

# A Bill

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## For An Act To Be Entitled

AN ACT CONCERNING THE TRANSPORTATION AND UNDERGROUND  
STORAGE OF CARBON DIOXIDE; AND FOR OTHER PURPOSES.

### Subtitle

THE ARKANSAS CARBON DIOXIDE STORAGE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 15, Chapter 72 is amended to add an additional subchapter to read as follows:*

*Subchapter 11 – Carbon Dioxide Storage*

*15-72-1101. Title.*

*This subchapter shall be known and may be cited as the “Arkansas Carbon Dioxide Storage Act”.*

1       15-72-1102. Legislative finding.

2       (a) The General Assembly finds that:

3               (1) Carbon dioxide is a substance that occurs naturally in the  
4 environment as a result of biological processes and that exists as a gas at  
5 standard temperature and pressure;

6               (2) Carbon dioxide is released during combustion of any material  
7 that contains carbon including coal, natural gas, oil, and wood, all of which  
8 exist in abundance and the production and use of which is one of the  
9 foundations of our state's economy;

10              (3) Carbon dioxide is currently being released into the  
11 atmosphere in substantial volumes through the combustion of such materials as  
12 coal, natural gas, oil, and wood;

13              (4) For many years, technologies for the injection, use, and  
14 storage of carbon dioxide in underground geologic formations have been  
15 developed and successfully used for the extraction of underground natural  
16 resources such as oil and natural gas;

17              (5) The storage of carbon dioxide in underground geologic  
18 formations may be an effective means for reducing the release of carbon  
19 dioxide into the atmosphere from anthropogenic sources;

20              (6) The transportation and storage of carbon dioxide in  
21 underground geological formations and for beneficial use or reuse in  
22 industrial and commercial applications is expected to increase in the United  
23 States and in Arkansas due to initiatives by federal, state, and local  
24 governments, industry and commerce, and other interested persons and may  
25 present an opportunity for economic growth and development for the state; and

26              (7) The United States Environmental Protection Agency is moving  
27 forward with regulations that may require industry to address carbon dioxide  
28 emissions, and recent federal regulatory developments, including the United  
29 States Environmental Protection Agency Underground Injection Control Program  
30 for Carbon Dioxide Geologic Sequestration Wells, make it prudent and  
31 appropriate to allow for the transportation of carbon dioxide and the storage  
32 of carbon dioxide in underground geologic formations as an alternative to its  
33 release into the atmosphere.

34       (b) The General Assembly also finds that:

35              (1) The transportation and storage of carbon dioxide will  
36 benefit the citizens of the state by reducing carbon dioxide emissions;

1           (2) Carbon dioxide may have potential for use in other  
2 industrial and commercial processes and applications;

3           (3) Transportation and storage of carbon dioxide may allow for  
4 the orderly withdrawal and use or reuse as appropriate or necessary, thereby  
5 allowing carbon dioxide to be available for commercial, industrial, or other  
6 uses, including the use of carbon dioxide for enhanced recovery of oil and  
7 gas;

8           (4) The protection of private property rights and interests are  
9 essential and may be impacted by the underground storage of carbon dioxide;

10           (5) It is the public policy of this state and the purpose of  
11 this subchapter to provide for a coordinated statewide program for the  
12 transportation and storage of carbon dioxide in underground geological  
13 formations and also to fulfill the state's primary responsibility for  
14 ensuring compliance with the federal Safe Drinking Water Act, 42 U.S.C. §  
15 300f et seq., including recent regulations concerning the underground  
16 injection of carbon dioxide; and

17           (6). The risks and technology for the injection of carbon dioxide  
18 on a commercial scale are not entirely known and in the development stage  
19 with only pilot projects being completed and as such there is sufficient time  
20 for the legislature to study all issues associated with this matter.

21           (c) The General Assembly further finds that:

22           (1) Liability issues surrounding long-term storage of carbon  
23 dioxide must be addressed in order to encourage the development of projects  
24 under this subchapter; and

25           (2) Liability insurance is a key component of the injury  
26 compensation structure contemplated in this subchapter.

27  
28           15-72-1103. Definitions.

29           As used in this subchapter:

30           (1) "Carbon dioxide" means naturally occurring, geologically  
31 sourced, or anthropogenically sourced carbon dioxide, including without  
32 limitation its derivatives and all mixtures, combinations, and phases of  
33 carbon dioxide, whether liquid or gaseous, stripped, segregated, or divided  
34 from any other fluid stream, material, or substance;

35           (2)(A) "Carbon dioxide transmission pipeline" means a pipeline,  
36 a compressor, a meter and associated equipment and appurtenances used for the

1 purpose of transporting carbon dioxide in this state for underground storage  
2 in this state or another state.

3 (B) "Carbon dioxide transmission pipeline" does not  
4 include carbon capture equipment located at the generator of the carbon  
5 dioxide or a pipeline that is part of a storage facility;

6 (3) "Oil or gas" means oil, natural gas, coalbed methane, or gas  
7 condensate;

8 (4) "Person" means an individual, corporation, company, firm,  
9 partnership, association, trust, joint-stock company or trust, venture,  
10 municipal, state, or federal government or agency, or any other legal entity,  
11 however organized;

12 (5) "Reservoir" means that portion of any underground geologic  
13 stratum, formation, aquifer, cavity, or void, whether natural or artificially  
14 created, including without limitation oil and gas reservoirs, salt domes, or  
15 other saline formations, oil and gas formations, or coal and coalbed methane  
16 seams that are suitable for or capable of being made suitable for the  
17 injection and storage of carbon dioxide;

18 (6) "Storage" means the placement and long-term or short-term  
19 underground storage of carbon dioxide in a reservoir; and

20 (7)(A) "Storage facility" means the reservoir, the underground  
21 equipment and pipelines internal to the storage operation, storage wells,  
22 monitoring wells, and surface buildings and equipment utilized in the storage  
23 operation, including pipelines owned or operated by the storage operator used  
24 to transport carbon dioxide from one (1) or more capture facilities or  
25 sources to the storage and injection site or sites.

26 (B) "Storage facility" does not include carbon capture  
27 equipment located at the generator of the carbon dioxide.

28  
29 15-72-1104. Authority to Accept

30 (a) The Arkansas Public Service Commission may prescribe, enforce, and  
31 implement safety standards for carbon dioxide transmission pipelines subject  
32 to this subchapter in accordance with and to the extent that the pipelines  
33 are subject to the Arkansas Natural Gas Pipeline Safety Act of 1971, § 23-15-  
34 201 et seq.

35 (b)(1) This subchapter does not apply to:

1                   (A) The use of carbon dioxide as a part of or in  
2 conjunction with any enhanced recovery operation where the sole purpose of  
3 the project is enhanced oil, coalbed methane, brine, or natural gas recovery;  
4 or

5                   (B) A natural gas storage operation certificated by the  
6 Federal Energy Regulatory Commission or the Oil and Gas Commission.

7                   (c) This subchapter does not amend the Arkansas Water and Air  
8 Pollution Control Act, § 8-4-101 et seq.

9                   (d) This subchapter does not affect the jurisdiction of the Arkansas  
10 Pollution Control and Ecology Commission or the Arkansas Department of  
11 Environmental Quality with respect to water and air pollution control or  
12 other matters within their respective jurisdictions.

13                   (e) This subchapter does not affect the requirement that a person  
14 apply for and obtain a permit as provided by the Arkansas Water and Air  
15 Pollution Control Act, § 8-4-101 et seq.

16                   (f)(1) The Arkansas Department of Environmental Quality may administer  
17 on behalf of the state, subject to the approval of the Governor, its own  
18 program for the underground injection of carbon dioxide for the purpose of  
19 geologic sequestration within its jurisdiction in lieu of that of the United  
20 States Environmental Protection Agency under the federal Safe Drinking Water  
21 Act, 42 U.S.C. § 300f et seq., as it existed on February 1, 2011.

22                   (2) The Arkansas Department of Environmental Quality may submit  
23 to the Administrator of the United States Environmental Protection Agency an  
24 application for approval of a program that the Arkansas Department of  
25 Environmental Quality proposes to establish and administer for the  
26 underground injection of carbon dioxide for the purpose of geologic  
27 sequestration as provided in Section 1422 of the federal Safe Drinking Water  
28 Act , 42 U.S.C. § 300f et seq., as it existed on February 1, 2011.

29                   (3) The Department, the Arkansas Pollution Control & Ecology  
30 Commission and the Oil and Gas Commission may:

31                   (A) Meet the requirements of Section 1422 of the federal  
32 Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as it existed on February  
33 1, 2011, relating to the underground injection of carbon dioxide for the  
34 purpose of geologic sequestration; and

35                   (B) Enter into interagency written agreements or  
36 understandings that may be necessary or convenient for the delegation or

1 sharing of responsibility or administration relating to the underground  
2 injection of carbon dioxide for the purpose of geologic sequestration.

3 (g) No agency of state government or political subdivision of the  
4 state may regulate a facility or activity for the purpose of the  
5 transportation, storage, or withdrawal of carbon dioxide for the purpose of  
6 storage in underground geologic formations except as expressly authorized  
7 under this subchapter.

8 (h) No person or entity may construct or operate any part of a carbon  
9 dioxide storage facility without first obtaining a permit from the Arkansas  
10 Department of Environmental Quality. No authorizing permits by any state  
11 agency to proceed under this chapter or otherwise for any carbon dioxide  
12 storage facility may be issued until June 30, 2013.

13  
14 15-72-1105. Delegation of Authority

15 (a) The legislature, after the interim study named herein, may empower  
16 the proper agencies with authority to provide for a coordinated statewide  
17 program for the transportation and storage of carbon dioxide in underground  
18 geologic formations which may be determined by the legislature and  
19 implemented no later than June 30, 2013. Such agency rules may, at a  
20 minimum, address such issues as the following:

21 (1) The public necessity for a proposed storage facility or  
22 carbon dioxide transmission pipeline;

23 (2) The economic reasonableness of a proposed storage facility;

24 (3) The suitability of the location of a proposed storage  
25 facility, including its reservoir;

26 (4) The environmental impact of a proposed storage facility or  
27 carbon dioxide transmission pipeline;

28 (5) Financial requirements, including long-term financial  
29 assurance or responsibility, for the construction, operation, monitoring,  
30 closure, remediation and long-term care of a proposed storage facility;

31 (6) Public notice and comment, including the opportunity for a  
32 public hearing, on the need for a proposed storage facility or a proposed  
33 carbon dioxide transmission pipeline and on any permit to construct or  
34 operate a storage facility or carbon dioxide transmission pipeline;

1           (7) Permits to construct and operate a proposed storage facility  
2 that contain conditions reasonably necessary to protect against pollution or  
3 escape of carbon dioxide from the reservoir;

4           (8) The quality of carbon dioxide to be managed at a proposed  
5 storage facility so as to not compromise the rights of landowners, human  
6 health, the environment, or the safety and efficiency of the reservoir;

7           (9) Cooperative agreements with other states or state agencies  
8 for the purpose of regulating carbon dioxide storage facilities or carbon  
9 dioxide transmission pipelines that extend across state boundaries; and

10           (10) Civil penalties for violations of rules adopted pursuant to  
11 this subchapter.

12           (b) The Oil and Gas Commission, the Arkansas Pollution Control &  
13 Ecology Commission, and the Arkansas Department of Environmental Quality may  
14 provide a report to the House Insurance and Commerce Committee no later than  
15 June 30, 2012, describing their progress and their proposals to address the  
16 requirements of subsection (f) of 15-72-1104 and subsection (a) of this  
17 section, including without limitation each of the items enumerated in  
18 subsection (a).

19           (c) All rules and regulations adopted under this subchapter may be  
20 reviewed by the Joint Interim Insurance and Commerce Committee, and by the  
21 Joint Interim Public Health and Welfare Committee.

22           (d) Each agency named herein may propose how to address the issues  
23 cited within this subchapter to the legislature within the time frame  
24 outlined.

25  
26           15-72-1106. Ownership of reservoir and pore space.

27           (a)(1) A conveyance of the surface ownership of real property may be  
28 deemed to be a conveyance of the reservoir and pore space in all strata below  
29 the surface of the real property, except in the following circumstances:

30                   (A) The ownership interest in the reservoir and pore space  
31 has been previously severed from the surface ownership;

32                   (B) The ownership interest in the reservoir and pore space  
33 has been explicitly reserved from the conveyance of the surface ownership; or

34                   (C) The ownership interest in the reservoir and pore space  
35 has been implicitly reserved from the conveyance of the surface ownership by

1 the placement of a restriction or limitation on the use of the surface  
 2 estate.

3 (2)(A) A conveyance of the surface only in an original severance  
 4 deed may be sufficient to reserve to the grantor the reservoir and pore  
 5 space.

6 (B) A conveyance or reservation of coal, oil, gas, coalbed  
 7 methane, and other minerals may not be sufficient as a conveyance or  
 8 reservation of the reservoir and pore space.

9 (b) If, notwithstanding subsection (a) of this section, prior  
 10 agreements and conveyances remain uncertain as to the ownership of the  
 11 reservoir and pore space, ownership of the reservoir and pore space in the  
 12 strata below the surface is vested in the owner of the surface above the  
 13 strata.

14 (c) This section is not intended to change, impinge upon, or impair  
 15 any existing rights to store underground, extract, mine or otherwise produce  
 16 coal, oil, gas, coalbed methane, or other mineral interests, including rights  
 17 under the Underground Storage of Gas Law, § 15-72-601 et seq., or to prevent  
 18 any party from asserting adverse possession of the reservoir and pore space."

19  
 20 SECTION 2. Do. Not Codify. The Utilities Subcommittee of the House  
 21 Insurance and Commerce Committee may study and review:

22 (1) The impact of the underground storage of carbon dioxide on  
 23 private property rights and interests;

24 (2) The use of available legal mechanisms for the amalgamation  
 25 of property rights necessary for the orderly development of carbon dioxide  
 26 storage facilities;

27 (3) Liability of carbon dioxide storage facility operators,  
 28 carbon dioxide transmission pipeline operators, generators of carbon dioxide  
 29 that has been injected into a carbon dioxide storage facility, and other  
 30 persons with interests in a carbon dioxide storage facility upon completion  
 31 of injection operations;

32 (4) The use of financial mechanisms or instruments for payment  
 33 of the costs of long term monitoring, maintenance, remediation and liability  
 34 claims associated with carbon dioxide storage facilities;

35 (5) The availability of liability insurance as components of a  
 36 state program to ensure that there are adequate funds to provide for the safe



1 and secure storage of carbon dioxide, to address conditions that pose a  
2 threat to human health and the environment; and to compensate landowners and  
3 others who may suffer damages as a result of carbon dioxide storage  
4 activities, for as long as carbon dioxide is stored underground;

5 (6) The manner in which private property owners whose lands may  
6 be acquired and used for carbon dioxide storage, and other interested persons  
7 will be notified of any and all regulatory proceedings related to the storage  
8 of carbon dioxide; and

9 (7) Reforms to existing laws that may be necessary to facilitate  
10 carbon dioxide storage, which will impact the landowners whose property may  
11 be utilized for carbon dioxide storage, and to protect human health and the  
12 environment from the potential adverse effects that may occur as a result of  
13 carbon dioxide storage.

14 /s/Barnett

15  
16 Referred by the Arkansas House of Representatives

17 Prepared by: MGF/VJF

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