

**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; definitions.**

4

5 (a) As used in this section and in W.S. 35-11-319,
6 "injector" means a person applying for or holding a permit
7 or certificate for geologic sequestration of carbon dioxide
8 under W.S. 35-11-313.

9

10 (b) An injector shall:

11

12 (i) Have title to any carbon dioxide the injector
13 injects into and stores underground or within a unit area;

14

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

18

19 (c) During any time the injector holds title to carbon
20 dioxide under this section, the injector shall be liable
21 for any damage the injected or stored carbon dioxide may
22 cause, including damage caused by carbon dioxide that

1 escapes or is released from where it is being stored
2 underground.

3

4 **35-11-319. Certificate of project completion; release;**
5 **transfer of title and custody.**

6

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

17

18 (b) A certificate of project completion shall not be
19 issued until at least ten (10) years after carbon dioxide
20 injections end.

21

1 (c) A certificate of project completion shall not be
2 issued until the injector with title to the carbon dioxide
3 establishes to the satisfaction of the department that:

4

5 (i) The injector is in full compliance with all
6 laws governing the injection and storage of the carbon
7 dioxide;

8

9 (ii) The injector has addressed any pending
10 claims regarding the injection and storage of the carbon
11 dioxide;

12

13 (iii) The underground place or pore space where
14 the carbon dioxide was injected or stored is expected to no
15 longer expand vertically or horizontally and poses no
16 threat to human health, human safety, the environment or
17 underground sources of drinking water;

18

19 (iv) The stored or injected carbon dioxide is
20 unlikely to cross any underground or pore space boundary
21 and is not expected to endanger any underground source of
22 drinking water or otherwise human health, human safety or
23 the environment;

1

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

5

6 (vi) The injector has plugged any injection wells
7 and has completed all reclamation required by the
8 department.

9

STAFF COMMENT

14 The language in subsection (d) below is based in part on a
15 similar North Dakota law. Under North Dakota law,
16 ownership, not just liability, of the carbon dioxide and
17 the storage facility is transferred to the state.

19 The Committee may wish to note Article 1, Section 33 of the
20 Wyoming Constitution, which provides that "Private property
21 shall not be taken or damaged for public or private use
22 without just compensation." The Committee may also wish to
23 consider whether the assumption of primary responsibility
24 and liability is sufficient consideration for the state
25 taking title to the injected carbon dioxide.

29
30 (d) Upon the issuance of a certificate of project
31 completion under subsection (a) of this section:

1 (i) In exchange for assuming responsibility and
2 liability for the stored carbon dioxide as provided in this
3 section, title to the stored or injected carbon dioxide,
4 and any facilities used to inject or store the carbon
5 dioxide, without payment of any compensation, shall be
6 transferred to the state;

7

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

11

12 (iii) Primary responsibility and liability for
13 the stored or injected carbon dioxide shall be transferred
14 to the state;

15

16 (iv) The injector and all persons who generated
17 any injected or stored carbon dioxide shall be forever
18 released from all regulatory requirements associated with
19 the continued storage and maintenance of the injected
20 carbon dioxide;

21

1 (v) Any bond or financial assurance submitted to
2 the department under W.S. 35-11-313 through 35-11-317 shall
3 be released;

4

5 (vi) The state, through the department, shall
6 assume responsibility to manage and monitor the stored
7 carbon dioxide until such time when the federal government
8 assumes responsibility for the long-term monitoring and
9 management of stored carbon dioxide.

10

11 **Section 2.** W.S. 30-5-104(d)(viii), 30-5-502(a), 34-1-
12 153, 35-11-313(e), (f)(ii)(F) and (vii) and by creating
13 new subsections (n) and (o), 35-11-314(a) and (b)(intro)
14 and 35-11-316(j) are amended to read:

15

16 30-5-104. Oil and gas conservation commission; powers
17 and duties; investigations; rules and regulations.

18

19 (d) The commission has authority:

20

21 (viii) To issue orders allowing the unitization
22 of pore space associated with geologic sequestration sites
23 pursuant to W.S. 35-11-314 through ~~35-11-317~~ ~~35-11-320~~ and

1 adopt such rules and regulations as necessary to effectuate
2 the purposes of W.S. 35-11-314;

3

4 **30-5-502. Certification of carbon dioxide**
5 **incidentally stored during enhanced recovery operations.**

6

7 (a) If there is production of oil, gas or both from
8 enhanced recovery operations under a commission order
9 entered pursuant to W.S. 30-5-110 utilizing the injection
10 of carbon dioxide, the commission upon voluntary
11 application by the unit operator, and after review of the
12 operator's plan for accounting for the incidentally stored
13 carbon dioxide, may enter an order recognizing the
14 incidental storage of carbon dioxide occurring through the
15 enhanced recovery operation and certifying the quantity of
16 carbon dioxide being stored. An application or
17 certification under this section does not subject the
18 enhanced recovery operation to the requirements of W.S. 35-
19 11-313 through 35-11-318 35-11-320 or require the operator
20 to obtain a permit under those sections.

21

22 **34-1-153. Ownership of material injected into**
23 **geologic sequestration sites; liability for holding**

1 **interests related to a sequestration site or giving consent**
2 **to allow geologic sequestration activities.**

3

4 (a) All carbon dioxide, and other substances injected
5 incidental to the injection of carbon dioxide, injected
6 into any geologic sequestration site for the purpose of
7 geologic sequestration shall be presumed to be owned by the
8 injector of such material subject to W.S. 35-11-318 and 35-
9 11-319 and all rights, benefits, burdens and liabilities of
10 such ownership shall belong to the injector. This
11 presumption may be rebutted by a person claiming contrary
12 ownership by a preponderance of the evidence in an action
13 to establish ownership.

14

15 (b) Except as provided in W.S. 35-11-318 and 35-11-
16 319, no owner of pore space, other person holding any right
17 to control pore space or other surface or subsurface
18 interest holder, shall be liable for the effects of
19 injecting carbon dioxide for geologic sequestration
20 purposes, or for the effects of injecting other substances
21 for the purpose of geologic sequestration which substances
22 are injected incidental to the injection of carbon dioxide,

1 solely by virtue of their interest or by their having given
2 consent to the injection.

3

4 **35-11-313. Carbon sequestration; permit requirements.**

5

6 (e) Permit requirements for geologic sequestration of
7 carbon dioxide shall be as defined by department rules. The
8 injector of the carbon dioxide shall apply for any permit
9 required under this section.

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

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~~;

21 (n) Upon issuing a permit, the department shall issue
22 a certificate that includes a statement that the permit has
23 been issued, a description of the area covered by the

1 permit and any other information that the department deems
2 appropriate. The injector shall file a copy of the
3 certificate with the county clerk in the county or counties
4 where the geologic sequestration site is located.

5

6 (o) The provisions of W.S. 35-11-318 and 35-11-319
7 shall apply to any permit or certificate for sequestration
8 of carbon dioxide under this section and to any unitization
9 of geologic sequestration sites under W.S. 35-11-314
10 through 35-11-317.

11

12 **35-11-314. Unitization of geologic sequestration**
13 **sites; purposes; definitions.**

14

15 (a) The purpose of W.S. 35-11-314 through 35-11-317
16 35-11-319 is declared by the Wyoming legislature to be the
17 protection of corresponding rights, compliance with
18 environmental requirements and to facilitate the use and
19 production of Wyoming energy resources.

20

21 (b) Except when context otherwise requires or when
22 otherwise defined in this subsection, the terms used or
23 defined in W.S. 35-11-103, shall have the same meaning when

1 used in W.S. 35-11-314 through 35-11-317 35-11-320. When

2 used in W.S. 35-11-314 through 35-11-317 35-11-320:

3

4 **35-11-316. Unitization of geologic sequestration**
5 **sites; hearings on application, order; modifications.**

6

7 (j) No provision of W.S. 35-11-314 through 35-11-317
8 35-11-319 shall be construed to confer on any person the
9 right of eminent domain and no order for unitization issued
10 under this section shall act so as to grant to any person
11 the right of eminent domain.

12

13 **Section 3.** W.S. 35-11-318 is amended and renumbered as
14 35-11-320 to read:

15

16 **35-11-318 35-11-320. Geologic sequestration special**
17 **revenue account.**

18

19 (a) There is created the Wyoming geologic
20 sequestration special revenue account. The account shall
21 be administered by the director and all funds in the
22 account shall be transmitted to the state treasurer for
23 credit to the account and shall be invested by the state

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

9

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

18

19 (c) Funds in the account shall be used only for:
20

21 (i) ~~The measurement, testing, monitoring and~~
22 ~~verification long-term inspections~~ of geologic
23 sequestration sites;

1

2 (ii) Remediation of mechanical problems
3 associated with remaining wells and infrastructure;

4

5 (iii) Plugging and abandoning monitoring wells;

6

7 (iv) All future claims associated with the
8 release of carbon dioxide from the geologic sequestration
9 sites following site closure project completion
10 certification, release of all financial assurance
11 instruments and termination of the permit.

12

13 (d) The existence, management and expenditure of
14 funds from this account shall not constitute a waiver by
15 the state of Wyoming of its immunity from suit, nor does it
16 constitute an assumption of any liability by the state for
17 geologic sequestration sites. ~~or the carbon dioxide and~~
18 ~~associated constituents injected into those sites.~~

19

20 **Section 4.** The provisions of this act shall apply to
21 all holders of permits for geologic sequestration of carbon
22 dioxide issued under W.S. 35-11-313 and to all orders of
23 unitization of geologic sequestration sites under W.S. 35-

1 11-314 through 35-11-317 before, on and after the effective
2 date of this section.

3

4 **Section 5.**

5

6 (a) The department of environmental quality may take
7 all actions necessary to implement the provisions of this
8 act.

9

10 (b) The environmental quality council and the Wyoming
11 oil and gas conservation commission shall promulgate all
12 rules necessary to implement the provisions of this act.

13

14 (c) Not later than August 1, 2023, the department of
15 environmental quality shall report to the joint minerals,
16 business and economic development interim committee on the
17 status of implementing this act, including whether further
18 legislation is necessary to retain the state's primacy in
19 regulating class VI injection wells and whether more time
20 is necessary to implement this act in order to amend or
21 retain any plan agreement for the state's regulation of
22 class vi injection wells.

23

1 Section 6.

2

3 (a) Except as provided in subsection (b) of this
4 section, this act is effective July 1, 2024.

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)