

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 ENROLLED ACT No. 451

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 14-39-1-2.6 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, "person" includes a political body, a corporate body, and the state of Indiana.**

SECTION 2. IC 14-39-1-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 2.7. As used in this chapter, "pore space" means subsurface cavities or voids that can be used as a storage space for carbon dioxide.**

SECTION 3. IC 14-39-1-3.5, AS ADDED BY P.L.291-2019, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **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) construct, operate, or use not more than two (2) carbon dioxide pipelines;

(C) maintain operations only in Vigo and Vermillion counties; and

(D) inject the carbon dioxide underground through one (1) or more injection wells pursuant to a Class VI well permit

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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) **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.**

(c) **This section expires July 1, 2028, if the operator of the carbon sequestration pilot project designated under subsection (b) according to the characteristics set forth in subsection (a) is not issued a Class VI permit by the United States Environmental Protection Agency under 40 CFR 146 subpart H by July 1, 2028.**

SECTION 4. IC 14-39-1-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 16. For purposes of the operation of the carbon sequestration pilot project under this chapter, the title to the 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, unless 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.**

SECTION 5. IC 14-39-1-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 17. (a) Before the anticipated migration of carbon dioxide 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 a yearly payment of forty percent (40%) of the average estimated cash rent per acre for the area of Indiana and the average class of land, according to the Farmland Values & Cash Rents Survey Results published by Purdue University most recently before the offer of compensation is made, every year until the cessation of injection of carbon dioxide.

SECTION 6. IC 14-39-1-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 18. (a) 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, the 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 by the pilot project operator.**



(7) The pilot project operator may consolidate multiple requests for mediation into one (1) or more mediation proceedings.

(8) 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 IC 4-21.5-3.5-20(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 against the pilot project operator. A civil action described in this subsection may be brought only under this section.

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

(1) injunctive relief or an order of possession; or

(2) monetary relief that exceeds the fair market value of pore space in Indiana.

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

(1) a person;

(2) tangible property; or

(3) an animal.

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

SECTION 7. [EFFECTIVE JULY 1, 2023] (a) IC 14-39-1-18, as added by this act, applies to causes of action that accrue after June 30, 2023.



(b) This SECTION expires July 1, 2026.



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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