

Colorado Introduces Bill to Promote and Expand Carbon Dioxide Capture and Sequestration

A bill to expand the Colorado Energy and Carbon Management Commission's ("Commission") ability to regulate and promote carbon dioxide capture and sequestration was introduced on February 27. HB24-1346 expands the authority of the Commission to regulate facilities that use equipment to capture significant quantities of carbon dioxide directly from the ambient air (referred to as direct air capture or DAC) as well as the underground sequestration of carbon dioxide in pore space (referred to as geologic storage operations).

Significantly, HB24-1346 establishes that ownership of pore space necessary for geologic storage (referred to as a sequestration estate) is vested in the owner of the overlying surface estate if the sequestration estate has not been separately severed, conveyed or reserved. Any conveyance of the ownership of an overlying surface estate also conveys the grantor's ownership of the sequestration estate, except in certain circumstances. In addition, conveyance of the ownership of a mineral estate does not convey the grantor's ownership in the sequestration estate unless the conveyance instrument provides for such conveyance.

Under the proposed legislation, the Commission may reimpose regulatory responsibility or financial insurance obligations on persons who exercised or conducted geologic CO₂ storage operations if the geologic storage operator makes material misrepresentations or admissions that cause the Commission to approve a site closure. The Commission may also assess and collect regulatory and permitting fees from geologic storage operators. The legislation expands the statute of limitations for alleged violations of energy and carbon management laws from one year after the date of the alleged violation to three years after discovery of the alleged violation. It also provides that the three-year statute of limitations does not apply if information regarding the alleged violation was knowingly or willfully concealed by the alleged violator.

The proposed legislation also empowers the Commission, after application of an interested person and following notice and a hearing, to enter orders for unitization of one or more geologic storage resources (referred to as a geologic storage unit) if the Commission determines that the geologic storage unit is reasonably necessary to undertake and complete a geologic storage project. The order must include terms and conditions that are just and reasonable and establish a plan for operation of the geologic storage unit. An order is effective only if the plan for such geologic storage unit has been approved by persons who collectively own at least 75% of the geologic storage resources (i.e., pore space) included in the geologic

storage unit area. The Commission's order approving such unitization must make a specific finding that the required 75% approval has been obtained.

HB24-1346 is sponsored by House Representatives Brianna Titone and Karen McCormick and Senators Chris Hansen and Kevin Priola. A summary of the proposed legislation and text of HB24-1346 can both be found [here](#).

HB24-1346 is follow-on legislation to Colorado Senate Bill 23-016, which was enacted in 2023 and grants the Commission authority to seek permission from the U.S. Environmental Protection Agency (referred to as primacy authority) to issue Class VI underground injection control permits for drilling carbon sequestration wells. A copy of SB23-016 can be found [here](#).