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.

Adopted Rejected

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:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-3.1-27-9.5, AS AMENDED BY P.L.122-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 9.5. **Except as provided in IC 6-3.1-28-11(c),** the total amount of credits allowed under:

(1) section 8 of this chapter;
(2) section 9 of this chapter; and
(3) IC 6-3.1-28;

may not exceed fifty million dollars ($50,000,000) for all taxpayers and all taxable years beginning after December 31, 2004. The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars ($4,000,000) for each type of credit.

SECTION 2. IC 6-3.1-28-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry over the excess to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. **A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A requirement that:

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

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

(ii) as fuel in a fluidized bed combustion unit, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is dedicated primarily to serving Indiana retail electric utility consumers;

must be Indiana coal; or

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

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

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

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

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

SECTION 7. IC 6-3.1-29-20.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 20.5. (a) Subject to subsection (c), part or all of the credit to which a taxpayer is entitled under section 15 of this chapter may be assigned by the taxpayer to one (1) or more utilities that have entered into a contract that:**

(1) is approved by the Indiana utility regulatory commission;

(2) provides for the purchase of electricity or substitute natural gas (as defined in IC 8-1-2-42.1) by the utility from the taxpayer; and

(3) expressly allows the assignment of tax credits under this section.

A tax credit assigned to a utility under this section must be applied against the utility's state tax liability in the order set forth in section 14(b) of this chapter.

(b) Notwithstanding section 16 of this chapter, any part of a taxpayer's credit under section 15 of this chapter that is assigned by the taxpayer under this section must be taken in twenty (20) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant or a fluidized bed combustion technology.

(c) The part of a taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to any one (1) taxable year is subject to the following:

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

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

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

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

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

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

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

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

Chapter 31.5. Energy Savings Tax Credit

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

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

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

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

(1) a furnace;

(2) a water heater;

(3) central air conditioning;

(4) a room air conditioner; and

(5) a programmable thermostat.

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

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

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 6. As used in this chapter, "small business" has the meaning set forth in IC 4-4-5.2-3.

Sec. 7. As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 27-1-18-2 (the insurance premiums tax); and

(3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

Sec. 8. As used in this chapter, "taxpayer" means:

(1) an individual filing a single return;

(2) a married couple filing a joint return; or

(3) a small business;

that has any state tax liability.

Sec. 9. Subject to section 12 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the lesser of the following:

(1) Twenty percent (20%) of the amount of expenditures for energy star heating and cooling equipment incurred by the taxpayer during the taxable year.

(2) One hundred dollars ($100).

Sec. 10. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the credit may be applied, an individual who is a shareholder, partner, or member of the pass through entity is entitled to a credit equal to:

(1) the credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributable income to which the individual is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same expenditures for energy star heating and cooling equipment.

Sec. 11. The amount of a credit claimed under this chapter may not exceed a qualified taxpayer's state tax liability. A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

Sec. 12. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.

Sec. 13. The total amount of tax credits allowed under this chapter may not exceed one million dollars ($1,000,000) in a state fiscal year.

Sec. 14. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

service providers in the customer choice program.

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

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

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

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

(c) This subsection applies only to a municipality:

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

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

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

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

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

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

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

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

known as the Illinois basin.

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

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

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

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

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

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

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

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

(1) Any of the following projects:

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

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

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

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

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

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

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

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

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

(2) that either:

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

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

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

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

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

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

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

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

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

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

(2) The facility is a:

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

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

dedicated primarily to serving Indiana retail customers.

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

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

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

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

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

(1) Energy from wind.

(2) Solar energy.

(3) Photovoltaic cells and panels.

(4) Dedicated crops grown for energy production.

(5) Organic waste biomass, **including any of the following organic matter that is available on a renewable basis:**

(A) Agricultural crops.

(B) Agricultural wastes and residues.

(C) Wood and wood wastes, including the following:

(i) Wood residues.

(ii) Forest thinnings.

(iii) Mill residue wood.

(iv) Waste from clean construction and demolition.

(D) Animal wastes.

(E) Aquatic plants.

(6) Hydropower from existing dams.

(7) Fuel cells.

(8) Energy from waste to energy facilities producing steam not used for the production of electricity.

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

~~(1) Waste wood.~~

~~(2)~~ **(1)** Tires.

~~(3)~~ **(2)** General household, institutional, commercial, industrial lunchroom, office, or landscape waste.

~~(4) Construction or demolition debris.~~

(c) The term excludes treated or painted lumber.

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

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

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

(c) An application must include the following:

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

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

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

(4) Other information the commission considers necessary.

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

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

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

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

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

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

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

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

Chapter 8.9. Financing of Substitute Natural Gas Costs

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

property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 4. As used in this chapter, "financing entity" means a person that provides:

(1) equity financing; or

(2) debt financing;

that is secured by an SNG property interest.

Sec. 5. As used in this chapter, "qualified contract" means a contract with a term of at least thirty (30) years for the sale of substitute natural gas to an energy utility.

Sec. 6. As used in this chapter, "qualified cost" means any cost incurred by an energy utility in purchasing substitute natural gas under a qualified contract.

Sec. 7. As used in this chapter, "qualified order" means a final and irrevocable order that:

(1) is issued by the commission; and

(2) approves a qualified contract adopted in accordance with this chapter and IC 8-1-2-42.1.

Sec. 8. As used in this chapter, "substitute natural gas" or "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

Sec. 9. As used in this chapter, "SNG property interest" means the right, title, and interest that:

(1) are held by an energy utility or its assignee;

(2) are created by a qualified order; and

(3) entitle the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.1.

Sec. 10. As used in this chapter, "SNG seller" means any individual, corporation, or other legal entity that engages in the production and sale of substitute natural gas.

Sec. 11. (a) Notwithstanding any other law, the commission may, in accordance with this chapter and IC 8-1-2-42.1, issue a qualified order that:

(1) approves the terms of a qualified contract; and

(2) authorizes the recovery of qualified costs by an energy utility from its customers.

(b) A qualified order issued under this section may not be:

(1) rescinded;

(2) nullified; or

(3) modified;

in such a manner that reduces or otherwise impairs the value of an SNG property interest.

Sec. 12. (a) An SNG property interest, including any right to future purchases of substitute natural gas during the term of a qualified contract, constitutes a present property right.

(b) Qualified costs recovered by an energy utility under a qualified order constitute proceeds of only the SNG property

interest that is created by the qualified order.

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

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

(2) limit, alter, or impair:

(A) the qualified order;

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

(C) qualified costs that are:

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

(ii) remitted to the SNG seller;

under the terms of the qualified contract;

until the qualified contract has been performed in full.

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

(1) another party to the qualified contract; or

(2) a financing entity.

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

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

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

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

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

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

(1) segregated by the energy utility; and

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

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

Sec. 14. The interests of an assignee in:

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

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

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

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

(1) the resulting transaction:

(A) is a true sale; and

(B) is not a secured transaction; and

(2) title, both legal and equitable, passes to the person to which the SNG property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

(1) the assignee has recourse against the assignor; or

(2) the agreement provides for any of the following:

(A) The assignor's retention of an equity interest in the SNG property interest transferred.

(B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 16. (a) An SNG property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in SNG property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an SNG property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the SNG property interest and, upon perfection through the filing of notice with the secretary of state:

(1) constitutes a continuously perfected lien and security interest in the SNG property interest and all proceeds of the SNG property interest, whether or not accrued;

(2) has priority in the order of its filing; and

(3) takes precedence over any subsequent judicial lien or other creditor's lien.

If notice is filed with the secretary of state not later than ten (10) days after value is received for the indebtedness, the security interest is perfected retroactive to the date the value was received. If notice is not filed with the secretary of state within ten (10) days after value is received for the indebtedness, the security interest is perfected as of the date of filing.

(c) Transfer of an SNG property interest to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, upon:

(1) the delivery of transfer documents to the assignee; and

(2) the filing of notice with the secretary of state in accordance with subsection (b).

However, if notice of the transfer is not filed with the secretary of state within ten (10) days after the delivery of the transfer documentation, the transfer of the SNG property interest is not perfected against third parties until the notice is filed.

(d) The priority of a lien and security interest under this section is not impaired by either of the following:

(1) A later modification of the qualified order creating the SNG property interest being transferred.

(2) The commingling of other funds with funds collected in connection with a qualified contract. Any other security interest that may apply to funds collected in connection with a qualified contract terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If an SNG property interest has been transferred to an assignee, any proceeds from the SNG property interest shall be held in trust for the assignee.

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

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

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

(1) any bankruptcy, reorganization, or other insolvency proceeding;

(2) any merger, sale, or transfer involving the energy utility; or

(3) the operation of law;

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

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

(1) the transportation and distribution of substitute natural gas; and

(2) billing, collection, and other related services;

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

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

(1) retains title to all substitute natural gas distributed by the energy utility to the energy utility's retail end use customers;

(2) is entitled to all amounts collected by the energy utility

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

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

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

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

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

(B) mitigating price and supply risk;

(C) improving price stability; and

(D) promoting economic development and job creation.

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

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

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

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

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

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**