

**HB327 ENROLLED**



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



## HB327 Enrolled

1 Enrolled, An Act,

2           Relating to geologic storage; to designate Sections  
3 9-17-150, 9-17-151, 9-17-152, 9-17-153, 9-17-154, 9-17-155,  
4 9-17-156, and 9-17-157, Code of Alabama 1975, as Division 1 of  
5 Article 6, Chapter 17, Title 9 of the Code of Alabama 1975;  
6 and to add a Division 2 to Article 6, Chapter 17, Title 9 of  
7 the Code of Alabama 1975, commencing with Section 9-17-160, to  
8 define the term "pore space"; to provide that the possessory  
9 right to pore space below surface real property is vested in  
10 the surface owners and may be separately conveyed; to further  
11 provide the circumstances under which a proposed carbon  
12 dioxide storage facility may receive approval to operate from  
13 the State Oil and Gas Board; to provide that the board may  
14 amalgamate storage rights for a carbon dioxide storage  
15 facility under certain circumstances; to create the  
16 Underground Carbon Dioxide Storage Facility Administrative  
17 Fund to be used by the board in monitoring and regulating  
18 active storage facilities; to create the Underground Carbon  
19 Dioxide Storage Facility Trust Fund to be used by the board in  
20 long-term monitoring and management of closed storage  
21 facilities; to create a certificate of project closure and  
22 completion and provide for its issuance and implications; to  
23 authorize the Commissioner of Conservation and Natural  
24 Resources to lease pore space of certain lands for underground  
25 storage of carbon dioxide; and to further provide for the  
26 board's rulemaking authority.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

28           Section 1. Sections 9-17-150, 9-17-151, 9-17-152,



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29 9-17-153, 9-17-154, 9-17-155, 9-17-156, and 9-17-157, Code of  
30 Alabama 1975, shall be designated as Division 1 of Article 6,  
31 Chapter 17, Title 9 of the Code of Alabama 1975.

32 Section 2. Division 2 is added to Article 6 of Chapter  
33 17, Title 9 of the Code of Alabama 1975, commencing with  
34 Section 9-17-160, to read as follows:

35 Division 2.

36 §9-17-160

37 For the purposes of this division, the term "pore  
38 space" means subsurface space that can be used for the  
39 geologic storage or sequestration of carbon dioxide and  
40 incidental substances that are part of the carbon dioxide  
41 capture, transportation, or storage process.

42 §9-17-161

43 (a) The ownership of pore space in all strata below the  
44 surface lands and waters of this state is vested in the owners  
45 of the surface rights above the underlying strata where the  
46 pore space exists, unless the ownership interest in the pore  
47 space has previously been severed from the surface ownership  
48 or is explicitly excluded or reserved in a conveyance.

49 (b) A conveyance of the surface ownership of real  
50 property shall be a conveyance of the pore space in all strata  
51 below the surface of the real property unless the ownership  
52 interest in the subsurface pore space has previously been  
53 severed from the surface ownership or is explicitly excluded  
54 or reserved in the conveyance. The ownership of pore space in  
55 strata may be conveyed in the manner provided by law for the  
56 transfer of surface interests in real property.



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57 (c) No previous agreement conveying or reserving oil,  
58 gas, or other mineral interests in real property shall act to  
59 convey or reserve ownership of any pore space or carbon  
60 dioxide storage rights in the stratum unless the agreement  
61 explicitly conveys or reserves subsurface space to be used for  
62 the geologic storage or sequestration or carbon dioxide.

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

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

76 (f) Nothing in this section shall alter, amend,  
77 diminish, or invalidate any right to the use of pore space  
78 that was acquired by contract or lease prior to October 1,  
79 2024.

80 (g) In considering approving a storage facility to be  
81 used for the storage and sequestration of carbon dioxide  
82 pursuant to this division, the board shall consider both of  
83 the following:

84 (1) Any competing rights of all separately owned



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85 estates in lands potentially affected by the storage facility,  
86 giving due consideration of competing rights as to existing or  
87 future uses by pore space, surface, and mineral owners that  
88 may be affected.

89 (2) The distance of the storage facility from any  
90 current or future underground mining operation or other  
91 underground operation designed and operated for the extraction  
92 of minerals and the potential impact on the safety of these  
93 operations.

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

99 §9-17-162

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

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

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

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



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113 (4) Upon a storage operator obtaining the consent of  
114 persons that own not less than 66 and two-thirds percent of a  
115 storage facility's pore space and storage rights for carbon  
116 dioxide, the board, after providing notice and a public  
117 hearing, may enter an order to amalgamate and pool the pore  
118 space and storage rights for carbon dioxide owned by  
119 non-consenting owners into the storage facility on terms that  
120 are just and 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 (6) A storage operator shall use commercially  
125 reasonable efforts to limit the adverse surface-use impact  
126 upon the lands of non-consenting owners of a storage  
127 facility's pore space and storage rights.

128 (7) A storage operator seeking approval to operate in  
129 the Blue Creek or Mary Lee coal seams in Jefferson,  
130 Tuscaloosa, or Walker counties or within a 10-mile radius of  
131 any coal mine operation shall obtain the written consent of  
132 the coal mine operator and mineral owner with an operation or  
133 mineral interest in such seams or within such radius;  
134 provided, however, that such consent shall not be unreasonably  
135 withheld or delayed.

136 §9-17-163

137 (a) (1) The Underground Carbon Dioxide Storage Facility  
138 Administrative Fund is created in the State Treasury. The fund  
139 shall consist of all administrative fees for the geologic  
140 storage of carbon dioxide as determined by the board pursuant



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141 to Section 9-17-151(d).

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

146 (3) Monies in the fund shall be invested by the State  
147 Treasurer for the sole benefit of the fund and in a manner to  
148 obtain the highest return possible while preserving the  
149 principal. Any interest earned on the fund shall be deposited  
150 into the fund.

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

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

163 (2) The fund shall consist of any fees levied by the  
164 board pursuant to 9-17-151(d) and all monies received by the  
165 board to measure, monitor, and verify underground carbon  
166 dioxide storage facilities following the plugging and  
167 abandonment of all injection wells in accordance with board  
168 rules, issuance of a certificate of project closure and



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169 completion, and release of all financial assurance instruments  
170 for a storage facility. The board shall adopt rules as  
171 necessary to collect monies for the fund in an amount  
172 reasonably calculated to pay the costs of measuring,  
173 monitoring, and verifying the sites.

174 (3) Monies in the fund shall only be used for the  
175 following purposes:

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

178 b. Remediation of mechanical problems associated with  
179 remaining wells and infrastructure.

180 c. Plugging and abandoning monitoring wells.

181 d. All costs associated with the release of carbon  
182 dioxide from underground carbon dioxide storage facilities  
183 following the issuance by the board of a certificate of  
184 project closure and completion and release of financial  
185 assurance instruments.

186 e. Other operations and activities deemed necessary by  
187 the board or the State Oil and Gas Supervisor to protect  
188 underground sources of drinking water and for public health  
189 and safety following the issuance of a certificate of project  
190 closure and completion by the board and release of all  
191 financial assurance instruments.

192 (4) Monies in the fund shall be invested by the State  
193 Treasurer for the sole benefit of the fund and in a manner to  
194 obtain the highest return possible while preserving the  
195 principal. Any interest earned on the fund shall be deposited  
196 into the fund.





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

207           §9-17-164

208           (a) A storage operator has title to all carbon dioxide  
209 injected and stored in a storage facility. A storage operator  
210 is liable for any damages attributed to its operations while  
211 holding title to the injected carbon dioxide.

212           (b) Upon all carbon dioxide injections into a storage  
213 facility ending and application by a storage facility  
214 operator, the board may issue a certificate of project closure  
215 and completion for the storage facility.

216           (c) A certificate of project closure and completion  
217 shall only be issued after all of the following have been  
218 satisfied:

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

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

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



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

227 a. The storage facility is in full compliance with all  
228 governing laws and rules.

229 b. The storage facility is reasonably expected to  
230 retain the carbon dioxide.

231 c. The carbon dioxide in the storage facility is  
232 stable. For purposes of this paragraph, carbon dioxide is  
233 stable if it is essentially stationary or, if it is migrating  
234 or may migrate, migration is unlikely to cross the underground  
235 reservoir boundary and is not expected to endanger any  
236 underground source of drinking water.

237 d. All wells, equipment, and facilities to be used in  
238 the post-closure period are in good condition and retain  
239 mechanical integrity.

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

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

246 (1) Title to equipment and facilities necessary for  
247 long-term monitoring and all carbon dioxide injected into the  
248 storage facility, without payment of any compensation, shall  
249 transfer to the state. Title acquired by the state includes  
250 all rights and interests in, and all responsibilities and  
251 liabilities associated with, all equipment and facilities used  
252 for long-term monitoring and the stored carbon dioxide within



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253 the storage facility. A storage operator may not transfer to  
254 the state, and the state may not accept, any property  
255 interests or rights that the storage operator does not own or  
256 have the authority to transfer.

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

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

262 (4) Monitoring and managing the storage facility shall  
263 become the responsibility of the state and be administered by  
264 the board unless an agency of the federal government assumes  
265 responsibility for the long-term monitoring and management of  
266 the storage facility.

267 §9-17-165

268 The Commissioner of Conservation and Natural Resources,  
269 on behalf of this state, is authorized to lease pore space for  
270 any lands under the jurisdiction of the Department of  
271 Conservation and Natural Resources for underground storage of  
272 carbon dioxide on, in, and under such lands.

273 §9-17-166

274 The board may adopt rules as necessary to implement and  
275 administer this division.

276 Section 3. This act shall become effective on October  
277 1, 2024.



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 09-Apr-24, as amended.

John Treadwell  
Clerk

Senate

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**02-May-24**

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Passed