

HB 2860

FILED

2009 MAY -4 PM 3: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2860

(By Mr. Speaker (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]



Passed April 11, 2009

In Effect Ninety Days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2860

(BY MR. SPEAKER (MR. THOMPSON) AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §22-11-4, §22-11-22, §22-11-24 and §22-11-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all relating to regulating the sequestration and storage of carbon dioxide; providing for powers and duties of the Department of Environmental Protection; providing for civil penalties and injunctive relief; providing for criminal penalties; providing for civil liability; setting forth legislative findings; defining terms; specifying powers and duties; specifying carbon dioxide permitting requirements; establishing a working group to study and make recommendations regarding carbon dioxide sequestration; and authorizing the promulgation of legislative rules and cooperative agreements.

Be it enacted by the Legislature of West Virginia:

That §22-11-4, §22-11-22, §22-11-24 and §22-11-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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
2 has and may exercise, subject to specific grants of authority
3 to the chief or the board in this article or elsewhere in this
4 code, the director has the following powers and authority and
5 shall perform the following duties:

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

12 (2) To encourage voluntary cooperation by all persons in
13 the conservation, improvement and development of water
14 resources and in controlling and reducing the pollution of the
15 waters of this state, and to advise, consult and cooperate with
16 all persons, all agencies of this state, the federal government
17 or other states, and with interstate agencies in the furtherance
18 of the purposes of this article, and to this end and for the

19 purpose of studies, scientific or other investigations, research,
20 experiments and demonstrations pertaining thereto, the
21 division may receive moneys from such agencies, officers
22 and persons on behalf of the state. The division shall pay all
23 moneys so received into a special fund hereby created in the
24 State Treasury, which fund shall be expended under the
25 direction of the director solely for the purpose or purposes for
26 which the grant, gift or contribution was made;

27 (3) To encourage the formulation and execution of plans
28 by cooperative groups or associations of municipal
29 corporations, industries, industrial users, and other users of
30 waters of the state, who, jointly or severally, are or may be
31 the source of pollution of such waters, for the control and
32 reduction of pollution;

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

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

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

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

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

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

54 (10) To exercise general supervision over the
55 administration and enforcement of the provisions of this
56 article, and all rules, permits and orders issued pursuant to the
57 provisions of this article, article eleven-a of this chapter and
58 article one, chapter twenty-two-b of this code;

59 (11) In cooperation with the college of engineering at
60 West Virginia University and the schools and departments of
61 engineering at other institutions of higher education operated
62 by this state, to conduct studies, scientific or other
63 investigations, research, experiments and demonstrations in
64 an effort to discover economical and practical methods for
65 the elimination, disposal, control and treatment of sewage,
66 industrial wastes, and other wastes, and the control and
67 reduction of water pollution, and to this end, the director may
68 cooperate with any public or private agency and receive
69 therefrom, on behalf of the state, and for deposit in the State
70 Treasury, any moneys which such agency may contribute as
71 its part of the expenses thereof, and all gifts, donations or
72 contributions received as aforesaid shall be expended by the
73 director according to the requirements or directions of the
74 donor or contributor without the necessity of an appropriation
75 therefor, except that an accounting thereof shall be made in
76 the fiscal reports of the division;

77 (12) To require the prior submission of plans,
78 specifications, and other data relative to, and to inspect the
79 construction and operation of, any activity or activities in
80 connection with the issuance and revocation of such permits

81 as are required by this article, article eleven-a of this chapter
82 or the rules promulgated thereunder;

83 (13) To require any and all persons directly or indirectly
84 discharging, depositing or disposing of treated or untreated
85 sewage, industrial wastes or other wastes, or the effluent
86 therefrom, into or near any waters of the state or into any
87 underground strata, and any and all persons operating an
88 establishment which produces or which may produce or from
89 which escapes, releases or emanates or may escape, release
90 or emanate treated or untreated sewage, industrial wastes or
91 other wastes, or the effluent therefrom, into or near any
92 waters of the state or into any underground strata, to file with
93 the division such information as the director may require in
94 a form or manner prescribed for such purpose, including, but
95 not limited to, data as to the kind, characteristics, amount and
96 rate of flow of any such discharge, deposit, escape, release or
97 disposition;

98 (14) To adopt, modify, or repeal procedural rules and
99 interpretive rules in accordance with the provisions of chapter
100 twenty-nine-a of this code administering and implementing
101 the powers, duties and responsibilities vested in the director
102 by the provisions of this article and article eleven-a of this
103 chapter;

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

109 (16) To adopt, modify, repeal and enforce rules, in
110 accordance with the provisions of chapter twenty-nine-a of
111 this code: (A) Implementing and making effective the
112 declaration of policy contained in section one of this article

113 and the powers, duties and responsibilities vested in the
114 director and the chief by the provisions of this article and
115 otherwise by law; (B) preventing, controlling and abating
116 pollution; and (C) facilitating the state's participation in the
117 "National Pollutant Discharge Elimination System" pursuant
118 to the "Federal Water Pollution Control Act," as amended:
119 *Provided*, That no rule adopted by the director shall specify
120 the design of equipment, type of construction or particular
121 method which a person shall use to reduce the discharge of
122 a pollutant; and

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

127 (b) Whenever required to carry out the objectives of this
128 article or article eleven-a of this chapter the director shall
129 require the owner or operator of any point source or
130 establishment to: (i) Establish and maintain such records; (ii)
131 make such reports; (iii) install, use and maintain such
132 monitoring equipment or methods; (iv) sample such effluents
133 in accordance with such methods, at such locations, at such
134 intervals and in such manner as the director shall prescribe;
135 and (v) provide such other information as the director may
136 reasonably require.

137 (c) The director upon presentation of credentials: (i) Has
138 a right of entry to, upon or through any premises in which an
139 effluent source is located or in which any records required to
140 be maintained under subsection (b) of this section are
141 located; and (ii) may at reasonable times have access to and
142 copy any records, inspect any monitoring equipment or
143 method required under subsection (b) of this section and
144 sample any streams in the area as well as sample any
145 effluents which the owner or operator of such source is

146 required to sample under subsection (b) of this section.
147 Nothing in this subsection eliminates any obligation to follow
148 any process that may be required by law.

149 (d) The director is hereby authorized and empowered to
150 investigate and ascertain the need and factual basis for the
151 establishment of public service districts as a means of
152 controlling and reducing pollution from unincorporated
153 communities and areas of the state, investigate and ascertain,
154 with the assistance of the Public Service Commission, the
155 financial feasibility and projected financial capability of the
156 future operation of any such public service district or
157 districts, and to present reports and recommendations thereon
158 to the county commissions of the areas concerned, together
159 with a request that such county commissions create a public
160 service district or districts, as therein shown to be needed and
161 required and as provided in article thirteen-a, chapter sixteen
162 of this code. In the event a county commission fails to act to
163 establish a county-wide public service district or districts, the
164 director shall act jointly with the Commissioner of the
165 Bureau of Public Health to further investigate and ascertain
166 the financial feasibility and projected financial capability and,
167 subject to the approval of the Public Service Commission,
168 order the county commission to take action to establish such
169 public service district or districts as may be necessary to
170 control, reduce or abate the pollution, and when so ordered
171 the county commission members must act to establish such
172 a county-wide public service district or districts.

173 (e) The director has the authority to enter at all reasonable
174 times upon any private or public property for the purpose of
175 making surveys, examinations, investigations and studies
176 needed in the gathering of facts concerning the water
177 resources of the state and their use, subject to responsibility
178 for any damage to the property entered. Upon entering, and
179 before making any survey, examination, investigation and

180 study, such person shall immediately present himself or
181 herself to the occupant of the property. Upon entering
182 property used in any manufacturing, mining or other
183 commercial enterprise, or by any municipality or
184 governmental agency or subdivision, and before making any
185 survey, examination, investigation and study, such person
186 shall immediately present himself or herself to the person in
187 charge of the operation, and if he or she is not available, to a
188 managerial employee. All persons shall cooperate fully with
189 the person entering such property for such purposes. Upon
190 refusal of the person owning or controlling such property to
191 permit such entrance or the making of such surveys,
192 examinations, investigations and studies, the director may
193 apply to the circuit court of the county in which such
194 property is located, or to the judge thereof in vacation, for an
195 order permitting such entrance or the making of such surveys,
196 examinations, investigations and studies; and jurisdiction is
197 hereby conferred upon such court to enter such order upon a
198 showing that the relief asked is necessary for the proper
199 enforcement of this article: *Provided*, That nothing in this
200 subsection eliminates any obligation to follow any process
201 that may 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
2 issued under or subject to the provisions of this article or
3 article eleven-a of this chapter is subject to a civil penalty not
4 to exceed \$25,000 per day of such violation and any person
5 who violates any provision of this article or of any rule or
6 who violates any standard or order promulgated or made and
7 entered under the provisions of this article, article eleven-a of
8 this chapter or article one, chapter twenty-two-b of this code
9 is subject to a civil penalty not to exceed \$25,000 per day of
10 such violation. Any such civil penalty may be imposed and

11 collected only by a civil action instituted by the director in
12 the circuit court of the county in which the violation occurred
13 or is occurring or of the county in which the waters thereof
14 are polluted as the result of such violation.

15 Upon application by the director, the circuit courts of the
16 state or the judges thereof in vacation may by injunction
17 compel compliance with and enjoin violations of the
18 provisions of this article, article eleven-a of this chapter, the
19 rules of the board or director, effluent limitations, the terms
20 and conditions of any permit granted under the provisions of
21 this article or article eleven-a of this chapter or any order of
22 the director or board, and the venue of any such actions shall
23 be the county in which the violations or noncompliance exists
24 or is taking place or in any county in which the waters thereof
25 are polluted as the result of such violation or noncompliance.
26 The court or the judge thereof in vacation may issue a
27 temporary or preliminary injunction in any case pending a
28 decision on the merits of any injunction application filed.
29 Any other section of this code to the contrary
30 notwithstanding, the state is not required to furnish bond as
31 a prerequisite to obtaining injunctive relief under this article
32 or article eleven-a of this chapter. An application for an
33 injunction under the provisions of this section may be filed
34 and injunctive relief granted notwithstanding that all of the
35 administrative remedies provided for in this article have not
36 been pursued or invoked against the person or persons
37 against whom such relief is sought and notwithstanding that
38 the person or persons against whom such relief is sought
39 have not been prosecuted or convicted under the provisions
40 of this article.

41 The judgment of the circuit court upon any application
42 filed or in any civil action instituted under the provisions of
43 this section is final unless reversed, vacated or modified on
44 appeal to the Supreme Court of Appeals. Any such appeal

45 shall be sought in the manner provided by law for appeals
46 from circuit courts in other civil cases, except that the
47 petition seeking review in any injunctive proceeding must be
48 filed with said Supreme Court of Appeals within ninety days
49 from the date of entry of the judgment of the circuit court.

50 Legal counsel and services for the chief, director or the
51 board in all civil penalty and injunction proceedings in the
52 circuit court and in the Supreme Court of Appeals of this
53 state shall be provided by the Attorney General or his or her
54 assistants and by the prosecuting attorneys of the several
55 counties as well, all without additional compensation, or the
56 chief, director or the board, with the written approval of the
57 Attorney General, may employ counsel to represent him or
58 her or it in a particular proceeding.

59 (b) In addition to the powers and authority granted to the
60 director by this chapter to enter into consent agreements,
61 settlements and otherwise enforce this chapter, the director
62 shall propose, for legislative promulgation, rules in
63 accordance with the provisions of article three, chapter
64 twenty-nine-a of this code to establish a mechanism for the
65 administrative resolution of violations set forth in this section
66 through consent order or agreement as an alternative to
67 instituting a civil action.

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

1 (a) Any person who causes pollution or who fails or
2 refuses to discharge any duty imposed upon him or her by
3 this article, by article eleven-a of this chapter or by any rule
4 of the board or director, promulgated pursuant to the
5 provisions and intent of this article or article eleven-a of this
6 chapter, or by an order of the director or board, or who fails
7 or refuses to apply for and obtain a permit as required by the
8 provisions of this article or article eleven-a of this chapter, or

9 who fails or refuses to comply with any term or condition of
10 such permit, is guilty of a misdemeanor and, upon conviction
11 thereof, shall be punished by a fine of not less than \$100 nor
12 more than \$1,000, or by imprisonment in the county jail for
13 a period not exceeding six months, or by both fine and
14 imprisonment.

15 (b) Any person who intentionally misrepresents any
16 material fact in an application, record, report, plan or other
17 document filed or required to be maintained under the
18 provisions of this article, article eleven-a of this chapter or
19 any rules promulgated by the director thereunder is guilty of
20 a misdemeanor and, upon conviction thereof, shall be
21 punished by a fine of not less than \$1,000 nor more than
22 \$10,000 or by imprisonment in jail not exceeding six months
23 or by both fine and imprisonment.

24 (c) Any person who willfully or negligently violates any
25 provision of any permit issued under or subject to the
26 provisions of this article or article eleven-a of this chapter or
27 who willfully or negligently violates any provision of this
28 article or article eleven-a of this chapter, any rule of the board
29 or director, any effluent limitation or any order of the director
30 or board is guilty of a misdemeanor and, upon conviction
31 thereof, shall be punished by a fine of not less than \$2,500
32 nor more than \$25,000 per day of violation or by
33 imprisonment in jail not exceeding one year or by both fine
34 and imprisonment.

35 (d) Any person convicted of a second or subsequent
36 willful violation of subsections (b) or (c) of this section or
37 knowingly and willfully violates any provision of any permit,
38 rule or order issued under or subject to the provisions of this
39 article or article eleven-a of this chapter, or knowingly and
40 willfully violates any provision of this article or article
41 eleven-a of this chapter, is guilty of a felony and, upon

42 conviction, shall be imprisoned in a correctional facility not
43 less than one nor more than three years, or fined not more
44 than \$50,000 for each day of violation, or both fined and
45 imprisoned.

46 (e) Any person may be prosecuted and convicted under
47 the provisions of this section notwithstanding that none of the
48 administrative remedies provided in this article have been
49 pursued or invoked against said person and notwithstanding
50 that civil action for the imposition and collection of a civil
51 penalty or an application for an injunction under the
52 provisions of this article has not been filed against such
53 person.

54 (f) Where a person holding a permit is carrying out a
55 program of pollution abatement or remedial action in
56 compliance with the conditions and terms of the permit, the
57 person is not subject to criminal prosecution for pollution
58 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
2 person or persons' failure or refusal to discharge any duty
3 imposed upon such person by this article, section seven,
4 article six of this chapter or article eleven-a of this chapter,
5 either the West Virginia Division of Natural Resources or the
6 Division of Environmental Protection, or both jointly may
7 initiate a civil action on behalf of the State of West Virginia
8 to recover from such person or persons causing such loss a
9 sum equal to the cost of replacing such game fish or aquatic
10 life. Any moneys so collected shall be deposited in a special
11 revenue fund entitled "Natural Resources Game Fish and
12 Aquatic Life Fund" and shall be expended as hereinafter
13 provided. The fund shall be expended to stock waters of this

14 state with game fish and aquatic life. Where feasible, the
15 Director of the Division of Natural Resources shall use any
16 sum collected in accordance with the provisions of this
17 section to stock waters in the area in which the loss resulting
18 in the collection of such sum occurred. Any balance of such
19 sum shall remain in said fund and be expended to stock state-
20 owned and operated fishing lakes and ponds, wherever
21 located in this state, with game fish and aquatic life.

ARTICLE 11A. CARBON DIOXIDE SEQUESTRATION.

§22-11A-1. Legislative findings.

1 (a) The Legislature finds that:

2 (1) Carbon dioxide is a colorless, odorless gas that can be
3 produced by burning carbon and organic compounds;

4 (2) Carbon dioxide is emitted into the atmosphere from
5 a number of sources including fossil-fueled power plants,
6 automobiles, certain industrial processes and other naturally
7 occurring sources;

8 (3) By far, fossil-fueled power plants are the largest
9 source of carbon dioxide emissions. These power plants emit
10 approximately one-third of carbon dioxide emissions
11 worldwide;

12 (4) On average, the United States generates
13 approximately fifty-one percent of its electricity from coal-
14 burning power plants, which are a prominent source of
15 carbon dioxide emissions;

16 (5) West Virginia's reliance on electricity produced from
17 coal is even more pronounced, as West Virginia generates
18 approximately ninety-eight percent of its electricity from
19 coal-burning power plants;

20 (6) There is increasing pressure, both nationally and
21 worldwide, to produce electrical power with an ever-
22 decreasing amount of carbon dioxide emissions;

23 (7) West Virginia is a state rich in natural resources, and
24 its economy depends largely upon the demand for energy
25 produced from materials found within the state, not the least
26 of which is coal;

27 (8) As demand for energy produced from alternative and
28 renewable resources rises, new technologies are needed to
29 burn coal more cleanly and efficiently if West Virginia is to
30 remain competitive as an energy producing state;

31 (9) Carbon dioxide capture and sequestration is the
32 capture and secure storage of carbon dioxide that would
33 otherwise be emitted to, or remain in, the atmosphere. This
34 technology is currently being used and tested to reduce the
35 carbon footprint of electricity generated by the combustion of
36 coal;

37 (10) The science of carbon dioxide capture and
38 sequestration is advancing rapidly, but the environmental
39 effects of large, long-term carbon dioxide sequestration
40 operations are still being studied and evaluated;

41 (11) Although the state is committed to expanding its
42 portfolio of alternative and renewable energy resources,
43 electricity generated from these resources is insufficient in
44 the near term to meet the rising demand for energy;

45 (12) It is in the public interest to advance the
46 implementation of carbon dioxide capture and sequestration
47 technologies into the state's energy portfolio;

48 (13) The transportation by pipeline and sequestration of
49 carbon dioxide by a public utility engaged in the generation
50 of electricity may be integral to the construction, maintenance
51 and operation of electric light, heat and power plants
52 operating in the state; and

53 (14) Therefore, in order to expand more rapidly the
54 generation of electricity with little or no carbon dioxide
55 emissions, it is critical to encourage the development of
56 carbon dioxide capture and sequestration technologies; to
57 examine factors that may be integral to the construction,
58 maintenance and operation of carbon dioxide sequestration
59 facilities; and to study the economic and environmental
60 feasibility of large, long-term carbon dioxide sequestration
61 operations.

62 (b) It is therefore the purpose of this article to:

63 (1) Establish a legal and regulatory framework for the
64 permitting of carbon dioxide sequestration operations;

65 (2) Designate a state agency responsible for establishing
66 standards and rules for the permitting of carbon dioxide
67 sequestration operations including, but not limited to, rules
68 pertaining to:

69 (A) Environmental surveillance of carbon dioxide
70 sequestration operations;

71 (B) The monitoring of geologic migration of carbon
72 dioxide and the detection of carbon dioxide excursions;

73 (C) Construction standards for carbon dioxide
74 sequestration operations;

75 (D) Bonding or other financial assurances; and

76 (E) The closure of carbon dioxide sequestration
77 operations, including post-closure monitoring, verification
78 and maintenance; and to

79 (3) With the aid of a carbon dioxide sequestration
80 working group, develop a long-term strategy for the
81 regulation of carbon dioxide sequestration.

§22-11A-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Department" means the Department of
4 Environmental Protection;

5 (b) "Carbon dioxide sequestration" means the injection
6 of carbon dioxide and associated constituents into subsurface
7 geologic formations intended to prevent its release into the
8 atmosphere;

9 (c) "Carbon dioxide sequestration facilities" means the
10 surface equipment used for transport, storage and injection of
11 carbon dioxide, excluding pipelines used to transport carbon
12 dioxide from one or more capture facilities to the
13 sequestration injection site or sites.

14 (d) "Carbon dioxide sequestration site" means the
15 underground carbon dioxide formations where the carbon
16 dioxide is stored or is intended to be stored;

17 (e) "Excursion" means the migrating of carbon dioxide at or
18 beyond the boundary of a carbon dioxide sequestration site; and

19 (f) "Secretary" means the Secretary of the Department of
20 Environmental Protection.

§22-11A-3. Prohibition of 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) The provisions of article eleven of this chapter apply
2 to all permits issued pursuant to this article except, where the
3 express provisions of this article conflict with the provisions
4 of article eleven of this chapter, the express provisions of this
5 article control.

6 (b) Except as set forth in subsection (c) of this section, no
7 person shall engage in carbon dioxide sequestration in this
8 state unless authorized by a permit issued by the department
9 in accordance with section eight, article eleven of this
10 chapter.

11 (c) The injection of carbon dioxide for purposes of
12 enhancing the recovery of oil or other minerals pursuant to a
13 project approved by the department shall not be subject to the
14 provisions of this article.

15 (d) If an oil, natural gas or coalbed methane operator
16 converts its operations to carbon dioxide sequestration upon
17 the cessation of oil or other mineral recovery operations, then
18 the carbon dioxide sequestration facility and the carbon
19 dioxide sequestration site shall be regulated pursuant to this
20 article and article eleven of this chapter. If an operator does
21 not convert its operations to carbon dioxide sequestration
22 upon the cessation of oil or other mineral recovery
23 operations, the wells shall be plugged and abandoned in
24 accordance with article six of this chapter.

25 (e) Any entity owning or operating a carbon dioxide
26 sequestration facility which has commenced construction on

27 or before the effective date of this article is hereby authorized
28 to continue operating until such time as the secretary has
29 established operational and procedural requirements
30 applicable to such existing facilities and the entity owning or
31 operating such facility has had a reasonable opportunity to
32 comply with those requirements.

**§22-11A-4. General powers and duties of the secretary with
respect to carbon dioxide sequestration.**

1 (a) The secretary, after receiving public comment and
2 after consultation with the state geologist and the working
3 group established in section six of this article, shall
4 promulgate legislative rules in accordance with the
5 provisions of article three, chapter twenty-nine-a of this code
6 to implement the provisions of this article, including without
7 limitation:

8 (1) The requirements for issuance of permits for carbon
9 dioxide sequestration;

10 (2) The requirements for carbon dioxide sequestration
11 permit applications;

12 (3) The issuance of notice following the approval of a
13 permit application, which shall identify the location at which
14 the public may examine the permit, describe the nature of the
15 public's opportunity to comment, and list any public hearing
16 that may be held in connection with the permit. The
17 secretary shall allow no less than thirty days for public
18 comment on the draft permit and may for good cause extend
19 the comment period up to an additional thirty days. Notice
20 of any public hearing shall be given no less than thirty days
21 prior to its conduct; and

22 (4) The creation of subclasses of wells within the existing
23 Underground Injection Control (UIC) program administered
24 by the United States Environmental Protection Agency
25 pursuant to Part C of the Safe Drinking Water Act, 42 U.S.C.
26 §300h, *et seq.*, to protect human health, safety and the
27 environment and to allow for the permitting of the
28 sequestration of carbon dioxide;

29 (5) The appropriate bonding or other financial assurance
30 procedures necessary to ensure that carbon dioxide
31 sequestration sites and facilities will be constructed, operated
32 and closed in accordance with the purposes and provisions of
33 this article; and

34 (6) The proper duration of the post-closure care period
35 for carbon dioxide sequestration sites.

36 (b) The secretary shall propose amendments to the rules
37 promulgated under this section and take such action as may
38 be required in order to fulfill the state's primary
39 responsibility for assuring compliance with the federal Safe
40 Drinking Water Act, including any amendments thereto.

**§22-11A-5. Permit application requirements and contents;
permit application fees.**

1 (a) A carbon dioxide sequestration permit application
2 shall include:

3 (1) A description of the general geology of the area to be
4 affected by the injection of carbon dioxide, including
5 geochemistry, structure and faulting, fracturing and seals, and
6 stratigraphy and lithology, including petrophysical attributes;

7 (2) A characterization of the injection zone and aquifers
8 above and below the injection zone that may be affected by

9 the injection of carbon dioxide, including applicable pressure
10 and fluid chemistry data to describe the projected effects of
11 injection activities;

12 (3) The identification of all other drill holes and operating
13 wells that exist or have existed within and adjacent to the
14 proposed sequestration site;

15 (4) An assessment of the effect on fluid resources, on
16 subsurface structures and on the surface of lands that may
17 reasonably be expected to be affected by the injection of
18 carbon dioxide, together with the measures required to
19 mitigate those effects;

20 (5) The plans and procedures for environmental
21 surveillance and excursion detection, prevention and control
22 programs;

23 (6) A site and facilities description, including a
24 description of the proposed carbon dioxide sequestration
25 facilities and documentation sufficient to demonstrate that the
26 applicant has, or will have prior to the commencement of the
27 operation, all legal rights, including without limitation the
28 right to surface or pore space use, necessary to sequester
29 carbon dioxide and associated constituents into the proposed
30 carbon dioxide sequestration site;

31 (7) Proof that the proposed injection wells are designed,
32 at minimum, to the construction standards set forth by the
33 department;

34 (8) A plan for periodic mechanical integrity testing of all
35 wells;

36 (9) A monitoring plan to assess the migration of the
37 injected carbon dioxide and to ensure the retention of the
38 carbon dioxide in the sequestration site;

39 (10) Proof of bonding or financial assurance to ensure
40 that carbon dioxide sequestration sites and facilities will be
41 constructed, operated and closed in accordance with the
42 purposes and provisions of this article and the rules
43 promulgated pursuant to this article;

44 (11) A detailed plan for post-closure monitoring,
45 verification, accounting, maintenance and mitigation;

46 (12) Procedures for the operator of the facilities to
47 provide immediate verbal notice to the department of any
48 excursion after the excursion is discovered, followed by
49 written notice to all surface owners, mineral claimants,
50 mineral owners, lessees and other owners of record of
51 subsurface interests within thirty days of discovering the
52 excursion;

53 (13) Procedures for the termination or modification of
54 any applicable Underground Injection Control (UIC) permit
55 issued under Part C of the Safe Drinking Water Act, 42
56 U.S.C. §300h, *et seq.*, if an excursion cannot be controlled or
57 mitigated;

58 (14) A plan to provide proof of notice to surface owners,
59 mineral claimants, mineral owners, lessees and other owners
60 of record of subsurface interests regarding the contents of the
61 application. At a minimum, the notice shall include:

62 (A) The publication of a Class I legal advertisement in a
63 newspaper of general circulation in each county of the
64 proposed operation. The applicant shall publish the notice at
65 the time of filing and shall identify in the notice the location
66 where the public may examine the application;

67 (B) The mailing of a copy of the notice to all surface
68 owners, mineral claimants, mineral owners, lessees and other

69 owners of record of subsurface interests that are located
70 within one mile of the proposed boundary of the carbon
71 dioxide sequestration site; and

72 (15) Any other requirement set forth in legislative rules
73 promulgated under this article.

74 (b) Upon filing an application, an applicant shall pay a
75 reasonable fee, as established by the secretary in legislative
76 rules, to the department for the costs of reviewing, evaluating
77 and processing the permit, serving notice of an application
78 and holding any hearings. The fee shall be credited to a
79 separate account and shall be used by the department as
80 required to complete the tasks necessary to process, publish
81 and reach a decision on the permit application.

§22-11A-6. Carbon dioxide sequestration working group.

1 (a) The secretary shall establish the carbon dioxide
2 sequestration working group.

3 (b) The secretary, in cooperation with the state geologist,
4 shall appoint at least fifteen persons to serve on the working
5 group.

6 (c) In selecting persons to serve on the working group,
7 the secretary and the state geologist shall appoint at least
8 three persons who are experts in carbon dioxide sequestration
9 or related technologies, at least one person who is an expert
10 in environmental science, at least one person who is an expert
11 in geology, at least one person who is an attorney with an
12 expertise in environmental law, at least one person who is an
13 expert in engineering, at least one person who is an expert in
14 the regulation of public utilities in West Virginia, one person
15 who is a representative of a citizen's group advocating
16 environmental protection, a representative of a coal power

17 electric generating utility advocating carbon dioxide
18 sequestration development, at least one person who is an
19 engineer with an expertise in the underground storage of
20 natural gas, the chairman of the National Council of Coal
21 Lessors or his/her designee, a representative of the West
22 Virginia Coal Association, a representative of the West
23 Virginia Land and Mineral Owners Association, and at least
24 one representative advocating the interests of surface owners
25 of real property.

26 (d) The working group shall study issues pertaining to
27 carbon dioxide sequestration including, but not limited to,
28 scientific, technical, legal and regulatory issues, and issues
29 regarding ownership and other rights and interest in
30 subsurface space that can be used as storage space for carbon
31 dioxide and other associated constituents, or other
32 substances, commonly referred to as "pore space," and shall
33 report to the secretary and the Legislature its
34 recommendations with respect to the development, regulation
35 and control of carbon dioxide sequestration and related
36 technologies.

37 (e) In addition, the working group shall develop a long-
38 term strategy for the regulation of carbon dioxide
39 sequestration in West Virginia.

40 (f) The working group may conduct or initiate studies,
41 scientific or other investigations, research, experiments and
42 demonstrations pertaining to carbon dioxide sequestration,
43 and to this end, the working group may cooperate with state
44 institutions of higher education or any public or private
45 agency. The secretary may receive on behalf of the state for
46 deposit in the State Treasury any moneys which such
47 institutions or state agencies may be authorized to transfer to
48 the Secretary, and all gifts, donations or contributions which
49 such private agencies or other may provide, to defray the

50 expenses of the working group. Any amounts so received
51 shall be expended by the secretary solely for the purposes set
52 forth in subsection (d) of this section.

53 (g) The working group shall issue a preliminary report to
54 the secretary and the Legislature by July 1, 2010, containing
55 any preliminary recommendations or findings of the working
56 group.

57 (h) The working group shall issue a final report to the
58 Legislature by July 1, 2011, which report shall, at a
59 minimum:

60 (1) Recommend appropriate methods to encourage the
61 development of carbon dioxide sequestration technologies;

62 (2) Assess the economic and environmental feasibility of
63 large, long-term carbon dioxide sequestration operations;

64 (3) Recommend any legislation the working group may
65 determine to be necessary or desirable to clarify issues
66 regarding the ownership and other rights and interest in pore
67 space;

68 (4) Recommend methods of facilitating the widespread
69 use of carbon dioxide sequestration technology throughout
70 West Virginia;

71 (5) Identify geologic sequestration monitoring sites to
72 assess the short-term and long-term impact of carbon dioxide
73 sequestration;

74 (6) Assess the feasibility of carbon dioxide sequestration
75 in West Virginia and the characteristics of areas within the
76 state where carbon dioxide could be sequestered;

77 (7) Assess the costs, benefits, risks and rewards of large-
78 scale carbon dioxide sequestration projects in West Virginia;

79 (8) Assess the potential carbon dioxide sequestration
80 capacity in this state;

81 (9) Identify areas of research needed to better understand
82 and quantify the processes of carbon dioxide sequestration;
83 and

84 (10) Outline the working group's long-term strategy for
85 the regulation of carbon dioxide sequestration in West
86 Virginia.

87 (i) The working group, along with the state geologist,
88 shall assist the secretary in developing and promulgating
89 legislative rules under this article.

§22-11A-7. Reporting and accountability.

1 The department shall include within the reports to the
2 Legislature required by section six, article twelve of this
3 chapter its observations concerning all aspects of compliance
4 with this article, including without limitation the
5 promulgation of rules, the formation of the carbon dioxide
6 sequestration working group, the permitting process and any
7 pertinent changes to federal rules or regulations.

**§22-11A-8. Oil, natural gas and coalbed methane activities at
carbon dioxide sequestration sites; extraction of
sequestered carbon dioxide.**

1 (a) Nothing in this article shall be deemed to affect the
2 otherwise lawful right of a mineral owner to drill or bore
3 through a carbon dioxide sequestration site, if done in
4 accordance with the rules promulgated under this article for

5 protecting the carbon dioxide sequestration site against the
6 escape of carbon dioxide.

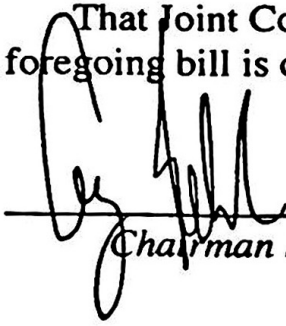
7 (b) Nothing in this article is intended to impede or impair
8 the ability of an oil, natural gas or coalbed methane operator
9 to inject carbon dioxide through an approved enhanced oil,
10 natural gas or coalbed methane recovery project and to
11 establish, verify, register and sell emission reduction credits
12 associated with the project.

13 (c) The Office of Oil and Gas shall have jurisdiction over
14 any subsequent extraction of sequestered carbon dioxide that
15 is intended for commercial or industrial purposes.

§22-11A-9. Cooperative agreements.

1 The secretary is authorized to enter into cooperative
2 agreements with other governments or government entities
3 for the purpose of regulating carbon dioxide storage projects
4 that extend beyond state regulatory authority under this
5 article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



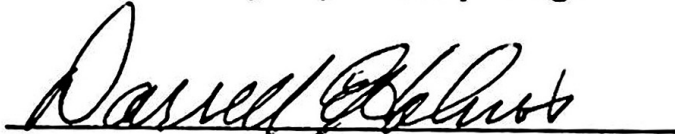
Chairman Senate Committee



Chairman House Committee

Originating in the House.

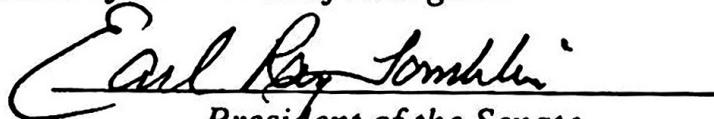
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 4th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 30 2009

Time 3:20 pm