the petition. If such a notice of protest were not timely submitted, the Division could issue an order for unit operations without holding a hearing.

The Division would have to issue an order for unit operations of the carbon sequestration project or parts of the project and for pooling of interests in pore space in the applicable portion of the storage reservoir if the Division found all the following:

-- That the material representations contained in the verified petition were substantially true.
-- That the unitization requested would facilitate the operation of a carbon sequestration project under Part 651.
-- That the type of operations contemplated by the proposed plan for unitization was feasible and the injection of carbon dioxide into the storage reservoir for the unit would not endanger or injure any oil, gas, or other mineral formation in any material respect unless otherwise addressed in an arrangement between the applicant and the oil, gas, or mineral owner or lessee within the unit area.
-- That the application outlined operations that would comply with Part 651.

Unit Operations Order

An order for unit operations under Part 651 would have to include terms and conditions that were fair, reasonable, and equitable. The order would have to prescribe a plan for unit operations that included all the following:

-- A description of the unit area, including any part of the surface estate within the unit area that will be used as part of the carbon sequestration project; this would not authorize the location of any monitoring well on the surface estate of any tract, which would be determined through negotiation between the applicant and owners of the surface estate.
-- A statement in reasonable detail of the operations contemplated.
-- The quantity of pore space capacity allocated to each separately owned tract within the unit area, representing each tract's actual share of pore space being used in the carbon sequestration project, and the method used to make that allocation.
-- The general way the unit and the further development and operation of the unit area would have to or could be conducted.
-- Provisions, based upon appraisals submitted by the applicant and pore space owners whose interests had not been acquired for use in unit operations, for compensation for the fair market value of the pore space.
-- Provisions for supervision and management of the unit operations.
-- The effective date of the plan of unitization and the date when unit operations could commence.
-- The time when, conditions under which, and method by which the unit would have to be dissolved and its affairs wound up.
-- A requirement that the carbon sequestration project comprising the unit area obtain a permit under Part 651.
-- Findings by the Division that the injection of carbon dioxide into the carbon sequestration project for the unit would not endanger or injure any oil, gas, or other mineral formation in any material respect, or that any such endangerment or injury had been addressed in an arrangement between the petitioner and the mineral lessee or mineral.

-- Any additional provisions that the Division found appropriate for unit operations.

An order for unit operations would not take effect until the Division made a finding, either in the order for unit operations or in a supplemental order, that the plan for unit operations had been approved in writing by persons owning at least 60% of the pore space storage capacity within the unit area. For purposes of Part 653, any unknown or unlocatable pore space owners would be considered to have approved the plan of unit operations and would be subject to a proposed unit if the petitioner complied with the notice requirements.

If persons owning at least 60% of the pore space storage capacity within the unit area had not approved the plan for unit operations when the Division issued the order for unit operations, the Division on its own motion or the motion of any interested person would have to, after providing notice, hold one or more supplemental hearings to determine if the plan for unit operations had been approved. If the Division found that the plan had been approved, the Division would have to issue a supplemental order declaring the plan effective and setting forth the date for the commencement of unit operations. If, within 180 days from the date the order was issued, the Division did not find that the plan had been approved, the order for unit operations would be ineffective and would have to be revoked unless for good cause shown the Division extended the time for an additional period not to exceed one year.

An order for unit operations could be amended by an order issued by the Division in the same manner and subject to the same conditions as applied to the issuance of an original order for unit operations. The Division, upon its own motion or upon application, and with notice and hearing, could modify an order for unit operations regarding the operation, size, or other characteristics of the unit area to prevent or assist in preventing a substantial inequity resulting from operation of the unit.

Operations conducted pursuant to an order for unit operations would constitute a fulfillment of all the express and implied obligations of each lease or contract that covered the lands in the unit area to the extent that compliance with the obligations would be prevented by the order for unit operations. Except to the extent that the parties affected agree otherwise, an order for unit operations would not result in a transfer of all or part of the title of any person's pore space rights in any tract within the unit area.

Unit Rights and Responsibilities

If the plan for unit operations so provided, a unit created under Part 653 could, through its operator, sue, be sued, and contract as a unit in its own right. The operator of the unit, on behalf and for the account of all owners of interest within the unit area, could supervise, manage, and conduct further development and operations for the carbon sequestration project within the unit area under the authority and limitations of the order for unit operations.

After the effective date of an order for unit operations, the unit area defined in the order could not be operated by persons other than the unit operator or persons acting under the unit operator's authority or operated other than in the manner and to the extent provided in the plan for unitization.

Property rights, leases, contracts, and all other rights and obligations would have to be considered to be amended and modified to the extent necessary to conform to Part 653 and to any valid and applicable plan for unitization or order of the Division made pursuant to Part 653.

If the Division or a board or officer of the State or of any agency or political subdivision of the State has control and management of land or pore space, that person could, on behalf of the

State or the agency or political subdivision, consent to or participate in any plan for or program of unitization initiated or adopted under Part 653.

Land or pore space subject to the control and management of a board or officer of this state or a political subdivision of this state is subject to any plan for unit operations under this part and proposed unit that has been approved under Part 653.

The Department could promulgate rules to implement this part pursuant to the Administrative Procedures Act.

Except as provided under Part 653, the Division would not be able to issue, put into effect, revoke, change, renew, or extend an order under Part 653, unless the Division had held a public hearing. The public hearing would have to be held at such time, place, and manner as provided for in this part or by rules promulgated under this part, including notice as provided in section 65316.

The Division would not be able to issue, put into effect, revoke, change, renew, or extend an order under Part 653, unless the Division had held a public hearing on the proposal. The public hearing would have to be held at such time, place, and manner as provided for in part 653 or by rules promulgated under Part 653, including the required notice.

Jurisdictional requirements of notice for all hearings required by part 653, except proceedings for criminal or civil enforcement of part 653, would be satisfied by publication of the time, place, and issues involved in the hearing as provided in either of the following:

-- Publication once each week for 2 weeks consecutively in a newspaper of general circulation in the county in which the unit area or any portion of the unit area is located with the date of last publication at least 20 days before the date set for the hearing.
-- Publication at least 20 days before the date set for the hearing in a trade journal, periodical, newsletter, or paper, or commercially available scout report, in general circulation within appropriate industries as determined by the supervisor.

The rules, procedures, penalties, and other provisions set forth in NREPA governing the process employed by the Division for the unitization of oil and gas drilling units would apply to a petition filed for unitization of pore space interests within a unit area under part 653 and any order under Part 653. However, to the extent that the provisions set forth in NREPA conflict with part 653, the provisions of part 653 would control.

A certified copy of an order of the Division issued under part 653 would have to be recorded in the office of the register of deeds for each county where all or any portion of the unit area was located, and such recordation constitutes notice to all persons in interest and their heirs, successors, and assigns.

Senate Bill 1132

Public Act 16 of 1929 prohibits a person from buying, selling, transporting, storing, and piping crude oil and petroleum products and carbon dioxide products without State authorization. This prohibition does not apply in specified circumstances. Under the bill, the prohibition would not apply to a carbon sequestration well under Part 651 of NREPA.

Senate Bill 1133

The "Subsurface Pore Space Act" would vest in the owner of the overlying surface of the real

property, unless severed from the surface estate as provided in Part 653, the ownership of pore space in all strata underlying the surface lands and waters in the State.

"Pore space" would mean the open space in a subsurface geological formation if the open space is proposed, authorized, used, or capable of being used for the storing of carbon dioxide or other substances. "Pore space" also would mean the open space includes an easement to use the following:

-- Any subsurface geological formation in which the open space is located to contain and support the carbon dioxide or other substances stored in the open space.
-- Cap rock.

"Cap rock" would mean a separate geological formation with relatively low porosity and permeability or relatively low open pore space and that has the geological properties necessary to cap, contain, or support substances in the open space of a receiving geological formation or reservoir.

A conveyance of the ownership of the surface of real property would be a conveyance of the pore space in all strata below the surface of that real property unless the ownership of the pore space was previously severed from the ownership of the surface or was expressly excluded from the conveyance. An agreement conveying subsurface mineral or other interests would not convey the ownership of any pore space in the stratum unless the agreement explicitly conveyed the ownership of pore space.

Pore space could be severed from the fee simple surface estate by conveyance, reservation, or lease. The conveyance, reservation, or lease of pore space would include all pore space created under the surface lands in the future, absent express language to the contrary.

An instrument that severed the rights to pore space from the surface estate under Part 653 would describe the following:

-- The subsurface geologic formation or formations in which the pore space was located.
-- The depth of the pore space being conveyed or reserved.
-- The scope of any right to use the surface estate being reserved by the owner of the pore space or conveyed along with the pore space; the owner of any severed pore space would have no right to use the surface estate beyond that set forth in the instrument.

Any expressly severed pore space interest could be separately sold, purchased, leased, and otherwise conveyed.

The bill would not limit, waive, or abrogate State common law related to any of the following:

-- The rights belonging to, or the dominance of, the mineral estate.
-- The surface owner's right to use or lease any non-severed pore space rights for the storage of fluids or gases, subject to the rights of the owners of any oil, gas, and other mineral rights within the pore space to explore for and produce native minerals.
-- The rights of an owner or lessee of mineral rights to reasonable use of the surface for the purpose of mineral exploration and production.

The bill would not alter, modify, or invalidate rights to the use of pore space that were acquired by conveyance, reservation, contract, lease, or eminent domain before the effective date of the bill.

FISCAL IMPACT

Senate Bill 1131

This bill would have an indeterminate but limited fiscal impact on EGLE. Permit application fees would be required not to exceed actual reasonable costs of processing applications and would be utilized to offset those administrative costs. Additional annual fees would be assessed against carbon sequestration project operators; these fees would need to be based on the department's anticipated expenses associated with long-term monitoring of the project, though not to exceed $0.08 per ton of CO_2. These fees would be collected and deposited into the newly created carbon sequestration fund. There would be additional administrative costs associated with holding and issuing notices for public hearings that would be held within 60 days of a completed application.

Further time and labor costs would be associated with processing application fees for a certificate of project completion, and when such a certificate is issued, the state assumes responsibilities related to the carbon sequestration project and carbon dioxide injected into the storage reservoir. Generally, the fees outlined within the bill are not explicitly defined, but rather dependent upon the cost incurred by the EGLE to process them.

The bill could have a positive fiscal impact on the State and local government. Revenue from new misdemeanor and civil fines under the bill would go to local libraries. Additionally, $10 of each civil fine would be deposited into the State Justice System Fund. This Fund supports justice-related activities across state government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

Some increased litigation expenses for the Department of Attorney General would be possible under the bill, as it includes language allowing the Attorney General to commence civil actions in circuit court for violations of part 13 of the (Natural Resources and Environmental Protection) Act, the permit, issued orders, or state promulgated rule. It is probable the Department of Attorney General will be able to absorb these expenses. Additional FTEs and/or attorneys may be required with more litigation costs. Any impact on circuit courts would depend on the volume of violations prosecuted.

The bill would have no fiscal impact on the Department of Treasury. Based on the level of estimated revenue within the Fund, the ongoing costs associated with administering and investing the Fund are less than $100 and are within current appropriations.

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