

AMENDMENT NO. _____ Calendar No. _____

Purpose: To clarify policies regarding ownership and management of pore space.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. _____

To invest in the energy and outdoor infrastructure of the United States to deploy new and innovative technologies, update existing infrastructure to be reliable and resilient, and secure energy infrastructure against physical and cyber threats; and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. Barrasso

Viz:

1 At the end, add the following:

2 **TITLE XII—FEDERAL CARBON**
3 **STORAGE**

4 **SEC. 12001. SHORT TITLE.**

5 This title may be cited as the “Federal Carbon Stor-
6 age Act of 2021”.

7 **SEC. 12002. PORE SPACE OWNERSHIP AND MANAGEMENT.**

8 (a) AMENDMENT.—

1 (1) IN GENERAL.—The Energy Policy Act of
2 2005 is amended by inserting after section 963 (42
3 U.S.C. 16293) the following:

4 **“SEC. 963A. PORE SPACE OWNERSHIP AND MANAGEMENT.**

5 “(a) DEFINITIONS.—In this section:

6 “(1) CARBON OXIDE.—The term ‘carbon oxide’
7 means carbon oxide that has been captured, includ-
8 ing—

9 “(A) any associated substance derived
10 from a source material and the capture process;
11 and

12 “(B) any substance added to the stream to
13 enable or improve the injection process.

14 “(2) FEDERAL ONSHORE PORE SPACE.—The
15 term ‘Federal onshore pore space’ means the on-
16 shore pore space that is vested in the Federal Gov-
17 ernment beneath land managed by—

18 “(A) the Secretary of the Interior, acting
19 through the Director of the Bureau of Land
20 Management; or

21 “(B) the Secretary of Agriculture, acting
22 through the Chief of the Forest Service.

23 “(3) PORE SPACE.—The term ‘pore space’
24 means a subsurface geologic space of any size that

1 can be used for storage or sequestration of carbon
2 oxide injected into the space.

3 “(4) SEQUESTER; STORE; SEQUESTRATION;
4 STORAGE.—The terms ‘sequester’ and ‘store’, and
5 ‘sequestration’ and ‘storage’, with respect to carbon
6 oxide injected into a pore space, mean to hold, or
7 holding, respectively, the carbon oxide within the
8 pore space indefinitely.

9 “(b) OWNERSHIP.—

10 “(1) PORE SPACE LOCATED DIRECTLY BELOW
11 PRIVATE SURFACE ESTATES.—

12 “(A) IN GENERAL.—The ownership of any
13 pore space located directly below a private sur-
14 face estate, [including] in cases in which the
15 Federal Government owns the mineral estate or
16 a portion of the mineral estate, including min-
17 erals reserved beneath land subject to the provi-
18 sions of law described in subparagraph (B),
19 shall be vested pursuant to the applicable law of
20 the State in which the pore space is located.

21 “(B) DESCRIPTION OF LAWS.—The provi-
22 sions of law referred to in subparagraph (A)
23 are—

24 “(i) the Act of July 17, 1914 (38
25 Stat. 509, chapter 142; 30 U.S.C. 121 et

1 seq.) and the Act of March 4, 1933 (47
2 Stat. 1570, chapter 278; 30 U.S.C. 124)
3 (commonly known as the ‘Agricultural
4 Entry Acts’);

5 “(ii) section 9 of the Act of December
6 29, 1916 (commonly known as the
7 ‘Stockraising Homestead Act’) (39 Stat.
8 864, chapter 114; 43 U.S.C. 299); and

9 [“(iii) the first section of the Act of
10 June 28, 1934 (commonly known as the
11 ‘Taylor Grazing Act’) (48 Stat. 1269,
12 chapter 865; 43 U.S.C. 315).]

13 “(C) EFFECT OF PARAGRAPH.—Nothing in
14 this paragraph reserves to the United States
15 any pore space beneath land granted under—

16 “(i) any provision of law described in
17 subparagraph (B); or

18 “(ii) any instrument executed pursu-
19 ant to such a provision.

20 “(2) REQUIREMENT.—Notwithstanding any
21 other provision of law, the total period for all Fed-
22 eral reviews and permit considerations, including all
23 reviews required under the National Environmental
24 Policy Act of 1969 (42 U.S.C. 4321 et seq.), for a

1 carbon oxide injection project under this section
2 shall not exceed 12 months.

3 “(c) MANAGEMENT.—

4 “(1) IN GENERAL.—Federal onshore pore space
5 shall be managed by the Bureau of Land Manage-
6 ment in accordance with subsection (g).

7 “(2) OFFSHORE PORE SPACE.—Federal off-
8 shore pore space shall be managed by the Bureau of
9 Ocean Energy Management in accordance with sec-
10 tion 8(p) of the Outer Continental Shelf Lands Act
11 (43 U.S.C. 1337(p)) and subsection (g).

12 “(d) CONVEYANCE.—

13 “(1) IN GENERAL.—A conveyance limited to a
14 fee interest in the surface ownership of Federal
15 land—

16 “(A) shall include the conveyance of the
17 Federal pore space in all strata directly below
18 the surface of the Federal land unless—

19 “(i) the ownership interest in the pore
20 space has previously been severed from the
21 surface ownership; or

22 “(ii) the intent not to convey the pore
23 space is expressed or necessarily implied by
24 the terms of the conveyance; and

1 “(B) shall not limit or expand the rights or
2 obligations associated with Federal mineral in-
3 terests, regardless of whether the Federal min-
4 eral interests were previously conveyed or re-
5 served.

6 “(2) LIMITATION.—Subject to subsections (e)
7 and (f), no agreement conveying or reserving Fed-
8 eral mineral interests or other interests underlying
9 the surface of land shall convey ownership of any
10 Federal pore space in the stratum unless the agree-
11 ment explicitly conveys the interest in pore space.

12 “(3) CONVEYANCE INSTRUMENTS.—

13 “(A) IN GENERAL.—Any express convey-
14 ance of an interest in Federal pore space under
15 this section, including any initial conveyance
16 from the appropriate Federal land management
17 agency and any subsequent conveyance, shall
18 describe the scope of any right to use the sur-
19 face estate.

20 “(B) USE OF PORE SPACE.—The holder of
21 any pore space right conveyed under this sec-
22 tion shall have no right to use the surface es-
23 tate except for the uses, if any, described in an
24 instrument described in subparagraph (A).

1 “(C) APPLICABLE LAW.—All conveyances
2 of Federal land executed before the date of en-
3 actment of this section shall be construed in ac-
4 cordance with this section, unless a person
5 claiming ownership interest contrary to an ap-
6 plicable provision of this section establishes
7 ownership by a preponderance of the evidence
8 in an action to establish ownership of the inter-
9 est.

10 “(e) PRIORITY.—

11 “(1) IN GENERAL.—For the purpose of deter-
12 mining the priority of subsurface uses between a
13 mineral estate and pore space, the mineral estate is
14 dominant, except as expressly provided by the terms
15 of an instrument creating an interest in the mineral
16 estate or pore space.

17 “(2) REQUIREMENT.—Notwithstanding para-
18 graph (1), in any case in which the Federal Govern-
19 ment owns the mineral estate, to the maximum ex-
20 tent practicable, the managing agency shall accom-
21 modate the subsurface uses of both the mineral es-
22 tate and the pore space.

23 “(f) DOMINANCE OF MINERAL ESTATE.—Nothing in
24 this section alters any provision of law or judicial prece-
25 dent in effect on the date of enactment of this section re-

1 lating to the rights belonging to, or the dominance of, the
2 mineral estate.

3 “(g) MANAGEMENT OF FEDERAL PORE SPACE.—

4 “(1) DEFINITIONS.—In this subsection:

5 “(A) DIRECTOR CONCERNED.—The term
6 ‘Director concerned’ means—

7 “(i) the Director of the Bureau of
8 Land Management, with respect to the
9 program established under paragraph
10 (2)(A); and

11 “(ii) the Director of the Bureau of
12 Ocean Energy Management, with respect
13 to the program established under para-
14 graph (2)(B).

15 “(B) PROGRAM.—The term ‘program’
16 means, as applicable—

17 “(i) the program established under
18 paragraph (2)(A); and

19 “(ii) the program established under
20 paragraph (2)(B).

21 “(2) ESTABLISHMENT.—

22 “(A) FEDERAL ONSHORE PORE SPACE.—

23 There is established within the Bureau of Land
24 Management a program for the management of
25 Federal onshore pore space, including the

1 granting of exclusive subsurface rights-of-way
2 through Federal onshore pore space pursuant
3 to title V of the Federal Land Policy and Man-
4 agement Act of 1976 (43 U.S.C. 1761 et seq.).

5 “(B) FEDERAL OFFSHORE PORE SPACE.—
6 There is established within the Bureau of
7 Ocean Energy Management a program for the
8 management of Federal offshore pore space, in-
9 cluding the granting of exclusive subsurface
10 rights-of-way through Federal offshore pore
11 space pursuant to the Outer Continental Shelf
12 Lands Act (43 U.S.C. 1331 et seq.).”

13 “(3) FEES.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (B), the Director concerned shall charge
16 a 1-time injection fee of \$2 per metric ton for
17 the sequestration of carbon oxide in Federal
18 pore space.

19 “(B) FEE EXCEPTION.—

20 “(i) IN GENERAL.—In the case of any
21 qualified carbon oxide (as defined in sub-
22 section (c) of section 45Q of the Internal
23 Revenue Code of 1986) for which a carbon
24 oxide sequestration credit determined
25 under such section is allowable under sec-

1 tion 38 of such Code for any taxable year,
2 if such qualified carbon oxide is seques-
3 tered in a Federal pore space during such
4 taxable year, the Director concerned shall
5 not impose the fee described in subpara-
6 graph (A) with respect to the sequestration
7 of such qualified carbon oxide.

8 “(ii) RECAPTURE.—In the case of any
9 qualified carbon oxide described in clause
10 (i) for which the credit determined under
11 section 45Q of the Internal Revenue Code
12 of 1986 is subject to recapture pursuant to
13 subsection (f)(4) of such section, the Di-
14 rector concerned may not retroactively im-
15 pose the fee described in subparagraph (A)
16 with respect to the sequestration of such
17 qualified carbon oxide.

18 “(iii) NONAPPLICATION OF CERTAIN
19 LIMITATIONS.—For purposes of this sub-
20 paragraph, section 45Q of the Internal
21 Revenue Code of 1986 shall be applied
22 without regard to—

23 “(I) the requirements under
24 paragraphs (3)(A) and (4)(A) of sub-
25 section (a) of such section pertaining

1 to the period during which the carbon
2 oxide sequestration credit may be
3 claimed; or

4 “(II) subsection (g) of such sec-
5 tion.

6 “(h) REGULATIONS.—

7 “(1) PROPOSED.—Not later than 180 days
8 after the date of enactment of this section, the Sec-
9 retary of the Interior, in coordination with relevant
10 stakeholders, shall issue proposed regulations relat-
11 ing to the unitization of pore space units on Federal,
12 State, and fee land, including relating to the inclu-
13 sion of—

14 “(A) federally owned pore space in units
15 formed pursuant to State law;

16 “(B) State-owned and privately owned pore
17 space in Federal pore space units;

18 “(C) pore space units that cross State
19 lines; and

20 “(D) pore space units that cross Federal
21 and State water boundaries.

22 “(2) FINAL.—Not later than 240 days after the
23 date of enactment of this section, the Secretary of
24 the Interior shall promulgate final regulations in ac-
25 cordance with paragraph (1).

1 “(i) USGS INVENTORY.—The Director of the United
2 States Geological Survey shall update and refine the
3 United States Geological Survey inventory of pore volumes
4 suitable for the storage of carbon oxide.”.

5 (2) CONFORMING AMENDMENT.—The table of
6 contents for the Energy Policy Act of 2005 (Public
7 Law 109–58; 119 Stat. 600) is amended by insert-
8 ing after the item relating to section 963 the fol-
9 lowing:

“Sec. 963A. Pore space ownership and management.”.

10 (b) OCS LEASES FOR ENERGY AND RELATED PUR-
11 POSES.—

12 (1) DEFINITIONS.—Section 2 of the Outer Con-
13 tinental Shelf Lands Act (43 U.S.C. 1331) is
14 amended—

15 (A) in each of subsections (a) through (o),
16 by striking the semicolon at the end of the sub-
17 section and inserting a period;

18 (B) in subsection (p), by striking “; and”
19 at the end and inserting a period; and

20 (C) by adding at the end the following:

21 “(r) The term ‘carbon oxide’ means carbon oxide that
22 has been captured, including—

23 “(1) any associated substance derived from a
24 source material and the capture process; and

1 “(2) any substance added to the stream to en-
2 able or improve the injection process.

3 “(s) The term ‘pore space’ means a subsurface geo-
4 logic space of any size that can be used for storage or
5 sequestration of carbon oxide injected into the space.

6 “(t) The terms ‘sequester’ and ‘store’, and ‘sequestra-
7 tion’ and ‘storage’, with respect to carbon oxide injected
8 into a pore space, mean to hold, or holding, respectively,
9 the carbon oxide within the pore space indefinitely.”.

10 (2) LEASES.—Section 8(p) of the Outer Conti-
11 nental Shelf Lands Act (43 U.S.C. 1337(p)) is
12 amended—

13 (A) in paragraph (1)—

14 (i) in subparagraph (C), by striking
15 “or” at the end;

16 (ii) in subparagraph (D), by striking
17 the period at the end and inserting “; or”;
18 and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(E) are to store or sequester carbon
22 oxide, regardless of the source of the carbon
23 oxide (including in any case in which the pro-
24 duction of oil, gas, coal, an industrial **[byprod-**
25 **uct]**, or biomass was such a source).”; and

1 **【SLC note: Or should this read, ‘in any case in**
2 *which any industrial process, including the pro-*
3 *duction of oil, gas, coal, or biomass, was such a*
4 *source’?】*

5 (B) by adding at the end the following:

6 “(11) MANAGEMENT OF PORE SPACE.—

7 “(A) IN GENERAL.—Federal offshore pore
8 space shall be managed by the Bureau of Ocean
9 Energy Management in accordance with this
10 subsection and section 963A(g) of the Energy
11 Policy Act of 2005.

12 “(B) CONTROLLING PROVISIONS.—In the
13 event of any inconsistency between this sub-
14 section and section 963A(g) of the Energy Pol-
15 icy Act of 2005, the provisions of section
16 963A(g) of the Energy Policy Act of 2005 shall
17 control.”.

18 (c) AMENDMENT TO MARINE PROTECTION, RE-
19 SEARCH, AND SANCTUARIES ACT OF 1972.—Section 101
20 of the Marine Protection, Research, and Sanctuaries Act
21 of 1972 (33 U.S.C. 1411) is amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph (1),
24 by striking “108 of this title,” and inserting
25 “108—”;

1 (B) in paragraph (1), by striking “States,”
2 and inserting “States any material for the pur-
3 pose of dumping the material into ocean
4 waters;”;

5 (C) in paragraph (2), by inserting “any
6 material for the purpose of dumping the mate-
7 rial into ocean waters” after “location”; and

8 (D) by striking the undesignated matter
9 following paragraph (2); and

10 (2) by adding at the end the following:

11 “(c) SUB-SEABED CARBON DIOXIDE INJECTION NOT
12 PROHIBITED.—

13 “(1) IN GENERAL.—Sub-seabed carbon dioxide
14 injection for the purpose of geological sequestration
15 shall not be considered a prohibited act under this
16 title.

17 “(2) APPLICATION OF PERMIT REQUIRE-
18 MENTS.—The permit requirements described in this
19 title shall not apply to sub-seabed carbon dioxide in-
20 jection for the purpose of geological sequestration.”.