

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1722

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

Synopsis: Utility matters. Proposed conference committee report for EHB 1722. Provides that a taxpayer may not sell, assign, convey, or otherwise transfer an ethanol production tax credit. Provides that the total amount of ethanol production tax credits for taxpayers that produce at least 20,000,000 gallons of cellulosic ethanol in a year may not exceed \$20,000,000 for all taxpayers for all taxable years, and the credits may be applied only to state tax liability attributable to business activity taking place at the Indiana facility at which the cellulosic ethanol was produced. Provides that a facility that produces synthesis gas as a substitute for natural gas is eligible for a coal gasification technology investment tax credit. Creates a tax credit, beginning in taxable year 2009, for the purchase of energy star heating and cooling equipment manufactured in the United States. Allows a taxpayer to assign part or all of a coal gasification technology investment tax credit to an electric utility that has entered a contract to purchase electricity or substitute natural gas from the taxpayer. Specifically lists certain items included in the definition of organic waste biomass for purposes of the law concerning a utility's purchase of energy from alternative sources. Requires the utility regulatory commission (IURC) to allow a utility that purchases substitute natural gas (SNG) to recover any costs arising under the purchase contract through rate adjustments. Provides that certain municipalities have jurisdiction over certain territorial disputes between water utilities. Amends the definition of clean coal and energy projects to include a project using coal to produce substitute natural gas. Defines an SNG property interest as a right, title, and interest that: (1) is held by an energy utility; (2) is created by a qualified order of the IURC; and (3) entitles the energy utility to recover certain costs incurred in purchasing substitute natural gas under a qualified contract. Sets forth provisions governing: (1) the assignment of an SNG property interest; (2) the rights of assignees, financing entities, and SNG sellers; (3) the perfection of a lien and security interest in an SNG property interest; and (4) the obligations of an energy utility after the assignment of an SNG property interest. **(This conference committee report removes language: (1) creating the Indiana fueled energy investment tax credit; and (2) concerning Indiana economic development corporation agreements for awarding coal gasification tax credits. This conference committee report adds provisions: (1) specifying that the tax credit for producing 20,000,000 gallons of cellulosic ethanol may be applied only to state tax liability attributable to business activity taking place at the Indiana facility at which the cellulosic ethanol was produced; (2) creating a tax credit for the purchase of energy star heating and cooling equipment manufactured in the United States; (3)**

providing that certain municipalities have jurisdiction over certain territorial disputes between water utilities; and (4) listing certain items included in the definition of organic waste biomass for purposes of the law concerning a utility's purchase of energy from alternative sources.

Effective: Upon passage; July 1, 2007; January 1, 2008.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1722 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-3.1-27-9.5, AS AMENDED BY P.L.122-2006,
- 3 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2008]: Sec. 9.5. **Except as provided in**
- 5 **IC 6-3.1-28-11(c)**, the total amount of credits allowed under:
- 6 (1) section 8 of this chapter;
- 7 (2) section 9 of this chapter; and
- 8 (3) IC 6-3.1-28;
- 9 may not exceed fifty million dollars (\$50,000,000) for all taxpayers and
- 10 all taxable years beginning after December 31, 2004. The corporation
- 11 shall determine the maximum allowable amount for each type of credit,
- 12 which must be at least four million dollars (\$4,000,000) for each type
- 13 of credit.
- 14 SECTION 2. IC 6-3.1-28-9 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) If the amount of
- 16 the credit determined under this chapter for a taxpayer in a taxable year
- 17 exceeds the taxpayer's state tax liability for that taxable year, the
- 18 taxpayer may carry over the excess to the following taxable years. The
- 19 amount of the credit carryover from a taxable year shall be reduced to
- 20 the extent that the carryover is used by the taxpayer to obtain a credit
- 21 under this chapter for any subsequent taxable year.
- 22 (b) A taxpayer is not entitled to a carryback or refund of any unused

1 credit. **A taxpayer may not sell, assign, convey, or otherwise**
 2 **transfer the tax credit provided by this chapter.**

3 SECTION 3. IC 6-3.1-28-11, AS AMENDED BY P.L.122-2006,
 4 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JANUARY 1, 2008]: Sec. 11. **(a) As used in this section, "cellulosic**
 6 **ethanol" means ethanol derived solely from lignocellulosic or**
 7 **hemicellulosic matter.**

8 **(b)** The corporation shall determine the maximum amount of credits
 9 that a taxpayer (or if the person producing the ethanol is a pass through
 10 entity, the shareholders, partners, or members of the pass through
 11 entity) is eligible to receive under this section. The total amount of
 12 credits allowed a taxpayer (or, if the person producing the ethanol is a
 13 pass through entity, the shareholders, partners, or members of the pass
 14 through entity) under this chapter may not exceed a total of the
 15 following amounts for all taxable years:

16 (1) Two million dollars (\$2,000,000) in the case of a taxpayer
 17 who produces at least forty million (40,000,000) but less than
 18 sixty million (60,000,000) gallons of **grain** ethanol in a taxable
 19 year.

20 (2) Three million dollars (\$3,000,000) in the case of a taxpayer
 21 who produces at least sixty million (60,000,000) gallons of **grain**
 22 ethanol in a taxable year.

23 **(3) Twenty million dollars (\$20,000,000) for all taxpayers for**
 24 **all taxable years, in the case of tax credits for a taxpayer who**
 25 **produces at least twenty million (20,000,000) gallons of**
 26 **cellulosic ethanol in a taxable year.**

27 **(c) The total amount of tax credits allowed under this chapter**
 28 **for a taxpayer who produces at least twenty million (20,000,000)**
 29 **gallons of cellulosic ethanol is not subject to the maximum amount**
 30 **of tax credits imposed by IC 6-3.1-27-9.5.**

31 **(d) A taxpayer who is eligible for a credit under this chapter as**
 32 **a result of producing at least twenty million (20,000,000) gallons of**
 33 **cellulosic ethanol in a taxable year may apply the credit only**
 34 **against the state tax liability attributable to business activity taking**
 35 **place at the Indiana facility at which the cellulosic ethanol was**
 36 **produced.**

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

42 (1) The facility is located in Indiana and is a newly constructed
 43 energy generating plant.

44 (2) The facility converts coal into synthesis gas that can be used
 45 as a fuel to generate energy **or as a substitute for natural gas.**

46 (3) The facility uses the synthesis gas as a fuel to generate electric
 47 energy **or produces synthesis gas that can be used as a**
 48 **substitute for natural gas.**

49 (4) The facility is dedicated primarily to **production of electricity**
 50 **or gas for use by energy utilities** serving Indiana retail electric
 51 **or gas** utility consumers.

1 SECTION 5. IC 6-3.1-29-15, AS AMENDED BY P.L.122-2006,
 2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 15. (a) Subject to section 16 of this chapter,
 4 the amount of the credit to which a taxpayer is entitled for a qualified
 5 investment in an integrated coal gasification powerplant is equal to the
 6 sum of the following:

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

9 (2) Five percent (5%) of the amount of the taxpayer's qualified
 10 investment that exceeds five hundred million dollars
 11 (\$500,000,000) only if the facility is dedicated primarily to
 12 serving Indiana retail electric **or gas** utility consumers.

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

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

18 (2) Three percent (3%) of the amount of the taxpayer's qualified
 19 investment that exceeds five hundred million dollars
 20 (\$500,000,000).

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

26 (1) A detailed description of the project that is the subject of the
 27 agreement.

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

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

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

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

41 (6) For a project involving a qualified investment in ~~a~~ **an**
 42 **integrated** coal gasification powerplant, a requirement that the
 43 taxpayer will maintain at the location where the qualified
 44 investment is made, during the term of the tax credit, a total
 45 payroll that is at least equal to the payroll that existed on the date
 46 that the taxpayer placed the integrated coal gasification
 47 powerplant into service.

48 (7) A requirement that:

49 (A) one hundred percent (100%) of the coal used:

50 (i) at the integrated coal gasification powerplant, for a
 51 project involving a qualified investment in an integrated

- 1 coal gasification powerplant; or
 2 (ii) as fuel in a fluidized bed combustion unit, in a project
 3 involving a qualified investment in a fluidized bed
 4 combustion technology, if the unit is dedicated primarily to
 5 serving Indiana retail electric utility consumers;
 6 must be Indiana coal; or
 7 (B) seventy-five percent (75%) of the coal used as fuel in a
 8 fluidized bed combustion unit must be Indiana coal, in a
 9 project involving a qualified investment in a fluidized bed
 10 combustion technology, if the unit is not dedicated primarily
 11 to serving Indiana retail electric utility consumers.
- 12 (8) A requirement that the taxpayer obtain from the commission
 13 a determination under IC 8-1-8.5-2 that public convenience and
 14 necessity require, or will require:
- 15 (A) the construction of the taxpayer's integrated coal
 16 gasification powerplant, in the case of a project involving a
 17 qualified investment in an integrated coal gasification
 18 powerplant; or
 19 (B) the installation of the taxpayer's fluidized bed combustion
 20 unit, in the case of a project involving a qualified investment
 21 in a fluidized bed combustion technology.
- 22 (b) A taxpayer must comply with the terms of the agreement
 23 described in subsection (a) to receive an annual installment of the tax
 24 credit awarded under this chapter. The corporation shall annually
 25 determine whether the taxpayer is in compliance with the agreement.
 26 If the corporation determines that the taxpayer is in compliance, the
 27 corporation shall issue a certificate of compliance to the taxpayer.
- 28 SECTION 7. IC 6-3.1-29-20.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE UPON PASSAGE]: **Sec. 20.5. (a) Subject to subsection**
 31 **(c), part or all of the credit to which a taxpayer is entitled under**
 32 **section 15 of this chapter may be assigned by the taxpayer to one**
 33 **(1) or more utilities that have entered into a contract that:**
 34 **(1) is approved by the Indiana utility regulatory commission;**
 35 **(2) provides for the purchase of electricity or substitute**
 36 **natural gas (as defined in IC 8-1-2-42.1) by the utility from**
 37 **the taxpayer; and**
 38 **(3) expressly allows the assignment of tax credits under this**
 39 **section.**
- 40 **A tax credit assigned to a utility under this section must be applied**
 41 **against the utility's state tax liability in the order set forth in**
 42 **section 14(b) of this chapter.**
- 43 **(b) Notwithstanding section 16 of this chapter, any part of a**
 44 **taxpayer's credit under section 15 of this chapter that is assigned**
 45 **by the taxpayer under this section must be taken in twenty (20)**
 46 **annual installments, beginning with the year in which the taxpayer**
 47 **places into service an integrated coal gasification powerplant or a**
 48 **fluidized bed combustion technology.**
- 49 **(c) The part of a taxpayer's credit under section 15 of this**
 50 **chapter that may be assigned by the taxpayer with respect to any**
 51 **one (1) taxable year is subject to the following:**

1 (1) The total amount of the taxpayer's credit under section 15
2 of this chapter that may be assigned by the taxpayer with
3 respect to the taxable year may not exceed the product of:

4 (A) the total credit amount to which the taxpayer is
5 entitled under section 15 of this chapter, divided by twenty
6 (20); multiplied by

7 (B) the percentage of Indiana coal used in the taxpayer's
8 integrated coal gasification powerplant or fluidized bed
9 combustion technology in the taxable year for which the
10 annual installment of the credit is allowed.

11 (2) The part of the amount determined under subdivision (1)
12 that may be assigned to any one (1) utility with respect to the
13 taxable year may not exceed the greater of:

14 (A) the utility's total state tax liability for the taxable year,
15 multiplied by twenty-five percent (25%); or

16 (B) the utility's total utility receipts tax liability for the
17 taxable year.

18 (d) Any part of the taxpayer's credit under section 15 of this
19 chapter that is assigned to one (1) or more utilities by a taxpayer
20 under this section with respect to a taxable year may not be
21 claimed by the taxpayer or the taxpayer's shareholders, partners,
22 or members. However, any part of the credit to which the taxpayer
23 is entitled under section 15 of this chapter and that is not assigned
24 by the taxpayer with respect to the taxable year may be taken and
25 applied by the taxpayer, or the taxpayer's shareholders, partners,
26 or members, in accordance with sections 16 and 20 of this chapter.

27 SECTION 8. IC 6-3.1-31.5 IS ADDED TO THE INDIANA CODE
28 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
29 JANUARY 1, 2008]:

30 **Chapter 31.5. Energy Savings Tax Credit**

31 **Sec. 1. This chapter applies only to taxable years beginning after
32 December 31, 2008.**

33 **Sec. 2. As used in this chapter, "energy star heating and cooling
34 equipment" means heating and cooling equipment that is rated for
35 energy efficiency under the federal energy star program and
36 manufactured in the United States.**

37 **Sec. 3. As used in this chapter, "energy star program" refers to
38 the program established by Section 324A of the federal Energy
39 Policy and Conservation Act.**

40 **Sec. 4. As used in this chapter, "heating and cooling equipment"
41 means:**

42 (1) a furnace;

43 (2) a water heater;

44 (3) central air conditioning;

45 (4) a room air conditioner; and

46 (5) a programmable thermostat.

47 **Sec. 5. As used in this chapter, "pass through entity" means:**

48 (1) a corporation that is exempt from the adjusted gross
49 income tax under IC 6-3-2-2.8(2);

50 (2) a partnership;

51 (3) a limited liability company; or

- 1 **(4) a limited liability partnership.**
- 2 **Sec. 6. As used in this chapter, "small business" has the meaning**
3 **set forth in IC 4-4-5.2-3.**
- 4 **Sec. 7. As used in this chapter, "state tax liability" means the**
5 **taxpayer's total tax liability that is incurred under:**
- 6 **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**
7 **(2) IC 27-1-18-2 (the insurance premiums tax); and**
8 **(3) IC 6-5.5 (the financial institutions tax);**
- 9 **as computed after the application of the credits that, under**
10 **IC 6-3.1-1-2, are to be applied before the credit provided by this**
11 **chapter.**
- 12 **Sec. 8. As used in this chapter, "taxpayer" means:**
- 13 **(1) an individual filing a single return;**
14 **(2) a married couple filing a joint return; or**
15 **(3) a small business;**
- 16 **that has any state tax liability.**
- 17 **Sec. 9. Subject to section 12 of this chapter, a taxpayer is**
18 **entitled to a credit against the taxpayer's state tax liability for a**
19 **taxable year equal to the lesser of the following:**
- 20 **(1) Twenty percent (20%) of the amount of expenditures for**
21 **energy star heating and cooling equipment incurred by the**
22 **taxpayer during the taxable year.**
23 **(2) One hundred dollars (\$100).**
- 24 **Sec. 10. (a) If a pass through entity is entitled to a credit under**
25 **this chapter but does not have state tax liability against which the**
26 **credit may be applied, an individual who is a shareholder, partner,**
27 **or member of the pass through entity is entitled to a credit equal**
28 **to:**
- 29 **(1) the credit determined for the pass through entity for the**
30 **taxable year; multiplied by**
31 **(2) the percentage of the pass through entity's distributable**
32 **income to which the individual is entitled.**
- 33 **(b) The credit provided under subsection (a) is in addition to a**
34 **tax credit to which a shareholder, partner, or member of a pass**
35 **through entity is otherwise entitled under this chapter. However,**
36 **a pass through entity and an individual who is a shareholder,**
37 **partner, or member of the pass through entity may not claim more**
38 **than one (1) credit for the same expenditures for energy star**
39 **heating and cooling equipment.**
- 40 **Sec. 11. The amount of a credit claimed under this chapter may**
41 **not exceed a qualified taxpayer's state tax liability. A taxpayer is**
42 **not entitled to a carryback, carryover, or refund of an unused**
43 **credit.**
- 44 **Sec. 12. A taxpayer may not sell, assign, convey, or otherwise**
45 **transfer the tax credit provided by this chapter.**
- 46 **Sec. 13. The total amount of tax credits allowed under this**
47 **chapter may not exceed one million dollars (\$1,000,000) in a state**
48 **fiscal year.**
- 49 **Sec. 14. To receive the credit provided by this chapter, a**
50 **taxpayer must claim the credit on the taxpayer's annual state tax**
51 **return or returns in the manner prescribed by the department. The**

1 taxpayer shall submit to the department all information that the
2 department determines is necessary for the calculation of the credit
3 provided by this chapter.

4 SECTION 9. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
6 UPON PASSAGE]: Sec. 42.1. (a) As used in this section, "substitute
7 natural gas" means pipeline quality gas produced by a facility in
8 Indiana that uses a gasification process to convert coal from the
9 geological formation known as the Illinois Basin into a gas capable
10 of being used:

11 (1) by a utility to supply gas utility service to end use
12 consumers in Indiana; or

13 (2) as a fuel used by a utility to produce electric power to
14 supply electric utility service to end use consumers in Indiana.

15 (b) As used in this section, "customer choice program" means
16 a program under which certain residential and commercial gas
17 consumers located in the service area of a gas utility may:

18 (1) elect to purchase their gas supply from a provider other
19 than the gas utility in the service area; and

20 (2) receive transportation service from the gas utility in the
21 service area for the delivery of the gas purchased under
22 subdivision (1) to the consumer's premises.

23 (c) Subject to IC 8-1-8.9 and notwithstanding any other law, if
24 the commission approves a contract for the purchase of substitute
25 natural gas, or electricity generated in connection with the
26 production of substitute natural gas, by a utility, the commission
27 shall allow the utility to recover the following costs on a timely
28 basis throughout the term of the contract:

29 (1) All costs incurred in connection with and resulting from
30 the utility's purchases under the contract, including the cost
31 of the substitute natural gas and related costs for generation,
32 transmission, transportation, and storage services.

33 (2) All costs the utility incurs in obtaining replacement gas if
34 the seller fails to deliver substitute natural gas required to be
35 delivered under the contract, including the price of the gas,
36 and related transportation, storage, and hedging costs, to the
37 extent those costs are not paid by the seller.

38 (3) Upon petition by the utility, any other costs the
39 commission finds are reasonably necessary in association with
40 the contract.

41 (d) Any costs recovered under subsection (c):

42 (1) are in addition to the recovery of other costs; and

43 (2) shall be made through an adjustment under section 42 of
44 this chapter or another rate adjustment mechanism that
45 allows for comparable timely cost recovery.

46 (e) If a customer choice program is implemented, expanded, or
47 renewed for a utility during the term of a contract approved by the
48 commission under subsection (c) that has the effect of reducing the
49 utility's sales volumes, a condition of the authorization of that
50 program must be the proportionate assignment of the gas or
51 electric utility's substitute natural gas purchase obligation to the

1 service providers in the customer choice program.

2 (f) Regardless of changes in market conditions or other
3 circumstances, the commission may not take any action during the
4 term of a contract approved under this section that adversely
5 affects a utility's right to timely recover costs under this section or
6 to otherwise fully recover such costs.

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

17 SECTION 10. IC 8-1-2-86.5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 86.5. (a) As used
19 in this section, "four (4) mile area" means the area within four (4)
20 miles of a municipality's corporate boundaries.

21 (b) Except as provided in subsection (c), the commission, after
22 notice and hearing, may, by order, determine territorial disputes
23 between all water utilities.

24 (c) This subsection applies only to a municipality:

25 (1) having a population of less than seven thousand five
26 hundred (7,500); and

27 (2) that, as of January 1, 2007, has adopted an ordinance
28 exercising the power to regulate the furnishing of water to the
29 public granted by IC 36-9-2-14 within a four (4) mile area.

30 The commission may not determine a territorial dispute within a
31 four (4) mile area unless the territorial dispute concerns a
32 geographic area located in more than one (1) four (4) mile area.

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

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

39 (2) The development of a robust and diverse portfolio of energy
40 **production or** generating capacity, including **coal gasification**
41 **and** the use of renewable energy resources, is needed if Indiana
42 is to continue to be successful in attracting new businesses and
43 jobs.

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

48 (4) Certain regions of the state, such as southern Indiana, could
49 benefit greatly from new employment opportunities created by
50 development of new energy **production or** generating facilities
51 utilizing the plentiful supply of coal from the geological formation

1 known as the Illinois basin.
 2 (5) Technology can be deployed that allows high sulfur coal from
 3 the geological formation known as the Illinois Basin to be burned
 4 **or gasified** efficiently while meeting strict state and federal air
 5 quality limitations. Specifically, the state should encourage the
 6 use of advanced clean coal technology, such as coal gasification.
 7 (6) It is in the public interest for the state to encourage the
 8 construction of new energy **production or** generating facilities
 9 that increase the in-state capacity to provide for current and
 10 anticipated energy demand at a competitive price.

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

13 (1) Indiana's energy **production or** generating capacity continues
 14 to be adequate to provide for Indiana's current and future energy
 15 needs, including the support of the state's economic development
 16 efforts.

17 (2) The vast and underutilized coal resources of the Illinois Basin
 18 are used as a fuel source for new energy **production or**
 19 generating facilities.

20 (3) The electric transmission ~~system~~ **and gas transportation**
 21 **systems** within Indiana ~~is~~ **are** upgraded to distribute additional
 22 amounts of electricity **and gas** more efficiently.

23 (4) Jobs are created as new energy **production or** generating
 24 facilities are built in regions throughout Indiana.

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

29 (1) Any of the following projects:

30 (A) Projects at new energy **production or** generating facilities
 31 that employ the use of clean coal technology and that ~~are~~
 32 **fueled produce energy, including substitute natural gas,**
 33 primarily ~~by~~ **from** coal or gases, derived from coal from the
 34 geological formation known as the Illinois Basin.

35 (B) Projects to provide advanced technologies that reduce
 36 regulated air emissions from existing energy **production or**
 37 generating plants that are fueled primarily by coal or gases
 38 from coal from the ~~geologic~~ **geological** formation known as
 39 the Illinois Basin, such as flue gas desulfurization and
 40 selective catalytic reduction equipment.

41 (C) Projects to provide electric transmission facilities to serve
 42 a new energy **production or** generating facility.

43 **(D) Projects that produce substitute natural gas from**
 44 **Indiana coal by construction and operation of a coal**
 45 **gasification facility.**

46 (2) Projects to develop alternative energy sources, including
 47 renewable energy projects **and coal gasification facilities.**

48 (3) The purchase of fuels produced by a coal gasification facility.

49 (4) Projects described in subdivisions (1) through (3) that use coal
 50 bed methane.

1 SECTION 13. IC 8-1-8.8-3 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this
 3 chapter, "clean coal technology" means a technology (including
 4 precombustion treatment of coal):

5 (1) that is used in a new or existing energy **production or**
 6 **generating facility** and directly or indirectly reduces **or avoids**
 7 airborne emissions of sulfur, mercury, or nitrogen oxides or other
 8 regulated air emissions associated with the combustion or use of
 9 coal; and

10 (2) that either:

11 (A) was not in general commercial use at the same or greater
 12 scale in new or existing facilities in the United States at the
 13 time of enactment of the federal Clean Air Act Amendments
 14 of 1990 (P.L.101-549); or

15 (B) has been selected by the United States Department of
 16 Energy for funding **or loan guaranty** under **its an** Innovative
 17 Clean Coal Technology **or loan guaranty** program **under the**
 18 **Energy Policy Act of 2005, or any successor program**, and
 19 is finally approved for such funding **or loan guaranty** on or
 20 after the date of enactment of the federal Clean Air Act
 21 Amendments of 1990 (P.L.101-549).

22 SECTION 14. IC 8-1-8.8-4 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this
 24 chapter, "coal gasification facility" means a facility in Indiana that uses
 25 a manufacturing process that converts coal into a clean gas that can be
 26 used as a fuel to generate energy **or substitute natural gas**.

27 SECTION 15. IC 8-1-8.8-6 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this
 29 chapter, "eligible business" means an energy utility (as defined in
 30 IC 8-1-2.5-2) **or owner of a coal gasification facility** that:

31 (1) proposes to construct or repower a new energy **production or**
 32 **generating facility**;

33 (2) proposes to construct or repower a project described in section
 34 2(1) or 2(2) of this chapter;

35 (3) undertakes a project to develop alternative energy sources,
 36 including renewable energy projects; or

37 (4) purchases fuels produced by a coal gasification facility.

38 SECTION 16. IC 8-1-8.8-8 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in
 40 this chapter, "new energy generating facility" refers to a **generation or**
 41 **coal gasification** facility that satisfies all of the following:

42 (1) The facility is ~~fuelled~~ **produces energy** primarily ~~by~~ **from** coal
 43 or gases from coal from the ~~geologic~~ **geological** formation known
 44 as the Illinois Basin.

45 (2) The facility is a:

46 (A) newly constructed or newly repowered energy generation
 47 plant; or

48 (B) newly constructed generation capacity expansion at an
 49 existing facility;

50 dedicated primarily to serving Indiana retail customers.

1 (3) The repowering, construction, or expansion of the facility was
2 begun by an Indiana utility after July 1, 2002.

3 (4) Except for a facility that is a clean coal and energy project
4 under section 2(2) of this chapter, the facility has an aggregate
5 rated electric generating capacity of at least one hundred (100)
6 megawatts for all units at one (1) site or a generating capacity of
7 at least four hundred thousand (400,000) pounds per hour of
8 steam.

9 (b) The term includes the transmission lines, **gas transportation**
10 **facilities**, and associated equipment employed specifically to serve a
11 new energy generating **or coal gasification** facility.

12 SECTION 17. IC 8-1-8.8-9 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. As used in this
14 chapter, "qualified utility system property" means any new energy
15 generating **or coal gasification** facility used, or to be used, in whole or
16 in part, ~~or a utility system by an energy utility~~ to provide retail energy
17 service (as defined in IC 8-1-2.5-3) regardless of whether that service
18 is provided under IC 8-1-2.5 or another provision of this article.

19 SECTION 18. IC 8-1-8.8-10 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As used in this
21 chapter, "renewable energy resources" means alternative sources of
22 renewable energy, including the following:

- 23 (1) Energy from wind.
24 (2) Solar energy.
25 (3) Photovoltaic cells and panels.
26 (4) Dedicated crops grown for energy production.
27 (5) Organic waste biomass, **including any of the following**
28 **organic matter that is available on a renewable basis:**
29 (A) **Agricultural crops.**
30 (B) **Agricultural wastes and residues.**
31 (C) **Wood and wood wastes, including the following:**
32 (i) **Wood residues.**
33 (ii) **Forest thinnings.**
34 (iii) **Mill residue wood.**
35 (iv) **Waste from clean construction and demolition.**
36 (D) **Animal wastes.**
37 (E) **Aquatic plants.**
38 (6) Hydropower from existing dams.
39 (7) Fuel cells.
40 (8) Energy from waste to energy facilities producing steam not
41 used for the production of electricity.

42 (b) Except for energy described in subsection (a)(8), the term does
43 not include energy from the incinerations, burning, or heating of any of
44 the following:

- 45 ~~(1) Waste wood.~~
46 ~~(2) (1) Tires.~~
47 ~~(3) (2) General household, institutional, commercial, industrial~~
48 ~~lunchroom, office, or landscape waste.~~
49 ~~(4) Construction or demolition debris.~~

50 **(c) The term excludes treated or painted lumber.**

51 SECTION 19. IC 8-1-8.8-12 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The
 2 commission shall provide financial incentives to eligible businesses for
 3 new energy **producing and** generating facilities in the form of timely
 4 recovery of the costs incurred in connection with the construction,
 5 repowering, expansion, operation, or maintenance of the facilities.

6 (b) An eligible business seeking authority to timely recover the costs
 7 described in subsection (a) must apply to the commission for approval
 8 of a rate adjustment mechanism in the manner determined by the
 9 commission.

10 (c) An application must include the following:

11 (1) A schedule for the completion of construction, repowering, or
 12 expansion of the new energy generating **or coal gasification**
 13 facility for which rate relief is sought.

14 (2) Copies of the most recent integrated resource plan filed with
 15 the commission, **if applicable.**

16 (3) The amount of capital investment by the eligible business in
 17 the new energy generating **or coal gasification** facility.

18 (4) Other information the commission considers necessary.

19 (d) The commission shall allow an eligible business to recover the
 20 costs associated with qualified utility system property if the eligible
 21 business provides substantial documentation that the expected costs
 22 associated with qualified utility system property and the schedule for
 23 incurring those costs are reasonable and necessary.

24 (e) The commission shall allow an eligible business to recover the
 25 costs associated with the purchase of fuels produced by a coal
 26 gasification facility if the eligible business provides substantial
 27 documentation that the costs associated with the purchase are
 28 reasonable and necessary.

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

34 SECTION 20. IC 8-1-8.8-13, AS AMENDED BY P.L.1-2006,
 35 SECTION 151, IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall
 37 file a monthly report with the lieutenant governor stating the following
 38 information:

39 (1) The amount of Illinois Basin coal, if any, purchased during the
 40 previous month for use in a new energy generating **or coal**
 41 **gasification** facility.

42 (2) The amount of any fuel produced by a coal gasification facility
 43 and purchased by the eligible business during the previous month.

44 (3) Any other information the lieutenant governor may reasonably
 45 require.

46 SECTION 21. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE
 47 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 48 UPON PASSAGE]:

49 **Chapter 8.9. Financing of Substitute Natural Gas Costs**

50 **Sec. 1. (a) As used in this chapter, "assignee" means any**
 51 **individual, corporation, or other legal entity to which an SNG**

- 1 property interest is transferred.
- 2 (b) The term includes an assignee of a person described in
3 subsection (a).
- 4 Sec. 2. As used in this chapter, "commission" refers to the
5 Indiana utility regulatory commission created by IC 8-1-1-2.
- 6 Sec. 3. As used in this chapter, "energy utility" has the meaning
7 set forth in IC 8-1-2.5-2.
- 8 Sec. 4. As used in this chapter, "financing entity" means a
9 person that provides:
- 10 (1) equity financing; or
11 (2) debt financing;
12 that is secured by an SNG property interest.
- 13 Sec. 5. As used in this chapter, "qualified contract" means a
14 contract with a term of at least thirty (30) years for the sale of
15 substitute natural gas to an energy utility.
- 16 Sec. 6. As used in this chapter, "qualified cost" means any cost
17 incurred by an energy utility in purchasing substitute natural gas
18 under a qualified contract.
- 19 Sec. 7. As used in this chapter, "qualified order" means a final
20 and irrevocable order that:
- 21 (1) is issued by the commission; and
22 (2) approves a qualified contract adopted in accordance with
23 this chapter and IC 8-1-2-42.1.
- 24 Sec. 8. As used in this chapter, "substitute natural gas" or
25 "SNG" has the meaning set forth in IC 8-1-2-42.1(a).
- 26 Sec. 9. As used in this chapter, "SNG property interest" means
27 the right, title, and interest that:
- 28 (1) are held by an energy utility or its assignee;
29 (2) are created by a qualified order; and
30 (3) entitle the energy utility or its assignee to recover qualified
31 costs under IC 8-1-2-42.1.
- 32 Sec. 10. As used in this chapter, "SNG seller" means any
33 individual, corporation, or other legal entity that engages in the
34 production and sale of substitute natural gas.
- 35 Sec. 11. (a) Notwithstanding any other law, the commission may,
36 in accordance with this chapter and IC 8-1-2-42.1, issue a qualified
37 order that:
- 38 (1) approves the terms of a qualified contract; and
39 (2) authorizes the recovery of qualified costs by an energy
40 utility from its customers.
- 41 (b) A qualified order issued under this section may not be:
- 42 (1) rescinded;
43 (2) nullified; or
44 (3) modified;
45 in such a manner that reduces or otherwise impairs the value of an
46 SNG property interest.
- 47 Sec. 12. (a) An SNG property interest, including any right to
48 future purchases of substitute natural gas during the term of a
49 qualified contract, constitutes a present property right.
- 50 (b) Qualified costs recovered by an energy utility under a
51 qualified order constitute proceeds of only the SNG property

1 interest that is created by the qualified order.

2 (c) If the commission issues a qualified order under section 11
3 of this chapter, the state covenants and agrees, for the benefit of
4 the energy utility and any assignee or financing entity involved,
5 that the state will not take or permit any action that would:

6 (1) reduce or otherwise impair the value of the SNG property
7 interest created by the qualified order; or

8 (2) limit, alter, or impair:

9 (A) the qualified order;

10 (B) the SNG property interest created by the qualified
11 order; or

12 (C) qualified costs that are:

13 (i) imposed on and collected by the energy utility; and

14 (ii) remitted to the SNG seller;

15 under the terms of the qualified contract;

16 until the qualified contract has been performed in full.

17 Sec. 13. (a) An energy utility may assign an SNG property
18 interest to an assignee, including:

19 (1) another party to the qualified contract; or

20 (2) a financing entity.

21 An assignee may in turn assign an SNG property interest to a
22 financing entity that provides financing to the assignee.

23 (b) An assignment to a financing entity under this section may
24 be:

25 (1) an absolute assignment of the SNG property interest; or

26 (2) an assignment of the SNG property interest as collateral
27 for an obligation owed to the financing entity.

28 (c) An assignee under this section may enforce the SNG
29 property interest by all applicable legal and equitable means.

30 (d) Any amounts collected by an energy utility in connection
31 with the sale, transfer, or disposition of substitute natural gas
32 under a qualified contract that forms the basis of an SNG property
33 interest assigned under this section constitute the property of the
34 assignee. Pending the transfer of the SNG property interest to the
35 assignee, the amounts described in this subsection shall be:

36 (1) segregated by the energy utility; and

37 (2) held in trust for the benefit of the assignee;

38 subject to the terms of the qualified contract that forms the basis
39 of the SNG property interest that is being assigned.

40 Sec. 14. The interests of an assignee in:

41 (1) an SNG property interest transferred to the assignee
42 under section 13 of this chapter; and

43 (2) any revenues or collections arising from the SNG property
44 interest transferred;

45 are not subject to setoff by the energy utility that transferred the
46 SNG property interest, or by any other person, in connection with
47 any bankruptcy proceeding involving the energy utility.

48 Sec. 15. (a) If an agreement by an energy utility or an assignee
49 to assign an SNG property interest expressly states that the
50 assignment is a sale or is otherwise an absolute transfer:

51 (1) the resulting transaction:

- 1 **(A) is a true sale; and**
 2 **(B) is not a secured transaction; and**
 3 **(2) title, both legal and equitable, passes to the person to**
 4 **which the SNG property interest is assigned.**
 5 **(b) A transaction resulting from an agreement described in**
 6 **subsection (a) is a true sale regardless of whether:**
 7 **(1) the assignee has recourse against the assignor; or**
 8 **(2) the agreement provides for any of the following:**
 9 **(A) The assignor's retention of an equity interest in the**
 10 **SNG property interest transferred.**
 11 **(B) Continuing obligations of the energy utility under the**
 12 **qualified contract, including the obligation of the energy**
 13 **utility to serve as the collector of qualified costs.**
 14 **(C) The treatment of the transfer as a financing for tax,**
 15 **financial reporting, or other purposes.**
 16 **Sec. 16. (a) An SNG property interest does not constitute an**
 17 **account or a general intangible under IC 26-1-9.1-102. The**
 18 **creation, granting, perfection, and enforcement of liens and**
 19 **security interests in SNG property interests are governed by this**
 20 **chapter and not by IC 26-1-9.1.**
 21 **(b) A valid and enforceable lien and security interest in an SNG**
 22 **property interest may be created only by the execution and**
 23 **delivery of a security agreement with a financing entity in**
 24 **connection with the issuance of indebtedness. The security interest**
 25 **attaches automatically from the time that value is received for the**
 26 **indebtedness secured by the SNG property interest and, upon**
 27 **perfection through the filing of notice with the secretary of state:**
 28 **(1) constitutes a continuously perfected lien and security**
 29 **interest in the SNG property interest and all proceeds of the**
 30 **SNG property interest, whether or not accrued;**
 31 **(2) has priority in the order of its filing; and**
 32 **(3) takes precedence over any subsequent judicial lien or**
 33 **other creditor's lien.**
 34 **If notice is filed with the secretary of state not later than ten (10)**
 35 **days after value is received for the indebtedness, the security**
 36 **interest is perfected retroactive to the date the value was received.**
 37 **If notice is not filed with the secretary of state within ten (10) days**
 38 **after value is received for the indebtedness, the security interest is**
 39 **perfected as of the date of filing.**
 40 **(c) Transfer of an SNG property interest to an assignee is**
 41 **perfected against all third parties, including subsequent judicial or**
 42 **other lien creditors, upon:**
 43 **(1) the delivery of transfer documents to the assignee; and**
 44 **(2) the filing of notice with the secretary of state in accordance**
 45 **with subsection (b).**
 46 **However, if notice of the transfer is not filed with the secretary of**
 47 **state within ten (10) days after the delivery of the transfer**
 48 **documentation, the transfer of the SNG property interest is not**
 49 **perfected against third parties until the notice is filed.**
 50 **(d) The priority of a lien and security interest under this section**
 51 **is not impaired by either of the following:**

- 1 **(1) A later modification of the qualified order creating the**
 2 **SNG property interest being transferred.**
 3 **(2) The commingling of other funds with funds collected in**
 4 **connection with a qualified contract. Any other security**
 5 **interest that may apply to funds collected in connection with**
 6 **a qualified contract terminates when the funds are**
 7 **transferred to a segregated account for the benefit of the**
 8 **assignee or a financing entity. If an SNG property interest has**
 9 **been transferred to an assignee, any proceeds from the SNG**
 10 **property interest shall be held in trust for the assignee.**

11 **(e) If a default or termination occurs in connection with a**
 12 **financing secured by an SNG property interest, the financing entity**
 13 **or its representative may foreclose on or otherwise enforce its lien**
 14 **and security interest in the SNG property interest as if the**
 15 **financing entity were a secured party under IC 26-1-9.1. Amounts**
 16 **arising from the qualified contract that is the basis of the SNG**
 17 **property interest shall be transferred to a separate account for the**
 18 **financing entity's benefit and are subject to the financing entity's**
 19 **security interest and lien.**

20 **Sec. 17. An assignee or a financing party is not considered an**
 21 **energy utility solely by virtue of its participation in any transaction**
 22 **described in this chapter.**

23 **Sec. 18. Any entity that becomes a successor to an energy utility**
 24 **as the result of:**

- 25 **(1) any bankruptcy, reorganization, or other insolvency**
 26 **proceeding;**
 27 **(2) any merger, sale, or transfer involving the energy utility;**
 28 **or**
 29 **(3) the operation of law;**

30 **or for any other reason, shall perform and satisfy any obligations**
 31 **of the energy utility incurred under this chapter in the same**
 32 **manner and to the same extent as the energy utility would have**
 33 **been obligated to perform, including the obligation to pay to an**
 34 **assignee any funds collected by the energy utility in connection**
 35 **with the SNG property interest assigned to the assignee.**

36 **Sec. 19. An SNG seller that is an assignee may contract with the**
 37 **energy utility, in the qualified contract or in another contract, for**
 38 **the performance of services related to the sale of substitute natural**
 39 **gas under the qualified contract, including:**

- 40 **(1) the transportation and distribution of substitute natural**
 41 **gas; and**
 42 **(2) billing, collection, and other related services;**

43 **according to terms and conditions that reasonably compensate the**
 44 **energy utility for its services and adequately secure payment to the**
 45 **SNG seller.**

46 **Sec. 20. If an energy utility makes a true sale of an SNG**
 47 **property interest to an SNG seller under section 15 of this chapter,**
 48 **the SNG seller:**

- 49 **(1) retains title to all substitute natural gas distributed by the**
 50 **energy utility to the energy utility's retail end use customers;**
 51 **(2) is entitled to all amounts collected by the energy utility**

1 from its retail end use customers for the distribution of the
2 substitute natural gas, subject to the terms of the qualified
3 contract; and

4 (3) has the same rights to payments made by the energy
5 utility's retail end use customers as does the energy utility that
6 provides the substitute natural gas to those customers.

7 SECTION 22. [EFFECTIVE UPON PASSAGE] The general
8 assembly finds the following:

9 (1) The development of coal gasification facilities in Indiana
10 that would use local coal resources for the production of
11 substitute natural gas is in the public interest for purposes of:

12 (A) reducing the reliance of Indiana energy utilities on gas
13 imports;

14 (B) mitigating price and supply risk;

15 (C) improving price stability; and

16 (D) promoting economic development and job creation.

17 (2) Coal gasification is encouraged by federal policies
18 intended to increase the energy independence of the United
19 States, including through the availability of tax incentives and
20 loan guarantees.

21 (3) Indiana has the necessary resources and infrastructure
22 suitable for development of coal gasification facilities.

23 (4) The receipt of federal incentives for the development,
24 construction, and financing of new coal gasification facilities
25 in Indiana will be enhanced by Indiana energy utilities
26 entering into long term contracts for the purchase of
27 substitute natural gas produced by such facilities.

28 (5) It is necessary to allow Indiana energy utilities to recover,
29 through rate adjustments for the utility's customers, costs
30 incurred from entering into supply contracts for substitute
31 natural gas in order to promote the creation of such contracts
32 without causing Indiana energy utilities to incur undue risk.

33 SECTION 23. [EFFECTIVE JANUARY 1, 2008] IC 6-3.1-28-11,
34 as amended by this act, applies to taxable years beginning after
35 December 31, 2007.

36 SECTION 24. An emergency is declared for this act.

(Reference is to EHB 1722 as reprinted April 4, 2007.)

Conference Committee Report
on
Engrossed House Bill 1722

Signed by:

Representative Stilwell
Chairperson

Senator Hershman

Representative Lutz J

Senator Hume

House Conferees

Senate Conferees