



February 4, 2011

SENATE BILL No. 72

DIGEST OF SB 72 (Updated January 31, 2011 4:36 pm - DI 118)

Citations Affected: IC 14-37; IC 14-39.

Synopsis: Carbon dioxide pipelines and eminent domain. Establishes procedures for the issuance by the department of natural resources of a carbon dioxide transmission pipeline certificate of authority that allows construction, operation, and maintenance of a pipeline and the use of eminent domain for those purposes. Requires the department of natural resources to deposit the fees collected in the oil and gas environmental fund. Allows oil and gas environmental fund purpose to include pipeline safety. Requires a carbon monoxide source to have a production facility in Indiana. Limits a pipeline company to exercising the power of eminent domain only for right of way or easement purposes. Allows one hundred eighty (180) days to provide information to the department of natural resources about the actual route of the carbon dioxide pipeline.

Effective: July 1, 2011.

Gard, Buck, Charbonneau

January 5, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
February 3, 2011, amended, reported favorably — Do Pass.

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SB 72—LS 6211/DI 52+



February 4, 2011

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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SENATE BILL No. 72

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 14-37-10-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Money paid into
3 the fund shall be appropriated for the following purposes:
4 (1) To supplement the cost required to abandon a well that has
5 had a permit revoked under IC 14-37-13-1.
6 (2) To cover the costs of remedial plugging and repairing of wells
7 under IC 14-37-8, including the expenses of remedial action
8 under IC 14-37-8-15.
9 (3) To cover the cost to:
10 (A) mitigate environmental damage; or
11 (B) protect public safety against harm;
12 caused by a well regulated under this article.
13 **(4) Pipeline safety.**
14 (b) The director may make expenditures from the fund for
15 emergency purposes under section 6 of this chapter without the prior
16 approval of the budget agency or the governor. An expenditure under
17 this subsection may not exceed fifty thousand dollars (\$50,000).

SB 72—LS 6211/DI 52+



(c) The director may establish a program to reimburse an applicant for the reasonable expenses of remedial action incurred under IC 14-37-8-15. The director may make expenditures from the fund for this purpose and may establish any necessary guidelines and procedures to administer the program.

SECTION 2. IC 14-39 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

ARTICLE 39. CARBON DIOXIDE

Chapter 1. Eminent Domain for Transportation of Carbon Dioxide by Pipeline

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.

Sec. 2. As used in this chapter, "carbon dioxide transmission pipeline" means the part of a pipeline in Indiana, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a carbon management application, including sequestration, enhanced oil recovery, and deep saline injection, within or outside Indiana.

Sec. 3. Because the movement conducted for:

- (1) a person's own use or account; or**
- (2) 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, the use of carbon dioxide transmission pipelines, including their routing, construction, maintenance, and operation, is 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.

Sec. 4. (a) A carbon dioxide transmission pipeline company may apply to the department for issuance of a carbon dioxide transmission pipeline certificate of authority. The department shall prescribe the form of the application, which must:

- (1) include a filing fee of one thousand dollars (\$1,000);**
- (2) be signed by a responsible officer of the company;**
- (3) include a statement verifying that the information submitted is true, accurate, and complete to the best of that responsible officer's knowledge and belief; and**
- (4) include all information necessary for the department to**

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find the following:

(A) That the applicant has the financial, managerial, and technical ability to construct, operate, and maintain a carbon dioxide transmission pipeline in Indiana.

(B) That the applicant has the requisite experience constructing, operating, and maintaining a carbon dioxide transmission pipeline.

(C) That the applicant has entered into a contract to transport carbon dioxide by pipeline in Indiana with:

(i) at least one (1) producer of carbon dioxide located in Indiana; and

(ii) unless all of the carbon dioxide to be transported in the proposed carbon dioxide transmission pipeline is for the applicant's own use or account, at least one (1) end user of carbon dioxide.

(D) That the applicant has provided documentation to the department showing the proposed length, diameter, and location of the proposed carbon dioxide transmission pipeline in Indiana.

(E) That the applicant will construct, operate, and maintain the proposed carbon dioxide transmission pipeline in accordance with applicable local, state, and federal law.

(b) The department shall review an application filed under subsection (a). Subject to subsection (f), if the department determines that the application is incomplete or inaccurate, or both, the department shall return the application to the applicant informing the applicant in writing of the applicant's right to file a corrected application with the department. If the department determines that the application is complete and accurate, the department shall provide notice to the applicant of:

- (1) that determination; and
- (2) the date, time, and location of the public information meeting to be held under subsection (d).

(c) The applicant shall:

- (1) upon receipt of a notice under subsection (b):
 - (A) place for public inspection a copy of the application in a public library located in each county in which the carbon dioxide transmission pipeline is proposed to be located; and
 - (B) publish notice in the same manner that would be required if the applicant were subject to IC 5-3-1 in each

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- county in which the carbon dioxide transmission pipeline is proposed to be located of:
 - (i) the name and address of each library in which a copy of the application is placed under clause (A); and
 - (ii) the date, time, and location of the public information meeting to be held under subsection (d);
- (2) provide to the department proof of publication of notice under subdivision (1)(B); and
- (3) have a representative present at the public information meeting held under subsection (d).
- (d) The department shall:
 - (1) conduct a public information meeting in the county seat of one (1) of the counties, as determined by the department, in which the proposed carbon dioxide transmission pipeline will be located; and
 - (2) provide an opportunity at the meeting for members of the public to be briefed and to ask questions about the proposed carbon dioxide transmission pipeline.
- (e) Not later than ninety (90) days after the public information meeting held under subsection (d), the department shall notify the applicant in writing that:
 - (1) the department:
 - (A) has made the findings described in subsection (a)(4); and
 - (B) has approved the application; or
 - (2) the department:
 - (A) has determined that the department is unable to make the findings described in subsection (a)(4); and
 - (B) has disapproved the application.
- (f) The department shall process a corrected application that is filed as permitted under subsection (b) in the same manner the department processes an initially filed application under subsection (a).
- (g) If the department fails to act under subsection (e) not later than ninety (90) days after the public information meeting held under subsection (d), the application is considered to be approved by the department.
- (h) If:
 - (1) the department approves the application under subsection (e)(1); or
 - (2) the application is considered to be approved as described in subsection (g);

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the department shall issue to the applicant a carbon dioxide transmission pipeline certificate of authority.

Sec. 5. (a) Except as provided in subsection (b), if the applicant files with the department a verified certificate stating the reasons that the designation of confidential information is necessary, the applicant may designate information that it submits in its application to the department, or in subsequent reports, as trade secret or confidential and proprietary information.

(b) Subsection (a) does not apply to information referred to in section 4(a)(4)(D) of this chapter.

(c) The department shall exercise all necessary caution to avoid public disclosure of confidential information designated under subsection (a).

Sec. 6. A certificate of authority issued by the department under this chapter must include at least the following:

- (1) A grant of authority to construct and operate a carbon dioxide transmission pipeline as requested in the application.
- (2) A grant of authority to use, occupy, and construct pipeline facilities in any designated public right-of-way for the construction and operation of the carbon dioxide transmission pipeline.
- (3) A grant of authority to take and acquire possession by eminent domain of any property or interest in property for the construction, maintenance, or operation of a carbon dioxide transmission pipeline in the manner provided for the exercise of the power of eminent domain under sections 7 and 8 of this chapter.

Sec. 7. 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, utilizing, 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

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component parts.

Sec. 8. Except as otherwise provided in this chapter, IC 32-24-1 applies to the condemnation of property under this chapter by a carbon dioxide transmission pipeline company.

Sec. 9. Not later than one hundred eighty (180) days after the completion of a carbon dioxide transmission pipeline for which the department has issued a certificate of authority under this chapter, the applicant shall provide maps and other documentation to the department showing the actual route in Indiana of the carbon dioxide transmission pipeline.

Sec. 10. A determination of the department under section 4(e)(2) of this chapter is subject to administrative review under IC 4-21.5.

Sec. 11. The department shall deposit fee revenue received under section 4(a)(1) of this chapter in the oil and gas environmental fund established by IC 14-37-10-2.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 72, 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 14-37-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Money paid into the fund shall be appropriated for the following purposes:

- (1) To supplement the cost required to abandon a well that has had a permit revoked under IC 14-37-13-1.
- (2) To cover the costs of remedial plugging and repairing of wells under IC 14-37-8, including the expenses of remedial action under IC 14-37-8-15.
- (3) To cover the cost to:
 - (A) mitigate environmental damage; or
 - (B) protect public safety against harm; caused by a well regulated under this article.

(4) Pipeline safety.

(b) The director may make expenditures from the fund for emergency purposes under section 6 of this chapter without the prior approval of the budget agency or the governor. An expenditure under this subsection may not exceed fifty thousand dollars (\$50,000).

(c) The director may establish a program to reimburse an applicant for the reasonable expenses of remedial action incurred under IC 14-37-8-15. The director may make expenditures from the fund for this purpose and may establish any necessary guidelines and procedures to administer the program."

Page 2, line 30, delete "dioxide;" and insert "**dioxide located in Indiana;**".

Page 5, line 11, delete "land, improvements, a right-of-way," and insert "**a right-of-way or**".

Page 5, line 11, after "easement" delete ", or any" and insert "**necessary or useful for:**".

Page 5, delete line 12.

Page 5, line 25, delete "ninety (90)" and insert "**one hundred eighty (180)**".

Page 5, line 34, delete "carbon dioxide" and insert "**oil and gas environmental fund established by IC 14-37-10-2.**".

Page 5, delete lines 35 through 42.

SB 72—LS 6211/DI 52+



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Delete page 6.
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to SB 72 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 6, Nays 1.

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