

**HB327 ENGROSSED**



1 HB327  
2 A3AXQQS-2  
3 By Representative Baker  
4 RFD: State Government  
5 First Read: 19-Mar-24



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A BILL  
TO BE ENTITLED  
AN ACT

Relating to geologic storage; to designate Sections 9-17-150, 9-17-151, 9-17-152, 9-17-153, 9-17-154, 9-17-155, 9-17-156, and 9-17-157, Code of Alabama 1975, as Division 1 of Article 6, Chapter 17, Title 9 of the Code of Alabama 1975; and to add a Division 2 to Article 6, Chapter 17, Title 9 of the Code of Alabama 1975, commencing with Section 9-17-160, to define the term "pore space"; to provide that the possessory right to pore space below surface real property is vested in the surface owners and may be separately conveyed; to further provide the circumstances under which a proposed carbon dioxide storage facility may receive approval to operate from the State Oil and Gas Board; to provide that the board may amalgamate storage rights for a carbon dioxide storage facility under certain circumstances; to create the Underground Carbon Dioxide Storage Facility Administrative Fund to be used by the board in monitoring and regulating active storage facilities; to create the Underground Carbon Dioxide Storage Facility Trust Fund to be used by the board in long-term monitoring and management of closed storage facilities; to create a certificate of project closure and



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29 completion and provide for its issuance and implications; to  
30 authorize the Commissioner of Conservation and Natural  
31 Resources to lease pore space of certain lands for underground  
32 storage of carbon dioxide; and to further provide for the  
33 board's rulemaking authority.

34 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

35 Section 1. Sections 9-17-150, 9-17-151, 9-17-152,  
36 9-17-153, 9-17-154, 9-17-155, 9-17-156, and 9-17-157, Code of  
37 Alabama 1975, shall be designated as Division 1 of Article 6,  
38 Chapter 17, Title 9 of the Code of Alabama 1975.

39 Section 2. Division 2 is added to Article 6 of Chapter  
40 17, Title 9 of the Code of Alabama 1975, commencing with  
41 Section 9-17-160, to read as follows:

42 Division 2.

43 §9-17-160

44 For the purposes of this division, the term "pore  
45 space" means subsurface space that can be used for the  
46 geologic storage or sequestration of carbon dioxide and  
47 incidental substances that are part of the carbon dioxide  
48 capture, transportation, or storage process.

49 §9-17-161

50 (a) The ownership of pore space in all strata below the  
51 surface lands and waters of this state is vested in the owners  
52 of the surface rights above the underlying strata where the  
53 pore space exists, unless the ownership interest in the pore  
54 space has previously been severed from the surface ownership  
55 or is explicitly excluded or reserved in a conveyance.

56 (b) A conveyance of the surface ownership of real



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57 property shall be a conveyance of the pore space in all strata  
58 below the surface of the real property unless the ownership  
59 interest in the subsurface pore space has previously been  
60 severed from the surface ownership or is explicitly excluded  
61 or reserved in the conveyance. The ownership of pore space in  
62 strata may be conveyed in the manner provided by law for the  
63 transfer of surface interests in real property.

64 (c) No previous agreement conveying or reserving oil,  
65 gas, or other mineral interests in real property shall act to  
66 convey or reserve ownership of any pore space or carbon  
67 dioxide storage rights in the stratum unless the agreement  
68 explicitly conveys or reserves subsurface space to be used for  
69 the geologic storage or sequestration or carbon dioxide.

70 (d) No agreement conveying the right to use or occupy a  
71 storage facility, pore space, and potentially the surface or  
72 subsurface of the land incident thereto shall convey any other  
73 right of real property use, including oil, gas, or other  
74 minerals within the same instrument. Any agreement that  
75 violates this subsection is void; provided, however, this  
76 subsection shall not apply to any agreement executed before  
77 October 1, 2024.

78 (e) The owner of any pore space right shall have no  
79 right to use the surface estate beyond that set out in a  
80 properly executed instrument nor in any manner that will  
81 adversely affect any existing easement, whether public or  
82 private.

83 (f) Nothing in this section shall alter, amend,  
84 diminish, or invalidate any right to the use of pore space



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85 that was acquired by contract or lease prior to October 1,  
86 2024.

87 (g) In considering approving a storage facility to be  
88 used for the storage and sequestration of carbon dioxide  
89 pursuant to this division, the board shall consider both of  
90 the following:

91 (1) Any competing rights of all separately owned  
92 estates in lands potentially affected by the storage facility,  
93 giving due consideration of competing rights as to existing or  
94 future uses by pore space, surface, and mineral owners that  
95 may be affected.

96 (2) The distance of the storage facility from any  
97 current or future underground mining operation or other  
98 underground operation designed and operated for the extraction  
99 of minerals and the potential impact on the safety of these  
100 operations.

101 (h) Other than as may regard a claim to an ownership  
102 interest in pore space, nothing in this division shall be  
103 construed to change, alter, diminish, or in any way affect the  
104 statutory or common law as of October 1, 2024, as it relates  
105 to the rights belonging to surface and mineral estates.

106 §9-17-162

107 For a storage facility that is used for the storage  
108 and sequestration of carbon dioxide, all of the following  
109 shall apply:

110 (1) A storage operator shall adhere to all rules  
111 adopted by the board relating to the underground storage of  
112 carbon dioxide.



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113           (2) A storage operator shall make a good faith effort  
114 to obtain the consent of all persons that own a storage  
115 facility's pore space and storage rights for carbon dioxide.

116           (3) A storage operator shall obtain the consent of  
117 persons that own not less than 66 and two-thirds percent of a  
118 storage facility's pore space and storage rights for carbon  
119 dioxide.

120           (4) Upon a storage operator obtaining the consent of  
121 persons that own not less than 66 and two-thirds percent of a  
122 storage facility's pore space and storage rights for carbon  
123 dioxide, the board, after providing notice and a public  
124 hearing, may enter an order to amalgamate and pool the pore  
125 space and storage rights for carbon dioxide owned by  
126 non-consenting owners into the storage facility on terms that  
127 are just and reasonable as determined by the board.

128           (5) All non-consenting owners of a storage facility's  
129 pore space and storage rights for carbon dioxide shall be  
130 fairly and equitably compensated.

131           (6) A storage operator shall use commercially  
132 reasonable efforts to limit the adverse surface-use impact  
133 upon the lands of non-consenting owners of a storage  
134 facility's pore space and storage rights.

135           (7) A storage operator seeking approval to operate in  
136 the Blue Creek or Mary Lee coal seams in Jefferson,  
137 Tuscaloosa, or Walker counties or within a 10-mile radius of  
138 any coal mine operation shall obtain the written consent of  
139 the coal mine operator and mineral owner with an operation or  
140 mineral interest in such seams or within such radius;



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141 provided, however, that such consent shall not be unreasonably  
142 withheld or delayed.

143 §9-17-163

144 (a) (1) The Underground Carbon Dioxide Storage Facility  
145 Administrative Fund is created in the State Treasury. The fund  
146 shall consist of all administrative fees for the geologic  
147 storage of carbon dioxide as determined by the board pursuant  
148 to Section 9-17-151(d).

149 (2) All monies in the fund shall be used only for the  
150 purpose of defraying expenses incurred by the board in the  
151 performance of its administrative and regulatory duties  
152 relative to the geologic storage of carbon dioxide.

153 (3) Monies in the fund shall be invested by the State  
154 Treasurer for the sole benefit of the fund and in a manner to  
155 obtain the highest return possible while preserving the  
156 principal. Any interest earned on the fund shall be deposited  
157 into the fund.

158 (4) The fund shall be paid out only by warrant of the  
159 Comptroller upon the State Treasury, upon itemized vouchers,  
160 approved by the State Oil and Gas Supervisor; provided, that  
161 no funds shall be withdrawn or expended except as budgeted and  
162 allotted according to the provisions of Sections 41-4-80  
163 through 41-4-96 and Sections 41-19-1 through 41-19-12, and  
164 only in amounts as stipulated in the general appropriation or  
165 other appropriation bills; provided further, that any funds  
166 unspent and unencumbered at the end of any state fiscal year  
167 shall not be transferred into the State General Fund.

168 (b) (1) The Underground Carbon Dioxide Storage Facility



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169 Trust Fund is created in the State Treasury.

170 (2) The fund shall consist of any fees levied by the  
171 board pursuant to 9-17-151(d) and all monies received by the  
172 board to measure, monitor, and verify underground carbon  
173 dioxide storage facilities following the plugging and  
174 abandonment of all injection wells in accordance with board  
175 rules, issuance of a certificate of project closure and  
176 completion, and release of all financial assurance instruments  
177 for a storage facility. The board shall adopt rules as  
178 necessary to collect monies for the fund in an amount  
179 reasonably calculated to pay the costs of measuring,  
180 monitoring, and verifying the sites.

181 (3) Monies in the fund shall only be used for the  
182 following purposes:

183 a. Testing, monitoring, and long-term inspection of  
184 underground carbon dioxide storage facilities.

185 b. Remediation of mechanical problems associated with  
186 remaining wells and infrastructure.

187 c. Plugging and abandoning monitoring wells.

188 d. All costs associated with the release of carbon  
189 dioxide from underground carbon dioxide storage facilities  
190 following the issuance by the board of a certificate of  
191 project closure and completion and release of financial  
192 assurance instruments.

193 e. Other operations and activities deemed necessary by  
194 the board or the State Oil and Gas Supervisor to protect  
195 underground sources of drinking water and for public health  
196 and safety following the issuance of a certificate of project





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197 closure and completion by the board and release of all  
198 financial assurance instruments.

199 (4) Monies in the fund shall be invested by the State  
200 Treasurer for the sole benefit of the fund and in a manner to  
201 obtain the highest return possible while preserving the  
202 principal. Any interest earned on the fund shall be deposited  
203 into the fund.

204 (5) The fund shall be paid out only by warrant of the  
205 Comptroller upon the State Treasury, upon itemized vouchers,  
206 approved by the State Oil and Gas Supervisor; provided, that  
207 no funds shall be withdrawn or expended except as budgeted and  
208 allotted according to the provisions of Sections 41-4-80  
209 through 41-4-96 and Sections 41-19-1 through 41-19-12, and  
210 only in amounts as stipulated in the general appropriation or  
211 other appropriation bills; provided further, that any funds  
212 unspent and unencumbered at the end of any state fiscal year  
213 shall not be transferred into the State General Fund.

214 §9-17-164

215 (a) A storage operator has title to all carbon dioxide  
216 injected and stored in a storage facility. A storage operator  
217 is liable for any damages attributed to its operations while  
218 holding title to the injected carbon dioxide.

219 (b) Upon all carbon dioxide injections into a storage  
220 facility ending and application by a storage facility  
221 operator, the board may issue a certificate of project closure  
222 and completion for the storage facility.

223 (c) A certificate of project closure and completion  
224 shall only be issued after all of the following have been



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225 satisfied:

226 (1) Notice and a public hearing on the issuance of the  
227 certificate are provided pursuant to Section 9-17-152(a).

228 (2) The board has consulted with the Alabama Department  
229 of Environmental Management regarding issuing the certificate.

230 (3) Ten or more years have passed from the date carbon  
231 dioxide injection into the storage facility ended.

232 (4) The storage operator has demonstrated all of the  
233 following to the satisfaction of the board:

234 a. The storage facility is in full compliance with all  
235 governing laws and rules.

236 b. The storage facility is reasonably expected to  
237 retain the carbon dioxide.

238 c. The carbon dioxide in the storage facility is  
239 stable. For purposes of this paragraph, carbon dioxide is  
240 stable if it is essentially stationary or, if it is migrating  
241 or may migrate, migration is unlikely to cross the underground  
242 reservoir boundary and is not expected to endanger any  
243 underground source of drinking water.

244 d. All wells, equipment, and facilities to be used in  
245 the post-closure period are in good condition and retain  
246 mechanical integrity.

247 e. All injection wells have been plugged, all related  
248 equipment and facilities used during the pre-closure period  
249 not necessary for long-term monitoring have been removed, and  
250 all reclamation work required by the board has been completed.

251 (d) Upon the issuance of a certificate of project  
252 closure and completion, all of the following shall occur:



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253 (1) Title to equipment and facilities necessary for  
254 long-term monitoring and all carbon dioxide injected into the  
255 storage facility, without payment of any compensation, shall  
256 transfer to the state. Title acquired by the state includes  
257 all rights and interests in, and all responsibilities and  
258 liabilities associated with, all equipment and facilities used  
259 for long-term monitoring and the stored carbon dioxide within  
260 the storage facility. A storage operator may not transfer to  
261 the state, and the state may not accept, any property  
262 interests or rights that the storage operator does not own or  
263 have the authority to transfer.

264 (2) The storage operator and all persons that generated  
265 any injected carbon dioxide shall be released from all  
266 regulatory requirements associated with the storage facility.

267 (3) The storage operator shall be released from all  
268 bonds and other security posted by the storage operator.

269 (4) Monitoring and managing the storage facility shall  
270 become the responsibility of the state and be administered by  
271 the board unless an agency of the federal government assumes  
272 responsibility for the long-term monitoring and management of  
273 the storage facility.

274 §9-17-165

275 The Commissioner of Conservation and Natural Resources,  
276 on behalf of this state, is authorized to lease pore space for  
277 any lands under the jurisdiction of the Department of  
278 Conservation and Natural Resources for underground storage of  
279 carbon dioxide on, in, and under such lands.

280 §9-17-166

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281           The board may adopt rules as necessary to implement and  
282 administer this division.

283           Section 3. This act shall become effective on October  
284 1, 2024.



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House of Representatives

Read for the first time and referred .....19-Mar-24  
to the House of Representatives  
committee on State Government  
  
Read for the second time and placed .....04-Apr-24  
on the calendar:  
1 amendment  
  
Read for the third time and passed .....09-Apr-24  
as amended  
Yeas 95  
Nays 5  
Abstains 2

John Treadwell  
Clerk