As Introduced

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Representatives Robb Blasdel, Peterson

To enact sections 1509.71, 1509.72, 1509.73, 1509.75, 1509.76, 1509.77, 1509.79, 5301.57, 5301.58, 5301.59, and 5301.60 of the Revised Code to establish a process to regulate carbon capture and storage technologies and the geologic sequestration of carbon dioxide for long-term storage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1509.71, 1509.72, 1509.73, 1509.75, 1509.76, 1509.77, 1509.79, 5301.57, 5301.58, 5301.59, and 5301.60 of the Revised Code be enacted to read as follows:

Sec. 1509.71. As used in sections 1509.71 to 1509.79 of the Revised Code:

"Carbon dioxide" means naturally occurring, geologically sourced, or anthropogenically sourced carbon dioxide including its derivatives and all mixtures, combinations, and phases, whether liquid, gaseous, solid, stripped, segregated, or divided from any other fluid stream thereof.

"Carbon dioxide well" means a well that is used to inject carbon dioxide into a reservoir for carbon sequestration under a UIC Class VI permit. "Carbon dioxide well" shall be considered a

"well" for purposes of section 1509.01 of the Revised Code.

"Carbon dioxide plume" means the extent of an underground injected carbon dioxide stream.

"Carbon sequestration" means the underground storage of carbon dioxide in a geological formation.

"Carbon sequestration project" means a project that involves the underground storage of carbon dioxide in a geological formation pursuant to at least one UIC Class VI permit.

"Owner" includes, unless the context indicates otherwise, a person who has the right to drill a carbon dioxide well and to inject carbon dioxide in an underground geologic formation. "Owner," as defined in section 1509.01 of the Revised Code, does not apply to sections 1509.71 to 1509.79 or sections 5301.58 to 5301.60 of the Revised Code unless the context indicates otherwise.

"Pore space" means subsurface cavities and voids, whether natural or artificially created, that are suitable for use as a sequestration space for carbon dioxide.

"Storage facility" means the pore space in the subsurface area consisting of the extent of a carbon dioxide plume and the geological seals that confine the carbon dioxide plume that are required to be delineated on an approved UIC Class VI permit or an amendment to a UIC Class VI permit issued to a storage operator.

"Storage operator" means an individual, corporation, or other legal entity that operates a carbon sequestration project, regardless of whether an owner that has the right to drill and store carbon dioxide in the project area contracts, retains, or

allows an individual, corporation, or other legal entity to conduct operations or provide other services at the carbon sequestration project.

"UIC Class VI permit" means an underground injection control program permit issued by the chief of the division of oil and gas resources management that allows the operation of a carbon dioxide well.

"Underground storage of carbon dioxide" means the injection and storage of carbon dioxide into underground strata and formations under at least one UIC Class VI permit.

Sec. 1509.72. The division of oil and gas resources management has sole and exclusive authority to regulate carbon sequestration and the operation of storage facilities within the state, excepting only those activities regulated under federal laws for which oversight has been delegated to the environmental protection agency and activities regulated under sections 6111.01 to 6111.028 of the Revised Code. The regulation of carbon sequestration activities is a matter of general statewide interest that requires uniform statewide regulation, and sections 1509.71 to 1509.79 of the Revised Code and rules adopted under those sections constitute a comprehensive plan with respect to all aspects of carbon sequestration within this state, including storage facility operation and permitting related to those activities.

In order to assist the division in the furtherance of its sole and exclusive authority as established in this section, the chief of the division of oil and gas resources management may enter into cooperative agreements with other state agencies regarding carbon sequestration projects. Such cooperative agreements do not confer on other state agencies any authority

to administer or enforce sections 1509.71 to 1509.79 of the Revised Code and rules adopted under those sections. In addition, such cooperative agreements shall not be construed to dilute or diminish the division's sole and exclusive authority as established in this section.

Nothing in this section affects the authority granted to the director of transportation and local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs carbon sequestration projects regulated under sections 1509.71 to 1509.79 of the Revised Code.

Sec. 1509.73. (A) The chief of the division of oil and gas resources management shall adopt, rescind, and amend, rules for the administration, implementation, and enforcement of sections 1509.71 to 1509.79 of the Revised Code.

(B) Rules adopted under this section shall include provisions regarding applications for and the issuance of UIC Class VI permits; the terms and conditions of those permits; entry to conduct inspections and to examine records to ascertain compliance with sections 1509.71 to 1509.79 of the Revised Code, rules adopted under those sections, and orders and terms and conditions of permits issued under those sections; the provision and maintenance of information through monitoring, recordkeeping, and reporting; and other provisions in furtherance of the goals of this chapter and the Safe Drinking Water Act.

(C) The rules adopted under this section shall establish both of the following:

(1) A requirement that an applicant for a UIC Class VI permit attest that the applicant has the legal right to inject carbon dioxide in the underground formation proposed in the application and to the proposed extents that the carbon dioxide will migrate, including the pressure front associated with the injected carbon dioxide;

(2) The amount of the costs estimated to implement the closure plan of the carbon dioxide well and associated facilities and any post injection site care and site closure;

(D) The rules adopted under this section shall include an identification of the subjects that the chief shall address when attaching terms and conditions to a UIC Class VI permit. The subjects shall include at least all of the following:

(1) Requirements for the operation and monitoring of a carbon dioxide well;

(2) Safety concerning the drilling and operation of a carbon dioxide well;

(3) Spacing, setback, and other provisions to prevent storage facilities and storage operators from impacting the ability of owners of oil and gas interests to develop those interests;

(4) Protection of the public and private water supply, including the amount of water used and the source or sources of the water;

(5) Fencing and screening of surface facilities of a carbon dioxide well;

(6) Containment and disposal of drilling and other wastes related to a carbon sequestration project;

(7) Construction of access roads for purposes of the drilling and operation of a carbon dioxide well;

(8) Noise mitigation for purposes of the drilling of a carbon dioxide well and the operation of such a well, excluding safety and maintenance operations;

(9) Liability insurance to pay damages for injury to persons or property caused by the construction or operation of the storage facility, to be maintained for the period of time beginning at the commencement of construction operations and ending when the chief issues a certificate of project completion under section 1509.77 of the Revised Code;

(10) Liability insurance coverage of at least fifteen million dollars to cover bodily injury and property damage caused by the construction, drilling, or operation of the owner's carbon dioxide wells in this state. The rules shall require the insurance policy to include additional coverage for an environmental endorsement.

(11) A surety bond conditioned on compliance with all obligations imposed under sections 1509.71 to 1509.79 of the Revised Code, to be maintained for the period of time beginning at the commencement of construction operations and ending when the chief issues a certificate of project completion. The rules shall establish the required amount of the surety bond that is not less than the cost estimate identified in the application. The surety bond shall be sufficient to cover corrective actions, plugging, post-injection site care prior to receipt of a certificate of project completion, and emergency or remedial response.

Sec. 1509.75. (A) Carbon sequestration projects are

authorized in the state for the purposes of injecting carbon dioxide into the pore space of a storage facility through at least one carbon dioxide injection well under a UIC Class VI permit.

(B) To operate a carbon sequestration project under sections 1509.71 to 1509.79 of the Revised Code, a storage operator shall obtain at least both of the following:

(1) A UIC Class VI permit, which shall be applied for in the name of the storage operator;

(2) Any additional permits required by applicable laws, rules, and regulations, except that a storage operator is not required to obtain a permit required under section 1509.05 of the Revised Code.

(C) Prior to carbon sequestration, the chief of the division of oil and gas resources management may require a storage operator to deploy a seismicity monitoring system. The storage operator shall use the system to determine, to the best of the operator's ability, the presence or absence, magnitude, and the hypocenter location of seismic activity within the vicinity of the storage facility as may be necessary to perform an array and a risk analysis and as required by the chief. The chief may periodically require the storage operator to utilize the seismicity monitoring system during carbon sequestration operations.

(D) Prior to operating a carbon sequestration project under sections 1509.71 to 1509.79 of the Revised Code, a storage operator shall design the project to isolate any existing or future production of oil and gas from the carbon dioxide plume. The chief shall issue a permit under those sections only if the

chief is satisfied that the interests of the owners of the oil and gas will not be adversely affected.

(E) Provisions of this chapter codified in sections other than sections 1509.71 to 1509.79 of the Revised Code apply to carbon sequestration projects to the extent that those provisions are consistent with, and not specifically excepted from, sections 1509.71 to 1509.79 of the Revised Code.

Sec. 1509.76. (A) A storage operator who has obtained the consent of owners of at least seventy per cent of the pore space proposed to be used in a storage facility may submit a statutory consolidation application for the operation of the entire proposed storage facility to the chief of the division of oil and gas resources management. In calculating the seventy per cent, a pore space owner's entire interest in the proposed storage facility, including any divided, undivided, partial, fee, or other interest in the pore space, shall be included to the fullest extent of that interest.

(B) An applicant shall include the following with the application:

(1) A list of all persons reasonably known to own an interest in the pore space proposed to be used for the storage facility;

(2) A processing fee based on actual application processing costs incurred by the division of oil and gas resources management. Promptly after receiving an application, the division shall prepare and submit to the applicant an estimate of the processing fee and a payment billing schedule. The division shall maintain a record of all application processing costs incurred. After the division's work on the

application has concluded, the division shall send a final statement to the applicant. The applicant shall pay the full processing fee before the division issues its final decision on an application. The applicant shall pay the processing fee regardless of whether a permit is issued or denied, or whether the application is withdrawn. The division shall return any unused funds paid to the division as part of the processing fee estimate to the applicant.

(3) Proof of notice provided under division (D) of this section, if applicable;

(4) Any additional information reasonably requested by the chief.

(C) For each application, the chief shall provide notice to all pore space owners located within the proposed storage facility and all subsurface owners located within the proposed storage facility of the proposed carbon sequestration project, as identified by the applicant in the application. The chief shall not rule on an application until after such notice has been provided. If, upon receipt of the notice, the subsurface property owner expresses an objection to the chief regarding the design of the carbon sequestration project based on the potential adverse effect to a commercially valuable mineral, including, without limitation a coal or oil and gas estate, the storage operator shall address the objection to the satisfaction of the chief. Such objections are not required to be submitted in the timeframe required for notifications to the chief under division (D) of this section, but shall be made in accordance with requirements established by the chief.

(D) If the proposed storage facility contains pore space for which the owner is unknown or unlocatable, the storage

operator shall publish one notice in a newspaper of the largest circulation in each county in which the carbon sequestration project is located. The notice shall appear not more than thirty days prior to the date the application is submitted to the chief.

The notice shall:

(1) State that an application for statutory consolidation will be filed with the division;

(2) Describe the proposed storage facility;

(3) In the case of an unknown pore space owner, state the owner's interest in the proposed storage facility, and the name of the last known owner of that interest;

(4) State that a person claiming an interest in the pore space proposed to be consolidated shall notify the chief and the applicant at the published address within twenty days of the notice's publication date. Within seven days of receiving notice of a claim, the applicant shall provide information to the claimant, in a form and manner prescribed by the chief, regarding the right of the claimant to file an objection and participate in the application proceeding before the division.

(E)(1)(a) The chief shall hold a hearing regarding an application submitted under this section, except as otherwise provided in division (E)(1)(b) of this section.

(b) If the chief determines that an application is materially incomplete before the required hearing date, the chief shall notify the applicant. If the applicant does not timely correct the application, the chief may reschedule the hearing date.

(2) At the hearing, the chief shall consider whether the application is reasonably necessary to facilitate the underground storage of carbon dioxide.

(F)(1) The chief shall issue an order approving the application submitted under this section and providing for the operation of the proposed storage facility if the chief finds that such operation is reasonably necessary to facilitate the underground storage of carbon dioxide. The chief shall issue the order not later than sixty days after the date of the hearing under division (E) of this section, unless the chief denies the application by order within that sixty-day period.

(2) An order approving an application shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for operations that include:

(a) A description of the pore space and storage facility proposed to be operated;

(b) The location of and means to access carbon injection wells, outbuildings, roads, and monitoring equipment;

(c) A statement of the nature of the operations contemplated;

(d)(i) An allocation to the separately owned interests in the storage facility of all economic benefits derived from operation of the storage facility.

(ii) The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement between the parties, the chief shall determine the value of each separately owned interest in the storage facility, exclusive of physical equipment, for development of the storage facility, and the economic benefits allocated to each interest shall be the

proportion that the value of each interest so determined bears to the value of all interests in the storage facility.

(e) A provision describing how the credits and charges shall be made in the adjustment among the owners in the storage facility for their respective investments in wells, machinery, materials, and equipment contributed to the operations;

(f) A provision describing how the expenses of operations, including capital investment, shall be determined and charged to the separately owned interests and how the expenses shall be paid;

(g) A provision, if necessary, for carrying or otherwise financing any person who does not meet the person's financial obligations in connection with the storage facility, allowing a reasonable interest charge for such service;

(h) A provision for the supervision and conduct of the storage facility operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of operations chargeable against the interest of that person;

(i) The time when the storage facility operations shall commence and the manner in which, and the circumstances under which, the operations shall terminate;

(j) Any additional provisions as are found to be appropriate for carrying on the operations, and for the protection or adjustment of correlative rights.

(3) The storage operator shall file a certified copy of the order and a survey of the storage facility in the office of the county recorder of the county in which all or a portion of the storage facility is located. The chief shall make the order

publicly available, which may include posting the order on the division's web site.

(G) Storage facility operations conducted pursuant to an order issued under this section constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the storage facility to the extent that compliance with such obligations cannot be had because of the order of the chief.

Economic benefits allocated to any interest shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for storage facility operations.

(H) No order of the chief or other contract relating to the pore space and the storage of carbon dioxide from a separately owned interest shall be terminated by the order providing for storage facility operations, but shall remain in force until terminated in accordance with the provisions thereof.

Except to the extent that the parties affected so agree, no order providing for storage facility operations shall be construed to result in a transfer of any person's title to all or any part of the pore space in the storage facility. All property, whether real or personal, that may be acquired for the account of the owners within the storage facility shall be the property of such owners in the proportion that the expenses of operations are charged.

Sec. 1509.77. (A) After carbon dioxide injection into a storage facility ceases, the chief of the division of oil and gas resources management may issue a certificate of project

completion upon application by the storage operator. The chief shall issue a certificate only upon satisfaction of the conditions imposed under this section and after providing public notice of the application, an opportunity for public comment, and if deemed necessary by the chief, a public hearing on the application.

(B) A certificate shall not be issued until at least fifty years after carbon dioxide injections cease or until an established alternative timeline approved by the chief has elapsed.

(C) A certificate shall not be issued until the storage operator establishes with a degree of certainty to the satisfaction of the chief that all of the following apply:

(1) The storage operator is in full compliance with all laws governing the injection and storage of the carbon dioxide.

(2) The following apply to the carbon dioxide that has been injected underground for storage:

(a) It is not expected to extend or migrate outside of the storage facility and poses no threat to public health or safety or the environment or underground sources of drinking water.

(b) It is not likely to cross any boundary vertically from the storage facility and is not expected to endanger public health or safety or the environment or underground sources of drinking water.

(3) All carbon dioxide wells and associated equipment and facilities to be used in maintaining and managing the stored carbon dioxide are in good condition and will retain mechanical integrity.

(4) The storage operator has plugged all carbon dioxide wells not used in maintaining and managing the stored carbon dioxide and has completed all reclamation required by the division.

(D) Upon the issuance of a certificate of project completion, the following shall occur:

(1) Except as otherwise provided in this section, the former storage operator is released from all regulatory requirements associated with continued storage and maintenance of the injected carbon dioxide, and financial assurance required under rules adopted under section 1509.73 of the Revised Code shall be released to the former storage operator.

(2) Primary responsibility and liability for the stored or injected carbon dioxide shall be transferred to the state, except for criminal and contractual liability and except under any of the following circumstances:

(a) The storage operator violated a duty imposed on the storage operator by state law or rule prior to approval of site closure and any applicable statutes of limitations have not run out;

(b) After notice and a hearing, the chief determines either of the following:

(i) The storage operator provided deficient or erroneous information that was material and relied upon by the chief to support approval of site closure;

(ii) There is carbon dioxide migration that threatens public health or safety or the environment or underground sources of drinking water;

(c) The balance of the carbon dioxide storage facility fund is insufficient to cover costs arising from storage facilities and associated carbon dioxide wells after site closure.

(3) The storage operator and all individuals who generated, injected, or stored carbon dioxide shall be forever released from all regulatory requirements associated with the continued storage and maintenance of the injected carbon dioxide, except as provided in division (D)(2) of this section.

(4) Any bond or financial assurance submitted to the division shall be released.

Sec. 1509.79. (A) Storage operators shall pay the department of natural resources a fee of five and twenty-five one hundredth cents for each metric ton of carbon dioxide injected for storage in a storage facility. The fee shall be deposited into the carbon dioxide storage facility fund created under this section.

(B)(1) The carbon dioxide storage facility fund is created in the state treasury. Except for fees collected under division (C) of this section, the fund shall consist of any money collected under this section in relation to a Class VI well, including money received by the department from financial responsibility mechanisms established and penalties imposed for violations of sections 1509.71 to 1509.79 of the Revised Code, rules adopted under those sections, and orders and terms and conditions of a permit issued under those sections. All interest earnings of the fund shall be credited to the fund.

(2) The chief of the division of oil and gas resources management shall use the money in the fund for the purpose of

defraying expenses of the division that are associated with post-closure care of sequestered carbon dioxide in a storage facility, including the maintenance of carbon dioxide wells, associate surface facilities, remediation of any environmental impacts from the injected carbon dioxide, and plugging of monitoring wells associated with the injection of carbon dioxide in a carbon dioxide well.

(3) The existence, management, and expenditure of money from the fund do not constitute a waiver of governmental immunity or an assumption of any liability by the state for carbon dioxide storage.

(C)(1) In addition to the fee established under division (A) of this section, an owner of a carbon dioxide well shall pay a fee for each metric ton of carbon dioxide injected in the carbon dioxide well. The chief, by rule, shall establish the amount of the fee, and the fee shall be deposited in the carbon capture administrative fund created under this section.

(2) The carbon capture administrative fund is created in the state treasury. The fund shall consist of the money collected under division (C)(1) of this section. The chief shall use the funds for the purpose of administering sections 1509.71 to 1509.79 of the Revised Code and the rules adopted under those sections that are associated with injection and sequestration of carbon dioxide in a carbon dioxide well and for other purposes determined by the chief. All interest earnings of the fund shall be credited to the fund.

Sec. 5301.57. (A) As used in sections 5301.57 to 5301.60 of the Revised Code, "carbon dioxide," "carbon dioxide well," "carbon sequestration," "owner," "pore space," "storage operator," and "storage facility," have the same meanings as in

section 1509.71 of the Revised Code.

(B) As used in sections 5301.58 to 5301.60 of the Revised Code, "subsurface property interest owner" means a property interest owner identified by the records of the recorder of deeds for each county in which a portion of a proposed storage facility is located who holds a fee simple interest, other freehold interest, or leasehold interest in the subsurface of the property, which may include mineral rights, such as coal or oil and gas rights. "Subsurface property interest owner" does not include an owner who holds an interest in property consisting solely of an easement or right-of-way.

Sec. 5301.58. (A) The ownership of all pore space in all strata below the surface lands and waters is vested in the owner of the surface directly above the pore space.

A conveyance of the surface ownership of real property shall be a conveyance of the pore space in all strata below the surface of the real property unless the ownership interest in the pore space previously has been expressly excepted and reserved, conveyed, or otherwise severed from the surface ownership. The ownership of pore space in the strata may be conveyed in the manner provided by law for the transfer of real property interests. No agreement conveying mineral, oil and gas, coal, limestone or similar resource, or other interests underlying the surface shall convey pore space in the strata unless the agreement expressly includes conveyance of the pore space.

(B) No provision of law or rule requiring notice to be given to a surface owner, owner of the mineral or oil and gas interest, or both shall be construed to require notice to individuals holding ownership interests in pore space in the

underlying strata unless the applicable law specifies notice to the individuals is required or unless the owner of the pore space also owns an interest in the surface or in the mineral or oil and gas interests.

(C)(1) Nothing in sections 5301.58 to 5301.60 of the Revised Code shall be construed to change or alter the common law existing as of the effective date of this section with respect to the rights belonging to, or the dominance of, the mineral estate or oil and gas estate. For the purpose of determining the priority of surface and subsurface uses between a severed mineral or oil and gas estate and pore space, the severed mineral or oil and gas estate is dominant regardless of whether ownership of the pore space is vested in the owner of the surface or is owned separately from the surface.

(2) If pore space is severed from the surface ownership, the pore space estate shall be considered to be dominant over the surface estate unless the conveyance specifically provides otherwise.

(3) Nothing in sections 5301.58 to 5301.60 of the Revised Code shall alter, amend, diminish, or invalidate rights to the pore space that were acquired by deed, contract, or lease prior to the effective date of this section.

(D) An instrument that transfers the rights to pore space shall include a specific description of the location of the pore space being transferred. In the event that the instrument uses only a description of the surface, the transfer shall be considered to include pore space owned by the transferor at all depths underlying the described surface area unless specifically excluded. The owner of the pore space shall have no right to use the surface estate beyond that set out in a properly recorded

instrument due solely to its ownership in the pore space.

An instrument that conveys the surface directly above the pore space, but otherwise seeks to except or reserve the rights to the pore space, shall include a specific reference to the pore space in the instrument. In the event of such exception or reserved rights, the reserved rights to the pore space shall include pore space owned by the transferor at all depths underlying the described surface area unless otherwise specifically excluded.

Sec. 5301.59. All carbon dioxide injected into a storage facility for carbon sequestration, and all other substances injected incidental to the injection of carbon dioxide, shall be presumed to be owned by the storage operator. This presumption may be rebutted by an individual claiming contrary ownership by a preponderance of the evidence in an action to establish ownership.

No owner of pore space, other individual holding any right to control pore space, or other surface or subsurface property interest owner, shall have any liability relating to the injection of carbon dioxide, or any other substances injected incidental to the injection of carbon dioxide, for carbon sequestration activities solely by virtue of their interest in the pore space or their surface or subsurface rights.

Sec. 5301.60. (A) A claim for damages due to injection or migration of carbon dioxide shall not be recoverable against a storage operator conducting carbon sequestration in accordance with a valid UIC Class VI permit unless the claimant proves that the injection or migration of carbon dioxide:

(1) Is injurious to health, or an obstruction to the free

use of property so as essentially to interfere with the comfortable enjoyment of life or property; or

(2) Has caused direct physical injury to an individual, animal, or real or personal property.

(B) A surface or subsurface property interest owner asserting a claim for injury to personal or real property may recover monetary damages due to injection or migration of carbon dioxide only for the diminution in real or personal property value resulting from the injection or migration of carbon dioxide beyond the storage facility.

(C) A surface or subsurface property interest owner may not seek punitive damages due to injection or migration of carbon dioxide if the storage operator acts in compliance with the requirements of the UIC Class VI permit.

(D) Divisions (A), (B), and (C) of this section do not apply to any claims that may be asserted by owners of oil and gas interests or owners of class II disposal wells for damages or injuries related to:

(1) The injection or migration of carbon dioxide;

(2) The construction or operation of a storage facility; or

(3) A carbon sequestration project.