

HOUSE BILL NO. HB0080

Sequestration site unitization.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the unitization of carbon sequestration
2 sites; providing purposes and definitions; specifying
3 requirements for agreements, applications and hearings;
4 requiring orders; providing for modification of orders;
5 providing for liens; specifying limitations of the act; and
6 providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 35-11-314 through 35-11-317 are
11 created to read:

12

13 **35-11-314. Unitization of geologic sequestration**
14 **sites; purposes; definitions.**

15

16 (a) The purpose of W.S. 35-11-314 through 35-11-317 is
17 declared by the Wyoming legislature to be the protection of

1 corresponding rights, compliance with environmental
2 requirements and to facilitate the use and production of
3 Wyoming energy resources.

4

5 (b) Except when context otherwise requires or when
6 otherwise defined in this subsection, the terms used or
7 defined in W.S. 35-11-103, shall have the same meaning when
8 used in W.S. 35-11-314 through 35-11-317. When used in
9 W.S. 35-11-314 through 35-11-317:

10

11 (i) "Corresponding rights" means the right of
12 all pore space owners in a unit area who will be affected
13 by unit operations, either now or in the future, to
14 concurrently share in the economic benefits generated by
15 using the pore space in the unit area.

16

17 **35-11-315. Unitization of geologic sequestration**
18 **sites; agreements; application for permit; contents.**

19

20 (a) Any interested person may file an application with
21 the Wyoming oil and gas conservation commission requesting
22 an order providing for the operation and organization of a
23 unit of one (1) or more parts as a geologic sequestration
24 site and for the pooling of interests in pore space in the

1 proposed unit area for the purpose of conducting the unit
2 operation. The application shall contain:

3

4 (i) A copy of any permit or draft permit issued
5 by the department allowing geologic sequestration or any
6 application for such permit;

7

8 (ii) A description of the pore space and surface
9 lands proposed to be so operated, termed the "unit area";

10

11 (iii) The names, as disclosed by the conveyance
12 records of the county or counties in which the proposed
13 unit area is situated, and the status records of the
14 district office of the bureau of land management of:

15

16 (A) All persons owning or having an
17 interest in the surface estate and pore space in such unit
18 area including mortgages and the owners of other liens or
19 encumbrances; and

20

21 (B) All owners of the surface estate and
22 pore space not included within but which immediately
23 adjoins the proposed unit area or a corner thereof.

24

1 (iv) The addresses of all persons and owners
2 identified in subparagraphs (iii)(A) and (B) of this
3 subsection, if known. If the name or address of any such
4 person or owner is unknown, the application shall so
5 indicate;

6

7 (v) A statement of the type of operations
8 contemplated in order to effectuate the purposes specified
9 in W.S. 35-11-314 to comply with environmental requirements
10 and to facilitate the use and production of Wyoming energy
11 resources;

12

13 (vi) A proposed plan of unitization applicable to
14 the proposed unit area which the applicant considers fair,
15 reasonable and equitable and which shall include provisions
16 for determining the pore space to be used within such area,
17 the appointment of a unit operator and the time when the
18 plan is to become effective;

19

20 (vii) A proposed plan for determining the
21 quantity of pore space storage capacity to be assigned to
22 each separately owned tract within the unit and the formula
23 or method by which pore space will be allocated the

1 economic benefits generated by use of pore space in the
2 unit area;

3

4 (viii) A proposed plan for generating economic
5 benefits for the use of pore space within the unit area;

6

7 (ix) A proposed operating plan providing the
8 manner in which the unit area will be supervised and
9 managed and, if applicable, costs allocated and paid,
10 unless all owners within the proposed unit area have joined
11 in executing an operating agreement or plan providing for
12 such supervision, management and allocation and, if
13 applicable, payment of costs. All operating plans shall
14 comply with all applicable environmental requirements.

15

16 **35-11-316. Unitization of geologic sequestration**
17 **sites; hearings on application, order; modifications.**

18

19 (a) Upon receipt of an application under W.S.
20 35-11-315, the Wyoming oil and gas conservation commission
21 shall promptly set the matter for hearing, and in addition
22 to any notice otherwise required by law or the commission's
23 rules, shall cause the applicant to give notice of such
24 hearing, specifying the time and place of hearing, and

1 describing briefly its purpose and the land and pore space
2 affected, to be mailed by certified mail at least thirty
3 (30) days prior to the hearing to all persons whose names
4 and addresses are required to be listed in the application.
5

6 (b) After considering the application and hearing the
7 evidence offered in connection therewith, the Wyoming oil
8 and gas conservation commission shall enter an order
9 setting forth the following findings and approving the
10 proposed plan of unitization and proposed operating plan,
11 if any, if the commission finds that:
12

13 (i) The material allegations of the application
14 are substantially true;
15

16 (ii) The purposes specified in W.S. 35-11-314
17 will be served by granting the application;
18

19 (iii) The application outlines operations that
20 will comply with environmental requirements;
21

22 (iv) Granting the application will facilitate the
23 use and production of Wyoming energy resources;
24

1 (v) The quantity of pore space storage capacity,
2 and method used to determine the quantity of pore space
3 storage capacity allocated to each separately owned tract
4 within the unit area represents, so far as can be
5 practically determined, each such tract's actual share of
6 the pore space to be used in the sequestration activity;

7
8 (vi) The method by which the allocation of
9 economic benefits generated from use of pore space within
10 the unit area between pore space owners; and between pore
11 space owners and the unit operator or others is fair and
12 reasonable, taking into consideration the costs required to
13 capture, transport and sequester the carbon dioxide;

14
15 (vii) The method of generating economic benefits
16 from the use of pore space in the unit area is fair and
17 equitable and is reasonably designed to maximize the value
18 of such use;

19
20 (viii) In the event that there are pore space
21 owners in the unit area who have not executed an operating
22 agreement or agreed to the proposed operating plan, that
23 the proposed operating plan:

24

1 (A) Fairly and equitably provides for the
2 assignment of pore space storage capacity to such pore
3 space owners;

4
5 (B) Fairly and equitably provides for the
6 allocation of the costs of unit operations chargeable
7 against the interests of such pore space owners, if any;

8
9 (C) Provides for fair and equitable terms
10 and conditions for removal of a unit operator and for
11 appointment of a successor unit operator once all
12 applicable permitting requirements have been satisfied;

13
14 (D) Makes a fair and equitable adjustment
15 among pore space owners for their respective investments,
16 if any, in any improvement which will contribute to unit
17 operations;

18
19 (E) If the plan provides for an allocation
20 of the cost of unit operations, including capital
21 investment, provides a fair and equitable method for
22 determining and allocating such costs.

23

1 (ix) Other requirements specified by rules or
2 regulations adopted by the oil and gas conservation
3 commission have been met.

4
5 (c) No order of the Wyoming oil and gas conservation
6 commission authorizing the commencement of unit operations
7 shall become effective until the plan of unitization has
8 been signed or in writing ratified or approved by those
9 persons who own at least eighty percent (80%) of the pore
10 space storage capacity within the unit area. If such
11 consent has not been obtained at the time the
12 commissioner's order is made, the commission shall, upon
13 application, hold supplemental hearings and make findings
14 as may be required to determine when and if such consent
15 will be obtained. The commission shall require the
16 applicant to give notice of a supplemental hearing by
17 regular mail at least thirty (30) days prior to the hearing
18 to each person owning interests in the pore space in the
19 proposed unit area whose name and address was required by
20 W.S. 35-11-315(a) to be listed in the application for the
21 unit operations. If the required percentages of consent
22 have not been obtained within a period of six (6) months
23 from and after the date on which the order of approval is
24 made, such order shall be ineffective and revoked by the

1 commission, unless, for good cause shown, the commission
2 extends that time. Any interested person may file an
3 application with the Wyoming oil and gas conservation
4 commission requesting an order applicable only to the
5 proposed unit area described in the application which shall
6 provide for the percentage of approval or ratification to
7 be reduced from eighty percent (80%) to seventy-five
8 percent (75%). The application shall contain the
9 information required by W.S. 35-11-315(a) and any order of
10 the commission entered pursuant to the application shall
11 comply with subsection (b) of this section. Notice of the
12 hearing on the application shall be given in the same
13 manner and to the same persons as required by subsection
14 (a) of this section. If the commission finds that
15 negotiations were being conducted since July 1, 2009, or
16 have been conducted for a period of at least nine (9)
17 months prior to the filing of the application, that the
18 applicant has participated in the negotiations diligently
19 and in good faith, and that the percentage of approval or
20 ratification required by this subsection cannot be
21 obtained, the commission may reduce any percentage of
22 approval or ratification required by this section from
23 eighty percent (80%) to seventy-five percent (75%). Such
24 an order shall affect only the unit area described in the

1 application and shall operate only to approve the proposed
2 plan of unitization and proposed operating plan and to
3 reduce the required percentage of approval or ratification
4 thereof and shall not change any other requirement
5 contained in this section.

6

7 (d) From and after the effective date of an order of
8 the Wyoming oil and gas conservation commission entered
9 under the provisions of this section, the operation of the
10 unit area defined in the order by persons other than the
11 unit operator or persons acting under the unit operator's
12 authority, or except in the manner and to the extent
13 provided in the plan of unitization approved by the order,
14 shall be unlawful and is hereby prohibited.

15

16 (e) Unless otherwise provided in this section, an
17 order entered by the Wyoming oil and gas conservation
18 commission under this section may be amended in the same
19 manner and subject to the same conditions as an original
20 order or previous agreement: provided, no amendatory order
21 shall change the assignments of pore space storage capacity
22 between existing pore space owners in the unit area as
23 established by the original order or previous agreement,
24 except with the written consent of those persons who own at

1 least eighty percent (80%) of the pore space storage
2 capacity in the unit area, nor change any allocation of
3 costs as established by the original order or previous
4 agreement, except with the written consent of those persons
5 who own at least eighty percent (80%) of the unit pore
6 space storage capacity. If such consent has not been
7 obtained at the time the commission order is made, the
8 commission shall, upon application, hold supplemental
9 hearings and make findings as may be required to determine
10 when and if such consent will be obtained. The commission
11 shall require the applicant to give notice of a
12 supplemental hearing by regular mail at least thirty (30)
13 days prior to the hearing to each person owning interests
14 in the unit area whose name and address was required by the
15 provisions of W.S. 35-11-315(a)(iii) to be listed in the
16 application for the unit operations. If the required
17 percentages of consent have not been obtained within a
18 period of six (6) months from and after the date on which
19 the order of approval is made, such order shall be
20 ineffective and revoked by the commission, unless, for good
21 cause shown, the commission extends that time. Any
22 interested person may file an application with the Wyoming
23 oil and gas conservation commission requesting an order
24 applicable only to the unit area described in the

1 application which shall provide for the percentage of
2 approval or ratification to be reduced from eighty percent
3 (80%) to seventy-five percent (75%). The application shall
4 contain the information required by W.S. 35-11-315(a) and
5 any order of the commission entered pursuant to the
6 application shall comply with subsection (b) of this
7 section. Notice of the hearing on the application shall be
8 given in the same manner and to the same persons as
9 required by subsection (a) of this section. If the
10 commission finds that negotiations were being conducted
11 since July 1, 2009 or have been conducted for a period of
12 at least nine (9) months prior to the filing of the
13 application, that the applicant has participated in the
14 negotiations diligently and in good faith, and that the
15 percentage of approval or ratification required by this
16 subsection cannot be obtained, the commission may reduce
17 any percentage of approval or ratification required by this
18 section from eighty percent (80%) to seventy-five percent
19 (75%). Such an order shall affect only the unit area
20 described in the application and operate only to reduce the
21 required percentage of approval or ratification necessary
22 for amending the assignment of pore space or allocation of
23 costs and shall not change any other requirement contained
24 in this section.

1

2 (f) The Wyoming oil and gas conservation commission,
3 upon its own motion or upon application, and with notice
4 and hearing, may modify its order regarding the operation,
5 size or other characteristic of the unit area in order to
6 prevent or assist in preventing a substantial inequity
7 resulting from operation of the unit, provided that no such
8 modification may amend any permit issued under W.S.
9 35-11-313.

10

11 (g) Any owner of pore space within a geologic
12 sequestration site who has not been included within a
13 unitization application or order authorizing a unit under
14 this section, may petition for inclusion in the unit area.
15 The petition shall be filed with the Wyoming oil and gas
16 conservation commission and shall describe the petitioner's
17 legal entitlement to the pore space, the location of the
18 pore space, whether the pore space is included within any
19 permitting area applicable to the unit area and the bases
20 for inclusion in the unit area. The petition shall be
21 accompanied by a deposit of money sufficient to pay all
22 costs of the inclusion proceedings. The commission shall
23 require the petitioner to publish a notice of filing of the
24 petition which notice shall state the filing of the

1 petition, the name of the petitioner, the location of the
2 pore space and the prayer of the petitioner. The notice
3 shall notify all interested persons to appear at a
4 specified time and place and to show cause, in writing, if
5 any they have, why the petition should not be granted. The
6 commission at the time and place mentioned in the notice
7 shall proceed to hear the petition and all objections
8 thereto and shall thereafter grant or deny the petition.
9 The filing of the petition shall be deemed and taken as an
10 assent by each and all petitioners to the inclusion in the
11 unit of the pore space mentioned in the petition or any
12 part thereof. If the petition is granted, the petitioner
13 shall be considered to have been a member of the unit since
14 its inception and, upon the payment of any costs paid by
15 unit members, shall be entitled to all economic benefits
16 received by unit members since the inception of the unit
17 provided that no unit modification affects any permit
18 issued under W.S. 35-11-313. The oil and gas conservation
19 commission shall adopt rules providing for the fair and
20 equitable determination of pore space storage capacity for
21 each successful petitioner and the means by which
22 successful petitioners shall be paid the economic benefits
23 to which they are entitled under this subsection,

1 including, if necessary, a reallocation of economic
2 benefits among unit members.

3

4 (h) A certified copy of any order of the Wyoming oil
5 and gas conservation commission entered under the
6 provisions of this section shall be entitled to be recorded
7 in the land records of the county clerk for the counties
8 where all or any portion of the unit area is located, and
9 the recordation shall constitute notice thereof to all
10 persons.

11

12 (j) No provision of W.S. 35-11-314 through 35-11-317
13 shall be construed to confer on any person the right of
14 eminent domain and no order for unitization issued under
15 this section shall act so as to grant to any person the
16 right of eminent domain.

17

18 (k) No order for unitization issued under this section
19 shall act so as to grant any person a right of use or
20 access to a surface estate if that person would not
21 otherwise have such a right.

22

23 **35-11-317. Unitization of geologic sequestration**
24 **sites; economic benefits; liens.**

1

2 (a) No order of the Wyoming oil and gas conservation
3 commission or other contract relating to a separately owned
4 tract within the unit area shall be terminated by the order
5 providing for unit operations, but shall remain in force
6 and apply to that tract, its benefits, burdens and
7 obligations, until terminated in accordance with the
8 provisions thereof.

9

10 (b) Except to the extent that the parties affected so
11 agree, no order providing for unit operations shall be
12 construed to result in a transfer of all or any part of the
13 title to pore space or other rights in any tract in the
14 unit area and no agreement or order shall operate so as to
15 violate the terms and requirements of any permit applicable
16 to pore space within the unit area.

17

18 **Section 2.** W.S. 30-5-104(d) by creating new paragraph
19 (viii) and 35-11-313(f)(intro) and (ii)(F) are amended to
20 read:

21

22 **30-5-104. Oil and gas conservation commission; powers**
23 **and duties; investigations; rules and regulations.**

24

1 (d) The commission has authority:

2

3 (viii) To issue orders allowing the unitization
4 of pore space associated with geologic sequestration sites
5 pursuant to W.S. 35-11-314 through 35-11-317 and adopt such
6 rules and regulations as necessary to effectuate the
7 purposes of W.S. 35-11-314.

8

9 **35-11-313. Carbon sequestration; permit requirements.**

10

11 (f) The administrator of the water quality division
12 of the department of environmental quality, after receiving
13 public comment and after consultation with the state
14 geologist, the Wyoming oil and gas conservation commission
15 and the advisory board created under this act, shall
16 recommend to the director rules, regulations and standards
17 for:

18

19 (ii) Requirements for the content of
20 applications for geologic sequestration permits. Such
21 applications shall include:

22

23 (F) A site and facilities description,
24 including a description of the proposed geologic

1 sequestration facilities and documentation sufficient to
2 demonstrate that the applicant has all legal rights,
3 including but not limited to the right to surface use,
4 necessary to sequester carbon dioxide and associated
5 constituents into the proposed geologic sequestration site.
6 The department may issue a draft permit contingent on
7 obtaining a unitization order pursuant to W.S. 35-11-314
8 through 35-11-317;
9

10 **Section 3.** This act is effective July 1, 2009.
11

12 (END)