

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 ENROLLED ACT No. 442

AN ACT to amend the Indiana Code concerning natural resources.

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

SECTION 1. IC 14-39-1-1, AS ADDED BY P.L.150-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. As used in this chapter, "carbon dioxide" means a fluid consisting of more than ninety percent (90%) carbon dioxide molecules. ~~compressed to a supercritical state.~~

SECTION 2. IC 14-39-1-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2.4. As used in this chapter, "carbon sequestration pilot project" refers to the pilot project described in section 3.5 of this chapter.**

SECTION 3. IC 14-39-1-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2.5. As used in this chapter, "underground storage of carbon dioxide" means the injection of carbon dioxide into, and storage of carbon dioxide in, underground strata and formations at the site of the carbon sequestration pilot project, as described in section 3.5 of this chapter, pursuant to one (1) or more federal permits issued by the United States Environmental Protection Agency.**

SECTION 4. IC 14-39-1-3, AS ADDED BY P.L.150-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. Because:

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(1) the movement of **carbon dioxide** conducted for:

(1) (A) a person's own use or account; or

(2) (B) the use or account of another person or persons;
of **carbon dioxide** by pipeline in Indiana for carbon management applications can assist efforts to reduce carbon dioxide emissions; from the manufacture of gas using coal and the generation of electricity; and

(2) the **underground storage of carbon dioxide can assist efforts to reduce carbon dioxide emissions;**

the use of carbon dioxide transmission pipelines, including their routing, construction, maintenance, and operation, **and the underground storage of carbon dioxide** is **are** declared as a matter of legislative determination to be a public use and service, in the public interest, and a benefit to the welfare and people of Indiana.

SECTION 5. IC 14-39-1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 3.5. (a) This chapter authorizes the establishment of a carbon sequestration pilot project:**

(1) that will:

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

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

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

(b) The director shall designate the operator of the carbon sequestration pilot project according to the characteristics of the pilot project set forth in subsection (a).

SECTION 6. IC 14-39-1-7, AS ADDED BY P.L.150-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 7. (a)** If a carbon dioxide transmission pipeline company has received a carbon dioxide transmission pipeline certificate of authority from the department under this chapter and is not able to reach an agreement with a property owner for the construction, operation, and maintenance of the carbon dioxide transmission pipeline on the owner's property, the company may proceed to condemn a right-of-way or an easement necessary or useful for:

(1) constructing, maintaining, using, operating, and gaining access to a carbon dioxide transmission pipeline and all necessary



machinery, equipment, pumping stations, appliances, and fixtures for use in connection with the carbon dioxide transmission pipeline; and

(2) obtaining all necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove a carbon dioxide transmission pipeline and all of its component parts.

(b) If the operator of the carbon sequestration pilot project is not able to reach an agreement with an owner of property to acquire:

(1) ownership of underground strata or formations located under the surface of the property for purposes of the underground storage of carbon dioxide; or

(2) ownership or other rights to one (1) or more areas of the surface of the property for purposes of establishing and operating monitoring facilities required by the United States Environmental Protection Agency for the underground storage of carbon dioxide;

that are needed for the carbon sequestration pilot project, the operator of the carbon sequestration pilot project may exercise the power of eminent domain under IC 32-24-1 and IC 32-24-5 to make the needed acquisition.

SECTION 7. IC 14-39-1-8, AS ADDED BY P.L.150-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. **(a)** Except as otherwise provided in this chapter, IC 32-24-1 applies to the condemnation of property under **section 7(a)** of this chapter by a carbon dioxide transmission pipeline company.

(b) IC 32-24-5 and (pursuant to IC 32-24-5-5) IC 32-24-1 apply to the condemnation of property under section 7(b) of this chapter by the operator of the carbon sequestration pilot project, strictly for purposes of the carbon sequestration pilot project.

SECTION 8. IC 14-39-1-9, AS ADDED BY P.L.150-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. A carbon dioxide transmission pipeline company that exercises the authority set forth in section **7(a)** of this chapter shall:

(1) compensate the property owner by making a payment to the owner equal to:

(A) one hundred twenty-five percent (125%) of the fair market value of the interest in the property acquired, if the right-of-way or easement involves agricultural land; or

(B) one hundred fifty percent (150%) of the fair market value of the interest in the property acquired, if the right-of-way or



easement involves a parcel of property occupied by the owner as a residence; and

- (2) pay to the property owner:
 - (A) any damages determined under IC 32-24-1; and
 - (B) any loss incurred in a trade or business;
 that are attributable to the exercise of eminent domain.

SECTION 9. IC 14-39-1-13 IS REPEALED [EFFECTIVE JULY 1, 2019]. ~~Sec. 13. This chapter expires July 1, 2021.~~

SECTION 10. IC 14-39-1-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 14. (a) Because the public interest would be served by the state of Indiana succeeding to the rights of a person that has conducted the underground storage of carbon dioxide, the state of Indiana, upon the recommendation of the director of the department and review by the state budget committee, may obtain ownership of:**

- (1) the carbon dioxide stored in underground strata and formations; and
- (2) the underground strata and formations in which the carbon dioxide is stored;

from the operator of the carbon sequestration pilot project.

(b) The state of Indiana may obtain ownership of the carbon dioxide stored in underground strata and formations and the underground strata and formations in which the carbon dioxide is stored under this section:

- (1) after the operator, through the carbon sequestration pilot project, has injected carbon dioxide into underground strata and formations for at least twelve (12) years; or
- (2) after the operator of the carbon sequestration pilot project ceases to inject carbon dioxide into underground strata and formations, if the injection ceases less than twelve (12) years after it began.

SECTION 11. IC 14-39-1-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 15. (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 the 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 12. IC 32-24-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) Whereas, the



storage of gas in subsurface strata or formations of the earth in Indiana tends to insure a more adequate supply of gas to domestic, commercial, and industrial consumers of gas in this state and materially promotes the economy of the state, the storage of gas is declared to be in public interest and for the welfare of Indiana and the people of Indiana and to be a public use.

(b) Whereas, because the underground storage of carbon dioxide in subsurface strata or formations of the earth can assist efforts to reduce carbon dioxide emissions and thus materially promotes the well-being of citizens of the state, the underground storage of carbon dioxide is declared to be:

(1) in the public interest and for the welfare of Indiana and the people of Indiana; and

(2) a public use.

SECTION 13. IC 32-24-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A person, firm, limited liability company, municipal corporation, or other corporation authorized to do business in Indiana and engaged in the business of transporting or distributing gas by means of pipelines into, within, or through Indiana for ultimate public use may condemn:

(1) land subsurface strata or formations;

(2) other necessary land rights;

(3) land improvements and fixtures, in or on land, except buildings of any nature; and

(4) the use and occupation of land subsurface strata or formations; for constructing, maintaining, drilling, utilizing, and operating an underground gas storage reservoir.

(b) The operator of the carbon sequestration pilot project established under IC 14-39-1 may exercise the power of eminent domain to obtain:

(1) ownership of such underground strata and formations located under the surface of the owner's property as may be necessary or useful for underground storage of carbon dioxide in the strata or formations; and

(2) ownership or other rights to one (1) or more areas of the surface of the owner's property, including but not limited to one (1) or more rights-of-way or easements, as may be necessary or useful for constructing, maintaining, using, operating, and gaining access to monitoring facilities required by the United States Environmental Protection Agency for the underground storage of carbon dioxide.

(c) The following rights in land may be condemned for use in connection with the underground storage of gas:

(1) To drill and operate wells in and on land.

(2) To install and operate pipelines.



(3) To install and operate equipment, machinery, fixtures, and communication facilities.

(4) To create ingress and egress to explore and examine subsurface strata or underground formations.

(5) To create ingress and egress to construct, alter, repair, maintain, and operate an underground storage reservoir.

(6) To exclusively use any subsurface strata condemned.

(7) To remove and reinstall pipe and other equipment used in connection with rights condemned under subdivisions (1) through (6).

~~(c)~~ (d) Acquisition of subsurface rights in land for gas storage purposes **or for purposes of the carbon sequestration pilot project established under IC 14-39-1** by condemnation under this section must be without prejudice to any subsequent proceedings that may be necessary under this section to acquire additional subsurface rights in the same land for use in connection with the underground storage. Surface rights in land necessary for the accomplishment of the purposes set forth in this section may be condemned.

~~(d)~~ (e) Except with respect to a proceeding under this chapter to:

(1) acquire the right to explore and examine a subsurface stratum or formation in land; and

(2) create the right of ingress and egress for operations connected to the acquisition;

and subject to subsection ~~(e)~~; (f), as a condition precedent to the exercise of the right to condemn any underground stratum, formation, or interest reasonably expected to be used or useful for underground gas storage **or for purposes of the carbon sequestration pilot project established under IC 14-39-1**, a condemnor first must have acquired by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in at least sixty per cent (60%) of the stratum or formation. This must be computed in relation to the total surface acreage overlying the entire stratum or formation considered useful for the purpose.

~~(e)~~ (f) A tract under which the stratum or formation sought to be condemned is owned by two (2) or more persons, firms, limited liability companies, or corporations must be credited to the condemnor as acquired by it for the purpose of computing the percentage of acreage acquired by the condemnor in complying with the requirement of subsection ~~(d)~~ (e) if the condemnor acquires from the owner or owners of an undivided three-fourths (3/4) part or interest or more of the underground stratum or formation, by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in the stratum or formation. It is not necessary for the condemnor to have acquired any interest in the



property in which the condemnee has an interest before instituting a proceeding under this chapter.

SECTION 14. IC 32-24-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) The rights acquired by condemnation **under this chapter** must be without prejudice to the rights and interests of the owners or their lessees to:

- (1) execute oil and gas leases;
- (2) drill or bore to any other strata or formation not condemned;
- and
- (3) produce oil and gas discovered.

However, any drilling and all operations in connection with the drilling must be performed in a manner that protects the strata or formations condemned against the loss of gas and against contamination of the reservoir by water, oil, or other substance that will affect the use of the condemned strata or formations for gas storage purposes.

(b) If the owners of mineral rights or the owners' lessees drill into land in which gas storage rights have been condemned under this chapter, the owners of mineral rights or their lessees shall give notice to the owner of the gas storage stratum, formation, or horizon at least thirty (30) days before commencing the drilling. The notice must specify the location and nature of the operations, including the depth to be drilled. The notice must be given by United States registered or certified mail, return receipt requested, and addressed to the usual business address of the owner or owners of the gas storage stratum or formation condemned under this chapter.

(c) It is the duty of the owner of a gas storage stratum or formation to designate all necessary procedures for protecting the gas storage area. The actual costs incurred over and above customary and usual drilling and other costs that would have been incurred without compliance with the requirements shall be borne by the owner of the gas storage stratum or formation. An owner or lessee of mineral interests other than gas storage rights is not responsible for an act done under such a requirement or the consequences of this act.

SECTION 15. IC 32-24-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. Only the rights in land necessary for use in connection with:

- (1) **the** underground storage of gas and those subsurface strata adaptable for underground storage of gas; **and**
- (2) **the carbon sequestration pilot project established under IC 14-39-1;**

may be appropriated and condemned under this chapter. Rights in the subsurface of land constituting a part of a geological structure are deemed necessary to the operation of an underground storage reservoir in the structure. In determining the compensation to be paid to the



owner of an oil producing stratum, or interest in the stratum, condemned under this chapter, proof may be offered and consideration must be given to potential recovery, if any, of oil from a stratum by secondary or other subsequent recovery processes in addition to potential recovery by a primary process.

SECTION 16. IC 32-24-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. The appropriation and condemnation of:

- (1) subsurface strata or formations in land; **and**
- (2) rights in and easements in land and subsurface strata or formations;

authorized by this chapter must be made under IC 32-24-1.

SECTION 17. [EFFECTIVE UPON PASSAGE] **(a) The legislative council is urged 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.**

(b) This SECTION expires December 31, 2019.

SECTION 18. **An emergency is declared for this act.**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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