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BILL ANALYSIS

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Senate Bills 394 through 396 (as introduced 6-10-25)
Sponsor: Senator John Cherry (S.B. 394)
Senator Joseph Bellino, Jr. (S.B. 395)
Senator Sean McCann (S.B. 396)
Committee: Energy and Environment

Date Completed: 6-12-25

INTRODUCTION

The bills would establish a State regulatory framework and permitting process for carbon sequestration, which is generally the process of capturing carbon dioxide in the air and storing it into rock formations underground. 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 proposed storage reservoir, among other things. The bills prescribe duties of EGLE's Geologic Resource Management Division (Division) in the regulation of carbon sequestration projects, and as applicable, the creation of unit areas of pooled interests in pore space for carbon storage. Application fees, annual carbon sequestration fees, and fines for regulatory violations would have to be deposited into one of several funds created by the bills. The bills would require the State to assume responsibility for a project after its completion.

The bills are tie-barred.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bills are similar to Senate Bills 1131 through 1133 from the 2023-2024 Legislative Session. Senate Bills 1131 through 1133 were reported out of the Senate Committee on Energy and Environment but received no further action.

BRIEF FISCAL IMPACT

The bills would likely have a positive impact for several departments within State government as well as a positive fiscal impact in the form of grants to locals as designated in the bills. The extent of this impact is unclear at this time as it would depend on the number and scope of carbon sequestration projects undertaken in the State.

MCL 483.1 (S.B. 395)
324.502 et al. (S.B. 396)

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CONTENT

Senate Bill 396 would amend Part 5 (Department of Natural Resources) and 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 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.**
- **Prescribe the process for the pooling of interests in pore space and the creation of a unit area used for carbon sequestration.**
- **Require the Division to issue a carbon sequestration permit if the project met Part 651's and Federal requirements, and as applicable, Part 653's requirements.**
- **Prescribe inflation-adjusted fees for each ton of carbon dioxide stream injected for storage in a preceding calendar year.**
- **Require the State to assume responsibility and liability for carbon sequestration projects upon their completion, which could happen beginning 25 years after a project ceased carbon dioxide injection.**
- **Prescribe penalties for a violation of Part 651 and allow the Attorney General to commence a civil action for relief of violations of Part 651.**
- **Allow the Department of Natural Resources (DNR) to create a program to incentivize innovation for the use and reutilization of captured carbon dioxide and prescribe how money collected from the storage of carbon dioxide on State lands would be credited.**
- **Create the Carbon Sequestration Fund, the Community Benefits Fund, the Long-Term Remediation Fund, and the First Responders Fund, prescribe their purposes, and require application fees, annual carbon sequestration fees, and civil fines from the administration of carbon sequestration projects to be deposited into them.**

Senate Bill 394 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 395 would amend Public Act 16 of 1929, which prohibits the unauthorized buying and selling of petroleum products, to specify that its prohibition would not apply to a carbon sequestration well under Part 651 of NREPA.

Senate Bill 396

Definitions

"Carbon dioxide stream" would mean carbon dioxide that has been captured from an emission source, incidental associated substances derived from the source materials and the capture process, and any substances added to enable or improve the injection process. Carbon dioxide

stream would not include a substance that met the definition of a hazardous waste under the Code of Federal Rules.

"Carbon dioxide substance" would mean a gaseous or liquid substance, consisting primarily of carbon dioxide, that will be disposed of or put in storage, or that has been or will be used to produce hydrocarbons in a secondary or enhanced recovery operation.

"Carbon sequestration project" would mean one or more 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 a carbon dioxide stream in a storage reservoir. Geologic storage would not include the injection or disposal or oil or gas field wastes subject to a permit and bond. "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 stream. "Storage reservoir" would mean a reservoir proposed, authorized, or used for storing a carbon dioxide stream beneath the lowermost formation containing an underground source of drinking water by a confining zone as part of a carbon sequestration project. Storage reservoir would include the proposed and actual subsurface three-dimensional extent of the carbon dioxide stream 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 (Part 651)

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 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 Division. An applicant also would have to submit any information demonstrating that the project operator would comply with those Federal regulations to maximize receipt of any available tax credits for carbon dioxide sequestration.

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 or State law.

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) or Part 625 (Mineral Wells).
-- Pore space owners.
-- Owners and lessees of subsurface geological formations and confining zones.

An applicant also would have to provide the names and addresses of surface owners of land overlying the portion of the storage reservoir underlying the area included within the applicable carbon sequestration project and within a half mile of the boundaries of that portion of the storage reservoir.

The bill would allow EGLE to enter into cooperative agreements with other governments or government entities to regulate carbon sequestration projects that extend beyond the State's regulatory authority. The 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 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 in accordance with Federal regulations. The 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 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 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 or Part 625.
-- Pore space owners.
-- Owners and lessees of subsurface geological formations and confining zone.

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. The notice would have to include the purpose, time, and location of the meeting and could include a copy of a draft permit or information on how to obtain a copy. If substantial compliance with the notice requirements in Part 651 were achieved, inadvertent mistakes in compliance would not bar processing the permit.

The owner of a mineral interest 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 was not damaged, suggest an arrangement between the carbon sequestration project operator and the owner of the mineral interest to reasonably address any potential damage, and consider the evidence presented when making the final permit decision.

Carbon Sequestration Permit Issuance

The 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 a carbon dioxide stream 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 or could be reasonably 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 Division information to demonstrate that the project operator would comply with Federal regulations necessary to receive tax credits for carbon sequestration as provided by the Internal Revenue Code.

The Division also would 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 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 establish 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 10 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 stream 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 the injected carbon dioxide stream if the State had assumed any potential liability associated with the carbon dioxide stream into the storage reservoir. Otherwise, a carbon sequestration project operator would not be liable for the presence of or pressure from the injected carbon dioxide stream unless the person asserting that the carbon sequestration project operator was liable established that the carbon dioxide stream 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.

The Division would have 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.

Certificate of Project Completion

Unless a different time frame was established by rule, beginning 25 years after cessation of carbon dioxide injection, a carbon sequestration project operator could submit to the Division an application for a certificate of project completion. The Division could approve a shorter time frame than otherwise applicable if requested by a carbon sequestration project operator and if the time frame were supported by data demonstrating reservoir containment and non-endangerment of underground sources of drinking water. 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 have 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 as required for a 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 that the storage reservoir was reasonably expected to retain mechanical integrity, that the carbon dioxide stream was reasonably expected to remain emplaced, and that 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.
-- 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.

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 stream 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 stream 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 stream injected into the storage reservoir would be released from all liability associated with the carbon sequestration project and the carbon dioxide stream.
-- 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 be required and would have to be released within 60 days after issuance of the certificate of project completion.

However, the carbon sequestration project operator would retain liability associated with the carbon sequestration project if any of the following occurred:

-- The carbon sequestration project operator violated State law related to the project, the violation was not remedied before the issuance of the certificate of project completion, and any applicable statutes of limitation had not run out.
-- The Division determined, after notice and hearing, that the carbon sequestration project operator provided deficient or erroneous information that was material and relied upon to support the issuance of the certificate of project completion.
-- Liability arose from the carbon sequestration project operator's conduct associated with the project that, if known, would have materially affected the Division's decision in issuing the certificate of project completion.

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 have 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, a carbon sequestration project operator, 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 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 stream injected for storage in the preceding calendar year. The fee would have to be

based on EGLE's anticipated reasonable 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 22 cents per ton of carbon dioxide stream 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 as follows:

-- 2 cents or 20%, whichever was greater, in the Michigan Game and Fish Protection Trust Fund.
-- 1 cent or 5%, whichever was greater, to the Community Benefits Fund.
-- 1 cent or 5%, whichever was greater, to the Long-Term Remediation Fund.
-- 1 cent or 5%, whichever was greater, to the First Responders Fund.
-- The balance to the Carbon Sequestration Fund created.

Creation of Carbon Sequestration Fee Funds

The bill also would create four new funds in the State Treasury:

-- The Community Benefits Fund.
-- The Long-Term Remediation Fund.
-- The First Responders Fund.
-- The Carbon Sequestration Fund.

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

The Division would have to spend money from the funds, upon appropriation, only as follows:

-- From the Community Benefits Fund, only for grants to surface owners of land overlying the portion of the storage reservoir underlying the area included within the applicable carbon sequestration project and within 1/2 mile of the boundaries of that portion of the storage reservoir, to mitigate adverse impacts of a carbon sequestration project.
-- From the Long-Term Remediation Fund, only for remediation of carbon dioxide leakage from a carbon sequestration project after a certificate of project completion was issued for the project under Part 651.
-- From the First Responders Fund, only for grants to local units of government for training and equipment for life support agencies and fire departments to respond to an emergency at a carbon sequestration project.
-- From the Carbon Sequestration Fund, only 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 and to pay expenses incurred to perform regulatory responsibilities with respect to a carbon sequestration project that were not paid for by any other fee imposed 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 legal description of the proposed unit area; including total acreage, township, range, and section information.
-- 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 unit operations; if the plan for unit operations 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 unit operations.
-- 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 unit operations 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 owned 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 unit operations 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 confining zone.
-- 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 unit operations, 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 unit operations was feasible and the injection of carbon dioxide stream 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 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 for unit operations 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 the carbon dioxide stream 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 or could be reasonably 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 70% 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. The lessees of State-owned pore space that would be leased through a State leasing program and comprised all or a portion of the pore space storage capacity for a carbon sequestration project would be considered to have approved the plan of unit operations. The plan of unit operations would be subordinate to the terms and conditions of any State pore space lease.

If persons owning at least 70% 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 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 unit operations.

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 unit operations or order of the Division made pursuant to Part 653.

The Division could not require the unitization of State-owned properties or parts of State-owned properties under Part 653 if the State provided for the orderly development of State-owned pore space through a leasing program.

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.

If a written notice of protest was timely filed, 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 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 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 two weeks consecutively in a newspaper of general circulation in the county in which the unit area or any portion of the unit area was 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 conflicted 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.

Carbon Capture Innovation and Incentivization (Part 5)

The bill would allow the DNR to create program to incentivize innovation for the use and reutilization of captured carbon dioxide substances. Unless otherwise prohibited, money received from bonuses, rentals, delayed rentals, and royalties collected or reserved under provisions of leases for the capture, disposal, or storage of gas, carbon dioxide substances, or mineral products in or upon State lands other than tax reverted lands, would be credited to the fund from which the land was purchased. For tax reverted lands, that money would be credited as follows:

-- 50% to the Michigan Game and Fish Protection Trust Fund.
-- 50% to the Forest Development Trust Account.

The DNR could sell carbon offset credits that it owned from public land under its management, if all the following criteria were met:

-- The carbon offset credits were third-party verified.
-- The sale of carbon offset credits allowed for continued land management as outlined by the DNR's land management plans or strategies.

However, these provisions would not create a preemptive right for the DNR or the State to own any carbon offset credits related to public land if a third party had legal rights to the credits. Notwithstanding any law to the contrary, carbon offset credits or tax credits that resulted from the sequestration of carbon dioxide on public lands during the effective period of permitted sequestration and until issuance of a certificate of project completion would be the property of a carbon sequestration project operator. Nothing in the bill would prohibit a carbon sequestration project operator from contracting for the sale, transfer, or other lawful disposition of the credits.

Forest Management Fund

The bill would create the Forest Management Fund in the State Treasury. The State Treasurer would deposit money and other assets received from the storage of carbon dioxide substances or from any other source in the Fund. The State Treasurer would have to direct the investment of money in the Fund and credit interest and earnings from the investments to the Fund. The DNR would be the administrator the Fund for audits.

The DNR would, upon appropriation, spend from the Fund during any State fiscal year up to 1/3 of the revenue received by the Fund, including interest and earnings, during the previous State fiscal year. Money would have to be spent only for the following purposes:

-- Road infrastructure on State forest.
-- Habitat management activities on State forest.

-- Reforestation and other forest management activities to maintain the health of State forest.
-- Administration of carbon-related leasing programs.

Additional Provisions

Under the bill, "processing period" for a permit for a well for secondary recovery, for the disposal of salt water or brine produced in association with oil or gas operations or other oil field wastes, or for the development of reservoirs for the storage of liquid or gaseous hydrocarbons would mean the following:

-- Twenty-five days if EGLE did not receive public comment on the application.
-- Thirty-five days if EGLE received public comment but did not hold a public hearing on the application.
-- Sixty days if EGLE received public comment and held a public hearing on the application.

Senate Bill 394

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 that is capable of being used for the storing of carbon dioxide or other substances. The open space would include an easement to use the following:

-- Any subsurface geological formation in which the open space was located to contain and support the carbon dioxide or other substances stored in the open space.
-- The confining zone.

"Confining zone" would mean a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

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 Act 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 Act also 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.

Senate Bill 395

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 the operation of a carbon sequestration well under Part 651 of NREPA.

FISCAL IMPACT

Senate Bill 394

The bill would have no fiscal impact on State or local government.

Senate Bill 395

There is no anticipated fiscal impact to State or local governments.

Senate Bill 396

This bill would have an indeterminate but likely positive fiscal impact on EGLE. Permit application fees could not exceed actual reasonable costs of processing applications and would be used 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 EGLE's anticipated expenses associated with long-term monitoring of the project, though not to exceed 22 cents per ton of CO2. These fees would be collected and deposited as follows: 2 cents or 20%, whichever was greater, into the Game and Fish Protection Trust Fund, 1 cent or 5%, whichever was greater, each for the new Community Benefits Fund, the Long-Term Remediation Fund, and the First Responders Fund, and the balance into the Carbon Sequestration Fund. Funds from the Community Benefits Fund could only be spent as grants to surface owners of land overlying an applicable carbon sequestration project. Funds from the Long-Term Remediation Fund could be spent only for remediation of carbon dioxide leakage from a carbon sequestration project. Funds from the First Responders Fund could be spent only for grants to local units of government for training and equipment for life support agencies. The Carbon Sequestration Fund could be spent to pay expenses the Division incurred in long-term monitoring and management of projects after their completion, or to pay for expenses incurred to perform regulatory responsibilities laid out in the bill. 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 was issued, the State would assume responsibilities related to the carbon sequestration project and carbon dioxide injected into the storage reservoir. If popular, administering the program could require additional full -time equivalents (FTEs) within EGLE, and the estimated cost per State employee in Fiscal Year 2024-2025 is $138,900. Generally, the fees outlined within the bill are not explicitly defined but rather dependent on the cost incurred by the EGLE to process them.

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

The bill would have a positive fiscal impact on the DNR by permitting them to enter into carbon sequestration contracts and sell carbon offset credits that it owned, thus resulting in a positive fiscal impact for the DNR. This practice, previously allowed for coal, oil, gas, and other mineral products from State lands, would be expanded under the bill to include carbon capture projects. Instructions for the allocation of funds received by the DNR from carbon sequestration-related projects on State-owned land are provided in the bill. This would include bonuses, rentals, delayed rentals, and royalties collected under its provisions. Funds sourced from contracts on land managed by the Forest Resources Division of the DNR would be deposited into the Forest Development Fund; funds sourced from land managed by the Wildlife or Fisheries Divisions would be deposited into the Game and Fish Protection Account. For other State land, proceeds would go toward the fund with which the land was purchased. Revenue generated under the bill on tax-reverted land would be split equally between the Forest Development Trust Account and the Game and Fish Protection Trust Fund.

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, which 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 that would allow the Attorney General to commence civil actions in Circuit Court for violations of Part 13 of NREPA, the permit, issued orders, or State promulgated rule. It is probable the Department of Attorney General would be able to absorb these expenses. Additional FTEs and/or attorneys could be required with more litigation costs.

Any impact on circuit courts would depend on the volume of violations prosecuted.

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