
HOUSE BILL No. 1211

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 8-1.7; IC 34-30-2-24.2.

Synopsis: Public power and finance authority. Creates the public power and finance authority. Allows the authority to sell electricity at cost to Indiana customers other than investor owned utilities. Requires the authority to use project labor agreements. Allows the authority to charge fees to use its transmission lines and use the revenue generated by the fees to repay bonds. Provides that the utility regulatory commission (IURC) has jurisdiction over: (1) purchases of clean coal technology; and (2) certain merchant power plants. Requires a merchant power plant to give notice of a proposed facility to property owners within one half mile of the proposed facility, to hold hearings, and to issue written findings. Establishes the criteria the IURC must consider when considering a merchant power plant application. Requires the IURC to obtain a recommendation from the department of natural resources regarding a merchant power plant's planned use of and potential effect on a water resource and to have prepared an assessment of the plant's effect on a water resource and its users. Requires a merchant power plant that seeks approval from or alternative regulation by the IURC to establish proof of financial responsibility in an amount determined by the IURC. Requires the IURC to issue a decision on a merchant power plant's petition for approval or for alternative regulation not later than 18 months after the date of the petition. Lists the duties of the merchant power plant following approval by the IURC. Provides the circumstances under which the IURC may revoke its approval of a merchant power plant. Allows the IURC to decline to exercise jurisdiction over a facility that has applied to the IURC before March 1, 2003.

Effective: Upon passage; July 1, 2003.

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January 8, 2003, read first time and referred to Committee on Commerce and Economic Development.



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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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HOUSE BILL No. 1211



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

1 SECTION 1. IC 8-1-2-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 4. **(a)** Every public utility is
3 required to furnish reasonably adequate service and facilities. The
4 charge made by any public utility for any service rendered or to be
5 rendered either directly or in connection therewith shall be reasonable
6 and just, and every unjust or unreasonable charge for such service is
7 prohibited and declared unlawful. The commission, in order to expedite
8 the determination of rate questions, or to avoid unnecessary and
9 unreasonable expense, or to avoid discrimination in rates between
10 classes of customers, or, whenever in the judgment of the commission
11 public interest so requires, may, for ratemaking and accounting
12 purposes, or either of them, consider a single municipality and/or two
13 (2) or more municipalities and/or the adjacent and/or intervening rural
14 territory as a regional unit where the same utility serves such region,
15 and may within such region prescribe uniform rates for consumers or
16 patrons of the same class. Nothing in this chapter contained shall
17 authorize any public utility during the remainder of the term of any



1 grant or franchise under which it may be acting on May 1, 1913, to
 2 charge for any service, in such grant or franchise contracted, exceeding
 3 the maximum rate or rates therefor, if any, that may be fixed in such
 4 grant or franchise.

5 **(b) Except as provided in subsection (c), a charge made by the**
 6 **public power and finance authority established by IC 8-1.7-1-2 to**
 7 **a customer (as defined in IC 8-1.7-2-7) within Indiana may not**
 8 **exceed the cost of service (as defined in IC 8-1.7-2-6).**

9 **(c) A charge made by the public power and finance authority to:**
 10 **(1) an investor owned utility; or**
 11 **(2) a customer outside Indiana;**
 12 **may exceed the cost of service.**

13 SECTION 2. IC 8-1-2-6.1 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6.1. (a) As used in this
 15 section, "clean coal technology" means a technology (including
 16 precombustion treatment of coal):

17 (1) that is used at a new or existing electric generating facility and
 18 directly or indirectly reduces airborne emissions of sulfur or
 19 nitrogen based pollutants associated with the combustion or use
 20 of coal; and

21 (2) that either:

22 (A) is not in general commercial use at the same or greater
 23 scale in new or existing facilities in the United States as of
 24 January 1, 1989; or

25 (B) has been selected by the United States Department of
 26 Energy for funding under its Innovative Clean Coal
 27 Technology program and is finally approved for such funding
 28 on or after January 1, 1989.

29 (b) As used in this section, "Indiana coal" means coal from a mine
 30 whose coal deposits are located in the ground wholly or partially in
 31 Indiana regardless of the location of the mine's tipple.

32 (c) Except as provided in subsection (d), the commission shall allow
 33 a utility to recover as operating expenses those expenses associated
 34 with:

35 (1) research and development designed to increase use of Indiana
 36 coal; and

37 (2) preconstruction costs (including design and engineering costs)
 38 associated with employing clean coal technology at a new or
 39 existing coal burning electric generating facility if the
 40 commission finds that the facility:

41 (A) utilizes and will continue to utilize (as its primary fuel
 42 source) Indiana coal; or

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1 (B) is justified, because of economic considerations or
 2 governmental requirements, in utilizing non-Indiana coal;
 3 after the technology is in place.

4 (d) The commission may only allow a utility to recover
 5 preconstruction costs as operating expenses on a particular project if
 6 the commission awarded a certificate under IC 8-1-8.7 for that project.

7 (e) The commission shall establish guidelines for determining
 8 recoverable expenses.

9 **(f) The commission shall have jurisdiction over transactions**
 10 **involving the purchase of clean coal technology from third parties,**
 11 **including the purchase of precombustion coal treated by**
 12 **gasification. The commission's jurisdiction includes the authority**
 13 **to review the terms of a transaction and determine whether the**
 14 **transaction is in the public interest.**

15 SECTION 3. IC 8-1-2.3-2 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The definitions
 17 in this section apply throughout this chapter.

18 (b) "Electricity supplier" means a public utility, a local district rural
 19 electric membership corporation, or a municipally owned electric
 20 utility which furnishes retail electric service to the public. **However,**
 21 **the term does not include the public power and finance authority**
 22 **established by IC 8-1.7-1-2.**

23 (c) "Retail electric service" means electric service furnished to a
 24 customer for ultimate consumption, but does not include wholesale
 25 electric service furnished by an electricity supplier to another
 26 electricity supplier for resale.

27 (d) "Existing electric distribution line" means an electric conductor
 28 which on January 1, 1979, was being used for the distribution or
 29 delivery of retail electric service.

30 (e) "Assigned service area" means the designated geographic area
 31 within the boundaries of which an electricity supplier is authorized to
 32 furnish all retail electric service, as provided in this chapter.

33 (f) "Municipality" means a city or town.

34 (g) "Existing municipal limits" means the corporate boundaries of
 35 any municipality as such boundaries existed on January 1, 1979.

36 SECTION 4. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
 37 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 38 PASSAGE]:

39 **Chapter 8.4. Merchant Power Plants**

40 **Sec. 1. This chapter does not apply to a merchant power plant**
 41 **that has filed a petition with the commission under IC 8-1-2.5**
 42 **before March 1, 2003, seeking an order that the commission**

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1 decline to exercise, in whole or in part, its jurisdiction over the
2 merchant power plant.

3 Sec. 2. (a) As used in this chapter, "merchant power plant"
4 means a facility within Indiana used for the:

5 (1) production, transmission, delivery, or furnishing of heat,
6 light, or power; and

7 (2) sale of electric energy exclusively on the wholesale market;
8 to other public utilities, energy service providers, or power
9 marketers within or outside Indiana.

10 (b) The term includes a facility that has made a significant
11 alteration to the labor used to construct or remodel the facility. For
12 purposes of this subsection, a facility makes a significant alteration
13 to the labor used to construct or remodel a facility if the person
14 uses contractors, subcontractors, or work crews that include
15 workers who are not participants in or have not completed a
16 jointly administered labor and management apprenticeship
17 program approved by the United States Department of Labor's
18 Bureau of Apprenticeship Training.

19 (c) The term does not include a facility that is owned, controlled,
20 or operated by a person that is obligated contractually to provide
21 substantially all the wholesale power requirements of an electricity
22 supplier under a contract extending at least five (5) years.

23 Sec. 3. Except as provided in section 1 of this chapter, a
24 merchant power plant is subject to the jurisdiction of the
25 commission.

26 Sec. 4. (a) The commission shall consider the following when
27 acting upon any petition by a merchant power plant under
28 IC 8-1-2.5 or IC 8-1-8.5:

29 (1) Location.

30 (2) Need.

31 (3) Financing.

32 (4) Reporting requirements.

33 (5) Impact on electric, water, and natural gas suppliers and
34 customers.

35 (6) The recommendation of the department of natural
36 resources under section 12 of this chapter.

37 (b) The commission shall issue a decision either approving or
38 denying a merchant power plant's petition under IC 8-1-2.5 or
39 IC 8-1-8.5 not later than eighteen (18) months after the date of the
40 petition.

41 Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or
42 IC 8-1-8.5, a merchant power plant must establish proof of

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1 financial responsibility by filing one (1) or a combination of the
2 following with the commission:

- 3 (1) A fully funded trust fund agreement.
4 (2) A surety bond with a standby trust fund agreement.
5 (3) A letter of credit with a standby trust fund agreement.
6 (4) An insurance policy with a standby trust fund agreement.
7 (5) Proof that the merchant power plant meets a financial test
8 established by the commission and equivalent to one (1) of the
9 items in subdivisions (1) through (4).

10 (b) The amount of financial responsibility that a merchant
11 power plant must establish under this section shall be determined
12 by the commission. In all cases, the amount must be sufficient to
13 close the merchant power plant in a manner that:

- 14 (1) minimizes the need for further maintenance and
15 remediation; and
16 (2) provides reasonable, foreseeable, and necessary
17 maintenance and remediation after closure for at least twenty
18 (20) years after the merchant power plant ceases operations.

19 (c) The commission may use:

- 20 (1) a trust fund agreement;
21 (2) a surety bond;
22 (3) a letter of credit;
23 (4) an insurance policy; or
24 (5) other proof of financial responsibility;

25 filed under this section for the closure or post-closure monitoring,
26 maintenance, or remediation of a merchant power plant approved
27 by the commission, if the merchant power plant does not comply
28 with closure or post-closure standards established by the
29 commission under subsection (d).

30 (d) The commission shall adopt rules under IC 4-22-2 to
31 establish the following:

- 32 (1) Standards for the proper closure and post-closure
33 monitoring, maintenance, and remediation of merchant power
34 plants.
35 (2) Criteria for how money in a trust fund agreement, a surety
36 bond, a letter of credit, an insurance policy, or other proof of
37 financial responsibility provided by a merchant power plant
38 may be released to the merchant power plant when the
39 merchant power plant meets the closure and post-closure
40 standards established under subdivision (1).

41 Sec. 6. (a) Not later than seven (7) days after filing a petition
42 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

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1 (1) send notice of the petition by United States mail to all
 2 record owners of real property located within one-half (1/2)
 3 mile of the proposed facility; and

4 (2) cause notice of the petition to be published in a newspaper
 5 of general circulation in each county in which the facility or
 6 proposed facility is or will be located.

7 (b) The notice of the petition shall include:

8 (1) a description of the facility or proposed facility; and

9 (2) the location, date, and time of the field hearing required by
 10 section 7 of this chapter.

11 Sec. 7. Not later than thirty (30) days after filing a petition
 12 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall
 13 conduct a field hearing at a location in a county in which the
 14 facility or proposed facility is or will be located. The purpose of the
 15 field hearing is to determine local support for the merchant power
 16 plant.

17 Sec. 8. Not later than thirty (30) days after the field hearing
 18 required by section 7 of this chapter, a majority of the persons
 19 described in section 6(a)(1) of this chapter may request in writing
 20 a hearing before the commission.

21 Sec. 9. (a) Not later than thirty (30) days after a hearing is
 22 requested under section 8 of this chapter, the commission shall
 23 conduct a hearing at a location in a county in which the facility or
 24 proposed facility is or will be located. The hearing required by this
 25 subsection must be held:

26 (1) before or at the same time as the hearing required under
 27 IC 8-1-8.5-5(b); and

28 (2) before the commission issues a certificate of public
 29 convenience and necessity under IC 8-1-8.5.

30 (b) At least ten (10) days before the scheduled hearing, notice of
 31 the hearing must be served by first class mail on:

32 (1) all record owners of real property located within one-half
 33 (1/2) mile of the proposed facility; and

34 (2) the merchant power plant.

35 (c) The parties to the hearing include:

36 (1) a person entitled to notice under section 6(a)(1) of this
 37 chapter; and

38 (2) the merchant power plant.

39 (d) The commission shall accept written or oral testimony from
 40 any person who appears at the public hearing, but the right to call
 41 and examine witnesses is reserved for the parties to the hearing.

42 (e) The commission shall make a record of the hearing and all

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1 testimony received. The commission shall make the record
2 available for public inspection.

3 **Sec. 10.** Not later than forty-five (45) days after a hearing is
4 conducted under section 9 of this chapter, the commission shall
5 issue written findings based on the testimony presented at the
6 hearing. To the extent the commission's findings differ from
7 testimony presented at the hearing, the commission must explain
8 its findings.

9 **Sec. 11.** When considering whether to approve a merchant
10 power plant, the commission shall give preference to the following
11 locations for siting:

- 12 (1) Brownfield sites that are isolated from populated areas.
- 13 (2) Sites of existing or former utilities that can be replaced or
14 repowered.
- 15 (3) Other sites identified for power plant or heavy industrial
16 development in local land use plans before the initiation of site
17 selection for the facility.

18 **Sec. 12. (a)** For purposes of this section:

- 19 (1) "department" refers to the department of natural
20 resources; and
- 21 (2) "water resource" has the meaning set forth in
22 IC 14-25-7-8.

23 (b) When considering whether to approve a merchant power
24 plant, the commission shall obtain a recommendation from the
25 department regarding the merchant power plant's planned use of
26 and its potential effect on the water resource.

27 (c) To make its recommendation, the department may do the
28 following:

- 29 (1) Rely on the merchant power plant's water resource
30 assessment under subsection (d).
- 31 (2) Consult with and advise users of the water resource.
- 32 (3) Enter upon any land or water in Indiana to evaluate the
33 effect of the merchant power plant on the water resource.
- 34 (4) Conduct studies to evaluate the availability and most
35 practical method of withdrawal, development, conservation,
36 and use of the water resource.
- 37 (5) Require metering or other reasonable measuring of water
38 withdrawals and reporting of the measurement to the
39 department.
- 40 (6) Engage in any other activity necessary to carry out the
41 purposes of this section.

42 (d) A merchant power plant shall provide an assessment of its

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1 effect on the water resource and its users to the commission and
2 the department. The assessment shall be prepared by a licensed
3 professional geologist (as defined in IC 25-17.6-1-6.5) or an
4 engineer licensed under IC 25-31-1. The assessment must include
5 the following information:

- 6 (1) Sources of water supply.
- 7 (2) Total amount of water to be used by the merchant power
8 plant from each source.
- 9 (3) Location of wells or points of withdrawal.
- 10 (4) Ability of the water resource to meet the needs of the
11 merchant power plant and other users.
- 12 (5) Probable effects of the merchant power plant's use and
13 consumption of the water resource on other users.
- 14 (6) Alternative sources of water supply.
- 15 (7) Conservation measures proposed by the merchant power
16 plant for reducing the plant's effect on the water resource.
- 17 (8) Other information required by any other law, rule, or
18 regulation.

19 **Sec. 13. Following the approval of a petition by the commission,
20 the merchant power plant shall:**

- 21 (1) notify the commission upon becoming an affiliate of any
22 regulated Indiana utility selling electricity at retail to Indiana
23 consumers, at which time the commission may reassert any
24 jurisdiction it had declined under IC 8-1-2.5;
- 25 (2) obtain prior commission approval with respect to the sale
26 of any electricity to any affiliated regulated Indiana retail
27 utility or any affiliate of a regulated Indiana retail utility; and
- 28 (3) obtain prior commission approval of any transfers of
29 ownership of the facility or its assets.

30 SECTION 5. IC 8-1.7 IS ADDED TO THE INDIANA CODE AS A
31 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
32 2003]:

33 **ARTICLE 1.7. PUBLIC POWER AND FINANCE
34 AUTHORITY**

35 **Chapter 1. General Provisions**

36 **Sec. 1. The general assembly makes the following findings:**

- 37 (1) Indiana citizens require and deserve an adequate, reliable,
38 and economical supply of electric power and energy.
- 39 (2) It is necessary and proper to create an entity that will
40 satisfy its obligation to serve the energy needs of Indiana's
41 citizens without depleting their resources.
- 42 (3) The present and prospective health, safety, morals, and

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1 general welfare of the people of Indiana require as a public
2 purpose the creation of an adequate, reliable, and economical
3 energy source.

4 **(4) The public power and finance authority can advance the**
5 **state policy of providing affordable electric service to all**
6 **Indiana citizens regardless of their income.**

7 **Sec. 2. There is established a body politic and corporate, not a**
8 **state agency but an independent instrumentality exercising**
9 **essential public functions, to be known as the public power and**
10 **finance authority.**

11 **Sec. 3. The authority shall exist and operate for the public**
12 **purposes of:**

13 **(1) providing affordable and accessible transmission of**
14 **electricity;**

15 **(2) promoting reusable energy sources;**

16 **(3) preventing and remediating environmental pollution; and**

17 **(4) increasing energy efficiency.**

18 **Sec. 4. (a) Except as provided in subsection (b), all property of**
19 **the authority is public property devoted to an essential public and**
20 **governmental function and purpose and is exempt from all taxes**
21 **and special assessments imposed by the state or a political**
22 **subdivision, except for the financial institutions tax imposed under**
23 **IC 6-5.5 or a death tax imposed under IC 6-4.1. However, the**
24 **authority may elect to make payments in lieu of taxes to the**
25 **appropriate taxing unit.**

26 **(b) Property owned by the authority and leased to a facility is**
27 **not public property. The property and the facility are subject to all**
28 **taxes of the appropriate taxing unit in the same manner and**
29 **subject to the same exemptions as are applicable to all persons.**

30 **Sec. 5. Except as provided in this article, the authority is subject**
31 **to the jurisdiction of the commission.**

32 **Sec. 6. This article provides a complete method for the**
33 **performance of things authorized, supplements and adds to powers**
34 **conferred by other laws, and is not in derogation of any existing**
35 **powers. However, to the extent this article is inconsistent with any**
36 **other law, the provisions of this article control. This article does**
37 **not authorize the issuance of bonds for the purpose of financing**
38 **facilities to be owned by any private corporation.**

39 **Chapter 2. Definitions**

40 **Sec. 1. The definitions in this chapter apply throughout this**
41 **article.**

42 **Sec. 2. "Authority" refers to the public power and finance**

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1 authority established by IC 8-1.7-1-2.

2 Sec. 3. "Bonds" means revenue bonds, notes, and other evidence
3 of indebtedness of the authority issued under this chapter.

4 Sec. 4. "Clean coal technology" has the meaning set forth in
5 IC 8-1-2-6.6.

6 Sec. 5. "Cost" includes the:

- 7 (1) acquisition;
- 8 (2) construction;
- 9 (3) reconstruction;
- 10 (4) improvement;
- 11 (5) enlargement;
- 12 (6) extension;
- 13 (7) decommissioning; and
- 14 (8) disposal;

15 of a transmission line.

16 Sec. 6. "Cost of service" means the total cost of providing
17 service to a customer. The term includes charges that produce
18 revenue sufficient to:

- 19 (1) pay all legal and other necessary expenses incident to the
20 operation of its system, including maintenance cost, operating
21 charges, upkeep, depreciation and amortization, repairs, and
22 interest charges on bonds or other obligations;
- 23 (2) maintain cash reserves of at least ten percent (10%) from
24 the proceeds of the sale of bonds or from other revenue;
- 25 (3) implement and operate authority programs, including
26 clean coal technology; and
- 27 (4) provide adequate funds to be used as working capital, as
28 well as funds for making extensions and replacements (to the
29 extent not provided for through depreciation).

30 Sec. 7. "Customer" means a:

- 31 (1) public utility;
- 32 (2) local district rural electric membership corporation; or
- 33 (3) municipally owned electric utility;

34 that uses a transmission line for a fee.

35 Sec. 8. "Department" refers to the Indiana department of
36 administration established by IC 4-13-1-2.

37 Sec. 9. "Energy" means all electric energy no matter how
38 generated or produced.

39 Sec. 10. "Indiana coal" means coal from the geological
40 formation known as the Illinois basin.

41 Sec. 11. "Project" includes any plant, works, system,
42 transmission line, or other property necessary or convenient in the

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1 generation, transmission, transformation, purchase, sale, exchange,
2 interchange, or other provision of services.

3 **Sec. 12. "Project labor agreement"** means a project specific
4 agreement between the authority and at least one (1) labor union.

5 **Sec. 13. "Public utility"** has the meaning set forth in IC 8-1-2-1.

6 **Sec. 14. "Service" or "services"** means the furnishing of
7 transmission lines or other utility services incidental to
8 development, operation, or maintenance of utility infrastructure
9 and the rendering of related engineering, financial, accounting, or
10 other services and related materials or equipment assisting in the
11 establishment and maintenance of better communication between
12 the authority and its customers.

13 **Sec. 15. "State agency"** means an authority, a board, a
14 commission, a committee, a department, a district, a division, or
15 other instrumentality of state government. The term does not
16 include a state educational institution (as defined in
17 IC 20-12-0.5-1).

18 **Sec. 16. "Transmission line"** means a transmission line owned
19 by the authority and used for the transmission or delivery of heat,
20 light, or power to public utilities, energy service providers, or
21 power marketers.

22 **Chapter 3. Public Power and Finance Authority**

23 **Sec. 1. All members of the authority must be residents of**
24 **Indiana.**

25 **Sec. 2. A candidate for appointment to the authority shall be**
26 **evaluated on the following considerations:**

- 27 (1) Education and academic honors and awards achieved.
28 (2) Professional experience and reputation.
29 (3) Financial interests, including any interest that might
30 conflict with the performance of authority responsibilities.
31 (4) Any other pertinent information that the governor believes
32 is important in selecting the most highly qualified individuals
33 for authority membership.

34 **Sec. 3. The authority consists of eleven (11) members. The**
35 **governor shall appoint the eleven (11) initial authority members as**
36 **follows:**

- 37 (1) One (1) member from each congressional district.
38 (2) Two (2) members at large.

39 **Not more than six (6) members may be of the same political party.**

40 **Sec. 4. (a) Three (3) of the appointments under section 3(1) of**
41 **this chapter are for one (1) year.**

42 **(b) Three (3) of the appointments under section 3(1) of this**

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chapter are for two (2) years.

(c) Three (3) of the appointments under section 3(1) of this chapter are for three (3) years.

(d) The appointments under section 3(2) of this chapter are for four (4) years.

(e) An appointment to the authority under section 5 of this chapter is for four (4) years.

Sec. 5. (a) A member shall hold office for the term of the member's appointment and shall continue to serve after expiration of the appointment until a successor is appointed and qualified.

(b) Upon the expiration or vacancy of an initial or subsequent term, the members of the authority, with the exception of a member whose term has expired or whose position is otherwise vacant, shall appoint a successor.

(c) Any member is eligible for reappointment.

(d) A member appointed to fill a vacancy created other than by an expiration of a term shall be appointed for the unexpired part of the term.

(e) An individual or member appointed to succeed an individual appointed under section 3(1) of this chapter must reside in the same congressional district as the initial member.

Sec. 6. Any member or employee of the authority who has or later acquires an interest in a transaction with the authority shall immediately disclose in writing the nature and extent of the interest to the authority as soon as the member has knowledge of the interest. The member shall disclose the interest in open meeting, and the disclosure shall be entered upon the minutes of the authority. The member may not participate in any action by the authority authorizing the transaction. However, an interest does not invalidate an action by the authority in which the disclosing member participated before the disclosing member became or should reasonably have become aware of the interest.

Sec. 7. (a) Employees of the authority are not employees of the state.

(b) A state officer or employee may accept membership in or provide services to the authority.

Sec. 8. The powers of the authority are vested in the members. Six (6) members of the authority constitute a quorum for the transaction of business. The affirmative votes of at least six (6) members are necessary for any action to be taken by the authority. Members may vote by written proxy delivered in advance to any other member who is present at the meeting. A vacancy in the

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1 membership of the authority does not impair the right of a quorum
2 to exercise all rights and perform all duties of the authority.

3 Sec. 9. The members shall appoint a member as director of the
4 authority.

5 Sec. 10. Meetings of the members of the authority shall be held
6 at:

- 7 (1) the call of the director; or
- 8 (2) the request of any three (3) members.

9 In any event, the members shall meet at least once every three (3)
10 months to attend to the business of the authority.

11 Sec. 11. Each member of the authority shall file with the
12 secretary of state a bond in the sum of twenty-five thousand dollars
13 (\$25,000) for the faithful performance of the member's duties. To
14 the extent a member is already covered by a bond required by
15 Indiana law, the member need not obtain another bond so long as
16 the bond required by Indiana law is in at least the sum of
17 twenty-five thousand dollars (\$25,000) and covers the member's
18 activities for the authority. Instead of a bond, the director may
19 execute a blanket surety bond covering each member. Each surety
20 bond shall be conditioned upon the faithful performance of the
21 duties of the office of the member and shall be issued by a surety
22 company authorized to transact business in Indiana as surety. At
23 all times after the issuance of any surety bonds, each member shall
24 maintain the surety bonds in full force and effect. The authority
25 shall bear all costs of the surety bonds.

26 Chapter 4. Powers and Duties of the Authority

27 Sec. 1. The authority is granted all powers necessary and
28 appropriate to carry out its public and corporate purposes under
29 this article, including the following:

- 30 (1) Execute instruments.
- 31 (2) Have perpetual succession as a body politic and corporate
32 and an independent instrumentality exercising essential public
33 functions.
- 34 (3) Sue and be sued in its own name.
- 35 (4) Have an official seal and alter it at will.
- 36 (5) Make and execute contracts and all other instruments
37 necessary or convenient for the performance of its duties and
38 the exercise of its powers and functions under this article.
- 39 (6) Employ architects, engineers, attorneys, inspectors,
40 technicians, financial experts, and such other advisers,
41 consultants, and agents as may be necessary in its judgment
42 and fix their compensation.

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(7) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.

(8) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of economical and efficient energy facilities.

(9) Cooperate and exchange services, personnel, and information with any federal, state, or local government agency or instrumentality of the United States or Indiana.

(10) Enter into agreements concerning and acquire, hold, and dispose of by any lawful means land or interests in land, building improvements, structures, personal property, franchises, patents, accounts receivable, loans, assignments, guarantees, and insurance needed for purposes of this article.

(11) Expend money as the authority considers appropriate.

(12) Sell, convey, lease, exchange, transfer, or otherwise dispose of property or any interest in property wherever the property is located.

(13) Acquire in the name of the authority by the exercise of the right of condemnation under IC 8-1-8 public or private lands, rights-of-way, property, rights, easements, and interests as necessary for carrying out this article.

(14) Do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this article, including compliance with requirements of federal law imposed from time to time for the issuance of bonds.

Sec. 2. The authority's powers under this chapter shall be interpreted broadly to effectuate the purposes of this article and may not be construed as a limitation of powers.

Sec. 3. The authority shall:

(1) make bylaws for the regulation and management of the affairs of the authority;

(2) establish a code of ethics for its employees;

(3) issue securities and incur indebtedness in an amount not to exceed three billion dollars (\$3,000,000,000);

(4) establish cash reserves of at least ten percent (10%) from the proceeds of the sale of bonds or from other revenue;

(5) invest any funds not needed for immediate disbursement, including any funds held in reserve; and

(6) apply the proceeds from its investments to reduce the cost of service.

Sec. 4. The authority may, after satisfying its duties under

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1 section 3 of this chapter, make loans to customers for capital
 2 improvements to and repair and rehabilitation of the customers'
 3 plants and other infrastructure incidental to the furnishing of
 4 electricity.

5 **Chapter 5. Bonds**

6 **Sec. 1.** The issuance of bonds by the authority does not
 7 constitute a debt of the state. Neither the faith and credit nor the
 8 taxing power of the state is pledged to payment of principal or
 9 interest on the bonds.

10 **Sec. 2.** The issuance of bonds shall be authorized by a resolution
 11 of the authority. The authority shall issue bonds to pay the cost of
 12 a project. The authority may pledge the revenues derived from the
 13 ownership and operation of authority facilities to the payment of
 14 the principal and interest on bonds authorized and issued by the
 15 authority.

16 **Sec. 3.** The authority may borrow money and issue bonds to pay
 17 all or part of the cost of carrying out its purposes, including:

- 18 (1) the funding or refunding of the principal, interest, or other
 19 obligation on a bond issued by the authority, whether or not
 20 the bond is due;
- 21 (2) the establishment or increase of reserves to secure or pay
 22 the bonds;
- 23 (3) the provision of working capital; and
- 24 (4) any expense incurred in or incident to carrying out the
 25 provisions of this article.

26 **Sec. 4.** The principal and interest on bonds issued by the
 27 authority are payable solely from the revenues of bonds issued by
 28 the authority.

29 **Sec. 5.** A bond issued by the authority must indicate on its face
 30 the following:

- 31 (1) The maturity date, which may not be later than fifty (50)
 32 years after the date of issue.
- 33 (2) The interest rate, including whether the rate is fixed,
 34 variable, or both.
- 35 (3) The denomination of the bond.
- 36 (4) Conversion or registration privileges.
- 37 (5) The places of payment, at least one (1) of which must be in
 38 Indiana.
- 39 (6) The conditions and terms under which the bondholder
 40 may redeem the bond before maturity.

41 **Sec. 6. (a)** Every issue of authority bonds shall be obligations of
 42 the authority payable solely out of any specified revenue or money

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of the authority, subject to an agreement with a holder of a bond pledging particular money or revenue.

(b) A bond issued by the authority may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, any corporation, limited liability company, association, institution, or person, or a pledge of money, money, or revenue of the authority from any source.

Sec. 7. The authority shall determine the form and manner of execution of the bonds, including the attachment of interest coupons.

Sec. 8. The authority may sell authority bonds at:

- (1) a public or private sale; and
- (2) a price determined by the authority.

Sec. 9. Subject to agreements with bondholders, the authority may purchase authority bonds out of any funds available. These bonds shall be canceled at a reasonable price. If the bonds are redeemable, the purchase price may not exceed the redemption price plus interest accrued to the next interest payment on the bond.

Sec. 10. Regardless of the form and character, authority bonds are made negotiable instruments, subject only to provisions of the bonds relating to registration.

Sec. 11. An authority bond may be executed by manual or facsimile signature of the director or an authority member designated by the director. If the director or the director's designee ceases to be a member of the authority before the delivery of a bond executed by the director or the director's designee, the signature on the bond is valid as if the director or the director's designee had remained in office until the delivery.

Sec. 12. The members of the authority are not subject to personal liability for an act under this chapter, including the issuance and execution of bonds.

Sec. 13. All money received by the authority shall be deposited as soon as practical in a separate account in a bank or trust company organized under the laws of Indiana or a national banking association. The money in an account shall be paid out on checks signed by the director or by other means authorized by the authority.

Sec. 14. All expenses incurred by the authority in carrying out this article are payable solely from funds provided under this chapter.

Sec. 15. Bonds issued under this chapter and:

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- 1 (1) proceeds received from the sale of the bonds by a holder;
- 2 (2) proceeds received on the redemption of the bonds before
- 3 maturity;
- 4 (3) proceeds received at the bonds' maturity; and
- 5 (4) interest received on the bonds;
- 6 are exempt from state taxes under IC 6-8-5.

7 Sec. 16. (a) The bonds issued by the authority under this chapter
 8 are legal investments in which the following may invest:

- 9 (1) Public officers or bodies of the state.
- 10 (2) Political subdivisions.
- 11 (3) Municipalities and municipal subdivisions.
- 12 (4) Insurance companies and other persons carrying on
- 13 insurance business.
- 14 (5) Banks, trust companies, savings associations, and other
- 15 persons carrying on banking business.
- 16 (6) Administrators, guardians, trustees, and other fiduciaries.
- 17 (7) Other persons who are or may be authorized to invest in
- 18 bonds.

19 (b) Bonds issued by the authority under this chapter are
 20 securities that may be deposited with and received by the
 21 following:

- 22 (1) Public officers and bodies of the state.
- 23 (2) Agencies or political subdivisions of the state.
- 24 (3) Municipalities and public commissions.

25 **Chapter 6. Rates and Provision of Services**

26 Sec. 1. (a) The purpose of this chapter is to ensure that the rates
 27 charged by the service produce an income sufficient to maintain
 28 the authority and its property in a sound physical and financial
 29 condition to render adequate and efficient service.

30 (b) Revenues and receipts not needed for purposes of this article
 31 shall be applied to abate current charges for energy.

32 Sec. 2. The authority shall file with the commission, within a
 33 time fixed by the commission, schedules open to public inspection
 34 that show all rates the authority has established that are enforced
 35 at the time for any service performed by it or any facility
 36 controlled or operated by it.

37 SECTION 6. IC 34-30-2-24.2 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2003]: Sec. 24.2. IC 8-1.7-5-12 (Concerning
 40 members of the public power and finance authority, for acts
 41 including the issuance and execution of bonds).

42 SECTION 7. An emergency is declared for this act.

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