

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4491

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

WAMSLEY, HOLSTEIN, CLARK, HOTT, AND YOUNG

[Originating in the Committee on the Judiciary,

February 18, 2022]

1 A BILL to amend and reenact §22-11A-3 and §22C-9-4 of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new article, designated §22-11B-
3 1, §22-11B-2, §22-11B-3, §22-11B-4, §22-11B-5, §22-11B-6, §22-11B-7, §22-11B-8, §22-
4 11B-9, §22-11B-10, §22-11B-11, §22-11B-12, §22-11B-13, §22-11B-14, §22-11B-15,
5 §22-11B-16, §22-11B-17, §22-11B-18, §22-11B-19, §22-11B-20, and §22-11B-21, all
6 relating to regulating the permitting, drilling, operation, and closure of injection wells for
7 the sequestration of carbon dioxide in underground storage reservoirs; declaring
8 legislative purpose; defining terms; amending and specifying the scope of the prior
9 program; providing an option for holders of pre-existing permits to pursue permit
10 modifications under the prior or new law; establishing requirements for permitting;
11 specifying application requirements and fees; clarifying that the provisions apply only to
12 underground carbon dioxide sequestration operations and facilities; directing and
13 authorizing the promulgation of rules by the Department of Environmental Protection and
14 the Oil and Gas Conservation Commission; providing for public notice, participation, and
15 hearings; authorizing certain conditions in permits and orders; preserving other existing
16 powers of the secretary and the commission; preserving rights of existing mineral owners
17 and authorizing cooperative agreements; declaring that carbon dioxide injected into an
18 underground storage facility is not a pollutant and not a public nuisance; requiring permit
19 holders to provide and update identification of a local agent; excluding enhanced oil,
20 natural gas, or coalbed methane recovery projects using carbon dioxide injection from
21 requirements of underground carbon dioxide storage permits; specifying requirements for
22 completion of an underground carbon dioxide storage project; directing transfer of carbon
23 dioxide ownership to surface owners upon completion of project; providing for all liability
24 and regulatory responsibilities to transfer to the state upon completion; establishing state
25 responsibility for maintenance and monitoring after completion; establishing the Carbon
26 Dioxide Storage Facility Administrative Fund and the Carbon Dioxide Storage Facility

27 Trust Fund as special revenue accounts and describing the source of revenue, authorized
28 purposes and uses of the funds; providing a process for completion of underground carbon
29 dioxide storage projects; requiring fees for underground storage of carbon dioxide; limiting
30 state and permittee liability; authorizing the secretary to make determinations of the
31 amount of carbon dioxide able to be sequestered at a location; specifying local filing
32 requirements; defining ownership of pore space formations; authorizing entry onto lands
33 to conduct seismic surveys and establishing requirements and conditions therefore;
34 requiring permit applicants and storage facility operators to identify and obtain consent
35 from pore space owners; providing for acquisition and pooling of interests of
36 nonconsenting pore space owners for the construction and operation of a storage facility;
37 providing for acquisition and pooling of interests of unknown and unlocatable pore space
38 owners for the construction and operation of a storage facility; providing for just and
39 reasonable compensation for unknown, unlocatable, and nonconsenting pore space
40 owners; providing for hearings to establish interests of pore space owners in reservoirs;
41 providing for management of funds of unknown and unlocatable owners; limiting and
42 establishing requirements for surface use; expanding the jurisdiction of the Oil and Gas
43 Conservation Commission; providing for reporting; and providing for judicial review.

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 facility 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) Foster, encourage, promote, and establish a legal and regulatory framework for the
3 development and approval of underground carbon dioxide sequestration facilities;

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;

6 and

7 (3) Safeguard, protect and enforce the correlative rights of operators, mineral owners, pore
8 space owners, and surface owners in that each may obtain just and reasonable compensation for
9 their respective contribution for underground carbon dioxide sequestration 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) "Commission" means the Oil and Gas Conservation Commission established pursuant
18 to §22C-9-1 et seq. of this code.

19 (6) "Completion certificate" means a Certificate of Underground Carbon Dioxide Storage
20 Project Completion;

21 (7) "Excursion" means the migration of carbon dioxide at or beyond the designated
22 boundary of a carbon dioxide sequestration site;

23 (8) "Permit" means a Class VI underground injection control permit issued by the secretary
24 or by the US EPA, authorizing a person or business entity to drill an injection well and to construct
25 and operate a carbon dioxide sequestration facility;

26 (9) "Pore space" means a cavity or void, whether naturally or artificially created, in a
27 subsurface stratum and is also known as container space or storage rights;

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

31 (11) "Secretary" means the Secretary of the Department of Environmental Protection;

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

36 (13) "Storage operator" means a person applying for or holding a permit until the issuance
37 of a completion certificate for the relevant storage facility;

38 (14) "Storage reservoir" means a reservoir proposed, authorized, or used for storing
39 carbon dioxide;

40 (15) "UIC" means underground injection control;

41 (16) "Unknown or unlocatable owner" means a person vested with a present ownership
42 interest in the pore space whose present identity or location cannot be determined from:

43 (A) A reasonable review of the records of the clerk of the county commission, the sheriff,
44 the assessor, and the clerk of the circuit court in the county or counties in which the property is
45 located, and includes unknown heirs, successors and assigns known to be alive;

46 (B) A reasonable inquiry in the vicinity of the owner's last known place of residence;

47 (C) A diligent inquiry into known interest owners in the same tract; and

48 (D) A reasonable review of available Internet resources commonly utilized by the industry;

49 and

50 (17) "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 written agreement entered
14 into by the mineral owners, 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 and have at least begun the process to
25 obtain the remaining interests through the commission;

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

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

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

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

34 (9) That all nonconsenting pore space owners are or will be justly and reasonably
35 compensated in accordance with the rules and procedures set forth in or promulgated under this
36 article by the secretary and the commission; and

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

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

41 (f) The secretary shall propose rules for legislative approval, pursuant to the provisions of
42 §29A-3-1 et seq. of this code, detailing additional requirements for inclusion in a permit
43 application, such as:

44 (1) Site characterization requirements;

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

47 (3) Well operation requirements;

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

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

54 (6) Reporting and recordkeeping requirements that provide project-specific information to
55 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 an application for a permit shall be served 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 served to each surface owner of land
10 overlying the storage reservoir.

11 (e) Notice of an application for a permit shall be served 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 by registered mail, or by any method of delivery that requires a receipt or signature confirmation.

15 (g) The secretary and/or the commission shall hold a public hearing whenever he or she
16 finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft
17 permit. The secretary and/or the commission may also hold a public hearing at his or her
18 discretion if a hearing may assist in clarifying one or more issues involved in the permit decision.
19 Should a public hearing be held, notice of the hearing shall be provided in the same manner as
20 set forth above with respect to public notice of the 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 rules specified in §22-11B-4 of this code, the secretary and the
2 commission may promulgate such emergency, interpretive, legislative, and procedural rules,
3 pursuant to the provisions of §29A-3-1 et seq. of this code, useful or necessary to carry out the
4 requirements of this article, including, but not limited to:

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

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

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

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

13 (5) The issuance of collective storage orders as a part of the development of a proposed
14 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 and the commission's authority as set forth in this article shall not
6 otherwise limit the authority or jurisdiction of the secretary and the commission 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 article, 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) Demonstrates that it has addressed all pending claims regarding the storage facility's
13 operation; and

14 (3) Demonstrates that the storage reservoir is reasonably expected to retain the carbon
15 dioxide 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 using only funds from the Carbon
24 Dioxide Storage Facility Trust Fund;

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

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

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

34 (f) The secretary shall require that a copy of the completion certificate and a survey of the
35 storage field be filed with the county recorder in the county or counties where the carbon dioxide
36 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
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, operation, and pre-closure phases; and making storage amount
8 determinations under §22-11B-17 of this code. Any balance remaining in the fund at the end of
9 any fiscal year shall not revert to the General Revenue Fund but shall remain in the special
10 revenue fund. The moneys accrued in the fund, any interest earned thereon, and yield from
11 investments by the State Treasurer or West Virginia Investment Management Board are reserved
12 solely and exclusively for the purposes set forth in this section.

13 (b) The secretary may, through a cooperative agreement with another agency, use money
14 from the fund to compensate the cooperating agency for expenses that cooperating agency incurs
15 in carrying out regulatory responsibilities that agency may have over a storage 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 stored or
3 to be stored at the facility. This fee shall be deposited in the Carbon Dioxide Storage Facility
4 Administrative 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 §12-3-1 et seq. of this code. Any balance
6 remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund,
7 but remains in the special revenue fund. The moneys accrued in the fund, any interest earned
8 thereon, and yield from investments by the State Treasurer or West Virginia Investment
9 Management Board are reserved solely and exclusively for the purposes set forth in this section.

10 (b) The secretary may, through a cooperative agreement with another agency, use money
11 from the fund to compensate the cooperating agency for expenses that cooperating agency incurs
12 in carrying out regulatory responsibilities that agency may have over a storage 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 or container 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 and unenforceable as to the severance of the pore space from the
8 surface interest.

9 (d) This article does not affect transactions before the effective date of this article, where
10 the terms are clear and unambiguous upon the face of the instruments which severed pore space
11 from title to the surface estate. However, there shall be a rebuttable presumption that for all
12 transactions prior to the effective date of this article, that the pore space remains vested with the

13 surface owner unless there was a clear and unambiguous reservation, conveyance, and/or
14 severance of the pore space from the surface upon the face of the instruments.

15 (e) 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 commission may require that the pore space owned by nonconsenting owners
4 be included in a storage facility and be 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 of a tract or parcel but has secured written
9 consent or agreement from the owners of at least 75 percent of the interests in the pore space of
10 the tract or parcel for the storage facility, all of the pore space of said interests for which an
11 agreement has not been reached shall be declared to be included within the proposed storage
12 facility if the commission finds that the requirements of this section have been met. For the
13 purposes of this section, any unknown or unlocatable owners shall be deemed to have consented
14 or agreed to the use of said pore space, provided that the storage operator has complied with the
15 publication requirements of this article.

16 (3) Except for temporary access for seismic studies and in cases of emergency, the
17 commission or the secretary may not allow any surface disturbance on any surface tract or tracts
18 overlying the pore space of a non-consenting owner.

19 (b) Seismic study. — It is the policy of this State to allow for the exploration for geologic
20 storage. If an operator is unable to reasonably negotiate with a surface owner for the right to
21 conduct seismic study on lands owned by the surface owner, the secretary or the commission is
22 authorized to issue an order for the entry onto such lands by the operator. In such instance, the
23 operator shall notify the owner or owners 15 days prior to entry, pay the surface owner just and
24 reasonable compensation as established by the secretary or the commission, and reasonably
25 repair all damages to the surface and anything thereon resulting from entry. Just and reasonable
26 compensation shall include, without limitation, compensation for all unrepairable damages to the
27 surface and anything thereon. Any order for entry shall establish an expiration date after a
28 reasonable duration but also allow for reauthorization as needed. The operator shall post a bond
29 with the secretary before entry to be used as compensation to the surface owner but shall not
30 limit the amount of compensation to be paid to the surface owner for any damages to the surface
31 and anything thereon. Further, any such seismic study conducted by this section shall be limited
32 to geologic storage and shall remain confidential and proprietary. The operator shall defend,
33 indemnify, and hold harmless the property owner for all claims arising out of any entry onto the
34 property by the operator, its contractors, and its agents, except those claims arising from the
35 intentional acts of a property owner.

36 (c) Collective storage. —

37 (1) The storage operator shall provide a list to the commission of all persons reasonably
38 known to own an interest in pore space proposed to be collectively used in an application to the
39 commission for a collective storage order.

40 (2) If after applying the provisions of §22-11B-19(a), the applicant or operator cannot
41 locate, reach an agreement, or receive a commission order for all necessary pore space in a
42 storage reservoir, but has under the provisions of §22-11B-19(a), secured written consent,
43 agreement, or a commission order for at least 75 percent of the pore space acreage in the storage
44 reservoir, all of the pore space in the storage reservoir shall be declared to be included within the

45 proposed storage facility if the commission finds that the requirements of this section have been
46 met. For the purposes of this section, any unknown or unlocatable owners shall be deemed to
47 have consented or agreed to the use of said pore space, provided that the storage operator has
48 complied with the publication requirements of this article. A collective storage order shall be made
49 only after the commission provides notice to all pore space owners proposed to be included within
50 the order.

51 (3) The secretary shall set and collect a fee adequate to pay expenses associated with
52 the conduct of administrative hearings for the collective storage of pore space and reimburse the
53 commission for said expenses.

54 (4) If the proposed collective storage order concerns pore space with unknown or
55 unlocatable owners, the storage operator shall publish one notice in the newspaper of the largest
56 circulation in each county in which the pore space is located. The notice shall appear no more
57 than 30 days prior to the initial application for the collective storage order. The applicant shall file
58 proof of notice with the commission concurrently with the application. The notice shall:

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

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

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

64 (D) In the case of a unlocatable pore space owner, identify the owner and the owner's last
65 known address; and

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

69 (5) A collective storage order shall authorize the long-term storage of carbon dioxide
70 beneath the tract or portion thereof. The order shall also specify, where necessary, the location

71 of carbon injection wells, outbuildings, roads, monitoring equipment, and access to them. The
72 collective storage order shall identify the compensation to be paid to unknown, unlocatable, and
73 nonconsenting pore space owners and the basis for valuation of the collective interest. The
74 commission may consider evidence submitted by nonconsenting surface and nonconsenting pore
75 space owners as to the valuation of their interest.

76 (6) Except for temporary access for seismic studies and in cases of emergency, the
77 commission or the secretary shall not allow any surface disturbance on any surface tract or tracts
78 overlying the pore space of a non-consenting owner.

79 (7) A certified copy of any collective storage order and a survey of the storage field shall
80 be recorded by the operator in the office of the county clerk of the county or counties in which all
81 or any portion of the collective tract is located. The commission shall attempt to provide a copy of
82 the collective storage order to those required to be noticed. For purposes of this section, any
83 unknown or unlocatable owners shall be deemed to have received notice, provided that the
84 operator has complied with the publication requirements of subdivision (c)(3) of this section with
85 respect to the unknown or unlocatable owners.

86 (8) The commission shall provide a certified copy of any collective storage order to the
87 secretary.

§22-11B-20. Funds to be held in trust for unknown or unlocatable owners.

1 The storage operator shall hold all funds of unknown or unlocatable owners in trust in an
2 interest bearing account and shall transfer said funds as unclaimed property to the State
3 Treasurer pursuant to §36-8-1 *et seq.*, the Uniform Unclaimed Property Act.

§22-11B-21. Judicial Review.

1 Any person aggrieved by a final decision of the department or the commission under this
2 article is entitled to review of such final decision in accordance with the applicable provisions of
3 §29A-1-1 of this code, State Administrative Procedures Act, §22-9-1 *et seq.* of this code, and in
4 the Circuit Court of Kanawha County or any other county where the property is located.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The “oil and gas conservation commission” shall be composed of five members. The
2 director of the Department of Environmental Protection and the chief of the office of oil and gas
3 shall be members of the commission ex officio. The remaining three members of the commission
4 shall be appointed by the Governor, by and with the advice and consent of the Senate, and may
5 not be employees of the Department of Environmental Protection. Of the three members
6 appointed by the Governor, one shall be an independent producer and at least one shall be a
7 public member not engaged in an activity under the jurisdiction of the Public Service Commission
8 or the federal energy regulatory commission. The third appointee shall possess a degree from an
9 accredited college or university in petroleum engineering or geology and must be a registered
10 professional engineer with particular knowledge and experience in the oil and gas industry and
11 shall serve as commissioner and as chair of the commission.

12 (b) The members of the commission appointed by the Governor shall be appointed for
13 overlapping terms of six years each, except that the original appointments shall be for terms of
14 two, four and six years, respectively. Each member appointed by the Governor shall serve until
15 the members successor has been appointed and qualified. Members may be appointed by the
16 Governor to serve any number of terms. The members of the commission appointed by the
17 Governor, before performing any duty hereunder, shall take and subscribe to the oath required
18 by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership
19 appointed by the Governor shall be filled by appointment by the Governor for the unexpired term
20 of the member whose office is vacant and such appointment shall be made by the Governor within
21 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be

22 removed by the Governor in case of incompetency, neglect of duty, gross immorality or
23 malfeasance in office. A commission member's appointment shall be terminated as a matter of
24 law if that member fails to attend three consecutive meetings. The Governor shall appoint a
25 replacement within 30 days of the termination.

26 (c) The commission shall meet at such times and places as shall be designated by the
27 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the
28 commission upon the written request of two members or upon the written request of the oil and
29 gas conservation commissioner or the chief of the office of oil and gas. Notification of each
30 meeting shall be given in writing to each member by the chair at least 14 calendar days in advance
31 of the meeting. Three members of the commission, at least two of whom are appointed members,
32 shall constitute a quorum for the transaction of any business.

33 (d) The commission shall pay each member the same compensation as is paid to
34 members of the Legislature for their interim duties as recommended by the citizens legislative
35 compensation commission and authorized by law for each day or portion thereof engaged in the
36 discharge of official duties and shall reimburse each member for actual and necessary expenses
37 incurred in the discharge of official duties.

38 (e) The commission is hereby empowered and it is the commission's duty to execute and
39 carry out, administer and enforce the provisions of this article in the manner provided herein.
40 Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority
41 over all persons and property necessary therefor. The commission is authorized to make such
42 investigation of records and facilities as the commission deems proper. In the event of a conflict
43 between the duty to prevent waste and the duty to protect correlative rights, the commission's
44 duty to prevent waste shall be paramount.

45 (f) Without limiting the commission's general authority, the commission shall have specific
46 authority to:

47 (1) Regulate the spacing of deep wells;

48 (2) Make and enforce reasonable rules and orders reasonably necessary to prevent
49 waste, protect correlative rights, govern the practice and procedure before the commission and
50 otherwise administer the provisions of this article;

51 (3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the
52 production of any books, records, maps, charts, diagrams and other pertinent documents, and
53 administer oaths and affirmations to such witnesses, whenever, in the judgment of the
54 commission, it is necessary to do so for the effective discharge of the commission's duties under
55 the provisions of this article; and

56 (4) Serve as technical advisor regarding oil and gas to the Legislature, its members and
57 committees, to the chief of office of oil and gas, to the Department of Environmental Protection
58 and to any other agency of state government having responsibility related to the oil and gas
59 industry.

60 (g) The commission may delegate to the commission staff the authority to approve or deny
61 an application for new well permits, to establish drilling units or special field rules if:

62 (1) The application conforms to the rules of the commission; and

63 (2) No request for hearing has been received.

64 (h) The commission may not delegate its authority to:

65 (1) Propose legislative rules;

66 (2) Approve or deny an application for new well permits, to establish drilling units or special
67 field rules if the conditions set forth in subsection (g) of this section are not met; or

68 (3) Approve or deny an application for the pooling of interests within a drilling unit.

69 (i) Any exception to the field rules or the spacing of wells which does not conform to the
70 rules of the commission, and any application for the pooling of interests within a drilling unit, must
71 be presented to and heard before the commission.

72 (j) The commission is hereby empowered and it is the commission's duty to execute and
73 carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code

- 74 concerning mineral development by covenants for all wells at all depths and §22-11B-1 et seq. of
75 this code concerning underground carbon dioxide sequestration storage facilities at all depths.
76 The commission has jurisdiction and authority over all persons and property necessary therefor.
77 The commission is authorized to make such investigation of records and facilities as the
78 commission deems proper.

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.