

GEOLOGICAL CARBON SEQUESTRATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill authorizes the Division of Oil, Gas, and Mining and the Board of Oil, Gas, and Mining to establish regulations for the geologic storage of carbon.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes who has title to pore space with respect to the surface estate;
- ▶ describes the circumstances under which the board and the division will gain jurisdiction over class VI injection wells;
- ▶ authorizes the board to make rules regarding the oversight of class VI injection wells;
- ▶ authorizes the board to establish and collect fees to reimburse the board and division for the costs associated with the regulation of class VI injection wells;
- ▶ describes the permitting process with which an operator must comply in order to operate a class VI injection well;
- ▶ describes the factors a permit must demonstrate for the board to approve the division to issue a permit;

- 28 ▶ requires the board to hold a public hearing before issuing a permit;
- 29 ▶ authorizes the board to order amalgamation of a tract of land for a storage facility if:
 - 30 • nonconsenting owners are fairly compensated for the use of the nonconsenting
 - 31 owners' pore space;
 - 32 • 70% of owners of included tracts have consented to the process; and
 - 33 • the board finds it is in the best interest of all owners;
- 34 ▶ requires operators to record the permit;
- 35 ▶ provides for:
 - 36 • rights of property owners whose pore space becomes part of a storage facility;
 - 37 and
 - 38 • the persons who hold title to carbon dioxide injected into and stored within a
 - 39 storage facility;
- 40 ▶ requires an operator to follow certain procedures in order to receive a certificate of
- 41 project completion;
- 42 ▶ describes the relation of this chapter to enhanced oil and gas recovery projects;
- 43 ▶ authorizes the board to enter into cooperative agreements with other agencies to
- 44 carry out the objectives of this chapter;
- 45 ▶ authorizes controlling state interests and political subdivisions to participate in
- 46 geologic carbon storage;
- 47 ▶ authorizes the board to adopt a procedure to determine the amount of injected
- 48 carbon dioxide;
- 49 ▶ establishes funds in which the board and division shall deposit fees collected under
- 50 this chapter; and
- 51 ▶ makes technical and conforming changes.

52 **Money Appropriated in this Bill:**

53 None

54 **Other Special Clauses:**

55 None

56 **Utah Code Sections Affected:**

57 AMENDS:

58 **40-6-2**, as last amended by Laws of Utah 2020, Chapter 375

59 **40-6-5**, as last amended by Laws of Utah 2020, Chapter 375

60 ENACTS:

61 **40-6-20.5**, Utah Code Annotated 1953

62 **40-11-1**, Utah Code Annotated 1953

63 **40-11-2**, Utah Code Annotated 1953

64 **40-11-3**, Utah Code Annotated 1953

65 **40-11-4**, Utah Code Annotated 1953

66 **40-11-5**, Utah Code Annotated 1953

67 **40-11-6**, Utah Code Annotated 1953

68 **40-11-7**, Utah Code Annotated 1953

69 **40-11-8**, Utah Code Annotated 1953

70 **40-11-9**, Utah Code Annotated 1953

71 **40-11-10**, Utah Code Annotated 1953

72 **40-11-11**, Utah Code Annotated 1953

73 **40-11-12**, Utah Code Annotated 1953

74 **40-11-13**, Utah Code Annotated 1953

75 **40-11-14**, Utah Code Annotated 1953

76 **40-11-15**, Utah Code Annotated 1953

77 **40-11-16**, Utah Code Annotated 1953

78 **40-11-17**, Utah Code Annotated 1953

79 **40-11-18**, Utah Code Annotated 1953

80 **40-11-19**, Utah Code Annotated 1953

81 **40-11-20**, Utah Code Annotated 1953

82 [40-11-21](#), Utah Code Annotated 1953

83 [40-11-22](#), Utah Code Annotated 1953

84

85 *Be it enacted by the Legislature of the state of Utah:*

86 Section 1. Section **40-6-2** is amended to read:

87 **40-6-2. Definitions.**

88 For the purpose of this chapter:

89 (1) "Board" means the Board of Oil, Gas, and Mining.

90 (2) "Correlative rights" means the opportunity of each owner in a pool to produce the
91 owner's just and equitable share of the oil and gas in the pool without waste.

92 (3) "Condensate" means hydrocarbons, regardless of gravity, that:

93 (a) occur naturally in the gaseous phase in the reservoir; and

94 (b) are separated from the natural gas as liquids through the process of condensation
95 either in the reservoir, in the wellbore, or at the surface in field separators.

96 (4) "Consenting owner" means an owner who, in the manner and within the time frame
97 established by the board in rule, consents to the drilling and operation of a well and agrees to
98 bear the owner's proportionate share of the costs of the drilling and operation of the well.

99 (5) "Crude oil" means hydrocarbons, regardless of gravity, that:

100 (a) occur naturally in the liquid phase in the reservoir; and

101 (b) are produced and recovered at the wellhead in liquid form.

102 (6) "Division" means the Division of Oil, Gas, and Mining.

103 (7) (a) "Gas" means natural gas, as defined in Subsection (10), natural gas liquids, as
104 defined in Subsection (11), other gas, as defined in Subsection (17), or any mixture of them.

105 (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil
106 shale, or tar sands.

107 (8) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well
108 within the state in violation of this chapter or any rule or order of the board.

109 (9) "Illegal product" means any product derived in whole or in part from illegal oil or
110 illegal gas.

111 (10) (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in
112 the reservoir and are produced and recovered at the wellhead in gaseous form, except natural
113 gas liquids as defined in Subsection (11) and condensate as defined in Subsection (3).

114 (b) "Natural gas" includes coalbed methane gas.

115 (11) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated
116 from natural gas as liquids in gas processing plants through the process of condensation,
117 absorption, adsorption, or other methods.

118 (12) "Nonconsenting owner" means an owner who does not, after written notice and in
119 the manner and within the time frame established by the board in rule, consent to the drilling
120 and operation of a well or agree to bear the owner's proportionate share of the costs.

121 (13) (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in
122 Subsection (3), or any mixture of them.

123 (b) "Oil" does not include any gaseous or liquid substance processed from coal, oil
124 shale, or tar sands.

125 (14) "Oil and gas operations" means to explore for, develop, or produce oil and gas.

126 (15) (a) "Oil and gas proceeds" means any payment that:

127 (i) derives from oil and gas production from any well located in the state;

128 (ii) is expressed as a right to a specified interest in the:

129 (A) cash proceeds received from the sale of the oil and gas; or

130 (B) the cash value of the oil and gas; and

131 (iii) is subject to any tax withheld from the payment pursuant to law.

132 (b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest,
133 production payment interest, or working interest.

134 (c) "Oil and gas proceeds" does not include a net profits interest or other interest the
135 extent of which cannot be determined with reference to a specified share of:

136 (i) the cash proceeds received from the sale of the oil and gas; or

137 (ii) the cash value of the oil and gas.

138 (16) "Operator" means a person who has been designated by the owners or the board to
139 operate a well or unit.

140 (17) (a) "Other gas" means nonhydrocarbon gases that:

141 (i) occur naturally in the gaseous phase in the reservoir; or

142 (ii) are injected into the reservoir in connection with pressure maintenance, gas cycling,
143 or other secondary or enhanced recovery projects.

144 (b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.

145 (18) "Owner" means a person who has the right:

146 (a) to drill into and produce from a reservoir; and

147 (b) to appropriate the oil and gas produced for that person or for that person and others.

148 (19) "Payor" means the person who undertakes to distribute oil and gas proceeds to the
149 persons entitled to them, whether as the first purchaser of that production, as operator of the
150 well from which the production was obtained, or as lessee under the lease on which royalty is
151 due.

152 (20) "Person" means the same as that term is defined in Section 68-3-12.5 and includes
153 an operator or owner as used in this chapter.

154 (21) "Pool" means an underground reservoir containing a common accumulation of oil
155 or gas or both. Each zone of a general structure that is completely separated from any other
156 zone in the structure is a separate pool. "Common source of supply" and "reservoir" are
157 synonymous with "pool."

158 (22) "Pooling" means the bringing together of separately owned interests for the
159 common development and operation of a drilling unit.

160 (23) (a) "Pore space" means subsurface porous material possessing free space, naturally
161 or artificially created, between the mineral grains.

162 (b) "Pore space":

163 (i) is expressed as a percentage; and
164 (ii) depends on the size and sorting of the subsurface material's particles as a cubic or
165 hexagonal package.

166 (c) "Pore space" does not include void or cavern space created by the removal of
167 minerals in the course of solution mining or other mining operations.

168 [~~(23)~~] (24) "Producer" means the owner or operator of a well capable of producing oil
169 and gas.

170 [~~(24)~~] (25) "Product" means any commodity made from oil and gas.

171 [~~(25)~~] (26) "Surface land" means privately owned land:

- 172 (a) overlying privately owned oil and gas resources;
- 173 (b) upon which oil and gas operations are conducted; and
- 174 (c) owned by a surface land owner.

175 [~~(26)~~] (27) (a) "Surface land owner" means a person who owns, in fee simple absolute,
176 all or part of the surface land as shown by the records of the county where the surface land is
177 located.

178 (b) "Surface land owner" does not include the surface land owner's lessee, renter,
179 tenant, or other contractually related person.

180 [~~(27)~~] (28) "Surface land owner's property" means a surface land owner's:

- 181 (a) surface land;
- 182 (b) crops on the surface land; and
- 183 (c) existing improvements on the surface land.

184 [~~(28)~~] (29) "Surface use agreement" means an agreement between an owner or operator
185 and a surface land owner addressing:

- 186 (a) the use and reclamation of surface land owned by the surface land owner; and
- 187 (b) compensation for damage to the surface land caused by oil and gas operations that
188 result in:

189 (i) loss of the surface land owner's crops on the surface land;

190 (ii) loss of value of existing improvements owned by the surface land owner on the
191 surface land; and

192 (iii) permanent damage to the surface land.

193 [~~(29)~~] (30) "Waste" means:

194 (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or
195 gas or reservoir energy;

196 (b) the inefficient storing of oil or gas;

197 (c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a
198 manner that causes:

199 (i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir
200 under prudent and economical operations;

201 (ii) unnecessary wells to be drilled; or

202 (iii) the loss or destruction of oil or gas either at the surface or subsurface; or

203 (d) the production of oil or gas in excess of:

204 (i) transportation or storage facilities; or

205 (ii) the amount reasonably required to be produced as a result of the proper drilling,
206 completing, testing, or operating of a well or otherwise utilized on the lease from which it is
207 produced.

208 Section 2. Section **40-6-5** is amended to read:

209 **40-6-5. Jurisdiction of board -- Rules.**

210 (1) The board has jurisdiction over all persons and property necessary to enforce this
211 chapter. The board shall make rules in accordance with Title 63G, Chapter 3, Utah
212 Administrative Rulemaking Act.

213 (2) The board shall make rules and orders as necessary to administer the following
214 provisions:

215 (a) Ownership of all facilities for the production, storage, treatment, transportation,
216 refining, or processing of oil and gas shall be identified.

217 (b) Well logs, directional surveys, and reports on well location, drilling, and production
218 shall be made and filed with the division. Logs of wells marked "confidential" shall be kept
219 confidential for one year after the date on which the log is required to be filed, unless the
220 operator gives written permission to release the log at an earlier date. Production reports shall
221 be:

- 222 (i) filed monthly;
- 223 (ii) accurate; and
- 224 (iii) in a form that reasonably serves the needs of state agencies and private fee owners.

225 (c) Monthly reports from gas processing plants shall be filed with the division.

226 (d) Wells shall be drilled, cased, cemented, operated, and plugged in such manner as to
227 prevent:

228 (i) the escape of oil, gas, or water out of the reservoir in which they are found into
229 another formation;

230 (ii) the detrimental intrusion of water into an oil or gas reservoir;

231 (iii) the pollution of fresh water supplies by oil, gas, or salt water;

232 (iv) blowouts;

233 (v) cavings;

234 (vi) seepages;

235 (vii) fires; and

236 (viii) unreasonable:

237 (A) loss of a surface land owner's crops on surface land;

238 (B) loss of value of existing improvements owned by a surface land owner on surface
239 land; and

240 (C) permanent damage to surface land.

241 (e) The drilling of wells may not commence without an adequate and approved supply
242 of water as required by Title 73, Chapter 3, Appropriation. This Subsection (2)(e) is not
243 intended to impose additional legal requirements, but to assure that existing legal requirements

244 concerning the use of water have been met before the commencement of drilling.

245 (f) Subject to Subsection (9), an operator shall furnish a reasonable performance bond
246 or other good and sufficient surety, conditioned for the performance of the duty to:

247 (i) plug each dry or abandoned well;

248 (ii) repair each well causing waste or pollution;

249 (iii) maintain and restore the well site; and

250 (iv) except as provided in Subsection (8), protect a surface land owner against
251 unreasonable:

252 (A) loss of a surface land owner's crops on surface land;

253 (B) loss of value of existing improvements owned by a surface land owner on surface
254 land; and

255 (C) permanent damage to surface land.

256 (g) Production from wells shall be separated into oil and gas and measured by means
257 and upon standards that are prescribed by the board and reflect current industry standards.

258 (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and
259 any accumulation of nonmerchantable waste crude oil shall be treated and processed, as
260 prescribed by the board.

261 (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or
262 processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced
263 recovery, or salt water disposal in this state shall maintain complete and accurate records of the
264 quantities produced, sold, purchased, acquired, stored, transported, refined, processed, or
265 injected for a period of at least six years. The records shall be available for examination by the
266 board or the board's agents at any reasonable time. Rules enacted to administer this Subsection
267 (2)(i) shall be consistent with applicable federal requirements.

268 (j) Any person with an interest in a lease shall be notified when all or part of that
269 interest in the lease is sold or transferred.

270 (k) The assessment and collection of administrative penalties is consistent with Section

271 40-6-11.

272 (3) The board has the authority to regulate:

273 (a) all operations for and related to the production of oil or gas including:

274 (i) drilling, testing, equipping, completing, operating, producing, and plugging of
275 wells; and

276 (ii) reclamation of sites;

277 (b) the spacing and location of wells;

278 (c) operations to increase ultimate recovery, such as:

279 (i) cycling of gas;

280 (ii) the maintenance of pressure; and

281 (iii) the introduction of gas, water, or other substances into a reservoir;

282 (d) the disposal of salt water and oil-field wastes;

283 (e) the underground and surface storage of oil, gas, or products; and

284 (f) the flaring of gas from an oil well.

285 (4) For the purposes of administering this chapter, the board may designate:

286 (a) wells as:

287 (i) oil wells; or

288 (ii) gas wells; and

289 (b) pools as:

290 (i) oil pools; or

291 (ii) gas pools.

292 (5) The board has exclusive jurisdiction over:

293 (a) class II injection wells, as defined by the federal Environmental Protection Agency
294 or a successor agency; [~~and~~]

295 (b) pits and ponds in relation to these injection wells[.];

296 (c) when granted primacy by the Environmental Protection Agency, class VI injection
297 wells, as defined by the Environmental Protection Agency or a successor agency; and

298 (d) storage facilities, as that term is defined in Section 40-11-1.

299 (6) The board has jurisdiction:

300 (a) to hear questions regarding multiple mineral development conflicts with oil and gas
301 operations if there:

302 (i) is potential injury to other mineral deposits on the same lands; or

303 (ii) are simultaneous or concurrent operations conducted by other mineral owners or
304 lessees affecting the same lands; and

305 (b) to enter the board's order or rule with respect to those questions.

306 (7) The board has enforcement powers with respect to operators of minerals other than
307 oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple
308 mineral development issues.

309 (8) Subsection (2)(f)(iv) does not apply if the surface land owner is a party to, or a
310 successor of a party to:

311 (a) a lease of the underlying privately owned oil and gas;

312 (b) a surface use agreement applicable to the surface land owner's surface land; or

313 (c) a contract, waiver, or release addressing an owner's or operator's use of the surface
314 land owner's surface land.

315 (9) (a) The board shall review rules made under Subsection (2)(f) to determine whether
316 the rules provide adequate fiscal security for the fiscal risks to the state related to oil and gas
317 operations.

318 (b) During the board's review under this Subsection (9), the board may consider the
319 bonding schemes of other states.

320 Section 3. Section 40-6-20.5 is enacted to read:

321 **40-6-20.5. Title to pore space.**

322 (1) Title to pore space underlying the surface estate is vested in the owner of the
323 surface estate.

324 (2) Nothing in this section shall be interpreted to increase or diminish any property

325 right established under the laws of the state.

326 Section 4. Section **40-11-1** is enacted to read:

327 **CHAPTER 11. GEOLOGIC CARBON STORAGE**

328 **40-11-1. Definitions.**

329 As used in this chapter:

330 (1) "Board" means the Board of Oil, Gas, and Mining.

331 (2) (a) "Carbon dioxide" means carbon dioxide (CO2) that has been captured from an
332 emission source or direct air capture, plus incidental associated substances derived from the
333 source materials and the capture process, and any substances added to the carbon dioxide to
334 enable or improve the injection process.

335 (b) "Carbon dioxide" does not include hazardous waste as that term is defined in
336 Section [19-6-102](#).

337 (3) "Class VI injection well" means the same as that term is defined in 40 C.F.R.
338 146.5(f).

339 (4) "Division" means the Division of Oil, Gas, and Mining.

340 (5) "Geologic carbon storage" means the permanent or short-term underground storage
341 of carbon dioxide in a storage reservoir.

342 (6) "Geologic carbon storage activity" means activity associated with the development,
343 production, processing, and storage of carbon dioxide as set forth in Title 40, Chapter 11, Utah
344 Geologic Carbon Sequestration Act, and includes:

345 (a) drilling;

346 (b) development of storage facilities;

347 (c) completion, maintenance, reworking, recompletion, disposal, plugging, and
348 abandonment of storage facilities;

349 (d) construction activities;

350 (e) recovery techniques;

351 (f) remediation activities; and

352 (g) any other activity related to geologic carbon storage that the board identifies.

353 (7) "Permit" means a permit issued by the division and approved by the board allowing
354 a person to operate a storage facility.

355 (8) "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or
356 void, whether natural or artificially created, including oil and gas reservoirs, saline formations,
357 and coal seams suitable for or capable of being made suitable for geologic carbon storage.

358 (9) (a) "Storage facility" means the reservoir, underground equipment, and surface
359 facilities and equipment used or proposed to be used in a geologic carbon storage operation.

360 (b) "Storage facility" does not include pipelines used to transport carbon dioxide to a
361 storage facility.

362 (10) "Storage operator" means a person holding or applying for a permit.

363 Section 5. Section **40-11-2** is enacted to read:

364 **40-11-2. Preemption.**

365 (1) Regulation of geologic carbon storage is of statewide concern and the state
366 regulation of geologic carbon storage activity occupies the whole field of geologic carbon
367 storage subject to:

368 (a) the granting of primacy over Class VI geologic sequestration wells; and

369 (b) relevant federal law.

370 (2) The legislative body of a political subdivision may enact, amend, or enforce a local
371 ordinance, resolution, or rule consistent with the political subdivision's general land use
372 authority that:

373 (a) regulates only surface activity that is incidental to geologic carbon storage activity;

374 (b) does not effectively or unduly limit, ban, or prohibit geologic carbon storage
375 activity; and

376 (c) is not otherwise preempted by state or federal law.

377 Section 6. Section **40-11-3** is enacted to read:

378 **40-11-3. Board authority -- Rulemaking authority.**

- 379 (1) The board and the division have jurisdiction over all persons and property
380 necessary to enforce this chapter.
- 381 (2) To enforce this chapter, the board shall make rules in accordance with Title 63G,
382 Chapter 3, Utah Administrative Rulemaking Act.
- 383 (3) Subject to the granting of primacy by the Environmental Protection Agency under
384 the process required in 40 C.F.R. Section 145 and successful application for primacy approval
385 under Section 1425 of the Safe Drinking Water Act, the board and the division have:
- 386 (a) exclusive jurisdiction in the state over Class VI injection wells located in the state
387 on nonfederal lands; and
- 388 (b) cooperative jurisdiction in the state over Class VI injection wells located in the
389 state on federal lands.
- 390 (4) The board shall establish fees in accordance with Section [63J-1-504](#), in an amount
391 to pay the costs to the board and division of:
- 392 (a) the permitting process;
- 393 (b) the regulation of the construction, operation, and pre-closure activities of the
394 storage facility; and
- 395 (c) the monitoring of closed storage facilities.
- 396 Section 7. Section **40-11-4** is enacted to read:
- 397 **40-11-4. Board and division permit authority.**
- 398 To the extent required to authorize and issue permits and to regulate geologic carbon
399 sequestration, the board and the division shall have authority:
- 400 (1) over all persons and property necessary to administer and enforce this chapter and
401 this chapter's objectives;
- 402 (2) to regulate activities relating to a storage facility, including construction, operation,
403 and closure;
- 404 (3) to enter, at a reasonable time and manner, a storage facility to:
- 405 (a) inspect equipment and surface storage facilities;

- 406 (b) observe, monitor, and investigate operations; or
- 407 (c) inspect records the board requires the operators maintain at the storage facility;
- 408 (4) to require that storage operators provide assurance, including bonds, that money is
- 409 available to fulfill the storage operator's duties;
- 410 (5) to exercise continuing jurisdiction over storage operators and storage facilities,
- 411 including the authority, after notice and hearing, to amend provisions in a permit and to revoke
- 412 a permit; and
- 413 (6) to dissolve or change the boundaries of any unit that is within or near a storage
- 414 reservoir's boundaries.

415 Section 8. Section **40-11-5** is enacted to read:

416 **40-11-5. Permits.**

417 (1) Subject to the granting of primacy as described in Section [40-11-3](#), the board may

418 authorize the division to issue a permit.

419 (2) A person may only transfer a permit to another person with permission of the

420 board.

421 (3) A person may not engage in geologic carbon storage in the state without a permit.

422 Section 9. Section **40-11-6** is enacted to read:

423 **40-11-6. Permit application requirements.**

424 (1) A person applying for a permit shall:

425 (a) comply with:

426 (i) the application requirements the board establishes through rule; and

427 (ii) the application requirements described in this section; and

428 (b) pay a fee, as established by the board, to cover the administrative costs of

429 considering an application for a permit.

430 (2) The board shall give priority to storage operators who apply for a permit to store

431 carbon dioxide produced in Utah.

432 (3) A permit application shall demonstrate:

- 433 (a) that the storage operator has complied with all requirements established by the
- 434 board in rule and in this chapter;
- 435 (b) that the storage facility is suitable for carbon dioxide injection and storage;
- 436 (c) that the carbon dioxide the storage operator will store is of a quality that allows the
- 437 carbon dioxide to be safely and efficiently stored in the reservoir;
- 438 (d) that the storage operator has made a good-faith effort to get the consent of all
- 439 persons who own the storage reservoir's pore space;
- 440 (e) that owners who own no less than 70% of the reservoir's pore space have provided
- 441 written consent to the use of the owners' pore space for a storage facility;
- 442 (f) whether the storage facility contains commercially valuable minerals;
- 443 (g) if the storage facility contains commercially valuable minerals:
- 444 (i) a plan for addressing the ownership interests of the mineral owners or mineral
- 445 lessees; and
- 446 (ii) a demonstration that the storage facility will not negatively impact the
- 447 commercially valuable minerals;
- 448 (h) that the storage reservoir meets the integrity requirements described in Section
- 449 [40-11-13](#);
- 450 (i) that the operator has taken reasonable steps to ensure that:
- 451 (i) the storage facility will not endanger human health;
- 452 (ii) the storage facility will not endanger the environment;
- 453 (iii) the storage facility is in the public interest;
- 454 (iv) the storage facility will not adversely affect surface water or formation containing
- 455 fresh water;
- 456 (v) carbon dioxide will not escape from the storage reservoir at a rate exceeding the
- 457 lower of 1% or the standard recommended by the Environmental Protection Agency; and
- 458 (vi) that substances that compromise the objectives of this chapter or the integrity of a
- 459 reservoir will not enter the reservoir;

- 460 (j) that the storage reservoir has defined horizontal and vertical boundaries;
- 461 (k) that the boundaries of the storage reservoir include buffer areas to ensure the safe
- 462 operation of the storage facility;
- 463 (l) plans for monitoring the storage facility and procedures to assess the location and
- 464 migration of carbon dioxide injected for storage;
- 465 (m) plans to ensure compliance with geologic carbon storage statutes and rules; and
- 466 (n) assurance that all nonconsenting pore space owners are or will be equitably
- 467 compensated for the use of the pore space of the nonconsenting pore space owners in the
- 468 storage facility.

469 Section 10. Section **40-11-7** is enacted to read:

470 **40-11-7. Permit hearing.**

- 471 (1) The board shall hold a public hearing before authorizing the division to issue a
- 472 permit.
- 473 (2) The board shall conduct the hearing in accordance with Title 63G, Chapter 4,
- 474 Administrative Procedures Act.
- 475 (3) The board shall give notice no fewer than 30 days prior to the hearing by:
- 476 (a) one publication in a daily newspaper of general circulation in Salt Lake City, Utah;
- 477 (b) in all newspapers of general circulation published in the county or counties in
- 478 which the land affected is situated; and
- 479 (c) by publication in accordance with Section [45-1-101](#).
- 480 (4) In addition to the notice required in Subsection (3), an applicant shall provide
- 481 notice of the hearing and a copy of the permit application, no fewer than 30 days before the
- 482 hearing to:
- 483 (a) each mineral lessee within one-half mile of the storage reservoir's boundaries;
- 484 (b) each mineral owner within one-half mile of the storage reservoir's boundaries;
- 485 (c) each pore space owner within one-half mile of the storage reservoir's boundaries;
- 486 (d) each surface owner of land within one-half mile of the storage reservoir's

487 boundaries; and

488 (e) any additional person the board identifies.

489 (5) An applicant shall serve the notice described in Subsection (4) through personal
490 service.

491 (6) The board may, in accordance with the requirements of Section 63G-6a-116,
492 procure the services of an administrative law judge to conduct the hearing described in
493 Subsection (1).

494 (7) If the board procures the services of an administrative law judge, the board may
495 rely on the decision of the administrative law judge when deciding whether to issue a permit.

496 Section 11. Section **40-11-8** is enacted to read:

497 **40-11-8. Findings to issue a permit.**

498 Before issuing a permit, the board shall find that:

499 (1) the application meets all of the requirements described in Section 40-11-6; and

500 (2) the interested parties described in Subsection 40-11-7(4) all received proper notice.

501 Section 12. Section **40-11-9** is enacted to read:

502 **40-11-9. Permit provisions.**

503 (1) A permit shall require that:

504 (a) an operator remain in compliance with all of the permit requirements described in
505 Subsection 40-11-6(3); and

506 (b) an operator comply with any additional provisions the board imposes.

507 (2) The board may make a permit contingent upon:

508 (a) the payment of fair compensation to pore space owners who do not consent to the
509 use of the owners' pore space for geologic carbon storage;

510 (b) the recording of the permit as described in Section 40-11-12; and

511 (c) additional provisions to protect the environment and the property interests of the
512 parties described in Subsection 40-11-7(4).

513 Section 13. Section **40-11-10** is enacted to read:

514 **40-11-10. Amalgamation of interests -- Board may order amalgamation --**

515 **Payment of costs and interests -- Accounting.**

516 (1) Two or more owners of contiguous pore space may bring together the owners'
517 interests for the development of a storage facility.

518 (2) (a) In the absence of a written agreement for amalgamation, including a joint
519 operating agreement, the board may enter an order combining all interests in the contiguous
520 pore space for the development of a storage facility.

521 (b) The order shall be made upon terms and conditions that are just and reasonable.

522 (c) The board may adopt terms appearing in a joint operating agreement:

523 (i) for the storage facility that is in effect between the consenting owners;

524 (ii) submitted by any party to the proceeding; or

525 (iii) submitted by the board on the board's own motion.

526 (3) Operations incident to the construction or operation of a storage facility upon any
527 portion of an area included in an amalgamation order shall be deemed for all purposes to be the
528 conduct of the operations upon each separately owned tract in the area by the several orders.

529 (4) (a) (i) Each amalgamation order shall provide for the payment of just and
530 reasonable costs incurred in the construction and operation of the storage facility, including:

531 (A) the costs of constructing, marketing, completing, and operating the storage facility;

532 (B) reasonable charges for the administration and supervision of operations; and

533 (C) other costs customarily incurred in the industry.

534 (ii) An owner is not liable under an amalgamation order for costs or losses resulting
535 from the gross negligence or willful misconduct of the operator.

536 (b) Each amalgamation order shall provide for reimbursement to the consenting owners
537 for any nonconsenting owner's share of the costs of operation of the storage facility attributable
538 to the nonconsenting owner's tract.

539 (c) Each amalgamation order shall provide that each consenting owner shall own and
540 be entitled to receive, subject to taxes, fees, fines, and other obligations:

541 (i) the share of the profits of the storage facility applicable to the consenting owner's
542 interest in the storage facility; and

543 (ii) unless the consenting owner has agreed otherwise, the consenting owner's
544 proportionate part of the nonconsenting owner's share of the profits until the recovery of costs
545 provided for in Subsection (4)(d).

546 (d) (i) Each amalgamation order shall provide that each nonconsenting owner shall be
547 entitled to receive, subject to obligations, the share of the profits from the storage facility
548 applicable to the nonconsenting owner's interest in the storage facility after the consenting
549 owners have recovered from the nonconsenting owner's share of the profits the following
550 amounts less any cash contributions the nonconsenting owner has made:

551 (A) 100% of the nonconsenting owner's share of the cost of storage facility
552 construction and maintenance;

553 (B) 100% of the nonconsenting owner's share of the estimated cost to close the storage
554 facility as the board determines;

555 (C) 100% of the nonconsenting owner's share of the cost of operation of the storage
556 facility commencing with the first injection of carbon dioxide and continuing until the
557 consenting owners have recovered all costs; and

558 (D) 100% of the nonconsenting owner's share of the costs of preparing the storage
559 facility, rights-of-way, and equipment.

560 (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is
561 that interest which would have been chargeable to the nonconsenting owner had the
562 nonconsenting owner initially agreed to pay the nonconsenting owner's share of the costs of the
563 storage facility from commencement of the operation.

564 (iii) The board may include a reasonable interest charge if the board finds it
565 appropriate.

566 (e) The board shall determine the proper costs to resolve any dispute about costs.

567 (5) The operator of a storage facility under an amalgamation order in which there is a

568 nonconsenting owner shall furnish the nonconsenting owner with monthly statements
569 specifying:

570 (a) costs incurred; and

571 (b) profit realized.

572 (6) Each amalgamation order shall provide that when the consenting owners recover
573 from a nonconsenting owner's relinquished interest the amounts provided for in Subsection
574 (4)(d):

575 (a) the relinquished interest of the nonconsenting owner shall automatically revert to
576 the nonconsenting owner;

577 (b) the nonconsenting owner shall from that time:

578 (i) own the same interest in the storage facility; and

579 (ii) be liable for the further costs of the operation as if the nonconsenting owner had
580 participated in the initial drilling and operations; and

581 (iii) costs are payable out of profits unless otherwise agreed between the nonconsenting
582 owner and the operator.

583 (7) Each amalgamation order shall provide that in any circumstance where the
584 nonconsenting owner has relinquished the nonconsenting owner's share of profits to consenting
585 owners or at any time fails to take the nonconsenting owner's share of benefits when the
586 nonconsenting owner is entitled to do so, the nonconsenting owner is entitled to:

587 (a) an accounting of the profits applicable to the nonconsenting owner's relinquished
588 share of the storage facility; and

589 (b) payment of the profits applicable to that share of the profits not taken in-kind, net
590 of costs.

591 (8) A nonconsenting owner who does not take the nonconsenting owner's share of the
592 profits is not liable for the costs described in Subsection (4)(d) and is not liable for any actions
593 the operator takes with respect to the storage facility.

594 Section 14. Section **40-11-11** is enacted to read:

595 **40-11-11. Geologic carbon storage amalgamation unit -- Procedure for**
596 **establishment -- Operation.**

597 (1) The board may hold a hearing to consider the need for the amalgamation of a tract
598 for geologic carbon storage.

599 (2) The board shall make an order providing for the amalgamation of a tract for
600 geologic carbon storage, if the board finds that:

601 (a) amalgamation is reasonably necessary for the purposes of this chapter; and

602 (b) the value of amalgamation justifies proceeding against the nonconsenting owner's
603 wishes.

604 (3) The amalgamation order shall include:

605 (a) a description of the lands and of the reservoir to become a storage facility;

606 (b) a statement of the nature of the operations contemplated;

607 (c) an allocation to the separately owned tracts in the amalgamation unit of the profits
608 the storage facility receives, considering:

609 (i) agreements among interested parties; and

610 (ii) the relative value of the separately owned tracts within the amalgamation area;

611 (d) a provision for adjustment among the owners of the amalgamation area for
612 investments made prior to the amalgamation order;

613 (e) a provision determining the allocation of costs among owners, and how the owners
614 shall pay those costs;

615 (f) any necessary provision for:

616 (i) financing an owner; or

617 (ii) carrying an owner;

618 (g) a provision for the supervision and conduct of the storage facility operations,
619 including a percentage vote for each owner;

620 (h) additional provisions that are necessary and appropriate for carrying on the
621 operation of the amalgamation unit; and

622 (i) the designation of an operator of the amalgamation unit.
623 (4) An amalgamation order described in Subsection (3) shall only be effective after the
624 plan for operating the storage facility is approved in writing by:
625 (a) owners whose obligations under the amalgamation order require them to pay not
626 less than 70% of the costs for operating and constructing the facility; and
627 (b) owners whose combined interest under the amalgamation order is not less than 70%
628 of the profits from the operation of the storage facility.
629 Section 15. Section **40-11-12** is enacted to read:
630 **40-11-12. Requirement to record.**
631 An operator shall file a record of the permit and a description of the impacted land with
632 the recorder's office in each county where the storage facility is located.
633 Section 16. Section **40-11-13** is enacted to read:
634 **40-11-13. Reservoir integrity.**
635 (1) Carbon dioxide injected into and stored in a reservoir in compliance with the
636 requirements of this section is not:
637 (a) pollution, as that term is defined in Section [4-18-103](#); or
638 (b) a nuisance, as that term is defined in Section [4-44-102](#).
639 (2) A reservoir is only appropriate for geologic carbon storage if the board determines
640 and the operator demonstrates that:
641 (a) carbon dioxide cannot escape the reservoir at a rate exceeding the lower of 1% or
642 the standard recommended by the Environmental Protection Agency;
643 (b) no additional substances will be introduced into the storage facility that could
644 compromise the integrity of the storage reservoir; and
645 (c) the operator has a plan to maintain the integrity of the reservoir.
646 (3) When making a determination described in Subsection (2), the board may rely
647 upon:
648 (a) a finding from the Utah Geological Survey, created in Section [79-3-201](#) that the

649 reservoir is appropriate for the storage of carbon dioxide; and

650 (b) reports and findings from the Department of Environmental Quality, created in
651 Section [19-1-104](#).

652 (4) The board shall take action to enforce the provisions of this section.

653 Section 17. Section **40-11-14** is enacted to read:

654 **40-11-14. Preservation of rights.**

655 Nothing in this chapter or in a permit may be interpreted to:

656 (1) prejudice the rights of property owners who own property that hosts a storage
657 facility to the extent that those property rights are not committed to the storage facility;

658 (2) prevent a mineral owner or mineral lessee from drilling through or near a storage
659 reservoir to explore or develop mineral resources to the extent that the exploration and
660 development:

661 (a) preserves the integrity of the storage facility; and

662 (b) complies with requirements described in this chapter.

663 Section 18. Section **40-11-15** is enacted to read:

664 **40-11-15. Title to injected carbon dioxide.**

665 (1) The storage operator has title to the carbon dioxide injected into and stored in a
666 storage reservoir and holds title until the board issues a certificate of project completion.

667 (2) The storage operator is liable for any damage the stored carbon dioxide may cause,
668 including damage caused by escaping stored carbon dioxide until the board issues a certificate
669 of completion.

670 (3) An owner of pore space does not incur liability for geologic carbon storage activity
671 by virtue of ownership of or of leasing out the pore space.

672 Section 19. Section **40-11-16** is enacted to read:

673 **40-11-16. Certificate of project completion.**

674 (1) To request a certificate of project completion, a storage operator shall submit:

675 (a) a demonstration that the last carbon dioxide injection was no fewer than 10 years

676 preceding the filing;
677 (b) a statement of compliance with all statutes and rules regulating the storage facility;
678 (c) a demonstration of the resolution of all pending claims regarding the storage
679 facility;
680 (d) a demonstration of the present and future physical integrity of the storage reservoir;
681 (e) a demonstration that any carbon dioxide in the storage reservoir:
682 (i) is essentially stationary; or
683 (ii) if the carbon dioxide migrates or will migrate, is highly unlikely to cross the
684 storage reservoir boundary;
685 (f) a demonstration that all wells, equipment, and facilities necessary for maintaining
686 the continued integrity of the storage reservoir are currently in good condition and will
687 maintain that good condition;
688 (g) a demonstration that the operator has:
689 (i) plugged wells;
690 (ii) removed equipment and facilities not necessary to maintaining the integrity of the
691 reservoir; and
692 (iii) completed any other reclamation work the board requires.
693 (2) Immediately after the board issues a certificate of completion:
694 (a) title to the storage facility and the stored carbon dioxide transfers to the state;
695 (b) liability with respect to the storage facility and the stored carbon dioxide transfers
696 to the state;
697 (c) the storage operator and any person who is not the state who has property rights in
698 the storage facility is released from any obligation to comply with regulatory requirements
699 associated with the storage facility;
700 (d) the board shall release any bonds the storage operator has posted; and
701 (e) the division shall oversee the monitoring and managing of the storage facility.
702 Section 20. Section **40-11-17** is enacted to read:

703 **40-11-17. Application of this chapter to enhanced recovery projects.**

704 (1) This chapter does not apply to the injection of carbon dioxide for an enhanced oil or
705 gas recovery project.

706 (2) (a) This chapter does apply to the conversion of an enhanced oil or gas recovery
707 project to a storage facility.

708 (b) To accommodate the conversion described in Subsection (2)(a), the board may
709 make additional rules to allow for circumstances unique to the conversion of an enhanced oil
710 and gas recovery project to a storage facility and not otherwise anticipated under this chapter.

711 Section 21. Section **40-11-18** is enacted to read:

712 **40-11-18. Cooperative agreements and contracts.**

713 (1) The board may enter into an agreement with another government, government
714 entity, or state agency for the purpose of carrying out the objectives described in this chapter.

715 (2) The board may enter into a contract with a private person in order for the board to
716 carry out the board's objectives.

717 (3) The board shall follow Title 63G, Chapter 6a, Utah Procurement Code, when
718 entering into an agreement or contract described in Subsection (1) or (2).

719 Section 22. Section **40-11-19** is enacted to read:

720 **40-11-19. Participation of public interests.**

721 The governing body of a controlling state interest or interest of a political subdivision is
722 authorized to consent to and participate in a geologic carbon storage project.

723 Section 23. Section **40-11-20** is enacted to read:

724 **40-11-20. Adoption of procedure.**

725 (1) The board may adopt procedures and criteria to determine the amount of injected
726 carbon dioxide:

727 (a) stored in a reservoir that has been or is being used for an enhanced oil or gas
728 recovery project; or

729 (b) stored in a reservoir that is a part of a storage facility.

730 (2) The board may charge a fee to cover the costs of making a determination described
731 in Subsection (1).

732 (3) The division shall deposit a fee collected in accordance with Subsection (2) into the
733 Geologic Carbon Storage Facility Administrative Fund created in Section [40-11-21](#).

734 Section 24. Section **40-11-21** is enacted to read:

735 **40-11-21. Fees -- Geologic Carbon Storage Facility Administrative Fund.**

736 (1) There is levied a fee per ton of carbon dioxide injected into a reservoir.

737 (2) The board shall establish the fee described in Subsection (1) in accordance with
738 Section [63J-1-504](#), in an amount to pay the costs to the division of the regulation of storage
739 facility:

740 (a) construction;

741 (b) operation; and

742 (c) pre-closure activities.

743 (3) Money the board collects in accordance with this section shall be deposited into the
744 Geologic Carbon Storage Facility Administrative Fund created in Subsection (4).

745 (4) There is created an expendable special revenue fund known as the "Geologic
746 Carbon Storage Facility Administrative Fund."

747 (5) The fund shall consist of the money specified in Subsections (1) through (3),
748 Section [40-11-20](#), and interest earned on the fund.

749 (6) The division shall only use the money deposited into the Geologic Carbon Storage
750 Facility Administrative Fund to:

751 (a) defray the division's regulatory expenses incurred during the regulation of storage
752 facility:

753 (i) construction;

754 (ii) operation; and

755 (iii) pre-closure activities;

756 (b) make determinations in accordance with Section [40-11-20](#); and

757 (c) reimburse a regulatory agency with whom the board has entered into a cooperative
758 agreement described in Section 40-11-18 for expenses the cooperating agency incurs in
759 conducting the activities described in Subsections (6)(a) and (b).

760 Section 25. Section 40-11-22 is enacted to read:

761 **40-11-22. Fees -- Geologic Carbon Storage Facility Trust Fund.**

762 (1) There is levied a fee per ton of carbon dioxide injected into a storage facility.

763 (2) The board shall establish the fee described in Subsection (1) in accordance with
764 Section 63J-1-504, in an amount to pay the costs to the division of the long-term monitoring
765 and management of a closed storage facility.

766 (3) Money the division collects as a result of the fee described in Subsection (1) shall
767 be deposited in the Geologic Carbon Storage Facility Trust Fund created in Subsection (4).

768 (4) There is created an expendable special revenue fund known as the "Geologic
769 Carbon Storage Facility Trust Fund."

770 (5) The fund shall consist of the money specified in Subsections (1) through (3) and
771 interest earned on the fund.

772 (6) The division shall only use the money deposited into the Geologic Carbon Storage
773 Facility Trust Fund to:

774 (a) defray the expenses the division incurs in the long-term monitoring and
775 management of a closed storage facility; or

776 (b) to reimburse a regulatory agency with whom the board has entered into a
777 cooperative agreement described in Section 40-11-18 for expenses the cooperating agency
778 incurs in the long-term monitoring and management of a closed storage facility.