SENATE BILL No. 442

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2; IC 14-37-10; IC 14-39.

Synopsis: Underground storage of carbon dioxide. Provides that if a prospective operator of a facility at which carbon dioxide would be stored underground obtains the express consent of pore space owners of at least 51% of the subsurface geologic strata into which carbon dioxide would be injected, the prospective operator may apply for a "pooling order" authorizing the use of the entire tract of land for the injection and underground storage of carbon dioxide. Establishes conditions that a person applying for a pooling order must meet. Requires an administrative law judge to grant the application if the administrative law judge determines that the benefit to the state and the nation of the geologic storage of carbon dioxide at the facility outweighs the detriment that the granting of the application would impose on the pore space owners who did not consent to the storage of carbon dioxide. Requires the director of the department of natural resources to issue a pooling order if the administrative law judge grants the application. Provides that the compensation paid to pore space owners who did not consent to the use of their pore space for the storage of carbon dioxide must be calculated as 101.25% of the compensation paid per unit of pore space volume to pore space owners who consented use of their pore space. Provides the following concerning the underground storage of carbon dioxide at a storage facility: (1) The state of Indiana owns all carbon dioxide stored underground. (2) The operator of the storage facility bears all emergency and remedial response responsibility until the closure of the storage facility, and all emergency and remedial response responsibility then passes to the state of Indiana. (3) The operator must fulfill all (Continued next page)

Effective: July 1, 2019.

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January 14, 2019, read first time and referred to Committee on Environmental Affairs.
monitoring requirements until the closure of the storage facility, and the duty to fulfill monitoring requirements then passes to the state of Indiana. (4) The operator is required to meet financial responsibility requirements for as long as the maintenance of financial responsibility is required. (5) The ownership of the storage facility transfers to the state of Indiana upon closure of the storage facility.
SENATE BILL No. 442

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-8-2-34.8 is added to the Indiana Code as a new section to read as follows [effective July 1, 2019]: Sec. 34.8. "Carbon dioxide owner", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-1.

SECTION 2. IC 14-8-2-41.2 is added to the Indiana Code as a new section to read as follows [effective July 1, 2019]: Sec. 41.2. "Class VI well", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-2.

SECTION 3. IC 14-8-2-41.3 is added to the Indiana Code as a new section to read as follows [effective July 1, 2019]: Sec. 41.3. "Class VI well permit", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-3.

SECTION 4. IC 14-8-2-83.5 is added to the Indiana Code as a new section to read as follows [effective July 1, 2019]: Sec. 83.5. "Emergency and remedial response
responsibility", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-4.

SECTION 5. IC 14-8-2-90.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 90.9. "Financial responsibility", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-5.

SECTION 6. IC 14-8-2-168.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 168.5. "Monitoring requirements", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-6.

SECTION 7. IC 14-8-2-195.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 195.5. "Ownership start date", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-7.

SECTION 8. IC 14-8-2-209.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 209.5. "Pore space", for purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-1.

SECTION 9. IC 14-8-2-209.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 209.6. "Pore space owner", for purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-2.

SECTION 10. IC 14-8-2-240 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 240. (a) "Reservoir", for purposes of IC 14-37, means an underground geological formation that contains oil or natural gas.

(b) "Reservoir", for purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-3.

SECTION 11. IC 14-8-2-258.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 258.2. "Site closure date", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-8.

SECTION 12. IC 14-8-2-266.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 266.5. (a) "Storage facility", for purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-4.

(b) "Storage facility", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-9.

SECTION 13. IC 14-8-2-266.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2019]: Sec. 266.6. (a) "Storage operator", for purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-5.

(b) "Storage operator", for purposes of IC 14-39-3, has the meaning set forth in IC 14-39-3-10.

SECTION 14. IC 14-37-10-3, AS AMENDED BY P.L.195-2014, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. The following shall be deposited in the fund:

1. Annual fees for oil and gas wells received under IC 14-37-5.

2. Accrued interest and other investment earnings of the fund.

3. Civil penalties collected under IC 14-37.


5. Gifts, grants, donations, or appropriations from any source.


SECTION 15. IC 14-37-10-5, AS AMENDED BY P.L.150-2011, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) Money paid into the fund shall be appropriated for the following purposes:

1. To supplement the cost required to abandon a well that has had a permit revoked under IC 14-37-13-1.

2. To cover the costs of remedial plugging and repairing of wells under IC 14-37-8, including the expenses of remedial action under IC 14-37-8-15.

3. To cover the cost to:
   (A) mitigate environmental damage; or
   (B) protect public safety against harm;
   caused by a well regulated under this article.

4. Pipeline safety.

5. To defray expenses incurred by the department under IC 14-39-2.

(b) The director may make expenditures from the fund for emergency purposes under section 6 of this chapter without the prior approval of the budget agency or the governor. An expenditure under this subsection may not exceed fifty thousand dollars ($50,000).

(c) The director may establish a program to reimburse an applicant for the reasonable expenses of remedial action incurred under IC 14-37-8-15. The director may make expenditures from the fund for this purpose and may establish any necessary guidelines and procedures to administer the program.

SECTION 16. IC 14-39-2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 2. Pooling of Pore Space for Geologic Storage of
Carbon Dioxide

Sec. 1. As used in this chapter, "pore space" means the voids in one (1) or more subsurface geologic strata that are:
   (1) located beneath the surface of a particular tract of land; and
   (2) suitable for the storage of carbon dioxide.

Sec. 2. As used in this chapter, "pore space owner" means the person who has:
   (1) the right to inject and store carbon dioxide in the pore space beneath the surface of a particular tract of land; and
   (2) the power to transfer the right described in subdivision (1) to another person.

Sec. 3. As used in this chapter, "reservoir" means a portion of one (1) or more underground geologic strata that is suitable for the injection and storage of carbon dioxide.

Sec. 4. (a) As used in this chapter, "storage facility" means a facility at which carbon dioxide is subjected to geologic storage.
   (b) The term includes the:
      (1) reservoir;
      (2) underground equipment; and
      (3) surface buildings and equipment;
      used in the carbon dioxide geologic storage operation.
   (c) The term does not include pipelines used to transport the carbon dioxide to the storage facility.

Sec. 5. As used in this chapter, "storage operator" means a person that holds a permit to operate a storage facility.

Sec. 6. For the purposes of this chapter, the pore space owner with respect to a tract of land is:
   (1) the holder of the fee simple estate in the tract of land; or
   (2) if the pore space ownership rights have been severed from the surface estate, the person or persons to whom the pore space ownership rights in the tract of land have been transferred.

Sec. 7. A storage operator is authorized to inject and store carbon dioxide in the pore space beneath the surface of a tract of land:
   (1) if the storage operator obtains the express, written consent of all of the pore space owners of the pore space; or
   (2) if:
      (A) the storage operator obtains the express, written consent of enough of the pore space owners to meet the condition set forth in section 8(1) of this chapter and
applies for the pooling of the pore space beneath the
surface of the tract of land; and
(B) the storage operator's application is granted under this
chapter.

Sec. 8. If:
(1) a prospective storage operator secures the express, written
consent of the pore space owners of the subsurface geologic
strata located beneath at least fifty-one percent (51%) of the
surface area of a tract of land; but
(2) the prospective storage operator:
   (A) is unable to identify;
   (B) having identified, is unable to locate or communicate
       with; or
   (C) despite identifying and communicating with, is
       unsuccessful in obtaining the consent of;
the pore space owners of the pore space beneath the rest of
the surface of a tract of land;
the prospective storage operator may submit to the division of oil
and gas of the department an application for the pooling of all pore
space beneath the surface area of a tract of land.

Sec. 9. A prospective storage operator seeking the pooling of
pore space under this chapter must do the following:
(1) Submit:
   (A) an application; and
   (B) an application fee in the amount required under section
       13 of this chapter;
   to the division of oil and gas of the department under this
chapter.
(2) Provide to the department:
   (A) the names; and
   (B) any known mailing addresses, phone numbers,
electronic mail addresses, or other contact information;
of all persons reasonably known to hold an interest in pore
space proposed to be pooled.
(3) At least twenty (20) days before the date of the hearing on
the application for a pooling order, publish in the newspaper
of largest circulation in each county in which the pore space
is located one (1) notice that:
   (A) states that an application for a pooling order has been
       filed with the division of oil and gas of the department;
   (B) sets forth the location of the pore space proposed to be
       pooled;
(C) if, as provided in section 8(2)(A) of this chapter, the identity of the current pore space owner of any pore space proposed to be pooled is unknown to the prospective storage operator, sets forth the name of the last known pore space owner of that pore space;

(D) in the case of each pore space owner to whom section 8(2)(B) of this chapter applies, sets forth the name and last known address of the pore space owner;

(E) states that any person claiming an interest in the pore space to which the application for a pooling order applies should notify the director of the division of oil and gas of the department and the prospective storage operator at the address set forth in the notice within twenty (20) days after the publication date of the notice; and

(F) states the date, time, and location of the hearing on the application for a pooling order.

Sec. 10. (a) Before convening a hearing on an application for a pooling order, the administrative law judge must ensure that:

(1) all pore space owners to whom section 8(2)(B) and 8(2)(C) of this chapter apply; and

(2) all other persons who:

(A) claim an interest in the pore space to which the application for a pooling order would apply; and

(B) have notified the director of the division of oil and gas of the department of their claimed interest;

have received notice of the hearing under IC 4-21.5-3-1.

(b) In the hearing on the application for a pooling order, all persons to whom:

(1) subsection (a)(1) applies; or

(2) subsection (a)(2) applies;

shall be allowed to appear, present evidence, and present oral testimony.

(c) If the administrative law judge determines that:

(1) the prospective storage operator has done everything that could reasonably be expected to:

(A) identify;

(B) contact; and

(C) obtain the consent of;

all pore space owners to whose pore space the application for a pooling order applies; and

(2) in the judgment of the administrative law judge, the benefit to the state and the nation of the geologic storage of...
carbon dioxide in the pore space to which the application applies, including:

(A) the environmental and social benefit of reducing greenhouse gas emissions;
(B) the economic benefit to the state and its citizens of promoting the geologic sequestration of carbon dioxide as a commercial activity; and
(C) the potential economic benefit of storing carbon dioxide for future commercial, industrial, or other uses, including the enhanced recovery of oil, gas, and other minerals;

outweighs the detriment that the granting of the application would impose on the pore space owners to whom section 8(2)(A), 8(2)(B), and 8(2)(C) of this chapter apply;

the administrative law judge shall grant the application for a pooling order.

Sec. 11. (a) If an administrative law judge grants an application for a pooling order under section 10(c) of this chapter, the order of the administrative law judge granting the application:

(1) is a final order; or
(2) becomes a final order;

according to IC 4-21.5-3-27(a).

(b) When an order of an administrative law judge granting an application is or becomes a final order under IC 4-21.5-3-27(a), the director shall issue a pooling order to the applicant.

Sec. 12. (a) A pooling order issued by the director under section 11(b) of this chapter must:

(1) authorize the permanent storage of carbon dioxide in the storage facility to which the order relates;
(2) if the director considers it necessary, specify the location of:
   (A) carbon injection wells;
   (B) outbuildings;
   (C) roads; and
   (D) monitoring equipment;

to be located at the storage facility to which the order relates; and

(3) specify:
   (A) the compensation to be paid to:
       (i) pore space owners to whom section 8(2)(B) or 8(2)(C) of this chapter applies; and
       (ii) if their identity and location become known, pore
space owners to whom section 8(2)(A) of this chapter applies;
for the storage of carbon dioxide in the storage facility to which the order relates; and
(B) the basis for the calculation of the compensation under clause (A).

(b) The compensation to be paid to a pore space owner to whom section 8(2)(C) of this chapter applies must be calculated as one hundred one and twenty-five hundredths percent (101.25%) of the compensation paid by the prospective storage operator paid per unit of pore space volume to pore space owners who consented to the prospective storage operator's use of their pore space for the storage of carbon dioxide.

(c) If a prospective storage operator is compensating two (2) or more pore space owners who consented to the prospective storage operator's use of their pore space for the storage of carbon dioxide at different rates of compensation, the calculation under subsection (b) shall be based on the average compensation being paid by the prospective storage operator paid per unit of pore space volume to the pore space owners who consented to the use of their pore space for the storage of carbon dioxide.

Sec. 13. (a) The department shall adopt rules under IC 4-22-2 to implement this chapter.
(b) The rules must set the amount of the fee to be collected from a person applying for a pooling order under this chapter. The fee shall be set at an amount reasonably expected to defray the expenses incurred by the department in:
(1) processing the application for a pooling order; and
(2) holding a hearing on the application;
under this chapter.
(c) The department shall deposit revenue from the fee collected under this section in the oil and gas environmental fund established by IC 14-37-10-2.

Sec. 14. The county recorder of the county in which pore space subject to a pooling order issued under this chapter is located shall:
(1) accept the pooling order for recording;
(2) enter and record full copies of the pooling order in the same way that deeds are recorded; and
(3) charge the same fees for recording the pooling order as the recorder charges for recording deeds.

Sec. 15. Nothing in this chapter may be construed to limit the right of a storage operator or prospective storage operator to
negotiate for the right to inject and store carbon dioxide in pore space.

SECTION 17. IC 14-39-3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 3. State Assumption of Ownership of Carbon Dioxide Storage Facility

Sec. 1. As used in this chapter, "carbon dioxide owner" means the person or entity that:

(1) owns the carbon dioxide stored underground at a storage facility; and

(2) is subject to any liability associated with the ownership of the carbon dioxide stored in the underground at a storage facility.

Sec. 2. As used in this chapter, "Class VI well" means a well that:

(1) is used for the underground long term storage of carbon dioxide; and

(2) is regulated by the United States Environmental Protection Agency under 40 CFR Part 146, Subpart H.

Sec. 3. As used in this chapter, "Class VI well permit" means a permit issued by the United States Environmental Protection Agency under 40 CFR Part 146, Subpart H, to authorize the construction and operation of a Class VI well.

Sec. 4. As used in this chapter, "emergency and remedial response responsibility" means the responsibility to take action:

(1) pursuant to an emergency and remedial response plan provided with respect to a Class VI well under 40 CFR 146.94; or

(2) according to an order issued by federal, state, or local governmental authorities with respect to a Class VI well; when a problem associated with the Class VI well creates a danger to underground sources of drinking water or otherwise endangers human health or the environment.

Sec. 5. As used in this chapter, "financial responsibility" means compliance with the requirement of 40 CFR 146.85 to maintain the ability to pay the costs of:

(1) corrective action;

(2) injection well plugging;

(3) post injection site care and site closure; and

(4) emergency and remedial response; associated with a Class VI well.
Sec. 6. As used in this chapter, "monitoring requirements" means:
(1) the testing and monitoring requirements imposed on the owner or operator of a Class VI well by 40 CFR 146.90; and
(2) all other monitoring responsibilities imposed with respect to the Class VI well by:
(A) 40 CFR Part 146, Subpart H; and
(B) the Class VI well permit of the storage operator of the Class VI well.

Sec. 7. As used in this chapter, "ownership start date" means, with respect to a storage facility, the first date on which all of the following conditions are met:
(1) The construction of a storage facility is complete.
(2) The storage operator of the storage facility has obtained a Class VI well permit.
(3) The storage operator has informed the department that the underground long term storage of carbon dioxide at the storage facility has begun.

Sec. 8. As used in this chapter, "site closure date" means, with respect to a storage facility, the date on which:
(1) injection well plugging, postinjection site care, site closure, and all other requirements that apply under:
   (A) 40 CFR Part 146, Subpart H; and
   (B) the storage operator's Class VI well permit;
   when the injection of carbon dioxide for storage ends have been satisfied; and
(2) the storage operator of the storage facility notifies the department of the satisfaction of the requirements in subdivision (1).

Sec. 9. (a) As used in this chapter, "storage facility" means a facility at which carbon dioxide is subjected to long term underground storage through the use of a Class VI well.
(b) The term includes:
(1) the:
   (A) underground equipment; and
   (B) surface buildings and equipment;
   used in the underground storage of carbon dioxide at the storage facility;
(2) the ownership interest of the storage operator in the land on which the storage facility is located; and
(3) if the storage operator is a pore space owner (as defined in IC 14-39-2-2) of pore space located beneath the storage
facility, the interest of the storage operator as a pore space
owner.
(c) The term does not include pipelines used to transport the
carbon dioxide to the storage facility.
Sec. 10. As used in this chapter, "storage operator" means a
person that holds a Class VI well permit to construct and operate
a storage facility.
Sec. 11. The state of Indiana is the carbon dioxide owner of all
carbon dioxide stored underground at a storage facility beginning
on the ownership start date of the storage facility.
Sec. 12. (a) The storage operator bears all emergency and
remedial response responsibility with respect to the storage
operator's Class VI well:
(1) beginning on the ownership start date of the storage
facility containing the Class VI well; and
(2) ending on the site closure date of the storage facility.
(b) The state of Indiana bears all emergency and remedial
response responsibility with respect to a Class VI well beginning on
the site closure date of the storage facility containing the Class VI
well.
Sec. 13. (a) The storage operator shall fulfill all monitoring
requirements with respect to the storage operator's Class VI well:
(1) beginning on the ownership start date of the storage
facility containing the Class VI well; and
(2) ending on the site closure date of the storage facility.
(b) The state of Indiana must fulfill all monitoring requirements
with respect to a Class VI well beginning on the site closure date of
the storage facility containing the Class VI well.
Sec. 14. A storage operator shall maintain financial
responsibility with respect to the storage operator's Class VI well
in compliance with 40 CFR 146.85 for as long as the maintenance
of financial responsibility is required with respect to the Class VI
well.
Sec. 15. On the site closure date of a storage facility, the
ownership of the storage facility transfers to the state of Indiana.