



Reprinted
April 21, 2011

ENGROSSED HOUSE BILL No. 1128

DIGEST OF HB 1128 (Updated April 20, 2011 11:17 pm - DI 101)

Citations Affected: IC 8-1.

Synopsis: Renewable energy resources. Provides that the following qualify as a renewable energy resources for purposes of the statute that provides financial incentives for clean coal and energy projects: (1) Hydrogen. (2) Coal bed methane derived from a naturally occurring biogenic process. (3) Low temperature, oxygen starved gasification of municipal solid waste. (4) Methane recovered from landfills for the production of electricity. Defines a "compliance project" as a project undertaken by an energy utility to comply with certain specified federally mandated requirements. Requires an energy utility that seeks
(Continued next page)

Effective: Upon passage; July 1, 2011.

Koch, Battles

(SENATE SPONSOR — GARD)

January 6, 2011, read first time and referred to Committee on Utilities and Energy.
January 27, 2011, amended, reported — Do Pass.
February 3, 2011, read second time, ordered engrossed. Engrossed.
February 7, 2011, read third time, passed. Yeas 78, nays 18.

SENATE ACTION

February 17, 2011, read first time and referred to Committee on Utilities and Technology.
April 7, 2011, amended, reported favorably — Do Pass.
April 20, 2011, read second time, amended, ordered engrossed.

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to recover federally mandated costs incurred in connection with a compliance project to apply to the utility regulatory commission (IURC) for a certificate of public convenience and necessity for the compliance project. Sets forth certain factors that the IURC must consider in determining whether to grant a certificate. Specifies that if the IURC approves a proposed compliance project and the projected federally mandated costs associated with the project, the following apply: (1) 80% of the approved costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism. (2) 20% of the approved costs shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the IURC. (3) Actual costs exceeding the projected federally mandated costs of the approved compliance project by more than 25% shall require specific justification and approval before being authorized in the energy utility's next general rate case. Allows a nuclear energy production or generating facility to qualify for certain financial incentives available for clean energy projects if the facility: (1) supplies electricity to Indiana retail customers on July 1, 2011; and (2) is undergoing a comprehensive life cycle management project to enhance the safety and reliability of the facility while it is licensed to operate by the United States Nuclear Regulatory Commission. Requires the IURC to adopt rules to establish the voluntary clean energy portfolio standard program to provide incentives to participating electricity suppliers to obtain specified percentages of electricity from clean energy sources in accordance with two clean portfolio standard goals (CPS goals). Sets forth qualifying clean energy resources for purposes of the program. Amends the definition of "renewable energy resources" for purposes of the statute providing financial incentives for clean energy projects to consist of certain clean energy resources that qualify for the voluntary clean energy portfolio standard program. Requires the IURC to determine, before approving an application for participation in the program, that approving the application will not result in an increase to the electricity supplier's retail rates and charges above what could reasonably be expected if the application were not approved. Provides that a participating electricity supplier may own or purchase clean energy credits to meet a CPS goal. Beginning in 2014, requires: (1) a participating electricity supplier to report annually to the IURC on the supplier's efforts to meet the CPS goals; and (2) the IURC to include in its annual report to the regulatory flexibility committee a summary of the information reported by participating electricity suppliers. Amends the Indiana Code section concerning the state utility forecasting group's (SUFG) annual study of renewable energy resources as follows: (1) Requires the SUFG to study certain specified clean energy resources. (2) Provides that the IURC: (A) may direct the SUFG to study additional clean energy resources; and (B) shall direct the SUFG concerning the appropriate level of detail for the report prepared in connection with the study. (3) Removes the requirement that the SUFG evaluate potential renewable energy generation opportunities from biomass and algae production systems.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1128

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources.

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

1 SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 8.4. Federally Mandated Requirements for Energy**
5 **Utilities**

6 **Sec. 1. As used in this chapter, "certificate" refers to a**
7 **certificate of public convenience and necessity issued by the**
8 **commission under section 7(b) of this chapter.**

9 **Sec. 2. (a) As used in this chapter, "compliance project" means**
10 **a project that is:**

11 (1) **undertaken by an energy utility; and**
12 (2) **related to the direct or indirect compliance by the energy**
13 **utility with one (1) or more federally mandated requirements.**

14 **(b) The term includes:**

15 (1) **an addition; or**
16 (2) **an integrity, enhancement, or replacement project;**
17 **undertaken by an energy utility to comply with a federally**

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1 mandated requirement described in section 5(5) of this chapter.
 2 Sec. 3. As used in this chapter, "energy utility" has the meaning
 3 set forth in IC 8-1-2.5-2.
 4 Sec. 4. (a) As used in this chapter, "federally mandated costs"
 5 means costs that an energy utility incurs in connection with a
 6 compliance project, including capital, operating, maintenance,
 7 depreciation, tax, or financing costs.
 8 (b) The term does not include fines or penalties assessed against
 9 or imposed on an energy utility for violating laws, regulations, or
 10 consent decrees related to a federally mandated requirement.
 11 Sec. 5. As used in this chapter, "federally mandated
 12 requirement" means a requirement that the commission
 13 determines is imposed on an energy utility by the federal
 14 government in connection with any of the following:
 15 (1) The federal Clean Air Act (42 U.S.C. 7401 et seq.).
 16 (2) The federal Water Pollution Control Act (33 U.S.C. 1251
 17 et seq.).
 18 (3) The federal Resource Conservation and Recovery Act (42
 19 U.S.C. 6901 et seq.).
 20 (4) The federal Toxic Substances Control Act (15 U.S.C. 2601
 21 et seq.).
 22 (5) Standards or regulations concerning the integrity, safety,
 23 or reliable operation of:
 24 (A) transmission; or
 25 (B) distribution;
 26 pipeline facilities.
 27 (6) Requirements relating to a license issued by the United
 28 States Nuclear Regulatory Commission to operate a nuclear
 29 energy production or generating facility (as defined in
 30 IC 8-1-8.8-8.5).
 31 (7) Any other law, order, or regulation administered or issued
 32 by the United States Environmental Protection Agency, the
 33 United States Department of Transportation, the Federal
 34 Energy Regulatory Commission, or the United States
 35 Department of Energy.
 36 Sec. 6. (a) Except as provided in subsection (c), or unless an
 37 energy utility has elected to file for:
 38 (1) a certificate of public convenience and necessity; or
 39 (2) the recovery of costs;
 40 under another statute, an energy utility that seeks to recover
 41 federally mandated costs under section 7(c) of this chapter must
 42 obtain from the commission a certificate that states that public

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convenience and necessity will be served by a compliance project proposed by the energy utility.

(b) The commission shall issue a certificate of public convenience and necessity under section 7(b) of this chapter if the commission finds that the proposed compliance project will allow the energy utility to comply directly or indirectly with one (1) or more federally mandated requirements. In determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The following, which must be set forth in the energy utility's application for the certificate sought, in accordance with section 7(a) of this chapter:

(A) A description of the federally mandated requirements, including any consent decrees related to the federally mandated requirements, that the energy utility seeks to comply with through the proposed compliance project.

(B) A description of the projected federally mandated costs associated with the proposed compliance project, including costs that are allocated to the energy utility:

(i) in connection with regional transmission expansion planning and construction; or

(ii) under a Federal Energy Regulatory Commission approved tariff, rate schedule, or agreement.

(C) A description of how the proposed compliance project allows the energy utility to comply with the federally mandated requirements described by the energy utility under clause (A).

(D) Alternative plans that demonstrate that the proposed compliance project is reasonable and necessary.

(E) Information as to whether the proposed compliance project will extend the useful life of an existing energy utility facility and, if so, the value of that extension.

(2) Any other factors the commission considers relevant.

(c) An energy utility is not required to obtain a certificate under this section for a project that constitutes a research and development project.

Sec. 7. (a) As a condition for receiving the certificate required under section 6 of this chapter, an energy utility must file with the commission an application that sets forth the information described in section 6(b) of this chapter, supported with technical information in as much detail as the commission requires.

(b) The commission shall hold a properly noticed public hearing

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1 on each application and grant a certificate only if the commission
2 has:

- 3 (1) made a finding that the public convenience and necessity
- 4 will be served by the proposed compliance project;
- 5 (2) approved the projected federally mandated costs
- 6 associated with the proposed compliance project; and
- 7 (3) made a finding on each of the factors set forth in section
- 8 6(b) of this chapter.

9 (c) If the commission approves under subsection (b) a proposed
10 compliance project and the projected federally mandated costs
11 associated with the proposed compliance project, the following
12 apply:

- 13 (1) Eighty percent (80%) of the approved federally mandated
- 14 costs shall be recovered by the energy utility through a
- 15 periodic retail rate adjustment mechanism that allows the
- 16 timely recovery of the approved federally mandated costs.
- 17 The commission shall adjust the energy utility's authorized
- 18 net operating income to reflect any approved earnings for
- 19 purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).
- 20 (2) Twenty percent (20%) of the approved federally mandated
- 21 costs, including depreciation, allowance for funds used during
- 22 construction, and post in service carrying costs, based on the
- 23 overall cost of capital most recently approved by the
- 24 commission, shall be deferred and recovered by the energy
- 25 utility as part of the next general rate case filed by the energy
- 26 utility with the commission.
- 27 (3) Actual costs that exceed the projected federally mandated
- 28 costs of the approved compliance project by more than
- 29 twenty-five percent (25%) require specific justification by the
- 30 energy utility and specific approval by the commission before
- 31 being authorized in the next general rate case filed by the
- 32 energy utility with the commission.

33 SECTION 2. IC 8-1-8.8-1, AS AMENDED BY P.L.175-2007,
34 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2011]: Sec. 1. (a) The general assembly makes the following
36 findings:

- 37 (1) Growth of Indiana's population and economic base has created
- 38 a need for new energy production or generating facilities in
- 39 Indiana.
- 40 (2) The development of a robust and diverse portfolio of energy
- 41 production or generating capacity, including coal gasification and
- 42 the use of renewable energy resources, is needed if Indiana is to

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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.

(7) It is in the public interest for the state to encourage the study, analysis, development, and life cycle management of nuclear energy production or generating facilities, as well as carbon dioxide capture, transportation, and storage facilities.

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

(1) Indiana's **and the region'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 and gas transportation systems within Indiana 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.

(5) The study, analysis, development, and life cycle management of nuclear energy production or generating facilities are encouraged at the same time as are new coal fired and other fossil fuel based energy production or generating facilities.

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1 SECTION 3. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 2. As used in this chapter, "clean ~~coal and~~ energy
4 projects" means any of the following:

5 (1) Any of the following projects:

6 (A) Projects at new energy production or generating facilities
7 that employ the use of clean coal technology and that produce
8 energy, including substitute natural gas, primarily from coal,
9 or gases derived from coal, from the geological formation
10 known as the Illinois Basin.

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

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

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

23 **(E) Projects or potential projects that enhance the safe and**
24 **reliable use of nuclear energy production or generating**
25 **technologies to produce electricity.**

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

28 (3) The purchase of fuels **or energy** produced by a coal
29 gasification facility **or by a nuclear energy production or**
30 **generating facility.**

31 (4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use
32 coal bed methane.

33 SECTION 4. IC 8-1-8.8-4, AS AMENDED BY P.L.175-2007,
34 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2011]: Sec. 4. As used in this chapter, "coal gasification
36 facility" means a facility in Indiana that uses a manufacturing process
37 that converts coal into a clean gas that can be used:

38 (1) as a fuel to generate energy; or

39 (2) as substitute natural gas.

40 SECTION 5. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007,
41 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2011]: Sec. 6. As used in this chapter, "eligible business"

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1 means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal
2 gasification facility that:

- 3 (1) proposes to construct or repower a new energy production or
4 generating facility;
5 (2) proposes to construct or repower a project described in section
6 2(1) or 2(2) of this chapter;
7 (3) undertakes a project to develop alternative energy sources,
8 including renewable energy projects or **coal gasification**
9 **facilities; or**
10 (4) purchases fuels **or energy** produced by a coal gasification
11 facility **or by a nuclear energy production or generating**
12 **facility.**

13 SECTION 6. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007,
14 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2011]: Sec. 8. (a) As used in this chapter, "new energy
16 **production or generating facility**" refers to a generation or coal
17 gasification facility that satisfies all of the following:

- 18 (1) The facility produces energy primarily from coal or gases from
19 coal from the geological formation known as the Illinois Basin.
20 (2) The facility is a:
21 (A) newly constructed or newly repowered energy ~~generation~~
22 plant; or
23 (B) newly constructed ~~generation~~ capacity expansion at an
24 existing ~~facility; plant;~~
25 dedicated primarily to serving Indiana retail customers.
26 (3) The repowering, construction, or expansion of the facility was
27 begun by an Indiana utility after July 1, 2002.
28 (4) Except for a facility that is a clean ~~coal and~~ energy project
29 under section 2(2) of this chapter, the facility has an aggregate
30 rated electric generating capacity of at least one hundred (100)
31 megawatts for all units at one (1) site or a generating capacity of
32 at least four hundred thousand (400,000) pounds per hour of
33 steam.

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

37 SECTION 7. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE
38 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2011]: **Sec. 8.5. (a) As used in this chapter, "nuclear energy**
40 **production or generating facility" means an energy production or**
41 **generation facility that:**

- 42 (1) uses a nuclear reactor as its heat source to provide steam

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- 1 to a turbine generator to produce or generate electricity;
- 2 (2) supplies electricity to Indiana retail customers on July 1,
- 3 2011;
- 4 (3) is dedicated primarily to serving Indiana customers; and
- 5 (4) is undergoing a comprehensive life cycle management
- 6 project to enhance the safe and reliable operation of the
- 7 facility during the period the facility is licensed to operate by
- 8 the United States Nuclear Regulatory Commission.

9 (b) The term includes the transmission lines and other
 10 associated equipment employed specifically to serve a nuclear
 11 energy production or generating facility.

12 SECTION 8. IC 8-1-8.8-8.7 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2011]: Sec. 8.7. As used in this chapter, "qualified utility system
 15 expenses" means the costs associated with the study, analysis, or
 16 development of a life cycle management project for a nuclear
 17 energy production or generating facility.

18 SECTION 9. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007,
 19 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2011]: Sec. 9. As used in this chapter, "qualified utility system
 21 property" means any:

22 (1) new energy production or generating or coal gasification
 23 facility; or

24 (2) nuclear energy production or generating facility;
 25 used, or to be used, in whole or in part, by an energy utility to provide
 26 retail energy service (as defined in IC 8-1-2.5-3) regardless of whether
 27 that service is provided under IC 8-1-2.5 or another provision of this
 28 article.

29 SECTION 10. IC 8-1-8.8-10, AS AMENDED BY P.L.95-2010,
 30 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2011]: Sec. 10. (a) As used in this chapter "renewable energy
 32 resource" means alternative sources of renewable energy, including
 33 any of the following:

- 34 (1) Energy from wind;
- 35 (2) Solar energy;
- 36 (3) Photovoltaic cells and panels;
- 37 (4) Dedicated crops grown for energy production;
- 38 (5) Organic waste biomass, including any of the following organic
 39 matter that is available on a renewable basis:
 - 40 (A) Agricultural crops;
 - 41 (B) Agricultural wastes and residues;
 - 42 (C) Wood and wood wastes, including the following:

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- 1 (i) Wood residues.
- 2 (ii) Forest thinnings.
- 3 (iii) Mill residue wood.
- 4 (D) Animal wastes.
- 5 (E) Animal byproducts.
- 6 (F) Aquatic plants.
- 7 (G) Algae.
- 8 (6) Hydropower from existing dams.
- 9 (7) Fuel cells.
- 10 (8) Energy from waste to energy facilities.
- 11 (9) Energy storage systems.
- 12 (1) A clean energy resource listed in IC 8-1-37-4(a)(1) through
- 13 IC 8-1-37-4(a)(16).
- 14 (2) Low temperature, oxygen starved gasification of municipal
- 15 solid waste.
- 16 (3) Methane recovered from landfills for the production of
- 17 electricity.
- 18 (b) Except for energy described in subsection (a)(8), **from waste to**
- 19 **energy facilities**, the term does not include energy from the
- 20 incinerations, burning, or heating of any of the following:
- 21 (1) Tires.
- 22 (2) General household, institutional, commercial, industrial
- 23 lunchroom, office, or landscape waste.
- 24 (c) The term excludes treated or painted lumber.
- 25 SECTION 11. IC 8-1-8.8-11 IS AMENDED TO READ AS
- 26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The commission
- 27 shall encourage clean ~~coal and~~ energy projects by creating the
- 28 following financial incentives for clean ~~coal and~~ energy projects, if the
- 29 projects are found to be reasonable and necessary:
- 30 (1) The timely recovery of costs **and expenses** incurred during
- 31 construction and operation of projects described in section 2(1) or
- 32 2(2) of this chapter.
- 33 (2) The authorization of up to three (3) percentage points on the
- 34 return on shareholder equity that would otherwise be allowed to
- 35 be earned on projects described in subdivision (1).
- 36 (3) Financial incentives for the purchase of fuels **or energy**
- 37 **produced by a coal gasification facility or by a nuclear energy**
- 38 **production or generating facility**, including cost recovery and
- 39 the incentive available under subdivision (2).
- 40 (4) Financial incentives for projects to develop alternative energy
- 41 sources, including renewable energy projects **or coal gasification**
- 42 **facilities.**

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1 (5) Other financial incentives the commission considers
2 appropriate.

3 (b) An eligible business must file an application to the commission
4 for approval of a clean ~~coal and~~ energy project under this section. This
5 chapter does not relieve an eligible business of the duty to obtain any
6 certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business
7 seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for
8 one (1) project may file a single application for all necessary
9 certificates. If a single application is filed, the commission shall
10 consider all necessary certificates at the same time.

11 (c) The commission shall promptly review an application filed
12 under this section for completeness. The commission may request
13 additional information the commission considers necessary to aid in its
14 review.

15 (d) The commission shall, after notice and hearing, issue a
16 determination of a project's eligibility for the financial incentives
17 described in subsection (a) not later than one hundred twenty (120)
18 days after the date of the application, unless the commission finds that
19 the applicant has not cooperated fully in the proceeding.

20 SECTION 12. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007,
21 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2011]: Sec. 12. (a) The commission shall provide financial
23 incentives to eligible businesses for:

24 (1) new energy ~~producing and~~ **production or** generating
25 facilities; **and**

26 (2) **nuclear energy production or generating facilities;**
27 in the form of timely recovery of the costs incurred in connection with
28 the **study, analysis, development, siting, design, licensing,**
29 **permitting,** construction, repowering, expansion, **life cycle**
30 **management,** operation, or maintenance of the facilities.

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

35 (c) An application must include the following:

36 (1) A schedule for the completion of construction, repowering,
37 **life cycle management,** or expansion of the ~~new energy~~
38 ~~generating or coal gasification~~ facility for which rate relief is
39 sought.

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

42 (3) The amount of capital investment by the eligible business in

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- 1 the ~~new energy generating or coal gasification~~ facility.
- 2 (4) Other information the commission considers necessary.
- 3 (d) The commission shall allow an eligible business to recover:
- 4 **(1) the costs associated with qualified utility system property; and**
- 5 **(2) qualified utility system expenses;**

6 if the eligible business provides substantial documentation that the
 7 expected costs ~~associated with qualified utility system property~~ and
 8 **expenses and** the schedule for incurring those costs **and expenses** are
 9 reasonable and necessary.

10 (e) The commission shall allow an eligible business to recover the
 11 costs associated with the purchase of fuels **or energy** produced by a
 12 coal gasification facility **or by a nuclear energy production or**
 13 **generating facility** if the eligible business provides substantial
 14 documentation that the costs associated with the purchase are
 15 reasonable and necessary.

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

21 SECTION 13. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007,
 22 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2011]: Sec. 13. An eligible business shall file a monthly report
 24 with the lieutenant governor stating the following information:

- 25 (1) The amount of Illinois Basin coal, if any, purchased during the
 26 previous month for use in a new energy **production or** generating
 27 ~~or coal gasification~~ facility.
- 28 (2) The amount of any fuel **or energy** produced by:
- 29 **(A) a coal gasification facility; and or**
- 30 **(B) a nuclear energy production or generating facility;**
 31 **that is** purchased by the eligible business during the previous
 32 month.
- 33 (3) Any other information the lieutenant governor may reasonably
 34 require.

35 SECTION 14. IC 8-1-8.8-14, AS AMENDED BY P.L.71-2009,
 36 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2011]: Sec. 14. The group shall conduct an annual study on
 38 the use, availability, and economics of using ~~renewable in Indiana~~ **the**
 39 **clean energy resources in Indiana. listed in IC 8-1-37-4(a)(1) through**
 40 **IC 8-1-37-4(a)(6). The commission may direct the group to study**
 41 **additional clean energy resources as the commission considers**
 42 **appropriate.** Each year, the group shall submit a report on the study

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1 to the commission for inclusion in the commission's annual report to
2 the regulatory flexibility committee described in IC 8-1-2.5-9 and
3 IC 8-1-2.6-4. **The commission shall direct the group concerning the**
4 **appropriate level of detail for the report.** The report must include
5 suggestions from the group to encourage the development and use of
6 ~~renewable clean~~ energy resources and technologies appropriate for use
7 in Indiana. ~~In formulating the suggestions, the group shall evaluate~~
8 ~~potential renewable energy generation opportunities from biomass and~~
9 ~~algae production systems.~~

10 SECTION 15. IC 8-1-13.1-2, AS ADDED BY P.L.151-2009,
11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]: Sec. 2. As used in this chapter, "alternative energy
13 project" means a project that:

- 14 (1) develops or makes use of:
 - 15 (A) clean ~~coal and~~ energy projects (as defined in IC 8-1-8.8-2);
 - 16 (B) renewable energy resources (as defined in IC 8-1-8.8-10)
 - 17 for the production of electricity;
 - 18 (C) integrated gasification combined cycle (IGCC) technology
 - 19 to produce synthesis gas that is used:
 - 20 (i) to generate electricity; or
 - 21 (ii) as a substitute for natural gas;
 - 22 regardless of the fuel source used to produce the synthesis gas;
 - 23 (D) methane recovered from landfills for the production of
 - 24 electricity;
 - 25 (E) demand side management, energy efficiency, or
 - 26 conservation programs; or
 - 27 (F) coal bed methane;
- 28 (2) results in quantifiable reductions in, or the avoidance of:
 - 29 (A) the use of electricity produced by traditional electric
 - 30 generating facilities that use fossil fuels as their fuel source; or
 - 31 (B) regulated air pollutants and carbon emissions produced by
 - 32 traditional electric generating facilities that use fossil fuels as
 - 33 their fuel source; and
- 34 (3) is implemented under a plan approved by:
 - 35 (A) the office; and
 - 36 (B) a corporation's or a cooperatively owned power supplier's
 - 37 board of directors.

38 SECTION 16. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS
39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
40 PASSAGE]:

41 **Chapter 37. Voluntary Clean Energy Portfolio Standard**
42 **Program**

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- 1 **Sec. 1. As used in this chapter, "base year" means the calendar**
- 2 **year ending December 31, 2010.**
- 3 **Sec. 2. As used in this chapter, "clean energy" means electricity**
- 4 **that is produced from a clean energy resource.**
- 5 **Sec. 3. As used in this chapter, "clean energy credit", or "CEC",**
- 6 **means an interest that:**
 - 7 **(1) represents one (1) megawatt hour of clean energy that**
 - 8 **satisfies the applicable conditions set forth in section 12(c)(2)**
 - 9 **of this chapter;**
 - 10 **(2) is quantifiable and transferrable; and**
 - 11 **(3) is possessed by not more than one (1) entity at a time.**
- 12 **Sec. 4. (a) As used in this chapter, "clean energy resource"**
- 13 **means any of the following sources, clean sources, alternative**
- 14 **technologies, or programs used in connection with the production**
- 15 **or conservation of electricity:**
 - 16 **(1) Energy from wind.**
 - 17 **(2) Solar energy.**
 - 18 **(3) Photovoltaic cells and panels.**
 - 19 **(4) Dedicated crops grown for energy production.**
 - 20 **(5) Organic waste biomass, including any of the following**
 - 21 **organic matter that is available on a renewable basis:**
 - 22 **(A) Agricultural crops.**
 - 23 **(B) Agricultural wastes and residues.**
 - 24 **(C) Wood and wood wastes, including the following:**
 - 25 **(i) Wood residues.**
 - 26 **(ii) Forest thinnings.**
 - 27 **(iii) Mill residue wood.**
 - 28 **(D) Animal wastes.**
 - 29 **(E) Animal byproducts.**
 - 30 **(F) Aquatic plants.**
 - 31 **(G) Algae.**
 - 32 **(6) Hydropower.**
 - 33 **(7) Fuel cells.**
 - 34 **(8) Hydrogen.**
 - 35 **(9) Energy from waste to energy facilities, including energy**
 - 36 **derived from advanced solid waste conversion technologies.**
 - 37 **(10) Energy storage systems or technologies.**
 - 38 **(11) Geothermal energy.**
 - 39 **(12) Coal bed methane derived from a naturally occurring**
 - 40 **biogenic process.**
 - 41 **(13) Industrial byproduct technologies that use fuel or energy**
 - 42 **that is a byproduct of an industrial process.**

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(14) Waste heat recovery from capturing and reusing the waste heat in industrial processes for heating or for generating mechanical or electrical work.

(15) A source, technology, or program approved by the commission and designated as a clean energy resource by a rule adopted by the commission under IC 4-22-2.

(16) Demand side management or energy efficiency initiatives that:

- (A) reduce electricity consumption; or
- (B) implement load management, demand response, or energy efficiency measures designed to shift customers' electric loads from periods of higher demand to periods of lower demand;

as a result of equipment installed, or customers enrolled, after January 1, 2010.

(17) A clean energy project described in IC 8-1-8.8-2(1).

(18) Nuclear energy.

(19) Electricity that is:

- (A) generated by a customer owned distributed generation facility that is interconnected to the electricity supplier's distribution system in accordance with the commission's interconnection standards set forth in 170 IAC 4-4.3; and
- (B) supplied back to the electricity supplier for use in meeting the electricity supplier's electricity demand requirements in accordance with the commission's net metering rules set forth in 170 IAC 4-4.2.

(20) Combined heat and power systems.

(21) Electricity that is generated from natural gas at a facility constructed in Indiana after July 1, 2011, which displaces electricity generation from an existing coal fired generation facility.

(b) Except for energy described in subsection (a)(9), the term does not include energy from the incineration, burning, or heating of any of the following:

- (1) Tires.
- (2) General household, institutional, commercial, industrial, lunchroom, office, or landscape waste.

(c) The term excludes treated or painted lumber.

Sec. 5. As used in this chapter, "clean portfolio standard goal", or "CPS goal", refers to a goal set forth in section 12(a) of this chapter that a participating electricity supplier must achieve during a specified period during the program to qualify for one (1)

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1 or more of the financial incentives described in section 13 of this
2 chapter.

3 Sec. 6. (a) As used in this chapter, "electricity supplier" means
4 a public utility (as defined in IC 8-1-2-1) that furnishes retail
5 electric service to customers in Indiana on January 1, 2011.

6 (b) The term does not include a utility that is:

- 7 (1) a municipally owned utility (as defined in IC 8-1-2-1(h));
8 (2) a corporation organized under IC 8-1-13; or
9 (3) a corporation organized under IC 23-17 that is an electric
10 cooperative and that has at least one (1) member that is a
11 corporation organized under IC 8-1-13.

12 Sec. 7. As used in this chapter, "participating electricity
13 supplier" refers to an electricity supplier that has been approved
14 by the commission under section 11 of this chapter to participate
15 in the program.

16 Sec. 8. As used in this chapter, "program" refers to the Indiana
17 voluntary clean energy portfolio standard program established by
18 the commission under section 10 of this chapter.

19 Sec. 9. As used in this chapter, "regional transmission
20 organization", with respect to an electricity supplier, refers to the
21 regional transmission organization approved by the Federal
22 Energy Regulatory Commission for the control area that includes
23 the electricity supplier's assigned service area (as defined in
24 IC 8-1-2.3-2).

25 Sec. 10. (a) Subject to subsection (d), the commission shall adopt
26 rules under IC 4-22-2 to establish the Indiana voluntary clean
27 energy portfolio standard program. The program established
28 under this section must be a voluntary program that provides
29 incentives to participating electricity suppliers that undertake to
30 supply specified percentages of the total electricity supplied to their
31 Indiana retail electric customers from clean energy.

32 (b) The rules adopted by the commission under this section to
33 establish the program must:

34 (1) incorporate:

- 35 (A) the CPS goals set forth in section 12(a) of this chapter;
36 (B) methods for measuring and evaluating a participating
37 electricity supplier's compliance with the CPS goals set
38 forth in section 12(a) of this chapter;
39 (C) the financial incentives and periodic rate adjustment
40 mechanisms set forth in section 13 of this chapter; and
41 (D) the reporting requirements set forth in section 14 of
42 this chapter;

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- 1 (2) require the commission to determine, before approving an
- 2 application under section 11 of this chapter, that the approval
- 3 of the application will not result in an increase to the retail
- 4 rates and charges of the electricity supplier above what could
- 5 reasonably be expected if the application were not approved;
- 6 (3) take effect not later than January 1, 2012; and
- 7 (4) be consistent with this chapter.

8 (c) Upon the effective date of the rules adopted by the
 9 commission under this section, an electricity supplier may apply to
 10 the commission under section 11 of this chapter for approval to
 11 participate in the program.

12 (d) The commission may adopt emergency rules under
 13 IC 4-22-2-37.1 to adopt the rules required by this section. An
 14 emergency rule adopted by the commission under IC 4-22-2-37.1
 15 expires on the date a rule that supersedes the emergency rule is
 16 adopted by the commission under IC 4-22-2-24 through
 17 IC 4-22-2-36.

18 Sec. 11. (a) An electricity supplier that seeks to participate in the
 19 program established by the commission under section 10 of this
 20 chapter must apply to the commission:

- 21 (1) in the manner and on a form prescribed by the
- 22 commission; and
- 23 (2) not later than a date specified by the commission in the
- 24 rules adopted under section 10 of this chapter;

25 for approval to participate in the program.

26 (b) Upon receiving an application under subsection (a), the
 27 commission shall review the application for completeness. The
 28 commission may request additional information the commission
 29 considers necessary to aid in the commission's review.

30 (c) If the commission determines that:

- 31 (1) an application submitted under subsection (a) is complete
- 32 and reasonably complies with the purpose of this chapter;
- 33 (2) the electricity supplier submitting the application has
- 34 demonstrated that the electricity supplier has a reasonable
- 35 expectation of obtaining clean energy to meet the energy
- 36 requirements of its Indiana retail electric customers during
- 37 the calendar year ending December 31, 2025, in an amount
- 38 equal to at least ten percent (10%) of the total electricity
- 39 supplied by the participating electricity supplier to its Indiana
- 40 retail electric customers during the base year, as set forth in
- 41 section 12(a)(3) of this chapter; and
- 42 (3) approving the application will not result in an increase to

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1 the retail rates and charges of the electricity supplier above
 2 what could reasonably be expected if the application were not
 3 approved;
 4 the commission shall approve the application. If, however, the
 5 commission determines that the application does not meet the
 6 requirements set forth in this subsection, the commission shall
 7 reject the application. The electricity supplier that submitted the
 8 application under subsection (a) bears the burden of proving to the
 9 commission that the application meets the requirements set forth
 10 in this subsection.

11 Sec. 12. (a) Subject to subsection (c), to qualify for the financial
 12 incentives set forth in section 13 of this chapter, a participating
 13 electricity supplier must obtain clean energy to meet the energy
 14 requirements of the participating electricity supplier's Indiana
 15 retail electric customers according to the following CPS goals:

16 (1) CPS Goal Period I: For the six (6) calendar years
 17 beginning January 1, 2013, and ending December 31, 2018, an
 18 average of at least four percent (4%) of the total electricity
 19 obtained by the participating electricity supplier to meet the
 20 energy requirements of its Indiana retail electric customers
 21 during the base year.

22 (2) CPS Goal Period II: For the six (6) calendar years
 23 beginning January 1, 2019, and ending December 31, 2024, an
 24 average of at least seven percent (7%) of the total electricity
 25 obtained by the participating electricity supplier to meet the
 26 energy requirements of its Indiana retail electric customers
 27 during the base year.

28 (3) CPS Goal Period III: In the calendar year ending
 29 December 31, 2025, at least ten percent (10%) of the total
 30 electricity obtained by the participating electricity supplier to
 31 meet the energy requirements of its Indiana retail electric
 32 customers during the base year.

33 (b) For purposes of subsection (a), electricity is measured in
 34 megawatt hours. However, in determining whether a participating
 35 electricity supplier has met a CPS goal set forth in subsection (a),
 36 the commission shall multiply each megawatt hour of clean energy
 37 as follows:

38 (1) Subject to subdivision (2), for clean energy that is
 39 generated by a facility located in Indiana, by a factor of one
 40 and twenty-five hundredths (1.25).

41 (2) For clean energy that is generated by a facility located in
 42 Indiana, and from a clean energy resource listed in section

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4(a)(1) through 4(a)(16) of this chapter, by a factor of one and five tenths (1.5).

(c) In determining whether a participating electricity supplier has met a particular CPS goal set forth in subsection (a), the commission shall consider only clean energy that:

(1) except as provided in subsection (f), is obtained by the participating electricity supplier to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers during the CPS goal period under consideration; and

(2) is generated by a facility located in a control area that is part of a regional transmission organization of which an electricity supplier is a member.

(d) An electricity supplier is not required to obtain clean energy to meet a particular CPS goal if the commission determines that the cost of clean energy resources available to the electricity supplier would result in an increase in the rates and charges of the electricity supplier that would not be just and reasonable.

(e) A participating electricity supplier may own or purchase one (1) or more CECs to meet any of the CPS goals set forth in subsection (a) as long as the clean energy represented by the CEC meets the conditions set forth in subsection (c)(2).

(f) A participating electricity supplier may apply:

(1) amounts of clean energy supplied by the participating electricity supplier to its Indiana retail electric customers during a particular CPS goal period; or

(2) CECs acquired by the participating electricity supplier during a particular CPS goal period;

that exceed the requirements for the particular CPS goal period to the immediately succeeding CPS goal period.

(g) A participating electricity supplier may use a clean energy resource described in section 4(a)(17) through 4(a)(21) of this chapter to satisfy not more than thirty percent (30%) of any of the CPS goals set forth in subsection (a).

Sec. 13. (a) The commission may establish a shareholder incentive consisting of the authorization of an increased overall rate of return on equity, not to exceed fifty (50) basis points over a participating electricity supplier's authorized rate of return, whenever the participating electricity supplier attains a CPS goal set forth in section 12(a) of this chapter. The number of additional basis points authorized by the commission under this subsection may:

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- 1 (1) be different for each of the CPS goal periods identified in
- 2 section 12(a) of this chapter, as the commission determines is
- 3 appropriate; and
- 4 (2) in the case of a particular participating electricity supplier,
- 5 be based on the extent to which the participating electricity
- 6 supplier met a particular CPS goal using clean energy
- 7 resources listed in section 4(a)(1) through 4(a)(16) of this
- 8 chapter.

9 The additional basis points authorized by the commission under
 10 this subsection for each CPS goal period are not cumulative and
 11 may not be authorized for a clean energy resource for which the
 12 commission has authorized an incentive under IC 8-1-8.8-11(a)(2).
 13 In determining a participating electricity supplier's authorized rate
 14 of return to which additional basis points may be added upon the
 15 participating electricity supplier's achievement of a particular CPS
 16 goal, the commission shall not include as part of the authorized
 17 rate of return any additional basis points awarded to the
 18 participating electricity supplier for having achieved the
 19 immediately preceding CPS goal.

20 (b) If the commission approves an electricity supplier's
 21 application under section 11(c) of this chapter, the commission
 22 shall authorize the incentive described in subsection (a) and the
 23 recovery of costs, by means of a periodic rate adjustment
 24 mechanism, as described in subsection (c), based on the following
 25 considerations:

- 26 (1) The sharing of achieved savings or as a percentage of
- 27 costs.
- 28 (2) Avoided costs resulting from achieving demand side
- 29 management or energy efficiency targets.
- 30 (3) The recovery of lost revenues associated with
- 31 implementation of demand side management or energy
- 32 efficiency initiatives.
- 33 (4) The designation of electricity produced or conserved by a
- 34 clean energy resource as an energy savings for purposes of
- 35 any initiative, rule, or order approved by the commission to
- 36 promote the efficient use and production of electricity,
- 37 including initiatives to implement demand side management,
- 38 energy efficiency, or conservation measures in accordance
- 39 with commission rules.

40 (c) If the commission approved an electricity supplier's
 41 application under section 11(c) of this chapter, the commission
 42 shall permit the recovery, by means of a periodic rate adjustment

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1 mechanism, of all just, reasonable, and necessary program costs
 2 incurred by a participating electricity supplier in:

3 (1) constructing, operating, or maintaining facilities that
 4 generate clean energy that:

5 (A) is used by the participating electricity supplier in its
 6 efforts to meet a CPS goal set forth in section 12(a) of this
 7 chapter; and

8 (B) meets the requirements set forth in section 12(c) of this
 9 chapter; or

10 (2) otherwise generating or purchasing clean energy that is
 11 used by the participating electricity supplier in its efforts to
 12 meet a CPS goal set forth in section 12(a) of this chapter.

13 For purposes of this subsection and subsection (h)(1), "program
 14 costs" includes administrative costs, ancillary costs, capacity costs,
 15 costs associated with CECs, capital costs, depreciation costs, tax
 16 costs, and financing costs incurred in connection with an activity
 17 described in subdivision (1) or (2).

18 (d) A participating electricity supplier that seeks an incentive
 19 established by the commission under subsection (a) or a periodic
 20 rate adjustment mechanism established by the commission under
 21 subsection (c) must apply to the commission:

22 (1) in the manner and on a form prescribed by the
 23 commission; and

24 (2) not later than any dates specified by the commission in
 25 rules adopted under section 10 of this chapter;

26 for approval for the incentive or periodic rate adjustment
 27 mechanism sought.

28 (e) The commission shall review an application filed under this
 29 section for completeness. The commission may request additional
 30 information the commission considers necessary to aid in the
 31 commission's review.

32 (f) The commission shall, after notice and hearing, issue a
 33 determination of a participating electricity supplier's eligibility for
 34 the financial incentive or periodic rate adjustment mechanism
 35 sought. The commission shall issue a determination under this
 36 subsection not later than one hundred twenty (120) days after the
 37 date of the application, unless the commission finds that the
 38 applicant has not cooperated fully in the proceeding.

39 (g) Subject to the participating electricity supplier's continuing
 40 compliance with the applicable CPS goal, as determined according
 41 to the measurement and evaluation procedures described in section
 42 10(b)(1)(B) of this chapter, a shareholder incentive described in

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1 subsection (a) continues in effect until the earlier of the following:

2 (1) A time or upon an event specified in the commission's
3 order approving the shareholder incentive.

4 (2) The commission issues a new order authorizing the
5 participating electricity supplier to receive a shareholder
6 incentive for meeting the next CPS program goal.

7 (h) Subject to the participating electricity supplier's continuing
8 compliance with the applicable CPS goal, as determined according
9 to the measurement and evaluation procedures described in section
10 10(b)(1)(B) of this chapter, a periodic rate adjustment mechanism
11 described in subsection (c) continues in effect until the earlier of
12 the following:

13 (1) The participating electricity supplier has recovered the
14 program costs for which the periodic rate adjustment
15 mechanism was allowed.

16 (2) A time or upon an event specified in the commission's
17 order approving the periodic rate adjustment mechanism.

18 Sec. 14. (a) Beginning in 2014, each participating electricity
19 supplier shall report to the commission not later than March 1 of
20 each year on the following:

21 (1) The participating electricity supplier's efforts, if any,
22 during the most recently ended calendar year to meet the CPS
23 goal applicable to the most recently ended calendar year.

24 (2) The total amount of renewable energy supplied to the
25 participating electricity supplier's Indiana retail electric
26 customers during the most recently ended calendar year,
27 including a breakdown of the following:

28 (A) The amount of clean energy generated by facilities
29 owned or operated by the participating electricity supplier.
30 The participating electricity supplier shall identify each
31 facility by:

32 (i) name and location;

33 (ii) total generating capacity;

34 (iii) total amount of electricity generated at the facility
35 during the most recently ended calendar year, including
36 the percentage of this amount that was supplied to the
37 participating electricity supplier's Indiana retail electric
38 customers; and

39 (iv) total amount of clean energy generated at the facility
40 during the most recently ended calendar year, including
41 the percentage of this amount that was supplied to the
42 participating electricity supplier's Indiana retail electric

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- customers.
- (B) The amount of clean energy purchased from other suppliers of clean energy. The participating electricity supplier shall identify:
 - (i) each supplier from whom clean energy was purchased;
 - (ii) the amount of clean energy purchased from each supplier;
 - (iii) the price paid by the participating electricity supplier for the clean energy purchased from each supplier; and
 - (iv) to the extent known, the name and location of each facility at which the clean energy purchased from each supplier was generated.
- (3) The number of CECs purchased by the participating electricity supplier during the most recently ended calendar year. The participating electricity supplier shall identify:
 - (A) each person from whom one (1) or more CECs was purchased;
 - (B) the price paid to each person identified in clause (A) for the CECs purchased;
 - (C) the number of CECs applied, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year; and
 - (D) the number of CECs, if any, that the participating electricity supplier plans to carry over to the next succeeding CPS goal period, as permitted by section 12(f) of this chapter.
- (4) The participating electricity supplier's plans for meeting the CPS goal applicable to the calendar year in which the report is submitted.
- (5) Advances in clean energy technology that affect activities described in subdivisions (1) and (4).
- (6) Any other information that the commission prescribes in rules adopted under IC 4-22-2.

For purposes of this subsection, amounts of clean energy and electricity shall be reported in megawatt hours. A participating electricity supplier's duty to submit a report under this subsection terminates after the participating electricity supplier has submitted the report that applies to the calendar year ending December 31, 2025.

(b) Beginning in 2014, the commission's annual report to the

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1 regulatory flexibility committee under IC 8-1-2.5-9(b) must include
2 a summary of the information provided by participating electricity
3 suppliers under subsection (a) with respect to the most recently
4 ended calendar year. The commission's duty to include the
5 information specified in this subsection in its annual report to the
6 regulatory flexibility committee terminates after the commission
7 has submitted the information that applies to the calendar year
8 ending December 31, 2025.

9 SECTION 17. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities and Energy, to which was referred House Bill 1128, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 9 and 10, begin a line block indented and insert:

"(11) Coal bed methane derived from a naturally occurring biogenic process."

and when so amended that said bill do pass.

(Reference is to HB 1128 as introduced.)

LUTZ, Chair

Committee Vote: yeas 9, nays 1.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Technology, to which was referred House Bill No. 1128, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources.

Page 2, between lines 11 and 12, begin a new line block indented and insert:

"(12) Low temperature, oxygen starved gasification of municipal solid waste.

(13) Methane recovered from landfills for the production of electricity."

Page 2, line 12, strike "subsection (a)(8)," and insert "**subsections (a)(8) and (a)(12),"**

Page 2, after line 18, begin a new paragraph and insert:

"SECTION 2. IC 14-8-2-42.2, AS ADDED BY P.L.78-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 42.2. "Coal bed methane", for purposes of ~~IC 14-37-4-1~~, **section 317 of this chapter and IC 14-37**, means gaseous substances of whatever character lying within or emanating



from:

- (1) unmined coal seams, either naturally or as a result of stimulation of the coal seam;
- (2) the void created by mining out coal seams; or
- (3) the gob created by longwall or other extraction methods of coal mining.

SECTION 3. IC 14-10-2-5, AS AMENDED BY P.L.123-2006, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The department may adopt emergency rules under IC 4-22-2-37.1 to carry out the duties of the department under the following:

- (1) IC 14-9.
- (2) This article.
- (3) IC 14-11.
- (4) IC 14-12-2.
- (5) IC 14-14.
- (6) IC 14-17-3.
- (7) IC 14-18, except IC 14-18-6 and IC 14-18-8.
- (8) IC 14-19-1 and IC 14-19-8.
- (9) IC 14-20-1.
- (10) IC 14-21.
- (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- (12) IC 14-23-1.
- (13) IC 14-25, except IC 14-25-8-3, IC 14-25-11, and IC 14-25-13.
- (14) IC 14-26.
- (15) IC 14-27.
- (16) IC 14-28.
- (17) IC 14-29.
- (18) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- (19) IC 14-37.**
- (20) IC 14-38, except IC 14-38-3.**

(b) A rule adopted under subsection (a) expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register.

SECTION 4. IC 14-37-1-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5. This article does not apply to methane ventilation governed under an approved federal Mine Safety and Health Administration coal mine ventilation plan.**

SECTION 5. IC 14-37-3-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

EH 1128—LS 6107/DI 101+



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[EFFECTIVE JULY 1, 2011]: **Sec. 14.5. The commission shall:**

- (1) regulate coal bed methane wells and compliance with IC 14-37-4-8 and IC 14-37-4-8.5;
- (2) establish alternative spacing, survey, unit, and bonding requirements for coal bed methane wells; and
- (3) require that all coal bed methane well permit applications include detailed plans for the following:
 - (A) Stimulation, including disclosure of the types and amounts to be used of all fluids and products, and any information necessary to assess the potential impact of stimulation on commercially minable coal resources and underground sources of drinking water.
 - (B) Horizontal drilling.
 - (C) Plugging of wells drilled by horizontal drilling.

SECTION 6. IC 14-37-4-1, AS AMENDED BY P.L.78-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Subject to subsection (b); A person may not drill, deepen, operate, or convert a well for oil and gas purposes without a permit issued by the department.

(b) Except as provided in subsection (c) and (d):

- (1) the extraction of coal bed methane from a well for oil and gas purposes on or after the effective date of this subsection and before July 1, 2012; is prohibited; and
- (2) the department may not issue a permit under this chapter for the extraction of coal bed methane from a well for oil and gas purposes before July 1, 2012; regardless of whether the application for the permit was made to the department before the effective date of this subsection.

(c) Subsection (b) does not apply if the owner of the right to the coal from which the coal bed methane for which a permit is sought under this chapter is derived consents in an instrument binding on that owner to the extraction of the coal bed methane and to the issuance of the permit.

(d) Subsection (b)(1) does not apply to a coal bed methane well that is operated under a permit issued by the department.

SECTION 7. IC 14-37-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) Except as provided in section 9 of this chapter **and subject to subsections (b) and (c)**, if an applicant for a permit complies with:

- (1) this article; and
- (2) the rules adopted under this article;

the ~~commission~~ **director** shall issue a permit.

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(b) The division shall:

(1) maintain a list of parties with experience and interest in mining commercially minable coal resources who request in writing to be given notice of the filing of complete permit applications under this chapter with respect to coal bed methane; and

(2) give written notice of each complete permit application filed under this chapter with respect to coal bed methane not later than fifteen (15) days after the filing date to each party on the list maintained under subdivision (1) and to each party that files an affidavit under IC 14-37-7-8.

(c) The notice given under subsection (b)(2) must include at least the following with respect to each proposed coal bed methane well:

(1) The location, type, and depth.

(2) The coal seam affected.

(d) The division may not issue a permit under this chapter until all of the following requirements are satisfied:

(1) At least thirty (30) days have elapsed after giving notice under subsection (b)(2).

(2) Proof of receipt of the written notice under section 8.5(e) of this chapter.

(3) The division has taken into consideration:

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

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

(4) The applicant has submitted to the director documentation demonstrating that the commercially minable coal seam outside the coal bed methane production area is protected adequately for future underground mining.

(5) The director has issued a finding that the requirements of subdivisions (1) through (4) and section 8.5(e) of this chapter were met.

(e) Unless waived by the applicant, the director shall issue or deny a permit under this chapter within fifteen (15) days after the elapse of the thirty (30) day notice period under subsection (d)(1).

SECTION 8. IC 14-37-4-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) For the purposes of this section, "waste" means locating, spacing, drilling, equipping, operating, or producing a well for coal bed methane purposes in a manner that unreasonably reduces or tends to unreasonably reduce the quantity**

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of commercially minable coal resources ultimately to be recovered from a mine.

(b) If ownership of coal bed methane is separate from ownership of coal, no surface right or any other right pertaining to coal bed methane and naturally flowing from the character of any instrument in law may be exercised without the consent of the coal owner under subsection (d)(2), unless the director makes a finding that the exercise of the right will not:

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

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

- (1) Hydrofracturing the coal seam.
- (2) Horizontal drilling in the coal seam.
- (3) Any other technology that disturbs the integrity of either or both of the following:
 - (A) The coal seam.
 - (B) The strata surrounding the coal seam.

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

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

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

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

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

(f) If there is a coal lease, the coal owner and the coal lessee

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must include in the written consent under subsection (d)(2) a statement acknowledging that the recovery of coal bed methane might result in waste of the commercially minable coal resource.

(g) If there is no coal lease, the coal owner must include in the written consent under subsection (d)(2) a statement that the coal owner has not leased the coal for coal mining purposes and acknowledging that the recovery of coal bed methane may result in waste of the commercially minable resource.

(h) A person with the following interests in the coal through which drilling for purposes of testing for or producing coal bed methane is proposed has thirty (30) days after receipt of the permit application notice to object to the issuance of the permit on the basis of waste of a commercially minable coal resource or endangerment of the health and safety of miners:

- (1) The owner.
- (2) If applicable, the lessee.
- (3) Another person with an interest to develop a coal resource who files an affidavit under IC 14-37-7-8.

(i) A person that files an affidavit under IC 14-37-7-8 may not object to the issuance of the permit if the application includes the written consent of the coal owner under subsection (d)(2).

(j) The commission shall prescribe by rule the procedure for objection under subsection (h), including a reasonable deadline for initiating the objection.

SECTION 9. IC 14-37-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.5. (a) For the purposes of this section, "waste" means locating, spacing, drilling, equipping, operating, or producing a well for oil and gas purposes in a manner that unreasonably reduces or tends to unreasonably reduce the quantity of commercially minable coal resources ultimately to be recovered from a mine.

(b) Except as provided in subsection (c), the division may require an owner or operator to make reasonable modifications to the specific location for the drilling of a well for oil and gas purposes as required by this section if the modifications:

- (1) are necessary to protect commercially minable coal resources from waste;
- (2) do not violate the drilling unit, well spacing, or other requirements of this article; and
- (3) are necessary to protect the health and safety of miners.

(c) Subsection (b) does not apply if the coal owner or coal lessee

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authorizes the drilling under IC 14-37-4-8.5(d)(2).

(d) If an owner or operator proposes to drill a well for oil and gas purposes:

- (1) on land within the permit boundaries of an active underground mine permitted under IC 14-34;
- (2) on land underlaid by an inactive underground mine; or
- (3) on land:
 - (A) associated with a mine referred to in subdivision (1) or (2) that is projected by the owner or operator to be mined; and
 - (B) on which a commercially minable coal resource is located;

the owner or operator shall provide notice of the intent to drill the well to the permittee of the mine under IC 14-34 or, in the case of an inactive underground mine, to the person that has the right to develop the coal resource.

(e) Except as provided in subsection (f), not more than fifteen (15) days after receipt of the notice required by subsection (d), the permittee of the mine under IC 14-34 or other person with the right to develop the coal resources shall state in writing whether the specific location selected for the drilling of the well is likely to result in either or both of the following:

- (1) A significant waste of the volume of coal ultimately to be recovered from the underground mine.
- (2) Endangerment of the health and safety of miners.

(f) Subsection (e) does not apply if the permittee of the mine under IC 14-34 consents in writing to the placement of the well.

(g) A person that makes an affirmative determination under subsection (d) shall:

- (1) promptly provide a copy of the determination to the owner or operator and the director; and
- (2) identify alternative well locations that would:
 - (A) reduce or avoid waste of the volume of coal ultimately to be recovered from the underground mine;
 - (B) eliminate the likelihood of endangerment of the health and safety of miners;
 - (C) not violate the drilling unit, well spacing, or other requirements of this article; and
 - (D) not result in waste.

(h) If:

- (1) the permittee of a mine under IC 14-34 or other person with the right to develop the coal resources; and

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(2) the owner or operator;
 are unable to agree on a suitable location for the well that is not likely to result in endangerment of the health and safety of miners, the parties may request an informal hearing before the director. Subject to subsection (i), the director shall conduct, within thirty (30) days after a request is made, an informal hearing under IC 14-37-3-16 to gather information to identify an alternative well location as described in subsection (g)(2).

(i) The information that the director gathers under subsection (h) may include the following:

- (1) Whether the location is in an inactive, abandoned, or projected underground coal mine.
- (2) Whether the location is in an unsealed inactive area or a sealed area of a coal mine with the potential for introducing oxygen into the area from drilling or the well.
- (3) The proximity and size of coal pillars in an alternative location that might be drilled through, including whether in a panel or support for a submain or main entries.
- (4) The equipment technology and operating or drilling experience history of the operator.

(j) If:

- (1) after the informal hearing under subsection (h), the director does not identify another suitable location for the well that is not likely to result in endangerment of the health and safety of miners; and
- (2) the location for the well for which notice was provided under subsection (d) is not likely to result in endangerment of the health and safety of miners;

the owner or operator is not required to modify the location of the proposed well and may proceed with the submittal of the permit application to the department under this article.

SECTION 10. IC 14-37-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) If a **vertical or vertical part of a horizontal** well is drilled and completed as a producing well:

- (1) through a commercially minable coal resource; and
- (2) within an area **permitted under IC 14-34** or for which ~~a mine plan is an affidavit and map have been~~ filed with the commission but for which an intermediate string is not required under section ~~3~~ **8** of this chapter;

an owner or operator shall set a production string of casing properly centralized and cemented ~~and documented by a sonic cement~~

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bond-variable density log.

(b) An owner or operator must provide at least forty-eight (48) hours notice to the:

- (1) department; and
- (2) person who filed the mine plan;

before commencing logging operations under this section.

(c) The person who filed the mine plan is entitled to:

- (1) be present during the logging operations; and
- (2) examine the log.

to ensure that adequate cement is placed behind the casing in the area between fifty (50) feet below and one hundred (100) feet above the commercially minable coal seam.

(b) On completion of the coal seam protection requirements of subsection (a), the owner or operator shall prepare and submit to the director an affidavit on a form provided by the division that includes the following:

- (1) Verification that the commercially minable coal resource was protected as required by subsection (a).
- (2) A cross-section drawing of the well showing the location of each centralizer in the completed well.
- (3) Evidence that adequate cement was circulated behind the casing as required by subsection (a).

(c) The director may require the owner or operator to run a cement bond-variable density log or other similar logging procedure to determine the adequacy of cement bonding if the director believes either or both of the following:

- (1) That adequate cement has not been circulated to protect the commercially minable coal resource.
- (2) That centralizers were not placed at locations necessary to properly centralize the casing through the coal seam.

(d) The commission shall determine the adequacy of cement bonding. If there is a bonding failure a logging procedure required under subsection (c) indicates that adequate cement bonding has not occurred between fifty (50) feet below and one hundred (100) feet above the commercially minable coal resource, the owner or operator shall perform remedial action, as ordered by the ~~commission~~, director, that results in adequate bonding.

(e) The owner or operator shall:

- (1) submit:
 - (A) to the division the original affidavit required by subsection (b) and a copy of any logs required by subsection (c); and

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(B) to the owner or operator of the commercially minable coal resource, if known, a copy of the affidavit required by subsection (b) and of any logs required by subsection (c); and

(2) complete the submission under subdivision (1) not later than thirty (30) days after commencing the later of the following:

(A) The completion date of the well.

(B) The date of completion of any logging operations; the owner or operator shall provide the department and the person who filed the mine plan with a copy of the sonic cement bond-variable density log: procedure under subsection (c).

(f) If the director finds that the protection measures taken by an owner or operator did not adequately protect the coal seam during coal mining operations in close proximity to a well that has not been plugged under IC 14-37-8-2 for which an affidavit is submitted under subsection (b), the owner or operator shall perform additional remedial action to ensure protection of the coal resource and the health and safety of miners. Significant water, gas, or other fluid movement into the underground mine that is transmitted through the annular space outside the protective casing string is evidence of a failure to adequately protect the coal seam.

(g) Preparation of the log and any remedial action required under this section are at the expense of the owner or operator.

SECTION 11. IC 14-37-7-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) The owner or lessee of coal or another person with an interest to develop a coal resource may file with the division an affidavit that:

(1) identifies by a map prepared by an engineer licensed under IC 25-31 or a geologist licensed under IC 25-17.6:

(A) the location of coal that the owner or lessee controls by deed, lease, or other instrument for later commercial production;

(B) the location of coal that is in an area targeted for later commercial production;

(C) the location of the coal seam or seams of interest; and

(D) the approximate depth of the coal seam or seams of interest; and

(2) states that the coal:

(A) can be mined using generally accepted underground

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mining practices; and

(B) is of sufficient quantity and quality to be commercially saleable.

(b) All coal in an area designated under subsection (a) is considered a commercially minable coal resource.

(c) An affidavit referred to in subsection (a) may be made before applying for permits for the actual mining of the commercially minable coal resource. The division shall:

(1) subject to subsection (e), keep the affidavit and map confidential; and

(2) use the affidavit and map solely for determining if a commercially minable coal resource is present in an area for which a permit application has been filed under IC 14-37.

(d) The division shall determine if the proposed well location is in an area underlain by coal identified in subsection (a) upon receipt of:

(1) a permit application referred to in subsection (c)(2); or

(2) an inquiry from a person interested in oil and gas explorations or drilling a well for oil and gas purposes.

(e) The name of the person who filed the map referred to in subsection (c) is not confidential.

SECTION 12. IC 14-37-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Plugging methods must be approved by the commission and must permanently confine all oil, natural gas, and water in their original strata. Mud-laden fluid, cement, or mechanical plugs, or other methods or materials approved by the director shall must be used singly or in combination.

(b) The commission shall adopt rules under IC 4-22-2 to prescribe plugging methods for wells that affect commercially minable coal resources.

(c) The plugging methods under subsection (b) do not apply to a well if the consent of the coal owner or coal lessee is granted under IC 14-37-4-8.5(d)(2).

SECTION 13. IC 14-37-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) This section applies to a well that is being plugged as a dry hole immediately following the completion of drilling or redrilling operations.

(b) An owner or operator shall notify must give verbal or written notice of intent to plug a well to an oil and gas inspector at least forty-eight (48) twelve (12) hours before beginning the plugging and abandoning a of the well under this chapter.

(c) Except as provided in subsection (d), an oil and gas inspector

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must be present during the plugging of a well.

(d) Subsection (c) does not apply if:

- (1) the owner or operator notifies an oil and gas inspector under subsection (b);
- (2) as part of the notice the owner or operator informs the oil and gas inspector of the plan for plugging the well; and
- (3) the oil and gas inspector gives the owner or operator verbal or written approval of the plan.

SECTION 14. IC 14-37-8-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.2. (a) This section applies to the plugging of a well other than a well that is plugged under section 4 or 4.3 of this chapter.**

(b) An owner or operator must give written notice of intent to plug a well to the department on a form provided by the department at least ten (10) days before beginning the plugging of the well under this chapter.

(c) The notice under subsection (b) must include a plan for plugging a well:

- (1) that describes the specific methods that will be used; and
- (2) that is sufficient to demonstrate compliance with the requirements of this chapter.

(d) The owner or operator may not begin the plugging of any well under this section until after receipt of written approval from the department of the plan referred to in subsection (c).

(e) The owner or operator shall give an oil and gas inspector verbal or written notice at least forty-eight (48) hours before the scheduled time to begin plugging operations on a well.

SECTION 15. IC 14-37-8-4.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.3. (a) This section applies to the plugging of a well other than a well referred to in section 4 of this chapter if an emergency or other urgent condition requires the immediate plugging of the well.**

(b) An emergency condition exists if a well is found to be leaking or discharging oil, gas, or other fluids in quantities that are capable of:

- (1) causing substantial harm to the environment; or
- (2) posing an immediate threat to public health or safety.

(c) An urgent condition exists if delay in the plugging of a well will result in a substantial increase in the cost to plug the well due to impending weather or other conditions that are beyond the

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control of the owner or operator.

(d) An owner or operator may begin plugging a well under this chapter upon verbal approval from the division director or a designated representative of the division director.

(e) An oil and gas inspector must be present during the plugging of a well only if the presence of the inspector is required in the approval given under subsection (d).

SECTION 16. IC 14-37-8-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.4. Not later than thirty (30) days after the completion of well plugging operations under this chapter, the operator shall submit a report of well plugging to the department describing in detail the specific methods used to plug the well. The report must:**

- (1) be on a form provided by the department; and
- (2) include an affidavit that:
 - (A) certifies that the well was plugged in accordance with this chapter; and
 - (B) is signed by the person who performed the well plugging operations and the well owner or operator.

SECTION 17. IC 14-37-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 7. The director of the division of oil and gas may require an owner or operator to redrill and replug a hole if the operator does not comply with section 5 4, 4.2, or 4.3 of this chapter.**

SECTION 18. IC 14-37-11-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 3. The owner or operator of a coal mine may burn in flares the coal bed methane produced from a coal bed methane well if either or both of the following apply:**

- (1) The burning is necessary to protect coal miners' safety.
- (2) It is not economical to market the coal bed methane.

SECTION 19. IC 32-23-7-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. As used in this chapter, "coal bed methane" has the meaning set forth in IC 14-8-2-42.2.**

SECTION 20. IC 32-23-7-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.4. (a) As used in this chapter, "coal bed methane estate in land" means the aggregate of all rights in land that affect the coal bed methane:**

- (1) in the land;

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- (2) on the land;**
- (3) under the land; or**
- (4) that may be taken from beneath the surface of the land.**
- (b) The term includes the following:**
 - (1) The right to produce coal bed methane for commercial use or sale.**
 - (2) The appurtenant right to use the surface overlying the coal bed methane for coal bed methane operations.**

SECTION 21. IC 32-23-7-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.5. (a) As used in this chapter, "coal bed methane production area" means the area of land determined by the operator in which multiple wells are drilled for a common production purpose.**

(b) A coal bed methane production area need not be part of a unit or other area in which production is pooled.

SECTION 22. IC 32-23-7-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.8. As used in this chapter, "commercially minable coal resource" has the meaning set forth in IC 14-8-2-47.**

SECTION 23. IC 32-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1. (a) As used in this chapter, "oil and gas" means petroleum and mineral oils and gaseous substances of whatever character naturally lying or found beneath the surface of land.**

(b) The term does not include coal bed methane.

SECTION 24. IC 32-23-7-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2.5. As used in this chapter, "operations for coal bed methane", unless otherwise indicated by the context of this chapter, means:**

- (1) the exploration, surveying, or testing of land for coal bed methane;**
- (2) other investigation of the potential of land for coal bed methane production;**
- (3) the actual drilling or preparation for drilling of wells for coal bed methane;**
- (4) the stimulation of coal bed methane production by hydrofracturing or otherwise;**
- (5) the collection and transportation by pipeline of coal bed methane from:**

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(A) the land; or

(B) nearby land that is a part of a coal bed methane production area that includes the land; or

(6) any other actions directed toward the eventual production or attempted production of coal bed methane from the land.

SECTION 25. IC 32-23-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) As used in this chapter, "person in interest" means:

(1) if used in reference to an oil and gas estate in land, the owner of a beneficial interest in the oil and gas estate in land; or

(2) if used in reference to a coal bed methane estate in land, the owner of a beneficial interest in the coal bed methane estate in land;

whether the interest is held for life, for a term of years, or in fee.

(b) The term includes a lessee, licensee, or duly qualified agent of the owner.

(c) The term does not include a mortgagee or security assignee of the owner if the mortgagee or security assignee does not have a right to the control or operation of the premises for:

(1) if used in reference to an oil and gas estate in land, oil and gas; or

(2) if used in reference to a coal bed methane estate in land, coal bed methane.

SECTION 26. IC 32-23-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. **(a) This section applies to the following:**

(1) Interests in oil and gas.

(2) Interests in coal bed methane.

~~(a)~~ **(b) An interest referred to in subsection (a) in, on, under, or that may be taken from beneath the surface of land located in Indiana may be created:**

(1) for life;

(2) for a term of years; or

(3) in fee;

in the manner and to the extent that other interests in real estate and title are created.

~~(b)~~ **(c) Title to the estates specified under subsection ~~(a)~~ (b) may be vested in one (1) or more persons by:**

(1) sole ownership;

(2) tenancy in common;

(3) joint tenancy;

(4) tenancy by the entirety; or

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(5) another manner recognized under Indiana law.

~~(c)~~ (d) Interests or estates specified in this section are freely alienable, in whole or in part, in the same manner as are other interests in real estate.

SECTION 27. IC 32-23-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) This chapter does not limit the rights of parties to contract with regard to ~~the~~ **an** oil and gas estate **or a coal bed methane estate in land** affecting lands in Indiana:

(1) to the extent permitted by; and

(2) in a manner consistent with;

the nature of the estate in law as specified under this chapter.

~~(b)~~ This chapter is intended to declare the law of this state with regard to the subject matter treated in this chapter as the law existed before ~~March 5, 1951~~.

~~(c)~~ (b) This chapter does not affect the rights or powers of any commission, board, or authority duly constituted for the regulation of the oil and gas industry **or the coal bed methane industry** in Indiana.

SECTION 28. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 14-37-7-3; IC 14-37-7-5; IC 14-37-8-5; IC 14-37-8-6; IC 14-37-8-9."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1128 as printed January 28, 2011.)

MERRITT, Chairperson

Committee Vote: Yeas 6, Nays 3.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1128 be amended to read as follows:

Page 2, delete lines 23 through 42.

Delete pages 3 through 17.

(Reference is to EHB 1128 as printed April 8, 2011.)

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1128 be amended to read as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert the following:

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

Chapter 8.4. Federally Mandated Requirements for Energy Utilities

Sec. 1. As used in this chapter, "certificate" refers to a certificate of public convenience and necessity issued by the commission under section 7(b) of this chapter.

Sec. 2. (a) As used in this chapter, "compliance project" means a project that is:

- (1) undertaken by an energy utility; and
- (2) related to the direct or indirect compliance by the energy utility with one (1) or more federally mandated requirements.

(b) The term includes:

- (1) an addition; or
- (2) an integrity, enhancement, or replacement project; undertaken by an energy utility to comply with a federally mandated requirement described in section 5(5) of this chapter.

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

Sec. 4. (a) As used in this chapter, "federally mandated costs" means costs that an energy utility incurs in connection with a compliance project, including capital, operating, maintenance, depreciation, tax, or financing costs.

(b) The term does not include fines or penalties assessed against or imposed on an energy utility for violating laws, regulations, or consent decrees related to a federally mandated requirement.

Sec. 5. As used in this chapter, "federally mandated requirement" means a requirement that the commission determines is imposed on an energy utility by the federal government in connection with any of the following:

- (1) The federal Clean Air Act (42 U.S.C. 7401 et seq.).
- (2) The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).
- (3) The federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).
- (4) The federal Toxic Substances Control Act (15 U.S.C. 2601

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et seq.).

(5) Standards or regulations concerning the integrity, safety, or reliable operation of:

(A) transmission; or

(B) distribution;

pipeline facilities.

(6) Requirements relating to a license issued by the United States Nuclear Regulatory Commission to operate a nuclear energy production or generating facility (as defined in IC 8-1-8.8-8.5).

(7) Any other law, order, or regulation administered or issued by the United States Environmental Protection Agency, the United States Department of Transportation, the Federal Energy Regulatory Commission, or the United States Department of Energy.

Sec. 6. (a) Except as provided in subsection (c), or unless an energy utility has elected to file for:

(1) a certificate of public convenience and necessity; or

(2) the recovery of costs;

under another statute, an energy utility that seeks to recover federally mandated costs under section 7(c) of this chapter must obtain from the commission a certificate that states that public convenience and necessity will be served by a compliance project proposed by the energy utility.

(b) The commission shall issue a certificate of public convenience and necessity under section 7(b) of this chapter if the commission finds that the proposed compliance project will allow the energy utility to comply directly or indirectly with one (1) or more federally mandated requirements. In determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The following, which must be set forth in the energy utility's application for the certificate sought, in accordance with section 7(a) of this chapter:

(A) A description of the federally mandated requirements, including any consent decrees related to the federally mandated requirements, that the energy utility seeks to comply with through the proposed compliance project.

(B) A description of the projected federally mandated costs associated with the proposed compliance project, including costs that are allocated to the energy utility:

(i) in connection with regional transmission expansion

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planning and construction; or

(ii) under a Federal Energy Regulatory Commission approved tariff, rate schedule, or agreement.

(C) A description of how the proposed compliance project allows the energy utility to comply with the federally mandated requirements described by the energy utility under clause (A).

(D) Alternative plans that demonstrate that the proposed compliance project is reasonable and necessary.

(E) Information as to whether the proposed compliance project will extend the useful life of an existing energy utility facility and, if so, the value of that extension.

(2) Any other factors the commission considers relevant.

(c) An energy utility is not required to obtain a certificate under this section for a project that constitutes a research and development project.

Sec. 7. (a) As a condition for receiving the certificate required under section 6 of this chapter, an energy utility must file with the commission an application that sets forth the information described in section 6(b) of this chapter, supported with technical information in as much detail as the commission requires.

(b) The commission shall hold a properly noticed public hearing on each application and grant a certificate only if the commission has:

- (1) made a finding that the public convenience and necessity will be served by the proposed compliance project;
- (2) approved the projected federally mandated costs associated with the proposed compliance project; and
- (3) made a finding on each of the factors set forth in section 6(b) of this chapter.

(c) If the commission approves under subsection (b) a proposed compliance project and the projected federally mandated costs associated with the proposed compliance project, the following apply:

- (1) Eighty percent (80%) of the approved federally mandated costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism that allows the timely recovery of the approved federally mandated costs. The commission shall adjust the energy utility's authorized net operating income to reflect any approved earnings for purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).
- (2) Twenty percent (20%) of the approved federally mandated

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costs, including depreciation, allowance for funds used during construction, and post in service carrying costs, based on the overall cost of capital most recently approved by the commission, shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the commission.

(3) Actual costs that exceed the projected federally mandated costs of the approved compliance project by more than twenty-five percent (25%) require specific justification by the energy utility and specific approval by the commission before being authorized in the next general rate case filed by the energy utility with the commission.

SECTION 2. IC 8-1-8.8-1, AS AMENDED BY P.L.175-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.

(7) It is in the public interest for the state to encourage the

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study, analysis, development, and life cycle management of nuclear energy production or generating facilities, as well as carbon dioxide capture, transportation, and storage facilities.

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

(1) Indiana's **and the region'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 and gas transportation systems within Indiana 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.

(5) The study, analysis, development, and life cycle management of nuclear energy production or generating facilities are encouraged at the same time as are new coal fired and other fossil fuel based energy production or generating facilities.

SECTION 3. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 produce energy, including substitute natural gas, primarily 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 **or increase the efficiency of** existing energy production or generating plants that are fueled primarily by coal or gases from coal from the 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 **or a nuclear energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana

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coal by construction and operation of a coal gasification facility.

(E) Projects or potential projects that enhance the safe and reliable use of nuclear energy production or generating technologies to produce electricity.

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

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility.**

(4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use coal bed methane.

SECTION 4. IC 8-1-8.8-4, AS AMENDED BY P.L.175-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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:

(1) as a fuel to generate energy; or

(2) as substitute natural gas.

SECTION 5. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 coal gasification facilities; or**

(4) purchases fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility.**

SECTION 6. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) As used in this chapter, "new energy **production or** generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

(1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.

(2) The facility is a:

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

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

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 **production or** generating ~~or coal gasification~~ facility.

SECTION 7. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) As used in this chapter, "nuclear energy production or generating facility" means an energy production or generation facility that:**

(1) uses a nuclear reactor as its heat source to provide steam to a turbine generator to produce or generate electricity;

(2) supplies electricity to Indiana retail customers on July 1, 2011;

(3) is dedicated primarily to serving Indiana customers; and

(4) is undergoing a comprehensive life cycle management project to enhance the safe and reliable operation of the facility during the period the facility is licensed to operate by the United States Nuclear Regulatory Commission.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a nuclear energy production or generating facility.

SECTION 8. IC 8-1-8.8-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.7. As used in this chapter, "qualified utility system expenses" means the costs associated with the study, analysis, or development of a life cycle management project for a nuclear energy production or generating facility.**

SECTION 9. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. As used in this chapter, "qualified utility system**

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property" means any:

(1) new energy **production or generating or coal gasification facility; or**

(2) **nuclear energy production or generating facility;**

used, or to be used, in whole or in part, 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 10. IC 8-1-8.8-10, AS AMENDED BY P.L.95-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this chapter "renewable energy resource" means **alternative sources of renewable energy, including any of 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:

(D) Animal wastes:

(E) Animal byproducts:

(F) Aquatic plants:

(G) Algae:

(6) Hydropower from existing dams:

(7) Fuel cells:

(8) Energy from waste to energy facilities:

(9) Energy storage systems:

(1) **A clean energy resource listed in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(16).**

(2) **Low temperature, oxygen starved gasification of municipal solid waste.**

(3) **Methane recovered from landfills for the production of electricity.**

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

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- (1) Tires.
- (2) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.
- (c) The term excludes treated or painted lumber.

SECTION 11. IC 8-1-8.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The commission shall encourage clean ~~coal and~~ energy projects by creating the following financial incentives for clean ~~coal and~~ energy projects, if the projects are found to be reasonable and necessary:

- (1) The timely recovery of costs **and expenses** incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.
- (2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).
- (3) Financial incentives for the purchase of fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility**, including cost recovery and the incentive available under subdivision (2).
- (4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects **or coal gasification facilities**.
- (5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean ~~coal and~~ energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 12. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007,

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SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

(1) new energy ~~producing~~ **and production or** generating facilities; **and**

(2) **nuclear energy production or generating facilities;**

in the form of timely recovery of the costs incurred in connection with the **study, analysis, development, siting, design, licensing, permitting,** construction, repowering, expansion, **life cycle management,** 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, **life cycle management,** 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:

(1) the costs associated with qualified utility system property; **and**

(2) **qualified utility system expenses;**

if the eligible business provides substantial documentation that the expected costs ~~associated with qualified utility system property~~ **and expenses** and the schedule for incurring those costs **and expenses** are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating 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.

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SECTION 13. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 **production or** generating ~~or coal gasification~~ facility.
- (2) The amount of any fuel **or energy** produced by:
 - (A) a coal gasification facility; ~~and or~~
 - (B) a nuclear energy production or generating facility;**
that is purchased by the eligible business during the previous month.
- (3) Any other information the lieutenant governor may reasonably require.

SECTION 14. IC 8-1-8.8-14, AS AMENDED BY P.L.71-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. The group shall conduct an annual study on the use, availability, and economics of using ~~renewable in Indiana~~ **the clean energy resources in Indiana: listed in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(6). The commission may direct the group to study additional clean energy resources as the commission considers appropriate.** Each year, the group shall submit a report on the study to the commission for inclusion in the commission's annual report to the regulatory flexibility committee described in IC 8-1-2.5-9 and IC 8-1-2.6-4. **The commission shall direct the group concerning the appropriate level of detail for the report.** The report must include suggestions from the group to encourage the development and use of ~~renewable clean~~ energy resources and technologies appropriate for use in Indiana. ~~In formulating the suggestions, the group shall evaluate potential renewable energy generation opportunities from biomass and algae production systems.~~

SECTION 15. IC 8-1-13.1-2, AS ADDED BY P.L.151-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. As used in this chapter, "alternative energy project" means a project that:

- (1) develops or makes use of:
 - (A) clean ~~coal and~~ energy projects (as defined in IC 8-1-8.8-2);
 - (B) renewable energy resources (as defined in IC 8-1-8.8-10) for the production of electricity;
 - (C) integrated gasification combined cycle (IGCC) technology to produce synthesis gas that is used:
 - (i) to generate electricity; or

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- (ii) as a substitute for natural gas; regardless of the fuel source used to produce the synthesis gas;
- (D) methane recovered from landfills for the production of electricity;
- (E) demand side management, energy efficiency, or conservation programs; or
- (F) coal bed methane;
- (2) results in quantifiable reductions in, or the avoidance of:
 - (A) the use of electricity produced by traditional electric generating facilities that use fossil fuels as their fuel source; or
 - (B) regulated air pollutants and carbon emissions produced by traditional electric generating facilities that use fossil fuels as their fuel source; and
- (3) is implemented under a plan approved by:
 - (A) the office; and
 - (B) a corporation's or a cooperatively owned power supplier's board of directors.

SECTION 16. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 37. Voluntary Clean Energy Portfolio Standard Program

Sec. 1. As used in this chapter, "base year" means the calendar year ending December 31, 2010.

Sec. 2. As used in this chapter, "clean energy" means electricity that is produced from a clean energy resource.

Sec. 3. As used in this chapter, "clean energy credit", or "CEC", means an interest that:

- (1) represents one (1) megawatt hour of clean energy that satisfies the applicable conditions set forth in section 12(c)(2) of this chapter;
- (2) is quantifiable and transferrable; and
- (3) is possessed by not more than one (1) entity at a time.

Sec. 4. (a) As used in this chapter, "clean energy resource" means any of the following sources, clean sources, alternative technologies, or programs used in connection with the production or conservation of electricity:

- (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

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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.
 - (D) Animal wastes.
 - (E) Animal byproducts.
 - (F) Aquatic plants.
 - (G) Algae.
- (6) Hydropower.
- (7) Fuel cells.
- (8) Hydrogen.
- (9) Energy from waste to energy facilities, including energy derived from advanced solid waste conversion technologies.
- (10) Energy storage systems or technologies.
- (11) Geothermal energy.
- (12) Coal bed methane derived from a naturally occurring biogenic process.
- (13) Industrial byproduct technologies that use fuel or energy that is a byproduct of an industrial process.
- (14) Waste heat recovery from capturing and reusing the waste heat in industrial processes for heating or for generating mechanical or electrical work.
- (15) A source, technology, or program approved by the commission and designated as a clean energy resource by a rule adopted by the commission under IC 4-22-2.
- (16) Demand side management or energy efficiency initiatives that:
- (A) reduce electricity consumption; or
 - (B) implement load management, demand response, or energy efficiency measures designed to shift customers' electric loads from periods of higher demand to periods of lower demand;
- as a result of equipment installed, or customers enrolled, after January 1, 2010.
- (17) A clean energy project described in IC 8-1-8.8-2(1).
- (18) Nuclear energy.
- (19) Electricity that is:
- (A) generated by a customer owned distributed generation facility that is interconnected to the electricity supplier's

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distribution system in accordance with the commission's interconnection standards set forth in 170 IAC 4-4.3; and (B) supplied back to the electricity supplier for use in meeting the electricity supplier's electricity demand requirements in accordance with the commission's net metering rules set forth in 170 IAC 4-4.2.

(20) Combined heat and power systems.

(21) Electricity that is generated from natural gas at a facility constructed in Indiana after July 1, 2011, which displaces electricity generation from an existing coal fired generation facility.

(b) Except for energy described in subsection (a)(9), the term does not include energy from the incineration, burning, or heating of any of the following:

(1) Tires.

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

(c) The term excludes treated or painted lumber.

Sec. 5. As used in this chapter, "clean portfolio standard goal", or "CPS goal", refers to a goal set forth in section 12(a) of this chapter that a participating electricity supplier must achieve during a specified period during the program to qualify for one (1) or more of the financial incentives described in section 13 of this chapter.

Sec. 6. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to customers in Indiana on January 1, 2011.

(b) The term does not include a utility that is:

(1) a municipally owned utility (as defined in IC 8-1-2-1(h));

(2) a corporation organized under IC 8-1-13; or

(3) a corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 7. As used in this chapter, "participating electricity supplier" refers to an electricity supplier that has been approved by the commission under section 11 of this chapter to participate in the program.

Sec. 8. As used in this chapter, "program" refers to the Indiana voluntary clean energy portfolio standard program established by the commission under section 10 of this chapter.

Sec. 9. As used in this chapter, "regional transmission organization", with respect to an electricity supplier, refers to the

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regional transmission organization approved by the Federal Energy Regulatory Commission for the control area that includes the electricity supplier's assigned service area (as defined in IC 8-1-2.3-2).

Sec. 10. (a) Subject to subsection (d), the commission shall adopt rules under IC 4-22-2 to establish the Indiana voluntary clean energy portfolio standard program. The program established under this section must be a voluntary program that provides incentives to participating electricity suppliers that undertake to supply specified percentages of the total electricity supplied to their Indiana retail electric customers from clean energy.

(b) The rules adopted by the commission under this section to establish the program must:

(1) incorporate:

- (A) the CPS goals set forth in section 12(a) of this chapter;
- (B) methods for measuring and evaluating a participating electricity supplier's compliance with the CPS goals set forth in section 12(a) of this chapter;
- (C) the financial incentives and periodic rate adjustment mechanisms set forth in section 13 of this chapter; and
- (D) the reporting requirements set forth in section 14 of this chapter;

- (2) require the commission to determine, before approving an application under section 11 of this chapter, that the approval of the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;
- (3) take effect not later than January 1, 2012; and
- (4) be consistent with this chapter.

(c) Upon the effective date of the rules adopted by the commission under this section, an electricity supplier may apply to the commission under section 11 of this chapter for approval to participate in the program.

(d) The commission may adopt emergency rules under IC 4-22-2-37.1 to adopt the rules required by this section. An emergency rule adopted by the commission under IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

Sec. 11. (a) An electricity supplier that seeks to participate in the program established by the commission under section 10 of this chapter must apply to the commission:

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- (1) in the manner and on a form prescribed by the commission; and
 - (2) not later than a date specified by the commission in the rules adopted under section 10 of this chapter;
- for approval to participate in the program.

(b) Upon receiving an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.

(c) If the commission determines that:

- (1) an application submitted under subsection (a) is complete and reasonably complies with the purpose of this chapter;
- (2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to meet the energy requirements of its Indiana retail electric customers during the calendar year ending December 31, 2025, in an amount equal to at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year, as set forth in section 12(a)(3) of this chapter; and
- (3) approving the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;

the commission shall approve the application. If, however, the commission determines that the application does not meet the requirements set forth in this subsection, the commission shall reject the application. The electricity supplier that submitted the application under subsection (a) bears the burden of proving to the commission that the application meets the requirements set forth in this subsection.

Sec. 12. (a) Subject to subsection (c), to qualify for the financial incentives set forth in section 13 of this chapter, a participating electricity supplier must obtain clean energy to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers according to the following CPS goals:

- (1) CPS Goal Period I: For the six (6) calendar years beginning January 1, 2013, and ending December 31, 2018, an average of at least four percent (4%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers

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during the base year.

(2) **CPS Goal Period II:** For the six (6) calendar years beginning January 1, 2019, and ending December 31, 2024, an average of at least seven percent (7%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(3) **CPS Goal Period III:** In the calendar year ending December 31, 2025, at least ten percent (10%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(b) For purposes of subsection (a), electricity is measured in megawatt hours. However, in determining whether a participating electricity supplier has met a CPS goal set forth in subsection (a), the commission shall multiply each megawatt hour of clean energy as follows:

(1) Subject to subdivision (2), for clean energy that is generated by a facility located in Indiana, by a factor of one and twenty-five hundredths (1.25).

(2) For clean energy that is generated by a facility located in Indiana, and from a clean energy resource listed in section 4(a)(1) through 4(a)(16) of this chapter, by a factor of one and five tenths (1.5).

(c) In determining whether a participating electricity supplier has met a particular CPS goal set forth in subsection (a), the commission shall consider only clean energy that:

(1) except as provided in subsection (f), is obtained by the participating electricity supplier to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers during the CPS goal period under consideration; and

(2) is generated by a facility located in a control area that is part of a regional transmission organization of which an electricity supplier is a member.

(d) An electricity supplier is not required to obtain clean energy to meet a particular CPS goal if the commission determines that the cost of clean energy resources available to the electricity supplier would result in an increase in the rates and charges of the electricity supplier that would not be just and reasonable.

(e) A participating electricity supplier may own or purchase one (1) or more CECs to meet any of the CPS goals set forth in

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subsection (a) as long as the clean energy represented by the CEC meets the conditions set forth in subsection (c)(2).

(f) A participating electricity supplier may apply:

(1) amounts of clean energy supplied by the participating electricity supplier to its Indiana retail electric customers during a particular CPS goal period; or

(2) CECs acquired by the participating electricity supplier during a particular CPS goal period;

that exceed the requirements for the particular CPS goal period to the immediately succeeding CPS goal period.

(g) A participating electricity supplier may use a clean energy resource described in section 4(a)(17) through 4(a)(21) of this chapter to satisfy not more than thirty percent (30%) of any of the CPS goals set forth in subsection (a).

Sec. 13. (a) The commission may establish a shareholder incentive consisting of the authorization of an increased overall rate of return on equity, not to exceed fifty (50) basis points over a participating electricity supplier's authorized rate of return, whenever the participating electricity supplier attains a CPS goal set forth in section 12(a) of this chapter. The number of additional basis points authorized by the commission under this subsection may:

(1) be different for each of the CPS goal periods identified in section 12(a) of this chapter, as the commission determines is appropriate; and

(2) in the case of a particular participating electricity supplier, be based on the extent to which the participating electricity supplier met a particular CPS goal using clean energy resources listed in section 4(a)(1) through 4(a)(16) of this chapter.

The additional basis points authorized by the commission under this subsection for each CPS goal period are not cumulative and may not be authorized for a clean energy resource for which the commission has authorized an incentive under IC 8-1-8.8-11(a)(2). In determining a participating electricity supplier's authorized rate of return to which additional basis points may be added upon the participating electricity supplier's achievement of a particular CPS goal, the commission shall not include as part of the authorized rate of return any additional basis points awarded to the participating electricity supplier for having achieved the immediately preceding CPS goal.

(b) If the commission approves an electricity supplier's

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application under section 11(c) of this chapter, the commission shall authorize the incentive described in subsection (a) and the recovery of costs, by means of a periodic rate adjustment mechanism, as described in subsection (c), based on the following considerations:

- (1) The sharing of achieved savings or as a percentage of costs.
- (2) Avoided costs resulting from achieving demand side management or energy efficiency targets.
- (3) The recovery of lost revenues associated with implementation of demand side management or energy efficiency initiatives.
- (4) The designation of electricity produced or conserved by a clean energy resource as an energy savings for purposes of any initiative, rule, or order approved by the commission to promote the efficient use and production of electricity, including initiatives to implement demand side management, energy efficiency, or conservation measures in accordance with commission rules.

(c) If the commission approved an electricity supplier's application under section 11(c) of this chapter, the commission shall permit the recovery, by means of a periodic rate adjustment mechanism, of all just, reasonable, and necessary program costs incurred by a participating electricity supplier in:

- (1) constructing, operating, or maintaining facilities that generate clean energy that:
 - (A) is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 12(a) of this chapter; and
 - (B) meets the requirements set forth in section 12(c) of this chapter; or
- (2) otherwise generating or purchasing clean energy that is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 12(a) of this chapter.

For purposes of this subsection and subsection (h)(1), "program costs" includes administrative costs, ancillary costs, capacity costs, costs associated with CECs, capital costs, depreciation costs, tax costs, and financing costs incurred in connection with an activity described in subdivision (1) or (2).

(d) A participating electricity supplier that seeks an incentive established by the commission under subsection (a) or a periodic rate adjustment mechanism established by the commission under

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subsection (c) must apply to the commission:

- (1) in the manner and on a form prescribed by the commission; and
- (2) not later than any dates specified by the commission in rules adopted under section 10 of this chapter;

for approval for the incentive or periodic rate adjustment mechanism sought.

(e) The commission shall review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.

(f) The commission shall, after notice and hearing, issue a determination of a participating electricity supplier's eligibility for the financial incentive or periodic rate adjustment mechanism sought. The commission shall issue a determination under this subsection not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

(g) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a shareholder incentive described in subsection (a) continues in effect until the earlier of the following:

- (1) A time or upon an event specified in the commission's order approving the shareholder incentive.
- (2) The commission issues a new order authorizing the participating electricity supplier to receive a shareholder incentive for meeting the next CPS program goal.

(h) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a periodic rate adjustment mechanism described in subsection (c) continues in effect until the earlier of the following:

- (1) The participating electricity supplier has recovered the program costs for which the periodic rate adjustment mechanism was allowed.
- (2) A time or upon an event specified in the commission's order approving the periodic rate adjustment mechanism.

Sec. 14. (a) Beginning in 2014, each participating electricity supplier shall report to the commission not later than March 1 of each year on the following:

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(1) The participating electricity supplier's efforts, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year.

(2) The total amount of renewable energy supplied to the participating electricity supplier's Indiana retail electric customers during the most recently ended calendar year, including a breakdown of the following:

(A) The amount of clean energy generated by facilities owned or operated by the participating electricity supplier. The participating electricity supplier shall identify each facility by:

- (i) name and location;
- (ii) total generating capacity;
- (iii) total amount of electricity generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers; and
- (iv) total amount of clean energy generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers.

(B) The amount of clean energy purchased from other suppliers of clean energy. The participating electricity supplier shall identify:

- (i) each supplier from whom clean energy was purchased;
- (ii) the amount of clean energy purchased from each supplier;
- (iii) the price paid by the participating electricity supplier for the clean energy purchased from each supplier; and
- (iv) to the extent known, the name and location of each facility at which the clean energy purchased from each supplier was generated.

(3) The number of CECs purchased by the participating electricity supplier during the most recently ended calendar year. The participating electricity supplier shall identify:

- (A) each person from whom one (1) or more CECs was purchased;
- (B) the price paid to each person identified in clause (A) for

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the CECs purchased;

(C) the number of CECs applied, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year; and

(D) the number of CECs, if any, that the participating electricity supplier plans to carry over to the next succeeding CPS goal period, as permitted by section 12(f) of this chapter.

(4) The participating electricity supplier's plans for meeting the CPS goal applicable to the calendar year in which the report is submitted.

(5) Advances in clean energy technology that affect activities described in subdivisions (1) and (4).

(6) Any other information that the commission prescribes in rules adopted under IC 4-22-2.

For purposes of this subsection, amounts of clean energy and electricity shall be reported in megawatt hours. A participating electricity supplier's duty to submit a report under this subsection terminates after the participating electricity supplier has submitted the report that applies to the calendar year ending December 31, 2025.

(b) Beginning in 2014, the commission's annual report to the regulatory flexibility committee under IC 8-1-2.5-9(b) must include a summary of the information provided by participating electricity suppliers under subsection (a) with respect to the most recently ended calendar year. The commission's duty to include the information specified in this subsection in its annual report to the regulatory flexibility committee terminates after the commission has submitted the information that applies to the calendar year ending December 31, 2025."

Page 2, delete lines 1 through 22.

Page 17, after line 6, begin a new paragraph and insert:

"SECTION 44. An emergency is declared for this act."

Re-number all SECTIONS consecutively.

(Reference is to EHB 1128 as printed April 8, 2011.)

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