

# HB0244S01 compared with HB0244

~~deleted text~~ shows text that was in HB0244 but was deleted in HB0244S01.

inserted text shows text that was not in HB0244 but was inserted into HB0244S01.

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Representative Stephen G. Handy proposes the following substitute bill:

## GEOLOGICAL CARBON SEQUESTRATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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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

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

### **Money Appropriated in this Bill:**

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

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

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

#### ENACTS:

#### 40-6-20.5, Utah Code Annotated 1953

40-11-1, Utah Code Annotated 1953

40-11-2, Utah Code Annotated 1953

40-11-3, Utah Code Annotated 1953

40-11-4, Utah Code Annotated 1953

40-11-5, Utah Code Annotated 1953

40-11-6, Utah Code Annotated 1953

40-11-7, Utah Code Annotated 1953

40-11-8, Utah Code Annotated 1953

40-11-9, Utah Code Annotated 1953

40-11-10, Utah Code Annotated 1953

40-11-11, Utah Code Annotated 1953

40-11-12, Utah Code Annotated 1953

40-11-13, Utah Code Annotated 1953

40-11-14, Utah Code Annotated 1953

40-11-15, Utah Code Annotated 1953

40-11-16, Utah Code Annotated 1953

40-11-17, Utah Code Annotated 1953

40-11-18, Utah Code Annotated 1953

40-11-19, Utah Code Annotated 1953

40-11-20, Utah Code Annotated 1953

40-11-21, Utah Code Annotated 1953

40-11-22, Utah Code Annotated 1953

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

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

### **40-6-2. Definitions.**

For the purpose of this chapter:

- (1) "Board" means the Board of Oil, Gas, and Mining.
- (2) "Correlative rights" means the opportunity of each owner in a pool to produce the owner's just and equitable share of the oil and gas in the pool without waste.
- (3) "Condensate" means hydrocarbons, regardless of gravity, that:
  - (a) occur naturally in the gaseous phase in the reservoir; and
  - (b) are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.
- (4) "Consenting owner" means an owner who, in the manner and within the time frame established by the board in rule, consents to the drilling and operation of a well and agrees to bear the owner's proportionate share of the costs of the drilling and operation of the well.
- (5) "Crude oil" means hydrocarbons, regardless of gravity, that:
  - (a) occur naturally in the liquid phase in the reservoir; and
  - (b) are produced and recovered at the wellhead in liquid form.
- (6) "Division" means the Division of Oil, Gas, and Mining.
- (7) (a) "Gas" means natural gas, as defined in Subsection (10), natural gas liquids, as defined in Subsection (11), other gas, as defined in Subsection (17), or any mixture of them.
  - (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil shale, or tar sands.
- (8) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the board.
- (9) "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.
- (10) (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form, except natural gas liquids as defined in Subsection (11) and condensate as defined in Subsection (3).
  - (b) "Natural gas" includes coalbed methane gas.
- (11) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated

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from natural gas as liquids in gas processing plants through the process of condensation, absorption, adsorption, or other methods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Pore space":

(i) is expressed as a percentage; and

(ii) depends on the size and sorting of the subsurface material's particles as a cubic or hexagonal package.

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

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

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

(a) overlying privately owned oil and gas resources;

(b) upon which oil and gas operations are conducted; and

(c) owned by a surface land owner.

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

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

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

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

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

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

result in:

- (i) loss of the surface land owner's crops on the surface land;
- (ii) loss of value of existing improvements owned by the surface land owner on the surface land; and
- (iii) permanent damage to the surface land.

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

- (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas or reservoir energy;
- (b) the inefficient storing of oil or gas;
- (c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes:

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

- (ii) unnecessary wells to be drilled; or
- (iii) the loss or destruction of oil or gas either at the surface or subsurface; or
- (d) the production of oil or gas in excess of:

(i) transportation or storage facilities; or

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

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

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

- (1) The board has jurisdiction over all persons and property necessary to enforce this

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chapter. The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

- (i) filed monthly;
- (ii) accurate; and
- (iii) in a form that reasonably serves the needs of state agencies and private fee owners.
- (c) Monthly reports from gas processing plants shall be filed with the division.
- (d) Wells shall be drilled, cased, cemented, operated, and plugged in such manner as to

prevent:

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

- (ii) the detrimental intrusion of water into an oil or gas reservoir;
- (iii) the pollution of fresh water supplies by oil, gas, or salt water;
- (iv) blowouts;
- (v) cavings;
- (vi) seepages;
- (vii) fires; and
- (viii) unreasonable:

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

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

(C) permanent damage to surface land.

(e) The drilling of wells may not commence without an adequate and approved supply



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of water as required by Title 73, Chapter 3, Appropriation. This Subsection (2)(e) is not intended to impose additional legal requirements, but to assure that existing legal requirements concerning the use of water have been met before the commencement of drilling.

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

- (i) plug each dry or abandoned well;
- (ii) repair each well causing waste or pollution;
- (iii) maintain and restore the well site; and
- (iv) except as provided in Subsection (8), protect a surface land owner against

unreasonable:

- (A) loss of a surface land owner's crops on surface land;
- (B) loss of value of existing improvements owned by a surface land owner on surface land; and
- (C) permanent damage to surface land.

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

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

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

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

(k) The assessment and collection of administrative penalties is consistent with Section 40-6-11.

(3) The board has the authority to regulate:

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- (a) all operations for and related to the production of oil or gas including:
    - (i) drilling, testing, equipping, completing, operating, producing, and plugging of wells; and
    - (ii) reclamation of sites;
  - (b) the spacing and location of wells;
  - (c) operations to increase ultimate recovery, such as:
    - (i) cycling of gas;
    - (ii) the maintenance of pressure; and
    - (iii) the introduction of gas, water, or other substances into a reservoir;
  - (d) the disposal of salt water and oil-field wastes;
  - (e) the underground and surface storage of oil, gas, or products; and
  - (f) the flaring of gas from an oil well.
- (4) For the purposes of administering this chapter, the board may designate:
- (a) wells as:
    - (i) oil wells; or
    - (ii) gas wells; and
  - (b) pools as:
    - (i) oil pools; or
    - (ii) gas pools.
- (5) The board has exclusive jurisdiction over:
- (a) class II injection wells, as defined by the federal Environmental Protection Agency or a successor agency; ~~and~~
  - (b) pits and ponds in relation to these injection wells[-];
  - (c) when granted primacy by the Environmental Protection Agency, class VI injection wells, as defined by the Environmental Protection Agency or a successor agency; and
  - (d) storage facilities, as that term is defined in Section 40-11-1.
- (6) The board has jurisdiction:
- (a) to hear questions regarding multiple mineral development conflicts with oil and gas operations if there:
    - (i) is potential injury to other mineral deposits on the same lands; or
    - (ii) are simultaneous or concurrent operations conducted by other mineral owners or

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lessees affecting the same lands; and

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

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

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

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

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

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

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

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

Section 3. Section ~~{40-11-1}~~40-6-20.5 is enacted to read:

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

Title to pore space underlying the surface estate is vested in the owner of the surface estate.

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

### CHAPTER 11. GEOLOGIC CARBON STORAGE

#### **40-11-1. Definitions.**

As used in this chapter:

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

(2) (a) "Carbon dioxide" means carbon dioxide (CO<sub>2</sub>) that has been captured from an emission source or direct air capture, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the carbon dioxide to enable or improve the injection process.

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

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

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

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

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

(a) drilling;

(b) development of storage facilities;

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

(d) construction activities;

(e) recovery techniques;

(f) remediation activities; and

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

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

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

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

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

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

Section ~~4~~5. Section **40-11-2** is enacted to read:

### **40-11-2. Preemption.**

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

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- (a) the granting of primacy over Class VI geologic sequestration wells; and
- (b) relevant federal law.

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

- (a) regulates only surface activity that is incidental to geologic carbon storage activity;
- (b) does not effectively or unduly limit, ban, or prohibit geologic carbon storage activity; and
- (c) is not otherwise preempted by state or federal law.

Section ~~5~~6. Section **40-11-3** is enacted to read:

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

(1) The board and the division have jurisdiction over all persons and property necessary to enforce this chapter.

(2) To enforce this chapter, the board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) Subject to the granting of primacy by the Environmental Protection Agency under the process required in 40 C.F.R. Section 145 and successful application for primacy approval under Section 1425 of the Safe Drinking Water Act, the board and the division have:

- (a) exclusive jurisdiction in the state over Class VI injection wells located in the state on nonfederal lands; and
- (b) cooperative jurisdiction in the state over Class VI injection wells located in the state on federal lands.

(4) The board shall establish fees in accordance with Section 63J-1-504, in an amount to pay the costs to the board and division of:

- (a) the permitting process;
- (b) the regulation of the construction, operation, and pre-closure activities of the storage facility; and
- (c) the monitoring of closed storage facilities.

Section ~~6~~7. Section **40-11-4** is enacted to read:

### **40-11-4. Board and division permit authority.**

To the extent required to authorize and issue permits and to regulate geologic carbon

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sequestration, the board and the division shall have authority:

(1) over all persons and property necessary to administer and enforce this chapter and this chapter's objectives;

(2) to regulate activities relating to a storage facility, including construction, operation, and closure;

(3) to enter, at a reasonable time and manner, a storage facility to:

(a) inspect equipment and surface storage facilities;

(b) observe, monitor, and investigate operations; or

(c) inspect records the board requires the operators maintain at the storage facility;

(4) to require that storage operators provide assurance, including bonds, that money is available to fulfill the storage operator's duties;

(5) to exercise continuing jurisdiction over storage operators and storage facilities, including the authority, after notice and hearing, to amend provisions in a permit and to revoke a permit; and

(6) to dissolve or change the boundaries of any unit that is within or near a storage reservoir's boundaries.

Section ~~7~~8. Section **40-11-5** is enacted to read:

### **40-11-5. Permits.**

(1) Subject to the granting of primacy as described in Section 40-11-3, the board may authorize the division to issue a permit.

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

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

Section ~~8~~9. Section **40-11-6** is enacted to read:

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

(1) A person applying for a permit shall:

(a) comply with:

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

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

(b) pay a fee, as established by the board, to cover the administrative costs of considering an application for a permit.

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(2) The board shall give priority to storage operators who apply for a permit to store carbon dioxide produced in Utah.

(3) A permit application shall demonstrate:

(a) that the storage operator has complied with all requirements established by the board in rule and in this chapter;

(b) that the storage facility is suitable for carbon dioxide injection and storage;

(c) that the carbon dioxide the storage operator will store is of a quality that allows the carbon dioxide to be safely and efficiently stored in the reservoir;

(d) that the storage operator has made a good-faith effort to get the consent of all persons who own the storage reservoir's pore space;

(e) that owners who own no less than 70% of the reservoir's pore space have provided written consent to the use of the owners' pore space for a storage facility;

(f) whether the storage facility contains commercially valuable minerals;

(g) if the storage facility contains commercially valuable minerals, a plan for addressing the ownership interests of the mineral owners or mineral lessees;

(h) that the storage reservoir meets the integrity requirements described in Section 40-11-13;

(i) that the operator has taken reasonable steps to ensure that:

(i) the storage facility will not endanger human health;

(ii) the storage facility will not endanger the environment;

(iii) the storage facility is in the public interest;

(iv) the storage facility will not adversely affect surface water or formation containing fresh water;

(v) carbon dioxide will not escape from the storage reservoir at a rate exceeding the lower of 1% or the standard recommended by the Environmental Protection Agency; and

(vi) that substances that compromise the objectives of this chapter or the integrity of a reservoir will not enter the reservoir;

(j) that the storage reservoir has defined horizontal and vertical boundaries;

(k) that the boundaries of the storage reservoir include buffer areas to ensure the safe operation of the storage facility;

(l) plans for monitoring the storage facility and procedures to assess the location and

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migration of carbon dioxide injected for storage;

(m) plans to ensure compliance with geologic carbon storage statutes and rules; and

(n) assurance that all nonconsenting pore space owners are or will be equitably compensated for the use of the pore space of the nonconsenting pore space owners in the storage facility.

Section ~~9~~10. Section **40-11-7** is enacted to read:

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

(1) The board shall hold a public hearing before authorizing the division to issue a permit.

(2) The board shall conduct the hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) The board shall give notice no fewer than 30 days prior to the hearing by:

(a) one publication in a daily newspaper of general circulation in Salt Lake City, Utah;

(b) in all newspapers of general circulation published in the county or counties in which the land affected is situated; and

(c) by publication in accordance with Section 45-1-101.

(4) In addition to the notice required in Subsection (3), an applicant shall provide notice of the hearing and a copy of the permit application, no fewer than 30 days before the hearing to:

(a) each mineral lessee within one-half mile of the storage reservoir's boundaries;

(b) each mineral owner within one-half mile of the storage reservoir's boundaries;

(c) each pore space owner within one-half mile of the storage reservoir's boundaries;

(d) each surface owner of land within one-half mile of the storage reservoir's boundaries; and

(e) any additional person the board identifies.

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

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

(7) If the board procures the services of an administrative law judge, the board may



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rely on the decision of the administrative law judge when deciding whether to issue a permit.

Section ~~{10}~~11. Section **40-11-8** is enacted to read:

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

Before issuing a permit, the board shall find that:

- (1) the application meets all of the requirements described in Section 40-11-6; and
- (2) the interested parties described in Subsection 40-11-7(4) all received proper notice.

Section ~~{11}~~12. Section **40-11-9** is enacted to read:

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

(1) A permit shall require that:

(a) an operator remain in compliance with all of the permit requirements described in

Subsection 40-11-6(3); and

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

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

(a) the payment of fair compensation to pore space owners who do not consent to the

use of the owners' pore space for geologic carbon storage;

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

(c) additional provisions to protect the environment and the property interests of the

parties described in Subsection 40-11-(4).

Section ~~{12}~~13. Section **40-11-10** is enacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) other costs customarily incurred in the industry.

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

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

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

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

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

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

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

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

(C) 100% of the nonconsenting owner's share of the cost of operation of the storage facility commencing with the first injection of carbon dioxide and continuing until the

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consenting owners have recovered all costs; and

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

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

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

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

(5) The operator of a storage facility under an amalgamation order in which there is a nonconsenting owner shall furnish the nonconsenting owner with monthly statements specifying:

(a) costs incurred; and

(b) profit realized.

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

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

(b) the nonconsenting owner shall from that time:

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

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

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

(7) Each amalgamation order shall provide that in any circumstance where the nonconsenting owner has relinquished the nonconsenting owner's share of profits to consenting owners or at any time fails to take the nonconsenting owner's share of ~~f~~production in-kind~~;~~ benefits when the nonconsenting owner is entitled to do so, the nonconsenting owner is entitled to:

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

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

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

Section ~~{13}~~14. Section **40-11-11** is enacted to read:

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

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

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

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

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

(3) The amalgamation order shall include:

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

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

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

(i) agreements among interested parties; and

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

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

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

(f) any necessary provision for:

(i) financing an owner; or

(ii) carrying an owner;

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

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

(i) the designation of an operator of the amalgamation unit.

(4) An amalgamation order described in Subsection (3) shall only be effective after the plan for operating the storage facility is approved in writing by:

(a) owners whose obligations under the amalgamation order require them to pay not less than 70% of the costs for operating and constructing the facility; and

(b) owners whose combined interest under the amalgamation order is not less than 70% of the profits from the operation of the storage facility.

Section ~~{14}~~15. Section **40-11-12** is enacted to read:

### **40-11-12. Requirement to record.**

An operator shall file a record of the permit and a description of the impacted land with the recorder's office in each county where the storage facility is located.

Section ~~{15}~~16. Section **40-11-13** is enacted to read:

### **40-11-13. Reservoir integrity.**

(1) Carbon dioxide injected into and stored in a reservoir in compliance with the requirements of this section is not:

(a) pollution, as that term is defined in Section 4-18-103; or

(b) a nuisance, as that term is defined in Section 4-44-102.

(2) A reservoir is only appropriate for geologic carbon storage if the board determines and the operator demonstrates that:

(a) carbon dioxide cannot escape the reservoir at a rate exceeding the lower of 1% or the standard recommended by the Environmental Protection Agency;

(b) no additional substances will be introduced into the storage facility that could compromise the integrity of the storage reservoir; and

(c) the operator has a plan to maintain the integrity of the reservoir.

(3) When making a determination described in Subsection (2), the board may rely upon:

(a) a finding from the Utah Geological Survey, created in Section 79-3-201 that the

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reservoir is appropriate for the storage of carbon dioxide; and

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

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

Section ~~{16}~~17. Section **40-11-14** is enacted to read:

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

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

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

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

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

(b) complies with requirements described in this chapter.

Section ~~{17}~~18. Section **40-11-15** is enacted to read:

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

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

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

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

Section ~~{18}~~19. Section **40-11-16** is enacted to read:

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

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

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

(b) a statement of compliance with all statutes and rules regulating the storage facility;

(c) a demonstration of the resolution of all pending claims regarding the storage facility;

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(d) a demonstration of the present and future physical integrity of the storage reservoir;

(e) a demonstration that any carbon dioxide in the storage reservoir:

(i) is essentially stationary; or

(ii) if the carbon dioxide migrates or will migrate, is highly unlikely to cross the storage reservoir boundary;

(f) a demonstration that all wells, equipment, and facilities necessary for maintaining the continued integrity of the storage reservoir are currently in good condition and will maintain that good condition;

(g) a demonstration that the operator has:

(i) plugged wells;

(ii) removed equipment and facilities not necessary to maintaining the integrity of the reservoir; and

(iii) completed any other reclamation work the board requires.

(2) Immediately after the board issues a certificate of completion:

(a) title to the storage facility and the stored carbon dioxide transfers to the state;

(b) liability with respect to the storage facility and the stored carbon dioxide transfers to the state;

(c) the storage operator and any person who is not the state who has property rights in the storage facility is released from any obligation to comply with regulatory requirements associated with the storage facility;

(d) the board shall release any bonds the storage operator has posted; and

(e) the division shall oversee the monitoring and managing of the storage facility.

Section ~~{19}~~20. Section **40-11-17** is enacted to read:

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

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

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

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

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Section ~~{20}~~21. Section 40-11-18 is enacted to read:

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

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

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

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

Section ~~{21}~~22. Section 40-11-19 is enacted to read:

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

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

Section ~~{22}~~23. Section 40-11-20 is enacted to read:

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

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

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

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

~~{~~ (2) The board may use the determination described in Subsection (1) to facilitate determining amounts for:

~~\_\_\_\_\_~~ (a) carbon credits;

~~\_\_\_\_\_~~ (b) allowances;

~~\_\_\_\_\_~~ (c) trading;

~~\_\_\_\_\_~~ (d) emissions allocations;

~~\_\_\_\_\_~~ (e) offsets; and

~~\_\_\_\_\_~~ (f) purposes similar to those described in Subsections (2)(a) through (e).

~~‡~~ (~~{3}~~2) The board may charge a fee to cover the costs of making a determination described in Subsection (1).

(~~{4}~~3) The division shall deposit a fee collected in accordance with Subsection (~~{3}~~2) into the Geologic Carbon Storage Facility Administrative Fund created in Section 40-11-21.



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Section ~~{23}~~24. Section **40-11-21** is enacted to read:

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

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

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

(a) construction;

(b) operation; and

(c) pre-closure activities.

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

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

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

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

(a) defray the division's regulatory expenses incurred during the regulation of storage

facility:

(i) construction;

(ii) operation; and

(iii) pre-closure activities;

(b) make determinations in accordance with Section 40-11-20; and

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

Section ~~{24}~~25. Section **40-11-22** is enacted to read:

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

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

(2) The board shall establish the fee described in Subsection (1) in accordance with Section 63J-1-504, in an amount to pay the costs to the division of the long-term monitoring

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and management of a closed storage facility.

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

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

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

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

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

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