



February 22, 2019

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## SENATE BILL No. 442

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DIGEST OF SB 442 (Updated February 21, 2019 11:32 am - DI 125)

**Citations Affected:** IC 14-8; IC 14-39; IC 32-24; noncode.

**Synopsis:** Underground storage of carbon dioxide. Authorizes the establishment of a carbon sequestration pilot project that: (1) will be located in Terre Haute, Indiana, on the site of a closed industrial operation that is now a brownfield site; (2) will be operated in conjunction with the production of fertilizer by an operator that holds a Class VI well permit issued by the United States Environmental Protection Agency; and (3) will result in the storage of carbon dioxide deep underground. Provides that the pilot project will consist of three stages and that the operator, the department of natural resources (department), and the State of Indiana will have certain responsibilities at each stage of the pilot project, including testing and monitoring responsibility, responsibility for emergency and remedial response, and financial responsibility. Establishes a performance trust fund and a long term assurance trust fund for the purposes of the pilot project and requires the operator of the pilot project to make deposits into these funds. Requires the operator of the pilot project to pay a fee to defray the expenses incurred by the department in administering the pilot program. Provides that the State of Indiana owns all carbon dioxide injected underground for storage through the pilot project and that, in the final stage of the pilot project, the operator shall transfer ownership of the real property and real property interests acquired by the operator  
(Continued next page)

**Effective:** Upon passage; July 1, 2019.

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**Ford Jon, Messmer, Doriot, Zay,  
Niezgodski, Tallian, Breaux**

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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.  
February 21, 2019, amended, reported favorably — Do Pass.

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SB 442—LS 6818/DI 55



Digest Continued

for purposes of the pilot project to the State of Indiana. Authorizes the pilot project operator to use eminent domain to acquire the real property and real property interests needed for the underground storage of carbon dioxide. Urges the legislative council to assign to an appropriate interim study committee the task of studying the geologic storage of carbon dioxide, including the following: (1) The suitability of storing carbon dioxide and other substances in the subsurface geologic strata beneath Indiana's surface. (2) The right to inject and store carbon dioxide and other substances. (3) The owner of any stored carbon dioxide or other substances beneath the surface. (4) The requirements to gain authority of pooling of pore space. (5) The financial responsibility when a problem associated with a Class VI well creates a danger to human health or the environment. (6) The adequate testing and monitoring requirements imposed for a Class VI well. (7) The financial exposure to the state if the state becomes the owner of all carbon dioxide and other substances stored underground.



February 22, 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

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A BILL FOR AN ACT to amend the Indiana Code concerning natural resources and to make an appropriation.

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

1 SECTION 1. IC 14-8-2-41.2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2019]: **Sec. 41.2. "Class VI well", for purposes of IC 14-39-2, has**  
4 **the meaning set forth in IC 14-39-2-3.**

5 SECTION 2. IC 14-8-2-41.3 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2019]: **Sec. 41.3. "Class VI well permit", for purposes of**  
8 **IC 14-39-2, has the meaning set forth in IC 14-39-2-4.**

9 SECTION 3. IC 14-8-2-204.5 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2019]: **Sec. 204.5. "Pilot project", for**  
12 **purposes of IC 14-39-2, has the meaning set forth in IC 14-39-2-5.**

13 SECTION 4. IC 14-8-2-258.2 IS ADDED TO THE INDIANA  
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 2019]: **Sec. 258.2. "Site closure", for**

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

5 **Chapter 2. Geologic Storage of Carbon Dioxide Pilot Project**

6 **Sec. 1. The general assembly makes the following findings:**

7 (1) According to the National Aeronautics and Space  
 8 Administration, human activity has increased atmospheric  
 9 carbon dioxide concentration by more than one-third (1/3)  
 10 since the Industrial Revolution began.

11 (2) According to the U.S. Geological Survey, carbon  
 12 sequestration (the process of capturing and storing carbon  
 13 dioxide) is one method of reducing the amount of carbon  
 14 dioxide in the atmosphere.

15 (3) Because of the importance of carbon dioxide sequestration  
 16 as one means of reducing carbon dioxide emissions, and  
 17 because of the potential economic benefits of advancing  
 18 carbon sequestration technology in Indiana, a carbon  
 19 sequestration pilot project is in the best interests of the people  
 20 of Indiana.

21 **Sec. 2. As used in this chapter, "carbon dioxide" has the**  
 22 **meaning set forth in IC 14-39-1-1.**

23 **Sec. 3. As used in this chapter, "Class VI well" means a well**  
 24 **that:**

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

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

29 **Sec. 4. As used in this chapter, "Class VI well permit" means a**  
 30 **permit issued by the United States Environmental Protection**  
 31 **Agency under 40 CFR Part 146, Subpart H, to authorize the**  
 32 **construction and operation of a Class VI well.**

33 **Sec. 5. As used in this chapter, "pilot project" refers to the**  
 34 **carbon sequestration pilot project authorized by this chapter.**

35 **Sec. 6. As used in this chapter, "site closure" means the event**  
 36 **provided for in 40 CFR 146.93 in which, after:**

37 (1) the injection of carbon dioxide has ceased at a Class VI  
 38 well;

39 (2) the Class VI well has been flushed and plugged in  
 40 compliance with 42 CFR 146.92; and

41 (3) the director of the United States Environmental Protection  
 42 Agency has approved a completed post-injection site care and



1           site closure plan for the Class VI well;  
 2           the director of the United States Environmental Protection Agency  
 3           approves the site closure of the Class VI well.

4           **Sec. 7. (a) This chapter authorizes the establishment of a carbon**  
 5           **sequestration pilot project that:**

6           (1) will be located in Terre Haute, Indiana, on the site of a  
 7           closed industrial operation that is now a brownfield site;

8           (2) will be operated in conjunction with the production of  
 9           fertilizer by an operator that:

10           (A) has all state permits needed for the production of  
 11           fertilizer; and

12           (B) holds a Class VI well permit; and

13           (3) will result in the storage of carbon dioxide produced as a  
 14           by-product of the fertilizer production process deep  
 15           underground in geologic strata that are suitable for the  
 16           storage of carbon dioxide through the use of a Class VI well.

17           **(b) The carbon sequestration pilot project established under this**  
 18           **chapter shall consist of the following three (3) stages:**

19           (1) A pre-permit stage.

20           (2) An active permit stage.

21           (3) A final stage.

22           **Sec. 8. (a) The pre-permit stage of the pilot project:**

23           (1) begins with the designation of a private corporation,  
 24           limited liability company, partnership, or other firm as the  
 25           operator of the pilot project; and

26           (2) ends when the operator of the pilot project acquires from  
 27           the United States Environmental Protection Agency the Class  
 28           VI well permit that is needed for the underground storage of  
 29           carbon dioxide pursuant to the pilot project.

30           **(b) The director shall designate the operator of the pilot project**  
 31           **according to the characteristics of the pilot project set forth in**  
 32           **subsection (a).**

33           **(c) During the pre-permit stage of the pilot project:**

34           (1) the department:

35           (A) shall monitor the designated operator's efforts to  
 36           obtain; and

37           (B) may provide assistance to the designated operator in  
 38           obtaining;

39           a Class VI well permit;

40           (2) the operator shall notify the department of all submissions,  
 41           public hearings, and studies described in section 12 of this  
 42           chapter that are to take place during the pre-permit stage;



1 (3) the operator must acquire all real property and real  
 2 property interests needed for the underground storage of  
 3 carbon dioxide in the pilot project; and

4 (4) the department may take actions necessary or useful to:

5 (A) protect the interests of the State of Indiana; and

6 (B) foster the success of the pilot project.

7 **Sec. 9. (a) The active permit stage of the pilot project:**

8 (1) begins when the operator of the pilot project acquires  
 9 from the United States Environmental Protection Agency the  
 10 Class VI well permit that is needed for the underground  
 11 storage of carbon dioxide pursuant to the pilot project; and

12 (2) ends upon the site closure of the Class VI well of the pilot  
 13 project.

14 **(b) During the active permit stage of the pilot project:**

15 (1) the operator of the pilot project shall pay to the State of  
 16 Indiana the fee required by section 16 of this chapter; and

17 (2) the department may take actions necessary or useful to:

18 (A) protect the interests of the State of Indiana; and

19 (B) foster the success of the pilot project.

20 **Sec. 10. (a) The final stage of the pilot project:**

21 (1) begins upon the site closure of the Class VI well of the pilot  
 22 project; and

23 (2) continues indefinitely.

24 **(b) During the final stage of the pilot project:**

25 (1) the operator of the pilot project, under section 22 of this  
 26 chapter, shall transfer to the State of Indiana ownership of:

27 (A) the Class VI well, underground equipment, above  
 28 ground equipment, and buildings used in the pilot project;  
 29 and

30 (B) the surface and subsurface real property and rights to  
 31 real property acquired by the operator for use in the pilot  
 32 project; and

33 (2) the State of Indiana bears:

34 (A) responsibility for emergency and remedial response  
 35 actions under section 19(b) of this chapter;

36 (B) responsibility for testing and monitoring under section  
 37 20(c) of this chapter; and

38 (C) potential civil liability under section 21(b) of this  
 39 chapter.

40 **Sec. 11. The department has regulatory authority over the pilot  
 41 project, except for:**

42 (1) the authority of the United States Environmental



1           **Protection Agency over the pilot project's Class VI well,**  
 2           **including authority over:**  
 3           **(A) permitting;**  
 4           **(B) siting;**  
 5           **(C) financial responsibility;**  
 6           **(D) construction;**  
 7           **(E) operation;**  
 8           **(F) monitoring;**  
 9           **(G) plugging;**  
 10           **(H) post-injection site care; and**  
 11           **(I) site closure;**

12           **in connection with the pilot project's Class VI well; and**  
 13           **(2) the authority of the state chemist over commercial**  
 14           **fertilizers under IC 15-16-2.**

15           **Sec. 12. The operator of the pilot project shall notify the**  
 16           **department of all of forms and information to be submitted, all**  
 17           **public hearings to be held, and all studies to be conducted**  
 18           **according to the requirements of the United States Environmental**  
 19           **Protection Agency concerning the issuance of and operations under**  
 20           **a Class VI well permit, including:**

21           **(1) site characterization requirements;**  
 22           **(2) injection well construction requirements;**  
 23           **(3) injection well operation requirements;**  
 24           **(4) comprehensive monitoring requirements addressing:**  
 25           **(A) well integrity;**  
 26           **(B) carbon dioxide injection and storage; and**  
 27           **(C) ground water quality during the injection operation**  
 28           **and the post-injection site care period;**  
 29           **(5) financial responsibility requirements ensuring the**  
 30           **availability of funds for the life of the pilot project, including**  
 31           **post-injection site care and emergency response; and**  
 32           **(6) reporting and record keeping requirements.**

33           **Sec. 13. The following are established for purposes of the pilot**  
 34           **project:**

35           **(1) The Terre Haute carbon sequestration performance trust**  
 36           **fund (referred to as the "performance trust fund" in this**  
 37           **chapter).**  
 38           **(2) The Terre Haute carbon sequestration long term**  
 39           **assurance trust fund (referred to as the "long term assurance**  
 40           **trust fund" in this chapter).**

41           **Sec. 14. (a) The performance trust fund established under**  
 42           **section 13(1) of this chapter has the following purposes:**



1 (1) To satisfy the financial responsibility requirements  
2 applying to the operator of the pilot program under 40 CR  
3 146.85 as the holder of a Class VI well permit, including the  
4 requirement of sufficiency to cover the operator's potential  
5 cost of:

6 (A) corrective action under 40 CFR 146.84;

7 (B) injection well plugging under 40 CFR 146.92;

8 (C) post injection site care and site closure under 40 CFR  
9 146.93; and

10 (D) emergency and remedial response under 40 CFR  
11 146.94.

12 (2) To pay the costs incurred by the operator of the pilot  
13 program under 40 CFR 146.90 in preparing, maintaining, and  
14 complying with a testing and monitoring plan to verify that  
15 the pilot program's geologic sequestration of carbon dioxide  
16 is operating as permitted and is not endangering underground  
17 sources of drinking water.

18 (3) To meet other safety and good practice requirements  
19 established by the department for the pilot program, such as  
20 security, fencing, and ordinary maintenance of the pilot  
21 project property.

22 (b) To ensure that the performance trust fund satisfies the  
23 financial responsibility requirements applying to the operator of  
24 the pilot program under 40 CR 146.85, the balance in the  
25 performance trust fund shall be maintained at a level, and the  
26 terms and administration of the performance trust fund shall be  
27 such as necessary, to ensure that the performance trust fund meets  
28 the requirements of:

29 (1) sufficiency to address endangerment of underground  
30 sources of drinking water under 40 CR 146.85(a)(3); and

31 (2) protective conditions of coverage under 40 CR  
32 146.85(a)(4).

33 (c) Notwithstanding subsections (a)(1) and (b), the department  
34 may require that:

35 (1) the balance in the performance trust fund; and

36 (2) in particular, the part of the balance representing the pilot  
37 program operator's ability to perform corrective action and  
38 emergency and remedial response;

39 must exceed the amount required by the United States  
40 Environmental Protection Agency to satisfy the financial  
41 responsibility requirements applying to the operator of the pilot  
42 program under 40 CR 146.85.





1 (d) The department shall administer the performance trust  
2 fund.

3 (e) The performance trust fund is designated as a trust fund.

4 (f) The performance trust fund consists of the following:

5 (1) One (1) or more deposits in the performance trust fund  
6 required of the operator of the pilot program.

7 (2) Accrued interest and other investment earnings of the  
8 performance trust fund.

9 (3) Gifts, grants, donations, or appropriations from any  
10 source.

11 (g) Money in the performance trust fund does not revert to the  
12 state general fund at the end of a state fiscal year.

13 (h) The treasurer of state shall invest the money in the  
14 performance trust fund not currently needed to meet the  
15 obligations of the performance trust fund in the same manner as  
16 other public money may be invested. Interest that accrues from  
17 these investments shall be deposited in the performance trust fund.

18 (i) The expenses of administering the performance trust fund  
19 shall be paid from money in the performance trust fund.

20 (j) Money in the performance trust fund is annually  
21 appropriated for the purposes set forth in subsection (a).

22 (k) The director may make expenditures from the performance  
23 trust fund on an emergency basis for:

24 (1) corrective action;

25 (2) emergency and remedial response; or

26 (3) both corrective action and emergency and remedial  
27 response;

28 without the prior approval of the budget agency or the governor.  
29 An expenditure under this subsection may not exceed fifty  
30 thousand dollars (\$50,000).

31 (l) During the pre-permit stage and the active permit stage of  
32 the pilot program, the department shall disburse amounts from the  
33 performance trust fund to the operator of the pilot program as the  
34 operator meets certain preestablished objectives or benchmarks of  
35 the pilot program. The:

36 (1) objectives and benchmarks; and

37 (2) amount to be disbursed from the performance trust fund  
38 to the operator upon meeting each objective or benchmark;

39 shall be determined to promote the orderly accomplishment of the  
40 tasks and goals of the pilot program and to ensure that adequate  
41 funds are available for the accomplishment of each task and goal.

42 Sec. 15. (a) The long term assurance trust fund established



- 1 under section 13(2) of this chapter has the following purposes:  
 2 (1) To meet potential long term liabilities associated with the  
 3 pilot program.  
 4 (2) As a hedge against unanticipated adverse events such as:  
 5 (A) a bankruptcy, such as the bankruptcy of the operator  
 6 of the pilot fund;  
 7 (B) a national economic crisis;  
 8 (C) a natural disaster, such as an earthquake or tornado;  
 9 or  
 10 (D) a war or terrorist attack;  
 11 that would disrupt the finances of the pilot program.  
 12 (3) As a reserve maintained for the purposes of the  
 13 performance trust fund in case of the exhaustion of the  
 14 performance trust fund.  
 15 (4) To meet costs that the State of Indiana might incur for  
 16 corrective action and emergency and remedial response, or to  
 17 discharge civil liability of the state that might arise, during  
 18 the final stage of the pilot project due to the state's ownership  
 19 of:  
 20 (A) the carbon dioxide stored underground through the  
 21 pilot project; and  
 22 (B) the property and property interests transferred to the  
 23 State of Indiana under section 22 of this chapter.  
 24 (5) For the purchase of liability insurance under section 17 of  
 25 this chapter to meet the potential costs and liability described  
 26 in subdivision (4).  
 27 (b) The department shall administer the long term assurance  
 28 trust fund.  
 29 (c) The long term assurance trust fund is designated as a trust  
 30 fund.  
 31 (d) The long term assurance trust fund consists of the following:  
 32 (1) One (1) or more deposits in the long term assurance trust  
 33 fund required of the operator of the pilot program.  
 34 (2) Accrued interest and other investment earnings of the long  
 35 term assurance trust fund.  
 36 (3) Gifts, grants, donations, or appropriations from any  
 37 source.  
 38 (e) Money in the long term assurance trust fund does not revert  
 39 to the state general fund at the end of a state fiscal year.  
 40 (f) The treasurer of state shall invest the money in the long term  
 41 assurance trust fund not currently needed to meet the obligations  
 42 of the long term assurance trust fund in the same manner as other



1 public money may be invested. Interest that accrues from these  
 2 investments shall be deposited in the long term assurance trust  
 3 fund.

4 (g) The expenses of administering the long term assurance trust  
 5 fund shall be paid from money in the long term assurance trust  
 6 fund.

7 (h) Money in the long term assurance trust fund is annually  
 8 appropriated for the purposes set forth in subsection (a).

9 (i) The director may make expenditures from the long term  
 10 assurance trust fund on an emergency basis for corrective action  
 11 and emergency and remedial response under subsection (a)(4)  
 12 without the prior approval of the budget agency or the governor.  
 13 An expenditure under this subsection may not exceed fifty  
 14 thousand dollars (\$50,000).

15 Sec. 16. (a) During the active permit stage of the pilot project,  
 16 the operator of the pilot project shall pay to the State of Indiana a  
 17 fee assessed as a certain amount per unit of carbon dioxide injected  
 18 underground at the site of the pilot project.

19 (b) The fee shall be set at an amount sufficient to defray the  
 20 costs incurred by the department in the administration of the pilot  
 21 project.

22 Sec. 17. With the approval of the budget agency, the  
 23 department, using money from the long term assurance trust fund  
 24 under section 15(a)(5) of this chapter, may purchase one (1) or  
 25 more policies of liability insurance to discharge the potential civil  
 26 liability of the State of Indiana described in section 21(b) of this  
 27 chapter.

28 Sec. 18. The state of Indiana owns all carbon dioxide injected  
 29 underground for storage through the pilot project from the time it  
 30 is injected underground.

31 Sec. 19. (a) As provided in 40 CFR 146.94, the operator of the  
 32 pilot project is responsible for all emergency and remedial  
 33 response actions that may be necessary to address the movement  
 34 of carbon dioxide that endanger an underground source of  
 35 drinking water during the construction, operation, and  
 36 post-injection site care periods provided for in the Class VI well  
 37 permit of the pilot project operator.

38 (b) The State of Indiana:

39 (1) shares responsibility with the operator of the pilot for  
 40 emergency and remedial response actions that may be  
 41 necessary at the site of the pilot project beginning on the site  
 42 closure date and ending at the conclusion of the post-injection



1 site care period provided for in the Class VI well permit of the  
2 pilot project operator; and

3 (2) is responsible for emergency and remedial response  
4 actions that may be necessary at the site of the pilot project  
5 during the final stage of the pilot project.

6 Sec. 20. (a) The operator of the pilot project, as required by 40  
7 CFR 90, shall prepare, maintain, and comply with a testing and  
8 monitoring plan at the site of the pilot project to verify that the  
9 pilot project is operating as permitted and is not endangering  
10 underground sources of drinking water.

11 (b) As provided in 40 CFR 146.93, the operator of the pilot  
12 project is required to continue to conduct monitoring at the site of  
13 the pilot project for at least fifty (50) years after the site closure of  
14 the pilot project, unless the director of the United States  
15 Environmental Protection Agency approves an alternative time  
16 frame for the site of the pilot project under 40 CFR 146.93.

17 (c) The State of Indiana is responsible for any necessary testing  
18 and monitoring at the site of the pilot project after the monitoring  
19 responsibility of the operator of the pilot project ends.

20 Sec. 21. (a) As provided in 40 CFR 146.85, the operator of the  
21 pilot project is required to maintain financial responsibility in the  
22 form and amounts determined by the director of the United States  
23 Environmental Protection Agency until the director of the  
24 Environmental Protection Agency approves the site closure of the  
25 pilot project.

26 (b) During the final stage of the pilot project, the State of  
27 Indiana bears the potential civil liability arising from the state's  
28 ownership of:

29 (1) the carbon dioxide stored underground through the pilot  
30 project; and

31 (2) the state's ownership of the property and property  
32 interests transferred to the State of Indiana under section 22  
33 of this chapter;

34 and shall discharge any civil liability it incurs through the long  
35 term assurance trust fund established under section 13(2) of this  
36 chapter or through liability insurance purchased under section 17  
37 of this chapter.

38 Sec. 22. (a) Upon the site closure of the pilot project, the  
39 operator shall transfer ownership of the real property and real  
40 property interests acquired by the operator for purposes of the  
41 pilot project to the State of Indiana.

42 (b) The operator shall:



- 1 (1) execute a deed conveying title to the carbon dioxide
- 2 reservoir, including any associated easements (as described in
- 3 IC 32-24-5.2-2), to the state of Indiana; and
- 4 (2) deliver the deed to the governor.

5 The conveyance must include all surface buildings, facilities, and  
 6 fixtures, as well as any equipment remaining at the site of the pilot  
 7 project on the date the deed is executed.

8 (c) The governor shall record the deed as soon as practicable.

9 Sec. 23. (a) During the pre-permit stage and active permit stage  
 10 of the pilot project, the operator of the pilot project may not  
 11 transfer the rights or obligations of the pilot project operator  
 12 under this chapter to another person, firm, partnership, limited  
 13 liability company, or corporation without the express consent of  
 14 the State of Indiana.

15 (b) The operator of the pilot project may not, at the site of the  
 16 pilot project, inject underground carbon dioxide from a source  
 17 other than the fertilizer production facility on the site of the pilot  
 18 project, unless the State of Indiana consents to the underground  
 19 injection of the carbon dioxide at the pilot project site.

20 Sec. 24. (a) The rights and requirements of this chapter:

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

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

24 (b) Nothing in this chapter may be construed to preclude the  
 25 rights provided under IC 14-37-9.

26 SECTION 6. IC 32-24-1-0.5 IS ADDED TO THE INDIANA CODE  
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 28 1, 2019]: Sec. 0.5. (a) When the procedures set forth in this chapter  
 29 are used under IC 32-24-5.2 by the operator of a pilot project  
 30 established under IC 14-39-2, the property to be condemned and  
 31 acquired is:

32 (1) a carbon dioxide reservoir; and

33 (2) the rights to access, control, and use the carbon dioxide  
 34 reservoir;

35 as described in IC 32-24-5.2-2.

36 (b) This section expires July 1, 2024.

37 SECTION 7. IC 32-24-5.2 IS ADDED TO THE INDIANA CODE  
 38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2019]:

40 Chapter 5.2. Eminent Domain for Carbon Dioxide Storage

41 Sec. 1. The following definitions apply throughout this chapter:

42 (1) "Carbon dioxide" has the meaning set forth in



- 1           **IC 14-39-1-1.**  
 2           **(2) "Carbon dioxide reservoir" means the entirety of the**  
 3           **subsurface area below the base of the Ordovician formations**  
 4           **(as defined by the Indiana geological and water survey**  
 5           **established by IC 21-47-2) containing:**  
 6               **(A) the pore space in which the carbon dioxide is stored;**  
 7               **and**  
 8               **(B) the full extent of the:**  
 9                   **(i) carbon dioxide plume; and**  
 10                  **(ii) displaced brine.**  
 11           **The term includes any formation, stratum, soil, clay, rock,**  
 12           **sand, or other material containing the items described in**  
 13           **clauses (A) and (B).**  
 14           **(3) "Operator" means the person authorized to conduct a**  
 15           **pilot project for the geologic storage of carbon dioxide.**  
 16           **(4) "Pilot project" means the carbon sequestration pilot**  
 17           **project established under IC 14-39-2-7.**  
 18           **(5) "Pore space" means the voids in one (1) or more**  
 19           **subsurface geologic strata that:**  
 20               **(A) are located beneath the surface of a particular tract of**  
 21               **land;**  
 22               **(B) are suitable for the storage of carbon dioxide;**  
 23               **(C) in their natural and undisturbed state, are not:**  
 24                   **(i) oil bearing formations; or**  
 25                   **(ii) gas bearing formations; and**  
 26               **(D) are located below the base of the Ordovician**  
 27               **formations, as defined by the Indiana geological and water**  
 28               **survey established by IC 21-47-2.**  
 29           **Sec. 2. (a) If authorized to conduct a pilot project for the**  
 30           **geologic storage of carbon dioxide under IC 14-39-2, the operator**  
 31           **may condemn the subsurface land containing the carbon dioxide**  
 32           **reservoir, and rights necessary to access, control, and use the**  
 33           **carbon dioxide reservoir.**  
 34           **(b) The following may be condemned in connection with the**  
 35           **pilot project:**  
 36               **(1) An easement granting the right of access to surface land:**  
 37                   **(A) to monitor for releases of carbon dioxide from the**  
 38                   **underground pore space in which it is stored; and**  
 39                   **(B) if necessary, to take corrective action related to the**  
 40                   **underground storage of carbon dioxide.**  
 41               **(2) An easement granting the right of access between the**  
 42               **surface land and the carbon dioxide reservoir to carry out the**



1 purposes of the pilot project.

2 (3) The carbon dioxide reservoir.

3 (c) A condemnation under subsection (b) is without prejudice to  
4 any subsequent proceedings that may be necessary under this  
5 section to acquire additional subsurface land for use in connection  
6 with the underground storage of carbon dioxide.

7 (d) The easement described in subsection (b)(1) may be  
8 condemned if necessary for the accomplishment of the purpose of  
9 the underground storage of carbon dioxide.

10 (e) Subject to subsection (f), as a condition precedent to the  
11 exercise of the right to acquire property and property rights  
12 described in subsection (b), the operator first must have acquired  
13 by purchase, lease, or other method not involving condemnation,  
14 the right to store carbon dioxide in at least sixty percent (60%) of  
15 the proposed carbon dioxide reservoir, computed in relation to the  
16 total surface acreage overlying the entire proposed carbon dioxide  
17 reservoir.

18 (f) If:

19 (1) two (2) or more persons own a tract of surface land  
20 located above a part of the proposed carbon dioxide reservoir  
21 that the operator wishes to condemn;

22 (2) the operator acquires from the owners described in  
23 subdivision (1) an undivided interest in at least fifty-one  
24 percent (51%) of that part of the proposed carbon dioxide  
25 reservoir that is located beneath the owners' land;

26 and

27 (3) the operator acquired the undivided interest by purchase,  
28 lease, or another method not involving condemnation;

29 for purposes of computing the total surface acreage acquired by  
30 the operator under subsection (e), the operator is considered to  
31 have acquired the entirety of the tract of surface land above that  
32 part of the proposed carbon dioxide reservoir.

33 Sec. 3. (a) The right to acquire a carbon dioxide reservoir and  
34 related rights under this chapter are without prejudice to the  
35 rights and interests of the owners or their lessees to:

36 (1) execute oil and gas leases;

37 (2) drill or bore to any other strata or formation not  
38 condemned; and

39 (3) produce oil and gas discovered;

40 if the activities described in subdivisions (1) through (3) may be  
41 conducted in a manner that protects the carbon dioxide reservoir  
42 against the loss of carbon dioxide, and against contamination of the



1 carbon dioxide reservoir by water, oil, or any other substance that  
 2 will affect the use of the carbon dioxide reservoir for the  
 3 underground storage of carbon dioxide.

4 (b) If the owners of mineral rights or the owners' lessees drill  
 5 into land in which a carbon dioxide reservoir has been acquired  
 6 under this chapter, the owners of mineral rights or their lessees  
 7 shall give notice to the owner of the carbon dioxide reservoir at  
 8 least thirty (30) days before beginning the drilling. The notice must  
 9 specify the location and nature of the operations, including the  
 10 depth to be drilled. The notice must be given by United States  
 11 registered or certified mail, return receipt requested, and  
 12 addressed to the usual business address of the operator that has  
 13 acquired the rights to the carbon dioxide reservoir for the  
 14 underground storage of carbon dioxide under this chapter.

15 (c) An operator that has acquired a carbon dioxide reservoir  
 16 shall specify all necessary procedures for protecting the carbon  
 17 dioxide reservoir under the terms of the Class VI permit issued by  
 18 the United States Environmental Protection Agency.

19 (d) The actual costs incurred by the mineral rights owners or  
 20 their lessees in complying with the necessary procedures specified  
 21 under subsection (c), to the extent that they exceed the customary  
 22 and usual drilling costs and other costs that the mineral rights  
 23 owners or their lessees would otherwise have incurred, shall be  
 24 borne by the operator that has acquired the carbon dioxide  
 25 reservoir.

26 **Sec. 4. Only land and rights in land necessary for use in**  
 27 **connection with underground storage of carbon dioxide may be**  
 28 **appropriated and condemned under this chapter.**

29 **Sec. 5. The acquisition of:**

30 (1) the carbon dioxide reservoir; and

31 (2) the rights necessary to access, control, and use the carbon  
 32 dioxide reservoir;

33 authorized by this chapter must be carried out through the  
 34 procedures set forth in IC 32-24-1.

35 **Sec. 6. This chapter expires July 1, 2024.**

36 **SECTION 8. [EFFECTIVE UPON PASSAGE] (a) The legislative**  
 37 **council is urged to assign to an appropriate interim study**  
 38 **committee the task of studying the geologic storage of carbon**  
 39 **dioxide, including the following:**

40 (1) The suitability of storing carbon dioxide and other  
 41 substances in the subsurface geologic strata beneath Indiana's  
 42 surface.





- 1           **(2) The right to inject and store carbon dioxide and other**
- 2           **substances.**
- 3           **(3) The owner of any stored carbon dioxide or other**
- 4           **substances beneath the surface.**
- 5           **(4) The requirements to gain authority of pooling of pore**
- 6           **space.**
- 7           **(5) The financial responsibility when a problem associated**
- 8           **with a Class VI well creates a danger to human health or the**
- 9           **environment.**
- 10          **(6) The adequate testing and monitoring requirements**
- 11          **imposed for a Class VI well.**
- 12          **(7) The financial exposure to the state if the state becomes the**
- 13          **owner of all carbon dioxide and other substances stored**
- 14          **underground.**
- 15          **(b) This SECTION expires December 31, 2019.**
- 16          **SECTION 9. An emergency is declared for this act.**



## 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.

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources and to make an appropriation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 442 as printed January 30, 2019.)

MISHLER, Chairperson

Committee Vote: Yeas 10, Nays 2.

