

By: Senator(s) Dearing, Montgomery

To: Oil, Gas and Other Minerals

SENATE BILL NO. 2723

1 AN ACT TO CREATE THE MISSISSIPPI GEOLOGIC SEQUESTRATION OF
2 CARBON DIOXIDE ACT; TO ARTICULATE LEGISLATIVE INTENT; TO ENACT
3 DEFINITIONS; TO SPECIFY DUTIES AND POWERS OF THE OIL AND GAS BOARD
4 IN RESPECT TO GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE; TO REQUIRE
5 BOARD APPROVAL FOR USE OF A RESERVOIR FOR CARBON DIOXIDE STORAGE;
6 AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** The following shall be codified as Section
9 53-11-1, Mississippi Code of 1972:

10 53-11-1. **Short title.** This chapter shall be known and may
11 be cited as the "Mississippi Geologic Sequestration of Carbon
12 Dioxide Act."

13 **SECTION 2.** The following shall be codified as Section
14 53-11-3, Mississippi Code of 1972:

15 53-11-3. **Legislative findings.** (1) It is declared to be in
16 the public interest for a public purpose and the policy of
17 Mississippi that:

18 (a) The geologic sequestration of carbon dioxide will
19 benefit the citizens of the state and the state's environment.

20 (b) Carbon dioxide is a valuable commodity to the
21 citizens of the state.

22 (c) Geologic sequestration of carbon dioxide may allow
23 for orderly withdrawal as appropriate or necessary, thereby
24 allowing carbon dioxide to be available for commercial,
25 industrial, or other uses, including the use of carbon dioxide for
26 enhanced recovery of oil and gas.



27 (d) The state has substantial and valuable oil and gas
28 reserves not producible by traditional recovery techniques, but
29 which may be producible by enhanced recovery methods.

30 (e) The enhanced recovery of oil and gas by the
31 injection of carbon dioxide into oil and gas reservoirs is a
32 proven enhanced recovery method which results in additional
33 production of oil and gas in the State of Mississippi and the
34 sequestration of carbon dioxide.

35 (f) It is for the public benefit and in the public
36 interest that the maximum amount of the state's oil and gas
37 reserves be produced to the extent that it is economically and
38 technologically feasible.

39 (g) It is for the public benefit and in the public
40 interest that, to the extent that it is economically and
41 technologically feasible, carbon dioxide be injected into and
42 stored in oil and gas reservoirs and other geologic formations.

43 (h) Providing at the election of the operator for a
44 current or former enhanced oil or gas recovery project to qualify
45 as a geologic sequestration project for the incidental storage of
46 carbon dioxide will encourage enhanced oil or gas recovery
47 projects and geologic sequestration projects and will be
48 beneficial to the citizens of this state and will serve the public
49 interest.

50 (i) Geologic sequestration of carbon dioxide is an
51 emerging industry that has the potential to provide jobs,
52 investment, and other economic opportunities for the people of
53 Mississippi, and is a valuable incentive for Mississippi to
54 attract new industry.

55 (j) It is the public policy of Mississippi and the
56 purpose of this chapter to provide for a coordinated statewide
57 program related to the geologic sequestration of carbon dioxide in
58 reservoirs defined in this chapter and to also fulfill the state's
59 primary responsibility for assuring compliance with the federal



60 Safe Drinking Water Act, including any amendments thereto related
61 to the underground injection of carbon dioxide for geologic
62 sequestration.

63 (2) The board shall have jurisdiction and authority over all
64 persons and property necessary to enforce effectively the
65 provisions of this chapter relating to the geologic sequestration
66 of carbon dioxide and subsequent withdrawal of stored carbon
67 dioxide.

68 **SECTION 3.** The following shall be codified as Section
69 53-11-5, Mississippi Code of 1972:

70 53-11-5. **Definitions.** For the purposes of this chapter, the
71 following terms shall have the meanings ascribed unless the
72 context clearly indicates otherwise:

73 (a) "Board" means the State Oil and Gas Board created
74 by 53-1-5.

75 (b) "Carbon dioxide" means: (i) naturally occurring
76 carbon dioxide, (ii) geologically sourced carbon dioxide, or (iii)
77 carbon dioxide captured from an industrial emission source, plus
78 incidental associated substances derived from the source materials
79 and the capture process that remain in the injectate after taking
80 such measures as may be required by applicable law, regulation, or
81 permit, if any, and such measures, if any, needed to satisfy
82 quality specifications of carbon dioxide transporters. The term
83 includes phases of carbon dioxide, whether fluid, liquid or
84 gaseous, stripped, segregated, or divided from any other fluid
85 stream thereof and any substances added to the stream to enable or
86 improve the transportation or injection process.

87 (c) "Enhanced oil or gas recovery project" means
88 secondary recovery, pressure maintenance, repressuring operations,
89 cycling operations, water flooding operations, injection of carbon
90 dioxide or other gaseous substances or any combination thereof, or
91 any other form of effort calculated to increase the ultimate
92 recovery of oil or gas or both from a reservoir.



93 (d) "Gas" has the same meaning as provided in Section
94 53-1-3(d).

95 (e) "Geologic sequestration" means the underground
96 storage of carbon dioxide in a reservoir. "Storage" and
97 "sequestration" for purposes of this chapter mean the same thing.

98 (f) "Geologic sequestration facility" means a facility
99 that receives and stores or sequesters carbon dioxide, or has done
100 so, including:

101 (i) The reservoir into which carbon dioxide is
102 injected;

103 (ii) Sequestration wells, monitoring wells,
104 underground equipment, and surface buildings and equipment
105 utilized in geologic sequestration, owned by or under the control
106 of the storage operator; and

107 (iii) Other property identified by the storage
108 operator as part of the facility, including pipelines.

109 The reservoir component of the geologic sequestration
110 facility includes any necessary and reasonable buffer and
111 subsurface monitoring zones designated by the board for the
112 purpose of ensuring the safe and efficient operation of the
113 geologic sequestration facility for the storage of carbon dioxide
114 and shall be chosen to protect against escape or migration of
115 carbon dioxide.

116 (g) "Oil" has the same meaning as provided in Section
117 53-1-3(c).

118 (h) "Owner," except when used in the phrases "working
119 owner" or "royalty owner," shall have its ordinary, accepted
120 meaning.

121 (i) "Person" means any natural person, corporation,
122 association, partnership, limited liability company, or other
123 entity, receiver, executor, administrator, fiduciary or
124 representative of any kind.



125 (j) "Reservoir" means that portion of any underground
126 geologic stratum, formation, or cavity or void, whether natural or
127 artificially created, including oil and gas reservoirs, formations
128 above and below oil and gas reservoirs, salt domes associated with
129 oil or gas production, and coal and coal bed methane seams
130 associated with oil or gas production, suitable for or capable of
131 being made suitable for the injection and storage of carbon
132 dioxide therein, but only those formations for which the
133 boundaries have been or can be delineated as provided in this
134 chapter. The term "reservoir" includes a "pool" or "field" as
135 defined in Section 53-1-3(e) and (f).

136 (k) "Royalty owner" means any person who possesses an
137 interest in production of oil, gas, or other commercial minerals,
138 but who is not a "working owner" as defined in this section.

139 (l) "Safe Drinking Water Act" means the Safe Drinking
140 Water Act, as amended, Title 42, Chapter 6A, Subchapter XII (42
141 USC Section 300(f) and following).

142 (m) "Sequestration" means geologic sequestration as
143 used in this chapter and may include the incidental storage of
144 carbon dioxide associated with enhanced oil recovery or gas
145 recovery project operations.

146 (n) "State" means the State of Mississippi.

147 (o) "Storage operator" means the person authorized by
148 the board to operate a geologic sequestration facility.

149 (p) "Working owner" means the person who has the right
150 to drill into and produce from any pool of oil, gas, or other
151 commercial minerals, and to appropriate the production either for
152 himself or for himself and another or others.

153 **SECTION 4.** The following shall be codified as Section
154 53-11-7, Mississippi Code of 1972:

155 53-11-7. **Duties and powers of the board; rules and**
156 **regulations; permits.** (1) The use of any reservoir for storage
157 of carbon dioxide is hereby authorized, and the board shall have



158 authority to regulate and promulgate rules and regulations
159 governing geologic sequestration of carbon dioxide and underground
160 injection wells under this chapter. Rules and regulations
161 governing injection wells for geologic sequestration not regulated
162 under the board's authority for Class II wells shall be subject to
163 approval of the Mississippi Commission on Environmental Quality
164 ("commission") to be included in a Memorandum of Agreement between
165 the board and the commission.

166 (2) The board shall have authority to:

167 (a) Approve geologic sequestration of carbon dioxide
168 and the operation of a geologic sequestration facility.

169 (b) Regulate the development and operation of geologic
170 sequestration facilities and pipelines within geologic
171 sequestration facilities, provided those pipelines serving such
172 facilities approved hereunder are not otherwise covered under
173 applicable law.

174 (c) Perform any and all acts necessary to carry out the
175 purposes and requirements of the federal Safe Drinking Water Act,
176 as amended, with respect to the sequestration of carbon dioxide
177 within reservoirs defined in this chapter.

178 (d) Approve conversion of an existing enhanced oil or
179 gas recovery operation into a geologic sequestration facility and
180 continuances of the authority and prior approvals of the board
181 regarding unit operations.

182 (e) Approve use of carbon dioxide for enhanced oil or
183 gas recovery and for simultaneous geologic sequestration.

184 (f) Establish requirements for reasonable performance
185 bonds, deposits, or other assurances of performance to be posted
186 as a condition to or requirement for approving an application by
187 the storage operator, the sufficiency and character of the surety
188 and guarantors of performance bonds, deposits, or other assurances
189 of performance and reasonable conditions under which the bonds or
190 deposits shall be released.



191 (g) Make, after notice and hearings as provided in
192 Sections 53-1-19 through 53-1-37, any reasonable rules,
193 regulations and orders that are necessary from time to time in the
194 proper administration and enforcement of this chapter. To that
195 end, the board is authorized and empowered to adopt, modify,
196 repeal and enforce procedural, interpretive and administrative
197 rules in accordance with the provisions of this chapter.

198 (3) Only a storage operator shall be held or deemed
199 responsible for the performance of any actions required by the
200 board under this chapter.

201 (4) The board shall issue such orders, rules and regulations
202 as may be necessary for the purpose of protecting any storage
203 reservoir, strata, or formations against the escape of carbon
204 dioxide therefrom, including any necessary rules and regulations
205 as may pertain to the drilling into or through the storage
206 reservoir.

207 **SECTION 5.** The following shall be codified as Section
208 53-11-9, Mississippi Code of 1972:

209 53-11-9. **Approval of reservoir storage; title to carbon**

210 **dioxide.** (1) The use of any reservoir for the storage of carbon
211 dioxide as a geologic sequestration facility is hereby authorized.
212 The board shall first enter an order, after notice and hearing
213 pursuant to the provisions of Sections 53-1-19 through 53-1-37,
214 approving any proposed geologic sequestration of carbon dioxide.
215 The board shall be authorized to issue an order upon finding the
216 following:

217 (a) That the reservoir sought to be used as a reservoir
218 for the injection, storage and withdrawal of carbon dioxide is
219 suitable and feasible for such use and in the public interest; and

220 (b) That a majority interest, as provided in this
221 chapter, have consented to such use in writing; and

222 (c) That there is no reasonable risk that the use of
223 the reservoir for the storage of carbon dioxide will injure or



224 endanger other formations containing fresh water, oil, gas or
225 other commercial mineral deposits; and

226 (d) That there is no reasonable risk that the proposed
227 storage will endanger human lives or cause a hazardous condition
228 to property; and

229 (e) In the case of a reservoir that may contain oil,
230 gas or other commercial minerals, that either:

231 (i) The reservoir has been substantially depleted
232 of all volumes of reservoir oil, gas, or other commercial minerals
233 and the requirements of Sections 53-11-11 and 53-11-13 have been
234 satisfied; or

235 (ii) The reservoir has a greater value or utility
236 as a reservoir for carbon dioxide storage than for the production
237 of the remaining volumes of reservoir oil, gas, condensate, or
238 other commercial mineral, if any and the requirements of Sections
239 53-11-11 and 53-11-13 have been satisfied.

240 Approval of a geologic sequestration facility by the board shall
241 provide full and complete authority for the construction,
242 equipping, and operation of the geologic sequestration facility
243 without need of further action or grant by any person.

244 (2) Neither injection nor an order of the board shall affect
245 ownership of the carbon dioxide or inhibit the voluntary
246 conveyance of title to the carbon dioxide by the owner. The board
247 may issue any necessary order to protect the title of an owner to
248 carbon dioxide injected into a geologic sequestration facility.
249 The carbon dioxide shall not be subject to the right of any person
250 other than the owner of the carbon dioxide to produce, take,
251 reduce to possession, or otherwise interfere with or exercise any
252 control thereover. The owner of the carbon dioxide shall have no
253 right to gas, liquid hydrocarbons, salt, or other commercial
254 minerals in any stratum or portion thereof not determined by the
255 board to constitute an approved sequestration reservoir which are
256 not otherwise owned or leased by the owner.



257 **SECTION 6.** The following shall be codified as Section
258 53-11-11, Mississippi Code of 1972:

259 53-11-11. **Protection of correlative rights.** (1) Upon
260 application by an operator to unitize for a geologic sequestration
261 facility in an oil or gas reservoir that is not unitized either
262 under this chapter or by board order under the provisions of
263 Section 53-3-103 or 53-3-155, after notice as provided in Section
264 53-3-115, the board shall hold a hearing to consider the operation
265 of the reservoir for the storage of carbon dioxide to determine
266 whether the predominant result of the injection operations will be
267 the storage of carbon dioxide or will result in an increase in the
268 ultimate recovery of oil or gas, or both, from the proposed
269 geologic sequestration facility.

270 (a) In the event the board determines from the evidence
271 that the reservoir has more value as a geologic sequestration
272 facility than as an enhanced oil or gas recovery project, the
273 board shall enter an order for the operation of the unit as a
274 geologic sequestration facility upon making the additional
275 findings set forth in Section 53-11-13.

276 (b) In the event the board determines from the evidence
277 that the predominant result of such injection operations will be
278 an increase in the ultimate recovery of oil or gas or both, then
279 the board shall not approve the application for a geologic
280 sequestration facility. However, this shall not prevent the
281 board, upon application of the operator, from approving operation
282 of an existing enhanced oil or gas recovery project simultaneously
283 as a geologic sequestration project, recognizing the incidental
284 storage of carbon dioxide under the provisions set forth in
285 Section 53-11-15(d).

286 (2) Upon application by an operator to unitize for a
287 geologic sequestration facility in any other non-oil, gas or
288 commercial mineral reservoir that needs to be unitized, after
289 notice as provided, the board shall hold a hearing to consider the



290 evidence, and shall enter an order for the operation of the
291 reservoir as a geologic sequestration facility upon making the
292 findings set forth in Sections 53-11-9(1) (a) and 53-11-13.

293 (3) An order requiring unit operations of a geologic
294 sequestration facility shall be effective only when the unit for
295 the geologic sequestration facility and the agreements
296 incorporating the pertinent provisions of Section 53-11-15 have
297 been signed, ratified, adopted or approved in writing by a
298 majority interest of the surface interest, on the basis of, and in
299 proportion to, the surface acreage content of the unit area, or,
300 if separately owned, a majority interest of all rights of the
301 subsurface reservoir, on the basis of and in proportion to the
302 surface acreage content of the unit area, and the board has made a
303 finding to that effect, either in the order or in a supplemental
304 order.

305 (4) If the board finds under Section 53-11-9(1) (e) that a
306 reservoir has been substantially depleted of commercially
307 recoverable quantities of oil or gas or other commercial minerals
308 or that such reservoir has greater utility as a reservoir for
309 carbon dioxide storage and that the remaining conditions of
310 Section 53-11-9(1) have been satisfied; or if the board finds that
311 a nonoil, gas or commercial mineral-bearing reservoir satisfies
312 the conditions of Section 53-11-9(1) (a) through (d) and all other
313 conditions the board shall require have been satisfied, the board
314 shall issue an order approving the reservoir for the injection and
315 storage of carbon dioxide in connection with operation of a
316 geologic sequestration facility. An order approving any geologic
317 sequestration facility shall be effective only when the storage
318 rights agreement has been signed, ratified, adopted or approved in
319 writing by a majority interest of the surface interest, on the
320 basis of, and in proportion to, the surface acreage content of the
321 unit area under the terms of the order; or, if separately owned, a
322 majority interest of all rights in the underground reservoir, on



323 the basis of, and in proportion to, the surface acreage content of
324 the unit area. If oil, gas, or commercial minerals are expected
325 to be produced and sold or used in connection with the geologic
326 sequestration facility in a depleted oil, gas or commercial
327 mineral-bearing reservoir, or such a reservoir that has greater
328 utility as a geologic sequestration facility, then a majority
329 interest of all working owners of such oil, gas, or commercial
330 minerals, on the basis of, and in proportion to, the surface
331 acreage content of the unit area under the terms of the order,
332 must also consent to the allocation of the production in writing
333 before an order approving the geologic sequestration facility
334 shall be effective.

335 (5) In the event the required percentages set forth above in
336 this section have not signed, ratified or approved the respective
337 agreements within twelve (12) months from and after the date of
338 the order, the order requiring unit operation shall be
339 automatically revoked.

340 **SECTION 7.** The following shall be codified as Section
341 53-11-13, Mississippi Code of 1972:

342 53-11-13. **Order requiring unit operation of a geologic**
343 **sequestration facility.** If the board finds pursuant to Section
344 53-11-9(1) that a reservoir shall be operated as a unit for a
345 geologic sequestration facility, the board may issue an order
346 requiring unit operation, if it finds that:

347 (a) Unit operation of the reservoir is reasonably
348 necessary in order to create and operate an approved geologic
349 sequestration facility in the reservoir; and

350 (b) The unit for the geologic sequestration facility
351 and the agreements effectuating same are fair and reasonable under
352 all of the circumstances and protect the rights of all interests
353 in the oil, gas, or other commercial minerals where applicable,
354 and the owners of interests in the surface acreage of the unit



355 area, and owners of interests in the carbon dioxide injected or to
356 be injected in the reservoir;

357 (c) The correlative rights of all owners of interests
358 in the oil, gas, or other commercial minerals where applicable,
359 and the owners of interests in the surface acreage of the unit
360 area, and owners of interests in the carbon dioxide injected or to
361 be injected in the reservoir will be protected;

362 (d) The cost incident to conducting the geologic
363 sequestration operation will not be borne by the royalty owners of
364 the oil, gas, or other commercial minerals except for
365 post-production treating, processing, transportation, and
366 marketing expenses when concurrent production occurs with the
367 geologic sequestration operation; and

368 (e) The storage operator or a predecessor operator of a
369 proposed sequestration facility has demonstrated the boundaries of
370 the unit as may be necessary for the board to approve the unit by
371 the drilling of wells to sufficient depths and locations, or by
372 other geological or engineering interpretations which may include
373 those from logging, coring, modeling, or monitoring.

374 **SECTION 8.** The following shall be codified as Section
375 53-11-15, Mississippi Code of 1972:

376 53-11-15. **Board order provisions.** (1) The order issued by
377 the State Oil and Gas Board shall be fair and reasonable under all
378 of the circumstances and shall protect the rights of interested
379 parties and shall include:

380 (a) A description of the geographical area and a
381 description of the reservoirs or of any portion or portions or
382 combinations thereof affected which together constitute and are
383 herein termed the "unit area" of the geologic storage facility.

384 (b) A statement of the nature of the operations
385 contemplated.

386 (c) A provision for (i) access to and use of a
387 reasonable amount of the surface area within the unit area by the



388 storage operator and his agents in connection with constructing,
389 equipping, operating, maintaining, and terminating operations of
390 the geologic sequestration facility; and (ii) payment of the
391 reasonable costs of compensable damages to the surface and
392 reasonable consideration for use of the surface area.

393 (d) If oil or gas or both are expected to be produced
394 in connection with operating a unit area as a geologic
395 sequestration facility and the reservoir is presently operating
396 under a board order obtained pursuant to the requirements of
397 Section 53-3-101 et seq., the geologic sequestration facility may
398 be operated under the existing plan of unitization approved by the
399 owners therein provided that the unit operator: (i) provides a
400 method approved by the board for winding down oil and gas
401 operations for the transition to a carbon dioxide injection only
402 operation, and (ii) obtains the approval of a majority interest of
403 the surface interest, on the basis of, and in proportion to, the
404 surface acreage content of the unit area, prior to the termination
405 of oil and gas production.

406 (e) If oil or gas or both are expected to be produced
407 in connection with operating the geologic sequestration facility
408 and the reservoir has not formerly been unitized by board order
409 under Section 53-3-101 et seq., the order shall include:

410 (i) A formula for the allocation among the
411 separately owned tracts in the geologic sequestration unit area of
412 all the oil or gas, or both, produced and saved from the geologic
413 sequestration unit area, and not required in the conduct of such
414 operation, which formula must expressly be found reasonable to
415 permit persons otherwise entitled to share in or benefit by the
416 production from such separately owned tracts to receive, in lieu
417 thereof, their fair, equitable and reasonable share of the unit
418 production. A separately owned tract's fair, equitable and
419 reasonable share of the unit production shall be that
420 proportionate part of unit production that the contributing value



421 of the tract for oil and gas purposes in the geologic
422 sequestration unit area and its contributing value to the unit
423 bears to the total of all like values of all tracts in the unit,
424 taking into account all pertinent engineering, geological and
425 operating factors that are reasonably susceptible of
426 determination.

427 (ii) A provision for adjustment among the owners
428 of the geologic sequestration unit area, not including royalty
429 owners, of their respective investment in wells, tanks, pumps,
430 machinery, materials, equipment and other things and services of
431 value attributable to the unit operations. The amount to be
432 charged to unit operations for any such item shall be determined
433 by a majority of the owners of the geologic sequestration unit
434 area and a majority of the working owners of the oil or gas, or
435 both oil and gas, interests in the geologic sequestration unit
436 area, not including royalty owners, but if the owners of the
437 geologic sequestration unit area and working owners of the oil or
438 gas, or both oil and gas, interests, not including royalty owners,
439 are unable to agree upon the amount of such charges, or to agree
440 upon the correctness thereof, the board shall determine them after
441 due notice and hearing upon the application of any interested
442 party. The amount charged against the owner of a separately owned
443 tract shall be considered expense of unit operation chargeable
444 against the tract. The adjustments provided for in this
445 subparagraph (ii) may be treated separately and handled by
446 agreements separate from the unitization agreement.

447 (iii) A provision that the costs and expenses of
448 unit operations dedicated to producing oil and gas, including
449 investment past and prospective, shall be borne by the working
450 owners of each tract, who in the absence of unit operation would
451 be responsible for the expenses of developing and operating the
452 oil and gas pools or reservoirs, in the same proportion that the
453 tracts share in unit production. Each working owner's interest in



454 the oil or gas or both expected to be produced in connection with
455 operating the geologic sequestration unit area shall be
456 responsible for the working owner's proportionate share thereof,
457 and the unit operator shall have a lien thereon to secure payment
458 of that share together with interest at the legal rate. A
459 transfer or conversion of any working owner's interest or any
460 portion thereof, however accomplished after the effective date of
461 the order creating the unit, shall not relieve the transferred
462 interest of the operator's lien on the interest for the cost and
463 expense of unit operations, past or prospective.

464 (iv) The designation of, or a provision for the
465 selection of a successor to, the storage operator.

466 (v) A provision that the conduct of all unit
467 operations by the storage operator and the selection of a
468 successor to the storage operator shall be governed by the terms
469 and provisions of the geologic sequestration facility agreements.

470 (vi) A determination of, or a provision for
471 determining, the time the oil and gas unit operation is to become
472 effective.

473 (vii) A determination of, or a provision for
474 determining, the manner in which, and the circumstances under
475 which, the unit oil and gas operation shall terminate and the
476 geologic sequestration facility will no longer be considered
477 productive of oil and gas or other commercial minerals and the
478 geologic sequestration facility will be operated solely for the
479 injection of carbon dioxide.

480 (viii) A requirement that all oil or gas, or both
481 oil and gas, contained in a unit area shall be produced and sold
482 as rapidly as possible without decreasing the ultimate recovery of
483 oil or gas, or both, or causing damage to the reservoir.

484 (2) If oil or gas or both are being produced as an enhanced
485 recovery project operating under a board order obtained pursuant
486 to the requirements of Section 53-3-101 et seq., utilizing the



487 injection of carbon dioxide for enhanced oil or gas recovery, the
488 board, upon application by the unit operator, may make an order
489 recognizing the incidental sequestration of carbon dioxide that is
490 occurring during its enhanced oil or gas recovery project without
491 requiring the project to qualify as a geologic sequestration
492 facility or otherwise be subject to the provisions of this
493 chapter.

494 **SECTION 9.** The following shall be codified as Section
495 53-11-17, Mississippi Code of 1972:

496 53-11-17. **Hearings; notice; rules of procedures; emergency;**
497 **service of process; public records; request for hearings; orders**
498 **and compliance orders.** All public hearings under this chapter
499 shall be conducted pursuant to the provisions of Sections 53-1-19
500 through 53-1-37.

501 **SECTION 10.** The following shall be codified as Section
502 53-11-19, Mississippi Code of 1972:

503 53-11-19. **Compliance and enforcement.** (1) Whenever the
504 board or an authorized representative of the board determines that
505 a violation of any requirement of this chapter has occurred or is
506 threatened, the board shall be authorized to either issue an order
507 requiring compliance within a specified time period or commence a
508 civil action for appropriate relief, including a temporary or
509 permanent injunction.

510 (2) Any compliance order issued under this chapter shall
511 state with reasonable specificity the nature of the violation and
512 specify a time for compliance and, in the event of noncompliance,
513 assess a civil penalty, if any, which the board determines is
514 reasonable of not more than Five Thousand Dollars (\$5,000.00) a
515 day for each day of violation and for each act of violation,
516 taking into account the seriousness of the violation and any good
517 faith efforts to comply with the applicable requirements.

518 (3) (a) Except as otherwise provided by law, any person to
519 whom a compliance order is issued and who fails to take corrective



520 action within the time specified in the order or any person found
521 by the board to be in violation of any requirement of this section
522 may be liable for a civil penalty to be assessed by the board or
523 court, of not more than Five Thousand Dollars (\$5,000.00) a day
524 for each day of violation and for each act of violation. The
525 board, in order to enforce the provisions of this section, may
526 suspend or revoke any permit, compliance order, license, or
527 variance that has been issued to a person in accordance with law.

528 (b) No penalty shall be assessed until the person
529 charged has been given notice and an opportunity for a hearing on
530 the charge. In determining whether a civil penalty is to be
531 assessed and in determining the amount of the penalty, or the
532 amount agreed upon in compromise, the gravity of the violation and
533 the demonstrated good faith of the person charged in attempting to
534 achieve rapid compliance, after notification of a violation, shall
535 be considered.

536 (4) The board, or Attorney General if requested by the
537 board, shall have charge of and shall prosecute all civil cases
538 arising out of violation of any provision of this section
539 including the recovery of penalties.

540 (5) Except as otherwise provided herein, the board may
541 settle or resolve as the board may deem advantageous to the state
542 any suits, disputes or claims for any penalty under any provisions
543 of this section or the regulations or permit license terms and
544 conditions applicable thereto.

545 **SECTION 11.** The following shall be codified as Section
546 53-11-21, Mississippi Code of 1972:

547 53-11-21. **Effect of acting as storage operator.** Anything in
548 this chapter, or in any rule, regulation or order issued by the
549 board under this chapter to the contrary notwithstanding, acting
550 as a storage operator pursuant to this chapter in compliance with
551 the provisions of this chapter, or with rules, regulations or
552 orders issued by the board under this chapter, or voluntarily



553 performing any act or acts which could be required by the board
554 pursuant to this chapter, or rules, regulations, or orders issued
555 by the board under this chapter, shall not:

556 (a) Cause any storage operator or transporter of carbon
557 dioxide for storage to become, or be classified as, a common
558 carrier or a public utility for any purpose whatsoever.

559 (b) Subject the storage operator or carbon dioxide
560 transporter to any duties, obligations or liabilities as a common
561 carrier or public utility, under the Constitution and laws of this
562 state.

563 **SECTION 12.** The following shall be codified as Section
564 53-11-23, Mississippi Code of 1972:

565 53-11-23. **Fees, creation of Carbon Dioxide Storage Fund.**

566 (1) The board is authorized to adopt regulations assessing
567 sequestration fees against each geologic sequestration facility
568 comprised of: (a) a per-ton fee for each ton of carbon dioxide
569 from an industrial emission source injected for storage in a
570 geologic storage facility; and (b) an annual regulatory fee for
571 geologic sequestration facilities that have not received a
572 certificate of completion of injection operations. Further, the
573 board is authorized to collect an application fee not to exceed
574 One Thousand Dollars (\$1,000.00) for each application for
575 authority under this chapter to establish a geologic sequestration
576 facility. The board shall fix the amount of these charges in the
577 first instance, and may, from time to time, change, reduce or
578 increase the amount thereof, as in its judgment the charges
579 against the fund may require, but the amounts fixed by the board
580 shall not exceed the limits prescribed in this section, and it
581 shall be the duty of the board to make collection of these
582 assessments. No such fees shall be assessed beyond the third
583 anniversary of written notice to the board from the storage
584 operator that injection of carbon dioxide at the geologic
585 sequestration facility has ceased.



586 (2) All monies collected shall be used exclusively: (a) to
587 pay the expenses and other costs connected with administration and
588 enforcement of this chapter and the rules, regulations and orders
589 of the board pursuant to this chapter; and (b) to fund the Carbon
590 Dioxide Storage Fund established in this chapter.

591 (3) At no time shall the sum of the portion of the per-ton
592 fee applied to administration and the annual regulatory fee exceed
593 a total amount of One Hundred Fifty Thousand Dollars (\$150,000.00)
594 for geologic sequestration facilities in the state in any one (1)
595 fiscal year of the board. When the total amount of these
596 sequestration fees collected in any fiscal year exceeds Fifteen
597 Thousand Dollars (\$15,000.00) more than the current fiscal year's
598 estimated budget for administration and enforcement costs of the
599 board's activities required or authorized by this chapter, the
600 amount of the excess shall be transferred to a separate special
601 fund of the State Oil and Gas Board which is hereby created and is
602 to be known as the Carbon Dioxide Storage Fund.

603 (a) The per-ton fee assessed shall not exceed Two and
604 One-half Cents (2.5¢) for each ton of carbon dioxide injected for
605 storage purposes, with fifty percent (50%) of such fee to be
606 placed in the Carbon Dioxide Storage Fund; and

607 (b) The annual regulatory fee assessed per geologic
608 sequestration facility shall not exceed an amount of One Thousand
609 Dollars (\$1,000.00). The annual regulatory fee shall be based
610 upon the annual projected costs to the board for administration
611 and enforcement connected with all geologic sequestration
612 facilities subject to this chapter.

613 (4) Transfers to the Carbon Dioxide Storage Fund from the
614 per-ton fees shall be made monthly. Transfers from excess funds
615 collected under subsection (3) of this section for administration
616 and enforcement of all geologic sequestration facilities may be
617 made at any time in the fiscal year that the board shall determine
618 appropriate. At the beginning of the following fiscal year after



619 the transfer of any excess funds, the rate to be collected under
620 subsection (3) of this section shall be reduced to reflect the
621 excess from the prior year.

622 (5) When the balance in the Carbon Dioxide Storage Fund
623 reaches or exceeds Two Million Five Hundred Thousand Dollars
624 (\$2,500,000.00) per geologic sequestration facility, the board
625 shall abate the fifty percent (50%) portion of the per-ton fee,
626 and may adjust the annual regulatory fee as prescribed herein.
627 The abatement shall be effective at the beginning of the ensuing
628 fiscal year. When the CO2 Storage Fund is reduced below Two
629 Million Five Hundred Thousand Dollars (\$2,500,000.00) per geologic
630 sequestration facility, the fifty percent (50%) portion of the
631 per-ton fee shall again be imposed on all geologic storage
632 operators until such time as the fund shall reach or exceed Two
633 Million Five Hundred Thousand Dollars (\$2,500,000.00) per geologic
634 sequestration facility. The imposition of the fifty percent (50%)
635 portion of the per-ton fee shall be effective at the beginning of
636 the ensuing fiscal year.

637 (6) Monies in the Carbon Dioxide Storage Fund created in
638 this chapter may be used in the board's discretion but only if
639 inadequate funds are available from responsible parties including
640 the financial assurance funds provided in 53-11-27(2). Monies in
641 the Carbon Dioxide Storage Fund shall only be used for oversight
642 of geologic storage facilities after cessation of injection at the
643 facility and release of the facility's performance bond or other
644 assurance of performance and as shall be necessary or appropriate
645 to satisfy the requirements of the federal Safe Drinking Water
646 Act, including, without limitation, matters with respect to closed
647 facilities such as: (a) inspecting, testing, and monitoring of
648 the facility, including remaining surface facilities and wells;
649 (b) repairing mechanical problems associated with remaining wells
650 and surface infrastructure; and (c) repairing mechanical leaks at
651 the facility.



652 (7) The Carbon Dioxide Storage Fund shall be used for the
653 purposes set forth in this chapter and for no other governmental
654 purposes, nor shall any portion hereof ever be available to borrow
655 from by any branch of government, it being the intent of the
656 Legislature that this fund and its increments shall remain intact
657 and inviolate. Any interest earned on monies in this fund shall
658 remain in this fund.

659 **SECTION 13.** The following shall be codified as Section
660 53-11-25, Mississippi Code of 1972:

661 53-11-25. **Cessation of storage operations.** (1) After
662 cessation of injection into a geologic sequestration facility and
663 upon application by the storage operator, the board shall be
664 authorized to issue a certificate of completion of injection
665 operations upon a showing by the storage operator that the
666 reservoir is reasonably expected to retain mechanical integrity,
667 and that carbon dioxide will reasonably remain emplaced.

668 (2) Nothing in this chapter shall establish or create any
669 liability or responsibility on the part of the board or the state
670 to pay any costs associated with facility restoration from any
671 source other than the performance bond, deposit, other assurance
672 of performance, or financial assurances posted or required
673 pursuant to this chapter, nor shall the board or the state have
674 any liability or responsibility to make any payments for costs
675 associated with facility restoration.

676 (3) The board or its agents, on proper identification, may
677 enter the land of another for purposes of facility assessment or
678 restoration.

679 (4) The board and its agents are not liable for any damages
680 arising from an act or omission if the act or omission is part of
681 a good faith effort to carry out the purpose of this chapter.

682 (5) No party contracting with the state or any of its
683 political subdivisions under the provisions of this chapter shall



684 be deemed to be a public employee or agent of the State of
685 Mississippi or any of its political subdivisions.

686 **SECTION 14.** The following shall be codified as Section
687 53-11-27, Mississippi Code of 1972:

688 53-11-27. **Release of performance bond, deposit, or other**

689 **assurance of performance.** (1) The storage operator may file an
690 application with the board for the release of the performance
691 bond, deposit, or other assurance of performance on or after the
692 third anniversary of the date the board issued a certificate of
693 completion for the geologic sequestration facility. The
694 application for such release shall require a description of the
695 status of the carbon dioxide plume development or migration
696 compared to models previously provided to the board, and any other
697 information the board may reasonably require in accordance with
698 this chapter. The board shall give notice of the pending release
699 application by publication as provided in Section 53-3-115.

700 (2) Before the board's release of all or any portion of a
701 storage operator's performance bond, deposit, or other assurance
702 of performance, the board shall require that the storage operator
703 satisfy, in the reasonable determination of the board, the
704 financial assurance requirements of the federal Safe Drinking
705 Water Act and regulations promulgated thereunder. If the
706 financial assurance has as any component a trust or standby trust,
707 the board and the state shall be named as trust beneficiaries.
708 The trust situs shall be located in the state, and at least one
709 (1) trustee shall be a legal resident of the state.

710 (3) The board may release, in whole or in part, the
711 performance bond, deposit, or other assurance of performance if it
712 is satisfied that plume migration has stabilized or is developing
713 in the manner anticipated in models previously filed with the
714 board and the geologic sequestration facility has met all
715 necessary mechanical integrity requirements.



716 (4) When the storage operator has successfully completed any
717 necessary remedial actions required by the board, but not more
718 than two (2) years beyond the date of the board's initial, partial
719 release of the performance bond, deposit, or other assurance of
720 performance, the board shall release the remaining portion of the
721 performance bond, deposit, or other assurance of performance.
722 However, no performance bond, deposit, or other assurance of
723 performance shall be fully released until all requirements of this
724 chapter are fully met.

725 (5) If the board denies the application for release of the
726 performance bond, deposit, or other assurance of performance or
727 portion thereof, it shall notify the storage operator, in writing,
728 stating the reasons for denial and recommending corrective actions
729 necessary to secure the release.

730 (6) Full release by the board of the performance bond,
731 deposit, or other assurance of performance of the storage operator
732 or any other party holding title to the stored carbon dioxide,
733 shall not affect, either to enlarge or diminish in any way, any
734 legal obligations of the owner of the carbon dioxide or an owner
735 or operator of any carbon dioxide sequestration facility resulting
736 from the actions authorized pursuant to this chapter.

737 (7) Substantial compliance with this chapter shall in no way
738 be construed to be an absolute defense to civil liability.

739 **SECTION 15.** The following shall be codified as Section
740 53-11-29, Mississippi Code of 1972:

741 53-11-29. **Refusing to monitor or producing false or**
742 **inaccurate readings.** It shall be a violation of this chapter for
743 any person to refuse to attach or install a monitor within a
744 reasonable period of time when ordered to do so by the board, or
745 in any way to tamper with the monitors so as to produce a false or
746 inaccurate reading.

747 **SECTION 16.** The following shall be codified as Section
748 53-11-31, Mississippi Code of 1972:



749 53-11-31. **Appeal to chancery court.** Any interested person
750 adversely affected by any provision of this chapter or by any
751 rule, regulation or order made by the board thereunder, or by any
752 act done or threatened thereunder, may obtain court review and
753 seek relief by appeal to the Chancery Court of the First Judicial
754 District of Hinds County, Mississippi, or the chancery court of
755 the county in which the land involved, or any part thereof, is
756 situated. The term "interested person" shall be interpreted
757 broadly and liberally and shall include all mineral and royalty
758 owners, mineral lessees, if any, and the owners of surface on
759 which injection or reinjection wells and other surface equipment
760 connected with a geologic sequestration facility is or will be
761 situated. Any interested party may appeal to the chancery court
762 of the county in which the land involved or any part thereof is
763 situated, if appeal is demanded within thirty (30) days from the
764 date that the rule, regulation or order of the board is filed for
765 record in the office of the board.

766 The appeal may be taken by filing notice of the appeal with
767 the board, whereupon the board shall, under its certificate,
768 transmit to the court appealed to all documents and papers on file
769 in the matter, together with a transcript of the record, which
770 documents and papers together with said transcript of the record
771 shall be transmitted to the clerk of the chancery court of the
772 county to which the appeal is taken.

773 Except as otherwise provided in this section, the appeal
774 otherwise shall be made in accordance with the provisions of
775 Sections 53-1-39 and 53-1-41.

776 **SECTION 17.** The following shall be codified as Section
777 53-11-33, Mississippi Code of 1972:

778 53-11-33. **No effect upon enhanced oil or gas recovery**
779 **operations.** Notwithstanding anything to the contrary in this
780 chapter, nothing in this chapter shall prevent an enhanced oil or
781 gas recovery project utilizing injection of carbon dioxide as



782 approved under Section 53-1-17 or require compliance with all or
783 part of this chapter by any enhanced oil or gas recovery project
784 that is not a geologic sequestration facility. An operator of an
785 enhanced oil or gas recovery project utilizing injection of carbon
786 dioxide may request that the board approve such a project as a
787 geologic sequestration facility under this chapter or that the
788 board determine that injection activities constitute sequestration
789 of carbon dioxide, but nothing in this chapter shall require that
790 such a request be made. No provisions of this chapter shall
791 affect or govern any aspect of an enhanced oil or gas recovery
792 project utilizing injection of carbon dioxide unless and until the
793 operator of the project has requested that a particular project be
794 approved by the board as a geologic sequestration facility and the
795 board has granted that request.

796 **SECTION 18.** This act shall take effect and be in force from
797 and after its passage.

