

HOUSE BILL No. 1209

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-39.

Synopsis: Carbon sequestration projects. Provides for the mechanism for underground storage of carbon dioxide in Indiana. Makes conforming changes.

Effective: July 1, 2022.

Soliday

January 6, 2022, read first time and referred to Committee on Natural Resources.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1209

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

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

1 SECTION 1. IC 14-39-1-4, AS ADDED BY P.L.150-2011,
2 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 4. (a) A carbon dioxide transmission pipeline
4 company may apply to the department for issuance of a carbon dioxide
5 transmission pipeline certificate of authority. The department shall
6 prescribe the form of the application, which must:

- 7 (1) include a filing fee of one thousand dollars (\$1,000);
- 8 (2) be signed by a responsible officer of the company;
- 9 (3) include a statement verifying that the information submitted
10 is true, accurate, and complete to the best of that responsible
11 officer's knowledge and belief; and
- 12 (4) include all information necessary for the department to find
13 the following:

 - 14 (A) That the applicant **or the contractor or subcontractor of**
15 **the applicant** has the financial, managerial, and technical
16 ability to construct, operate, and maintain a carbon dioxide
17 transmission pipeline in Indiana.



- 1 (B) That the applicant has the requisite experience
2 constructing, operating, and maintaining a carbon dioxide
3 transmission pipeline.
- 4 (C) That the applicant has entered into a contract to transport
5 carbon dioxide by pipeline in Indiana with:
- 6 (i) at least one (1) producer of carbon dioxide located in
7 Indiana; and
- 8 (ii) unless all of the carbon dioxide to be transported in the
9 proposed carbon dioxide transmission pipeline is for the
10 applicant's own use or account, at least one (1) end user **or**
11 **storer** of carbon dioxide.
- 12 (D) That the applicant has provided documentation to the
13 department showing the proposed length, diameter, and
14 location of the proposed carbon dioxide transmission pipeline
15 in Indiana.
- 16 (E) That the applicant will construct, operate, and maintain the
17 proposed carbon dioxide transmission pipeline in accordance
18 with applicable local, state, and federal law, including federal
19 and state safety regulations and rules governing the
20 construction, operation, and maintenance of carbon dioxide
21 transmission pipelines, and related facilities and equipment, to
22 ensure the safety of pipeline employees and the public.
- 23 (F) That the applicant has:
- 24 (i) entered into an agreement with the Indiana utility
25 regulatory commission concerning the mitigation of
26 agricultural impacts associated with the construction of the
27 proposed carbon dioxide transmission pipeline; or
- 28 (ii) signed a statement indicating that the applicant agrees to
29 use, in connection with the construction of the proposed
30 carbon dioxide transmission pipeline, the guidelines adopted
31 under IC 8-1-22.6-8 by the pipeline safety division of the
32 Indiana utility regulatory commission.
- 33 (b) The department shall review an application filed under
34 subsection (a). Subject to subsection (f), if the department determines
35 that the application is incomplete or inaccurate, or both, the department
36 shall return the application to the applicant, informing the applicant in
37 writing of the applicant's right to file a corrected application with the
38 department. If the department determines that the application is
39 complete and accurate, the department shall provide notice to the
40 applicant of:
- 41 (1) that determination; and
- 42 (2) the date, time, and location of the public information meeting



1 to be held under subsection (d).

2 (c) The applicant shall:

3 (1) upon receipt of a notice under subsection (b):

4 (A) place for public inspection a copy of the application in a
5 public library located in each county in which the carbon
6 dioxide transmission pipeline is proposed to be located; and

7 (B) publish notice, in the same manner that would be required
8 if the applicant were subject to IC 5-3-1, in each county in
9 which the carbon dioxide transmission pipeline is proposed to
10 be located, of:

11 (i) the name and address of each library in which a copy of
12 the application is placed under clause (A); and

13 (ii) the date, time, and location of the public information
14 meeting to be held under subsection (d);

15 (2) provide to the department proof of publication of notice under
16 subdivision (1)(B); and

17 (3) have a representative present at the public information
18 meeting held under subsection (d).

19 (d) The department shall:

20 (1) conduct a public information meeting in the county seat of one
21 (1) of the counties, as determined by the department, in which the
22 proposed carbon dioxide transmission pipeline will be located;
23 and

24 (2) provide an opportunity at the meeting for members of the
25 public to be briefed and to ask questions about the proposed
26 carbon dioxide transmission pipeline.

27 (e) Not later than ninety (90) days after the public information
28 meeting held under subsection (d), the department shall notify the
29 applicant in writing that:

30 (1) the department:

31 (A) has made the findings described in subsection (a)(4); and

32 (B) has approved the application; or

33 (2) the department:

34 (A) has determined that the department is unable to make the
35 findings described in subsection (a)(4); and

36 (B) has disapproved the application.

37 (f) The department shall process a corrected application that is filed
38 as permitted under subsection (b) in the same manner the department
39 processes an initially filed application under subsection (a).

40 (g) If the department fails to act under subsection (e) not later than
41 ninety (90) days after the public information meeting held under
42 subsection (d), the application is considered to be approved by the



1 department.

2 (h) If:

3 (1) the department approves the application under subsection
4 (e)(1); or

5 (2) the application is considered to be approved as described in
6 subsection (g);

7 the department shall issue to the applicant a carbon dioxide
8 transmission pipeline certificate of authority.

9 SECTION 2. IC 14-39-2 IS ADDED TO THE INDIANA CODE AS
10 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2022]:

12 **Chapter 2. Underground Storage of Carbon Dioxide**

13 **Sec. 1. (a) Except as otherwise provided by law, this chapter
14 does not apply to extractable mineral resources.**

15 **(b) Except as otherwise provided by law, this chapter does not
16 preclude the rights provided by IC 14-37-9.**

17 **(c) The rights and requirements of this chapter:**

18 **(1) are subordinate to the rights pertaining to oil, gas, and
19 coal reserves; and**

20 **(2) may not adversely affect oil, gas, and coal reserves, except
21 as is strictly necessary to construct and maintain a carbon
22 sequestration facility that will provide for the permanent
23 storage of carbon dioxide.**

24 **Sec. 2. (a) The following definitions apply throughout this
25 chapter.**

26 **(b) "Carbon dioxide" has the meaning set forth in IC 14-39-1-1.**

27 **(c) "Carbon dioxide injection well" refers to a well that is used
28 to inject carbon dioxide into a reservoir for carbon sequestration.**

29 **(d) "Carbon dioxide plume" means the extent of an
30 underground three-dimensional injected carbon dioxide stream.**

31 **(e) "Carbon sequestration" means the underground storage of
32 carbon dioxide in a reservoir.**

33 **(f) "Carbon sequestration project" means any project that
34 involves the underground storage of carbon dioxide in a reservoir.**

35 **(g) "Mineral lessee" means a lessee identified by the records of
36 the recorder of deeds for each county containing a portion of the
37 proposed reservoir who holds an interest in minerals on real
38 property that are located above, below, or within the proposed
39 reservoir that has been severed from the surface estate by:**

40 **(1) grant;**

41 **(2) exception;**

42 **(3) reservation;**



- 1 (4) lease; or
 2 (5) any other means.
- 3 (h) "Mineral owner" means an owner identified by the records
 4 of the recorder of deeds for each county containing a portion of the
 5 proposed reservoir who holds an interest in minerals on real
 6 property that are located above, below, or within the proposed
 7 reservoir that has been severed from the surface estate by:
- 8 (1) grant;
 9 (2) exception;
 10 (3) reservation;
 11 (4) lease; or
 12 (5) any other means.
- 13 (i) "Pore space" means subsurface cavities or voids that can be
 14 used as a storage space for carbon dioxide.
- 15 (j) "Pore space owner" means:
 16 (1) a person;
 17 (2) a trust;
 18 (3) a corporation; or
 19 (4) another entity;
 20 that has title to pore space.
- 21 (k) "Reservoir" means a subsurface:
 22 (1) sedimentary stratum;
 23 (2) formation;
 24 (3) aquifer;
 25 (4) cavity; or
 26 (5) void;
 27 that is naturally or artificially created for, or is capable of being
 28 made suitable for, injecting and storing carbon dioxide.
- 29 (l) "Storage facility" means the subsurface area consisting of the
 30 extent of a carbon dioxide plume which is required to be delineated
 31 on a UIC Class VI permit of a storage operator.
- 32 (m) "Storage operator" means:
 33 (1) a person;
 34 (2) a trust;
 35 (3) a corporation; or
 36 (4) another entity;
 37 that operates a carbon sequestration project.
- 38 (n) "Surface or subsurface property interest owner" means a
 39 property interest owner identified by the records of the recorder
 40 of deeds for each county containing a portion of the proposed
 41 storage facility who holds a fee simple interest or other freehold
 42 interest in the surface or subsurface of the property, which may



1 include mineral rights. The term does not include the owner of a
 2 right-of-way, an easement, or a leasehold.

3 (o) "UIC Class VI permit" means a permit issued under the
 4 federal Safe Drinking Water Act's Underground Injection Control
 5 program that allows:

- 6 (1) a person;
- 7 (2) a trust;
- 8 (3) a corporation; or
- 9 (4) another entity;

10 to operate a carbon dioxide injection well.

11 (p) "Underground storage of carbon dioxide" has the meaning
 12 set forth in IC 14-39-1-2.5.

13 Sec. 3. (a) Before June 30, 2022, this chapter does not alter,
 14 amend, diminish, or invalidate the rights to the use of the pore
 15 space of real property that has been divided into a surface estate
 16 and a mineral estate where the rights to the use of the pore space
 17 were explicitly acquired by conveyance document. Any rights to
 18 the use of pore space that were not explicitly acquired remain
 19 vested in the surface estate.

20 (b) After July 1, 2022, the rights to the use of pore space remain
 21 vested in the surface estate of real property that is divided into a
 22 surface estate and a mineral estate unless such rights are explicitly
 23 acquired by conveyance document.

24 (c) A grant of:

- 25 (1) an easement to use; or
- 26 (2) a lease of pore space;

27 for carbon sequestration is in perpetuity if so specified unless the
 28 grantee relinquishes the easement or lease because the pore space
 29 was not utilized for carbon sequestration.

30 (d) A conveyance of rights regarding pore space does not confer
 31 a right to enter upon, or otherwise use, the surface of the land
 32 unless expressly provided in a conveyance document.

33 Sec. 4. (a) If at least two (2) pore space owners own pore space
 34 located within a storage reservoir, the owners may agree to
 35 integrate their interests to develop the pore space as a proposed
 36 storage facility for the underground storage of carbon dioxide.

37 (b) If all of the owners of the pore space under subsection (a) do
 38 not agree to integrate their interests, the department may issue an
 39 order requiring the owners to integrate their interests and to
 40 develop the pore space as a proposed storage facility for the
 41 underground storage of carbon dioxide to serve the public interest
 42 subject to the findings under subsection (c).



1 (c) Before issuing an order under subsection (b), the department
2 must make the following findings:

3 (1) That the storage operator has made a good faith effort to
4 obtain the consent of all pore space owners located within the
5 proposed storage facility.

6 (2) That the storage operator has obtained the consent of the
7 pore space owners reasonably estimated to comprise at least
8 sixty percent (60%) of the physical volume contained within
9 the defined proposed storage facility.

10 (3) That all pore space owners who do not agree to integrate
11 their interests to develop the pore space as a proposed storage
12 facility for the underground storage of carbon dioxide are
13 equitably compensated.

14 Sec. 5. (a) Carbon sequestration projects are authorized in
15 Indiana for the purposes of:

16 (1) injecting carbon dioxide into an underground storage
17 facility through at least one (1) carbon dioxide injection well
18 pursuant to a UIC Class VI permit; and

19 (2) employing the underground storage of carbon dioxide.

20 (b) A storage operator may not operate a carbon sequestration
21 project in Indiana without:

22 (1) a UIC Class VI permit; and

23 (2) a valid permit issued by the department.

24 (c) If a carbon sequestration project is owned by an entity other
25 than the storage operator, the storage operator shall be responsible
26 for obtaining a permit for a carbon sequestration project under
27 subsection (b). A permit for a carbon sequestration project may be
28 transferred or assigned from one (1) storage operator to another
29 storage operator.

30 (d) An individual may apply to the department for a permit for
31 a carbon sequestration project in a form and manner prescribed
32 by the department.

33 (e) An application under subsection (d) must include the
34 following:

35 (1) A filing fee of one thousand dollars (\$1,000).

36 (2) The signature of the applicant.

37 (3) A statement verifying that the information submitted is
38 true, accurate, and complete to the best of applicant's
39 knowledge.

40 (4) Information illustrating that the applicant has the
41 financial, managerial, and technical ability to construct,
42 operate, and maintain a carbon sequestration project.



1 **(5) Information illustrating that the applicant or the**
 2 **contractors or subcontractors of the applicant have the**
 3 **requisite expertise in constructing, operating, and maintaining**
 4 **a carbon sequestration project.**

5 **(6) Documentation to the department showing the proposed**
 6 **scope of the proposed carbon sequestration project.**

7 **(7) A statement showing the applicant will construct, operate,**
 8 **and maintain the proposed carbon sequestration project in**
 9 **accordance with applicable local, state, and federal law,**
 10 **including federal and state safety regulation and rules**
 11 **governing the construction, operation, and maintenance of the**
 12 **carbon sequestration project, and related facilities and**
 13 **equipment, to ensure the safety of the carbon sequestration**
 14 **project employees and the public.**

15 **(8) A statement that the interests of a mineral lessee or**
 16 **mineral owner will not be adversely affected, or will be**
 17 **addressed in an arrangement between the applicant and the**
 18 **mineral lessee or mineral owner as provided by section 4 of**
 19 **this chapter, to the extent the storage facility contains**
 20 **commercially valuable minerals.**

21 **Sec. 6. (a) The department shall review an application submitted**
 22 **under section 5(d) of this chapter. If the department determines**
 23 **that the application submitted under section 5(d) of this chapter is**
 24 **complete, the department shall notify the applicant.**

25 **(b) The department shall return an application to the applicant**
 26 **if the department determines that the application is incomplete,**
 27 **inaccurate, or both.**

28 **(c) If the department returns an application to an applicant**
 29 **under subsection (b), the department shall inform the applicant in**
 30 **writing that the applicant may file a corrected application not**
 31 **more than sixty (60) days after the receipt of the returned**
 32 **application.**

33 **(d) Upon receiving a corrected application under this section,**
 34 **the department shall review the application.**

35 **(e) Upon receiving notification that the corrected application is**
 36 **complete, the applicant shall:**

37 **(1) not more than sixty (60) days after receiving the notice**
 38 **under this subsection:**

39 **(A) place a copy of the corrected application in a public**
 40 **library located in each county in which the carbon**
 41 **sequestration project is proposed to be located for public**
 42 **inspection; and**



- 1 **(B) publish notice under IC 5-3-1 in each county in which**
 2 **the carbon sequestration project is proposed to be located**
 3 **of the name and address of each library in which a copy of**
 4 **the corrected application is placed as required by clause**
 5 **(A); and**
 6 **(2) provide to the department proof of publication of notice**
 7 **not more than thirty (30) days after the publication of the**
 8 **notice.**
- 9 **(f) Not later than ninety (90) days after receiving the notice of**
 10 **publication under subsection (e), the department shall notify the**
 11 **applicant in writing that:**
- 12 **(1) the department has approved the application; or**
 13 **(2) the department has denied the application.**
- 14 **Sec. 7. If the department approves an application under section**
 15 **5 of this chapter or a corrected application under section 6(c) of**
 16 **this chapter, the department shall issue to the applicant a carbon**
 17 **sequestration project permit.**
- 18 **Sec. 8. (a) Except as provided in subsection (b), if a storage**
 19 **operator or an applicant files a verified statement to the**
 20 **department stating the reasons that trade secret or confidential**
 21 **and proprietary information should be disclosed, the storage**
 22 **operator or applicant may disclose the trade secret or confidential**
 23 **and proprietary information to the department, or in subsequent**
 24 **reports.**
- 25 **(b) The department shall take all necessary precautions to avoid**
 26 **public disclosure of confidential information under subsection (a).**
- 27 **Sec. 9. (a) A storage operator shall pay the department a fee for**
 28 **every ton of carbon dioxide injected for storage.**
- 29 **(b) The storage operator shall provide the department with an**
 30 **estimate of the amount of carbon dioxide to be injected into a**
 31 **storage facility for the period of the permit at the time of**
 32 **application for a carbon sequestration project permit.**
- 33 **(c) A storage operator shall pay annually to the department a**
 34 **fee of eight cents (\$0.08) per ton of carbon dioxide estimated to be**
 35 **injected into a storage facility.**
- 36 **(d) A storage operator shall reconcile the previous calendar**
 37 **year's payment with the volume of carbon dioxide actually injected**
 38 **into the storage facility the previous calendar year. The storage**
 39 **operator shall submit payment for the amount of carbon dioxide**
 40 **injected into a storage facility less the amount paid the previous**
 41 **calendar year.**
- 42 **(e) The department shall refund a storage operator any**



1 overpayment in the current year from the previous calendar year.

2 **Sec. 10. (a) The carbon dioxide storage facility trust fund is**
3 **established.**

4 **(b) The fee collected under section 9 of this chapter must be**
5 **deposited in the carbon dioxide storage facility trust fund**
6 **established by subsection (a).**

7 **(c) The carbon dioxide storage facility trust fund must be**
8 **maintained as a special fund and all money in the fund is**
9 **appropriated and may be used only to defray the costs incurred by**
10 **the department for the long term monitoring and management of**
11 **a carbon sequestration facility.**

12 **Sec. 11. A mineral owner may drill through or near a storage**
13 **facility to explore for or extract minerals if:**

14 **(1) the mineral owner obtains the written consent of the**
15 **storage operator;**

16 **(2) the drilling is conducted in cooperation with the storage**
17 **operator; and**

18 **(3) the drilling is in compliance with:**

19 **(A) the requirements of the department that preserve the**
20 **storage facility's integrity; and**

21 **(B) the requirements of the UIC Class VI permit of the**
22 **storage operator.**

23 **Sec. 12. (a) A claim of subsurface trespass shall not be**
24 **actionable against a storage operator conducting carbon**
25 **sequestration in accordance with a valid UIC Class VI permit and**
26 **a permit issued by the department for a carbon sequestration**
27 **project, unless the claimant proves that injection or migration of**
28 **carbon dioxide:**

29 **(1) materially impairs the property interests outside of the**
30 **storage facility;**

31 **(2) caused or continues to cause actual interference with the**
32 **reasonable and foreseeable use of the property; or**

33 **(3) has caused direct physical injury to tangible property.**

34 **(b) A surface or subsurface property interest holder shall be**
35 **permitted to recover money damages only for the loss of a**
36 **nonspeculative value resulting from the injection and migration of**
37 **carbon dioxide beyond the storage facility.**

38 **(c) A surface or subsurface property interest holder may not**
39 **seek punitive damages if the storage operator acts in compliance**
40 **with the requirements of the UIC Class VI permit.**

41 **Sec. 13. (a) A certificate of project completion may be issued**
42 **upon the application from the storage operator if the department**



- 1 finds that the storage operator does the following:
- 2 (1) The storage operator is in compliance with all applicable
- 3 laws governing the storage facility.
- 4 (2) The storage operator shows that the storage facility is
- 5 reasonably expected to retain the carbon dioxide stored
- 6 therein.
- 7 (3) The storage operator shows that the carbon dioxide in the
- 8 storage facility is stable by showing that either:
- 9 (A) the stored carbon dioxide is essentially stationary; or
- 10 (B) if the stored carbon migrates, migration will be
- 11 unlikely to cross the boundaries of the storage facility.
- 12 (4) The storage operator shows that all wells, equipment, and
- 13 facilities used after the closure period are in good condition
- 14 and retain mechanical integrity.
- 15 (5) The storage operator shows that wells have been plugged.
- 16 (6) The storage operator shows that equipment and facilities,
- 17 not including fixed structures and long term monitoring
- 18 equipment, have been removed.
- 19 (7) The storage operator proves that the reclamation work
- 20 required by the department where the project ceases to inject
- 21 carbon dioxide is completed.
- 22 (8) The storage operator shows that carbon dioxide injections
- 23 ended at least ten (10) years prior to the application for a
- 24 certificate of project completion.
- 25 (b) The department may issue a certificate of project completion
- 26 prior to the time specified by subsection (a)(8) if the storage
- 27 operator demonstrates that the requirements of subsection (a)(1)
- 28 through (a)(7) have been met.
- 29 (c) The department shall issue a certificate of project completion
- 30 not later than one hundred eighty (180) days after receiving an
- 31 application from the storage operator. If the department
- 32 determines that the application for a certificate of project
- 33 completion is incomplete, inaccurate, or both, the department shall
- 34 return the application to the storage operator.
- 35 (d) If the department returns the application to the storage
- 36 operator under subsection (c), the department shall inform the
- 37 storage operator, in writing, of the deficiencies of the submitted
- 38 application and inform the storage operator of the right to file a
- 39 corrected application with the department.
- 40 (e) Once a certificate of completion is issued, the following
- 41 occurs:
- 42 (1) The state will assume ownership of and responsibility for



1 the storage facility.
2 **(2) The state will assume responsibility for all regulatory**
3 **requirements associated with the storage facility, and the**
4 **storage operator and the owner of the storage facility are**
5 **released from responsibility for all regulatory requirements**
6 **associated with the storage facility.**
7 **(3) The state will assume any potential liability associated**
8 **with the storage facility.**
9 **(f) Unless there is documentation to the contrary, the storage**
10 **operator has title to the carbon dioxide injected into and stored in**
11 **a storage facility, and the storage operator holds title until the**
12 **department issues a certificate of completion.**
13 **Sec. 14. The state of Indiana may, upon:**
14 **(1) the recommendation of the director of the department;**
15 **(2) review by the state budget committee; and**
16 **(3) the issuance of a certificate of project completion as set**
17 **forth in section 13(a) of this chapter;**
18 **obtain ownership of the carbon dioxide stored in underground**
19 **strata, formations, and pore space in which the carbon dioxide is**
20 **stored.**

