



February 15, 2023

SENATE BILL No. 451

DIGEST OF SB 451 (Updated February 13, 2023 12:25 pm - DI 55)

Citations Affected: IC 14-39; noncode.

Synopsis: Carbon sequestration pilot project. Defines the term "pore space". Corrects a spelling error in the address of the carbon sequestration pilot project (pilot project). Provides that the pilot project will construct, operate, or use not more than two (2) carbon dioxide pipelines and will maintain operations only in Vigo and Vermillion counties. Requires the director of the department of natural resources to designate the operator of the carbon sequestration pilot project not more than 30 days after the Class VI well permit authorizing the operation of carbon dioxide injection wells at the site of the pilot project is issued by the U.S. Environmental Protection Agency. Provides that, for purposes of the pilot project, the title to pore space is vested in the person who holds in fee simple the surface interest in the land or water, as identified by the property records of the county, except in case of an explicit conveyance, exception, or reservation through a recorded conveyance to another person. Requires the pilot project operator, before the anticipated migration of injected carbon dioxide into pore space, to: (1) notify the person who owns the pore space in fee simple of the anticipated migration of the carbon dioxide; and (2) make an offer of at least two hundred fifty dollars \$250 per acre to acquire, lease, or occupy the pore space. Provides that a person who claims ownership of pore space may initiate non-binding mediation of
(Continued next page)

Effective: July 1, 2023.

Ford Jon

January 19, 2023, read first time and referred to Committee on Environmental Affairs.
February 14, 2023, amended, reported favorably — Do Pass.

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Digest Continued

the dispute with the pilot project operator concerning the pore space. Establishes a procedure for mediation. Provides that if a person who claims ownership of pore space is unable to reach an agreement with the pilot project operator concerning the acquisition, lease, or occupancy of the pore space through negotiation or mediation, the person may pursue a civil action against the pilot project operator. Provides that, generally, in a civil action against the pilot project operator, the court may not grant injunctive relief, an order of possession, or monetary relief that exceeds the fair market value of underground gas storage rights in the region of the pore space. Provides, however, that these limits on monetary recovery do not apply in case of direct and tangible physical injury or damage to a person, tangible property, or an animal or in case of an effect of the pilot project on the sources of the public water supply used by a public utility.

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February 15, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 451

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 14-39-1-2.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2023]: **Sec. 2.6. As used in this chapter, "pore space" means**
4 **subsurface cavities or voids that can be used as a storage space for**
5 **carbon dioxide.**
- 6 SECTION 2. IC 14-39-1-3.5, AS ADDED BY P.L.291-2019,
7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2023]: Sec. 3.5. (a) This chapter authorizes the establishment
9 of a carbon sequestration pilot project:
- 10 (1) that will:
- 11 (A) capture carbon dioxide at the proposed ammonia plant to
12 be located at 444 West ~~Sanford~~ **Sandford** Avenue, West Terre
13 Haute, Indiana; ~~and~~
- 14 **(B) construct, operate, or use not more than two (2) carbon**
15 **dioxide pipelines;**
- 16 **(C) maintain operations only in Vigo and Vermillion**
17 **counties; and**

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- 1 ~~(B)~~ **(D)** inject the carbon dioxide underground through one (1)
 2 or more injection wells pursuant to a Class VI well permit
 3 issued by the United States Environmental Protection Agency;
 4 and
 5 (2) that will employ the underground storage of carbon dioxide as
 6 an alternative to releasing the carbon dioxide into the air.
- 7 (b) The director shall designate the operator of the carbon
 8 sequestration pilot project according to the characteristics of the pilot
 9 project set forth in subsection (a) **not more than thirty (30) days after**
 10 **the Class VI well permit referred to in subsection (a)(1)(D) is**
 11 **issued by the United States Environmental Protection Agency.**
- 12 SECTION 3. IC 14-39-1-16 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2023]: **Sec. 16. For purposes of the operation of the carbon**
 15 **sequestration pilot project under this chapter, the title to the pore**
 16 **space is vested in the person who holds in fee simple the surface**
 17 **interest in the land or water as identified by the property records**
 18 **of the county, unless another person has been explicitly conveyed,**
 19 **excepted, or reserved through a recorded conveyance document a**
 20 **right to use the pore space in a manner inconsistent with the**
 21 **carbon sequestration pilot project.**
- 22 SECTION 4. IC 14-39-1-17 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2023]: **Sec. 17. (a) Before the anticipated migration of carbon**
 25 **dioxide as predicted by the testing and monitoring activities**
 26 **pursuant to the Class VI permit issued to the carbon sequestration**
 27 **pilot project, the pilot project operator shall:**
- 28 (1) notify:
- 29 (A) the person who owns the pore space in fee simple; or
 30 (B) any person with a right by a recorded conveyance
 31 document to use the pore space;
 32 of the anticipated migration of the carbon dioxide; and
- 33 (2) make an offer of compensation in writing:
- 34 (A) to the person identified in subdivision (1)(A) to acquire,
 35 lease, or occupy the pore space; or
 36 (B) to a person identified in subdivision (1)(B) for any
 37 diminution in the rights that the person has acquired to use
 38 the pore space.
- 39 (b) An offer of compensation required by subsection (a)(2), with
 40 respect to a parcel, must be at least two hundred fifty dollars
 41 (\$250) per acre.
- 42 SECTION 5. IC 14-39-1-18 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 2 1, 2023]: **Sec. 18. (a) If a person who claims ownership of pore
 3 space described in section 17 of this chapter is unable to reach an
 4 agreement with the pilot project operator concerning the
 5 acquisition, lease, or occupancy of the pore space, the person may
 6 file a request for nonbinding mediation of the dispute before a
 7 single mediator qualified under Rule 2.5 of the Indiana Supreme
 8 Court Rules for Alternative Dispute Resolution.**

9 **(b) If the person who claims ownership of the pore space files a
 10 request for mediation under subsection (a), the mediation shall
 11 occur as follows:**

12 **(1) A demand for mediation must be:**

13 **(A) in writing; and**

14 **(B) served upon all other parties.**

15 **(2) Not later than thirty (30) days after the date on which the
 16 demand for mediation is served under subdivision (1), the
 17 parties shall mutually select an independent mediator.**

18 **(3) If the parties are unable to agree on the selection of a
 19 mediator, a mediator shall be appointed, upon motion of a
 20 party, by a judge of the Vigo County Circuit Court.**

21 **(4) After a mediator is selected under subdivision (2) or
 22 appointed under subdivision (3), the parties shall meet with
 23 the mediator for the purpose of attempting to resolve the
 24 dispute. The mediator shall determine:**

25 **(A) a time period within which the meeting required under
 26 this subdivision must occur; and**

27 **(B) a location within Indiana for the meeting.**

28 **The mediator may extend the period within which the meeting
 29 must occur for good cause shown by a party or upon
 30 stipulation of the parties.**

31 **(5) The mediation must be concluded not later than ninety
 32 (90) days after the mediator is selected under subdivision (2)
 33 or appointed under subdivision (3).**

34 **(6) The costs of a mediation under this subsection shall be
 35 borne as follows:**

36 **(A) One-half (1/2) shall be paid by the pilot project
 37 operator.**

38 **(B) One-half (1/2) shall be borne in equal shares by the
 39 other participants in the mediation.**

40 **(7) The following apply to a mediation conducted under this
 41 subsection:**

42 **IC 4-21.5-3.5-4**



- 1 IC 4-21.5-3.5-13
- 2 IC 4-21.5-3.5-16 through IC 4-21.5-3.5-19
- 3 IC 4-21.5-3.5-20(b) and (c)
- 4 IC 4-21.5-3.5-23
- 5 IC 4-21.5-3.5-24
- 6 IC 4-21.5-3.5-26
- 7 IC 4-21.5-3.5-27.

8 If the parties are not able to reach an agreement as to the
 9 assessment of compensation through a mediation under this
 10 subsection, the case shall proceed as described in subsection (c).

11 (c) If a person who claims ownership of pore space described in
 12 section 17 of this chapter is unable to reach an agreement with the
 13 pilot project operator concerning the acquisition, lease, or
 14 occupancy of the pore space through negotiation or mediation, the
 15 person may pursue a civil action under this section against the pilot
 16 project operator.

17 (d) Except as provided in subsections (e) and (f), unless
 18 otherwise agreed to by the person who claims ownership of the
 19 pore space and the pilot project operator, in a civil action under
 20 this section a court may not grant:

- 21 (1) injunctive relief or an order of possession; or
- 22 (2) monetary relief that exceeds the fair market value of
- 23 underground gas storage rights in the region in which the
- 24 pore space is located on the date on which the civil action is
- 25 filed.

26 (e) Monetary recovery may not be limited under subsection (d)
 27 in a civil action under this section if the claimant pleads and proves
 28 direct and tangible physical injury or damage to:

- 29 (1) a person;
- 30 (2) tangible property; or
- 31 (3) an animal.

32 (f) This section does not limit monetary recovery by a public
 33 utility for any effect of the carbon sequestration pilot project on
 34 the sources of the public water supply used by the public utility.

35 SECTION 6. [EFFECTIVE JULY 1, 2023] (a) IC 14-39-1-18, as
 36 added by this act, applies to causes of action that accrue after June
 37 30, 2023.

38 (b) This SECTION expires July 1, 2026.



COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 451, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-39-1-2.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 2.6. As used in this chapter, "pore space" means subsurface cavities or voids that can be used as a storage space for carbon dioxide.**"

Page 1, line 8, strike "and".

Page 1, between lines 8 and 9, begin a new line double block indented and insert:

**"(B) construct, operate, or use not more than two (2) carbon dioxide pipelines;
(C) maintain operations only in Vigo and Vermillion counties; and"**

Page 1, line 9, strike "(B)" and insert "(D)".

Page 1, line 16, delete "(a)." and insert "(a) **not more than thirty (30) days after the Class VI well permit referred to in subsection (a)(1)(D) is issued by the United States Environmental Protection Agency.**"

Page 2, line 6, delete "the rights to which this section applies have" and insert "**another person has been explicitly conveyed, excepted, or reserved through a recorded conveyance document a right to use the pore space in a manner inconsistent with the carbon sequestration pilot project.**"

Page 2, delete lines 7 through 8.

Page 2, line 11, after "17." insert "(a)".

Page 2, line 12, delete "injected underground at the site of the carbon" and insert "**as predicted by the testing and monitoring activities pursuant to the Class VI permit issued to the carbon sequestration pilot project, the pilot project operator shall:**

(1) notify:

(A) the person who owns the pore space in fee simple; or

(B) any person with a right by a recorded conveyance document to use the pore space;

of the anticipated migration of the carbon dioxide; and

(2) make an offer of compensation in writing:



(A) to the person identified in subdivision (1)(A) to acquire, lease, or occupy the pore space; or

(B) to a person identified in subdivision (1)(B) for any diminution in the rights that the person has acquired to use the pore space.

(b) An offer of compensation required by subsection (a)(2), with respect to a parcel, must be at least two hundred fifty dollars (\$250) per acre."

Page 2, delete lines 13 through 18.

Page 2, line 24, delete "person's" and insert "**person may file a request for nonbinding mediation of the dispute before a single mediator qualified under Rule 2.5 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.**

(b) If the person who claims ownership of the pore space files a request for mediation under subsection (a), the mediation shall occur as follows:

(1) A demand for mediation must be:

(A) in writing; and

(B) served upon all other parties.

(2) Not later than thirty (30) days after the date on which the demand for mediation is served under subdivision (1), the parties shall mutually select an independent mediator.

(3) If the parties are unable to agree on the selection of a mediator, a mediator shall be appointed, upon motion of a party, by a judge of the Vigo County Circuit Court.

(4) After a mediator is selected under subdivision (2) or appointed under subdivision (3), the parties shall meet with the mediator for the purpose of attempting to resolve the dispute. The mediator shall determine:

(A) a time period within which the meeting required under this subdivision must occur; and

(B) a location within Indiana for the meeting.

The mediator may extend the period within which the meeting must occur for good cause shown by a party or upon stipulation of the parties.

(5) The mediation must be concluded not later than ninety (90) days after the mediator is selected under subdivision (2) or appointed under subdivision (3).

(6) The costs of a mediation under this subsection shall be borne as follows:

(A) One-half (1/2) shall be paid by the pilot project operator.



(B) One-half (1/2) shall be borne in equal shares by the other participants in the mediation.

(7) The following apply to a mediation conducted under this subsection:

IC 4-21.5-3.5-4

IC 4-21.5-3.5-13

IC 4-21.5-3.5-16 through IC 4-21.5-3.5-19

IC 4-21.5-3.5-20(b) and (c)

IC 4-21.5-3.5-23

IC 4-21.5-3.5-24

IC 4-21.5-3.5-26

IC 4-21.5-3.5-27.

If the parties are not able to reach an agreement as to the assessment of compensation through a mediation under this subsection, the case shall proceed as described in subsection (c).

(c) If a person who claims ownership of pore space described in section 17 of this chapter is unable to reach an agreement with the pilot project operator concerning the acquisition, lease, or occupancy of the pore space through negotiation or mediation, the person may pursue a civil action under this section against the pilot project operator."

Page 2, delete lines 25 through 26.

Page 2, line 27, delete "(b)" and insert "**(d)**".

Page 2, line 27, delete "(c) and (d)," and insert "**(e) and (f)**".

Page 2, line 31, delete "relief;" and insert "**relief or an order of possession;**".

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

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

Page 2, line 42, delete "(d)" and insert "**(f)**".

Page 3, line 1, delete "a" and insert "**the**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 451 as introduced.)

NIEMEYER, Chairperson

Committee Vote: Yeas 8, Nays 3.

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