



**House State Government Reported Substitute for
HB327**

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

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

100 §9-17-162

101 For a storage facility that is used for the storage
102 and sequestration of carbon dioxide, all of the following
103 shall apply:

104 (1) A storage operator shall adhere to all rules
105 adopted by the board relating to the underground storage of
106 carbon dioxide.

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

110 (3) A storage operator shall obtain the consent of
111 persons that own not less than 60 percent of a storage
112 facility's pore space and storage rights for carbon dioxide.



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113 (4) Upon a storage operator obtaining the consent of
114 persons that own not less than 60 percent of a storage
115 facility's pore space and storage rights for carbon dioxide,
116 the board, after providing notice and a public hearing, may
117 enter an order to amalgamate and pool the pore space and
118 storage rights for carbon dioxide owned by non-consenting
119 owners into the storage facility on terms that are just and
120 reasonable as determined by the board.

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

124 §9-17-163

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

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

134 (3) Monies in the fund shall be invested by the State
135 Treasurer for the sole benefit of the fund and in a manner to
136 obtain the highest return possible while preserving the
137 principal. Any interest earned on the fund shall be deposited
138 into the fund.

139 (4) The fund shall be paid out only by warrant of the
140 Comptroller upon the State Treasury, upon itemized vouchers,



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141 approved by the State Oil and Gas Supervisor; provided, that
142 no funds shall be withdrawn or expended except as budgeted and
143 allotted according to the provisions of Sections 41-4-80
144 through 41-4-96 and Sections 41-19-1 through 41-19-12, and
145 only in amounts as stipulated in the general appropriation or
146 other appropriation bills; provided further, that any funds
147 unspent and unencumbered at the end of any state fiscal year
148 shall not be transferred into the State General Fund.

149 (b) (1) The Underground Carbon Dioxide Storage Facility
150 Trust Fund is created in the State Treasury.

151 (2) The fund shall consist of any fees levied by the
152 board pursuant to 9-17-151(d) and all monies received by the
153 board to measure, monitor, and verify underground carbon
154 dioxide storage facilities following the plugging and
155 abandonment of all injection wells in accordance with board
156 rules, issuance of a certificate of project closure and
157 completion, and release of all financial assurance instruments
158 for a storage facility. The board shall adopt rules as
159 necessary to collect monies for the fund in an amount
160 reasonably calculated to pay the costs of measuring,
161 monitoring, and verifying the sites.

162 (3) Monies in the fund shall only be used for the
163 following purposes:

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

166 b. Remediation of mechanical problems associated with
167 remaining wells and infrastructure.

168 c. Plugging and abandoning monitoring wells.



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169 d. All costs associated with the release of carbon
170 dioxide from underground carbon dioxide storage facilities
171 following the issuance by the board of a certificate of
172 project closure and completion and release of financial
173 assurance instruments.

174 e. Other operations and activities deemed necessary by
175 the board or the State Oil and Gas Supervisor to protect
176 underground sources of drinking water and for public health
177 and safety following the issuance of a certificate of project
178 closure and completion by the board and release of all
179 financial assurance instruments.

180 (4) Monies in the fund shall be invested by the State
181 Treasurer for the sole benefit of the fund and in a manner to
182 obtain the highest return possible while preserving the
183 principal. Any interest earned on the fund shall be deposited
184 into the fund.

185 (5) The fund shall be paid out only by warrant of the
186 Comptroller upon the State Treasury, upon itemized vouchers,
187 approved by the State Oil and Gas Supervisor; provided, that
188 no funds shall be withdrawn or expended except as budgeted and
189 allotted according to the provisions of Sections 41-4-80
190 through 41-4-96 and Sections 41-19-1 through 41-19-12, and
191 only in amounts as stipulated in the general appropriation or
192 other appropriation bills; provided further, that any funds
193 unspent and unencumbered at the end of any state fiscal year
194 shall not be transferred into the State General Fund.

195 §9-17-164

196 (a) A storage operator has title to all carbon dioxide



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197 injected and stored in a storage facility. A storage operator
198 is liable for any damages attributed to its operations while
199 holding title to the injected carbon dioxide.

200 (b) Upon all carbon dioxide injections into a storage
201 facility ending and application by a storage facility
202 operator, the board may issue a certificate of project closure
203 and completion for the storage facility.

204 (c) A certificate of project closure and completion
205 shall only be issued after all of the following have been
206 satisfied:

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

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

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

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

215 a. The storage facility is in full compliance with all
216 governing laws and rules.

217 b. The storage facility is reasonably expected to
218 retain the carbon dioxide.

219 c. The carbon dioxide in the storage facility is
220 stable. For purposes of this paragraph, carbon dioxide is
221 stable if it is essentially stationary or, if it is migrating
222 or may migrate, migration is unlikely to cross the underground
223 reservoir boundary and is not expected to endanger any
224 underground source of drinking water.



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225 d. All wells, equipment, and facilities to be used in
226 the post-closure period are in good condition and retain
227 mechanical integrity.

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

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

234 (1) Title to equipment and facilities necessary for
235 long-term monitoring and all carbon dioxide injected into the
236 storage facility, without payment of any compensation, shall
237 transfer to the state. Title acquired by the state includes
238 all rights and interests in, and all responsibilities and
239 liabilities associated with, all equipment and facilities used
240 for long-term monitoring and the stored carbon dioxide within
241 the storage facility. A storage operator may not transfer to
242 the state, and the state may not accept, any property
243 interests or rights that the storage operator does not own or
244 have the authority to transfer.

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

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

250 (4) Monitoring and managing the storage facility shall
251 become the responsibility of the state and be administered by
252 the board unless an agency of the federal government assumes



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253 responsibility for the long-term monitoring and management of
254 the storage facility.

255 §9-17-165

256 The Commissioner of Conservation and Natural Resources,
257 on behalf of this state, is authorized to lease pore space for
258 any lands under the jurisdiction of the Department of
259 Conservation and Natural Resources for underground storage of
260 carbon dioxide on, in, and under such lands.

261 §9-17-166

262 The board may adopt rules as necessary to implement and
263 administer this division.

264 Section 3. This act shall become effective on October
265 1, 2024.