

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 596

By Senators Smith and Phillips

[Introduced January 30, 2024; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on the Judiciary]

1 A BILL to amend and reenact §22-11-4, §22-11-22, §22-11-22a, §22-11-24, and §22-11-25 of the
2 Code of West Virginia, 1931, as amended; and to amend §22-11B-3 and §22-11B-12 of
3 said code, all relating to administering the West Virginia Water Pollution Control Act and
4 Underground Carbon Dioxide Sequestration and Storage; and providing further
5 assurances to the United States Environmental Protection Agency regarding the State of
6 West Virginia's application for primary enforcement authority over underground carbon
7 dioxide sequestration programs within the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-4. General powers and duties of director with respect to pollution.

1 (a) In addition to all other powers and duties the director has and may exercise, subject to
2 specific grants of authority to the chief or the board in this article or elsewhere in this code, the
3 director has the following powers and authority and shall perform the following duties:

4 (1) To perform any and all acts necessary to carry out the purposes and requirements of
5 this article and of the "Federal Water Pollution Control Act," 33 U.S.C. §1251, *et seq.*, as amended,
6 relating to this state's participation in the "National Pollutant Discharge Elimination System," 33
7 U.S.C. §1342, established under that act;

8 (2) To encourage voluntary cooperation by all persons in the conservation, improvement
9 and development of water resources and in controlling and reducing the pollution of the waters of
10 this state, and to advise, consult and cooperate with all persons, all agencies of this state, the
11 federal government or other states, and with interstate agencies in the furtherance of the purposes
12 of this article, and to this end and for the purpose of studies, scientific or other investigations,
13 research, experiments and demonstrations pertaining thereto, the division may receive moneys
14 from such agencies, officers and persons on behalf of the state. The division shall pay all moneys
15 so received into a special fund hereby created in the state Treasury, which fund shall be expended
16 under the direction of the director solely for the purpose or purposes for which the grant, gift or

17 contribution was made;

18 (3) To encourage the formulation and execution of plans by cooperative groups or
19 associations of municipal corporations, industries, industrial users, and other users of waters of
20 the state, who, jointly or severally, are or may be the source of pollution of such waters, for the
21 control and reduction of pollution;

22 (4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or
23 other investigations, research, experiments and demonstrations relating to the water resources of
24 the state and water pollution and its causes, control and reduction, and to collect data with respect
25 thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

26 (5) To study and investigate all problems concerning water flow, water pollution and the
27 control and reduction of pollution of the waters of the state, and to make reports and
28 recommendations with respect thereto;

29 (6) To collect and disseminate information relating to water pollution and the control and
30 reduction thereof;

31 (7) To develop a public education and promotion program to aid and assist in publicizing
32 the need for, and securing support for, pollution control and abatement;

33 (8) To sample ground and surface water with sufficient frequency to ascertain the
34 standards of purity or quality from time to time of the waters of the state;

35 (9) To develop programs for the control and reduction of the pollution of the waters of the
36 state;

37 (10) To exercise general supervision over the administration and enforcement of the
38 provisions of this article, and all rules, permits and orders issued pursuant to the provisions of this
39 article, §22-11-1 *et seq.* §22-11A-1 *et seq.*, §11-11B-1 *et seq.*, of this code and §22B-1-1 *et seq.* of
40 this code;

41 (11) In cooperation with the college of engineering at West Virginia University and the
42 schools and departments of engineering at other institutions of higher education operated by this

43 state, to conduct studies, scientific or other investigations, research, experiments and
44 demonstrations in an effort to discover economical and practical methods for the elimination,
45 disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control
46 and reduction of water pollution, and to this end, the director may cooperate with any public or
47 private agency and receive therefrom, on behalf of the state, and for deposit in the state Treasury,
48 any moneys which such agency may contribute as its part of the expenses thereof, and all gifts,
49 donations or contributions received as aforesaid shall be expended by the director according to
50 the requirements or directions of the donor or contributor without the necessity of an appropriation
51 therefor, except that an accounting thereof shall be made in the fiscal reports of the division;

52 (12) To require the prior submission of plans, specifications, and other data relative to, and
53 to inspect the construction and operation of, any activity or activities in connection with the
54 issuance and revocation of such permits as are required by this article, §22-11A-1 *et seq.* and §22-
55 11B-1 *et seq.*, of this code or the rules promulgated thereunder;

56 (13) To require any and all persons directly or indirectly discharging, depositing or
57 disposing of treated or untreated sewage, industrial wastes or other wastes, or the effluent
58 therefrom, into or near any waters of the state or into any underground strata, and any and all
59 persons operating an establishment which produces or which may produce or from which
60 escapes, releases or emanates or may escape, release or emanate treated or untreated sewage,
61 industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or
62 into any underground strata, to file with the division such information as the director may require in
63 a form or manner prescribed for such purpose, including, but not limited to, data as to the kind,
64 characteristics, amount and rate of flow of any such discharge, deposit, escape, release or
65 disposition;

66 (14) To adopt, modify, or repeal procedural rules and interpretive rules in accordance with
67 the provisions of Chapter 29A of this code administering and implementing the powers, duties and
68 responsibilities vested in the director by the provisions of this article, and §22-11A-1 *et seq.* and

69 §22-11B-1 et seq. of this code;

70 (15) To cooperate with interstate agencies for the purpose of formulating, for submission to
71 the Legislature, interstate compacts and agreements relating to: (A) The control and reduction of
72 water pollution; and (B) the state's share of waters in watercourses bordering the state;

73 (16) To adopt, modify, repeal, and enforce rules, in accordance with the provisions of
74 chapter twenty-nine-a of this code: (A) Implementing and making effective the declaration of policy
75 contained in section one of this article and the powers, duties and responsibilities vested in the
76 director and the chief by the provisions of this article and otherwise by law; (B) preventing,
77 controlling, and abating pollution; and (C) facilitating the state's participation in the "National
78 Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as
79 amended: *Provided*, That no rule adopted by the director shall specify the design of equipment,
80 type of construction or particular method which a person shall use to reduce the discharge of a
81 pollutant; and

82 (17) To advise all users of water resources as to the availability of water resources and the
83 most practicable method of water diversion, use, development and conservation.

84 (b) Whenever required to carry out the objectives of this article, §22-11A-1 et seq., or §22-
85 11B-1 et seq. of this code the director shall require the owner or operator of any point source or
86 establishment to: (i) Establish and maintain such records; (ii) make such reports; (iii) install, use
87 and maintain such monitoring equipment or methods; (iv) sample such effluents in accordance
88 with such methods, at such locations, at such intervals and in such manner as the director shall
89 prescribe; and (v) provide such other information as the director may reasonably require.

90 (c) The director upon presentation of credentials: (i) Has a right of entry to, upon or through
91 any premises in which an effluent source is located or in which any records required to be
92 maintained under subsection (b) of this section are located; and (ii) may at reasonable times have
93 access to and copy any records, inspect any monitoring equipment or method required under
94 subsection (b) of this section and sample any streams in the area as well as sample any effluents

95 which the owner or operator of such source is required to sample under subsection (b) of this
96 section. Nothing in this subsection eliminates any obligation to follow any process that may be
97 required by law.

98 (d) The director ~~is hereby authorized and empowered to~~ may investigate and ascertain the
99 need and factual basis for the establishment of public service districts as a means of controlling
100 and reducing pollution from unincorporated communities and areas of the state, investigate and
101 ascertain, with the assistance of the Public Service Commission, the financial feasibility and
102 projected financial capability of the future operation of any such public service district or districts,
103 and to present reports and recommendations thereon to the county commissions of the areas
104 concerned, together with a request that such county commissions create a public service district or
105 districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter
106 sixteen of this code. In the event a county commission fails to act to establish a county-wide public
107 service district or districts, the director shall act jointly with the Commissioner of the Bureau of
108 Public Health to further investigate and ascertain the financial feasibility and projected financial
109 capability and, subject to the approval of the Public Service Commission, order the county
110 commission to take action to establish such public service district or districts as may be necessary
111 to control, reduce or abate the pollution, and when so ordered the county commission members
112 must act to establish such a county-wide public service district or districts.

113 (e) The director ~~has the authority to~~ may enter at all reasonable times upon any private or
114 public property for the purpose of making surveys, examinations, investigations and studies
115 needed in the gathering of facts concerning the water resources of the state and their use, subject
116 to responsibility for any damage to the property entered. Upon entering, and before making any
117 survey, examination, investigation and study, such person shall immediately present himself or
118 herself to the occupant of the property. Upon entering property used in any manufacturing, mining
119 or other commercial enterprise, or by any municipality or governmental agency or subdivision, and
120 before making any survey, examination, investigation and study, such person shall immediately

121 present himself or herself to the person in charge of the operation, and if he or she is not available,
122 to a managerial employee. All persons shall cooperate fully with the person entering such property
123 for such purposes. Upon refusal of the person owning or controlling such property to permit such
124 entrance or the making of such surveys, examinations, investigations and studies, the director
125 may apply to the circuit court of the county in which such property is located, or to the judge thereof
126 in vacation, for an order permitting such entrance or the making of such surveys, examinations,
127 investigations and studies; and jurisdiction is hereby conferred upon such court to enter such order
128 upon a showing that the relief asked is necessary for the proper enforcement of this article:
129 *Provided*, That nothing in this subsection eliminates any obligation to follow any process that may
130 be required by law.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

1 (a) Any person who violates any provision of any permit issued under or subject to the
2 provisions of this article, or §22-11A-1 et seq., or §22-11B-1 et seq. of this code is subject to a civil
3 penalty not to exceed \$25,000 per a day of such violation and any person who violates any
4 provision of this article, §22-11A-1 et seq., or §22-11B-1 et seq. of this code or of any rule or who
5 violates any standard or order promulgated or made and entered under the provisions of this
6 article, §22-11A-1 et seq., §22-11B-1 et seq. of this code or §22B-1-1 et seq. of this code is subject
7 to a civil penalty not to exceed \$25,000 per a day of such violation. Any such civil penalty may be
8 imposed and collected only by a civil action instituted by the director in the circuit court of the
9 county in which the violation occurred or is occurring or of the county in which the waters thereof
10 are polluted as the result of such violation.

11 Upon application by the director, the circuit courts of the state or the judges thereof in
12 vacation may by injunction compel compliance with and enjoin violations of the provisions of this
13 article, §22-11A-1 et seq., and §22-11B-1 et seq. of this code, the rules of the board or director,
14 effluent limitations, the terms and conditions of any permit granted under the provisions of this
15 article, or §22-11A-1 et seq., and §22-11B-1 et seq. of this code or any order of the director or

16 board, and the venue of any such actions shall be the county in which the violations or
17 noncompliance exists or is taking place or in any county in which the waters thereof are polluted as
18 the result of such violation or noncompliance. The court or the judge thereof in vacation may issue
19 a temporary or preliminary injunction in any case pending a decision on the merits of any injunction
20 application filed. Any other section of this code to the contrary notwithstanding, the state is not
21 required to furnish bond as a prerequisite to obtaining injunctive relief under this article, or §22-
22 11A-1 *et seq.*, and §22-11B-1 *et seq.* of this code. An application for an injunction under the
23 provisions of this section may be filed and injunctive relief granted notwithstanding that all of the
24 administrative remedies provided for in this article have not been pursued or invoked against the
25 person or persons against whom such relief is sought and notwithstanding that the person or
26 persons against whom such relief is sought have not been prosecuted or convicted under the
27 provisions of this article.

28 The judgment of the circuit court upon any application filed or in any civil action instituted
29 under the provisions of this section is final unless reversed, vacated or modified on appeal to the
30 Supreme Court of Appeals. Any such appeal shall be sought in the manner provided by law for
31 appeals from circuit courts in other civil cases, except that the petition seeking review in any
32 injunctive proceeding must be filed with said Supreme Court of Appeals within 90 days from the
33 date of entry of the judgment of the circuit court.

34 Legal counsel and services for the chief, director or the board in all civil penalty and
35 injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state shall
36 be provided by the Attorney General or his or her assistants and by the prosecuting attorneys of
37 the several counties as well, all without additional compensation, or the chief, director or the board,
38 with the written approval of the Attorney General, may employ counsel to represent him or her or it
39 in a particular proceeding.

40 (b) In addition to the powers and authority granted to the director by this chapter to enter
41 into consent agreements, settlements and otherwise enforce this chapter, the director shall

42 propose, for legislative promulgation, rules in accordance with ~~the provisions of §29A-3-1 et seq.~~
43 of this code to establish a mechanism for the administrative resolution of violations set forth in this
44 section through consent order or agreement as an alternative to instituting a civil action.

**§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal
mining operations.**

1 (a) Any person who holds a permit to operate a coal mining operation issued under article
2 three of this chapter who violates any provision of any permit issued under or subject to the
3 provisions of this article, or §22-11A-1 et seq., and §22-11B-1 et seq. of this code is subject to a
4 civil penalty not to exceed \$25,000 ~~per~~ a day of the violation and any person who violates any
5 provision of this article or of any rule or who violates any standard or order promulgated or made
6 and entered under the provisions of this article, §22-11A-1 et seq., of this code or §22-11B-1 et
7 seq. of this code is subject to a civil penalty not to exceed \$25,000 ~~per~~ a day of the violation:
8 *Provided*, That any penalty imposed pursuant to the Surface Coal Mining and Reclamation Act
9 [§22-3-1 et seq.] shall be credited against any enforcement action under this article for violations of
10 standards protecting state waters.

11 (1) Any such civil penalty may be imposed and collected only by a civil action instituted by
12 the secretary in the circuit court of the county in which the violation occurred or is occurring or of
13 the county in which the waters thereof are polluted as the result of such violation.

14 (2) In determining the amount of a civil penalty the circuit court shall consider the
15 seriousness of the violation or violations, the economic benefit, if any, resulting from the violation,
16 any history of the violations, any good-faith efforts to comply with the applicable requirements,
17 cooperation by the permittee with the secretary, the economic impact of the penalty on the violator,
18 and other matters as justice may require.

19 (3) Upon application by the secretary, the circuit courts of the state or the judges thereof in
20 vacation may by injunction compel compliance with and enjoin violations of the provisions of this
21 article, §22-7A-1 et seq., and §22-11B-1 et seq. of this code, the rules of the board or secretary,

22 effluent limitations, the terms and conditions of any permit granted under the provisions of this
23 article, §22-11A-1 et seq., and §22-11B-1 et seq. or of this code or any order of the secretary or
24 board, and the venue of any such actions shall be the county in which the violations or
25 noncompliance exists or is taking place or in any county in which the waters thereof are polluted as
26 the result of the violation or noncompliance. The court or the judge thereof in vacation may issue a
27 temporary or preliminary injunction in any case pending a decision on the merits of any injunction
28 application filed. Any other section of this code to the contrary notwithstanding, the state is not
29 required to furnish bond as a prerequisite to obtaining injunctive relief under this article, or §22-
30 11A-1 *et seq.*, and §22-11B-1 et seq. of this code. An application for an injunction under the
31 provisions of this section may be filed and injunctive relief granted notwithstanding that all of the
32 administrative remedies provided in this article have not been pursued or invoked against the
33 person or persons against whom such relief is sought and notwithstanding that the person or
34 persons against whom such relief is sought have not been prosecuted or convicted under the
35 provisions of this article.

36 (4) The judgment of the circuit court upon any application filed or in any civil action
37 instituted under the provisions of this section is final unless reversed, vacated or modified on
38 appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner provided
39 by law for appeals from circuit courts in other civil cases, except that the petition seeking review in
40 any injunctive proceeding must be filed with said Supreme Court of Appeals within 90 days from
41 the date of entry of the judgment of the circuit court.

42 (5) Legal counsel and services for the director, secretary or the board in all civil penalty and
43 injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state shall
44 be provided by legal counsel employed by the department, the Attorney General or his or her
45 assistants and by the prosecuting attorneys of the several counties as well, all without additional
46 compensation, or the director, secretary or the board may employ counsel to represent him or her
47 or it in a particular proceeding.

48 (b) The secretary may assess a civil administrative penalty whenever he or she finds that a
49 person who holds a permit to operate a coal mining operation issued under article three of this
50 chapter has violated any provision of this article, or §22-11A-1 et seq., or §22-11B-1 et seq. of this
51 code, any permit issued under or subject to the provisions of this article, or §22-11A-1 et seq., or
52 §22-11B-1 et seq. of this code or any rule or order issued pursuant to this article, or §22-11A-1 et
53 seq., or §22-11B-1 et seq. of this code. A civil administrative penalty may be assessed unilaterally
54 by the director in accordance with this subsection.

55 (1) Any civil administrative penalty assessed pursuant to this section shall not exceed
56 \$10,000 per violation and the maximum amount of any civil administrative penalty assessed
57 pursuant to this section ~~shall~~ may not exceed \$125,000: *Provided*, That any stipulated penalties
58 accrued after the date of the draft order ~~shall~~ may not be included for purposes of determining the
59 total amount of the civil administrative penalty. For purposes of this section, a single operational
60 upset which leads to simultaneous violations of more than one pollutant parameter shall be treated
61 as a single violation.

62 (2) In determining the amount of any civil administrative penalty assessed under this
63 subsection, the secretary shall take into account the nature, circumstances, extent and gravity of
64 the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such
65 violations, the degree of good faith, economic benefit or savings, if any, resulting from the violation,
66 cooperation of the alleged violator, and such other matters as justice may require.

67 (3) No assessment may be levied pursuant to this subsection until after the alleged violator
68 has been notified by certified mail or personal service pursuant to the West Virginia rules of civil
69 procedure. The notice shall include a proposed order which refers to the provision of the statute,
70 rule, order or permit alleged to have been violated, a concise statement of the facts alleged to
71 constitute the violation, a statement of the amount of the administrative penalty to be imposed and
72 a statement of the alleged violator's right to an informal hearing prior to the issuance of the
73 proposed order.

74 (A) The alleged violator has 30 calendar days from receipt of the notice within which to
75 deliver to the secretary a written request for an informal hearing.

76 (B) If no hearing is requested, the proposed order becomes a draft order after the
77 expiration of the 30-day period.

78 (C) If an informal hearing is requested, the director shall inform the alleged violator of the
79 time and place of the hearing. The secretary may appoint an assessment officer to conduct the
80 informal hearing and make a written recommendation to the secretary concerning the proposed
81 order and the assessment of a civil administrative penalty.

82 (D) Within 30 days following the informal hearing, the secretary shall render and furnish to
83 the alleged violator a written decision, and the reasons therefor, concerning the assessment of a
84 civil administrative penalty. The proposed order shall be revised, if necessary, and shall become a
85 draft order.

86 (4) The secretary shall provide the opportunity for the public to comment on any draft order
87 by publishing a Class II legal advertisement in the newspaper with the largest circulation in the
88 county in which the violation occurred, and by other such means as the secretary deems
89 appropriate, which shall provide notice of the draft order, including the civil administrative penalty
90 assessment. The secretary shall consider any comments received in determining whether to
91 revise the draft order before issuance of a final order. During the 30-day public comment period,
92 any person may request a public hearing regarding the draft order and the secretary may grant or
93 deny the request at his or her discretion. If a request for a public hearing is denied, the secretary
94 shall provide notice to the person requesting a hearing and reasons for such denial.

95 (5) Within 30 days of the close of the public comment period on a draft order, the secretary
96 shall issue a final order or make a determination not to issue a final order, and shall provide written
97 notice by certified mail or personal service pursuant to the West Virginia rules of civil procedure to
98 the alleged violator and shall provide notice by certified mail or personal service pursuant to the
99 West Virginia rules of civil procedure to those persons who submitted written comments on the

100 draft order during the public comment period.

101 (6) The issuance of a final order assessing a civil administrative penalty pursuant to
102 subsection (b) of this section may be appealed to the environmental quality board pursuant to §22-
103 11-21 of this code. Any person who submitted written comments on a draft order during the public
104 comment period shall have the right to file such an appeal or intervene in any appeal filed by the
105 alleged violator.

106 (7) The authority to levy a civil administrative penalty is in addition to all other enforcement
107 provisions of this article and the payment of any assessment does not affect the availability of any
108 other enforcement provision in connection with the violation for which the assessment is levied:
109 Provided, That no combination of assessments against a violator under this section shall exceed
110 \$25,000 for each violation: Provided, however, That any violation for which the violator has paid a
111 civil administrative penalty assessed under this section may not be the subject of a separate civil
112 penalty action. No assessment levied pursuant to this section becomes due and payable until at
113 least thirty days after receipt of the final order or the procedures for review of the assessment,
114 including any appeals, have been completed, whichever is later.

115 (c) In addition to the authorities set forth in this section, the secretary may also enter into
116 agreements, settlements and other consent orders resolving alleged violations of this chapter.

117 (d) The secretary shall propose, for legislative review, rules, including emergency rules, in
118 accordance with the provisions of §29A-3-1 *et seq.* of this code to establish procedures for
119 assessing civil administrative penalties in accordance with this section by no later than July 1,
120 2015.

§22-11-24. Violations; criminal penalties.

1 (a) Any person who causes pollution or who fails or refuses to discharge any duty imposed
2 upon him or her by this article, by §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code or by any
3 rule of the board or director, promulgated pursuant to the provisions and intent of this article, or 22-
4 11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code, or by an order of the director or board, or who fails

5 or refuses to apply for and obtain a permit as required by the provisions of this article, or §22-11A-1
6 *et seq.*, or §22-11B-1 *et seq.* of this code, or who fails or refuses to comply with any term or
7 condition of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be
8 punished by a fine of not less than \$100 nor more than \$1,000, or ~~by imprisonment in the county~~
9 confined in jail for a period not exceeding six months, or by both fine and ~~imprisonment~~
10 confinement.

11 (b) Any person who intentionally misrepresents any material fact in an application, record,
12 report, plan or other document filed or required to be maintained under the provisions of this
13 article, §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code or any rules promulgated by the
14 director thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be punished by
15 a fine of not less than \$1,000 nor more than \$10,000 or ~~by imprisonment~~ confined in jail not
16 exceeding six months, or by both fine and ~~imprisonment~~ confinement.

17 (c) Any person who willfully or negligently violates any provision of any permit issued under
18 or subject to the provisions of this article, or §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code or
19 who willfully or negligently violates any provision of this article, or §22-11A-1 *et seq.*, or §22-11B-1
20 *et seq.* of this code, any rule of the board or director, any effluent limitation or any order of the
21 director or board is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a
22 fine of not less than \$2,500 nor more than \$25,000 ~~per~~ a day of violation or by ~~imprisonment~~
23 confinement in jail not exceeding one year or by both fine and ~~imprisonment~~ confinement.

24 (d) Any person convicted of a second or subsequent willful violation of subsections (b) or
25 (c) of this section or knowingly and willfully violates any provision of any permit, rule or order
26 issued under or subject to the provisions of this article, or §22-11A-1 *et seq.*, or §22-11B-1 *et seq.*
27 of this code, or knowingly and willfully violates any provision of this article, or §22-11A-1 *et seq.*, or
28 §22-11B-1 *et seq.* of this code, is guilty of a felony and, upon conviction, shall be imprisoned in a
29 state correctional facility not less than one nor more than three years, or fined not more than
30 \$50,000 for each day of violation, or both fined and imprisoned.

31 (e) Any person may be prosecuted and convicted under the provisions of this section
32 notwithstanding that none of the administrative remedies provided in this article have been
33 pursued or invoked against said person and notwithstanding that civil action for the imposition and
34 collection of a civil penalty or an application for an injunction under the provisions of this article has
35 not been filed against such person.

36 (f) Where a person holding a permit is carrying out a program of pollution abatement or
37 remedial action in compliance with the conditions and terms of the permit, the person is not subject
38 to criminal prosecution for pollution recognized and authorized by the permit.

§22-11-25. Civil liability; Natural Resources Game Fish and Aquatic Life Fund; use of funds.

1 If any loss of game fish or aquatic life results from a person or persons' failure or refusal to
2 discharge any duty imposed upon such person by this article, section seven, article six of this
3 chapter, or §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code, either the West Virginia Division of
4 Natural Resources or the Division of Environmental Protection, or both jointly may initiate a civil
5 action on behalf of the state of West Virginia to recover from such person or persons causing such
6 loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected
7 shall be deposited in a special revenue fund entitled "Natural Resources Game Fish and Aquatic
8 Life Fund" and shall be expended as hereinafter provided. The fund shall be expended to stock
9 waters of this state with game fish and aquatic life. Where feasible, the Director of the Division of
10 Natural Resources shall use any sum collected in accordance with the provisions of this section to
11 stock waters in the area in which the loss resulting in the collection of such sum occurred. Any
12 balance of such sum shall remain in said fund and be expended to stock state-owned and -
13 operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.

**ARTICLE 11B. UNDERGROUND CARBON DIOXIDE SEQUESTRATION AND
STORAGE**

§22-11B-3. Prohibition of underground carbon dioxide sequestration without a permit;

injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.

1 (a) It is unlawful for any person to commence work on, or to operate, a carbon dioxide
2 sequestration facility or storage site without first securing a Class VI underground injection control
3 permit from the secretary or from the US EPA.

4 (b) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other
5 minerals pursuant to a project approved by the secretary shall not be subject to the provisions of
6 this article.

7 (c) If an oil, natural gas or coalbed methane well operator proposes to convert its
8 operations to carbon dioxide sequestration, then the underground carbon dioxide sequestration
9 facility shall be regulated pursuant to this article and §22-11-1 *et seq.* of this code.

10 (d) All applications for permits submitted after the effective date of this article shall be
11 governed by the provisions of this article and the provisions of §22-11-1, *et seq.* of this code.
12 Permits issued and applications submitted prior to the effective date of this article shall be
13 governed by the provisions of §22-11-1 *et seq.* and §22-11A-1 *et seq.* of this code. If the holder of a
14 Class VI underground injection control permit or other carbon dioxide sequestration permit,
15 granted prior to the effective date of this article, seeks a modification of that permit after this article
16 becomes effective, then the permit holder shall have the option to proceed either according to the
17 provisions of this article or the provisions of §22-11A-1 *et seq.* of this code.

§22-11B-12. Certificate of project completion, release, transfer of title and custody, filing.

18 (a) After carbon dioxide injections into a reservoir end, and the storage operator has
19 fulfilled all requirements of its Class VI underground injection control permit including
20 requirements related to post-injection site care and site closure, and upon application by the
21 storage operator demonstrating compliance with this article, the secretary may issue a Certificate
22 of Underground Carbon Dioxide Storage Project Completion ("completion certificate").

23 (b) The completion certificate may only be issued after public notice and hearing. The

24 secretary shall establish notice requirements for this hearing by legislative rule.

25 (c) The completion certificate may not be issued until at least ~~40~~ 50 years after carbon
26 dioxide injections end or other time frame established on a site-specific basis in accordance with
27 the legislative rules regarding the timeframe for post-injection site care and site closure.

28 (d) The completion certificate may only be issued if the storage operator:

29 (1) Is in full compliance with all laws and other requirements governing the storage facility,
30 and has fulfilled all requirements including, without limitation, the terms of any underground
31 injection control permit associated with the facility including permit requirements related to post-
32 injection site care and site closure, legislative rules regarding post-injection site care and site
33 closure, and other applicable requirements;

34 (2) Demonstrates that it has addressed all pending claims regarding the storage facility's
35 operation; and

36 (3) Demonstrates that the storage reservoir is reasonably expected to retain the carbon
37 dioxide stored in it.

38 (e) As of the effective date of a completion certificate:

39 (1) Ownership of the stored carbon dioxide transfers, without payment of any
40 compensation, to the owners of the pore space as established in §22-11B-18 of this code;

41 (2) Ownership acquired by the pore space owners under subdivision (e)(1) of this section
42 includes all rights and interests in the stored carbon dioxide and any associated leasing rights;
43 *Provided*, That all liability other than contractual obligations and criminal liability ~~and regulatory~~
44 ~~requirements~~ associated with the stored carbon dioxide shall become the responsibility of the
45 state and the state shall defend, indemnify, and hold harmless the pore space and surface owners
46 against all claims using only funds from the Carbon Dioxide Storage Facility Trust Fund;

47 (3) The storage operator and all persons who transported and/or generated any stored
48 carbon dioxide are released from all liability other than contractual obligations and criminal liability
49 ~~and regulatory requirements~~ associated with the storage facility;

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

51 (5) Notwithstanding ownership of the stored carbon dioxide in the pore space owners as
52 provided herein, monitoring, and managing the storage facility shall become the state's
53 responsibility to be overseen by the secretary utilizing only money from the Carbon Dioxide
54 Storage Facility Trust Fund until such time as the federal government assumes responsibility for
55 the long-term monitoring and management of storage facilities. The release of liability under this
56 section shall not apply to a current or former owner or operator of a storage facility when such
57 liability arises from that owner or operator's noncompliance with applicable underground injection
58 control laws, regulations, or permits prior to issuance of the certificate of completion of injection
59 operations nor shall it apply when the director determines that there is fluid migration for which the
60 operator is responsible that causes or threatens imminent and substantial endangerment to an
61 underground source of drinking water.

62 (f) The secretary shall require that a copy of the completion certificate and a survey of the
63 storage field be filed with the county recorder in the county or counties where the carbon dioxide
64 storage facility is located.

65 (g) The secretary shall implement this article in a manner consistent with and as he or she
66 deems necessary to carry out the purposes and requirements of the federal Safe Drinking Water
67 Act, as amended, and its implementing regulations relating to the state's primary enforcement
68 authority for the underground injection control program established under that act with respect to
69 the storage and sequestration of carbon dioxide, including but not limited to the state's authority to
70 immediately and effectively restrain any person from engaging in any unauthorized activity which
71 is endangering or causing damage to public health or the environment. Additionally, in no event
72 may the release of liability under this section interfere with the US EPA's authority under Section
73 1431 of the federal Safe Drinking Water Act.

NOTE: The purpose of this bill is to provide further assurances to the United States

Environmental Protection Agency regarding the state of West Virginia's application for primary enforcement authority over underground carbon dioxide sequestration programs in the state of West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.