

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. \_\_\_\_\_

Carbon capture and sequestration.

Sponsored by: Joint Judiciary Interim Com

**PREPARED  
FOR  
COMMITTEE  
DISCUSSION  
PURPOSES**

A BILL

for

1 AN ACT relating to carbon capture and sequestration;  
2 providing for regulation of carbon dioxide injection by oil  
3 and gas conservation commission; and providing for an  
4 effective date.

5

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

7

8 **Section 1.** W.S. 30-9-101 through 30-9-105 and 30-9-

9 201 through 30-9-203 are created to read:

10

11 **Chapter 9. Carbon capture and sequestration.**

12

13 **Article 1. Regulation of carbon capture and**  
14 **sequestration.**

15

**\*\*\* STAFF COMMENTS \*\*\***

16

17 The following definitions (except "O&G  
18 commission" and "sequestration") are from a  
19 conceptual framework statute prepared by the  
20 Interstate Oil and Gas Compact Commission. (That  
framework is not an IOGCC approved model

1 statute.) While many of the provisions of the  
2 framework are used for this draft, many were not  
3 and many were changed. Where the language was  
4 drawn in whole or in part from that framework,  
5 there is a references to IOGCC "part and  
6 section".

7 The "CCGS operator" definition has been included  
8 for this draft to give thought to the issue of  
9 whether any person can apply to the commission to  
10 store CO2, or whether that person should hold a  
11 certificate to operate a CO2 pipeline.

12  
13 **30-9-101 Definitions.**

14  
15 (a) As used in this chapter:

16  
17 (i) "CCGS operator" means any individual or legal  
18 entity authorized to do business in this state and who  
19 engages in the business of transporting, injecting,  
20 storing, sequestering or distributing carbon dioxide by  
21 means of pipelines into, within or through this state;

22  
23 (ii) "Carbon dioxide" means carbon dioxide from an  
24 anthropogenic source as a gas or as a supercritical fluid  
25 with physical properties between a liquid and a gas at  
26 pressures greater than one thousand seventy-three (1073)  
27 pounds per square inch at eighty-seven and seven-tenths  
28 degrees fahrenheit (87.7) F, or as a constituent in a  
29 processed emission stream with commercial value;

1           (iii) "Commission" means the Wyoming oil and gas  
2 conservation commission created by W.S. 30-5-103;

3

4           (iv) "Geologic sequestration facility" means  
5 underground geologic formations, strata, reservoirs or  
6 caverns into which carbon dioxide is injected for  
7 sequestration;

8

9           (v) "Sequestration" means the injection of  
10 carbon dioxide with the intended purpose of retention in  
11 the place of injection and with no foreseeable immediate  
12 use for any other purpose.

13

14           **30-9-102. Carbon dioxide sequestration; regulation by**  
15 **oil and gas conservation commission; rulemaking authorized;**  
16 **exemption.**

17

18           (a) The primary purpose of this article is to ensure  
19 the safe and effective sequestration of carbon dioxide in  
20 geologic sequestration facilities. It is a further purpose  
21 of this article to maximize the use of geologic  
22 sequestration facilities and to prevent waste of those  
23 facilities and resources contained within those facilities.  
24 The commission has jurisdiction and authority over all

1 persons and property necessary to effectuate the purposes  
2 and intent of this article. The commission may make  
3 investigations as necessary to effectuate its duties under  
4 this article.

5 **\*\*\* STAFF COMMENTS \*\*\***

6 The purposes were stated as primary and secondary  
7 - the intent being to let the commission know  
8 which should control if there are conflicting  
9 issues - e.g. a proposed facility is the best  
10 place to ensure no migration/escape, but it might  
11 result in more loss of other resources (gas, oil  
12 or water) than a less secure facility.  
13

14 (b) The commission shall make rules, regulations and  
15 orders, and shall take other appropriate action, to  
16 effectuate the purposes and intent of this article.  
17

18 (c) The injection of carbon dioxide for purposes of  
19 enhanced recovery of oil or other minerals shall not be  
20 subject to the provisions of this chapter.

21 **\*\*\* STAFF COMMENTS \*\*\***

22 The above was taken in part from the commission's  
23 duties under the oil and gas chapter. The IOGCC  
24 act does not include provisions akin to the above  
25 (it is supplemental to a model underground gas  
26 storage act). Some general authority needed to  
27 be included and it could not simply be inserted  
28 in the oil and gas chapter which deals in great  
29 part with conserving oil and gas resources by  
30 requiring production in an efficient manner.  
31 Here the goal is primarily to ensure safe and  
32 effective sequestration of CO2. But there is  
33 also overlap with production of remaining oil and  
34 gas. The IOGCC act requires a finding of the  
35 amount of oil and gas remaining but that finding  
36 appears to be for eminent domain purposes,

1 (necessary or at least helpful for determination  
2 of payment required). Without eminent domain  
3 being authorized for CO2 sequestration, those  
4 provisions were not needed for that purpose. But  
5 they have been left in for this draft, not for  
6 eminent domain purposes, but because placing this  
7 program with the commission gives the commission  
8 dual and, depending on the circumstances, maybe  
9 conflicting roles

10  
11 \*\*\* STAFF COMMENTS \*\*\*

12 The following section was taken from the IGOCC  
13 act, part 1, section 4, but changed to eliminate  
14 eminent domain references and redrafted to a  
15 generic prohibition on storing without a  
16 certificate. This is the heart of the regulatory  
17 aspect of the bill. While not explicit, the  
18 process of certificating a sequestration facility  
19 has the effect of implementing a first in time,  
20 first to develop scheme.

21  
22 30-9-103. Carbon sequestration; application to  
23 commission.

24  
25 (a) No person shall sequester carbon dioxide in a  
26 geologic sequestration facility in this state without a  
27 certificate issued by the commission setting forth findings  
28 of the commission that:

29  
30 (i) The geologic sequestration facility sought to  
31 be acquired is suitable for the sequestration of carbon  
32 dioxide;

1           (ii) The amount of proven commercially producible  
2 accumulations of oil or native gas, or both, if any,  
3 remaining in the proposed geologic sequestration facility.  
4

5           (b) The commission's finding under subsection (a)(i)  
6 of this section that the geologic sequestration facility is  
7 suitable for the sequestration of carbon dioxide shall  
8 include specific findings, including:  
9

10           (i) That the use of the geologic sequestration  
11 facility for carbon dioxide sequestration will not  
12 contaminate other formations containing fresh water or  
13 containing oil, natural gas or other commercial mineral  
14 deposits; and  
15

16           (ii) The proposed geologic sequestration  
17 facility will not materially impair the production of oil,  
18 gas or other minerals;  
19

20           (iii) That the proposed geologic sequestration  
21 facility is protective of human health and the environment.  
22

23           (c) The oil and gas conservation commission shall not  
24 issue a certificate:

- 1           (i)    without reasonable notice to the public and  
2   an opportunity for public comment;
- 3           (ii)   without reasonable notice to interested  
4   parties and an opportunity for a hearing; and
- 5           (iii)   the applicant is responsible for all  
6   costs.

7                           **\*\*\* STAFF COMMENTS \*\*\***

8       The IGOCC act calls for "reasonable notice";  
9       which is not changed for this draft. It is  
10      assumed the term was intentionally selected with  
11      the "reasonableness" dependent upon the size,  
12      location, number of persons affected by the  
13      application, etc. The specifications for any  
14      notice and who are "interested parties" are  
15      issues for legislative debate.

- 16
- 17       (d)    Procedures for notice, hearing and judicial  
18   review for any action subject to this article shall be as  
19   provided by chapter 5 of this title.

20                           **\*\*\* STAFF COMMENTS \*\*\***

21      Subsection (d) was added to eliminate any  
22      confusion that title 30 chapter 5 regarding the  
23      conduct of hearings, appeals to court, etc. for  
24      actions taken under this article would apply. As  
25      this is written, the commission can adopt rules  
26      to fashion procedural issues to fit this article,  
27      within the constraints of its general provisions  
28      in chapter 5.

29                           **\*\*\* STAFF COMMENTS \*\*\***

30

31      The following is from IGOCC part 1, section 6.  
32      This provision also goes to the issue of what  
33      regulatory authority will be applied. The IGOCC  
34      recommendations note that given the long term  
35      sequestration involved "innovative solutions"  
36      will be called for in the cases of orphaned sites  
37      and state that the current method used for O&G  
38      production (i.e., the state ultimately assuming

1       **the cleanup, using bonding etc., might be**  
2       **needed.)**

3  
4       **The language in bold is contrary to the premise**  
5       **stated earlier (and not from the IGOCC act) that**  
6       **all sequestration facilities will be certificated**  
7       **by the commission.**  
8

9       **30-9-104. Bonds and guarantees; use of funds;**  
10      **nonliability of the state.**

11  
12       (a) The commission has the authority to require the  
13      furnishing of a surety bond or other guaranty, conditioned  
14      for or securing the performance of an injector's duties  
15      under this article and potential liability of an owner of a  
16      geologic sequestration facility for damages resulting from  
17      injected carbon dioxide contaminating other formations  
18      containing fresh water or containing oil, natural gas or  
19      other commercial mineral deposits.

20  
21       (b) The commission may seek recovery upon any such  
22      bond or guaranty provided under this section and use  
23      recovered funds to carry out the injector's duties and to  
24      mitigate further damage if the commission is unable to  
25      enforce its regulations and laws under this article.



1 (c) Nothing in this section shall be construed to  
2 create any liability by the state for failure to comply  
3 with this chapter or for actions taken in accordance with  
4 this chapter.

5 \*\*\* STAFF COMMENTS \*\*\*

6 The above was taken in part from bonding for oil  
7 and gas well plugging. Much of it (including  
8 subsection (c)) is created for this draft.  
9

10 30-9-105. Notice of closure of geologic carbon  
11 dioxide sequestration facility; disposition of property  
12 rights.  
13

14 When the owner of a geologic sequestration facility  
15 has ceased active injection operations of carbon dioxide and  
16 closes the sequestration facility **and that facility was**  
17 **certificated by the commission**, the owner shall file with  
18 the commission a notice of cessation of injection. **If any**  
19 **sequestration facility was certificated pursuant to federal**  
20 **authority, the owner shall file a copy of any federal**  
21 **closure authority with the commission.** Unless notice of  
22 closure authority has been filed with the commission, there  
23 shall be a presumption that the geologic sequestration  
24 facility and all rights associated with it remain as  
25 certificated. In either case the owner shall file an  
26 instrument with the county clerk in the appropriate county

1 or counties, stating that injection has ceased and that the  
2 ownership of all property acquired by the person authorized  
3 to inject the carbon dioxide, both surface and subsurface,  
4 remains with or will be transferred to a successor owner  
5 with approval of the commission.

6  
7 **\*\*\* STAFF COMMENTS \*\*\***

8 The following section is from IGOCC part 2,  
9 section 1. The authors suggest that it be  
10 included in the property statutes, which could be  
11 done, but it seemed to make as much sense to keep  
12 it in the same chapter, but not article as the  
13 sequestration regulation provisions. Decisions  
14 as to the commission's authority over tangential  
15 issues regarding CO2 sequestration, such as  
16 drilling for minerals or exercising surface  
17 rights would influence whether the following  
18 provisions would be better placed under this new  
19 article or property law provisions.  
20

21  
22 **Article 2. Ownership and monitoring of carbon**  
23 **dioxide.**

24  
25 **30-9-201. Ownership of injected carbon dioxide.**  
26

27 All carbon dioxide that has previously been reduced to  
28 possession, and which is subsequently injected into a  
29 geologic sequestration facility, shall at all times be the  
30 property of the injector, or the injector's heirs,  
31 successors or assigns, whether owned by the injector or  
32 stored under contract. Absent a final judgment of willful  
33 abandonment rendered by a court of competent jurisdiction,

1 in no event shall this carbon dioxide be deemed the property  
2 of a surface owner or mineral owner, or the property of  
3 persons claiming by or under these owners, under whose  
4 lands the carbon dioxide is stored. Only the injector, or  
5 the injector's heirs, successors and assigns, may produce,  
6 take or reduce to possession this stored carbon dioxide.

7  
8 **\*\*\* STAFF COMMENTS \*\*\***

9 **The following is from IGOCC part 2, section 2.**

10  
11 **30-9-202. Effect on surface and mineral rights.**

12  
13 Nothing in this article shall be deemed to affect the  
14 otherwise lawful right of a surface or mineral owner to  
15 drill or bore through the geologic sequestration  
16 facilities, if done in accordance with commission rules for  
17 protecting the geologic sequestration facility against the  
18 escape of carbon dioxide.

19  
20 **\*\*\* STAFF COMMENTS \*\*\***

21 **The following is from IGOCC part 2, section 3.**

22  
23 **30-9-203. Identification of migrating carbon dioxide;**  
24 **costs.**

25  
26 (a) If carbon dioxide that has been injected into  
27 property or has migrated to adjoining property or to a  
28 stratum, or portion thereof, which has not been acquired by

1 the owner of the carbon dioxide, such owner shall not lose  
2 title to or possession of injected carbon dioxide if he can  
3 prove by a preponderance of the evidence that the carbon  
4 dioxide was originally injected into the geologic  
5 sequestration facility.

6 **\*\*\* STAFF COMMENTS \*\*\***

7 The deletion from the IGOCC act's language of  
8 acquisition by eminent domain or otherwise,  
9 reveals that the IGOCC act doesn't really specify  
10 whether it is speaking to the owner of the CO2 or  
11 the injector (which might always be one and the  
12 same, or not, depending on the policy decision of  
13 whether an injector is allowed to sell his  
14 ownership of injected CO2). The draft uses  
15 "owner of the carbon dioxide" since it appears  
16 that under part 1, section 6 and part 2, section  
17 1 of the IGOCC act, that interest can be  
18 conveyed. The issue again goes to bonding or  
19 other requirements to ensure potential  
20 liabilities can be addressed.

21  
22 (b) If carbon dioxide that has been injected into  
23 property or has migrated to adjoining property or to a  
24 stratum, or portion thereof, which has not been acquired by  
25 the owner of the carbon dioxide, such owner at his sole  
26 risk and expense, shall have the right to conduct  
27 reasonable testing on any existing wells on adjoining  
28 property including tests to determine ownership of the  
29 carbon dioxide, and to determine the value of any lost  
30 production of other than the injector's carbon dioxide.

31 **\*\*\* STAFF COMMENTS \*\*\***  
32

1       The bold was added to the IGOCC act language.  
2       The reference is to the split estates provisions  
3       enacted in 2005 regarding operator's duties to  
4       split estate surface owners. It was added only  
5       to this particular provision which specified  
6       allowable testing. While added only to this  
7       provision for this draft, it is as much as  
8       anything a placeholder for discussion as to how  
9       the requirements on oil and gas operators in the  
10      split estate circumstance should apply in the  
11      carbon dioxide injection and sequestration  
12      scenario (if at all).

13  
14      (c) If carbon dioxide that has been injected into  
15      property or has migrated to adjoining property or to a  
16      stratum, or portion thereof, not owned by the owner of the  
17      carbon dioxide, the owner of the stratum and the owner of  
18      the surface shall be entitled to compensation for use of or  
19      damage to the surface or substratum, the value of the  
20      sequestration right, and shall be entitled to recover all  
21      costs and expenses, including reasonable attorney fees.

22  
23      **Section 2.** 30-5-104(a)(iv) by creating a new subparagraph  
24      (F) is amended to read:

25  
26      **30-5-104. Oil and gas conservation commission; powers**  
27      **and duties; investigations; rules and regulations.**

28  
29      (a) The Wyoming oil and gas conservation commission,  
30      herein called "the commission," has jurisdiction and

1 authority over all persons and property, public and  
2 private, necessary to effectuate the purposes and intent of  
3 this act, including the authority to set, assess and  
4 collect reasonable fees as provided in this subsection. The  
5 fees authorized under this subsection shall be set in  
6 accordance with the following:

7  
8 (iv) Fees may be imposed only for:

9  
10 (F) Applications for carbon dioxide  
11 sequestration under W.S. 30-9-102.

12  
13 **\*\*\* STAFF COMMENTS \*\*\***

14 While chapter 5 of title 30 deals with oil and  
15 gas, since the commission will be overseeing  
16 carbon sequestration, if feasible the general  
17 provisions found in that chapter were amended,  
18 rather than rewriting all regulatory provisions  
19 in the new chapter 9. In addition to shortening  
20 the legislation, that can help by using  
21 precedents developed in the oil and gas context  
22 for this new area; the downside is that a number  
23 of provisions are specific to oil and gas.

24  
25 **Section 4.** This act is effective July 1, 2008.

26  
27 (END)