
HOUSE BILL No. 1404

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-37; IC 32-23-7.

Synopsis: Coal bed methane. Requires the natural resources commission (commission) to: (1) regulate coal bed methane wells; (2) establish alternative spacing, unit, and bonding requirements for coal bed methane wells; (3) maintain a public record containing certain information on coal bed methane wells; and (4) adopt rules requiring the notification of a property owner before property is entered for oil and gas or coal bed methane purposes. Allows an owner or holder of mineral rights to coal to file an affidavit identifying a minable coal resource. Provides for regulation of coal bed methane wells and other gas wells in a similar manner. Requires the division of oil and gas (division) to post applications for coal bed methane permits on its web site. Prohibits the issuance of a permit less than 15 days after the posting, and establishes other conditions to permit issuance. Allows the commission to require an owner or operator to modify the location for the drilling of a well for oil and gas or coal bed methane purposes under certain circumstances. Amends the well plugging requirements. Allows an owner or operator of a coal mine to vent coal bed methane under certain circumstances. Provides for the establishment of an estate in land with respect to coal bed methane comparable to an estate that may be established under current law with respect to oil and gas. Limits the exercise of rights in certain circumstances under a coal bed methane estate if the exercise would affect miner safety or coal resources. Provides that a conveyance or reservation of rights to coal or oil and gas will not be considered as including the rights to coal bed methane unless there has been a specific grant. Provides that a coal operator's venting of coal bed methane gas in connection with mining operations is not considered to be a waste or diminution of resources.

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Effective: July 1, 2011.

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January 18, 2011, read first time and referred to Committee on Natural Resources.



First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1404

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

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

- 1 SECTION 1. IC 14-8-2-42.2, AS ADDED BY P.L.78-2010,
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 42.2. "Coal bed methane", for purposes of
 4 ~~IC 14-37-4-1~~, IC 14-37, means gaseous substances of whatever
 5 character lying within or emanating from:
 6 (1) unmined coal seams, either naturally or as a result of
 7 stimulation of the coal seam;
 8 (2) the void created by mining out coal seams; or
 9 (3) the gob created by longwall or other extraction methods of
 10 coal mining.
 11 SECTION 2. IC 14-37-3-14.5 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2011]: **Sec. 14.5. The commission shall do the**
 14 **following:**
 15 (1) **Regulate coal bed methane wells and compliance with**
 16 **IC 32-23-7.**
 17 (2) **Establish alternative spacing, survey, unit, and bonding**



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- requirements for coal bed methane wells.
- (3) Maintain a public record of the following:**
 - (A) The location of each coal bed methane well that has been drilled, including exploration wells.**
 - (B) The current status of each coal bed methane well.**
 - (C) The date of plugging and detailed information concerning the plugging of each coal bed methane well.**

SECTION 3. IC 14-37-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. **(a)** The commission shall adopt rules under IC 4-22-2 to implement this article. The rules must include rules necessary to carry out the duties imposed upon the commission under this chapter.

- (b) The commission shall adopt rules under IC 4-22-2:**
 - (1) requiring that a property owner be notified before the owner's property may be entered to survey, explore for, or extract oil and gas or coal bed methane; and**
 - (2) establishing procedures for the notification required under subdivision (1).**

SECTION 4. IC 14-37-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. **(a)** Except as provided in section 9 of this chapter **and subject to subsections (b) through (d)**, if an applicant for a permit complies with:

- (1) this article; and
- (2) the rules adopted under this article;

the commission shall issue a permit.

(b) The division shall post on the web site maintained by the division a listing of all complete permit applications submitted under this chapter with respect to oil and gas or coal bed methane. The posting must include at least the following for each permit application:

- (1) The location, type, and depth of the proposed well.**
- (2) The coal seam, if any, affected by the proposed well.**

(c) The commission may not issue a permit under this chapter until:

- (1) the applicant has received written consent from:**
 - (A) the owner of the property subject to the permit application;**
 - (B) the owners of all property that is adjacent to the property subject to the permit application; and**
 - (C) any owner or holder of mineral rights to the coal on the property subject to the permit application; or**
- (2) all of the following requirements are satisfied:**

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(A) At least fifteen (15) days have elapsed since the permit application was included in the list posted under subsection (b).

(B) The commission has taken into consideration any comments received from any affected interested party during the period referred to in clause (A).

(C) The applicant has submitted to the director documentation demonstrating that at least fifteen (15) days have elapsed since the applicant sent written notification of the permit application to the following:

- (i) The owner of the property subject to the permit application.
- (ii) The owners of all property that is adjacent to the property subject to the permit application.
- (iii) Any owner or holder of mineral rights to the coal on the property subject to the permit application.

(D) The director has issued a finding that the requirements of clauses (A) through (C) have been met.

(d) The commission may require the applicant to make reasonable modifications to the specific location for the proposed drilling of a well for oil and gas or coal bed methane purposes if:

- (1) the modifications are necessary to protect the health and safety of coal miners; or
- (2) the modifications:
 - (A) are necessary to protect minable coal resources;
 - (B) do not violate the drilling unit, well spacing, or other requirements of this article; and
 - (C) do not result in waste.

SECTION 5. IC 14-37-7-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) The owner or holder of mineral rights to coal or another interested person may file with the division of reclamation an affidavit that identifies by map the coal that is subject to the owner's or holder's mineral rights.

- (b) The division of reclamation shall:
 - (1) keep the affidavit and map confidential; and
 - (2) use the affidavit and map solely for the purpose of determining the owner or holder of mineral rights to coal in an area for which a permit application has been filed under IC 14-37-4.

(c) Upon receipt of a permit application under IC 14-37-4, the division shall request the division of reclamation to determine

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1 whether the location of the well proposed in the permit application
2 is in an area underlain by coal identified in an affidavit and map
3 filed under subsection (a).

4 (d) The division of reclamation shall report its determination
5 under subsection (c) in writing to the division.

6 SECTION 6. IC 14-37-8-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Plugging
8 methods must be approved by the commission and must permanently
9 confine all oil, natural gas, coal bed methane, and water in their
10 original strata.

11 (b) If a well is drilled through an area containing minable coal,
12 the plugging standards applying to the well must be more stringent
13 than the standards for the methods approved under subsection (a)
14 to the extent that the federal Mine Safety and Health
15 Administration requires the more stringent standards in order to
16 permit coal mining through the area of the plugged well.

17 (c) For areas to which subsection (b) does not apply, mud-laden
18 fluid, cement, or mechanical plugs shall must be used singly or in
19 combination.

20 SECTION 7. IC 14-37-11-3 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2011]: Sec. 3. The owner or operator of a coal mine may vent the
23 coal bed methane produced from a coal bed methane well if both
24 of the following apply:

25 (1) The venting is necessary to protect coal miners' safety.

26 (2) It is not economical to market the coal bed methane.

27 SECTION 8. IC 32-23-7-1 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) As used in this
29 chapter, "oil and gas" means petroleum and mineral oils and gaseous
30 substances of whatever character naturally lying or found beneath the
31 surface of land.

32 (b) The term does not include coal bed methane.

33 SECTION 9. IC 32-23-7-4 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) As used in this
35 chapter, "person in interest" means:

36 (1) if used in reference to an oil and gas estate in land, the
37 owner of a beneficial interest in the oil and gas estate in land; or

38 (2) if used in reference to coal bed methane, the owner of a
39 beneficial interest in the coal bed methane estate in land;

40 whether the interest is held for life, for a term of years, or in fee.

41 (b) The term includes a lessee, licensee, or duly qualified agent of
42 the owner.

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1 (c) The term does not include a mortgagee or security assignee of
2 the owner if the mortgagee or security assignee does not have a right
3 to the control or operation of the premises for:

4 (1) oil and gas, **if the term is used in reference to an oil and gas**
5 **estate in land or oil and gas; or**

6 (2) **coal bed methane, if the term is used in reference to a coal**
7 **bed methane estate in land or coal bed methane.**

8 SECTION 10. IC 32-23-7-6 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. A grant or
10 reservation contained in an instrument that affects land in Indiana and
11 that purports to convey or transfer an interest in the oil and gas in, on,
12 under, or that may be produced from beneath the surface of the land
13 transfers the following expressed rights and privileges in addition to
14 any other rights naturally flowing from the character of the instrument
15 in law to the named recipient:

16 (1) A person in interest in the oil and gas estate in land may enter
17 the land for the purpose of:

18 (A) exploring, prospecting, testing, surveying, or otherwise
19 investigating the land to determine the potential of the land for
20 oil or gas production; or

21 (B) otherwise conducting operations for oil and gas on the
22 land;

23 whether or not the person is also the owner, lessee, or licensee of
24 an owner of an interest in the surface rights in the land.

25 (2) A person in interest in the oil and gas estate in land in Indiana
26 may enter the land to drill a well or test well on the land for the
27 production or attempted production of oil and gas regardless of
28 whether the:

29 (A) person is also the owner, lessee, or licensee of an owner of
30 an interest in the surface rights in the land; and

31 (B) owner of the remaining rights in the land consents to the
32 entrance and drilling.

33 A person that drills a well under this subdivision shall provide an
34 accounting to the remaining or nonparticipating persons in
35 interest in the oil and gas estate in the land, for their respective
36 proportionate shares of the net profits arising from the operations
37 conducted upon the land for oil or gas. In calculating the profits,
38 a reduction may not be made from the gross proceeds of the
39 production of oil and gas, except for expenses that are reasonably
40 or necessarily incurred in connection with the drilling,
41 completion, equipping, and operation of the wells drilled upon the
42 premises during the period in which the relationship of cotenancy

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existed between the person drilling the well and the person whose interest is sought to be charged with the respective proportionate part of the cost of the drilling.

(3) A person who may enter and enters land in Indiana for the purpose of exploring, prospecting, testing, surveying, or otherwise investigating the potential of the land for oil and gas, or for the purpose of conducting operations on the land for the production of oil and gas, is accountable to the owner of the surface of the land for the actual damage resulting from the person's activities on the land to:

- (A) the surface of the land;
- (B) improvements to the land; or
- (C) growing crops on the land.

However, a person who enters land under this subdivision is not liable for punitive damages. **Actual damage includes actual damage to agricultural land, woodlands, or crops, including compaction of the soil, inability to plant crops, damage to drainage or erosion control systems, and causing flooding or soil erosion.** This subdivision does not increase damages between a lessor and a lessee in a valid and subsisting oil and gas lease that specifies damages if damages are not due other than damages that are expressly provided by contract between cotenants or the lessees of cotenants of a like estate in the land. This section does not authorize the location of a well for oil and gas nearer than two hundred (200) feet to an existing house, barn, or other structure (except fences) without the express consent of the owner of the structure.

(4) The right to conduct operations for oil and gas upon land located in Indiana includes the right to:

- (A) install and maintain physical equipment on the land; and
- (B) use the portion of the surface of the land that is reasonably necessary for the operations;

subject to the payment of damages resulting from the installation only of the equipment specified in this subdivision.

SECTION 11. IC 32-23-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. **(a) This section applies to the following:**

- (1) Interests in oil and gas.**
- (2) Interests in coal bed methane.**

(a) Interests in the oil and gas (b) An interest referred to in subsection (a) in, on, under, or that may be taken from beneath the surface of land located in Indiana may be created:

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- 1 (1) for life;
 2 (2) for a term of years; or
 3 (3) in fee;
 4 in the manner and to the extent that other interests in real estate and
 5 title are created.
 6 ~~(b)~~ (c) Title to the estates specified under subsection ~~(a)~~ (b) may be
 7 vested in one (1) or more persons by:
 8 (1) sole ownership;
 9 (2) tenancy in common;
 10 (3) joint tenancy;
 11 (4) tenancy by the entireties; or
 12 (5) another manner recognized under Indiana law.
 13 ~~(c)~~ (d) Interests or estates specified in this section are freely
 14 alienable, in whole or in part, in the same manner as are other interests
 15 in real estate.
 16 SECTION 12. IC 32-23-7-8 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) This chapter does
 18 not limit the rights of parties to contract with regard to ~~the an~~ oil and
 19 gas estate **or a coal bed methane estate** affecting lands in Indiana:
 20 (1) to the extent permitted by; and
 21 (2) in a manner consistent with;
 22 the nature of the estate in law as specified under this chapter.
 23 (b) This chapter is ~~intended to declare~~ **declares** the law of ~~this state~~
 24 **Indiana** with regard to the subject matter treated in this chapter as the
 25 law existed before ~~March 5, 1951~~. **July 1, 2011.**
 26 (c) This chapter does not affect the rights or powers of any
 27 commission, board, or authority duly constituted for the regulation of
 28 the oil and gas industry **or the coal bed methane industry** in Indiana.
 29 SECTION 13. IC 32-23-7-9 IS ADDED TO THE INDIANA CODE
 30 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2011]: **Sec. 9. (a) Any conveyance, reservation, or exception of**
 32 **rights to coal or oil and gas shall not be deemed to include rights to**
 33 **coal bed methane gas absent an express grant.**
 34 **(b) Nothing in this section affects a coal operator's right to vent**
 35 **coal bed methane gas in connection with mining operations. A coal**
 36 **operator's venting of coal bed methane gas in connection with**
 37 **mining operations is not considered to be a waste or diminution of**
 38 **resources for purposes of any action.**
 39 **(c) This section does not affect:**
 40 **(1) the settlement of any dispute concerning the ownership or**
 41 **development of coal bed methane gas that was entered into**
 42 **before July 1, 2011; or**

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1 **(2) any judgment or order of a governmental agency**
2 **concerning the ownership or development of coal bed**
3 **methane gas that was entered before July 1, 2011.**

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