

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

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

Carbon sequestration-financial assurances and regulation.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to environmental quality; establishing an  
2 account; funding the account; requiring fees by specified  
3 permit applicants; regulating the expenditure of funds;  
4 requiring rule making; providing for the state's immunity;  
5 requiring bonding or other financial assurances; providing  
6 penalties; providing for the release of financial  
7 assurances; requiring land owner notice of geological  
8 sequestration sites; repealing outdated sections; and  
9 providing for an effective date.

10

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

12

13 **Section 1.** W.S. 35-11-318 is created to read:

14

1           **35-11-318.      Geologic sequestration special revenue**  
2 **account.**

3

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

17

18           (b)       The account shall consist of all monies  
19 collected by the department to measure, monitor or verify  
20 Wyoming geologic sequestration sites following site closure  
21 certification, release of all financial assurance  
22 instruments and termination of the permit. The department  
23 shall promulgate rules necessary to collect monies in an

1 amount reasonably calculated to pay the costs of measuring,  
2 monitoring and verifying the sites.

3

4 (c) Funds in the account shall be used only for the  
5 measurement, monitoring and verification of geologic  
6 sequestration sites following site closure certification,  
7 release of all financial assurance instruments and  
8 termination of the permit.

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

16

17 **Section 2.** W.S. 35-11-313(f)(ii) by creating  
18 subparagraph (o) and by creating paragraphs (vi) and (vii)  
19 are amended to read:

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21 **35-11-313. Carbon sequestration; permit requirements.**

22

1           (f) The administrator of the water quality division  
2 of the department of environmental quality, after receiving  
3 public comment and after consultation with the state  
4 geologist, the Wyoming oil and gas conservation commission  
5 and the advisory board created under this act, shall  
6 recommend to the director rules, regulations and standards  
7 for:

8  
9           (ii) Requirements for the content of  
10 applications for geologic sequestration permits. Such  
11 applications shall include:

12  
13                   (0) A certificate issued by an insurance  
14 company authorized to do business in the United States  
15 certifying that the applicant has a public liability  
16 insurance policy in force for the geologic sequestration  
17 operations for which the permit is sought, or evidence that  
18 the applicant has satisfied other state or federal self  
19 insurance requirements. The policy shall provide for  
20 personal injury and property damage protection in an amount  
21 and for a duration as established by regulations;  
22

1           (vi) Requirements for bonding and financial  
 2 assurance for geologic sequestration facilities and  
 3 geologic sequestration sites including:

4  
 5           (A) Procedures to establish the type and  
 6 amount of the bond or financial assurance instrument to  
 7 assure that the operator faithfully performs all  
 8 requirements of this chapter, complies with all rules and  
 9 regulations and provides adequate financial resources to  
 10 pay for mitigation or reclamation costs that the state may  
 11 incur as a result of any default by the permit holder,  
 12 provided that, any insurance instruments submitted for  
 13 financial assurance purposes shall include the state of  
 14 Wyoming as an additional insured, which inclusion shall not  
 15 be deemed a waiver of sovereign immunity;

16                                   **\*\* STAFF COMMENT \*\***  
 17           **This subparagraph requires bonds or financial**  
 18 **assurance to pay for "mitigation or reclamation**  
 19 **costs that the state may incur as a result of**  
 20 **default by the permit holder." This may be**  
 21 **appropriate. However, consider whether this**  
 22 **language should be more broad to include**  
 23 **obligations that a non-state entity might incur**  
 24 **and/or damages caused to non-state entities?**  
 25

26           (B) Annual or other periodic reporting by  
 27 the permittee during geologic sequestration and reclamation  
 28 activities to allow the administrator to confirm or adjust

1 the amount of the bond or other financial assurance  
 2 requirements consistent with the site, facility and  
 3 operation-specific risks and conditions;

4  
 5 (C) Procedures to require proof of  
 6 compliance from any permittee ordered by the administrator  
 7 to adjust a bond or other financial assurance, including  
 8 permit suspension or termination procedures following  
 9 notice and an opportunity for a hearing if adequate bonding  
 10 or financial assurance cannot be demonstrated;

11 **\*\* STAFF COMMENT \*\***  
 12 **This subparagraph contemplates suspension or**  
 13 **termination "if adequate bonding or financial**  
 14 **assurance cannot be demonstrated." The real**  
 15 **issue, however, appears to be compliance with the**  
 16 **administrator's order to modify a bond or**  
 17 **financial assurance. Consider whether this**  
 18 **language should be modified to allow suspension**  
 19 **or termination procedures "if the permittee fails**  
 20 **to provide proof as required."**  
 21

22 (D) Procedures for replacement of a bond or  
 23 financial assurance instrument if notice of cancellation is  
 24 provided or notice that the license to do business in  
 25 Wyoming of the surety or insurance company issuing a bond  
 26 or other financial assurance pursuant to this chapter is  
 27 suspended or revoked;

28 **\*\* STAFF COMMENT \*\***

1       **This provision addresses the loss of authority to**  
2       **do business in Wyoming. Note, however, that the**  
3       **earlier amendment creating W.S. 35-11-**  
4       **313(f)(ii)(O) simply requires that a bonding or**  
5       **financial assurance company be authorized to do**  
6       **business in the United States.**  
7

8               (E) Procedures for the director to forfeit  
9       the bond or to make a claim against any insurance  
10       instrument providing financial assurance, including the  
11       right of the attorney general to bring suit to recover  
12       costs if the bond or financial assurance is **inadequate**, to  
13       pay for closure, mitigation, reclamation, measurement,  
14       monitoring, verification and pollution control, where  
15       recovery is deemed possible;

16                               **\*\* STAFF COMMENT \*\***

17       LSO has inserted a "," after the word  
18       "inadequate" in the subparagraph above. The ","  
19       substantially changes the meaning of the  
20       paragraph by allowing the director to forfeit  
21       bonds or make claims for closure, mitigation,  
22       reclamation, measurement costs, etc. As  
23       originally written, without the ",", the  
24       paragraph indicates that a suit by the AG's  
25       office is the only means of collecting the  
26       enumerated costs.  
27

28               (F) Procedures, including public notice and  
29       a public hearing if requested, for the release of bonds or  
30       the termination of insurance instruments not less than ten  
31       (10) years after the date when all wells excluding  
32       monitoring wells have been appropriately plugged and

1 abandoned, all subsurface operations and activities have  
2 ceased and all surface equipment and improvements have been  
3 removed or appropriately abandoned, or so long thereafter  
4 as necessary to obtain a completion and release certificate  
5 from the administrator certifying that plume stabilization  
6 as defined by rule has been achieved without the use of  
7 control equipment based on a minimum of three (3)  
8 consecutive years of monitoring data, and that the operator  
9 has completed site reclamation and all required monitoring  
10 and remediation to ensure that the carbon dioxide injected  
11 into the geologic sequestration site will not harm or  
12 present a risk to human health, safety or the environment,  
13 including drinking water supplies, consistent with the  
14 purposes of this chapter and the rules and regulations  
15 adopted by the council;

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17 (G) Requirements for the operator to record  
18 an affidavit in the office of the county clerk of the  
19 county or counties in which a geologic sequestration site  
20 is located, which affidavit shall be reasonably calculated  
21 to alert a person researching the title of a particular  
22 tract that such tract is underlain by a site used for  
23 geologic sequestration.



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(vii) Requirements for fees to be paid by all permittees of geologic sequestration sites or facilities, which may include a per-ton injection fee or a closure fee, commensurate with the injection of carbon dioxide and associated constituents into subsurface geologic formations in Wyoming, which fees shall be deposited in the geologic sequestration special revenue account created by W.S. 35-11-318 for use as provided therein;

**Section 3.** W.S. 35-11-313(g) is repealed.

**Section 4.** This act is effective July 1, 2010.

(END)