



Reprinted
April 13, 2021

ENGROSSED SENATE BILL No. 373

DIGEST OF SB 373 (Updated April 12, 2021 5:57 pm - DI 101)

Citations Affected: IC 8-1; IC 14-39; IC 15-11.

Synopsis: Carbon credit market, carbon sequestration, and federal mandates. Requires the state department of agriculture and the department of natural resources, in consultation with Purdue University, the utility regulatory commission (IURC), agricultural producers, woodland owners, foresters, certain technical experts, the agricultural industry, 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 to the
(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, ERRINGTON, DVORAK)

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.
April 8, 2021, amended, reported — Do Pass.
April 12, 2021, read second time, amended, ordered engrossed.

ES 373—LS 7340/DI 55



general assembly. Requires the director of the department of natural resources to designate the operator of the carbon sequestration pilot project (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 certain civil actions or claims. Provides that: (1) a claimant may overcome the affirmative defense by proving actual interference with the 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 utility's public water supply is not prohibited or limited. Defines a "federal phaseout mandate" as any federal statutory or regulatory requirement that: (1) is established after April 20, 2021, by Congress, a federal agency, or a federal executive order; and (2) requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source. Requires the IURC to consider in the context of: (1) applications for certificates of public convenience and necessity for new generating facilities; and (2) integrated resource planning; the impact of federal phaseout mandates on the estimated useful life of certain generating facilities of an electric utility, including on depreciation expense associated with such facilities.



Reprinted
April 13, 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 8-1-1-3, AS AMENDED BY P.L.136-2018,
2 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 3. (a) The members of the commission shall meet
4 and organize the commission. The commission may, subject to the
5 approval of the governor, appoint a secretary of the commission.
6 (b) The salaries of the members and secretary of the commission
7 shall be fixed by the governor, subject to the approval of the budget
8 agency; however, the salaries of the chairman and the members shall
9 not be less than the following annual minimum amounts:
10 (1) For the chairman, sixty-five thousand dollars (\$65,000).
11 (2) For the members, sixty thousand dollars (\$60,000) each.
12 (c) The commission may appoint one (1) or more administrative law
13 judges who shall be responsible to and serve at the will and pleasure of
14 the commission. While serving, the administrative law judges shall
15 devote full time to the duties of the commission and shall not be

ES 373—LS 7340/DI 55



actively engaged in any other occupation, profession, or business that constitutes a conflict of interest or otherwise interferes with carrying out their duties as administrative law judges. The salary of each administrative law judge shall be fixed by the commission subject to the approval of the budget agency but may not be less than the following annual amounts:

(1) For the chief administrative law judge, forty-five thousand dollars (\$45,000).

(2) For all other administrative law judges, forty thousand dollars (\$40,000).

(d) A majority of the commission members shall constitute a quorum.

(e) On order of the commission any one (1) member of the commission, or an administrative law judge, may conduct a hearing or an investigation, and take evidence in the hearing or investigation, and report on the hearing or investigation to the commission for the commission's consideration and action; however, a hearing concerning a request for a general increase in the basic rates and charges of a utility in an amount exceeding twenty million dollars (\$20,000,000) may only be conducted by one (1) or more commission members.

(f) Each member of the commission shall give bond in the sum of ten thousand dollars (\$10,000) for the faithful performance of the member's duties. Such bond shall be filed with the secretary of state.

(g) The commission shall formulate rules necessary or appropriate to carry out this chapter, and shall perform the duties imposed by law upon it, **including consulting with the Indiana state department of agriculture and the department of natural resources concerning the potential role of the state in a voluntary carbon credit market, as required by IC 15-11-16-1.**

(h) The commission may:

(1) employ, with the approval of the governor and the state budget agency, sufficient professional staff, including specialists, technicians, and analysts, who are exempt from the job classifications and compensation schedules established under IC 4-15; and

(2) purchase, lease, or otherwise acquire for the commission's internal use sufficient technical equipment necessary for the commission to carry out its statutory duties.

SECTION 2. IC 8-1-8.5-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 3.2. (a) This section applies to an electric utility that submits an integrated resource plan described in section 3(e) of this**



chapter after June 30, 2021, and before January 1, 2025.

(b) Except as otherwise provided in this section, the definitions in 170 IAC 4-7 apply throughout this section.

(c) As used in this section, "electric utility" refers to an electric utility listed in 170 IAC 4-7-2(a).

(d) As used in this section, "federal phaseout mandate" means any federal statutory or regulatory requirement that:

(1) is established after April 20, 2021, by the Congress of the United States, a federal regulatory agency, or a federal executive order; and

(2) requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source.

(e) In reviewing an integrated resource plan submitted by an electric utility after June 30, 2021, the commission shall evaluate the impact of federal phaseout mandates on the estimated useful lives of both:

(1) the existing electric generating facilities of the electric utility; and

(2) any proposed electric generating facilities of the electric utility;

including depreciation expense associated with such facilities, as set forth in the integrated resource plan.

SECTION 3. IC 8-1-8.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) As used in this section, "federal phaseout mandate" means any federal statutory or regulatory requirement that:

(1) is established after April 20, 2021, by the Congress of the United States, a federal regulatory agency, or a federal executive order; and

(2) requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source.

(b) In acting upon any petition for the construction, purchase, or lease of any facility for the generation of electricity, the commission shall take into account the following:

(1) The applicant's current and potential arrangement with other electric utilities for:

(A) the interchange of power;

(B) the pooling of facilities;

(C) the purchase of power; and

(D) joint ownership of facilities. ~~and~~

(2) Other methods for providing reliable, efficient, and economical electric service, including the refurbishment of



existing facilities, conservation, load management, cogeneration and renewable energy sources.

(3) With respect to a petition that:

(A) is for the construction of a new generating facility; and

(B) is submitted to the commission after June 30, 2021, and before January 1, 2025;

the impact of federal phaseout mandates on the estimated useful life of each proposed generating facility included in the petition, including depreciation expense associated with each facility.

SECTION 4. 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 5. 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 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 sequestration pilot project on the sources of the public water supply used by the public utility.

SECTION 6. IC 15-11-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

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) the Indiana utility regulatory commission;
- (3) agricultural producers;
- (4) woodland owners;
- (5) foresters;
- (6) technical experts in the area of carbon verification and voluntary carbon credit markets;
- (7) representatives of:
 - (A) the agricultural industry; and
 - (B) the forest industry; and
- (8) 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.



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**

ES 373—LS 7340/DI 55



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.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-1-3, AS AMENDED BY P.L.136-2018, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) The members of the commission shall meet and organize the commission. The commission may, subject to the approval of the governor, appoint a secretary of the commission.

(b) The salaries of the members and secretary of the commission shall be fixed by the governor, subject to the approval of the budget agency; however, the salaries of the chairman and the members shall not be less than the following annual minimum amounts:

- (1) For the chairman, sixty-five thousand dollars (\$65,000).
- (2) For the members, sixty thousand dollars (\$60,000) each.

(c) The commission may appoint one (1) or more administrative law judges who shall be responsible to and serve at the will and pleasure of the commission. While serving, the administrative law judges shall devote full time to the duties of the commission and shall not be actively engaged in any other occupation, profession, or business that

ES 373—LS 7340/DI 55



constitutes a conflict of interest or otherwise interferes with carrying out their duties as administrative law judges. The salary of each administrative law judge shall be fixed by the commission subject to the approval of the budget agency but may not be less than the following annual amounts:

(1) For the chief administrative law judge, forty-five thousand dollars (\$45,000).

(2) For all other administrative law judges, forty thousand dollars (\$40,000).

(d) A majority of the commission members shall constitute a quorum.

(e) On order of the commission any one (1) member of the commission, or an administrative law judge, may conduct a hearing or an investigation, and take evidence in the hearing or investigation, and report on the hearing or investigation to the commission for the commission's consideration and action; however, a hearing concerning a request for a general increase in the basic rates and charges of a utility in an amount exceeding twenty million dollars (\$20,000,000) may only be conducted by one (1) or more commission members.

(f) Each member of the commission shall give bond in the sum of ten thousand dollars (\$10,000) for the faithful performance of the member's duties. Such bond shall be filed with the secretary of state.

(g) The commission shall formulate rules necessary or appropriate to carry out this chapter, and shall perform the duties imposed by law upon it, **including consulting with the Indiana state department of agriculture and the department of natural resources in studying and making findings and recommendations concerning the potential role of the state in a voluntary carbon credit market, as required by IC 15-11-16-1.**

(h) The commission may:

(1) employ, with the approval of the governor and the state budget agency, sufficient professional staff, including specialists, technicians, and analysts, who are exempt from the job classifications and compensation schedules established under IC 4-15; and

(2) purchase, lease, or otherwise acquire for the commission's internal use sufficient technical equipment necessary for the commission to carry out its statutory duties.

SECTION 2. IC 8-1-1-16.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 16.1. (a) As used in this chapter, "electric utility" means an electric utility (as defined in IC 8-1-8.5-3.1(a)) that is**



under the jurisdiction of the commission for the approval of rates and charges.

(b) As used in this section, "federal phaseout mandate" means any federal statutory or regulatory requirement that requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source.

(c) In the commission's deliberations in a general rate case of an electric utility, the commission shall consider federal phaseout mandates in providing for depreciation under IC 8-1-2-21.

SECTION 3. IC 8-1-2-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 21. **Subject to IC 8-1-1-16.1**, the commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public.

SECTION 4. IC 8-1-8.5-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3.2. (a) **This section applies to an electric utility that submits an integrated resource plan described in section 3(e) of this chapter after June 30, 2021.**

(b) Except as otherwise provided in this section, the definitions in 170 IAC 4-7 apply throughout this section.

(c) As used in this section, "electric utility" refers to an electric utility listed in 170 IAC 4-7-2(a).

(d) As used in this section, "federal phaseout mandate" means any federal statutory or regulatory requirement that requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source.

(e) In reviewing an integrated resource plan submitted by an electric utility after June 30, 2021, the commission shall evaluate the impact of federal phaseout mandates on the depreciation of both:

- (1) the existing electric generating facilities; and
- (2) any proposed electric generating facilities of the electric utility;

as set forth in the integrated resource plan.

SECTION 5. IC 8-1-8.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) **As used in this section, "federal phaseout mandate" means any federal statutory or regulatory requirement that requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source.**

(b) In acting upon any petition for the construction, purchase, or lease of any facility for the generation of electricity, the commission



shall take into account **the following**:

- (1) The applicant's current and potential arrangement with other electric utilities for:
 - (A) the interchange of power;
 - (B) the pooling of facilities;
 - (C) the purchase of power; and
 - (D) joint ownership of facilities. ~~and~~
- (2) Other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.
- (3) The impact of federal phaseout mandates on the depreciation of both the existing and proposed electric generating facilities of the applicant."**

Page 2, between lines 35 and 36, begin a new line block indented and insert:

"(2) the Indiana utility regulatory commission;".

Page 2, line 36, delete "(2)" and insert **"(3)"**.

Page 2, line 37, delete "(3)" and insert **"(4)"**.

Page 2, line 38, delete "(4)" and insert **"(5)"**.

Page 2, line 39, delete "(5)" and insert **"(6)"**.

Page 2, line 41, delete "(6)" and insert **"(7)"**.

Page 3, line 2, delete "(7)" and insert **"(8)"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to ESB 373 as printed April 5, 2021.)

TORR

Committee Vote: yeas 9, nays 3.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 373 be amended to read as follows:

Page 2, line 27, delete "in studying".

Page 2, line 28, delete "and making findings and recommendations".

Page 2, delete lines 40 through 42.

Page 3, delete lines 1 through 14.

ES 373—LS 7340/DI 55



Page 3, line 19, delete "2021." and insert **"2021, and before January 1, 2025."**

Page 3, line 25, delete "that requires the" and insert **"that:**

(1) is established after April 20, 2021, by the Congress of the United States, a federal regulatory agency, or a federal executive order; and

(2) requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source."

Page 3, delete lines 26 through 27.

Page 3, line 30, delete "depreciation" and insert **"estimated useful lives"**.

Page 3, line 32, delete "facilities;" and insert **"facilities of the electric utility;"**.

Page 3, line 35, delete "as" and insert **"including depreciation expense associated with such facilities, as"**.

Page 3, line 39, delete "that requires the phaseout or" and insert **"that:**

(1) is established after April 20, 2021, by the Congress of the United States, a federal regulatory agency, or a federal executive order; and

(2) requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source."

Page 3, delete lines 40 through 41.

Page 4, line 13, delete "The impact of federal phaseout mandates on the" and insert **"With respect to a petition that:**

(A) is for the construction of a new generating facility; and

(B) is submitted to the commission after June 30, 2021, and before January 1, 2025;

the impact of federal phaseout mandates on the estimated useful life of each proposed generating facility included in the petition, including depreciation expense associated with each facility."

Page 4, delete lines 14 through 15.

Page 5, line 15, delete "dioxide" and insert **"sequestration"**.

Renumber all SECTIONS consecutively.

(Reference is to ESB 373 as printed April 8, 2021.)

SOLIDAY

