

HB327 INTRODUCED



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



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SYNOPSIS:

Under existing law, subsurface minerals may be separately conveyed from the overlying land and waters.

This bill would provide that the possessory right to pore space below surface real property is vested in the surface owners and may be separately conveyed.

Also under existing law, the State Oil and Gas Board regulates the underground storage of carbon oxides, including carbon dioxide.

This bill would further provide the circumstances under which a proposed carbon dioxide storage facility may receive the board's approval to operate.

This bill would provide that the board may amalgamate storage rights for a carbon dioxide storage facility under certain circumstances.

This bill would create the Underground Carbon Dioxide Storage Facility Administrative Fund to be used by the board in monitoring and regulating active storage facilities.

This bill would 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.



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29 This bill would provide for the issuance of a
30 certificate of project closure and completion by the
31 board to a carbon dioxide storage facility operator and
32 the certificate's implications.

33 Also under existing law, the Commissioner of
34 Conservation and Natural Resources may lease certain
35 state lands for various oil and gas uses.

36 This bill would authorize the commissioner to
37 lease pore space of certain state lands for underground
38 storage of carbon dioxide.

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A BILL

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TO BE ENTITLED

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AN ACT

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45 Relating to geologic storage; to designate Sections
46 9-17-150, 9-17-151, 9-17-152, 9-17-153, 9-17-154, 9-17-155,
47 9-17-156, and 9-17-157, Code of Alabama 1975, as Division 1 of
48 Article 6, Chapter 17, Title 9 of the Code of Alabama 1975;
49 and to add a Division 2 to Article 6, Chapter 17, Title 9 of
50 the Code of Alabama 1975, commencing with Section 9-17-160, to
51 define the term "pore space"; to provide that the possessory
52 right to pore space below surface real property is vested in
53 the surface owners and may be separately conveyed; to further
54 provide the circumstances under which a proposed carbon
55 dioxide storage facility may receive approval to operate from
56 the State Oil and Gas Board; to provide that the board may



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57 amalgamate storage rights for a carbon dioxide storage
58 facility under certain circumstances; to create the
59 Underground Carbon Dioxide Storage Facility Administrative
60 Fund to be used by the board in monitoring and regulating
61 active storage facilities; to create the Underground Carbon
62 Dioxide Storage Facility Trust Fund to be used by the board in
63 long-term monitoring and management of closed storage
64 facilities; to create a certificate of project closure and
65 completion and provide for its issuance and implications; to
66 authorize the Commissioner of Conservation and Natural
67 Resources to lease pore space of certain lands for underground
68 storage of carbon dioxide; and to further provide for the
69 board's rulemaking authority.

70 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

71 Section 1. Sections 9-17-150, 9-17-151, 9-17-152,
72 9-17-153, 9-17-154, 9-17-155, 9-17-156, and 9-17-157, Code of
73 Alabama 1975, shall be designated as Division 1 of Article 6,
74 Chapter 17, Title 9 of the Code of Alabama 1975.

75 Section 2. Division 2 is added to Article 6 of Chapter
76 17, Title 9 of the Code of Alabama 1975, commencing with
77 Section 9-17-160, to read as follows:

78 Division 2.

79 §9-17-160

80 For the purposes of this division, the term "pore
81 space" means subsurface space that can be used for the
82 geologic storage or sequestration of carbon dioxide and
83 incidental substances that are part of the carbon dioxide
84 capture, transportation, or storage process.



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85 §9-17-161

86 (a) The ownership of pore space in all strata below the
87 surface lands and waters of this state is vested in the owners
88 of the surface rights above the underlying strata where the
89 pore space exists, unless the ownership interest in the pore
90 space has previously been severed from the surface ownership
91 or is explicitly excluded or reserved in a conveyance.

92 (b) A conveyance of the surface ownership of real
93 property shall be a conveyance of the pore space in all strata
94 below the surface of the real property unless the ownership
95 interest in the subsurface pore space has previously been
96 severed from the surface ownership or is explicitly excluded
97 or reserved in the conveyance. The ownership of pore space in
98 strata may be conveyed in the manner provided by law for the
99 transfer of surface interests in real property.

100 (c) No previous agreement conveying or reserving oil,
101 gas, or other mineral interests in real property shall act to
102 convey or reserve ownership of any pore space or carbon
103 dioxide storage rights in the stratum unless the agreement
104 explicitly conveys or reserves subsurface space to be used for
105 the geologic storage or sequestration or carbon dioxide.

106 (d) No agreement conveying the right to use or occupy a
107 storage facility, pore space, and potentially the surface or
108 subsurface of the land incident thereto shall convey any other
109 right of real property use, including oil, gas, or other
110 minerals within the same instrument. Any agreement that
111 violates this subsection is void; provided, however, this
112 subsection shall not apply to any agreement executed before



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113 October 1, 2024.

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

119 (f) Nothing in this section shall alter, amend,
120 diminish, or invalidate any right to the use of pore space
121 that was acquired by contract or lease prior to October 1,
122 2024.

123 (g) In considering approving the use of an underground
124 reservoir as a storage facility for the storage and
125 sequestration of carbon dioxide pursuant to this division, the
126 board shall consider any potentially competing rights of
127 separately owned property interests to be included in the
128 storage facility, including reasonable accommodation of
129 competing rights of existing or imminent uses by pore space,
130 surface, or mineral owners that will be affected by the
131 storage facility.

132 §9-17-162

133 For a storage facility that is used for the storage
134 and sequestration of carbon dioxide, all of the following
135 shall apply:

136 (1) A storage operator shall adhere to all rules
137 adopted by the board relating to the underground storage of
138 carbon dioxide.

139 (2) A storage operator shall make a good faith effort
140 to obtain the consent of all persons that own a storage



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141 facility's pore space and storage rights for carbon dioxide.

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

145 (4) Upon a storage operator obtaining the consent of
146 persons that own not less than 60 percent of a storage
147 facility's pore space and storage rights for carbon dioxide,
148 the board, after providing notice and a public hearing, may
149 enter an order to amalgamate and pool the pore space and
150 storage rights for carbon dioxide owned by non-consenting
151 owners into the storage facility on terms that are just and
152 reasonable as determined by the board.

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

156 §9-17-163

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

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

166 (3) Monies in the fund shall be invested by the State
167 Treasurer for the sole benefit of the fund and in a manner to
168 obtain the highest return possible while preserving the



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169 principal. Any interest earned on the fund shall be deposited
170 into the fund.

171 (4) The fund shall be paid out only by warrant of the
172 Comptroller upon the State Treasury, upon itemized vouchers,
173 approved by the State Oil and Gas Supervisor; provided, that
174 no funds shall be withdrawn or expended except as budgeted and
175 allotted according to the provisions of Sections 41-4-80
176 through 41-4-96 and Sections 41-19-1 through 41-19-12, and
177 only in amounts as stipulated in the general appropriation or
178 other appropriation bills; provided further, that any funds
179 unspent and unencumbered at the end of any state fiscal year
180 shall not be transferred into the State General Fund.

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

183 (2) The fund shall consist of any fees levied by the
184 board pursuant to 9-17-151(d) and all monies received by the
185 board to measure, monitor, and verify underground carbon
186 dioxide storage facilities following the plugging and
187 abandonment of all injection wells in accordance with board
188 rules, issuance of a certificate of project closure and
189 completion, and release of all financial assurance instruments
190 for a storage facility. The board shall adopt rules as
191 necessary to collect monies for the fund in an amount
192 reasonably calculated to pay the costs of measuring,
193 monitoring, and verifying the sites.

194 (3) Monies in the fund shall only be used for the
195 following purposes:

196 a. Testing, monitoring, and long-term inspection of



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197 underground carbon dioxide storage facilities.

198 b. Remediation of mechanical problems associated with
199 remaining wells and infrastructure.

200 c. Plugging and abandoning monitoring wells.

201 d. All costs associated with the release of carbon
202 dioxide from underground carbon dioxide storage facilities
203 following the issuance by the board of a certificate of
204 project closure and completion and release of financial
205 assurance instruments.

206 e. Other operations and activities deemed necessary by
207 the board or the State Oil and Gas Supervisor to protect
208 underground sources of drinking water and for public health
209 and safety following the issuance of a certificate of project
210 closure and completion by the board and release of all
211 financial assurance instruments.

212 (4) Monies in the fund shall be invested by the State
213 Treasurer for the sole benefit of the fund and in a manner to
214 obtain the highest return possible while preserving the
215 principal. Any interest earned on the fund shall be deposited
216 into the fund.

217 (5) The fund shall be paid out only by warrant of the
218 Comptroller upon the State Treasury, upon itemized vouchers,
219 approved by the State Oil and Gas Supervisor; provided, that
220 no funds shall be withdrawn or expended except as budgeted and
221 allotted according to the provisions of Sections 41-4-80
222 through 41-4-96 and Sections 41-19-1 through 41-19-12, and
223 only in amounts as stipulated in the general appropriation or
224 other appropriation bills; provided further, that any funds



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225 unspent and unencumbered at the end of any state fiscal year
226 shall not be transferred into the State General Fund.

227 §9-17-164

228 (a) A storage operator has title to all carbon dioxide
229 injected and stored in a storage facility. A storage operator
230 is liable for any damages attributed to its operations while
231 holding title to the injected carbon dioxide.

232 (b) Upon all carbon dioxide injections into a storage
233 facility ending and application by a storage facility
234 operator, the board may issue a certificate of project closure
235 and completion for the storage facility.

236 (c) A certificate of project closure and completion
237 shall only be issued after all of the following have been
238 satisfied:

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

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

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

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

247 a. The storage facility is in full compliance with all
248 governing laws and rules.

249 b. The storage facility is reasonably expected to
250 retain the carbon dioxide.

251 c. The carbon dioxide in the storage facility is
252 stable. For purposes of this paragraph, carbon dioxide is



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253 stable if it is essentially stationary or, if it is migrating
254 or may migrate, migration is unlikely to cross the underground
255 reservoir boundary and is not expected to endanger any
256 underground source of drinking water.

257 d. All wells, equipment, and facilities to be used in
258 the post-closure period are in good condition and retain
259 mechanical integrity.

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

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

266 (1) Title to equipment and facilities necessary for
267 long-term monitoring and all carbon dioxide injected into the
268 storage facility, without payment of any compensation, shall
269 transfer to the state. Title acquired by the state includes
270 all rights and interests in, and all responsibilities and
271 liabilities associated with, all equipment and facilities used
272 for long-term monitoring and the stored carbon dioxide within
273 the storage facility. A storage operator may not transfer to
274 the state, and the state may not accept, any property
275 interests or rights that the storage operator does not own or
276 have the authority to transfer.

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

280 (3) The storage operator shall be released from all



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281 bonds and other security posted by the storage operator.

282 (4) Monitoring and managing the storage facility shall
283 become the responsibility of the state and be administered by
284 the board unless an agency of the federal government assumes
285 responsibility for the long-term monitoring and management of
286 the storage facility.

287 §9-17-165

288 The Commissioner of Conservation and Natural Resources,
289 on behalf of this state, is authorized to lease pore space for
290 any lands under the jurisdiction of the Department of
291 Conservation and Natural Resources for underground storage of
292 carbon dioxide on, in, and under such lands.

293 §9-17-166

294 The board may adopt rules as necessary to implement and
295 administer this division.

296 Section 3. This act shall become effective on October
297 1, 2024.