



January 30, 2019

SENATE BILL No. 442

DIGEST OF SB 442 (Updated January 28, 2019 2:34 pm - DI 55)

Citations Affected: IC 14-8; 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 of the tract of land into which carbon dioxide would be injected, the prospective operator may apply for a "pooling order" authorizing the use the pore space of the entire tract of land for the injection and underground storage of carbon dioxide. Require a person applying for a pooling order to pay a fee, provide notice to persons within certain categories, and meet certain conditions. Provides for the fee to be deposited in the pore space pooling application fund for the purpose of defraying expenses incurred by the department of natural resources (DNR) in processing applications for the pooling of pore space. Requires an administrative law judge (ALJ) to grant the application if the ALJ determines that the benefit to the state and the nation of the geologic storage of carbon dioxide at the facility outweighs the detriment that granting the application would impose on non-consenting pore space owners and other persons within certain categories. Requires the director of the DNR to issue a pooling order if the ALJ grants the application. Provides that the compensation to non-consenting pore space owners must be 101.25% of the compensation paid to consenting pore space owners. Requires the operator of a storage facility to pay a carbon dioxide storage fee of \$0.10 per metric ton of carbon dioxide injected
(Continued next page)

Effective: July 1, 2019.

Ford Jon, Messmer, Doriot, Zay

January 14, 2019, read first time and referred to Committee on Environmental Affairs.
January 29, 2019, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

SB 442—LS 6818/DI 55



Digest Continued

underground at the storage facility, until a total of \$5,000,000 has been paid, and provides for this fee to be deposited in a carbon dioxide storage fund for the purpose of meeting expenses of the state associated with carbon dioxide injection well monitoring and emergency and remedial response. 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 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.



January 30, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

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:

- 1 SECTION 1. IC 14-8-2-34.8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 34.8. "Carbon dioxide owner", for purposes of**
4 **IC 14-39-3, has the meaning set forth in IC 14-39-3-1.**
5 SECTION 2. IC 14-8-2-41.2 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2019]: **Sec. 41.2. "Class VI well", for purposes of IC 14-39-3, has**
8 **the meaning set forth in IC 14-39-3-2.**
9 SECTION 3. IC 14-8-2-41.3 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2019]: **Sec. 41.3. "Class VI well permit", for purposes of**
12 **IC 14-39-3, has the meaning set forth in IC 14-39-3-3.**
13 SECTION 4. IC 14-8-2-83.5 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2019]: **Sec. 83.5. "Emergency and remedial response**

SB 442—LS 6818/DI 55



1 **responsibility", for purposes of IC 14-39-3, has the meaning set**
 2 **forth in IC 14-39-3-4.**

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

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

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

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

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

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

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

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

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

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

41 SECTION 13. IC 14-8-2-266.6 IS ADDED TO THE INDIANA
 42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2019]: **Sec. 266.6. (a) "Storage operator", for**
 2 **purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-5.**

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

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

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

10 **Sec. 1. As used in this chapter, "pore space" means the voids in**
 11 **one (1) or more subsurface geologic strata that:**

- 12 **(1) are located beneath the surface of a particular tract of**
 13 **land;**
 14 **(2) are suitable for the storage of carbon dioxide;**
 15 **(3) in their natural and undisturbed state, are not:**
 16 **(A) oil bearing formations; or**
 17 **(B) gas bearing formations; and**
 18 **(4) are located below the base of the Ordovician formations,**
 19 **as defined by the Indiana geological and water survey**
 20 **established by IC 21-47-2.**

21 **Sec. 2. As used in this chapter, "pore space owner" means the**
 22 **person who has:**

- 23 **(1) the right to inject and store carbon dioxide in the pore**
 24 **space beneath the surface of a particular tract of land; and**
 25 **(2) the power to transfer the right described in subdivision (1)**
 26 **to another person.**

27 **Sec. 3. As used in this chapter, "reservoir" means a portion of**
 28 **one (1) or more subsurface geologic strata that:**

- 29 **(1) in their natural and undisturbed state, are not:**
 30 **(A) oil bearing formations; or**
 31 **(B) gas bearing formations; and**
 32 **(2) are located below the base of the Ordovician formations,**
 33 **as defined by the Indiana geological and water survey**
 34 **established by IC 21-47-2;**

35 **that is suitable for the injection and storage of carbon dioxide.**

36 **Sec. 4. (a) As used in this chapter, "storage facility" means a**
 37 **facility at which carbon dioxide is subjected to geologic storage.**

38 **(b) The term includes the:**

- 39 **(1) reservoir;**
 40 **(2) underground equipment; and**
 41 **(3) surface buildings and equipment;**

42 **used in the carbon dioxide geologic storage operation.**



1 (c) The term does not include pipelines used to transport the
2 carbon dioxide to the storage facility.

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

5 Sec. 6. For the purposes of this chapter, the pore space owner
6 with respect to a tract of land is:

- 7 (1) the holder of the fee simple estate in the tract of land; or
8 (2) if the pore space ownership rights have been severed from
9 the surface estate, the person or persons to whom the pore
10 space ownership rights in the tract of land have been
11 transferred.

12 Sec. 7. A storage operator is authorized to inject and store
13 carbon dioxide in the pore space beneath the surface of a tract of
14 land:

- 15 (1) if the storage operator obtains the express, written consent
16 of all of the pore space owners of the pore space; or
17 (2) if:
18 (A) the storage operator obtains the express, written
19 consent of enough of the pore space owners to meet the
20 condition set forth in section 8(1) of this chapter and
21 applies for the pooling of the pore space beneath the
22 surface of the tract of land; and
23 (B) the storage operator's application is granted under this
24 chapter.

25 Sec. 8. If:

- 26 (1) a prospective storage operator secures the express, written
27 consent of the pore space owners of the subsurface geologic
28 strata located beneath at least fifty-one percent (51%) of the
29 surface area of a tract of land; but
30 (2) the prospective storage operator:
31 (A) is unable to identify;
32 (B) having identified, is unable to locate or communicate
33 with; or
34 (C) despite identifying and communicating with, is
35 unsuccessful in obtaining the consent of;
36 the pore space owners of the pore space beneath the rest of
37 the surface of a tract of land;

38 the prospective storage operator may submit to the division of oil
39 and gas of the department an application for the pooling of all pore
40 space beneath the surface area of a tract of land.

41 Sec. 9. (a) A prospective storage operator seeking the pooling of
42 pore space under this chapter must do the following:



- 1 **(1) Submit:**
 2 **(A) an application; and**
 3 **(B) an application fee in the amount required under section**
 4 **13 of this chapter;**
 5 **to the division of oil and gas of the department under this**
 6 **chapter.**
 7 **(2) Provide to the department:**
 8 **(A) the names; and**
 9 **(B) any known mailing addresses, phone numbers,**
 10 **electronic mail addresses, or other contact information;**
 11 **of all persons reasonably known to hold an interest in pore**
 12 **space proposed to be pooled and all persons known to possess**
 13 **a fee simple estate or leasehold estate in minerals of the pore**
 14 **space proposed to be pooled.**
 15 **(3) At least twenty (20) days before the date of the hearing on**
 16 **the application for a pooling order, publish in the newspaper**
 17 **of largest circulation in each county in which the pore space**
 18 **is located one (1) notice that:**
 19 **(A) states that an application for a pooling order has been**
 20 **filed with the division of oil and gas of the department;**
 21 **(B) sets forth the location of the pore space proposed to be**
 22 **pooled;**
 23 **(C) if, as provided in section 8(2)(A) of this chapter, the**
 24 **identity of the current pore space owner of any pore space**
 25 **proposed to be pooled is unknown to the prospective**
 26 **storage operator, sets forth the name of the last known**
 27 **pore space owner of that pore space;**
 28 **(D) in the case of each pore space owner to whom section**
 29 **8(2)(B) of this chapter applies, sets forth the name and last**
 30 **known address of the pore space owner;**
 31 **(E) states that any person claiming an interest in the pore**
 32 **space to which the application for a pooling order applies:**
 33 **(i) may submit written comments to the director of the**
 34 **division of oil and gas of the department concerning the**
 35 **prospective storage operator's application for the**
 36 **pooling of pore space at the address set forth in the**
 37 **notice within twenty (20) days after the publication date**
 38 **of the notice; and**
 39 **(ii) may attend the hearing on the prospective storage**
 40 **operator's application for a pooling order; and**
 41 **(F) states the date, time, and location of the hearing on the**
 42 **application for a pooling order.**



- 1 **(4) Satisfy the notification requirements of subsections (b) and**
2 **(c).**
3 **(b) A prospective storage operator must serve a written**
4 **notification describing the proposed underground storage of**
5 **carbon dioxide personally or by certified mail to each of the**
6 **following:**
7 **(1) Each person who controls:**
8 **(A) a well for oil and gas purposes, including a well having**
9 **temporary abandonment status under 312 IAC 29-33;**
10 **(B) a well for oil and gas purposes that is not yet in**
11 **production; and**
12 **(C) an unexpired permit to drill a well for oil and gas**
13 **purposes;**
14 **if the location of the well is not more than one-fourth (1/4)**
15 **mile from the tract of land that the prospective storage**
16 **operator intends to use for the underground storage of carbon**
17 **dioxide.**
18 **(2) The permittee of an underground mine permitted under**
19 **IC 14-34 if the location of the underground mine is not more**
20 **than one-fourth (1/4) mile from the tract of land that the**
21 **prospective storage operator intends to use for the**
22 **underground storage of carbon dioxide.**
23 **(3) A person who files a map under 312 IAC 29-17-1(c)**
24 **showing the location of commercially minable coal resources**
25 **if the location of the coal resources is not more than**
26 **one-fourth (1/4) mile from the tract of land that the**
27 **prospective storage operator intends to use for the**
28 **underground storage of carbon dioxide.**
29 **(4) Each person who controls an underground gas storage or**
30 **underground petroleum storage reservoir identified under**
31 **312 IAC 29-18-1 if the location of the reservoir is not more**
32 **than one-fourth (1/4) mile from the tract of land that the**
33 **prospective storage operator intends to use for the**
34 **underground storage of carbon dioxide.**
35 **(5) Each person having a surface or subsurface property**
36 **interest (including fee simple or leasehold estate in minerals)**
37 **in:**
38 **(A) the pore space proposed to be pooled; or**
39 **(B) a tract of land located not more than one-fourth (1/4)**
40 **mile from the tract of land that the prospective storage**
41 **operator intends to use for the underground storage of**
42 **carbon dioxide.**



- 1 (c) The written notification provided under subsection (b):
 2 (1) must specify that a person, within fifteen (15) days after
 3 receiving the notification, may submit written comments to
 4 the director of the division of oil and gas of the department
 5 concerning the prospective storage operator's application for
 6 the pooling of pore space; and
 7 (2) must include:
 8 (A) the address to which the person's written comments
 9 may be forwarded;
 10 (B) the address from which additional information about
 11 the prospective storage operator's application for the
 12 pooling of pore space may be obtained; and
 13 (C) instructions for obtaining a copy of the prospective
 14 storage operator's application for the pooling of pore
 15 space.
- 16 **Sec. 10. (a) Before convening a hearing on an application for a**
 17 **pooling order, the administrative law judge must ensure that:**
 18 (1) all pore space owners to whom section 8(2)(B) and 8(2)(C)
 19 of this chapter apply;
 20 (2) all other persons who:
 21 (A) claim an interest in the pore space to which the
 22 application for a pooling order would apply; and
 23 (B) have notified the director of the division of oil and gas
 24 of the department of their claimed interest; and
 25 (3) all persons to whom section 9(b)(1) through 9(b)(5) of this
 26 chapter applies;
 27 have received notice of the hearing under IC 4-21.5-3-1 or this
 28 chapter.
- 29 (b) In the hearing on the application for a pooling order, all
 30 persons to whom:
 31 (1) subsection (a)(1);
 32 (2) subsection (a)(2); or
 33 (3) section 9(b)(1) through 9(b)(5) of this chapter;
 34 applies shall be allowed to appear, present evidence, and present
 35 oral testimony.
- 36 (c) If the administrative law judge determines that:
 37 (1) the prospective storage operator has done everything that
 38 could reasonably be expected to:
 39 (A) identify;
 40 (B) contact; and
 41 (C) obtain the consent of;
 42 all pore space owners to whose pore space the application for



1 a pooling order applies; and
 2 (2) in the judgment of the administrative law judge, in light of
 3 all written comments submitted before the hearing and all
 4 testimony given and written evidence presented at the
 5 hearing, the benefit to the state and the nation of the geologic
 6 storage of carbon dioxide in the pore space to which the
 7 application applies, including:

8 (A) the environmental and social benefit of reducing
 9 greenhouse gas emissions;

10 (B) the economic benefit to the state and its citizens of
 11 promoting the geologic sequestration of carbon dioxide as
 12 a commercial activity; and

13 (C) the potential economic benefit of storing carbon
 14 dioxide for future commercial, industrial, or other uses,
 15 including the enhanced recovery of oil, gas, and other
 16 minerals;

17 outweighs the detriment that the granting of the application
 18 would impose on the pore space owners to whom section
 19 8(2)(A), 8(2)(B), and 8(2)(C) of this chapter apply, and on
 20 other property owners and holders of property interests
 21 described in section 9(b)(1) through 9(b)(5) of this chapter;
 22 the administrative law judge shall grant the application for a
 23 pooling order.

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

27 (1) is a final order; or

28 (2) becomes a final order;

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

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

33 Sec. 12. (a) A pooling order issued by the director under section
 34 11(b) of this chapter must:

35 (1) authorize the permanent storage of carbon dioxide in the
 36 storage facility to which the order relates;

37 (2) if the director considers it necessary, specify the location
 38 of:

39 (A) carbon injection wells;

40 (B) outbuildings;

41 (C) roads; and

42 (D) monitoring equipment;



- 1 to be located at the storage facility to which the order relates;
 2 and
 3 (3) specify:
 4 (A) the compensation to be paid to:
 5 (i) pore space owners to whom section 8(2)(B) or 8(2)(C)
 6 of this chapter applies; and
 7 (ii) if their identity and location become known, pore
 8 space owners to whom section 8(2)(A) of this chapter
 9 applies;
 10 for the storage of carbon dioxide in the storage facility to
 11 which the order relates; and
 12 (B) the basis for the calculation of the compensation under
 13 clause (A).
 14 (b) The compensation to be paid to a pore space owner to whom
 15 section 8(2)(C) of this chapter applies must be calculated as one
 16 hundred one and twenty-five hundredths percent (101.25%) of the
 17 compensation paid by the prospective storage operator paid per
 18 unit of pore space volume to pore space owners who consented to
 19 the prospective storage operator's use of their pore space for the
 20 storage of carbon dioxide.
 21 (c) If a prospective storage operator is compensating two (2) or
 22 more pore space owners who consented to the prospective storage
 23 operator's use of their pore space for the storage of carbon dioxide
 24 at different rates of compensation, the calculation under subsection
 25 (b) shall be based on the average compensation being paid by the
 26 prospective storage operator paid per unit of pore space volume to
 27 the pore space owners who consented to the use of their pore space
 28 for the storage of carbon dioxide.
 29 Sec. 13. (a) The department shall adopt rules under IC 4-22-2 to
 30 implement this chapter.
 31 (b) The rules must set the amount of the fee to be collected from
 32 a person applying for a pooling order under this chapter. The fee
 33 shall be set at an amount reasonably expected to defray the
 34 expenses incurred by the department in:
 35 (1) processing the application for a pooling order; and
 36 (2) holding a hearing on the application;
 37 under this chapter.
 38 (c) The department shall deposit revenue from the fee collected
 39 under this section in the pore space pooling application fund
 40 established by IC 14-39-2.5-1.
 41 Sec. 14. The county recorder of the county in which pore space
 42 subject to a pooling order issued under this chapter is located shall:



- 1 (1) accept the pooling order for recording;
- 2 (2) enter and record full copies of the pooling order in the
- 3 same way that deeds are recorded; and
- 4 (3) charge the same fees for recording the pooling order as the
- 5 recorder charges for recording deeds.
- 6 **Sec. 15. Nothing in this chapter may be construed to limit the**
- 7 **right of a storage operator or prospective storage operator to**
- 8 **negotiate for the right to inject and store carbon dioxide in pore**
- 9 **space.**
- 10 **Sec. 16. (a) Except for the provisions of this chapter concerning:**
- 11 (1) notice being provided to; and
- 12 (2) the submission of written comments, testimony, and
- 13 written evidence by;
- 14 **the holders of interests in extractable mineral resources, nothing**
- 15 **in this chapter may be construed to apply to extractable mineral**
- 16 **resources.**
- 17 **(b) The rights and requirements of this chapter:**
- 18 (1) are subordinate to rights pertaining to oil, gas, and coal
- 19 reserves; and
- 20 (2) shall in no way adversely affect oil, gas, and coal reserves.
- 21 **(c) Notwithstanding any other law, nothing in this chapter may**
- 22 **be construed to preclude the rights provided under IC 14-37-9.**
- 23 SECTION 15. IC 14-39-2.5 IS ADDED TO THE INDIANA CODE
- 24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 25 JULY 1, 2019]:
- 26 **Chapter 2.5. Carbon Dioxide Storage Fees and Funds**
- 27 **Sec. 1. (a) The pore space pooling application fund is established**
- 28 **for the purpose of defraying the expenses of the department**
- 29 **described in IC 14-39-2-13(b).**
- 30 **(b) The department shall administer the fund.**
- 31 **(c) The fund consists of the following:**
- 32 (1) Fees collected under IC 14-39-2-9 from persons applying
- 33 for pore space pooling orders.
- 34 (2) Accrued interest and other investment earnings of the
- 35 fund.
- 36 (3) Gifts, grants, donations, or appropriations from any
- 37 source.
- 38 **(d) Money in the fund does not revert to the state general fund**
- 39 **at the end of a state fiscal year.**
- 40 **(e) The treasurer of state shall invest the money in the fund not**
- 41 **currently needed to meet the obligations of the fund in the same**
- 42 **manner as other public money may be invested. Interest that**



1 accrues from these investments shall be deposited in the fund.

2 (f) The expenses of administering the fund shall be paid from
3 money in the fund.

4 (g) Money in the fund is annually appropriated for the purpose
5 of defraying the expenses of the department described in
6 IC 14-39-2-13(b).

7 Sec. 2. (a) The definitions in IC 14-39-3 apply throughout this
8 section.

9 (b) A storage operator that injects carbon dioxide underground
10 at a storage facility shall pay a carbon dioxide storage fee. Subject
11 to subsection (c), the amount of the fee is ten cents (\$0.10) per
12 metric ton of carbon dioxide injected underground at the storage
13 facility.

14 (c) When a total of five million dollars (\$5,000,000) has been
15 paid in carbon dioxide storage fees under this section for the
16 injection of carbon dioxide underground at a particular storage
17 facility, the storage operator operating the storage facility is no
18 longer required to pay carbon dioxide storage fees under this
19 section for the injection of carbon dioxide underground at the
20 storage facility.

21 Sec. 3. (a) The carbon dioxide storage fund is established.

22 (b) The purpose of the fund is to meet:

23 (1) expenses incurred by the state of Indiana in fulfilling
24 monitoring requirements with respect to Class VI wells under
25 IC 14-39-3-13(b);

26 (2) expenses incurred by the state of Indiana for emergency
27 and remedial response with respect to Class VI wells under
28 IC 14-39-3-12(b); and

29 (3) other expenses incurred by the state of Indiana as owner
30 of storage facilities under IC 14-39-3-15.

31 (c) The department shall administer the fund.

32 (d) The fund consists of the following:

33 (1) Fees collected under section 2 of this chapter.

34 (2) Accrued interest and other investment earnings of the
35 fund.

36 (3) Gifts, grants, donations, or appropriations from any
37 source.

38 (e) Money in the fund does not revert to the state general fund
39 at the end of a state fiscal year.

40 (f) The treasurer of state shall invest the money in the fund not
41 currently needed to meet the obligations of the fund in the same
42 manner as other public money may be invested. Interest that



1 accrues from these investments shall be deposited in the fund.

2 (g) The expenses of administering the fund shall be paid from
3 money in the fund.

4 (h) Money in the fund is annually appropriated for the purposes
5 set forth in subsection (b).

6 SECTION 16. IC 14-39-3 IS ADDED TO THE INDIANA CODE
7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2019]:

9 **Chapter 3. State Assumption of Ownership of Carbon Dioxide**
10 **Storage Facility**

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

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

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

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

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

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

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

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

30 (1) pursuant to an emergency and remedial response plan
31 provided with respect to a Class VI well under 40 CFR
32 146.94; or

33 (2) according to an order issued by federal, state, or local
34 governmental authorities with respect to a Class VI well;

35 when a problem associated with the Class VI well creates a danger
36 to underground sources of drinking water or otherwise endangers
37 human health or the environment.

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

41 (1) corrective action;

42 (2) injection well plugging;



1 (3) post injection site care and site closure; and
 2 (4) emergency and remedial response;
 3 associated with a Class VI well.

4 **Sec. 6. As used in this chapter, "monitoring requirements"**
 5 **means:**

6 (1) the testing and monitoring requirements imposed on the
 7 owner or operator of a Class VI well by 40 CFR 146.90; and

8 (2) all other monitoring responsibilities imposed with respect
 9 to the Class VI well by:

10 (A) 40 CFR Part 146, Subpart H; and

11 (B) the Class VI well permit of the storage operator of the
 12 Class VI well.

13 **Sec. 7. As used in this chapter, "ownership start date" means,**
 14 **with respect to a storage facility, the first date on which all of the**
 15 **following conditions are met:**

16 (1) The construction of a storage facility is complete.

17 (2) The storage operator of the storage facility has obtained
 18 a Class VI well permit.

19 (3) The storage operator has informed the department that
 20 the underground long term storage of carbon dioxide at the
 21 storage facility has begun.

22 **Sec. 8. As used in this chapter, "site closure date" means, with**
 23 **respect to a storage facility, the date on which:**

24 (1) injection well plugging, postinjection site care, site closure,
 25 and all other requirements that apply under:

26 (A) 40 CFR Part 146, Subpart H; and

27 (B) the storage operator's Class VI well permit;

28 when the injection of carbon dioxide for storage ends have
 29 been satisfied; and

30 (2) the storage operator of the storage facility notifies the
 31 department of the satisfaction of the requirements in
 32 subdivision (1).

33 **Sec. 9. (a) As used in this chapter, "storage facility" means a**
 34 **facility at which carbon dioxide is subjected to long term**
 35 **underground storage through the use of a Class VI well.**

36 **(b) The term includes:**

37 (1) the:

38 (A) underground equipment; and

39 (B) surface buildings and equipment;

40 used in the underground storage of carbon dioxide at the
 41 storage facility;

42 (2) the ownership interest of the storage operator in the land



1 on which the storage facility is located; and
2 (3) if the storage operator is a pore space owner (as defined in
3 IC 14-39-2-2) of pore space located beneath the storage
4 facility, the interest of the storage operator as a pore space
5 owner.
6 (c) The term does not include pipelines used to transport the
7 carbon dioxide to the storage facility.
8 Sec. 10. As used in this chapter, "storage operator" means a
9 person that holds a Class VI well permit to construct and operate
10 a storage facility.
11 Sec. 11. The state of Indiana is the carbon dioxide owner of all
12 carbon dioxide stored underground at a storage facility beginning
13 on the ownership start date of the storage facility.
14 Sec. 12. (a) The storage operator bears all emergency and
15 remedial response responsibility with respect to the storage
16 operator's Class VI well:
17 (1) beginning on the ownership start date of the storage
18 facility containing the Class VI well; and
19 (2) ending on the site closure date of the storage facility.
20 (b) The state of Indiana bears all emergency and remedial
21 response responsibility with respect to a Class VI well beginning on
22 the site closure date of the storage facility containing the Class VI
23 well.
24 Sec. 13. (a) The storage operator shall fulfill all monitoring
25 requirements with respect to the storage operator's Class VI well:
26 (1) beginning on the ownership start date of the storage
27 facility containing the Class VI well; and
28 (2) ending on the site closure date of the storage facility.
29 (b) The state of Indiana must fulfill all monitoring requirements
30 with respect to a Class VI well beginning on the site closure date of
31 the storage facility containing the Class VI well.
32 Sec. 14. A storage operator shall maintain financial
33 responsibility with respect to the storage operator's Class VI well
34 in compliance with 40 CFR 146.85 for as long as the maintenance
35 of financial responsibility is required with respect to the Class VI
36 well.
37 Sec. 15. On the site closure date of a storage facility, the
38 ownership of the storage facility transfers to the state of Indiana.
39 Sec. 16. (a) Notwithstanding any other law, nothing in this
40 chapter may be construed to apply to extractable mineral
41 resources.
42 (b) The rights and requirements of this chapter:



1 **(1) are subordinate to rights pertaining to oil, gas, and coal**
2 **reserves; and**
3 **(2) shall in no way adversely affect oil, gas, and coal reserves.**
4 **(c) Notwithstanding any other law, nothing in this chapter may**
5 **be construed to preclude the rights provided under IC 14-37-9.**



COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 442, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 5 through 38.

Page 4, delete lines 2 through 6, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "pore space" means the voids in one (1) or more subsurface geologic strata that:

- (1) are located beneath the surface of a particular tract of land;**
- (2) are suitable for the storage of carbon dioxide;**
- (3) in their natural and undisturbed state, are not:**
 - (A) oil bearing formations; or**
 - (B) gas bearing formations; and**
- (4) are located below the base of the Ordovician formations, as defined by the Indiana geological and water survey established by IC 21-47-2."**

Page 4, delete lines 13 through 15, begin a new paragraph and insert:

"Sec. 3. As used in this chapter, "reservoir" means a portion of one (1) or more subsurface geologic strata that:

- (1) in their natural and undisturbed state, are not:**
 - (A) oil bearing formations; or**
 - (B) gas bearing formations; and**
- (2) are located below the base of the Ordovician formations, as defined by the Indiana geological and water survey established by IC 21-47-2;**

that is suitable for the injection and storage of carbon dioxide."

Page 5, line 21, after "Sec. 9." insert "(a)".

Page 5, line 34, delete "pooled." and insert **"pooled and all persons known to possess a fee simple estate or leasehold estate in minerals of the pore space proposed to be pooled."**

Page 6, line 10, delete "applies" and insert **"applies:"**.

Page 6, delete lines 11 through 14, begin a new line triple block indented and insert:

"(i) may submit written comments to the director of the division of oil and gas of the department concerning the prospective storage operator's application for the pooling of pore space at the address set forth in the notice within twenty (20) days after the publication date of the notice; and



(ii) may attend the hearing on the prospective storage operator's application for a pooling order; and".

Page 6, between lines 16 and 17, begin a new line block indented and insert:

"(4) Satisfy the notification requirements of subsections (b) and (c).

(b) A prospective storage operator must serve a written notification describing the proposed underground storage of carbon dioxide personally or by certified mail to each of the following:

(1) Each person who controls:

(A) a well for oil and gas purposes, including a well having temporary abandonment status under 312 IAC 29-33;

(B) a well for oil and gas purposes that is not yet in production; and

(C) an unexpired permit to drill a well for oil and gas purposes;

if the location of the well is not more than one-fourth (1/4) mile from the tract of land that the prospective storage operator intends to use for the underground storage of carbon dioxide.

(2) The permittee of an underground mine permitted under IC 14-34 if the location of the underground mine is not more than one-fourth (1/4) mile from the tract of land that the prospective storage operator intends to use for the underground storage of carbon dioxide.

(3) A person who files a map under 312 IAC 29-17-1(c) showing the location of commercially minable coal resources if the location of the coal resources is not more than one-fourth (1/4) mile from the tract of land that the prospective storage operator intends to use for the underground storage of carbon dioxide.

(4) Each person who controls an underground gas storage or underground petroleum storage reservoir identified under 312 IAC 29-18-1 if the location of the reservoir is not more than one-fourth (1/4) mile from the tract of land that the prospective storage operator intends to use for the underground storage of carbon dioxide.

(5) Each person having a surface or subsurface property interest (including fee simple or leasehold estate in minerals) in:

(A) the pore space proposed to be pooled; or



(B) a tract of land located not more than one-fourth (1/4) mile from the tract of land that the prospective storage operator intends to use for the underground storage of carbon dioxide.

(c) The written notification provided under subsection (b):

(1) must specify that a person, within fifteen (15) days after receiving the notification, may submit written comments to the director of the division of oil and gas of the department concerning the prospective storage operator's application for the pooling of pore space; and

(2) must include:

(A) the address to which the person's written comments may be forwarded;

(B) the address from which additional information about the prospective storage operator's application for the pooling of pore space may be obtained; and

(C) instructions for obtaining a copy of the prospective storage operator's application for the pooling of pore space."

Page 6, line 20, delete "and".

Page 6, line 25, after "interest;" insert "**and**

(3) all persons to whom section 9(b)(1) through 9(b)(5) of this chapter applies;".

Page 6, line 26, delete "IC 4-21.5-3-1." and insert "**IC 4-21.5-3-1 or this chapter."**

Page 6, line 29, delete "(a)(1) applies; or" and insert "**(a)(1);"**

Page 6, line 30, delete "(a)(2) applies;" and insert "**(a)(2); or**

(3) section 9(b)(1) through 9(b)(5) of this chapter;".

Page 6, line 31, before "shall" insert "**applies"**.

Page 6, line 41, after "judge," insert "**in light of all written comments submitted before the hearing and all testimony given and written evidence presented at the hearing,"**

Page 7, line 14, delete "apply;" and insert "**apply, and on other property owners and holders of property interests described in section 9(b)(1) through 9(b)(5) of this chapter;"**

Page 8, line 32, delete "oil and gas environmental" and insert "**pore space pooling application"**.

Page 8, line 33, delete "IC 14-37-10-2." and insert "**IC 14-39-2.5-1."**

Page 9, between lines 2 and 3, begin a new paragraph and insert:

"Sec. 16. (a) Except for the provisions of this chapter concerning:



- (1) notice being provided to; and
- (2) the submission of written comments, testimony, and written evidence by;

the holders of interests in extractable mineral resources, nothing in this chapter may be construed to apply to extractable mineral resources.

(b) The rights and requirements of this chapter:

- (1) are subordinate to rights pertaining to oil, gas, and coal reserves; and
- (2) shall in no way adversely affect oil, gas, and coal reserves.

(c) Notwithstanding any other law, nothing in this chapter may be construed to preclude the rights provided under IC 14-37-9.

SECTION 17. IC 14-39-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 2.5. Carbon Dioxide Storage Fees and Funds

Sec. 1. (a) The pore space pooling application fund is established for the purpose of defraying the expenses of the department described in IC 14-39-2-13(b).

(b) The department shall administer the fund.

(c) The fund consists of the following:

- (1) Fees collected under IC 14-39-2-9 from persons applying for pore space pooling orders.
- (2) Accrued interest and other investment earnings of the fund.
- (3) Gifts, grants, donations, or appropriations from any source.

(d) Money in the fund does not revert to the state general fund at the end of a state fiscal year.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) The expenses of administering the fund shall be paid from money in the fund.

(g) Money in the fund is annually appropriated for the purpose of defraying the expenses of the department described in IC 14-39-2-13(b).

Sec. 2. (a) The definitions in IC 14-39-3 apply throughout this section.

(b) A storage operator that injects carbon dioxide underground at a storage facility shall pay a carbon dioxide storage fee. Subject



to subsection (c), the amount of the fee is ten cents (\$0.10) per metric ton of carbon dioxide injected underground at the storage facility.

(c) When a total of five million dollars (\$5,000,000) has been paid in carbon dioxide storage fees under this section for the injection of carbon dioxide underground at a particular storage facility, the storage operator operating the storage facility is no longer required to pay carbon dioxide storage fees under this section for the injection of carbon dioxide underground at the storage facility.

Sec. 3. (a) The carbon dioxide storage fund is established.

(b) The purpose of the fund is to meet:

- (1) expenses incurred by the state of Indiana in fulfilling monitoring requirements with respect to Class VI wells under IC 14-39-3-13(b);**
- (2) expenses incurred by the state of Indiana for emergency and remedial response with respect to Class VI wells under IC 14-39-3-12(b); and**
- (3) other expenses incurred by the state of Indiana as owner of storage facilities under IC 14-39-3-15.**

(c) The department shall administer the fund.

(d) The fund consists of the following:

- (1) Fees collected under section 2 of this chapter.**
- (2) Accrued interest and other investment earnings of the fund.**
- (3) Gifts, grants, donations, or appropriations from any source.**

(e) Money in the fund does not revert to the state general fund at the end of a state fiscal year.

(f) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(g) The expenses of administering the fund shall be paid from money in the fund.

(h) Money in the fund is annually appropriated for the purposes set forth in subsection (b)."

Page 11, after line 35, begin a new paragraph and insert:

"Sec. 16. (a) Notwithstanding any other law, nothing in this chapter may be construed to apply to extractable mineral resources.

(b) The rights and requirements of this chapter:



(1) are subordinate to rights pertaining to oil, gas, and coal reserves; and

(2) shall in no way adversely affect oil, gas, and coal reserves.

(c) Notwithstanding any other law, nothing in this chapter may be construed to preclude the rights provided under IC 14-37-9."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 442 as introduced.)

MESSMER, Chairperson

Committee Vote: Yeas 8, Nays 3.

