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# HOUSE BILL No. 1722

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-29; IC 8-1.

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

**Effective:** Upon passage.

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### Stilwell, Battles

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

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First Regular Session 115th General Assembly (2007)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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# HOUSE BILL No. 1722



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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (7) A requirement that:

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

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

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

12 must be Indiana coal; or

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

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

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

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

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

34 SECTION 4. IC 8-1-2-6.6 IS AMENDED TO READ AS  
35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in  
36 this section:

37 "Clean coal technology" means a technology (including  
38 precombustion treatment of coal):

39 (1) that is used at a new or existing electric generating facility and  
40 directly or indirectly reduces airborne emissions of sulfur or  
41 nitrogen based pollutants associated with combustion or use of  
42 coal; and

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- 1 (2) that either:
- 2 (A) is not in general commercial use at the same or greater
- 3 scale in new or existing facilities in the United States as of
- 4 January 1, 1989; or
- 5 (B) has been selected by the United States Department of
- 6 Energy for funding under its Innovative Clean Coal
- 7 Technology program and is finally approved for such funding
- 8 on or after January 1, 1989.

9 "Indiana coal" means coal from a mine whose coal deposits are  
 10 located in the ground wholly or partially in Indiana regardless of the  
 11 location of the mine's tittle.

12 "Qualified pollution control property" means an air pollution control  
 13 device on a coal burning electric generating facility or any equipment  
 14 that constitutes clean coal technology that has been approved for use  
 15 by the commission, that meets applicable state or federal requirements,  
 16 and that is designed to accommodate the burning of **Indiana** coal. ~~from~~  
 17 ~~the geological formation known as the Illinois Basin.~~

18 "Utility" refers to any electric generating utility allowed by law to  
 19 earn a return on its investment.

20 (b) Upon the request of a utility that began construction after  
 21 October 1, 1985, and before March 31, 2002, of qualified pollution  
 22 control property that is to be used and useful for the public  
 23 convenience, the commission shall for ratemaking purposes add to the  
 24 value of that utility's property the value of the qualified pollution  
 25 control property under construction, but only if at the time of the  
 26 application and thereafter:

- 27 (1) the facility burns only Indiana coal as its primary fuel source
- 28 once the air pollution control device is fully operational; or
- 29 (2) the utility can prove to the commission that the utility is
- 30 justified because of economic considerations or governmental
- 31 requirements in utilizing some non-Indiana coal.

32 (c) The commission shall adopt rules under IC 4-22-2 to implement  
 33 this section.

34 SECTION 5. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE  
 35 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
 36 UPON PASSAGE]: **Sec. 42.1. (a) As used in this section, "substitute**  
 37 **natural gas" means gas produced by a facility in Indiana that uses**  
 38 **a manufacturing process to convert coal into a gas capable of being**  
 39 **used:**

- 40 (1) by a utility to supply gas utility service to end use
- 41 consumers in Indiana; or
- 42 (2) as a fuel used by a utility to produce electric power to

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

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

11 SECTION 6. IC 8-1-8.8-0.5 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 13 UPON PASSAGE]: Sec. 0.5. As used in this chapter, "Indiana coal"  
 14 means coal from a mine whose coal deposits are located in the  
 15 ground wholly or partially in Indiana regardless of the location of  
 16 the mine's tipple.

17 SECTION 7. IC 8-1-8.8-1 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The general  
 19 assembly makes the following findings:

- 20 (1) Growth of Indiana's population and economic base has created  
 21 a need for new energy **production or** generating facilities in  
 22 Indiana.
- 23 (2) The development of a robust and diverse portfolio of energy  
 24 **production or** generating capacity, including **coal gasification**  
 25 **and** the use of renewable energy resources, is needed if Indiana  
 26 is to continue to be successful in attracting new businesses and  
 27 jobs.
- 28 (3) Indiana has considerable natural resources that are currently  
 29 underutilized and could support development of new energy  
 30 **production or** generating facilities, **including coal gasification**  
 31 **facilities**, at an affordable price.
- 32 (4) Certain regions of the state, such as southern Indiana, could  
 33 benefit greatly from new employment opportunities created by  
 34 development of new energy **production or** generating facilities  
 35 utilizing the plentiful supply of **Indiana** coal. ~~from the geological~~  
 36 ~~formation known as the Illinois basin.~~
- 37 (5) Technology can be deployed that allows high sulfur **Indiana**  
 38 coal ~~from the geological formation known as the Illinois Basin~~ to  
 39 be burned **or gasified** efficiently while meeting strict state and  
 40 federal air quality limitations. Specifically, the state should  
 41 encourage the use of advanced clean coal technology, such as coal  
 42 gasification.

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

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

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

(2) The vast and underutilized **Indiana** 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** system within Indiana ~~is~~ **are** upgraded to distribute additional amounts of electricity **and gas** more efficiently.

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

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

(1) Any of the following projects:

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

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

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

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

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

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

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

3 SECTION 9. IC 8-1-8.8-3 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this  
5 chapter, "clean coal technology" means a technology (including  
6 precombustion treatment of coal):

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

11 (2) that either:

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

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

23 SECTION 10. IC 8-1-8.8-4 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this  
25 chapter, "coal gasification facility" means a facility in Indiana that uses  
26 a manufacturing process that converts coal into a clean gas that can be  
27 used as a fuel to generate energy **or substitute natural gas.**

28 SECTION 11. IC 8-1-8.8-6 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this  
30 chapter, "eligible business" means an energy utility (as defined in  
31 IC 8-1-2.5-2) **or owner of a coal gasification facility** that:

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

34 (2) proposes to construct or repower a project described in section  
35 2(1) or 2(2) of this chapter;

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

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

39 SECTION 12. IC 8-1-8.8-8 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in  
41 this chapter, "new energy generating facility" refers to a **generation or**  
42 **coal gasification** facility that satisfies all of the following:

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

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1 the commission, **if applicable.**

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

3 the new energy generating **or coal gasification** facility.

4 (4) Other information the commission considers necessary.

5 (d) The commission shall allow an eligible business to recover the

6 costs associated with qualified utility system property if the eligible

7 business provides substantial documentation that the expected costs

8 associated with qualified utility system property and the schedule for

9 incurring those costs are reasonable and necessary.

10 (e) The commission shall allow an eligible business to recover the

11 costs associated with the purchase of fuels produced by a coal

12 gasification facility if the eligible business provides substantial

13 documentation that the costs associated with the purchase are

14 reasonable and necessary.

15 (f) A retail rate adjustment mechanism proposed by an eligible

16 business under this section may be based on actual or forecasted data.

17 If forecast data is used, the retail rate adjustment mechanism must

18 contain a reconciliation mechanism to correct for any variance between

19 the forecasted costs and the actual costs.

20 SECTION 15. IC 8-1-8.8-13, AS AMENDED BY P.L.1-2006,

21 SECTION 151, IS AMENDED TO READ AS FOLLOWS

22 [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall

23 file a monthly report with the lieutenant governor stating the following

24 information:

25 (1) The amount of ~~Illinois Basin~~ **Indiana** coal, if any, purchased

26 during the previous month for use in a new energy generating **or**

27 **coal gasification** facility.

28 (2) The amount of any fuel produced by a coal gasification facility

29 and purchased by the eligible business during the previous month.

30 (3) Any other information the lieutenant governor may reasonably

31 require.

32 SECTION 16. [EFFECTIVE UPON PASSAGE] **The general**

33 **assembly finds the following:**

34 **(1) The development of coal gasification facilities in Indiana**

35 **that would use local coal resources for the production of**

36 **substitute natural gas is in the public interest for purposes of:**

37 **(A) reducing the reliance of Indiana energy utilities on gas**

38 **imports;**

39 **(B) mitigating price and supply risk;**

40 **(C) improving price stability; and**

41 **(D) promoting economic development and job creation.**

42 **(2) Coal gasification is encouraged by federal policies**

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1           **intended to increase the energy independence of the United**  
 2           **States, including through the availability of tax incentives and**  
 3           **loan guarantees.**  
 4           **(3) Indiana has the necessary resources and infrastructure**  
 5           **suitable for development of coal gasification facilities.**  
 6           **(4) The receipt of federal incentives for the development,**  
 7           **construction, and financing of new coal gasification facilities**  
 8           **in Indiana will be enhanced by Indiana energy utilities**  
 9           **entering into long term contracts for the purchase of**  
 10           **substitute natural gas produced by such facilities.**  
 11           **(5) It is necessary to allow Indiana energy utilities to recover,**  
 12           **through rate adjustments for the utility's customers, costs**  
 13           **incurred from entering into supply contracts for substitute**  
 14           **natural gas in order to promote the creation of such contracts**  
 15           **without causing Indiana energy utilities to incur undue risk.**  
 16           **SECTION 17. An emergency is declared for this act.**

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