

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; and providing for an effective date.

6

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

8

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

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 is
 16 declared by the Wyoming legislature to be the protection of
 17 correlative rights, the prevention of waste, compliance

1 with environmental requirements and to facilitate the use
2 and production of Wyoming energy resources.

3

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

9

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

15

16 (ii) "Waste" means an inefficient and
17 potentially dangerous use of a geologic sequestration site
18 without an overriding plan of organization and utilization.

19

20 **35-11-315. Unitization of geologic sequestration**
21 **sites; agreements; application for permit; contents.**

22

23 (a) An agreement for the combined organization and use
24 of a geologic sequestration site into one (1) or more parts

1 is authorized and may be performed, and shall not be held
2 or construed to violate any of the statutes of this state
3 relating to trusts, monopolies or contracts and
4 combinations in restraint of trade, and may be submitted to
5 the Wyoming oil and gas conservation commission for
6 approval as being in the public interest. Approval of the
7 agreement by the Wyoming oil and gas conservation
8 commission shall constitute a complete defense to any suit
9 charging violation of any statute of this state relating to
10 trusts, monopolies and combinations in restraint of trade
11 on account of the agreement or on account of operations
12 conducted pursuant thereto. The failure to submit an
13 agreement under this section to the Wyoming oil and gas
14 conservation commission for approval shall not for that
15 reason imply or constitute evidence that the agreement or
16 operations conducted pursuant thereto are in violation of
17 laws relating to trusts, monopolies and combinations in
18 restraint of trade.

19

20 (b) 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 geologic sequestration site as a unit of one (1) or more
24 parts 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;

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; and

24

1 (C) The addresses of all such persons and
2 owners, if known. If the name or address of any such
3 person or owner is unknown, the application shall so
4 indicate.

5

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

11

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

18

19 (vi) A proposed plan for determining the amount
20 of pore space to be allocated to each separately owned
21 tract within the unit and the method by which such pore
22 space will be allocated the economic benefits generated by
23 use of the pore space;

24

1 (vii) A proposed plan for marketing participation
2 opportunities generated by the use of pore space within the
3 unit area;

4
5 (viii) A proposed operating plan providing the
6 manner in which the unit area will be supervised and
7 managed and, if applicable, costs allocated and paid,
8 unless all owners within the proposed unit area have joined
9 in executing an operating agreement or plan providing for
10 such supervision, management and allocation and, if
11 applicable, payment of costs.

12
13 **35-11-316. Unitization of geologic sequestration**
14 **sites; hearings on application, order; modifications.**

15
16 (a) Upon receipt of an application under W.S.
17 35-11-315, the Wyoming oil and gas conservation commission
18 shall promptly set the matter for hearing, and in addition
19 to any notice otherwise required by law or the commission's
20 rules, shall cause notice of such hearing, specifying the
21 time and place of hearing, and describing briefly its
22 purpose and the land and pore space affected, to be mailed
23 by certified mail at least fifteen (15) days prior to the

1 hearing to all persons whose names and addresses are
2 required to be listed in the application.

3

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

10

11 (i) The material allegations of the application
12 are substantially true;

13

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

16

17 (iii) The application outlines operations that
18 will comply with federal environmental requirements;

19

20 (iv) Granting the application will facilitate the
21 use and production of Wyoming energy resources;

22

23 (v) The quantity of pore space and method used to
24 determine the quantity of pore space allocated to each

1 separately owned tract within the unit area represents, so
2 far as can be practically determined, each such tract's
3 actual share of the pore space to be used in the
4 sequestration activity;

5

6 (vi) The method by which each unit of pore space
7 is allocated a portion of the revenue generated from use of
8 the pore space is fair and reasonable, taking into
9 consideration the costs required to capture, transport and
10 sequester the carbon dioxide;

11

12 (vii) The method of marketing the use of the pore
13 space is fair and equitable and is reasonably designed to
14 maximize the value of such use;

15

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

20

21 (A) Provides that each pore space owner
22 shall have a vote in the supervision and conduct of unit
23 operations related to the proportion the owner's unitized
24 pore space bears to the total unit area and the allocation,

1 if any, of the costs of unit operations chargeable against
2 the interests of such owner;

3

4 (B) Provides for fair and equitable terms
5 and conditions for removal of a unit operator and for
6 appointment of a successor unit operator;

7

8 (C) Makes a fair and equitable adjustment
9 among pore space owners for their respective investments,
10 if any, in any improvement which will contribute to unit
11 operations;

12

13 (D) If the plan provides for an allocation
14 of the cost of unit operations, including capital
15 investment, provides a fair and equitable method for
16 determining and allocating such costs.

17

18 (c) No order of the Wyoming oil and gas conservation
19 commission authorizing the commencement of unit operations
20 shall become effective until the plan of unitization has
21 been signed or in writing ratified or approved by those
22 persons who have been allocated at least eighty percent
23 (80%) of the pore space within the unit area. If such
24 consent has not been obtained at the time the

1 commissioner's order is made, the commission shall, upon
2 application, hold supplemental hearings and make findings
3 as may be required to determine when and if such consent
4 will be obtained. Notice of a supplemental hearing shall
5 be given by regular mail at least fifteen (15) days prior
6 to the hearing to each person owning interests in the pore
7 space in the proposed unit area whose name and address was
8 required by W.S. 35-11-315(b) to be listed in the
9 application for the unit operations. If the required
10 percentages of consent have not been obtained within a
11 period of six (6) months from and after the date on which
12 the order of approval is made, such order shall be
13 ineffective and revoked by the commission, unless, for good
14 cause shown, the commission extends that time. Any
15 interested person may file an application with the Wyoming
16 oil and gas conservation commission requesting an order
17 applicable only to the proposed unit area described in the
18 application which shall provide for the percentage of
19 approval or ratification to be reduced from eighty percent
20 (80%) to seventy-five percent (75%). The application shall
21 contain the information required by W.S. 35-11-315(b) and
22 any order of the commission entered pursuant to the
23 application shall comply with subsection (b) of this
24 section. Notice of the hearing on the application shall be

1 given in the same manner and to the same persons as
2 required by subsection (a) of this section. If the
3 commission finds that negotiations were being conducted
4 since July 1, 2009, or have been conducted for a period of
5 at least nine (9) months prior to the filing of the
6 application, that the applicant has participated in the
7 negotiations diligently and in good faith, and that the
8 percentage of approval or ratification required by this
9 subsection cannot be obtained, the commission may reduce
10 any percentage of approval or ratification required by this
11 section from eighty percent (80%) to seventy-five percent
12 (75%). Such an order shall affect only the unit area
13 described in the application and shall operate only to
14 approve the proposed plan of unitization and proposed
15 operating plan and to reduce the required percentage of
16 approval or ratification thereof and shall not change any
17 other requirement contained in this section.

18

19 (d) From and after the effective date of an order of
20 the Wyoming oil and gas conservation commission entered
21 under the provisions of this section, the operation of the
22 unit area defined in the order by persons other than the
23 unit operator or persons acting under the unit operator's
24 authority, or except in the manner and to the extent

1 provided in the plan of unitization approved by the order,
2 shall be unlawful and is hereby prohibited.

3

4 (e) Unless otherwise provided in this section, an
5 order entered by the Wyoming oil and gas conservation
6 commission under this section may be amended in the same
7 manner and subject to the same conditions as an original
8 order or previous agreement: provided, no amendatory order
9 shall change the allocation of pore space as established by
10 the original order or previous agreement, except with the
11 written consent of those persons who have been allocated at
12 least eighty percent (80%) of the pore space in the unit,
13 nor change any allocation of costs as established by the
14 original order or previous agreement, except with the
15 written consent of those persons who have been allocated at
16 least eighty percent (80%) of the unit pore space. If such
17 consent has not been obtained at the time the commission
18 order is made, the commission shall, upon application, hold
19 supplemental hearings and make findings as may be required
20 to determine when and if such consent will be obtained.
21 Notice of a supplemental hearing shall be given by regular
22 mail at least fifteen (15) days prior to the hearing to
23 each person owning interests in the unit area whose name
24 and address was required by the provisions of W.S.

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

1 required by this subsection cannot be obtained, the
2 commission may reduce any percentage of approval or
3 ratification required by this section from eighty percent
4 (80%) to seventy-five percent (75%). Such an order shall
5 affect only the unit area described in the application and
6 operate only to reduce the required percentage of approval
7 or ratification necessary for amending the allocation of
8 pore space or allocation of costs and shall not change any
9 other requirement contained in this section.

10

11 (f) The Wyoming oil and gas conservation commission,
12 upon its own motion or upon application, and with notice
13 and hearing, may modify its order regarding the operation,
14 size or other characteristic of the unit area in order to
15 prevent or assist in preventing the violation of any fact
16 or circumstances upon which the order granting approval was
17 originally based or to correct a substantial inequity
18 resulting from operation of the unit.

19

20 (g) Any owner of pore space within a geologic
21 sequestration site who has not been included within a
22 unitization application or order authorizing a unit under
23 this section, may petition for inclusion in the unit area.
24 The petition shall be filed with the Wyoming oil and gas

1 conservation commission and shall describe the petitioner's
2 legal entitlement to the pore space, the location of the
3 pore space and the bases for inclusion in the unit area.
4 The petition shall be accompanied by a deposit of money
5 sufficient to pay all costs of the inclusion proceedings.
6 The commission shall cause a notice of filing of the
7 petition to be published which notice shall state the
8 filing of the petition, the name of the petitioner, the
9 location of the pore space and the prayer of the
10 petitioner. The notice shall notify all interested persons
11 to appear at a specified time and place and to show cause,
12 in writing, if any they have, why the petition should not
13 be granted. The commission at the time and place mentioned
14 in the notice shall proceed to hear the petition and all
15 objections thereto and shall thereafter grant or deny the
16 petition. The filing of the petition shall be deemed and
17 taken as an assent by each and all petitioners to the
18 inclusion in the unit of the pore space mentioned in the
19 petition or any part thereof. If the petition is granted,
20 the petitioner shall be considered to have been a member of
21 the unit since its inception and, upon the payment of any
22 costs paid by unit members, shall be entitled to all carbon
23 credits or other economic benefits received by unit members
24 since the inception of the unit.

1

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

9

10 **35-11-317. Unitization of geologic sequestration**
11 **sites; economic benefits; liens.**

12

13 (a) That portion of pore space allocated to any tract,
14 and the proceeds from the sale of carbon credits or other
15 economic benefit generated from that pore space, shall be
16 the property and income of the several persons to whom, or
17 to whose credit, the same are allocated or payable under
18 the order providing for unit operations.

19

20 (b) No department order, order of the Wyoming oil and
21 gas conservation commission or other contract relating to a
22 separately owned tract within the unit area shall be
23 terminated by the order providing for unit operations, but
24 shall remain in force and apply to that tract, its

1 benefits, burdens and obligations, until terminated in
2 accordance with the provisions thereof.

3

4 (c) Except to the extent that the parties affected so
5 agree, no order providing for unit operations shall be
6 construed to result in a transfer of all or any part of the
7 title or right of use to pore space or other rights in any
8 tract in the unit area.

9

10 (d) Subject to the limitations set forth in W.S.
11 35-11-314 through 35-11-317, and further limitations as may
12 be set forth in the plan of unitization and operating plan,
13 the operator of the unit shall have a first and prior lien
14 for costs incurred pursuant to the plan of unitization and
15 operating plan upon each owner's pore space and his share
16 of carbon credits or other economic benefit to secure the
17 payment of each owner's proportionate part of the costs of
18 developing and operating the unit area. The lien may be
19 established and enforced in the same manner as provided by
20 W.S. 29-3-101 through 29-3-111. For such purposes any
21 nonconsenting owner shall be deemed to have contracted with
22 the unit operator for his proportionate part of the cost of
23 developing and operating the unit area. A transfer or
24 conversion of any owner's interest or any portion thereof

1 however accomplished after the effective date of the order
2 creating the unit, shall not relieve the transferred
3 interest of the operator's lien on that interest for the
4 cost and expense of unit operations.

5

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

8

9 **30-5-104. Oil and gas conservation commission; powers
10 and duties; investigations; rules and regulations.**

11

12 (d) The commission has authority:

13

14 (viii) To issue orders allowing the unitization
15 of geologic sequestration sites pursuant to W.S. 35-11-314
16 through 35-11-317 and adopt such rules and regulations as
17 necessary to effectuate the purposes of W.S. 35-11-314.

18

19 **35-11-313. Carbon sequestration; permit requirements.**

20

21 (f) The administrator of the water quality division
22 of the department of environmental quality, after receiving
23 public comment and after consultation with the state
24 geologist and the advisory board created under this act,

1 shall recommend to the director rules, regulations and
2 standards for:

3

4 (ii) Requirements for the content of
5 applications for geologic sequestration permits. Such
6 applications shall include:

7

8 (F) A site and facilities description,
9 including a description of the proposed geologic
10 sequestration facilities and documentation sufficient to
11 demonstrate that the applicant has all legal rights,
12 including but not limited to the right to surface use,
13 necessary to sequester carbon dioxide and associated
14 constituents into the proposed geologic sequestration site.

15 In the event that the applicant does not have all legal
16 rights necessary for the proposed geologic sequestration
17 facility, the applicant may seek those rights pursuant to
18 W.S. 35-11-314 through 35-11-317. The department may issue
19 a draft permit contingent on obtaining a unitization order
20 pursuant to W.S. 35-11-314 through 35-11-317;

21

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

23

24

(END)