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ENVIRONMENTAL QUALITY AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Casey Snider
Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill addresses the Environmental Quality Code.

Highlighted Provisions:

This bill:

- defines terms;
- requires meetings between the Federalism Commission and the Department of Environmental Quality;
- repeals the Air Quality Policy Advisory Board;
- addresses sales and use tax exemptions and certifications related to pollution control;
- addresses the powers and duties of the Board of Oil, Gas, and Mining, including rulemaking, and the Division of Oil, Gas, and Mining; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 19-12-102**, as last amended by Laws of Utah 2018, Chapter 120
- 19-12-202**, as enacted by Laws of Utah 2014, Chapter 24
- 19-12-305**, as enacted by Laws of Utah 2014, Chapter 24
- 40-6-5**, as last amended by Laws of Utah 2022, Chapter 62
- 40-6-16**, as last amended by Laws of Utah 2022, Chapter 108
- 63C-4a-303**, as last amended by Laws of Utah 2023, Chapter 71

28 ENACTS:

29 **19-1-110**, Utah Code Annotated 1953

30 REPEALS:

31 **19-2a-102**, as last amended by Laws of Utah 2021, Chapter 69

32

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

34 Section 1. Section **19-1-110** is enacted to read:

35 **19-1-110 . Department discussions with the Federalism Commission.**

36 (1) As used in this section, "commission" means the Federalism Commission created in
 37 Section 63C-4a-302.

38 (2) The department shall meet with the commission as scheduled by the chairs of the
 39 commission and consistent with the usual schedule of the commission.

40 (3) The commission may discuss with the department:

41 (a) needs of industries that are subject to regulation under this title;

42 (b) needs of the department;

43 (c) policy and rulemaking changes or implementation;

44 (d) United States Environmental Protection Agency regulations and other federal
 45 regulations that affect industries regulated under this title or the department; and

46 (e) any other issue that is related to the environment or the functioning of the department.

47 Section 2. Section **19-12-102** is amended to read:

48 **19-12-102 . Definitions.**

49 As used in this chapter:

50 (1) "Air pollutant" means the same as that term is defined in Section 19-2-102.

51 (2) "Air pollutant source" means the same as that term is defined in Section 19-2-102.

52 (3) "Air pollution" means the same as that term is defined in Section 19-2-102.

53 (4) (a) [~~Director~~] Except as provided in Subsection (4)(b), "director" means:

54 [(a)] (i) for purposes of an application or certification under this chapter related to air
 55 pollution, the director of the Division of Air Quality; or

56 [(b)] (ii) for purposes of an application or certification under this chapter related to
 57 water pollution, the director of the Division of Water Quality.

58 (b) For purposes of an application or certification under this chapter related to property
 59 within the jurisdiction of the Board of Oil, Gas, and Mining under Section 40-6-5,

60 "director" means the director of the Division of Oil, Gas, and Mining.

61 (5) (a) "Freestanding pollution control property" means tangible personal property

- 62 located in the state, regardless of whether a purchaser purchases the tangible personal
63 property voluntarily or to comply with a requirement of a governmental entity, if:
- 64 (i) the primary purpose of the tangible personal property is the prevention, control, or
65 reduction of air or water pollution by:
 - 66 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
67 treatment works for industrial waste; or
 - 68 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce,
69 air pollutants, air pollution, or air contamination sources, and the use of one or
70 more air cleaning devices; and
 - 71 (ii) the tangible personal property is not used at, in the construction of, or
72 incorporated into a pollution control facility.
- 73 (b) "Freestanding pollution control property" does not include:
- 74 (i) a consumable:
 - 75 (A) chemical that is not reusable;
 - 76 (B) cleaning material that is not reusable; or
 - 77 (C) supply that is not reusable;
 - 78 (ii) the following used for human waste:
 - 79 (A) a septic tank; or
 - 80 (B) other property;
 - 81 (iii) property installed, constructed, or used for the moving of sewage to a collection
82 facility of a public or quasi-public sewerage system;
 - 83 (iv) the following used for the comfort of personnel:
 - 84 (A) an air conditioner;
 - 85 (B) a fan; or
 - 86 (C) an item similar to Subsection (5)(b)(iv)(A) or (B); or
 - 87 (v) office equipment or an office supply if the primary purpose of the office
88 equipment or office supply is not the prevention, control, or reduction of air or
89 water pollution by:
 - 90 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
91 treatment works for industrial waste; or
 - 92 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce,
93 air pollutants, air pollution, or air contamination sources, and the use of one or
94 more air cleaning devices.
- 95 (6) (a) "Pollution control facility" means real property in the state, regardless of whether

- 96 a purchaser purchases the real property voluntarily or to comply with a requirement
97 of a governmental entity, if the primary purpose of the real property is the prevention,
98 control, or reduction of air pollution or water pollution by:
- 99 (i) the disposal or elimination of, or redesign to eliminate, waste and the use of
100 treatment works for industrial waste; or
 - 101 (ii) (A) the disposal, elimination, or reduction of, or redesign to eliminate or
102 reduce, air pollutants, air pollution, or air contamination sources; and
103 (B) the use of one or more air cleaning devices.
- 104 (b) "Pollution control facility" includes:
- 105 (i) an addition to real property described in Subsection (6)(a);
 - 106 (ii) the reconstruction of real property described in Subsection (6)(a); or
 - 107 (iii) an improvement to real property described in Subsection (6)(a).
- 108 (c) "Pollution control facility" does not include:
- 109 (i) a consumable:
 - 110 (A) chemical that is not reusable;
 - 111 (B) cleaning material that is not reusable; or
 - 112 (C) supply that is not reusable;
 - 113 (ii) the following used for human waste:
 - 114 (A) a septic tank; or
 - 115 (B) another facility;
 - 116 (iii) property installed, constructed, or used for the moving of sewage to a collection
117 facility of a public or quasi-public sewerage system;
 - 118 (iv) the following used for the comfort of personnel:
 - 119 (A) an air conditioner;
 - 120 (B) a fan; or
 - 121 (C) an item similar to Subsection (6)(c)(iv)(A) or (B); or
 - 122 (v) office equipment or an office supply if the primary purpose of the office
123 equipment or office supply is not the prevention, control, or reduction of air or
124 water pollution by:
 - 125 (A) the disposal or elimination of, or redesign to eliminate waste, and the use of
126 treatment works for industrial waste; or
 - 127 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce,
128 air pollutants, air pollution, or air contamination sources, and the use of one or
129 more air cleaning devices.

130 (7) "Treatment works" means the same as that term is defined in Section 19-5-102.

131 (8) "Waste" means the same as that term is defined in Section 19-5-102.

132 (9) "Water pollution" has the same meaning as "pollution" under Section 19-5-102.

133 Section 3. Section **19-12-202** is amended to read:

134 **19-12-202 . Certification required before claiming a sales and use tax exemption.**

135 (1) Before a person may claim a sales and use tax exemption under Section 19-12-201, the
136 person shall obtain certification issued in accordance with Section 19-12-303.

137 (2) ~~[For]~~ Except as provided in Subsection (4), for purposes of Subsection (1), if a
138 certification relates to air pollution:

139 (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the
140 director of the Division of Air Quality; and

141 (b) the director of the Division of Air Quality shall perform the duties described in:

142 (i) Section 19-12-303 related to certification; and

143 (ii) Section 19-12-304 related to revocation of certification.

144 (3) ~~[For]~~ Except as provided in Subsection (4), for purposes of Subsection (1), if a
145 certification relates to water pollution:

146 (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the
147 director of the Division of Water Quality; and

148 (b) the director of the Division of Water Quality shall perform the duties described in:

149 (i) Section 19-12-303 related to certification; and

150 (ii) Section 19-12-304 related to revocation of certification.

151 (4) For purposes of Subsection (1), if a certification relates to property within the
152 jurisdiction of the Board of Oil, Gas, and Mining under Section 40-6-5:

153 (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the
154 director of the Division of Oil, Gas, and Mining; and

155 (b) the director of the Division of Oil, Gas, and Mining shall perform the duties
156 described in:

157 (i) Section 19-12-303 related to certification; and

158 (ii) Section 19-12-304 related to revocation of certification.

159 Section 4. Section **19-12-305** is amended to read:

160 **19-12-305 . Rulemaking authority.**

161 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
162 purposes of a certification related to air pollution, other than air pollution related to

163 property described in Subsection (3), the Air Quality Board may make rules establishing

164 procedures for:

165 (a) processing and evaluating an application for certification; and

166 (b) the issuance and revocation of a certification.

167 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
 168 purposes of a certification related to water pollution, other than water pollution related to
 169 property described in Subsection (3), the Water Quality Board may make rules
 170 establishing procedures for:

171 (a) processing and evaluating an application for certification; and

172 (b) the issuance or revocation of a certification.

173 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
 174 purposes of a certification related to property within the jurisdiction of the Board of Oil,
 175 Gas, and Mining under Section 40-6-5, the Board of Oil, Gas and Mining may make
 176 rules establishing procedures for:

177 (a) processing and evaluating an application for certification; and

178 (b) the issuance or revocation of a certification.

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

180 **40-6-5 . Jurisdiction of board -- Rules.**

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

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

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

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

192 Production reports shall be:

193 (i) filed monthly;

194 (ii) accurate; and

195 (iii) in a form that reasonably serves the needs of state agencies and private fee
 196 owners.

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

- 198 (d) Wells shall be drilled, cased, cemented, operated, and plugged in such manner as to
199 prevent:
- 200 (i) the escape of oil, gas, or water out of the reservoir in which they are found into
201 another formation;
- 202 (ii) the detrimental intrusion of water into an oil or gas reservoir;
- 203 (iii) the pollution of fresh water supplies by oil, gas, or salt water;
- 204 (iv) blowouts;
- 205 (v) cavings;
- 206 (vi) seepages;
- 207 (vii) fires; and
- 208 (viii) unreasonable:
- 209 (A) loss of a surface land owner's crops on surface land;
- 210 (B) loss of value of existing improvements owned by a surface land owner on
211 surface land; and
- 212 (C) permanent damage to surface land.
- 213 (e) The drilling of wells may not commence without an adequate and approved supply of
214 water as required by Title 73, Chapter 3, Appropriation. This Subsection (2)(e) is not
215 intended to impose additional legal requirements, but to assure that existing legal
216 requirements concerning the use of water have been met before the commencement
217 of drilling.
- 218 (f) Subject to Subsection (9), an operator shall furnish a reasonable performance bond or
219 other good and sufficient surety, conditioned for the performance of the duty to:
- 220 (i) plug each dry or abandoned well;
- 221 (ii) repair each well causing waste or pollution;
- 222 (iii) maintain and restore the well site; and
- 223 (iv) except as provided in Subsection (8), protect a surface land owner against
224 unreasonable:
- 225 (A) loss of a surface land owner's crops on surface land;
- 226 (B) loss of value of existing improvements owned by a surface land owner on
227 surface land; and
- 228 (C) permanent damage to surface land.
- 229 (g) Production from wells shall be separated into oil and gas and measured by means
230 and upon standards that are prescribed by the board and reflect current industry
231 standards.

- 232 (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and
233 any accumulation of nonmerchantable waste crude oil shall be treated and processed,
234 as prescribed by the board.
- 235 (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or
236 processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or
237 enhanced recovery, or salt water disposal in this state shall maintain complete and
238 accurate records of the quantities produced, sold, purchased, acquired, stored,
239 transported, refined, processed, or injected for a period of at least six years. The
240 records shall be available for examination by the board or the board's agents at any
241 reasonable time. Rules enacted to administer this Subsection (2)(i) shall be
242 consistent with applicable federal requirements.
- 243 (j) Any person with an interest in a lease shall be notified when all or part of that interest
244 in the lease is sold or transferred.
- 245 (k) The assessment and collection of administrative penalties is consistent with Section
246 40-6-11.
- 247 (3) The board has the authority to regulate:
- 248 (a) all operations for and related to the production of oil or gas including:
- 249 (i) drilling, testing, equipping, completing, operating, producing, and plugging of
250 wells; and
- 251 (ii) reclamation of sites;
- 252 (b) the spacing and location of wells;
- 253 (c) operations to increase ultimate recovery, such as:
- 254 (i) cycling of gas;
- 255 (ii) the maintenance of pressure; and
- 256 (iii) the introduction of gas, water, or other substances into a reservoir;
- 257 (d) the disposal of salt water and oil-field wastes;
- 258 (e) the underground and surface storage of oil, gas, or products; and
- 259 (f) the flaring of gas from an oil well.
- 260 (4) For the purposes of administering this chapter, the board may designate:
- 261 (a) wells as:
- 262 (i) oil wells; or
- 263 (ii) gas wells; and
- 264 (b) pools as:
- 265 (i) oil pools; or

- 266 (ii) gas pools.
- 267 (5) The board has exclusive jurisdiction over:
- 268 (a) class II injection wells, as defined by the federal Environmental Protection Agency
- 269 or a successor agency;
- 270 (b) pits and ponds in relation to these injection wells;
- 271 (c) when granted primacy by the Environmental Protection Agency, class VI injection
- 272 wells, as defined by the Environmental Protection Agency or a successor agency; and
- 273 (d) storage facilities, as that term is defined in Section 40-11-1.
- 274 (6) The board has jurisdiction:
- 275 (a) to hear questions regarding multiple mineral development conflicts with oil and gas
- 276 operations if there:
- 277 (i) is potential injury to other mineral deposits on the same lands; or
- 278 (ii) are simultaneous or concurrent operations conducted by other mineral owners or
- 279 lessees affecting the same lands; and
- 280 (b) to enter the board's order or rule with respect to those questions.
- 281 (7) The board has enforcement powers with respect to operators of minerals other than oil
- 282 and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple
- 283 mineral development issues.
- 284 (8) Subsection (2)(f)(iv) does not apply if the surface land owner is a party to, or a
- 285 successor of a party to:
- 286 (a) a lease of the underlying privately owned oil and gas;
- 287 (b) a surface use agreement applicable to the surface land owner's surface land; or
- 288 (c) a contract, waiver, or release addressing an owner's or operator's use of the surface
- 289 land owner's surface land.
- 290 (9) (a) The board shall review rules made under Subsection (2)(f) to determine whether
- 291 the rules provide adequate fiscal security for the fiscal risks to the state related to oil
- 292 and gas operations.
- 293 (b) During the board's review under this Subsection (9), the board may consider the
- 294 bonding schemes of other states.
- 295 (10) The board may make rules, in accordance with Title 63G, Chapter 3, Utah
- 296 Administrative Rulemaking Act, related to procedures under Title 19, Chapter 12,
- 297 Pollution Control Act, for certification by the director of the division.
- 298 Section 6. Section **40-6-16** is amended to read:
- 299 **40-6-16 . Duties of division.**

300 In addition to the duties assigned by the board, the division shall:

- 301 (1) develop and implement an inspection program that will include [~~but not be limited to~~]
 302 production data, pre-drilling checks, and site security reviews;
- 303 (2) publish a monthly production report;
- 304 (3) publish a monthly gas processing plant report;
- 305 (4) review and evaluate, [~~prior to~~] before a hearing, evidence submitted with the petition to
 306 be presented to the board;
- 307 (5) require adequate assurance of approved water rights in accordance with rules and orders
 308 enacted under Section 40-6-5;
- 309 (6) notify the county executive of the county in which the drilling will take place in writing
 310 of the issuance of a drilling permit;
- 311 (7) complete the verification of natural gas to hydrogen conversion plants required by
 312 Section 59-5-102; [~~and~~]
- 313 (8) issue tax credit certificates in accordance with Section 40-6-24[-] ; and
 314 (9) through the division's director, implement Title 19, Chapter 12, Pollution Control Act.

315 Section 7. Section **63C-4a-303** is amended to read:

316 **63C-4a-303 . Federalism Commission to evaluate federal law -- Curriculum on**
 317 **federalism -- Environment discussions.**

- 318 (1) (a) In accordance with Section 63C-4a-304, the commission may evaluate a federal
 319 law:
- 320 (i) as agreed by a majority of the commission;
- 321 (ii) submitted to the commission by a council member; or
- 322 (iii) reported to the commission in accordance with Subsection (1)(b).
- 323 (b) (i) To assist the commission in the evaluation of federal law as required in this
 324 section and Section 63C-4a-304, the commission may contract with a third party
 325 that is a Utah institution of higher education to monitor federal law for possible
 326 implications on the principles of federalism.
- 327 (ii) A third party contracted to monitor federal law as described in Subsection
 328 (1)(b)(i) shall:
- 329 (A) monitor federal law for possible implications on the principles of federalism
 330 and state sovereignty; and
- 331 (B) report to the commission any law or action by the federal government that
 332 may implicate the principles of federalism or state sovereignty.
- 333 (c) (i) As used in this Subsection (1)(c), "interim committee" means the same as that

- 334 term is defined in Section 36-12-1.
- 335 (ii) The commission shall provide an annual report to each interim committee
336 concerning any law or action by the federal government that implicates the
337 principles of federalism or state sovereignty.
- 338 (iii) The commission may notify the appropriate interim committee of any law or
339 action by the federal government that implicates the principles of federalism or
340 state sovereignty.
- 341 (2) The commission may request information regarding a federal law under evaluation from
342 a United States senator or representative elected from the state.
- 343 (3) If the commission finds that a federal law is not authorized by the United States
344 Constitution or violates the principle of federalism as described in Subsection
345 63C-4a-304(2), a commission cochair or the commission may:
- 346 (a) request from a United States senator or representative elected from the state:
347 (i) information about the federal law; or
348 (ii) assistance in communicating with a federal governmental entity regarding the
349 federal law;
- 350 (b) (i) give written notice of an evaluation made under Subsection (1) to the federal
351 governmental entity responsible for adopting or administering the federal law; and
352 (ii) request a response by a specific date to the evaluation from the federal
353 governmental entity;
- 354 (c) request a meeting, conducted in person or by electronic means, with the federal
355 governmental entity, a representative from another state, or a United States Senator
356 or Representative elected from the state to discuss the evaluation of federal law and
357 any possible remedy; or
- 358 (d) give written notice of an evaluation and the conclusions of the commission to any
359 other relevant entity.
- 360 (4) The commission may recommend to the governor that the governor call a special
361 session of the Legislature to give the Legislature an opportunity to respond to the
362 commission's evaluation of a federal law.
- 363 (5) A commission cochair may coordinate the evaluation of and response to federal law
364 with another state as provided in Section 63C-4a-305.
- 365 (6) The commission shall keep a current list on the Legislature's website of:
366 (a) a federal law that the commission evaluates under Subsection (1);
367 (b) an action taken by a cochair of the commission or the commission under Subsection

- 368 (3);
- 369 (c) any coordination undertaken with another state under Section 63C-4a-305; and
- 370 (d) any response received from a federal government entity that was requested under
- 371 Subsection (3).
- 372 (7) (a) The commission shall develop curriculum for a seminar on the principles of
- 373 federalism.
- 374 (b) The curriculum under Subsection (7)(a) shall be available to the general public and
- 375 include:
- 376 (i) fundamental principles of federalism;
- 377 (ii) the sovereignty, supremacy, and jurisdiction of the individual states, including
- 378 their police powers;
- 379 (iii) the history and practical implementation of the Tenth Amendment to the United
- 380 States Constitution;
- 381 (iv) the authority and limits on the authority of the federal government as found in the
- 382 United States Constitution;
- 383 (v) the relationship between the state and federal governments;
- 384 (vi) methods of evaluating a federal law in the context of the principles of federalism;
- 385 (vii) how and when challenges should be made to a federal law or regulation on the
- 386 basis of federalism;
- 387 (viii) the separate and independent powers of the state that serve as a check on the
- 388 federal government;
- 389 (ix) first amendment rights and freedoms contained therein; and
- 390 (x) any other issues relating to federalism the commission considers necessary.
- 391 (8) The commission may apply for and receive grants, and receive private donations to
- 392 assist in funding the creation, enhancement, and dissemination of the curriculum.
- 393 (9) The commission shall submit a report on or before November 30 of each year to the
- 394 Government Operations Interim Committee and the Natural Resources, Agriculture, and
- 395 Environment Interim Committee that:
- 396 (a) describes any action taken by the commission under Section 63C-4a-303; and
- 397 (b) includes any proposed legislation the commission recommends.
- 398 (10) The commission shall comply with Section 19-1-110 in discussions with the
- 399 Department of Environmental Quality on issues related to the environment or the
- 400 functioning of the Department of Environmental Quality.

401 Section 8. **Repealer.**

402 This bill repeals:
403 Section **19-2a-102, Air Quality Policy Advisory Board created -- Composition --**
404 **Responsibility -- Terms of office -- Compensation.**
405 Section 9. **Effective date.**
406 This bill takes effect on May 1, 2024.