



April 5, 2021

ENGROSSED
SENATE BILL No. 373

DIGEST OF SB 373 (Updated March 30, 2021 3:39 pm - DI 55)

Citations Affected: IC 14-39; IC 15-11.

Synopsis: Carbon credit market and carbon sequestration. Requires the state department of agriculture and the department of natural resources, in consultation with Purdue University, agricultural producers, woodland owners, foresters, technical experts in the area of carbon verification and voluntary carbon credit markets, representatives of the agricultural industry and the forest industry, and environmental and conservation groups, to: (1) study and make findings and recommendations concerning the potential role of the state in a voluntary carbon credit market; and (2) issue a written report for
(Continued next page)

Effective: July 1, 2021.

Glick, Niemeyer, Ford J.D., Bassler,
Yoder, Perfect, Lanane, Tomes,
Doriot, Qaddoura, Ford Jon, Tallian,
Randolph Lonnie M
(HOUSE SPONSORS — LEHE, ABBOTT)

January 12, 2021, read first time and referred to Committee on Natural Resources.
February 1, 2021, reported favorably — Do Pass.
February 18, 2021, read second time, ordered engrossed. Engrossed.
February 22, 2021, read third time, passed. Yeas 33, nays 16.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Natural Resources.
April 5, 2021, amended, reported — Do Pass; reassigned to Committee on Judiciary pursuant to House Rule 84.

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Digest Continued

distribution to the members of the general assembly. Requires the director of the department of natural resources to designate the operator of the carbon sequestration pilot project before July 31, 2021. Provides that material compliance by the pilot project with a permit for a Class VI carbon dioxide underground injection well is an affirmative defense for the pilot project against any civil action or claim for damages or equitable relief alleging infringement of or interference with real or personal property rights or interests related to an injection through or the migration of injectate from an underground injection well subject to the permit. However, provides that: (1) a claimant may overcome the affirmative defense by proving actual interference with the reasonable and foreseeable use of the property or direct physical injury to tangible property; and (2) recovery by a public utility for any effect of the pilot project on the sources of the public water supply used by the public utility is not prohibited or limited.



April 5, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

- 1 SECTION 1. IC 14-39-1-3.5, AS ADDED BY P.L.291-2019,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 3.5. (a) This chapter authorizes the establishment
4 of a carbon sequestration pilot project:
5 (1) that will:
6 (A) capture carbon dioxide at the proposed ~~ammonia~~
7 **hydrogen** plant to be located at 444 West Sanford Avenue,
8 West Terre Haute, Indiana; and
9 (B) inject the carbon dioxide underground through one (1) or
10 more injection wells pursuant to a Class VI well permit issued
11 by the United States Environmental Protection Agency; and
12 (2) that will employ the underground ~~storage~~ **injection** of carbon
13 dioxide as an alternative to releasing the carbon dioxide into the
14 air.
15 (b) The director shall designate the operator of the carbon

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1 sequestration pilot project according to the characteristics of the pilot
2 project set forth in subsection (a) **before July 31, 2021.**

3 SECTION 2. IC 14-39-1-14.1 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2021]: **Sec. 14.1. (a) This section applies to a**
6 **civil action filed after June 30, 2021.**

7 **(b) Except as provided in subsection (e), material compliance by**
8 **the carbon sequestration pilot project with a Class VI injection**
9 **well permit issued by the United States Environmental Protection**
10 **Agency is an affirmative defense against any civil action or claim**
11 **for damages or equitable relief alleging infringement of or**
12 **interference with real or personal property rights or interests that**
13 **relates to:**

- 14 (1) an injection through; or
15 (2) the migration of injectate from;

16 an injection well subject to the permit.

17 (c) A claimant may overcome the defense provided by
18 subsection (b) by proving:

- 19 (1) actual interference with the reasonable and foreseeable use
20 of the property; or
21 (2) direct physical injury to tangible property.

22 (d) For the purposes of subsection (c), a diminution in property
23 value due to a perceived risk that operation of the pilot project
24 may cause damage or injury does not constitute direct physical
25 injury to tangible property.

26 (e) This section does not prohibit or limit recovery by a public
27 utility for any effect of the carbon dioxide pilot project on the
28 sources of the public water supply used by the public utility.

29 SECTION 3. IC 15-11-16 IS ADDED TO THE INDIANA CODE
30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2021]:

32 **Chapter 16. Voluntary Carbon Credit Program Report**

33 **Sec. 1. The department and the department of natural resources**
34 **shall, in consultation with:**

- 35 (1) Purdue University;
36 (2) agricultural producers;
37 (3) woodland owners;
38 (4) foresters;
39 (5) technical experts in the area of carbon verification and
40 voluntary carbon credit markets;
41 (6) representatives of:
42 (A) the agricultural industry; and



1 **(B) the forest industry; and**
2 **(7) environmental and conservation groups;**
3 **study and make findings and recommendations concerning the**
4 **potential role of the state in a voluntary carbon credit market.**
5 **Sec. 2. Before July 1, 2022, the department and the department**
6 **of natural resources shall:**
7 **(1) issue a written report of the findings and**
8 **recommendations made under section 1 of this chapter; and**
9 **(2) submit the report in an electronic format under IC 5-14-6**
10 **to the executive director of the legislative services agency for**
11 **distribution to the members of the general assembly.**
12 **Sec. 3. This chapter expires July 1, 2022.**



COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 373, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 373 as introduced.)

GLICK, Chairperson

Committee Vote: Yeas 8, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred Senate Bill 373, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 15.

Delete pages 2 through 14.

Page 15, delete lines 1 through 9, begin a new paragraph and insert:

"SECTION 1. IC 14-39-1-3.5, AS ADDED BY P.L.291-2019, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3.5. (a) This chapter authorizes the establishment of a carbon sequestration pilot project:

(1) that will:

(A) capture carbon dioxide at the proposed ~~ammonia~~ **hydrogen** plant to be located at 444 West Sanford Avenue, West Terre Haute, Indiana; and

(B) inject the carbon dioxide underground through one (1) or more injection wells pursuant to a Class VI well permit issued by the United States Environmental Protection Agency; and

(2) that will employ the underground ~~storage~~ **injection** of carbon dioxide as an alternative to releasing the carbon dioxide into the air.

(b) The director shall designate the operator of the carbon sequestration pilot project according to the characteristics of the pilot project set forth in subsection (a) **before July 31, 2021.**

SECTION 2. IC 14-39-1-14.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 14.1. (a) This section applies to a**

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civil action filed after June 30, 2021.

(b) Except as provided in subsection (e), material compliance by the carbon sequestration pilot project with a Class VI injection well permit issued by the United States Environmental Protection Agency is an affirmative defense against any civil action or claim for damages or equitable relief alleging infringement of or interference with real or personal property rights or interests that relates to:

- (1) an injection through; or
 - (2) the migration of injectate from;
- an injection well subject to the permit.

(c) A claimant may overcome the defense provided by subsection (b) by proving:

- (1) actual interference with the reasonable and foreseeable use of the property; or
- (2) direct physical injury to tangible property.

(d) For the purposes of subsection (c), a diminution in property value due to a perceived risk that operation of the pilot project may cause damage or injury does not constitute direct physical injury to tangible property.

(e) This section does not prohibit or limit recovery by a public utility for any effect of the carbon dioxide pilot project on the sources of the public water supply used by the public utility."

Page 15, delete lines 13 through 42, begin a new paragraph and insert:

"Chapter 16. Voluntary Carbon Credit Program Report

Sec. 1. The department and the department of natural resources shall, in consultation with:

- (1) Purdue University;
- (2) agricultural producers;
- (3) woodland owners;
- (4) foresters;
- (5) technical experts in the area of carbon verification and voluntary carbon credit markets;
- (6) representatives of:
 - (A) the agricultural industry; and
 - (B) the forest industry; and
- (7) environmental and conservation groups;

study and make findings and recommendations concerning the potential role of the state in a voluntary carbon credit market.

Sec. 2. Before July 1, 2022, the department and the department of natural resources shall:



**(1) issue a written report of the findings and recommendations made under section 1 of this chapter; and
(2) submit the report in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.**

Sec. 3. This chapter expires July 1, 2022."

Delete pages 16 through 22.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 373 as printed February 2, 2021.)

EBERHART

Committee Vote: yeas 10, nays 3.

