

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4491**

BY DELEGATES ANDERSON, J. KELLY, FERRELL, HANSEN,

WAMSLEY, HOLSTEIN, CLARK, HOTT, AND YOUNG

[Introduced February 1, 2022; referred  
to the Committee on Energy and Manufacturing then  
the Judiciary]

1 A BILL to amend and reenact §22-11A-3 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new article, designated §22-11B-1, §22-11B-2, §22-  
3 11B-3, §22-11B-4, §22-11B-5, §22-11B-6, §22-11B-7, §22-11B-8, §22-11B-9, §22-11B-  
4 10, §22-11B-11, §22-11B-12, §22-11B-13, §22-11B-14, §22-11B-15, §22-11B-16, §22-  
5 11B-17, §22-11B-18, and §22-11B-19, all relating to regulating the drilling of injection wells  
6 for, and the operation and completion of, underground carbon dioxide storage sites;  
7 declaring legislative purpose; defining terms; specifying scope of former program;  
8 establishing requirement for permit; providing option for holders of pre-existing permits to  
9 pursue permit modifications under prior or new law; specifying application requirements  
10 and fees; clarifying that these provisions apply only to underground carbon dioxide  
11 sequestration operations and facilities; directing the proposal of legislative rules for permit  
12 applications, providing for public notice, participation, and permit hearings; authorizing the  
13 proposal of legislative rules for additional purposes to implement this act; authorizing  
14 additional conditions in permits and orders; preserving other existing powers of the  
15 secretary; preserving rights of existing mineral owners and authorizing cooperative  
16 agreements among owners and operators; declaring that carbon dioxide injected into an  
17 underground storage facility is not a pollutant; requiring permit holders to provide and  
18 update identification and contact information for a local agent; affirming exclusion of  
19 enhanced oil, natural gas, or coalbed methane recovery projects using carbon dioxide  
20 injection from requirement of underground carbon dioxide storage permit; specifying  
21 requirements for completion of an underground carbon dioxide storage project; directing  
22 transfer of ownership to surface owners upon completion of project; providing for liability  
23 to transfer to the state; establishing state responsibility for maintenance and monitoring  
24 after project completion; establishing the Carbon Dioxide Storage Facility Administrative  
25 Fund and the Carbon Dioxide Storage Facility Trust Fund as special revenue accounts  
26 and describing the authorized purposes and uses of fund moneys; providing a process for

27 completion of underground carbon dioxide storage projects; requiring annual fees for  
 28 underground storage or carbon dioxide and a fee to apply for a project completion  
 29 certificate; providing for cooperative agreements between the Department of  
 30 Environmental Protection and other government entities for enforcement and regulatory  
 31 activities; limiting state liability; authorizing the Secretary of the Department of  
 32 Environmental Protection to make determinations of the amount of carbon dioxide able to  
 33 be sequestered at a location and to assess fees for that determination; specifying local  
 34 filing requirements; defining ownership of pore space formations; authorizing entry onto  
 35 lands to conduct seismic surveys; requiring permit applicants and storage facility  
 36 operators to identify and obtain consent from potential pore space owners; providing for  
 37 pooling of interests if the storage operator does not obtain consent of pore space owners  
 38 for the construction and operation of a storage facility; providing for hearings to establish  
 39 interests of pore space owners in ownership pools; and providing for assessment of  
 40 hearing costs.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 11A. CARBON DIOXIDE SEQUESTRATION PILOT PROGRAM.**

**§22-11A-3. Prohibition of underground carbon dioxide sequestration without a permit;  
 injection of carbon dioxide for the purpose of enhancing the recovery of oil or other  
 minerals not subject to the provisions of this article, application to existing  
sequestration sites.**

1 (a) The provisions of §22-11-1 *et seq.* of this code apply to all permits issued pursuant to  
 2 this article except, where the express provisions of this article conflict with the provisions of §22-  
 3 11-1 *et seq.* of this code, the express provisions of this article control.

4 (b) Except as set forth in subsection (c) of this section, no person shall engage in  
 5 underground carbon dioxide sequestration in this state unless authorized by a permit issued by  
 6 the department in accordance with §22-11-1 *et seq.* or §22-11B-1 *et seq.* of this code.

7 (c) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other  
8 minerals pursuant to a project approved by the department shall not be subject to the provisions  
9 of this article.

10 ~~(d) If an oil, natural gas or coalbed methane operator converts its operations to carbon~~  
11 ~~dioxide sequestration upon the cessation of oil or other mineral recovery operations, then the~~  
12 ~~carbon dioxide sequestration facility and the carbon dioxide sequestration site shall be regulated~~  
13 ~~pursuant to this article and article eleven of this chapter. If an operator does not convert its~~  
14 ~~operations to carbon dioxide sequestration upon the cessation of oil or other mineral recovery~~  
15 ~~operations, the wells shall be plugged and abandoned in accordance with article six of this chapter~~  
16 The provisions of this article apply to all permits issued and to all applications for permits  
17 submitted prior to the effective date of §22-11B-1 et seq. of this code. If the permit holder for an  
18 underground carbon dioxide sequestration site that was granted a permit prior to the effective  
19 date of §22-11B-1 et seq. of this code seeks a modification of that permit after that article became  
20 effective, then the permit holder shall have the option to proceed either pursuant to the provisions  
21 of this article or the provisions of §22-11B-1 et seq. of this code.

22 (e) Any entity owning or operating an underground carbon dioxide sequestration facility  
23 which has commenced construction on or before the effective date of this article is hereby  
24 authorized to continue operating until such time as the secretary has established operational and  
25 procedural requirements applicable to such existing facilities and the entity owning or operating  
26 such facility has had a reasonable opportunity to comply with those requirements.

## **ARTICLE 11B. UNDERGROUND CARBON DIOXIDE SEQUESTRATION AND** **STORAGE.**

### **§22-11B-1. Statement of Purpose.**

1 It is the purpose of this article to:

2 (1) Establish a legal and regulatory framework for the development and approval of

3 underground carbon dioxide sequestration facilities; and

4 (2) Designate a state agency responsible for establishing standards and rules for the  
5 development and approval of underground carbon dioxide sequestration and storage facilities.

**§22-11B-2. Definitions.**

1 Unless the context clearly requires a different meaning, as used in this article:

2 (1) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is  
3 of such purity and quality that it will not compromise the safety of geologic storage and will not  
4 compromise those properties of a storage reservoir which allow the reservoir to effectively enclose  
5 and contain a stored gas;

6 (2) "Carbon dioxide sequestration" or "carbon dioxide storage" means the injection of  
7 carbon dioxide and associated constituents into subsurface geologic reservoirs intended to  
8 provide for the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream  
9 in subsurface geologic formations and thereby prevent its release into the atmosphere;

10 (3) "Class VI underground injection control" or "Class VI UIC" refers to the classification  
11 by the US EPA of wells for injection of substances or materials into deep rock formations and,  
12 specifically, to the class of wells that are used to inject carbon dioxide into underground rock  
13 formations to reduce carbon dioxide emissions to the atmosphere and mitigate climate change;

14 (4) "Class VI underground injection control permit," "Class VI UIC permit," or "Class VI  
15 permit" means a permit to drill injection wells and to conduct carbon dioxide sequestration at a  
16 specified site;

17 (5) "Completion certificate" means a Certificate of Underground Carbon Dioxide Storage  
18 Project Completion;

19 (6) "Excursion" means the migration of carbon dioxide at or beyond the designated  
20 boundary of a carbon dioxide sequestration site;

21 (7) "Permit" means a Class VI underground injection control permit issued by the secretary  
22 or by the US EPA, authorizing a person or business entity to drill an injection well and to construct

23 and operate a carbon dioxide sequestration facility;

24 (8) "Pore space" means a cavity or void, whether naturally or artificially created, in a  
25 subsurface stratum;

26 (9) "Reservoir" means a subsurface stratum, formation, aquifer, cavity, or void, whether  
27 naturally or artificially created, including oil and gas reservoirs, saline formations, and coal seams  
28 suitable for, or capable of being made suitable for, injecting and storing carbon dioxide;

29 (10) "Secretary" means the Secretary of the Department of Environmental Protection;

30 (11) "Storage facility" or "sequestration facility" means the reservoir, underground  
31 equipment, and surface facilities and equipment used or proposed to be used in a carbon dioxide  
32 sequestration project, but does not include pipelines used to transport carbon dioxide to the  
33 storage facility;

34 (12) "Storage operator" means a person applying for or holding a permit until the issuance  
35 of a completion certificate for the relevant storage facility;

36 (13) "Storage reservoir" means a reservoir proposed, authorized, or used for storing  
37 carbon dioxide;

38 (14) "UIC" means underground injection control; and

39 (15) "US EPA" means United States Environmental Protection Agency.

**§22-11B-3. Prohibition of underground carbon dioxide sequestration without a permit;**  
**injection of carbon dioxide for the purpose of enhancing the recovery of oil or other**  
**minerals not subject to the provisions of this article.**

1 (a) It is unlawful for any person to commence work on, or to operate, a carbon dioxide  
2 sequestration facility or storage site without first securing a Class VI underground injection control  
3 permit from the secretary or from the US EPA.

4 (b) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other  
5 minerals pursuant to a project approved by the secretary shall not be subject to the provisions of  
6 this article.

7 (c) If an oil, natural gas or coalbed methane well operator proposes to convert its  
8 operations to carbon dioxide sequestration, then the underground carbon dioxide sequestration  
9 facility shall be regulated pursuant to this article and §22-11-1 et seq. of this code.

10 (d) All applications for permits submitted after the effective date of this article shall be  
11 governed by the provisions of this article. Permits issued and applications submitted prior to the  
12 effective date of this article shall be governed by the provisions of §22-11-1 et seq. and §22-11A-  
13 1 et seq of this code. If the holder of a Class VI underground injection control permit or other  
14 carbon dioxide sequestration permit, granted prior to the effective date of this article, seeks a  
15 modification of that permit after this article becomes effective, then the permit holder shall have  
16 the option to proceed either according to the provisions of this article or the provisions of §22-  
17 11A-1 et seq. of this code.

**§22-11B-4. Permit application requirements and contents; application fee, required findings, and rulemaking.**

1 (a) Every permit application filed under this article shall be on a form as may be prescribed  
2 by the secretary, shall be verified, and shall contain all information specified by legislative rule.

3 (b) Upon filing an application for a permit, an applicant shall:

4 (1) Pay a fee in an amount set by the secretary. The amount of the fee shall be set by rule  
5 and shall be based on the secretary's anticipated cost of processing applications for permits,  
6 orders, or determinations under this article. The fee shall be deposited in the Carbon Dioxide  
7 Storage Facility Administrative Fund.

8 (2) Pay to the secretary the costs the secretary incurs in publishing notices of applications  
9 and notices for hearings on applications submitted under this article.

10 (c) Before a permit application may be approved, the secretary shall determine whether  
11 the proposed storage facility contains commercially valuable minerals and, if it does, a permit may  
12 be issued only if the secretary is satisfied that the interests of the mineral owners or mineral  
13 lessees will not be adversely affected or have been addressed in an arrangement entered into by

14 the mineral owners or mineral lessees and the storage operator;

15 (d) No permit shall be issued under this article unless the secretary finds:

16 (1) That the application and the proposed operations comply with all requirements  
17 established by the secretary, including any applicable underground injection rules, and with all  
18 applicable provisions of state and federal law;

19 (2) That the storage facility is suitable and feasible for carbon dioxide injection and  
20 sequestration;

21 (3) That the storage operator has made a good-faith effort to obtain the consent of all  
22 persons who own the storage reservoir's pore space;

23 (4) That the storage operator has obtained the written consent of persons who own at  
24 least 75 percent of the storage reservoir's pore space;

25 (5) That the proposed storage facility will not adversely affect surface waters or formations  
26 containing fresh water;

27 (6) That the storage facility will not unduly endanger human health or the environment;

28 (7) That adequate horizontal and vertical boundaries of the storage reservoir are defined,  
29 including buffer areas, to ensure that the storage facility is operated safely and prudently;

30 (8) That the storage operator will establish monitoring facilities and protocols to assess  
31 the location and migration of carbon dioxide injected for storage and to ensure compliance with  
32 all permit, statutory, and administrative requirements;

33 (9) That all nonconsenting pore space owners are or will be equitably compensated in  
34 accordance with the rules and procedures set forth in or promulgated under this article; and

35 (10) That the storage facility is in the public interest.

36 (e) To the extent not inconsistent with state and federal regulations, the secretary shall  
37 render a decision on a permit application within one year after submission of a complete  
38 application.

39 (f) The secretary shall propose rules for legislative approval, pursuant to the provisions of

40 §29A-3-1 et seq. of this code, detailing additional requirements for inclusion in a permit  
41 application, such as:

42 (1) Site characterization requirements;

43 (2) Injection well construction requirements for materials that are compatible with and can  
44 withstand contact with carbon dioxide over the life of a carbon dioxide sequestration project;

45 (3) Well operation requirements;

46 (4) Comprehensive monitoring requirements that address all aspects of well integrity,  
47 carbon dioxide injection and storage, as well as air and ground water quality during the injection  
48 operation and the post-injection site care period;

49 (5) Financial responsibility requirements assuring the availability of funds for the life of a  
50 carbon dioxide sequestration project (including post-injection site care and emergency response);  
51 and

52 (6) Reporting and recordkeeping requirements that provide project-specific information to  
53 continually evaluate the site operations and confirm environmental protection.

**§22-11B-5. Public participation in permit process, notices, public hearing.**

1 (a) Public notice of an application for a permit required under this article shall allow at least  
2 30 days for public comment. The secretary shall specify the required contents of the public notice.

3 (b) The secretary shall send the public notice to the applicant, who shall be responsible  
4 for publication of a Class 1 legal advertisement of the notice by a date and in a paper specified  
5 by the secretary. Upon publication, the applicant shall send the secretary a copy of the certificate  
6 of publication. The costs of publication shall be borne by the applicant.

7 (c) Notice of the preparation of a draft permit shall be given to each mineral lessee, mineral  
8 owner, and pore space owner with a legal interest that involves the storage reservoir.

9 (d) Notice of an application for a permit shall be given to each surface owner of land  
10 overlying the storage reservoir.

11 (e) Notice of an application for a permit shall be given to any additional persons that the

12 secretary requires.

13 (f) Service of individual notices required by this section shall be through personal service  
14 or by registered mail or by any method of delivery that requires a receipt or signature confirmation.

15 (g) The secretary shall hold a public hearing whenever he or she finds, on the basis of  
16 requests, a significant degree of public interest of issues relevant to the draft permit. The secretary  
17 may also hold a public hearing at his or her discretion if a hearing may assist in clarifying one or  
18 more issues involved in the permit decision. Should a public hearing be held, notice of the hearing  
19 shall be provided in the same manner as set forth above with respect to public notice of the  
20 preparation of a draft permit.

**§22-11B-6. Permit and order provisions; identification of agent.**

1 (a) The secretary may include in any permit or order all things necessary to carry out this  
2 article's objectives and to protect and adjust the respective rights and obligations of persons  
3 affected by a carbon dioxide sequestration facility.

4 (b) Every well operator required to designate an agent under this article shall, within five  
5 days after the termination of the designation, notify the secretary of the termination and designate  
6 a new agent.

**§22-11B-7. Additional rulemaking authority.**

1 In addition to the rule specified in §22-11B-4 of this code, the secretary may propose rules  
2 for legislative approval, pursuant to the provisions of §29A-3-1 et seq. of this code, to carry out  
3 the requirements of this article, including, but not limited to:

4 (1) The issuance of Underground Carbon Dioxide Storage Facility Completion Certificates;

5 (2) The administration of the Carbon Dioxide Storage Facility Administrative Fund and the  
6 Carbon Dioxide Storage Facility Trust Fund;

7 (3) The issuance of determinations of the amounts of carbon dioxide stored pursuant to  
8 individual underground injection control permits issued for that purpose, based upon requests for  
9 storage determination;

10 (4) The issuance of orders allowing for seismic studies and other steps to explore for  
11 suitable locations of carbon dioxide geologic storage; and

12 (5) The issuance of collective storage orders as a part of the development of a proposed  
13 carbon dioxide sequestration project.

**§22-11B-8. Environmental protection, other law.**

1 (a) For the purposes of this article and in all other respects, any carbon dioxide injected  
2 and sequestered in accordance with an underground injection control permit issued by the  
3 secretary shall not be considered a pollutant and the operation and existence of such a carbon  
4 dioxide sequestration facility shall not be considered a public nuisance.

5 (b) The secretary's authority as set forth in this article shall not otherwise limit the authority  
6 or jurisdiction of the secretary in any manner.

**§22-11B-9. Oil, natural gas and coalbed methane activities at carbon dioxide sequestration**  
**sites; extraction of sequestered carbon dioxide.**

1 (a) Nothing in this article shall be deemed to affect the otherwise lawful right of a mineral  
2 owner to drill or bore through a carbon dioxide storage facility if done in accordance with the  
3 secretary's underground injection control permit rules or any other applicable legal requirements  
4 which are intended to protect the carbon dioxide storage facility against the escape of carbon  
5 dioxide.

6 (b) Nothing in this article is intended to impede or impair the ability of an oil, natural gas,  
7 or coalbed methane operator to inject carbon dioxide through an approved enhanced oil, natural  
8 gas, or coalbed methane recovery project and to establish, verify, register, and sell emission  
9 reduction credits associated with the project.

10 (c) Subject to compliance with any applicable underground injection control regulations or  
11 permit, the Office of Oil and Gas shall have jurisdiction to review and approve of any subsequent  
12 extraction of sequestered carbon dioxide from a permitted underground carbon dioxide storage  
13 facility that is intended for commercial or industrial purposes.

**§22-11B-10. Cooperative agreements.**

1        The secretary is authorized to enter into cooperative agreements with other governments  
2 or government entities for the purpose of regulating carbon dioxide sequestration projects that  
3 extend beyond state regulatory authority under this article.

**§22-11B-11. Ownership of carbon dioxide.**

1        The storage operator shall be the owner of the carbon dioxide injected into and stored in  
2 a storage reservoir approved under this article and shall maintain ownership and control until the  
3 secretary issues a Certificate of Underground Carbon Dioxide Storage Project Completion. While  
4 the storage operator has ownership, the operator is liable for any damage the carbon dioxide may  
5 cause, including damage caused by carbon dioxide that escapes from the storage facility.

**§22-11B-12. Certificate of project completion, release, transfer of title and custody, filing.**

1        (a) After carbon dioxide injections into a reservoir end and upon application by the storage  
2 operator demonstrating compliance with this section, the secretary may issue a Certificate of  
3 Underground Carbon Dioxide Storage Project Completion (“completion certificate”).

4        (b) The completion certificate may only be issued after public notice and hearing. The  
5 secretary shall establish notice requirements for this hearing by legislative rule.

6        (c) The completion certificate may not be issued until at least 10 years after carbon dioxide  
7 injections end.

8        (d) The completion certificate may only be issued if the storage operator:

9        (1) Is in full compliance with all laws and other requirements governing the storage facility,  
10 including, without limitation, the terms of any underground injection control permit associated with  
11 the facility and other applicable requirements;

12        (2) Shows that it has addressed all pending claims regarding the storage facility’s  
13 operation; and

14        (3) Shows that the storage reservoir is reasonably expected to retain the carbon dioxide  
15 stored in it.

16 (e) As of the effective date of a completion certificate:

17 (1) Ownership of the stored carbon dioxide transfers, without payment of any  
18 compensation, to the owners of the pore space as established in §22-11B-18 of this code;

19 (2) Ownership acquired by the pore space owners under subdivision (e)(1) of this section  
20 includes all rights and interests in the stored carbon dioxide and any associated leasing rights;  
21 Provided, That all liability and regulatory requirements associated with the stored carbon dioxide  
22 shall become the responsibility of the state and the state shall defend, indemnify, and hold  
23 harmless the pore space and surface owners against all claims;

24 (3) The storage operator and all persons who transported and/or generated any stored  
25 carbon dioxide are released from all liability and regulatory requirements associated with the  
26 storage facility;

27 (4) Any bonds posted by the storage operator shall be released; and

28 (5) Notwithstanding ownership of the stored carbon dioxide in the pore space owners as  
29 provided herein, monitoring and managing the storage facility shall become the state's  
30 responsibility to be overseen by the secretary utilizing only money from the Trust Fund until such  
31 time as the federal government assumes responsibility for the long-term monitoring and  
32 management of storage facilities.

33 (f) The secretary shall require that a copy of the completion certificate and a survey of the  
34 storage field be filed with the county recorder in the county or counties where the carbon dioxide  
35 storage facility is located.

**§22-11B-13. Carbon Dioxide Storage Facility Administrative Fund.**

1 (a) There is hereby created in the State Treasury a special revenue fund to be known as  
2 the Carbon Dioxide Storage Facility Administration Fund. Expenditures from the fund shall be  
3 made by the secretary for the purposes set forth in this article, and are not authorized from  
4 collections, but are to be made only in accordance with appropriation from the Legislature and in  
5 §12-3-1 et seq. of this code. The fund may only be used for the purpose of payment of all

6 expenses of the department in processing permit and certificate applications; regulating storage  
7 facilities during their construction, operational, and preclosure phases; and making storage  
8 amount determinations under §22-11B-17 of this code. Any balance remaining in the fund at the  
9 end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special  
10 revenue fund. Money in the fund may be invested in a manner determined by the West Virginia  
11 Investment Management Board, with interest earned by the fund to be deposited in the fund.

12 (b) The secretary may, through a cooperative agreement with another state agency, use  
13 money from the fund to compensate the cooperating agency for expenses that cooperating  
14 agency incurs in carrying out regulatory responsibilities that agency may have over a storage  
15 facility.

**§22-11B-14. Application fee, deposit, use in cooperative regulatory functions.**

1 Permit applicants and operators seeking completion certificates shall pay the secretary an  
2 application fee, established by legislative rule, based upon each ton of carbon dioxide to be stored  
3 at the facility. This fee shall be deposited in the Carbon Dioxide Storage Facility Administrative  
4 Fund.

**§22-11B-15. Carbon Dioxide Storage Facility Trust Fund**

1 (a) There is hereby created in the State Treasury a special revenue fund to be known as  
2 the Carbon Dioxide Storage Facility Trust Fund. Expenditures from the fund shall be made by the  
3 secretary for the anticipated expenses associated with the long-term monitoring and management  
4 of closed storage facilities, and are not authorized from collections, but are to be made only in  
5 accordance with appropriation from the Legislature and in §12-3-1 et seq. of this code. Any  
6 balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue  
7 Fund, but remains in the special revenue fund. Money in the fund may be invested in a manner  
8 determined by the West Virginia Investment Management Board, with interest earned by the fund  
9 to be deposited in the fund.

10 (b) The secretary may, through a cooperative agreement with another state agency, use

11 money from the fund to compensate the cooperating agency for expenses that cooperating  
12 agency incurs in carrying out regulatory responsibilities that agency may have over a storage  
13 facility.

**§22-11B-16. Operation fee, use, report to legislature.**

1 (a) Storage operators shall pay the secretary a fee on each ton of carbon dioxide injected  
2 for storage. The fee shall be in the amount set by legislative rule. The amount shall be based on  
3 the contribution of the storage facility and the source of the carbon dioxide to the energy and  
4 agriculture production economy of West Virginia and the secretary's anticipated expenses  
5 associated with the long-term monitoring and management of closed storage facilities. This fee  
6 shall be deposited in the Carbon Dioxide Storage Facility Trust Fund.

7 (b) The secretary shall file with the Legislature's Joint Committee on Government and  
8 Finance a report discussing whether the amount in the Carbon Dioxide Storage Facility Trust  
9 Fund and fees being paid into it are sufficient to satisfy the fund's objectives. The first report is  
10 due December 31, 2025, and subsequent reports are due every four years thereafter.

**§22-11B-17. Determining storage amounts, carbon credits, fee.**

1 (a) The secretary, under procedures and criteria developed by legislative rule, shall  
2 determine the amount of injected carbon dioxide stored in a reservoir that has been or is being  
3 used for an enhanced oil or gas recovery project. The secretary may also make such a  
4 determination for carbon dioxide stored under this article.

5 (b) The storage amounts determined by the secretary under subsection (a) of this section  
6 may be used for such matters as establishing the amounts of carbon credits, allowances, trading,  
7 emissions allocations, and offsets, and for other similar purposes.

8 (c) The secretary may charge a reasonable fee to the person requesting a storage  
9 determination. The fee shall be set by legislative rule.

10 (d) Fees the secretary receives for storage determinations shall be deposited into the  
11 Carbon Dioxide Storage Facility Administrative Fund.

**§22-11B-18. Subsurface pore space.**

1           (a) Title to pore space in all strata underlying the surface of lands and waters is vested in  
2 the owner of the overlying surface estate.

3           (b) A conveyance of title to the surface of real property conveys the pore space in all strata  
4 underlying the surface of the real property.

5           (c) Title to pore space may not be severed from title to the surface of the real property  
6 overlying the pore space. An instrument or arrangement that seeks to sever title to pore space  
7 from title to the surface is void as to the severance of the pore space from the surface interest.

8           (d) Leasing pore space is not a severance prohibited by this article.

9           (e) This article does not affect transactions before the effective date of this article, where  
10 the terms explicitly severed pore space from title to the surface estate. However, there shall be a  
11 rebuttable presumption that for all transactions prior to the effective date of this article, that the  
12 pore space remains vested with the surface owner unless there was a clear and unambiguous  
13 reservation and/or severance of the pore space from the surface and the words “pore space” were  
14 used for such reservation and/or severance.

15           (f) In the relationship between a severed mineral owner and a pore space estate, this  
16 article does not change or alter the common law, as it relates to the rights belonging to, or the  
17 dominance of, the mineral estate.

**§22-11B-19. Co-tenants, ownership of pore space by multiple co-tenants and collective storage.**

1           (a) If a storage operator does not obtain the consent of all persons who own the storage  
2 reservoir’s pore space to the construction and operation of an underground carbon dioxide  
3 storage facility, the secretary may require that the pore space owned by nonconsenting owners  
4 be included in a storage facility and subject to geologic storage.

5           (1) The permit applicant and prospective storage operator shall negotiate with the pore  
6 space owners and acquire rights needed to access the pore space.

7           (2) If, after good-faith negotiation, the applicant or operator cannot locate or cannot reach  
8 an agreement with all necessary pore space owners but has secured written consent or  
9 agreement from the owners of at least 75 percent of the interests in the pore space for the storage  
10 facility, all of the pore space of said interests for which an agreement has not been reached shall  
11 be declared to be included within the proposed storage facility if the secretary finds that the  
12 requirements of this section have been met. For the purposes of this section, any unknown or  
13 nonlocatable owners shall be deemed to have consented or agreed to the use of said pore space,  
14 provided that the storage operator has complied with the publication requirements of this article.

15           (b) Seismic study. — It is the policy of this State to allow for the exploration for geologic  
16 storage. If an operator is unable to reasonably negotiate with a surface owner for the right to  
17 conduct seismic study on lands owned by the surface owner, the secretary is authorized to issue  
18 an order for the entry onto such lands by the operator. In such instance, the operator shall pay  
19 the surface owner just and reasonable compensation as established by the secretary. Further,  
20 any such seismic study conducted by this section shall be limited to geologic storage and shall  
21 remain confidential and proprietary. The operator shall defend, indemnify, and hold harmless the  
22 property owner for all claims arising out of any entry onto the property by the operator, its  
23 contractors, and its agents.

24           (c) Collective storage. —

25           (1) The storage operator shall provide a list to the secretary of all persons reasonably  
26 known to own an interest in pore space proposed to be collectively used in an application to the  
27 secretary for a collective storage order. A collective storage order shall be made only after the  
28 secretary provides notice to all pore space owners proposed to be included within the order.

29           (2) The secretary shall set and collect a fee adequate to pay expenses associated with  
30 the conduct of administrative hearings for the collective storage of pore space.

31           (3) If the proposed collective storage order concerns pore space with unknown or  
32 nonlocatable owners, the storage operator shall publish one notice in the newspaper of the largest

33 circulation in each county in which the pore space is located. The notice shall appear no more  
34 than 30 days prior to the initial application for the collective storage order. The applicant shall file  
35 proof of notice with the division concurrently with the application. The notice shall:

36 (A) State that an application for a collective storage order has been filed with the  
37 commission;

38 (B) Describe the pore space proposed to be collectively used;

39 (C) In the case of an unknown pore space owner, indicate the name of the last known  
40 owner;

41 (D) In the case of a nonlocatable pore space owner, identify the owner and the owner's  
42 last known address; and

43 (E) State that any person claiming an interest in the pore space proposed to be collectively  
44 used should notify the secretary and the storage operator at the published address within twenty  
45 (20) days of the publication date.

46 (4) A collective storage order shall authorize the long-term storage of carbon dioxide  
47 beneath the tract or portion. The order shall also specify, where necessary, the location of carbon  
48 injection wells, outbuildings, roads, monitoring equipment, and access to them. The collective  
49 storage order shall identify the compensation to be paid to unknown, nonlocatable, and  
50 nonconsenting pore space owners and the basis for valuation of the collective interest.

51 (5) A certified copy of any collective storage order and a survey of the storage field shall  
52 be recorded by the operator in the office of the county clerk of the county or counties in which all  
53 or any portion of the collective tract is located. The secretary shall provide a copy of the collective  
54 storage order to those required to be noticed. For purposes of this section, any unknown or  
55 nonlocatable owners shall be deemed to have received notice, provided that the operator has  
56 complied with the publication requirements of subdivision (c)(3) of this section with respect to the  
57 unknown or nonlocatable owners.

NOTE: The purpose of this bill is to establish a new legal and regulatory framework for drilling of injection wells and operation of facilities for the underground sequestration of injected carbon dioxide and for the state to pursue primacy authorization for oversight and enforcement of laws for underground carbon dioxide sequestration.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.