

As Introduced

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S. B. No. 136

Senators Schaffer, Chavez

Cosponsors: Senators Wilkin, Timken

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 20
"well" for purposes of section 1509.01 of the Revised Code. 21

"Carbon dioxide plume" means the extent of an underground 22
injected carbon dioxide stream. 23

"Carbon sequestration" means the underground storage of 24
carbon dioxide in a geological formation. 25

"Carbon sequestration project" means a project that 26
involves the underground storage of carbon dioxide in a 27
geological formation pursuant to at least one UIC Class VI 28
permit. 29

"Owner" includes, unless the context indicates otherwise, 30
a person who has the right to drill a carbon dioxide well and to 31
inject carbon dioxide in an underground geologic formation. 32
"Owner," as defined in section 1509.01 of the Revised Code, does 33
not apply to sections 1509.71 to 1509.79 or sections 5301.58 to 34
5301.60 of the Revised Code unless the context indicates 35
otherwise. 36

"Pore space" means subsurface cavities and voids, whether 37
natural or artificially created, that are suitable for use as a 38
sequestration space for carbon dioxide. 39

"Storage facility" means the pore space in the subsurface 40
area consisting of the extent of a carbon dioxide plume and the 41
geological seals that confine the carbon dioxide plume that are 42
required to be delineated on an approved UIC Class VI permit or 43
an amendment to a UIC Class VI permit issued to a storage 44
operator. 45

"Storage operator" means an individual, corporation, or 46
other legal entity that operates a carbon sequestration project, 47
regardless of whether an owner that has the right to drill and 48

store carbon dioxide in the project area contracts, retains, or 49
allows an individual, corporation, or other legal entity to 50
conduct operations or provide other services at the carbon 51
sequestration project. 52

"UIC Class VI permit" means an underground injection 53
control program permit issued by the chief of the division of 54
oil and gas resources management that allows the operation of a 55
carbon dioxide well. 56

"Underground storage of carbon dioxide" means the 57
injection and storage of carbon dioxide into underground strata 58
and formations under at least one UIC Class VI permit. 59

Sec. 1509.72. The division of oil and gas resources 60
management has sole and exclusive authority to regulate carbon 61
sequestration and the operation of storage facilities within the 62
state, excepting only those activities regulated under federal 63
laws for which oversight has been delegated to the environmental 64
protection agency and activities regulated under sections 65
6111.01 to 6111.028 of the Revised Code. The regulation of 66
carbon sequestration activities is a matter of general statewide 67
interest that requires uniform statewide regulation, and 68
sections 1509.71 to 1509.79 of the Revised Code and rules 69
adopted under those sections constitute a comprehensive plan 70
with respect to all aspects of carbon sequestration within this 71
state, including storage facility operation and permitting 72
related to those activities. 73

In order to assist the division in the furtherance of its 74
sole and exclusive authority as established in this section, the 75
chief of the division of oil and gas resources management may 76
enter into cooperative agreements with other state agencies 77
regarding carbon sequestration projects. Such cooperative 78

agreements do not confer on other state agencies any authority 79
to administer or enforce sections 1509.71 to 1509.79 of the 80
Revised Code and rules adopted under those sections. In 81
addition, such cooperative agreements shall not be construed to 82
dilute or diminish the division's sole and exclusive authority 83
as established in this section. 84

Nothing in this section affects the authority granted to 85
the director of transportation and local authorities in section 86
723.01 or 4513.34 of the Revised Code, provided that the 87
authority granted under those sections shall not be exercised in 88
a manner that discriminates against, unfairly impedes, or 89
obstructs carbon sequestration projects regulated under sections 90
1509.71 to 1509.79 of the Revised Code. 91

Sec. 1509.73. (A) The chief of the division of oil and gas 92
resources management shall adopt, rescind, and amend, rules for 93
the administration, implementation, and enforcement of sections 94
1509.71 to 1509.79 of the Revised Code. 95

(B) Rules adopted under this section shall include 96
provisions regarding applications for and the issuance of UIC 97
Class VI permits; the terms and conditions of those permits; 98
entry to conduct inspections and to examine records to ascertain 99
compliance with sections 1509.71 to 1509.79 of the Revised Code, 100
rules adopted under those sections, and orders and terms and 101
conditions of permits issued under those sections; the provision 102
and maintenance of information through monitoring, 103
recordkeeping, and reporting; and other provisions in 104
furtherance of the goals of this chapter and the Safe Drinking 105
Water Act. 106

(C) The rules adopted under this section shall establish 107
both of the following: 108

<u>(1) A requirement that an applicant for a UIC Class VI</u>	109
<u>permit attest that the applicant has the legal right to inject</u>	110
<u>carbon dioxide in the underground formation proposed in the</u>	111
<u>application and to the proposed extents that the carbon dioxide</u>	112
<u>will migrate, including the pressure front associated with the</u>	113
<u>injected carbon dioxide;</u>	114
<u>(2) The amount of the costs estimated to implement the</u>	115
<u>closure plan of the carbon dioxide well and associated</u>	116
<u>facilities and any post injection site care and site closure;</u>	117
<u>(D) The rules adopted under this section shall include an</u>	118
<u>identification of the subjects that the chief shall address when</u>	119
<u>attaching terms and conditions to a UIC Class VI permit. The</u>	120
<u>subjects shall include at least all of the following:</u>	121
<u>(1) Requirements for the operation and monitoring of a</u>	122
<u>carbon dioxide well;</u>	123
<u>(2) Safety concerning the drilling and operation of a</u>	124
<u>carbon dioxide well;</u>	125
<u>(3) Spacing, setback, and other provisions to prevent</u>	126
<u>storage facilities and storage operators from impacting the</u>	127
<u>ability of owners of oil and gas interests to develop those</u>	128
<u>interests;</u>	129
<u>(4) Protection of the public and private water supply,</u>	130
<u>including the amount of water used and the source or sources of</u>	131
<u>the water;</u>	132
<u>(5) Fencing and screening of surface facilities of a</u>	133
<u>carbon dioxide well;</u>	134
<u>(6) Containment and disposal of drilling and other wastes</u>	135
<u>related to a carbon sequestration project;</u>	136

<u>(7) Construction of access roads for purposes of the</u>	137
<u>drilling and operation of a carbon dioxide well;</u>	138
<u>(8) Noise mitigation for purposes of the drilling of a</u>	139
<u>carbon dioxide well and the operation of such a well, excluding</u>	140
<u>safety and maintenance operations;</u>	141
<u>(9) Liability insurance to pay damages for injury to</u>	142
<u>persons or property caused by the construction or operation of</u>	143
<u>the storage facility, to be maintained for the period of time</u>	144
<u>beginning at the commencement of construction operations and</u>	145
<u>ending when the chief issues a certificate of project completion</u>	146
<u>under section 1509.77 of the Revised Code;</u>	147
<u>(10) Liability insurance coverage of at least fifteen</u>	148
<u>million dollars to cover bodily injury and property damage</u>	149
<u>caused by the construction, drilling, or operation of the</u>	150
<u>owner's carbon dioxide wells in this state. The rules shall</u>	151
<u>require the insurance policy to include additional coverage for</u>	152
<u>an environmental endorsement.</u>	153
<u>(11) A surety bond conditioned on compliance with all</u>	154
<u>obligations imposed under sections 1509.71 to 1509.79 of the</u>	155
<u>Revised Code, to be maintained for the period of time beginning</u>	156
<u>at the commencement of construction operations and ending when</u>	157
<u>the chief issues a certificate of project completion. The rules</u>	158
<u>shall establish the required amount of the surety bond that is</u>	159
<u>not less than the cost estimate identified in the application.</u>	160
<u>The surety bond shall be sufficient to cover corrective actions,</u>	161
<u>plugging, post-injection site care prior to receipt of a</u>	162
<u>certificate of project completion, and emergency or remedial</u>	163
<u>response.</u>	164
<u>Sec. 1509.75. (A) Carbon sequestration projects are</u>	165

authorized in the state for the purposes of injecting carbon 166
dioxide into the pore space of a storage facility through at 167
least one carbon dioxide injection well under a UIC Class VI 168
permit. 169

(B) To operate a carbon sequestration project under 170
sections 1509.71 to 1509.79 of the Revised Code, a storage 171
operator shall obtain at least both of the following: 172

(1) A UIC Class VI permit, which shall be applied for in 173
the name of the storage operator; 174

(2) Any additional permits required by applicable laws, 175
rules, and regulations, except that a storage operator is not 176
required to obtain a permit required under section 1509.05 of 177
the Revised Code. 178

(C) Prior to carbon sequestration, the chief of the 179
division of oil and gas resources management may require a 180
storage operator to deploy a seismicity monitoring system. The 181
storage operator shall use the system to determine, to the best 182
of the operator's ability, the presence or absence, magnitude, 183
and the hypocenter location of seismic activity within the 184
vicinity of the storage facility as may be necessary to perform 185
an array and a risk analysis and as required by the chief. The 186
chief may periodically require the storage operator to utilize 187
the seismicity monitoring system during carbon sequestration 188
operations. 189

(D) Prior to operating a carbon sequestration project 190
under sections 1509.71 to 1509.79 of the Revised Code, a storage 191
operator shall design the project to isolate any existing or 192
future production of oil and gas from the carbon dioxide plume. 193
The chief shall issue a permit under those sections only if the 194

chief is satisfied that the interests of the owners of the oil 195
and gas will not be adversely affected. 196

(E) Provisions of this chapter codified in sections other 197
than sections 1509.71 to 1509.79 of the Revised Code apply to 198
carbon sequestration projects to the extent that those 199
provisions are consistent with, and not specifically excepted 200
from, sections 1509.71 to 1509.79 of the Revised Code. 201

Sec. 1509.76. (A) A storage operator who has obtained the 202
consent of owners of at least seventy per cent of the pore space 203
proposed to be used in a storage facility may submit a statutory 204
consolidation application for the operation of the entire 205
proposed storage facility to the chief of the division of oil 206
and gas resources management. In calculating the seventy per 207
cent, a pore space owner's entire interest in the proposed 208
storage facility, including any divided, undivided, partial, 209
fee, or other interest in the pore space, shall be included to 210
the fullest extent of that interest. 211

(B) An applicant shall include the following with the 212
application: 213

(1) A list of all persons reasonably known to own an 214
interest in the pore space proposed to be used for the storage 215
facility; 216

(2) A processing fee based on actual application 217
processing costs incurred by the division of oil and gas 218
resources management. Promptly after receiving an application, 219
the division shall prepare and submit to the applicant an 220
estimate of the processing fee and a payment billing schedule. 221
The division shall maintain a record of all application 222
processing costs incurred. After the division's work on the 223

application has concluded, the division shall send a final 224
statement to the applicant. The applicant shall pay the full 225
processing fee before the division issues its final decision on 226
an application. The applicant shall pay the processing fee 227
regardless of whether a permit is issued or denied, or whether 228
the application is withdrawn. The division shall return any 229
unused funds paid to the division as part of the processing fee 230
estimate to the applicant. 231

(3) Proof of notice provided under division (D) of this 232
section, if applicable; 233

(4) Any additional information reasonably requested by the 234
chief. 235

(C) For each application, the chief shall provide notice 236
to all pore space owners located within the proposed storage 237
facility and all subsurface owners located within the proposed 238
storage facility of the proposed carbon sequestration project, 239
as identified by the applicant in the application. The chief 240
shall not rule on an application until after such notice has 241
been provided. If, upon receipt of the notice, the subsurface 242
property owner expresses an objection to the chief regarding the 243
design of the carbon sequestration project based on the 244
potential adverse effect to a commercially valuable mineral, 245
including, without limitation a coal or oil and gas estate, the 246
storage operator shall address the objection to the satisfaction 247
of the chief. Such objections are not required to be submitted 248
in the timeframe required for notifications to the chief under 249
division (D) of this section, but shall be made in accordance 250
with requirements established by the chief. 251

(D) If the proposed storage facility contains pore space 252
for which the owner is unknown or unlocatable, the storage 253

operator shall publish one notice in a newspaper of the largest 254
circulation in each county in which the carbon sequestration 255
project is located. The notice shall appear not more than thirty 256
days prior to the date the application is submitted to the 257
chief. 258

The notice shall: 259

(1) State that an application for statutory consolidation 260
will be filed with the division; 261

(2) Describe the proposed storage facility; 262

(3) In the case of an unknown pore space owner, state the 263
owner's interest in the proposed storage facility, and the name 264
of the last known owner of that interest; 265

(4) State that a person claiming an interest in the pore 266
space proposed to be consolidated shall notify the chief and the 267
applicant at the published address within twenty days of the 268
notice's publication date. Within seven days of receiving notice 269
of a claim, the applicant shall provide information to the 270
claimant, in a form and manner prescribed by the chief, 271
regarding the right of the claimant to file an objection and 272
participate in the application proceeding before the division. 273

(E) (1) (a) The chief shall hold a hearing regarding an 274
application submitted under this section, except as otherwise 275
provided in division (E) (1) (b) of this section. 276

(b) If the chief determines that an application is 277
materially incomplete before the required hearing date, the 278
chief shall notify the applicant. If the applicant does not 279
timely correct the application, the chief may reschedule the 280
hearing date. 281

(2) At the hearing, the chief shall consider whether the 282
application is reasonably necessary to facilitate the 283
underground storage of carbon dioxide. 284

(F) (1) The chief shall issue an order approving the 285
application submitted under this section and providing for the 286
operation of the proposed storage facility if the chief finds 287
that such operation is reasonably necessary to facilitate the 288
underground storage of carbon dioxide. The chief shall issue the 289
order not later than sixty days after the date of the hearing 290
under division (E) of this section, unless the chief denies the 291
application by order within that sixty-day period. 292

(2) An order approving an application shall be upon terms 293
and conditions that are just and reasonable and shall prescribe 294
a plan for operations that include: 295

(a) A description of the pore space and storage facility 296
proposed to be operated; 297

(b) The location of and means to access carbon injection 298
wells, outbuildings, roads, and monitoring equipment; 299

(c) A statement of the nature of the operations 300
contemplated; 301

(d) (i) An allocation to the separately owned interests in 302
the storage facility of all economic benefits derived from 303
operation of the storage facility. 304

(ii) The allocation shall be in accord with the agreement, 305
if any, of the interested parties. If there is no agreement 306
between the parties, the chief shall determine the value of each 307
separately owned interest in the storage facility, exclusive of 308
physical equipment, for development of the storage facility, and 309
the economic benefits allocated to each interest shall be the 310

proportion that the value of each interest so determined bears 311
to the value of all interests in the storage facility. 312

(e) A provision describing how the credits and charges 313
shall be made in the adjustment among the owners in the storage 314
facility for their respective investments in wells, machinery, 315
materials, and equipment contributed to the operations; 316

(f) A provision describing how the expenses of operations, 317
including capital investment, shall be determined and charged to 318
the separately owned interests and how the expenses shall be 319
paid; 320

(g) A provision, if necessary, for carrying or otherwise 321
financing any person who does not meet the person's financial 322
obligations in connection with the storage facility, allowing a 323
reasonable interest charge for such service; 324

(h) A provision for the supervision and conduct of the 325
storage facility operations, in respect to which each person 326
shall have a vote with a value corresponding to the percentage 327
of the expenses of operations chargeable against the interest of 328
that person; 329

(i) The time when the storage facility operations shall 330
commence and the manner in which, and the circumstances under 331
which, the operations shall terminate; 332

(j) Any additional provisions as are found to be 333
appropriate for carrying on the operations, and for the 334
protection or adjustment of correlative rights. 335

(3) The storage operator shall file a certified copy of 336
the order and a survey of the storage facility in the office of 337
the county recorder of the county in which all or a portion of 338
the storage facility is located. The chief shall make the order 339

publicly available, which may include posting the order on the 340
division's web site. 341

(G) Storage facility operations conducted pursuant to an 342
order issued under this section constitute a fulfillment of all 343
the express or implied obligations of each lease or contract 344
covering lands in the storage facility to the extent that 345
compliance with such obligations cannot be had because of the 346
order of the chief. 347

Economic benefits allocated to any interest shall be the 348
property and income of the several persons to whom, or to whose 349
credit, the same are allocated or payable under the order 350
providing for storage facility operations. 351

(H) No order of the chief or other contract relating to 352
the pore space and the storage of carbon dioxide from a 353
separately owned interest shall be terminated by the order 354
providing for storage facility operations, but shall remain in 355
force until terminated in accordance with the provisions 356
thereof. 357

Except to the extent that the parties affected so agree, 358
no order providing for storage facility operations shall be 359
construed to result in a transfer of any person's title to all 360
or any part of the pore space in the storage facility. All 361
property, whether real or personal, that may be acquired for the 362
account of the owners within the storage facility shall be the 363
property of such owners in the proportion that the expenses of 364
operations are charged. 365

Sec. 1509.77. (A) After carbon dioxide injection into a 366
storage facility ceases, the chief of the division of oil and 367
gas resources management may issue a certificate of project 368

completion upon application by the storage operator. The chief 369
shall issue a certificate only upon satisfaction of the 370
conditions imposed under this section and after providing public 371
notice of the application, an opportunity for public comment, 372
and if deemed necessary by the chief, a public hearing on the 373
application. 374

(B) A certificate shall not be issued until at least fifty 375
years after carbon dioxide injections cease or until an 376
established alternative timeline approved by the chief has 377
elapsed. 378

(C) A certificate shall not be issued until the storage 379
operator establishes with a degree of certainty to the 380
satisfaction of the chief that all of the following apply: 381

(1) The storage operator is in full compliance with all 382
laws governing the injection and storage of the carbon dioxide. 383

(2) The following apply to the carbon dioxide that has 384
been injected underground for storage: 385

(a) It is not expected to extend or migrate outside of the 386
storage facility and poses no threat to public health or safety 387
or the environment or underground sources of drinking water. 388

(b) It is not likely to cross any boundary vertically from 389
the storage facility and is not expected to endanger public 390
health or safety or the environment or underground sources of 391
drinking water. 392

(3) All carbon dioxide wells and associated equipment and 393
facilities to be used in maintaining and managing the stored 394
carbon dioxide are in good condition and will retain mechanical 395
integrity. 396

(4) The storage operator has plugged all carbon dioxide 397
wells not used in maintaining and managing the stored carbon 398
dioxide and has completed all reclamation required by the 399
division. 400

(D) Upon the issuance of a certificate of project 401
completion, the following shall occur: 402

(1) Except as otherwise provided in this section, the 403
former storage operator is released from all regulatory 404
requirements associated with continued storage and maintenance 405
of the injected carbon dioxide, and financial assurance required 406
under rules adopted under section 1509.73 of the Revised Code 407
shall be released to the former storage operator. 408

(2) Primary responsibility and liability for the stored or 409
injected carbon dioxide shall be transferred to the state, 410
except for criminal and contractual liability and except under 411
any of the following circumstances: 412

(a) The storage operator violated a duty imposed on the 413
storage operator by state law or rule prior to approval of site 414
closure and any applicable statutes of limitations have not run 415
out; 416

(b) After notice and a hearing, the chief determines 417
either of the following: 418

(i) The storage operator provided deficient or erroneous 419
information that was material and relied upon by the chief to 420
support approval of site closure; 421

(ii) There is carbon dioxide migration that threatens 422
public health or safety or the environment or underground 423
sources of drinking water; 424

(c) The balance of the carbon dioxide storage facility 425
fund is insufficient to cover costs arising from storage 426
facilities and associated carbon dioxide wells after site 427
closure. 428

(3) The storage operator and all individuals who 429
generated, injected, or stored carbon dioxide shall be forever 430
released from all regulatory requirements associated with the 431
continued storage and maintenance of the injected carbon 432
dioxide, except as provided in division (D) (2) of this section. 433

(4) Any bond or financial assurance submitted to the 434
division shall be released. 435

Sec. 1509.79. (A) Storage operators shall pay the 436
department of natural resources a fee of five and twenty-five 437
one hundredth cents for each metric ton of carbon dioxide 438
injected for storage in a storage facility. The fee shall be 439
deposited into the carbon dioxide storage facility fund created 440
under this section. 441

(B) (1) The carbon dioxide storage facility fund is created 442
in the state treasury. Except for fees collected under division 443
(C) of this section, the fund shall consist of any money 444
collected under this section in relation to a Class VI well, 445
including money received by the department from financial 446
responsibility mechanisms established and penalties imposed for 447
violations of sections 1509.71 to 1509.79 of the Revised Code, 448
rules adopted under those sections, and orders and terms and 449
conditions of a permit issued under those sections. All interest 450
earnings of the fund shall be credited to the fund. 451

(2) The chief of the division of oil and gas resources 452
management shall use the money in the fund for the purpose of 453

defraying expenses of the division that are associated with 454
post-closure care of sequestered carbon dioxide in a storage 455
facility, including the maintenance of carbon dioxide wells, 456
associate surface facilities, remediation of any environmental 457
impacts from the injected carbon dioxide, and plugging of 458
monitoring wells associated with the injection of carbon dioxide 459
in a carbon dioxide well. 460

(3) The existence, management, and expenditure of money 461
from the fund do not constitute a waiver of governmental 462
immunity or an assumption of any liability by the state for 463
carbon dioxide storage. 464

(C) (1) In addition to the fee established under division 465
(A) of this section, an owner of a carbon dioxide well shall pay 466
a fee for each metric ton of carbon dioxide injected in the 467
carbon dioxide well. The chief, by rule, shall establish the 468
amount of the fee, and the fee shall be deposited in the carbon 469
capture administrative fund created under this section. 470

(2) The carbon capture administrative fund is created in 471
the state treasury. The fund shall consist of the money 472
collected under division (C) (1) of this section. The chief shall 473
use the funds for the purpose of administering sections 1509.71 474
to 1509.79 of the Revised Code and the rules adopted under those 475
sections that are associated with injection and sequestration of 476
carbon dioxide in a carbon dioxide well and for other purposes 477
determined by the chief. All interest earnings of the fund shall 478
be credited to the fund. 479

Sec. 5301.57. (A) As used in sections 5301.57 to 5301.60 480
of the Revised Code, "carbon dioxide," "carbon dioxide well," 481
"carbon sequestration," "owner," "pore space," "storage 482
operator," and "storage facility," have the same meanings as in 483

section 1509.71 of the Revised Code. 484

(B) As used in sections 5301.58 to 5301.60 of the Revised 485
Code, "subsurface property interest owner" means a property 486
interest owner identified by the records of the recorder of 487
deeds for each county in which a portion of a proposed storage 488
facility is located who holds a fee simple interest, other 489
freehold interest, or leasehold interest in the subsurface of 490
the property, which may include mineral rights, such as coal or 491
oil and gas rights. "Subsurface property interest owner" does 492
not include an owner who holds an interest in property 493
consisting solely of an easement or right-of-way. 494

Sec. 5301.58. (A) The ownership of all pore space in all 495
strata below the surface lands and waters is vested in the owner 496
of the surface directly above the pore space. 497

A conveyance of the surface ownership of real property 498
shall be a conveyance of the pore space in all strata below the 499
surface of the real property unless the ownership interest in 500
the pore space previously has been expressly excepted and 501
reserved, conveyed, or otherwise severed from the surface 502
ownership. The ownership of pore space in the strata may be 503
conveyed in the manner provided by law for the transfer of real 504
property interests. No agreement conveying mineral, oil and gas, 505
coal, limestone or similar resource, or other interests 506
underlying the surface shall convey pore space in the strata 507
unless the agreement expressly includes conveyance of the pore 508
space. 509

(B) No provision of law or rule requiring notice to be 510
given to a surface owner, owner of the mineral or oil and gas 511
interest, or both shall be construed to require notice to 512
individuals holding ownership interests in pore space in the 513

underlying strata unless the applicable law specifies notice to 514
the individuals is required or unless the owner of the pore 515
space also owns an interest in the surface or in the mineral or 516
oil and gas interests. 517

(C) (1) Nothing in sections 5301.58 to 5301.60 of the 518
Revised Code shall be construed to change or alter the common 519
law existing as of the effective date of this section with 520
respect to the rights belonging to, or the dominance of, the 521
mineral estate or oil and gas estate. For the purpose of 522
determining the priority of surface and subsurface uses between 523
a severed mineral or oil and gas estate and pore space, the 524
severed mineral or oil and gas estate is dominant regardless of 525
whether ownership of the pore space is vested in the owner of 526
the surface or is owned separately from the surface. 527

(2) If pore space is severed from the surface ownership, 528
the pore space estate shall be considered to be dominant over 529
the surface estate unless the conveyance specifically provides 530
otherwise. 531

(3) Nothing in sections 5301.58 to 5301.60 of the Revised 532
Code shall alter, amend, diminish, or invalidate rights to the 533
pore space that were acquired by deed, contract, or lease prior 534
to the effective date of this section. 535

(D) An instrument that transfers the rights to pore space 536
shall include a specific description of the location of the pore 537
space being transferred. In the event that the instrument uses 538
only a description of the surface, the transfer shall be 539
considered to include pore space owned by the transferor at all 540
depths underlying the described surface area unless specifically 541
excluded. The owner of the pore space shall have no right to use 542
the surface estate beyond that set out in a properly recorded 543

instrument due solely to its ownership in the pore space. 544

An instrument that conveys the surface directly above the 545
pore space, but otherwise seeks to except or reserve the rights 546
to the pore space, shall include a specific reference to the 547
pore space in the instrument. In the event of such exception or 548
reserved rights, the reserved rights to the pore space shall 549
include pore space owned by the transferor at all depths 550
underlying the described surface area unless otherwise 551
specifically excluded. 552

Sec. 5301.59. All carbon dioxide injected into a storage 553
facility for carbon sequestration, and all other substances 554
injected incidental to the injection of carbon dioxide, shall be 555
presumed to be owned by the storage operator. This presumption 556
may be rebutted by an individual claiming contrary ownership by 557
a preponderance of the evidence in an action to establish 558
ownership. 559

No owner of pore space, other individual holding any right 560
to control pore space, or other surface or subsurface property 561
interest owner, shall have any liability relating to the 562
injection of carbon dioxide, or any other substances injected 563
incidental to the injection of carbon dioxide, for carbon 564
sequestration activities solely by virtue of their interest in 565
the pore space or their surface or subsurface rights. 566

Sec. 5301.60. (A) A claim for damages due to injection or 567
migration of carbon dioxide shall not be recoverable against a 568
storage operator conducting carbon sequestration in accordance 569
with a valid UIC Class VI permit unless the claimant proves that 570
the injection or migration of carbon dioxide: 571

(1) Is injurious to health, or an obstruction to the free 572

use of property so as essentially to interfere with the 573
comfortable enjoyment of life or property; or 574

(2) Has caused direct physical injury to an individual, 575
animal, or real or personal property. 576

(B) A surface or subsurface property interest owner 577
asserting a claim for injury to personal or real property may 578
recover monetary damages due to injection or migration of carbon 579
dioxide only for the diminution in real or personal property 580
value resulting from the injection or migration of carbon 581
dioxide beyond the storage facility. 582

(C) A surface or subsurface property interest owner may 583
not seek punitive damages due to injection or migration of 584
carbon dioxide if the storage operator acts in compliance with 585
the requirements of the UIC Class VI permit. 586

(D) Divisions (A), (B), and (C) of this section do not 587
apply to any claims that may be asserted by owners of oil and 588
gas interests or owners of class II disposal wells for damages 589
or injuries related to: 590

(1) The injection or migration of carbon dioxide; 591

(2) The construction or operation of a storage facility; 592

or 593

(3) A carbon sequestration project. 594