



January 26, 2007

HOUSE BILL No. 1722

DIGEST OF HB 1722 (Updated January 25, 2007 10:10 am - DI 75)

Citations Affected: IC 6-3.1; IC 8-1; noncode.

Synopsis: Coal gasification tax credits and cost recovery. Provides that a facility that produces synthesis gas as a substitute for natural gas is eligible for a coal gasification technology investment tax credit. Requires the utility regulatory commission to allow a utility that purchases substitute natural gas to recover any costs arising under the purchase contract through rate adjustments. Amends the definition of clean coal and energy projects to include a project using coal to produce substitute natural gas. Includes certain findings made by the general assembly. Makes conforming changes.

Effective: Upon passage.

Stilwell, Battles, Whetstone

January 23, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

January 26, 2007, amended, reported — Do Pass.

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January 26, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1722

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

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

1 SECTION 1. IC 6-3.1-29-6, AS ADDED BY P.L.191-2005,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6. As used in this chapter, "integrated coal
4 gasification powerplant" means a facility that satisfies all the following
5 requirements:

- 6 (1) The facility is located in Indiana and is a newly constructed
7 energy generating plant.
8 (2) The facility converts coal into synthesis gas that can be used
9 as a fuel to generate energy **or as a substitute for natural gas.**
10 (3) The facility uses the synthesis gas as a fuel to generate electric
11 energy **or produces synthesis gas that can be used as a**
12 **substitute for natural gas.**
13 (4) The facility is dedicated primarily to serving Indiana retail
14 electric **or gas** utility consumers.

15 SECTION 2. IC 6-3.1-29-15, AS AMENDED BY P.L.122-2006,
16 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 UPON PASSAGE]: Sec. 15. (a) Subject to section 16 of this chapter,

HB 1722—LS 7187/DI 114+



1 the amount of the credit to which a taxpayer is entitled for a qualified
2 investment in an integrated coal gasification powerplant is equal to the
3 sum of the following:

4 (1) Ten percent (10%) of the taxpayer's qualified investment for
5 the first five hundred million dollars (\$500,000,000) invested.

6 (2) Five percent (5%) of the amount of the taxpayer's qualified
7 investment that exceeds five hundred million dollars
8 (\$500,000,000) only if the facility is dedicated primarily to
9 serving Indiana retail electric **or gas** utility consumers.

10 (b) Subject to section 16 of this chapter, the amount of the credit to
11 which a taxpayer is entitled for a qualified investment in a fluidized
12 bed combustion technology is equal to the sum of the following:

13 (1) Seven percent (7%) of the taxpayer's qualified investment for
14 the first five hundred million dollars (\$500,000,000) invested.

15 (2) Three percent (3%) of the amount of the taxpayer's qualified
16 investment that exceeds five hundred million dollars
17 (\$500,000,000).

18 SECTION 3. IC 6-3.1-29-19, AS AMENDED BY P.L.122-2006,
19 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 UPON PASSAGE]: Sec. 19. (a) The corporation shall enter into an
21 agreement with an applicant that is awarded a credit under this chapter.
22 The agreement must include all the following:

23 (1) A detailed description of the project that is the subject of the
24 agreement.

25 (2) The first taxable year for which the credit may be claimed.

26 (3) The maximum tax credit amount that will be allowed for each
27 taxable year.

28 (4) A requirement that the taxpayer shall maintain operations at
29 the project location for at least ten (10) years during the term that
30 the tax credit is available.

31 (5) If the facility is an integrated coal gasification powerplant, a
32 requirement that the taxpayer shall pay an average wage to its
33 employees at the integrated coal gasification powerplant, other
34 than highly compensated employees, in each taxable year that a
35 tax credit is available, that equals at least one hundred twenty-five
36 percent (125%) of the average county wage in the county in which
37 the integrated coal gasification powerplant is located.

38 (6) For a project involving a qualified investment in **a an**
39 **integrated** coal gasification powerplant, a requirement that the
40 taxpayer will maintain at the location where the qualified
41 investment is made, during the term of the tax credit, a total
42 payroll that is at least equal to the payroll that existed on the date

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1 that the taxpayer placed the integrated coal gasification
2 powerplant into service.

3 (7) A requirement that:

4 (A) one hundred percent (100%) of the coal used:
5 (i) at the integrated coal gasification powerplant, for a
6 project involving a qualified investment in an integrated
7 coal gasification powerplant; or
8 (ii) as fuel in a fluidized bed combustion unit, in a project
9 involving a qualified investment in a fluidized bed
10 combustion technology, if the unit is dedicated primarily to
11 serving Indiana retail electric utility consumers;

12 must be Indiana coal; or
13 (B) seventy-five percent (75%) of the coal used as fuel in a
14 fluidized bed combustion unit must be Indiana coal, in a
15 project involving a qualified investment in a fluidized bed
16 combustion technology, if the unit is not dedicated primarily
17 to serving Indiana retail electric utility consumers.

18 (8) A requirement that the taxpayer obtain from the commission
19 a determination under IC 8-1-8.5-2 that public convenience and
20 necessity require, or will require:

21 (A) the construction of the taxpayer's integrated coal
22 gasification powerplant, in the case of a project involving a
23 qualified investment in an integrated coal gasification
24 powerplant; or

25 (B) the installation of the taxpayer's fluidized bed combustion
26 unit, in the case of a project involving a qualified investment
27 in a fluidized bed combustion technology.

28 (b) A taxpayer must comply with the terms of the agreement
29 described in subsection (a) to receive an annual installment of the tax
30 credit awarded under this chapter. The corporation shall annually
31 determine whether the taxpayer is in compliance with the agreement.
32 If the corporation determines that the taxpayer is in compliance, the
33 corporation shall issue a certificate of compliance to the taxpayer.

34 SECTION 4. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
36 UPON PASSAGE]: **Sec. 42.1. (a) As used in this section, "substitute
37 natural gas" means gas produced by a facility in Indiana that uses
38 a manufacturing process to convert coal into a gas capable of being
39 used:**

40 **(1) by a utility to supply gas utility service to end use
41 consumers in Indiana; or**

42 **(2) as a fuel used by a utility to produce electric power to**

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1 supply electric utility service to end use consumers in Indiana.
2 (b) As used in this section, "customer choice program" means
3 a program under which certain residential and commercial gas
4 consumers located in the service area of an gas utility may:
5 (1) elect to purchase their gas supply from a provider other
6 than the gas utility in the service area; and
7 (2) receive transportation service from the gas utility in the
8 service area for the delivery of the gas purchased under
9 subdivision (1) to the consumer's premises.
10 (c) Notwithstanding any other law, if the commission approves
11 a contract for the purchase of substitute natural gas by a utility,
12 the commission shall allow the utility to recover the following costs
13 on a timely basis throughout the term of the contract:
14 (1) All costs incurred in connection with and resulting from
15 the utility's purchases under the contract, including the cost
16 of the substitute natural gas and related costs for
17 transportation and storage services.
18 (2) All costs the utility incurs in obtaining replacement gas, if
19 the seller fails to deliver substitute natural gas required to be
20 delivered under the contract, including the price of the gas,
21 and related transportation, storage, and hedging costs, to the
22 extent those costs are not paid by the seller.
23 (3) Upon petition by the utility, any other costs the
24 commission finds are reasonably necessary in association with
25 the contract.
26 (d) Any costs recovered under subsection (c):
27 (1) are in addition to the recovery of other costs; and
28 (2) shall be made through an adjustment under section 42 of
29 this chapter, or another rate adjustment mechanism that
30 allows for comparable timely cost recovery.
31 (e) If a customer choice program is implemented, expanded, or
32 renewed for a utility during the term of a contract approved by the
33 commission under subsection (c) that has the effect of reducing the
34 utility's sales volumes, a condition of the authorization of that
35 program must be the proportionate assignment of the gas or
36 electric utility's substitute natural gas purchase obligation to the
37 service providers in the customer choice program.
38 (f) Regardless of changes in market conditions or other
39 circumstances, the commission may not take any action during the
40 term of a contract approved under this section that adversely
41 affects a utility's right to timely recover costs under this section, or
42 to otherwise fully recover such costs.

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1 **(g) With respect to utilities that are parties to a contract for the**
 2 **purchase of substitute natural gas approved by the commission**
 3 **under this section, the state covenants and agrees that so long as**
 4 **such contract is in effect the state will not limit, alter, or impair a**
 5 **utility's right to recover costs as provided in this section.**
 6 **Notwithstanding any other law, neither the commission nor any**
 7 **other state agency, political subdivision, or governmental unit may**
 8 **take any action that would have the effect of limiting, altering, or**
 9 **impairing a utility's rights to recover costs as provided in this**
 10 **section.**

11 SECTION 5. IC 8-1-8.8-1 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The general
 13 assembly makes the following findings:

14 (1) Growth of Indiana's population and economic base has created
 15 a need for new energy **production or** generating facilities in
 16 Indiana.

17 (2) The development of a robust and diverse portfolio of energy
 18 **production or** generating capacity, including **coal gasification**
 19 **and** the use of renewable energy resources, is needed if Indiana
 20 is to continue to be successful in attracting new businesses and
 21 jobs.

22 (3) Indiana has considerable natural resources that are currently
 23 underutilized and could support development of new energy
 24 **production or** generating facilities, including **coal gasification**
 25 **facilities**, at an affordable price.

26 (4) Certain regions of the state, such as southern Indiana, could
 27 benefit greatly from new employment opportunities created by
 28 development of new energy **production or** generating facilities
 29 utilizing the plentiful supply of coal from the geological formation
 30 known as the Illinois basin.

31 (5) Technology can be deployed that allows high sulfur coal from
 32 the geological formation known as the Illinois Basin to be burned
 33 **or gasified** efficiently while meeting strict state and federal air
 34 quality limitations. Specifically, the state should encourage the
 35 use of advanced clean coal technology, such as coal gasification.

36 (6) It is in the public interest for the state to encourage the
 37 construction of new energy **production or** generating facilities
 38 that increase the in-state capacity to provide for current and
 39 anticipated energy demand at a competitive price.

40 (b) The purpose of this chapter is to enhance Indiana's energy
 41 security and reliability by ensuring all of the following:

42 (1) Indiana's energy **production or** generating capacity continues

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- 1 to be adequate to provide for Indiana's current and future energy
- 2 needs, including the support of the state's economic development
- 3 efforts.
- 4 (2) The vast and underutilized coal resources of the Illinois Basin
- 5 are used as a fuel source for new energy **production or**
- 6 generating facilities.
- 7 (3) The electric transmission **and gas transportation** system
- 8 within Indiana ~~is~~ **are** upgraded to distribute additional amounts of
- 9 electricity **and gas** more efficiently.
- 10 (4) Jobs are created as new energy **production or** generating
- 11 facilities are built in regions throughout Indiana.

12 SECTION 6. IC 8-1-8.8-2, AS AMENDED BY P.L.174-2005,
 13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 UPON PASSAGE]: Sec. 2. As used in this chapter, "clean coal and
 15 energy projects" means any of the following:

- 16 (1) Any of the following projects:
 - 17 (A) Projects at new energy **production or** generating facilities
 - 18 that employ the use of clean coal technology and that ~~are~~
 - 19 **fueled produce energy, including substitute natural gas,**
 - 20 primarily by **from** coal or gases, derived from coal from the
 - 21 geological formation known as the Illinois Basin.
 - 22 (B) Projects to provide advanced technologies that reduce
 - 23 regulated air emissions from existing energy **production or**
 - 24 generating plants that are fueled primarily by coal or gases
 - 25 from coal from the ~~geologic~~ **geological** formation known as
 - 26 the Illinois Basin, such as flue gas desulfurization and
 - 27 selective catalytic reduction equipment.
 - 28 (C) Projects to provide electric transmission facilities to serve
 - 29 a new energy **production or** generating facility.
 - 30 **(D) Projects that produce substitute natural gas from**
 - 31 **Indiana coal by construction and operation of a coal**
 - 32 **gasification facility.**
- 33 (2) Projects to develop alternative energy sources, including
- 34 renewable energy projects **and coal gasification facilities.**
- 35 (3) The purchase of fuels produced by a coal gasification facility.
- 36 (4) Projects described in subdivisions (1) through (3) that use coal
- 37 bed methane.

38 SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this
 40 chapter, "clean coal technology" means a technology (including
 41 precombustion treatment of coal):

- 42 (1) that is used in a new or existing energy **production or**

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1 generating facility and directly or indirectly reduces **or eliminates**
 2 airborne emissions of sulfur, mercury, or nitrogen oxides or other
 3 regulated air emissions associated with the combustion or use of
 4 coal; and
 5 (2) that either:
 6 (A) was not in general commercial use at the same or greater
 7 scale in new or existing facilities in the United States at the
 8 time of enactment of the federal Clean Air Act Amendments
 9 of 1990 (P.L.101-549); or
 10 (B) has been selected by the United States Department of
 11 Energy for funding **or loan guaranty** under **its an** Innovative
 12 Clean Coal Technology **or loan guaranty** program **under the**
 13 **Energy Policy Act of 2005, or any successor program**, and
 14 is finally approved for such funding **or loan guaranty** on or
 15 after the date of enactment of the federal Clean Air Act
 16 Amendments of 1990 (P.L.101-549).

17 SECTION 8. IC 8-1-8.8-4 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this
 19 chapter, "coal gasification facility" means a facility in Indiana that uses
 20 a manufacturing process that converts coal into a clean gas that can be
 21 used as a fuel to generate energy **or substitute natural gas**.

22 SECTION 9. IC 8-1-8.8-6 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this
 24 chapter, "eligible business" means an energy utility (as defined in
 25 IC 8-1-2.5-2) **or owner of a coal gasification facility** that:

- 26 (1) proposes to construct or repower a new energy **production or**
 27 generating facility;
- 28 (2) proposes to construct or repower a project described in section
 29 2(1) or 2(2) of this chapter;
- 30 (3) undertakes a project to develop alternative energy sources,
 31 including renewable energy projects; or
- 32 (4) purchases fuels produced by a coal gasification facility.

33 SECTION 10. IC 8-1-8.8-8 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in
 35 this chapter, "new energy generating facility" refers to a **generation or**
 36 **coal gasification** facility that satisfies all of the following:

- 37 (1) The facility is ~~fuel~~ **produces energy** primarily ~~by~~ **from** coal
 38 or gases from coal from the ~~geologic~~ **geological** formation known
 39 as the Illinois Basin.
- 40 (2) The facility is a:
 41 (A) newly constructed or newly repowered energy generation
 42 plant; or

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1 (B) newly constructed generation capacity expansion at an
 2 existing facility;
 3 dedicated primarily to serving Indiana retail customers.
 4 (3) The repowering, construction, or expansion of the facility was
 5 begun by an Indiana utility after July 1, 2002.
 6 (4) Except for a facility that is a clean coal and energy project
 7 under section 2(2) of this chapter, the facility has an aggregate
 8 rated electric generating capacity of at least one hundred (100)
 9 megawatts for all units at one (1) site or a generating capacity of
 10 at least four hundred thousand (400,000) pounds per hour of
 11 steam.
 12 (b) The term includes the transmission lines, **gas transportation**
 13 **facilities**, and associated equipment employed specifically to serve a
 14 new energy generating **or coal gasification** facility.
 15 SECTION 11. IC 8-1-8.8-9 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. As used in this
 17 chapter, "qualified utility system property" means any new energy
 18 generating **or coal gasification** facility used, or to be used, in whole or
 19 in part, ~~on a utility system by an energy utility~~ to provide retail energy
 20 service (as defined in IC 8-1-2.5-3) regardless of whether that service
 21 is provided under IC 8-1-2.5 or another provision of this article.
 22 SECTION 12. IC 8-1-8.8-12 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The
 24 commission shall provide financial incentives to eligible businesses for
 25 new energy **producing and** generating facilities in the form of timely
 26 recovery of the costs incurred in connection with the construction,
 27 repowering, expansion, operation, or maintenance of the facilities.
 28 (b) An eligible business seeking authority to timely recover the costs
 29 described in subsection (a) must apply to the commission for approval
 30 of a rate adjustment mechanism in the manner determined by the
 31 commission.
 32 (c) An application must include the following:
 33 (1) A schedule for the completion of construction, repowering, or
 34 expansion of the new energy generating **or coal gasification**
 35 facility for which rate relief is sought.
 36 (2) Copies of the most recent integrated resource plan filed with
 37 the commission, **if applicable**.
 38 (3) The amount of capital investment by the eligible business in
 39 the new energy generating **or coal gasification** facility.
 40 (4) Other information the commission considers necessary.
 41 (d) The commission shall allow an eligible business to recover the
 42 costs associated with qualified utility system property if the eligible

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1 business provides substantial documentation that the expected costs
2 associated with qualified utility system property and the schedule for
3 incurring those costs are reasonable and necessary.

4 (e) The commission shall allow an eligible business to recover the
5 costs associated with the purchase of fuels produced by a coal
6 gasification facility if the eligible business provides substantial
7 documentation that the costs associated with the purchase are
8 reasonable and necessary.

9 (f) A retail rate adjustment mechanism proposed by an eligible
10 business under this section may be based on actual or forecasted data.
11 If forecast data is used, the retail rate adjustment mechanism must
12 contain a reconciliation mechanism to correct for any variance between
13 the forecasted costs and the actual costs.

14 SECTION 13. IC 8-1-8.8-13, AS AMENDED BY P.L.1-2006,
15 SECTION 151, IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall
17 file a monthly report with the lieutenant governor stating the following
18 information:

- 19 (1) The amount of Illinois Basin coal, if any, purchased during the
20 previous month for use in a new energy generating **or coal**
21 **gasification** facility.
- 22 (2) The amount of any fuel produced by a coal gasification facility
23 and purchased by the eligible business during the previous month.
- 24 (3) Any other information the lieutenant governor may reasonably
25 require.

26 SECTION 14. [EFFECTIVE UPON PASSAGE] **The general**
27 **assembly finds the following:**

- 28 (1) **The development of coal gasification facilities in Indiana**
29 **that would use local coal resources for the production of**
30 **substitute natural gas is in the public interest for purposes of:**
 - 31 (A) **reducing the reliance of Indiana energy utilities on gas**
32 **imports;**
 - 33 (B) **mitigating price and supply risk;**
 - 34 (C) **improving price stability; and**
 - 35 (D) **promoting economic development and job creation.**
- 36 (2) **Coal gasification is encouraged by federal policies**
37 **intended to increase the energy independence of the United**
38 **States, including through the availability of tax incentives and**
39 **loan guarantees.**
- 40 (3) **Indiana has the necessary resources and infrastructure**
41 **suitable for development of coal gasification facilities.**
- 42 (4) **The receipt of federal incentives for the development,**

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1 **construction, and financing of new coal gasification facilities**
2 **in Indiana will be enhanced by Indiana energy utilities**
3 **entering into long term contracts for the purchase of**
4 **substitute natural gas produced by such facilities.**
5 **(5) It is necessary to allow Indiana energy utilities to recover,**
6 **through rate adjustments for the utility's customers, costs**
7 **incurred from entering into supply contracts for substitute**
8 **natural gas in order to promote the creation of such contracts**
9 **without causing Indiana energy utilities to incur undue risk.**
10 **SECTION 15. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1722, 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:

- Page 1, line 14, after "electric" insert "**or gas**".
 - Page 3, delete lines 34 through 42.
 - Page 4, delete lines 1 through 33.
 - Page 6, delete lines 11 through 16.
 - Page 6, line 35, delete "Indiana".
 - Page 6, line 35, delete ".".
 - Page 6, line 35, reset in roman "from the geological".
 - Page 6, reset in roman line 36.
 - Page 6, line 37, delete "Indiana".
 - Page 6, line 38, reset in roman "from the geological formation known as the Illinois Basin".
 - Page 7, line 11, delete "Indiana".
 - Page 7, line 11, reset in roman "of the".
 - Page 7, line 12, reset in roman "Illinois Basin".
 - Page 7, line 27, delete "Indiana".
 - Page 7, line 27, delete ".".
 - Page 7, reset in roman line 28.
 - Page 7, line 32, delete "Indiana".
 - Page 7, line 32, delete ",".
 - Page 7, line 32, reset in roman "from the".
 - Page 7, line 32, after "geologic" insert "**geological**".
 - Page 7, line 32, reset in roman "formation known as the".
 - Page 7, line 33, reset in roman "Illinois Basin,".
 - Page 8, line 8, after "reduces" insert "**or eliminates**".
 - Page 9, line 2, delete "Indiana".
 - Page 9, line 2, delete ".".
 - Page 9, line 2, reset in roman "from the".
 - Page 9, line 2, after "geologic" insert "**geological**".
 - Page 9, line 2, reset in roman "formation known".
 - Page 9, reset in roman line 3.
 - Page 10, line 25, reset in roman "Illinois Basin".
 - Page 10, line 25, delete "Indiana".
- Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1722 as introduced.)

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CROOKS, Chair

Committee Vote: yeas 11, nays 0.

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