

Adopted Rejected

COMMITTEE REPORT

YES: 11
NO: 1

MR. SPEAKER:

*Your Committee on Natural Resources, to which was referred Senate Bill 71, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, delete lines 12 through 17.
- 2 Page 2, delete lines 1 through 27.
- 3 Page 3, delete line 10, begin a new line block indented and insert:
- 4 "(19) IC 14-37.
- 5 (20) IC 14-38, except IC 14-38-3."
- 6 Page 3, line 23, delete "IC 32-23-7-10 and IC 14-37-4-8.5;" and
- 7 insert "IC 14-37-4-8 and IC 14-37-4-8.5;"
- 8 Page 3, line 27, delete "the following:" and insert ":".
- 9 Page 3, line 28, delete "Stimulation," and insert "stimulation,".
- 10 Page 3, line 32, delete "water." and insert "water;"
- 11 Page 3, line 33, delete "Horizontal" and insert "horizontal".
- 12 Page 3, line 33, delete "drilling." and insert "drilling; and".
- 13 Page 3, line 34, delete "Plugging" and insert "plugging".
- 14 Page 4, line 30, delete "subdivision (1)." and insert "subdivision (1),

1 **and to each party that files an affidavit under IC 14-37-7-8."**

2 Page 4, between lines 38 and 39, begin a new line block indented
3 and insert:

4 **"(2) Proof of both of the following has been submitted to the**
5 **division:**

6 **(A) Receipt of the permit application's written notice as**
7 **provided under section 8.5(e) of this chapter.**

8 **(B) That the applicant complied with the notification to the**
9 **surface owner provisions required under IC 32-23-7-6.5.**
10 **The applicant may submit as proof a certified mail receipt,**
11 **the surface owner's written acknowledgment of receipt of**
12 **the notification, or copy of an agreement with the surface**
13 **owner establishing different notification terms.**

14 **(3) The division has taken into consideration:**

15 **(A) comments received during the period referred to in**
16 **subdivision (1) from a person interested in the future**
17 **minability of a commercially minable coal resource; and**

18 **(B) objections made under section 8.5(h) of this chapter."**

19 Page 4, delete lines 39 through 42.

20 Page 5, line 1, delete "(3)" and insert "(4)".

21 Page 5, line 5, delete "(4)" and insert "(5)".

22 Page 5, line 6, delete "(3)" and insert **"(4) and section 8.5 of this**
23 **chapter"**.

24 Page 5, line 7, delete "The division" and insert **"Unless waived by**
25 **the applicant, the director"**.

26 Page 5, between lines 9 and 10, begin a new paragraph and insert:

27 "SECTION 8. IC 14-37-4-8.5 IS ADDED TO THE INDIANA
28 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) For purposes of this**
30 **section, "waste" means locating, spacing, drilling, equipping,**
31 **operating, or producing a well for coal bed methane purposes in a**
32 **manner that unreasonably reduces or tends to unreasonably**
33 **reduce the quantity of commercially minable coal resources**
34 **ultimately to be recovered from a mine.**

35 **(b) If ownership of coal bed methane is separate from ownership**
36 **of coal, no surface right or any other right pertaining to coal bed**
37 **methane and naturally flowing from the character of any**
38 **instrument in law may be exercised without the consent of the coal**

1 owner under subsection (d)(2), unless the director makes a finding
2 that the exercise of the right will not:

3 (1) result in; or
4 (2) have the potential to result in;
5 any waste of a commercially minable coal resource or
6 endangerment of the health and safety of miners.

7 (c) In making a finding under subsection (b), the director shall
8 consider whether the use of one (1) or more of the following may
9 result in waste of a commercially minable coal resource or
10 endangerment of the health and safety of miners:

11 (1) Hydrofracturing the coal seam.
12 (2) Horizontal drilling in the coal seam.
13 (3) Any other technology that disturbs the integrity of either
14 or both of the following:

15 (A) The coal seam.
16 (B) The strata surrounding the coal seam.

17 (d) An application for a permit to drill into or through one (1)
18 or more coal seams for the purpose of testing or producing coal
19 bed methane must be accompanied by:

20 (1) subject to subsection (e), certification by affidavit of the
21 applicant that upon diligent inquiry, including reference to:
22 (A) the record of filings maintained by the department and
23 made by coal owners and lessees under IC 14-8-2-47; and
24 (B) publicly available records pertaining to thickness and
25 depth of coal;

26 the activities of the applicant do not and will not result in
27 waste of a commercially minable coal resource or
28 endangerment of the health and safety of miners; or

29 (2) subject to subsections (f) and (g), written consent of the
30 coal owner or coal lessee authorizing the drilling.

31 (e) An applicant that submits a permit application accompanied
32 with a certification under subsection (d)(1) shall submit proof that
33 written notice of the permit application has been received by the
34 owner and, if applicable, the lessee of the coal through which
35 drilling is proposed.

36 (f) If there is a coal lease, the coal owner and the coal lessee
37 must include in the written consent under subsection (d)(2) a
38 statement acknowledging that the recovery of coal bed methane

- 1 might result in waste of the commercially minable coal resource.
- 2 (g) If there is no coal lease, the coal owner must include in the
3 written consent under subsection (d)(2) a statement that the coal
4 owner has not leased the coal for coal mining purposes and
5 acknowledging that the recovery of coal bed methane may result
6 in waste of the commercially minable resource.
- 7 (h) A person with the following interests in the coal through
8 which drilling for purposes of testing for or producing coal bed
9 methane is proposed has thirty (30) days, after receipt of the
10 permit application notice, to object to the issuance of the permit on
11 the basis of waste of a commercially minable coal resource or
12 endangerment of the health and safety of miners:
- 13 (1) The owner.
- 14 (2) If applicable, the lessee.
- 15 (3) Another person with an interest to develop a coal resource
16 who files an affidavit under IC 14-37-7-8.
- 17 (i) A person that files an affidavit under IC 14-37-7-8 may not
18 object to the issuance of the permit if the application includes the
19 written consent of the coal owner under subsection (d)(2).
- 20 (j) The commission shall prescribe by rule the procedure for
21 objection under subsection (h), including a reasonable deadline for
22 initiating the objection.
- 23 (k) An owner or holder of mineral interests must comply with
24 the requirements under IC 32-23-7-6.5."
- 25 Page 5, line 12, delete "Except as provided in subsection (b), the"
26 and insert "**For purposes of this section, "waste" means locating,**
27 **spacing, drilling, equipping, operating, or producing a well for oil**
28 **and gas purposes in a manner that unreasonably reduces or tends**
29 **to unreasonably reduce the quantity of commercially minable coal**
30 **resources ultimately to be recovered from a mine.**
- 31 (b) Except as provided in subsection (c), the".
- 32 Page 5, line 20, delete "may result in the endangerment of" and
33 insert "**are necessary to protect**".
- 34 Page 5, line 22, delete "(b)" and insert "(c)".
- 35 Page 5, line 22, delete "(a)" and insert "(b)".
- 36 Page 5, line 23, delete "IC 32-23-7-11(c)(2)." and insert "**IC**
37 **14-37-4-8.5(d)(2)**".
- 38 Page 5, line 24, delete "(c)" and insert "(d)".

- 1 Page 5, line 28, delete "mine;" and insert "**mine permitted under**
2 **IC 14-34;**".
- 3 Page 5, line 39, delete "(d)" and insert "**(e)**".
- 4 Page 5, line 39, delete "(e)" and insert "**(f)**".
- 5 Page 5, line 40, delete "(c)" and insert "**(d)**".
- 6 Page 5, line 42, delete "determine" and insert "**state**".
- 7 Page 6, line 6, delete "(e)" and insert "**(f)**".
- 8 Page 6, line 6, delete "(d)" and insert "**(e)**".
- 9 Page 6, line 8, delete "(f)" and insert "**(g)**".
- 10 Page 6, line 9, delete "(d)" and insert "**(e)**".
- 11 Page 6, line 20, delete "(g)" and insert "**(h)**".
- 12 Page 6, line 27, delete "(h)" and insert "**(i)**".
- 13 Page 6, line 30, delete "(f)(2)" and insert "**(g)(2)**".
- 14 Page 6, line 31, delete "(h)" and insert "**(i)**".
- 15 Page 6, line 32, delete "(g)" and insert "**(h)**".
- 16 Page 6, line 33, after "active," insert "**inactive,**".
- 17 Page 7, line 1, delete "(i)" and insert "**(j)**".
- 18 Page 7, line 2, delete "the director does not".
- 19 Page 7, line 3, delete "(g)" and insert "**(h), the director does not**".
- 20 Page 7, line 7, delete "(c)" and insert "**(d)**".
- 21 Page 7, between lines 11 and 12, begin a new paragraph and insert:
22 "**(k) An owner or holder of mineral interests shall comply with**
23 **the requirements under IC 32-23-7-6.5.**".
- 24 Page 7, line 36, after "submit" insert "**to the director**".
- 25 Page 7, line 37, delete "to the director".
- 26 Page 8, line 20, delete "of the".
- 27 Page 10, line 13, delete "IC 32-23-7-11(c)(2)." and insert "**IC**
28 **14-37-4-8.5(d)(2).**".
- 29 Page 14, between lines 4 and 5, begin a new paragraph and insert:
30 "SECTION 25. IC 32-23-7-6 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. A grant or
32 reservation contained in an instrument that affects land in Indiana and
33 that purports to convey or transfer an interest in the oil and gas in, on,
34 under, or that may be produced from beneath the surface of the land
35 transfers the following expressed rights and privileges in addition to
36 any other rights naturally flowing from the character of the instrument
37 in law to the named recipient:
38 (1) A person in interest in the oil and gas estate in land may enter

- 1 the land for the purpose of:
- 2 (A) exploring, prospecting, testing, surveying, or otherwise
- 3 investigating the land to determine the potential of the land for
- 4 oil or gas production; or
- 5 (B) otherwise conducting operations for oil and gas on the
- 6 land;
- 7 whether or not the person is also the owner, lessee, or licensee of
- 8 an owner of an interest in the surface rights in the land.
- 9 (2) A person in interest in the oil and gas estate in land in Indiana
- 10 may enter the land to drill a well or test well on the land for the
- 11 production or attempted production of oil and gas regardless of
- 12 whether the:
- 13 (A) person is also the owner, lessee, or licensee of an owner of
- 14 an interest in the surface rights in the land; and
- 15 (B) owner of the remaining rights in the land consents to the
- 16 entrance and drilling.
- 17 A person that drills a well under this subdivision shall provide an
- 18 accounting to the remaining or nonparticipating persons in
- 19 interest in the oil and gas estate in the land, for their respective
- 20 proportionate shares of the net profits arising from the operations
- 21 conducted upon the land for oil or gas. In calculating the profits,
- 22 a reduction may not be made from the gross proceeds of the
- 23 production of oil and gas, except for expenses that are reasonably
- 24 or necessarily incurred in connection with the drilling,
- 25 completion, equipping, and operation of the wells drilled upon the
- 26 premises during the period in which the relationship of cotenancy
- 27 existed between the person drilling the well and the person whose
- 28 interest is sought to be charged with the respective proportionate
- 29 part of the cost of the drilling.
- 30 (3) A person who may enter and enters land in Indiana for the
- 31 purpose of exploring, prospecting, testing, surveying, or otherwise
- 32 investigating the potential of the land for oil and gas, or for the
- 33 purpose of conducting operations on the land for the production
- 34 of oil and gas, is accountable to the owner of the surface of the
- 35 land for the actual damage resulting from the person's activities
- 36 on the land to:
- 37 (A) the surface of the land;
- 38 (B) improvements to the land; or

1 (C) growing crops on the land.
 2 However, a person who enters land under this subdivision is not
 3 liable for punitive damages. **Actual damage for which a person**
 4 **is accountable under this subdivision includes actual damage**
 5 **to marketable timber, crops, drainage systems, or erosion**
 6 **control systems, or quantifiable and verifiable damage to**
 7 **crops from compaction, abnormal flooding, or abnormal soil**
 8 **erosion caused by oil and gas operations.** This subdivision does
 9 not increase damages between a lessor and a lessee in a valid and
 10 subsisting oil and gas lease that specifies damages if damages are
 11 not due other than damages that are expressly provided by
 12 contract between cotenants or the lessees of cotenants of a like
 13 estate in the land. This section does not authorize the location of
 14 a well for oil and gas nearer than two hundred (200) feet to an
 15 existing house, barn, or other structure (except fences) without the
 16 express consent of the owner of the structure.

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

- 19 (A) install and maintain physical equipment on the land; and
 20 (B) use the portion of the surface of the land that is reasonably
 21 necessary for the operations;
 22 subject to the payment of damages resulting from the installation
 23 only of the equipment specified in this subdivision.

24 SECTION 26. IC 32-23-7-6.5 IS ADDED TO THE INDIANA
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2011]: **Sec. 6.5. (a) This section does not**
 27 **apply in the event of an emergency entry.**

28 **(b) Unless otherwise agreed by the surface owner, an owner or**
 29 **holder of oil, gas, or coal bed methane mineral interest who wants**
 30 **to enter land for the purpose of surveying a drilling location must**
 31 **provide to the surface owner a written notice of the intent to enter**
 32 **the property at least five (5) days before the entry.**

33 **(c) The written notice under subsection (b) may be given by**
 34 **personal delivery or by certified mail to the last known address of**
 35 **each person liable for any property taxes as shown on the tax**
 36 **duplicate, or to the last known address of the most recent owner**
 37 **shown in the transfer book."**

38 Page 14, delete line 42.

- 1 Delete page 15.
- 2 Page 16, delete lines 1 through 21.
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 71 as reprinted February 8, 2011.)

and when so amended that said bill do pass.

Representative Eberhart