

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H3/15/11 H3/17/11 S3/29/11*

2 88th General Assembly

A Bill

3 Regular Session, 2011

HOUSE BILL 1450

4

5 By: Representatives Barnett, Carnine, Jean, Hickerson, Clemmer, T. Bradford, Allen, Ingram, Lea,
6 McLean, Nickels, Patterson, Pierce, Rice, Slinkard, Shepherd, Stubblefield, Summers, Vines, Wardlaw,
7 Westerman, B. Wilkins, D. Altes, Bell, Benedict, Biviano, Branscum, J. Brown, J. Burris, Catlett,
8 Cheatham, Collins, Collins-Smith, L. Cowling, Dale, Deffenbaugh, English, Eubanks, Fielding, Garner,
9 Hall, Hammer, Harris, Hobbs, Hopper, Hubbard, D. Hutchinson, Hyde, Johnston, Kerr, King, Lampkin,
10 Lenderman, Linck, Lindsey, S. Malone, Mauch, Mayberry, McCrary, D. Meeks, S. Meeks, Murdock, B.
11 Overbey, Perry, Powers, J. Roebuck, T. Rogers, Sanders, G. Smith, Steel, T. Steele, Stewart, H. Wilkins,
12 Woods, Word, Wren, Wright

13 By: Senators S. Harrelson, J. Hutchinson, J. Dismang, G. Jeffress, J. Jeffress, B. Pritchard, J. Taylor, B.
14 Sample, Bledsoe, Whitaker, M. Lamoureux, D. Wyatt, Files

15

16

For An Act To Be Entitled

17

AN ACT CONCERNING THE TRANSPORTATION AND UNDERGROUND

18

STORAGE OF CARBON DIOXIDE; AND FOR OTHER PURPOSES.

19

20

21

Subtitle

22

THE ARKANSAS CARBON DIOXIDE STORAGE ACT.

23

24

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

26

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

29 *Subchapter 11 – Carbon Dioxide Storage*

30

31 *15-72-1101. Title.*

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

34

35 *15-72-1102. Legislative finding.*

36 *(a) The General Assembly finds that:*



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

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

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

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

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

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

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

32 (b) The General Assembly also finds that:

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

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

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

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

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

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

19 (c) The General Assembly further finds that:

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

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

25
26 15-72-1103. Definitions.

27 As used in this subchapter:

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

33 (2)(A) "Carbon dioxide transmission pipeline" means a pipeline,
34 a compressor, a meter and associated equipment and appurtenances used for the
35 purpose of transporting carbon dioxide in this state for underground storage
36 in this state or another state.

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

4 (3) "Oil or gas" means oil, natural gas, coalbed methane, or gas
5 condensate;

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

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

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

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

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

26
27 15-72-1104. Authority to Accept

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

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

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

1 or

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

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

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

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

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

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

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

28 (A) Meet the requirements of Section 1422 of the federal
29 Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as it existed on February
30 1, 2011, relating to the underground injection of carbon dioxide for the
31 purpose of geologic sequestration; and

32 (B) Enter into interagency written agreements or
33 understandings that may be necessary or convenient for the delegation or
34 sharing of responsibility or administration relating to the underground
35 injection of carbon dioxide for the purpose of geologic sequestration.

36 (g) No agency of state government or political subdivision of the

1 state may regulate a facility or activity for the purpose of the
2 transportation, storage, or withdrawal of carbon dioxide for the purpose of
3 storage in underground geologic formations except as expressly authorized
4 under this subchapter.

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

10
11 15-72-1105. Delegation of Authority

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

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

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

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

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

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

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

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

35 (8) The quality of carbon dioxide to be managed at a proposed
36 storage facility so as to not compromise the rights of landowners, human

1 health, the environment, or the safety and efficiency of the reservoir;

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

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

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

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

17 (d) Each agency named herein may propose how to address the issues
18 cited within this subchapter to the legislature within the time frame
19 outlined.

20
21 15-72-1106. Ownership of reservoir and pore space.

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

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

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

29 (C) The ownership interest in the reservoir and pore space
30 has been implicitly reserved from the conveyance of the surface ownership by
31 the placement of a restriction or limitation on the use of the surface
32 estate.

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

36 (B) A conveyance or reservation of coal, oil, gas, coalbed

1 methane, and other minerals may not be sufficient as a conveyance or
2 reservation of the reservoir and pore space.

3 (b) If, notwithstanding subsection (a) of this section, prior
4 agreements and conveyances remain uncertain as to the ownership of the
5 reservoir and pore space, ownership of the reservoir and pore space in the
6 strata below the surface is vested in the owner of the surface above the
7 strata.

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

13
14 SECTION 2. Do. Not Codify. The Utilities Subcommittee of the House
15 Insurance and Commerce Committee may study and review:

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

18 (2) The use of available legal mechanisms for the amalgamation
19 of property rights necessary for the orderly development of carbon dioxide
20 storage facilities;

21 (3) Liability of carbon dioxide storage facility operators,
22 carbon dioxide transmission pipeline operators, generators of carbon dioxide
23 that has been injected into a carbon dioxide storage facility, and other
24 persons with interests in a carbon dioxide storage facility upon completion
25 of injection operations;

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

29 (5) The availability of liability insurance as components of a
30 state program to ensure that there are adequate funds to provide for the safe
31 and secure storage of carbon dioxide, to address conditions that pose a
32 threat to human health and the environment; and to compensate landowners and
33 others who may suffer damages as a result of carbon dioxide storage
34 activities, for as long as carbon dioxide is stored underground;

35 (6) The manner in which private property owners whose lands may
36 be acquired and used for carbon dioxide storage, and other interested persons

1 will be notified of any and all regulatory proceedings related to the storage
2 of carbon dioxide; and

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

8 /s/Barnett

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