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CARBON CAPTURE AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Scott H. Chew
Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill address regulation of carbon capture.

Highlighted Provisions:

This bill:

- modifies definitions;
- repeals two existing funds and replaces the repealed funds with the Carbon Dioxide Storage Fund (fund);
- addresses the Board of Oil, Gas, and Mining's (board) authority to impose fees and deposit money into the fund;
- addresses the holding of title by the state of storage facilities including oversight of facilities used to store carbon dioxide after the board issues a certificate of project completion;
- clarifies fee provisions; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 40-11-1**, as enacted by Laws of Utah 2022, Chapter 62
- 40-11-3**, as enacted by Laws of Utah 2022, Chapter 62
- 40-11-4**, as enacted by Laws of Utah 2022, Chapter 62
- 40-11-6**, as enacted by Laws of Utah 2022, Chapter 62
- 40-11-15**, as enacted by Laws of Utah 2022, Chapter 62

28 **40-11-16**, as enacted by Laws of Utah 2022, Chapter 62

29 **40-11-20**, as enacted by Laws of Utah 2022, Chapter 62

30 **40-11-21**, as enacted by Laws of Utah 2022, Chapter 62

31 ENACTS:

32 **40-11-23**, Utah Code Annotated 1953

33 REPEALS:

34 **40-11-22**, as enacted by Laws of Utah 2022, Chapter 62

35

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

37 Section 1. Section **40-11-1** is amended to read:

38 **40-11-1 . Definitions.**

39 As used in this chapter:

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

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

45 (b) "Carbon dioxide" does not include hazardous waste as that term is defined in Section
 46 19-6-102.

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

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

49 (5) "Fund" means the Carbon Dioxide Storage Fund created under Section 40-11-23.

50 [~~(5)~~] (6) "Geologic carbon storage" means the permanent or short-term underground storage
 51 of carbon dioxide in a storage reservoir.

52 [~~(6)~~] (7) "Geologic carbon storage activity" means activity associated with the development,
 53 production, processing, and storage of carbon dioxide as set forth in Title 40, Chapter
 54 11, Geologic Carbon Storage, and includes:

55 (a) drilling;

56 (b) development of storage facilities;

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

59 (d) construction activities;

60 (e) recovery techniques;

61 (f) remediation activities; and

- 62 (g) any other activity related to geologic carbon storage that the board identifies.
- 63 [(7)] (8) "Permit" means a permit issued by the division and approved by the board allowing
64 a person to operate a storage facility.
- 65 [(8)] (9) "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or
66 void, whether natural or artificially created, including oil and gas reservoirs, saline
67 formations, and coal seams suitable for or capable of being made suitable for geologic
68 carbon storage.
- 69 [(9)] (10) (a) "Storage facility" means the reservoir, underground equipment, and surface
70 facilities and equipment used or proposed to be used in a geologic carbon storage
71 operation.
- 72 (b) "Storage facility" does not include pipelines used to transport carbon dioxide to a
73 storage facility.
- 74 [(10)] (11) "Storage operator" means a person holding or applying for a permit.
- 75 Section 2. Section **40-11-3** is amended to read:
- 76 **40-11-3 . Board authority -- Rulemaking authority.**
- 77 (1) The board and the division have jurisdiction over all persons and property necessary to
78 enforce this chapter.
- 79 (2) To enforce this chapter, the board shall make rules in accordance with Title 63G,
80 Chapter 3, Utah Administrative Rulemaking Act, including rules establishing penalties
81 for a violation of this chapter.
- 82 (3) Subject to the granting of primacy by the Environmental Protection Agency under the
83 process required in 40 C.F.R. Section 145 and successful application for primacy
84 approval under Section 1425 of the Safe Drinking Water Act, the board and the division
85 have:
- 86 (a) exclusive jurisdiction in the state over Class VI injection wells located in the state on
87 nonfederal lands; and
- 88 (b) cooperative jurisdiction in the state over Class VI injection wells located in the state
89 on federal lands.
- 90 (4) The board shall establish fees in accordance with Section 63J-1-504, in an amount to
91 pay the costs to the board and division of:
- 92 (a) the permitting process;
- 93 (b) the regulation of the construction, operation, and pre-closure activities of the storage
94 facility; [and]
- 95 (c) the monitoring and management of closed storage facilities[-] ; and

96 (d) administering the fund.

97 (5) In addition to a fee imposed under Subsection (4), the board, in accordance with Section
 98 63J-1-504:

99 (a) may impose fees under Section 40-11-20; and

100 (b) shall impose a fee under Section 40-11-21.

101 Section 3. Section **40-11-4** is amended to read:

102 **40-11-4 . Board and division permit authority.**

103 To the extent required to authorize and issue permits and to regulate geologic
 104 carbon sequestration, the board and the division shall have authority:

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

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

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

110 (a) inspect equipment and surface storage facilities;

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

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

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

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

118 (6) to dissolve or change the boundaries of any unit that is within or near a storage
 119 reservoir's boundaries[-] ; and

120 (7) to oversee the expenditure of money from the fund to accomplish the purposes of this
 121 chapter.

122 Section 4. Section **40-11-6** is amended to read:

123 **40-11-6 . Permit application requirements.**

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

125 (2) (a) comply with:

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

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

128 (b) pay a fee, as established by the board in accordance with Subsections 40-11-3(4) and
 129 (5), to cover the administrative costs of considering an application for a permit and to

130 pay the expenditures of money from the fund to accomplish the purposes of this
131 chapter.

132 [~~2~~] (3) The board shall give priority to storage operators who apply for a permit to store
133 carbon dioxide produced in Utah.

134 [~~3~~] (4) A permit application shall demonstrate:

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

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

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

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

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

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

145 (g) if the storage facility contains commercially valuable minerals:

146 (i) a plan for addressing the ownership interests of the mineral owners or mineral
147 lessees; and

148 (ii) a demonstration that the storage facility will not negatively impact the
149 commercially valuable minerals;

150 (h) that the storage reservoir meets the integrity requirements described in Section
151 40-11-13;

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

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

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

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

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

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

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

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

- 164 (k) that the boundaries of the storage reservoir include buffer areas to ensure the safe
 165 operation of the storage facility;
- 166 (l) plans for monitoring the storage facility and procedures to assess the location and
 167 migration of carbon dioxide injected for storage;
- 168 (m) plans to ensure compliance with geologic carbon storage statutes and rules; and
- 169 (n) assurance that all nonconsenting pore space owners are or will be equitably
 170 compensated for the use of the pore space of the nonconsenting pore space owners in
 171 the storage facility.

172 Section 5. Section **40-11-15** is amended to read:

173 **40-11-15 . Title to injected carbon dioxide.**

- 174 (1) The storage operator has title to the carbon dioxide injected into and stored in a storage
 175 reservoir and holds title until the board issues a certificate of project completion.
- 176 (2) The storage operator is liable for any damage the stored carbon dioxide may cause,
 177 including damage caused by escaping stored carbon dioxide until the board issues a
 178 certificate of project completion.
- 179 (3) An owner of pore space does not incur liability for geologic carbon storage activity by
 180 virtue of ownership of or of leasing out the pore space.

181 Section 6. Section **40-11-16** is amended to read:

182 **40-11-16 . Certificate of project completion.**

- 183 (1) To request a certificate of project completion, a storage operator shall submit:
- 184 (a) a demonstration that the last carbon dioxide injection was no fewer than 10 years
 185 preceding the filing;
- 186 (b) a statement of compliance with all statutes and rules regulating the storage facility;
- 187 (c) a demonstration of the resolution of all pending claims regarding the storage facility;
- 188 (d) a demonstration of the present and future physical integrity of the storage reservoir;
- 189 (e) a demonstration that any carbon dioxide in the storage reservoir:
- 190 (i) is essentially stationary; or
- 191 (ii) if the carbon dioxide migrates or will migrate, is highly unlikely to cross the
 192 storage reservoir boundary;
- 193 (f) a demonstration that all wells, equipment, and facilities necessary for maintaining the
 194 continued integrity of the storage reservoir are currently in good condition and will
 195 maintain that good condition;
- 196 (g) a demonstration that the operator has:
- 197 (i) plugged wells;

- 198 (ii) removed equipment and facilities not necessary to maintaining the integrity of the
 199 reservoir; and
 200 (iii) completed any other reclamation work the board requires.
- 201 (2) Immediately after the board issues a certificate of project completion:
 202 (a) title to the storage facility and the stored carbon dioxide, including oversight of a
 203 facility used to store the stored carbon dioxide, transfers to the state;
 204 (b) liability with respect to the storage facility and the stored carbon dioxide transfers to
 205 the state;
 206 (c) the storage operator and any person who is not the state who has property rights in
 207 the storage facility is released from any obligation to comply with regulatory
 208 requirements associated with the storage facility;
 209 (d) the board shall release any bonds the storage operator has posted; and
 210 (e) the division shall oversee the monitoring and managing of the storage facility.

211 Section 7. Section **40-11-20** is amended to read:

212 **40-11-20 . Adoption of procedure.**

- 213 (1) The board may adopt procedures and criteria to determine the amount of injected carbon
 214 dioxide:
 215 (a) stored in a reservoir that has been or is being used for an enhanced oil or gas
 216 recovery project; or
 217 (b) stored in a reservoir that is a part of a storage facility.
- 218 (2) The board may charge a fee to cover the costs of making a determination described in
 219 Subsection (1).
- 220 (3) The division shall deposit a fee collected in accordance with Subsection (2) into the [
 221 ~~Geologic Carbon Storage Facility Administrative Fund created in Section 40-11-21]~~ fund.

222 Section 8. Section **40-11-21** is amended to read:

223 **40-11-21 . Fees related to reservoir or storage facility.**

- 224 (1) There is levied a fee per ton of carbon dioxide injected into a reservoir or storage facility.
- 225 (2) The board shall establish the fee described in Subsection (1) in accordance with Section
 226 63J-1-504~~[, in]~~ to equal the sum of:
 227 (a) an amount to pay the anticipated costs to the division of the regulation of storage
 228 facility:
 229 ~~[(a)]~~ (i) construction;
 230 ~~[(b)]~~ (ii) operation; and
 231 ~~[(c)]~~ (iii) pre-closure activities~~[,]~~ ; and

- 232 (b) an amount to pay the anticipated costs to the division of the long-term monitoring
 233 and management of a closed storage facility.
- 234 [~~(3) Money the board collects in accordance with this section shall be deposited into the~~
 235 ~~Geologic Carbon Storage Facility Administrative Fund created in Subsection (4).]~~
- 236 [~~(4) There is created an expendable special revenue fund known as the "Geologic Carbon~~
 237 ~~Storage Facility Administrative Fund."~~]
- 238 [~~(5) The fund shall consist of the money specified in Subsections (1) through (3), Section~~
 239 ~~40-11-20, and interest earned on the fund.]~~
- 240 [~~(6) The division shall only use the money deposited into the Geologic Carbon Storage~~
 241 ~~Facility Administrative Fund to:]~~
- 242 [~~(a) defray the division's regulatory expenses incurred during the regulation of storage~~
 243 ~~facility:]~~
- 244 [~~(i) construction;~~]
 245 [~~(ii) operation; and]~~
 246 [~~(iii) pre-closure activities;]~~
- 247 [~~(b) make determinations in accordance with Section 40-11-20; and]~~
- 248 [~~(c) reimburse a regulatory agency with whom the board has entered into a cooperative~~
 249 ~~agreement described in Section 40-11-18 for expenses the cooperating agency incurs in~~
 250 ~~conducting the activities described in Subsections (6)(a) and (b).]~~
- 251 (3) The division shall deposit money collected under this section into the fund.
- 252 Section 9. Section **40-11-23** is enacted to read:
- 253 **40-11-23 . Carbon Dioxide Storage Fund.**
- 254 (1) There is created an expendable special revenue fund known as the "Carbon Dioxide
 255 Storage Fund."
- 256 (2) The fund shall consist of:
- 257 (a) money from fees collected under Subsection 40-11-3(4) and Sections 40-11-20 and
 258 40-11-21;
- 259 (b) penalties imposed for violations of this chapter; and
 260 (c) interest or other earnings for the fund.
- 261 (3) The state treasurer shall invest the money in the fund according to Title 51, Chapter 7,
 262 State Money Management Act, except that interest or other earnings derived from those
 263 investments shall be deposited into the fund.
- 264 (4) The division shall only use the money in the fund to:
- 265 (a) defray the division's regulatory expenses incurred during the regulation of a storage

- 266 facility:
- 267 (i) construction;
- 268 (ii) operation; and
- 269 (iii) pre-closure activities;
- 270 (b) make determinations in accordance with Section 40-11-20;
- 271 (c) reimburse a regulatory agency with whom the board has entered into a cooperative
- 272 agreement described in Section 40-11-18 for expenses the cooperating agency incurs
- 273 in conducting the activities described in Subsections (4)(a) and (b);
- 274 (d) permit, inspect, monitor, investigate, record, and report on geologic storage facilities
- 275 and associated carbon dioxide injection wells;
- 276 (e) perform long-term monitoring of geologic storage facilities and associated carbon
- 277 dioxide injection wells;
- 278 (f) remediate mechanical problems associated with geologic storage facilities and
- 279 associated carbon dioxide injection wells;
- 280 (g) repair mechanical leaks at geologic storage facilities;
- 281 (h) plug abandoned carbon dioxide injection wells used for geologic storage;
- 282 (i) training and technology transfer related to carbon dioxide injection and geologic
- 283 storage;
- 284 (j) perform compliance and enforcement activities related to geologic storage and
- 285 associated man-made carbon dioxide injection wells; and
- 286 (k) oversee the management of the geologic storage facilities and associated carbon
- 287 dioxide injection wells after site closure.

288 Section 10. **Repealer.**

289 This bill repeals:

290 Section **40-11-22, Fees -- Geologic Carbon Storage Facility Trust Fund.**

291 Section 11. **Effective date.**

292 This bill takes effect on May 1, 2024.