

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Carbon storage and sequestration-liability.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to geologic sequestration of carbon
2 dioxide; clarifying ownership of carbon dioxide injected
3 into geologic sequestration sites; specifying the transfer
4 of title and liability of injected carbon dioxide;
5 providing definitions; renumbering current statutes; making
6 conforming amendments; specifying applicability; requiring
7 rulemaking; and providing for effective dates.

8

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

10

11 **Section 1.** W.S. 35-11-318 and 35-11-319 are created to
12 read:

1

2 **35-11-318. Title to sequestered and injected carbon**
3 **dioxide.**

4

5 (a) A storage operator or unit operator shall:

6

7 (i) Have title to any carbon dioxide the storage
8 operator or unit operator injects into and stores
9 underground or within a unit area;

10

11 (ii) Hold title for any injected or stored carbon
12 dioxide until the department issues a certificate of
13 project completion as specified in W.S. 35-11-319.

14

15 (b) During any time the storage operator or unit
16 operator holds title to carbon dioxide under this section,
17 the operator shall be liable for any damage the injected or
18 stored carbon dioxide may cause, including damage caused by
19 carbon dioxide that escapes or is released from where it is
20 being stored underground.

21

22 **35-11-319. Certificate of site closure; release;**
23 **transfer of title and custody.**

1

2 (a) After all carbon dioxide injections underground or
3 into pore space are completed as provided by a permit
4 issued under W.S. 35-11-313 and upon application by the
5 storage operator or unit operator holding title to the
6 carbon dioxide under W.S. 35-11-318, the department may
7 issue a certificate of site closure. The department shall
8 only issue a certificate upon satisfaction of the
9 conditions imposed under subsections (b), (c) and (d) of
10 this section and after providing public notice of the
11 application, an opportunity for public comment and a public
12 hearing on the application.

13

14 (b) A certificate of site closure shall not be issued
15 less than ten (10) years following the completion of all
16 carbon dioxide injections underground or into pore space as
17 provided by a permit issued under W.S. 35-11-313.

18

19 (c) A certificate of site closure shall not be issued
20 until the storage operator or unit operator with title to
21 the carbon dioxide establishes to the satisfaction of the
22 department that:

23

1 (i) The operator is in full compliance with all
2 laws governing the injection and storage of the carbon
3 dioxide;

4

5 (ii) The operator has addressed any pending
6 claims regarding the injection and storage of the carbon
7 dioxide;

8

9 (iii) The underground place or pore space where
10 the carbon dioxide was injected or stored is reasonably
11 expected to retain the stored or injected carbon dioxide;

12

13 (iv) The stored or injected carbon dioxide is
14 stable. As used in this paragraph, "stable" means carbon
15 dioxide that is essentially stationary or, if it is
16 migrating or may migrate, carbon dioxide that is unlikely
17 to cross any underground or pore space boundary;

18

19 (v) All wells, equipment and facilities to be
20 used in maintaining and managing the stored carbon dioxide
21 are in good condition and will retain mechanical integrity;

22

1 (vi) The operator has plugged any injection wells
2 and has completed all reclamation required by the
3 department.

4

5 *****

6 *****

7 STAFF COMMENT

8

9 The language in subsection (d) below is based in part on a
10 similar North Dakota law. Under North Dakota law,
11 ownership, not just liability, of the carbon dioxide and
12 the storage facility is transferred to the state. That
13 language (adapted to track Wyoming's current law and this
14 bill draft) follows:

15

16 (i) Title to the stored or injected carbon
17 dioxide, and any facilities used to inject or store the
18 carbon dioxide, without payment of any compensation, shall
19 be transferred to the state;

20

21 (ii) Title acquired by the state includes all
22 rights, and interests in, and all responsibilities
23 associated with, the stored or injected carbon dioxide;

24

25 The Committee may wish to note Article 1, Section 33 of the
26 Wyoming Constitution, which provides that "Private property
27 shall not be taken or damaged for public or private use
28 without just compensation." The Committee may also wish to
29 consider whether the assumption of liability is sufficient
30 consideration for the state taking title to the injected
31 carbon dioxide.

32

33 *****

34 *****

35

36 (d) Upon the issuance of a certificate of site closure
37 under subsection (a) of this section:

38

1 (i) Primary responsibility and liability for the
2 stored or injected carbon dioxide shall be transferred to
3 the state;

4

5 (ii) The storage operator or unit operator and
6 all persons who generated any injected or stored carbon
7 dioxide shall be forever released from all regulatory
8 requirements associated with the continued storage and
9 maintenance of the injected carbon dioxide;

10

11 (iii) Any bond or financial assurance submitted
12 to the department under W.S. 35-11-313 through 35-11-317
13 shall be released;

14

15 (iv) The state, through the department, shall
16 assume responsibility to manage and monitor the stored
17 carbon dioxide until such time when the federal government
18 assumes responsibility for the long-term monitoring and
19 management of stored carbon dioxide.

20

21 **Section 2.** W.S. 30-5-104(d)(viii), 30-5-502(a), 35-11-
22 313(f)(ii)(F) and (vii) and by creating a new subsection

1 (n), 35-11-314(a), (b)(intro) and by creating a new
2 subsection (c) and 35-11-316(j) are amended to read:

3

4 **30-5-104. Oil and gas conservation commission; powers**
5 **and duties; investigations; rules and regulations.**

6

7 (d) The commission has authority:

8

9 (viii) To issue orders allowing the unitization
10 of pore space associated with geologic sequestration sites
11 pursuant to W.S. 35-11-314 through ~~35-11-317~~35-11-320 and
12 adopt such rules and regulations as necessary to effectuate
13 the purposes of W.S. 35-11-314;

14

15 **30-5-502. Certification of carbon dioxide**
16 **incidentally stored during enhanced recovery operations.**

17

18 (a) If there is production of oil, gas or both from
19 enhanced recovery operations under a commission order
20 entered pursuant to W.S. 30-5-110 utilizing the injection
21 of carbon dioxide, the commission upon voluntary
22 application by the unit operator, and after review of the
23 operator's plan for accounting for the incidentally stored

1 carbon dioxide, may enter an order recognizing the
2 incidental storage of carbon dioxide occurring through the
3 enhanced recovery operation and certifying the quantity of
4 carbon dioxide being stored. An application or
5 certification under this section does not subject the
6 enhanced recovery operation to the requirements of W.S. 35-
7 11-313 through ~~35-11-318~~ 35-11-320 or require the operator
8 to obtain a permit under those sections.

9

10 **35-11-313. Carbon sequestration; permit requirements.**

11

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

19

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

23

1 (F) A site and facilities description,
2 including a description of the proposed geologic
3 sequestration facilities and documentation sufficient to
4 demonstrate that the applicant has all legal rights,
5 including but not limited to the right to surface use,
6 necessary to sequester carbon dioxide and associated
7 constituents into the proposed geologic sequestration site.
8 The department may issue a draft permit contingent on
9 obtaining a unitization order pursuant to W.S. 35-11-314
10 through ~~35-11-317~~ 35-11-320;

11

12 (vii) Requirements for fees to be paid by all
13 permittees of geologic sequestration sites and facilities,
14 which may include a per ton injection fee or a closure fee,
15 during the period of injection of carbon dioxide and
16 associated constituents into subsurface geologic formations
17 in Wyoming, which fees shall be deposited in the geologic
18 sequestration special revenue account created by W.S. ~~35-~~
19 ~~11-318~~ 35-11-320 for use as provided therein.

20

21 (n) The provisions of W.S. 35-11-318 and 35-11-319
22 shall apply to any permit for sequestration of carbon
23 dioxide under this section and to any unitization of

1 geologic sequestration sites under W.S. 35-11-314 through
2 35-11-317.

3

4 **35-11-314. Unitization of geologic sequestration**
5 **sites; purposes; definitions.**

6

7 (a) The purpose of W.S. 35-11-314 through ~~35-11-317~~
8 35-11-319 is declared by the Wyoming legislature to be the
9 protection of corresponding rights, compliance with
10 environmental requirements and to facilitate the use and
11 production of Wyoming energy resources.

12

13 (b) Except when context otherwise requires or when
14 otherwise defined in this subsection, the terms used or
15 defined in W.S. 35-11-103, shall have the same meaning when
16 used in W.S. 35-11-314 through ~~35-11-317~~35-11-320. When
17 used in W.S. 35-11-314 through ~~35-11-317~~35-11-320:

18

19 (c) As used in W.S. 35-11-318 and 35-11-319:

20

21 (i) "Storage operator" means a person applying
22 for or holding a permit for geologic sequestration of
23 carbon dioxide under W.S. 35-11-313;

1

2 (ii) "Unit operator" means a person appointed to
3 operate a unit area for the geologic sequestration of
4 carbon dioxide as provided by W.S. 35-11-314 through 35-11-
5 317.

6

7 **35-11-316. Unitization of geologic sequestration**
8 **sites; hearings on application, order; modifications.**

9

10 (j) No provision of W.S. 35-11-314 through ~~35-11-317~~
11 ~~35-11-319~~ shall be construed to confer on any person the
12 right of eminent domain and no order for unitization issued
13 under this section shall act so as to grant to any person
14 the right of eminent domain.

15

16 **Section 3.** W.S. 35-11-318 is amended and renumbered as
17 35-11-320 to read:

18

19 ~~35-11-318~~ 35-11-320. **Geologic sequestration special**
20 **revenue account.**

21

22 (a) There is created the Wyoming geologic
23 sequestration special revenue account. The account shall

1 be administered by the director and all funds in the
2 account shall be transmitted to the state treasurer for
3 credit to the account and shall be invested by the state
4 treasurer as authorized under W.S. 9-4-715(a), (d) and (e)
5 in a manner to obtain the highest return possible
6 consistent with the preservation of the corpus. Any
7 interest earned on the investment or deposit of monies into
8 the fund shall remain in the fund and shall not be credited
9 to the general fund. All funds in the account are
10 continuously appropriated for use by the director
11 consistent with this section.

12

13 (b) The account shall consist of all monies collected
14 by the department to measure, monitor and verify Wyoming
15 geologic sequestration sites following site closure
16 certification, release of all financial assurance
17 instruments and termination of the permit. The department
18 shall promulgate rules necessary to collect monies in an
19 amount reasonably calculated to pay the costs of measuring,
20 monitoring and verifying the sites.

21

22 (c) Funds in the account shall be used only for the
23 measurement, monitoring and verification of geologic

1 sequestration sites following site closure certification,
2 release of all financial assurance instruments and
3 termination of the permit.

4

5 (d) The existence, management and expenditure of
6 funds from this account shall not constitute a waiver by
7 the state of Wyoming of its immunity from suit, nor does it
8 constitute an assumption of any liability by the state for
9 geologic sequestration sites. ~~or the carbon dioxide and~~
10 ~~associated constituents injected into those sites.~~

11

12 **Section 4.** The provisions of this act shall apply to
13 all holders of permits for geologic sequestration of carbon
14 dioxide issued under W.S. 35-11-313 and to all orders of
15 unitization of geologic sequestration sites under W.S. 35-
16 11-314 through 35-11-317 before, on and after the effective
17 date of this section.

18

19 **Section 5.** The environmental quality council and the
20 Wyoming oil and gas conservation commission shall
21 promulgate all rules necessary to implement the provisions
22 of this act.

23

1 **Section 6.**

2

3 (a) Except as provided in subsection (b) of this
4 section, this act is effective July 1, 2022.

5

6 (b) Sections 5 and 6 of this act are effective
7 immediately upon completion of all acts necessary for a
8 bill to become law as provided by Article 4, Section 8 of
9 the Wyoming Constitution.

10

11

(END)