

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 420 be amended to read as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 5-28-2-6 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2009]: **Sec. 6. For purposes of IC 5-28-17, "small business"**
- 5 **means a business entity that satisfies the following requirements:**
- 6 **(1) On at least fifty percent (50%) of the working days of the**
- 7 **business entity occurring during the preceding calendar year,**
- 8 **the business entity employed at least two (2) but not more**
- 9 **than one hundred (100) employees.**
- 10 **(2) The majority of the employees of the business entity work**
- 11 **in Indiana.**
- 12 SECTION 2. IC 5-28-5-6.5 IS ADDED TO THE INDIANA CODE
- 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 14 1, 2009]: **Sec. 6.5. The board, in consultation with the office of**
- 15 **energy and defense development, shall establish the office of small**
- 16 **business energy advancement to carry out the corporation's duties**
- 17 **under IC 5-28-17. The office of energy and defense development**
- 18 **shall provide staff support to the office of small business energy**
- 19 **advancement.**
- 20 SECTION 3. IC 5-28-17-1, AS ADDED BY P.L.4-2005, SECTION
- 21 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 22 2009]: **Sec. 1. (a) The corporation shall do the following to carry out**
- 23 **this chapter:**
- 24 **(1) Contribute to the strengthening of the economy of Indiana by**

- 1 encouraging the organization and development of new business
 2 enterprises, including technologically oriented enterprises.
- 3 (2) Submit an annual report to the governor and to the general
 4 assembly not later than November 1 of each year. The annual
 5 report must:
- 6 (A) include detailed information on the structure, operation,
 7 and financial status of the corporation; and
- 8 (B) be in an electronic format under IC 5-14-6.
- 9 The board shall conduct an annual public hearing to receive
 10 comment from interested parties regarding the annual report, and
 11 notice of the hearing shall be given at least fourteen (14) days
 12 before the hearing in accordance with IC 5-14-1.5-5(b).
- 13 (3) Approve and administer loans from the microenterprise
 14 partnership program fund established by IC 5-28-18.
- 15 (4) Conduct activities for nontraditional entrepreneurs under
 16 IC 5-28-18.
- 17 (5) Establish and administer the small and minority business
 18 financial assistance program under IC 5-28-20.
- 19 (6) Establish and administer the microenterprise partnership
 20 program under IC 5-28-19.
- 21 **(7) Assist small businesses in obtaining state and federal**
 22 **energy tax incentives.**
- 23 **(8) Establish a statewide network of public, private, and**
 24 **educational resources to inform small businesses of the state**
 25 **and federal programs under which they may obtain financial**
 26 **assistance or realize reduced costs.**
- 27 (b) The corporation may do the following to carry out this chapter:
- 28 (1) Receive money from any source, enter into contracts, and
 29 expend money for any activities appropriate to its purpose.
- 30 (2) Do all other things necessary or incidental to carrying out the
 31 corporation's functions under this chapter.
- 32 (3) Establish programs to identify entrepreneurs with marketable
 33 ideas and to support the organization and development of new
 34 business enterprises, including technologically oriented
 35 enterprises.
- 36 (4) Conduct conferences and seminars to provide entrepreneurs
 37 with access to individuals and organizations with specialized
 38 expertise.
- 39 (5) Establish a statewide network of public, private, and
 40 educational resources to assist the organization and development
 41 of new enterprises.
- 42 (6) Operate a small business assistance center to provide small
 43 businesses, including minority owned businesses and businesses
 44 owned by women, with access to managerial and technical
 45 expertise and to provide assistance in resolving problems
 46 encountered by small businesses.

- 1 (7) Cooperate with public and private entities, including the
 2 Indiana Small Business Development Center Network and the
 3 federal government marketing program, in exercising the powers
 4 listed in this subsection.
- 5 (8) Establish and administer the small and minority business
 6 financial assistance program under IC 5-28-20.
- 7 (9) Approve and administer loans from the microenterprise
 8 partnership program fund established by IC 5-28-18.
- 9 (10) Coordinate state funded programs that assist the organization
 10 and development of new enterprises.
- 11 **(11) Consult and cooperate with the office of energy and**
 12 **defense development in the establishment of the office of small**
 13 **business energy advancement under IC 5-28-5-6.5.**

14 SECTION 4. IC 5-28-17-3 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2009]: **Sec. 3. The office of small business energy advancement**
 17 **established under IC 5-28-5-6.5 shall provide free access to the**
 18 **office's services through:**

- 19 (1) a toll free telephone number; and
 20 (2) an Internet web page maintained on the web site of the
 21 office of energy and defense development.

22 SECTION 5. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE
 23 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 24 JANUARY 1, 2010]:

25 **Chapter 33. Renewable Energy Technology Manufacturer Tax**
 26 **Credit**

27 **Sec. 1. This chapter applies only to taxable years beginning after**
 28 **December 31, 2010.**

29 **Sec. 2. As used in this chapter, "corporation" refers to the**
 30 **Indiana economic development corporation established by**
 31 **IC 5-28-3-1.**

32 **Sec. 3. As used in this chapter, "director" has the meaning set**
 33 **forth in IC 6-3.1-13-3.**

34 **Sec. 4. As used in this chapter, "highly compensated employee"**
 35 **has the meaning set forth in Section 414(q) of the Internal Revenue**
 36 **Code.**

37 **Sec. 5. As used in this chapter, "new employee" has the meaning**
 38 **set forth in IC 6-3.1-13-6.**

39 **Sec. 6. As used in this chapter, "qualified investment" means the**
 40 **amount of a taxpayer's expenditures in Indiana that are reasonable**
 41 **and necessary for the manufacture or assembly of renewable**
 42 **energy technology.**

43 **Sec. 7. As used in this chapter, "renewable energy technology"**
 44 **means the following:**

- 45 (1) Solar panels that convert sunlight into electricity.
 46 (2) Solar technologies that use optical techniques to generate
 47 heat to power turbines or heat engines for the production of

- 1 electricity.
- 2 (3) Wind turbines that convert wind energy into electricity.
- 3 (4) Electrochemical devices, known as fuel cells, that combine
- 4 hydrogen and oxygen to produce electricity.
- 5 (5) Anaerobic digestion systems in which organic waste is
- 6 composted to produce gases that are burned as fuel to
- 7 produce electricity.
- 8 (6) Geothermal energy systems, including geothermal systems
- 9 for:
- 10 (A) the generation of electricity; or
- 11 (B) heating and cooling.
- 12 **Sec. 8. As used in this chapter, "state tax liability" means a**
- 13 **taxpayer's total tax liability that is incurred under:**
- 14 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 15 (2) IC 6-5.5 (the financial institutions tax); and
- 16 (3) IC 27-1-18-2 (the insurance premiums tax);
- 17 **as computed after the application of the credits that under**
- 18 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
- 19 **chapter.**
- 20 **Sec. 9. As used in this chapter, "taxpayer" means an individual,**
- 21 **a corporation, a partnership, or another entity that has state tax**
- 22 **liability.**
- 23 **Sec. 10. The corporation may make credit awards under this**
- 24 **chapter to:**
- 25 (1) foster job creation and higher wages;
- 26 (2) reduce dependency upon energy sources imported into the
- 27 United States; and
- 28 (3) reduce air pollution;
- 29 **as the result of the manufacture or assembly of renewable energy**
- 30 **technology in Indiana.**
- 31 **Sec. 11. Each taxable year, a taxpayer that:**
- 32 (1) is awarded a tax credit under this chapter by the
- 33 corporation; and
- 34 (2) complies with the conditions set forth in this chapter and
- 35 the agreement entered into by the corporation and the
- 36 taxpayer under this chapter;
- 37 **is entitled to a credit against the taxpayer's state tax liability for**
- 38 **the taxable year.**
- 39 **Sec. 12. The amount of the tax credit provided by this chapter**
- 40 **for a taxable year is an amount equal to:**
- 41 (1) a percentage determined by the corporation, not to exceed
- 42 fifteen percent (15%); multiplied by
- 43 (2) the amount of the qualified investment made by the
- 44 taxpayer in Indiana during the taxable year.
- 45 **Sec. 13. (a) A taxpayer may carry forward an unused credit for**
- 46 **the number of years determined by the corporation, not to exceed**
- 47 **nine (9) consecutive taxable years, beginning with the taxable year**

1 immediately following the taxable year in which the taxpayer
2 makes the qualified investment.

3 (b) The amount that a taxpayer may carry forward to a
4 particular taxable year under this section equals the unused part
5 of a credit allowed under this chapter.

6 (c) A taxpayer may:

7 (1) claim a tax credit under this chapter for a qualified
8 investment; and

9 (2) carry forward a remainder for one (1) or more different
10 qualified investments;

11 in the same taxable year.

12 (d) The total amount of each tax credit claimed under this
13 chapter may not exceed fifteen percent (15%) of the qualified
14 investment for which the tax credit is claimed.

15 (e) A taxpayer may not carry back an unused credit provided by
16 this chapter to a taxable year before the taxable year in which the
17 taxpayer makes the qualified investment. A taxpayer may not
18 claim a refund for an unused credit provided by this chapter.

19 Sec. 14. A person that proposes a project to manufacture or
20 assemble renewable energy technology that would create new jobs,
21 increase wage levels, or involve substantial capital investment in
22 Indiana may apply to the corporation before the taxpayer makes
23 the qualified investment to enter into an agreement for a tax credit
24 under this chapter. The corporation shall prescribe the form of the
25 application.

26 Sec. 15. After receipt of an application, the corporation may
27 enter into an agreement with the applicant for a credit under this
28 chapter if the corporation determines that all the following
29 conditions exist:

30 (1) The applicant's project will raise the total earnings of
31 employees of the applicant in Indiana.

32 (2) The applicant's project is economically sound and will
33 benefit the people of Indiana by increasing opportunities for
34 employment and strengthening the economy of Indiana.

35 (3) The manufacture or assembly of renewable energy
36 technology by the applicant will reduce air pollution.

37 (4) The manufacture or assembly of renewable energy
38 technology by the applicant will reduce dependence by the
39 United States on foreign energy sources.

40 (5) Receiving the tax credit is a major factor in the applicant's
41 decision to go forward with the project.

42 (6) Awarding the tax credit will result in an overall positive
43 fiscal impact to the state, as certified by the budget agency
44 using the best available data.

45 (7) The credit is not prohibited by section 16 of this chapter.

46 (8) The average wage that will be paid by the taxpayer to the
47 applicant's employees (excluding highly compensated

1 employees) at the location after the credit is given will be at
2 least equal to one hundred fifty percent (150%) of the hourly
3 minimum wage under IC 22-2-2-4 or its equivalent.

4 **Sec. 16.** A person is not entitled to claim the credit provided by
5 this chapter for any jobs that the person relocates from one (1) site
6 in Indiana to another site in Indiana. Determinations under this
7 section shall be made by the corporation.

8 **Sec. 17.** The corporation shall certify the amount of the qualified
9 investment that is eligible for a credit under this chapter. In
10 determining the credit amount that should be awarded, the
11 corporation shall grant a credit only for the amount of the
12 qualified investment that is directly related to expanding:

- 13 (1) the workforce in Indiana; or
14 (2) the capital investment in Indiana.

15 **Sec. 18.** The corporation shall enter into an agreement with an
16 applicant that is awarded a credit under this chapter. The
17 agreement must include all the following:

- 18 (1) A detailed description of the project that is the subject of
19 the agreement.
20 (2) The first taxable year for which the credit may be claimed.
21 (3) The amount of the taxpayer's state tax liability for each
22 tax in the taxable year of the taxpayer that immediately
23 preceded the first taxable year in which the credit may be
24 claimed.
25 (4) The maximum tax credit amount that will be allowed for
26 each taxable year.
27 (5) A requirement that the taxpayer shall maintain operations
28 at the project location for at least ten (10) years during the
29 term that the tax credit is available.
30 (6) A specific method for determining the number of new
31 employees employed during a taxable year who are
32 performing jobs not previously performed by an employee.
33 (7) A requirement that the taxpayer shall annually report to
34 the corporation the number of new employees who are
35 performing jobs not previously performed by an employee,
36 the average wage of the new employees, the average wage of
37 all employees at the location where the qualified investment
38 is made, and any other information the director needs to
39 perform the director's duties under this chapter.
40 (8) A requirement that the director is authorized to verify
41 with the appropriate state agencies the amounts reported
42 under subdivision (7), and that after doing so shall issue a
43 certificate to the taxpayer stating that the amounts have been
44 verified.
45 (9) A requirement that the taxpayer shall pay an average
46 wage to all its employees other than highly compensated
47 employees in each taxable year that a tax credit is available

1 that equals at least one hundred fifty percent (150%) of the
2 hourly minimum wage under IC 22-2-2-4 or its equivalent.

3 (10) A requirement that the taxpayer will keep the qualified
4 investment property that is the basis for the tax credit in
5 Indiana for at least the lesser of:

6 (A) the useful life of the qualified investment for federal
7 income tax purposes; or

8 (B) ten (10) years.

9 (11) A requirement that the taxpayer will maintain at the
10 location where the qualified investment is made during the
11 term of the tax credit a total payroll that is at least equal to
12 the payroll level that existed before the qualified investment
13 was made.

14 (12) A requirement that the taxpayer shall provide written
15 notification to the director and the corporation not more than
16 thirty (30) days after the taxpayer makes or receives a
17 proposal that would transfer the taxpayer's state tax liability
18 obligations to a successor taxpayer.

19 (13) Any other performance conditions that the corporation
20 determines are appropriate.

21 **Sec. 19.** A taxpayer claiming a credit under this chapter shall
22 submit to the department of state revenue a copy of the director's
23 certificate of verification under this chapter for the taxable year.
24 However, failure to submit a copy of the certificate does not
25 invalidate a claim for a credit.

26 **Sec. 20.** If the director determines that a taxpayer who has
27 received a credit under this chapter is not complying with the
28 requirements of the tax credit agreement or all the provisions of
29 this chapter, the director shall, after giving the taxpayer an
30 opportunity to explain the noncompliance, notify the Indiana
31 economic development corporation and the department of state
32 revenue of the noncompliance and request an assessment. The
33 department of state revenue, with the assistance of the director,
34 shall state the amount of the assessment, which may not exceed the
35 sum of any previously allowed credits under this chapter. After
36 receiving the notice, the department of state revenue shall make an
37 assessment against the taxpayer under IC 6-8.1.

38 **Sec. 21.** On or before March 31 each year, the director shall
39 submit a report to the corporation on the tax credit program
40 established by this chapter. The report must include information
41 on the number of agreements that were entered into under this
42 chapter during the preceding calendar year, a description of the
43 project that is the subject of each agreement, an update on the
44 status of projects under agreements entered into before the
45 preceding calendar year, and the sum of the credits awarded under
46 this chapter. A copy of the report shall be transmitted in an
47 electronic format under IC 5-14-6 to the executive director of the

1 legislative services agency for distribution to the members of the
2 general assembly.

3 **Sec. 22.** On a biennial basis, the corporation shall provide for an
4 evaluation of the tax credit program established by this chapter.
5 The evaluation must include an assessment of the effectiveness of
6 the program in creating new jobs and increasing wages in Indiana
7 and of the revenue impact of the program and may include a
8 review of the practices and experiences of other states with similar
9 programs. The director shall submit a report on the evaluation to
10 the governor, the president pro tempore of the senate, and the
11 speaker of the house of representatives after June 30 and before
12 November 1 in each odd-numbered year. The report provided to
13 the president pro tempore of the senate and the speaker of the
14 house of representatives must be in an electronic format under
15 IC 5-14-6.

16 **Sec. 23.** Notwithstanding the other provisions of this chapter,
17 the corporation may not approve a credit for a qualified
18 investment made after December 31, 2012. However, this section
19 may not be construed to prevent a taxpayer from carrying an
20 unused tax credit attributable to a qualified investment made
21 before January 1, 2013, forward to a taxable year beginning after
22 December 31, 2012, in the manner provided by section 13 of this
23 chapter.

24 SECTION 6. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
25 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
26 JANUARY 1, 2010]:

27 **Chapter 34. Business Renewable Energy Investment Tax Credit**

28 **Sec. 1.** This chapter applies only to taxable years beginning after
29 December 31, 2010.

30 **Sec. 2.** As used in this chapter, "business entity" means:

- 31 (1) an individual engaged in a trade or business;
- 32 (2) a partnership;
- 33 (3) a limited liability company;
- 34 (4) a limited liability partnership; or
- 35 (5) a corporation.

36 **Sec. 3.** As used in this chapter, "IEDC" refers to the Indiana
37 economic development corporation established by IC 5-28-3-1.

38 **Sec. 4.** As used in this chapter, "pass through entity" means:

- 39 (1) a corporation that is exempt from the adjusted gross
40 income tax under IC 6-3-2-2.8(2);
- 41 (2) a partnership;
- 42 (3) a trust;
- 43 (4) a limited liability company; or
- 44 (5) a limited liability partnership.

45 **Sec. 5.** As used in this chapter, "qualified capital investment"
46 means an expenditure for depreciable property that conforms to
47 the terms and conditions of a credit award by the IEDC under this

1 chapter. The term does not include an expenditure for inventory.

2 Sec. 6. As used in this chapter, "renewable or alternative energy
3 technology" means the following:

- 4 (1) Solar panels that convert sunlight into electricity.
5 (2) Solar technologies that use optical techniques to generate
6 heat to power turbines or heat engines for the production of
7 electricity.
8 (3) Wind turbines that convert wind energy into electricity.
9 (4) Electrochemical devices, known as fuel cells, that combine
10 hydrogen and oxygen to produce electricity.
11 (5) Anaerobic digestion systems in which organic waste is
12 composted to produce gases that are burned as fuel to
13 produce electricity.
14 (6) Geothermal energy systems, including geothermal systems
15 for:
16 (A) the generation of electricity; or
17 (B) heating and cooling.
18 (7) Commercial building technologies that contribute to
19 certification under any of the following standards or rating
20 systems:
21 (A) Green Globes.
22 (B) Leadership in Energy and Environmental Design
23 (LEED).
24 (C) An American National Standards Institute (ANSI)
25 green building standard.

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

- 28 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
29 (2) IC 27-1-18-2 (the insurance premiums tax); and
30 (3) IC 6-5.5 (the financial institutions tax);

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

34 Sec. 8. Each taxable year beginning after December 31, 2010, a
35 business entity that meets the terms of a credit award agreement
36 entered into under section 14 of this chapter is entitled to a credit
37 against the business entity's state tax liability for amounts that the
38 business entity expends during the taxable year for a qualified
39 capital investment in renewable or alternative energy technology.
40 The amount of the credit is:

- 41 (1) the percentage awarded to the business entity by the
42 IEDC, not to exceed ten percent (10%); multiplied by
43 (2) the amount of the business entity's qualified capital
44 investment in renewable or alternative energy technology for
45 the taxable year.

46 Sec. 9. (a) A taxpayer may carry forward an unused credit
47 provided by this chapter for the number of years determined by

1 the IEDC, not to exceed nine (9) consecutive taxable years,
2 beginning with the taxable year after the taxable year in which the
3 taxpayer makes the qualified capital investment.

4 (b) The amount that a taxpayer may carry forward to a
5 particular taxable year under this section equals the unused part
6 of a credit allowed under this chapter.

7 (c) A taxpayer may:

8 (1) claim a tax credit under this chapter for a qualified capital
9 investment; and

10 (2) carry forward a remainder for one (1) or more different
11 qualified capital investments;

12 in the same taxable year.

13 (d) A taxpayer may not carry back an unused credit provided
14 by this chapter to a taxable year before the taxable year in which
15 the taxpayer makes the qualified capital investment. A taxpayer
16 may not claim a refund for an unused credit provided by this
17 chapter.

18 **Sec. 10. If a pass through entity does not have state tax liability**
19 **against which the tax credit provided by this chapter may be**
20 **applied, a shareholder or partner of the pass through entity is**
21 **entitled to a tax credit equal to:**

22 (1) the amount of the tax credit determined for the pass
23 through entity for the taxable year; multiplied by

24 (2) the percentage of the pass through entity's distributive
25 income to which the shareholder or partner is entitled.

26 **Sec. 11. The IEDC may approve credit awards under this**
27 **chapter to encourage business entities to make capital investments**
28 **in renewable or alternative energy technology in Indiana.**

29 **Sec. 12. A business entity may apply to the IEDC for a credit**
30 **award under this chapter for a proposed capital investment in**
31 **renewable or alternative energy technology in Indiana. The IEDC**
32 **shall prescribe the form of the application.**

33 **Sec. 13. (a) The IEDC may not make a credit award under this**
34 **chapter unless the proposed capital investment in renewable or**
35 **alternative energy technology conforms with the following**
36 **requirements:**

37 (1) The proposed capital investment is located in Indiana.

38 (2) The proposed capital investment consists of depreciable
39 property that implements a renewable or alternative energy
40 technology.

41 (b) The IEDC may make a credit award under this chapter only
42 for proposed capital investments in renewable or alternative
43 energy technology. The IEDC may not make credit awards under
44 this chapter for investments in renewable or alternative energy
45 technology that are accomplished before the date on which the
46 business entity's application is submitted to the IEDC. If an
47 investment in renewable or alternative energy technology is

1 partially completed before the date on which the business entity's
 2 application is submitted to the IEDC, the IEDC may make a credit
 3 award for the part of the investment that occurs on or after the
 4 date on which the business entity's application is submitted to the
 5 IEDC.

6 Sec. 14. (a) After receipt of an application, the IEDC shall
 7 review the application to determine whether the requirements of
 8 section 13 of this chapter are met. If the IEDC determines that the
 9 proposed capital investment in renewable or alternative energy
 10 technology is not eligible for a credit award, the IEDC promptly
 11 shall issue a letter notifying the applicant that the application is
 12 denied.

13 (b) If the IEDC determines that a proposed capital investment
 14 in renewable or alternative energy technology is eligible for a
 15 credit award, the IEDC promptly shall prepare a credit award
 16 agreement that specifies the terms of the credit award. The credit
 17 award agreement must contain the following provisions:

18 (1) An award of the credit percentage to be applied under
 19 section 8 of this chapter.

20 (2) A provision that requires the applicant business entity to
 21 remain for ten (10) years at the location where the renewable
 22 or alternative energy technology is installed.

23 (3) Any other reasonable provision that the IEDC determines
 24 is advisable.

25 After the IEDC has prepared the credit award agreement, the
 26 IEDC promptly shall send a letter of notification along with the
 27 credit award agreement to the applicant business entity.

28 (c) A business entity is not eligible for the credit provided by this
 29 chapter unless the business entity enters into a credit award
 30 agreement with the IEDC.

31 Sec. 15. The department may require a taxpayer claiming a
 32 credit under this chapter to submit supporting documentation with
 33 the taxpayer's return.

34 Sec. 16. If the IEDC suspects that a taxpayer who has received
 35 a credit under this chapter is not complying with the requirements
 36 of the taxpayer's credit award agreement or this chapter, the IEDC
 37 shall give the taxpayer an opportunity to explain the
 38 noncompliance. If the IEDC determines that the taxpayer is not
 39 complying with the requirements of the credit award agreement or
 40 this chapter, the IEDC shall notify the department of the
 41 noncompliance and request an assessment. The department, with
 42 the assistance of the IEDC, shall determine the amount of the
 43 assessment, which may not exceed the sum of any previously
 44 allowed credits under this chapter, and shall make an assessment
 45 against the taxpayer under IC 6-8.1.

46 Sec. 17. Notwithstanding the other provisions of this chapter,
 47 the IEDC may not approve an application for a credit award under

1 this chapter after December 31, 2012. However, this section does
 2 not prevent a taxpayer from carrying forward an unused tax credit
 3 attributable to a qualified capital investment made before January
 4 1, 2013, to a taxable year beginning after December 31, 2012, in the
 5 manner provided by section 9 of this chapter.

6 SECTION 7. IC 8-1-2-23.1 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2009]: Sec. 23.1. (a) This section applies to a public utility that
 9 complies with the schedule set forth in IC 8-1-37-5(b).

10 (b) For purposes of section 23 of this chapter, the construction,
 11 addition, extension, or improvement of a public utility's plant or
 12 equipment to provide electric or gas service to a customer that
 13 produces biodiesel, ethanol, or any other biofuel is in fact used and
 14 useful in the public service.

15 (c) This subsection applies to a public utility's general rate
 16 proceeding that immediately follows the public utility's investment
 17 in a construction, an addition, an extension, or an improvement
 18 described in subsection (b). A public utility may accrue for
 19 recovery in the rate proceeding depreciation and a return, not to
 20 exceed a total of fifty million dollars (\$50,000,000), on the public
 21 utility's investment at the rate of return authorized by the
 22 commission in the public utility's general rate proceeding
 23 immediately preceding the investment. The accrual of a return by
 24 a public utility under this subsection:

25 (1) begins on the date the public utility initially records the
 26 investment in the public utility's books or records, as
 27 determined by the commission; and

28 (2) ends on the earlier of the following dates:

29 (A) The date on which the public utility accrues the full
 30 return determined under this subsection.

31 (B) The date rates are placed in effect after a general rate
 32 proceeding that recognizes an investment by a public
 33 utility in the public utility's rate base.

34 (d) Notwithstanding subsection (c), the commission shall revoke
 35 a cost recovery approved under this chapter for an electricity
 36 supplier that the commission determines has:

37 (1) elected to; and

38 (2) failed to;

39 comply with the schedule set forth in IC 8-1-37-5(b).

40 (e) This section expires December 31, 2020, unless reauthorized
 41 by the general assembly before December 31, 2020. However, a
 42 return accrued under this section before January 1, 2021, expires
 43 on the appropriate date determined under subsection (c)(2) even if
 44 the expiration date occurs after December 31, 2020.

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

1 **Chapter 8.4. Electric Line Facilities Projects**

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

4 **Sec. 2. As used in this chapter, "electric line facilities" means**
5 **the following:**

6 (1) **Overhead or underground electric transmission lines.**

7 (2) **Overhead or underground electric distribution lines.**

8 (3) **Electric substations.**

9 **Sec. 3. As used in this chapter, "electric line facilities project"**
10 **means an addition to or the construction, operation, maintenance,**
11 **reconstruction, relocation, upgrading, or removal of electric line**
12 **facilities.**

13 **Sec. 4. As used in this chapter, "electricity supplier" means a**
14 **public utility that furnishes retail electric service to the public.**

15 **Sec. 5. As used in this chapter, "public utility" has the meaning**
16 **set forth in IC 8-1-2-1.**

17 **Sec. 6. As used in this chapter, "regional transmission**
18 **organization" refers to the regional transmission organization**
19 **approved by the Federal Energy Regulatory Commission for the**
20 **control area in which an electricity supplier operates electric line**
21 **facilities.**

22 **Sec. 7. As used in this chapter, "renewable energy resources"**
23 **has the meaning set forth in IC 8-1-37-4.**

24 **Sec. 8. This chapter applies to an electricity supplier that**
25 **complies with the schedule set forth in IC 8-1-37-5(b).**

26 **Sec. 9. (a) The commission shall encourage electric line facilities**
27 **projects by creating the following financial incentives for electric**
28 **line facilities that are reasonable and necessary:**

29 (1) **The timely recovery of costs, by means of a periodic rate**
30 **adjustment mechanism, incurred by an electricity supplier in**
31 **connection with an electric line facilities project that**
32 **transmits or distributes electricity generated from renewable**
33 **energy resources.**

34 (2) **The timely recovery of costs, by means of a periodic rate**
35 **adjustment mechanism, incurred by an electricity supplier**
36 **taking service under a tariff of, or being assessed costs by the:**

37 (A) **regional transmission organization; or**

38 (B) **Federal Energy Regulatory Commission.**

39 (b) **The commission shall determine a reasonable schedule**
40 **under which an electricity supplier may recover costs under this**
41 **section. In making a determination under this subsection, the**
42 **commission shall consider the impact of the cost recovery on**
43 **ratepayers of the electricity supplier.**

44 **Sec. 10. (a) Subject to subsection (h), an electricity supplier must**
45 **submit an application to the commission for approval of an electric**
46 **line facilities project for which the electricity supplier seeks to**
47 **receive a financial incentive created under section 9 of this chapter.**

1 **(b) The commission shall prescribe the form for an application**
 2 **submitted under this section.**

3 **(c) Upon receipt of an application under subsection (a), the**
 4 **commission shall review the application for completeness. The**
 5 **commission may request additional information from an applicant**
 6 **as needed. The commission may not review an application**
 7 **submitted after December 31, 2020, unless authorized to do so by**
 8 **the general assembly before January 1, 2021.**

9 **(d) The commission, after notice and hearing, shall issue a**
 10 **determination of an electric line facilities project's eligibility for**
 11 **the financial incentives described in section 9 of this chapter not**
 12 **later than one hundred eighty (180) days after the date of the**
 13 **application. A determination under this subsection must include a**
 14 **finding that the applicant electricity supplier is in compliance with**
 15 **the schedule set forth in IC 8-1-37-5(b).**

16 **(e) Subject to subsections (g) and (h), the commission shall**
 17 **approve an application by an electricity supplier for an electric line**
 18 **facilities project that is reasonable and necessary. An electric line**
 19 **facilities project is presumed to be reasonable and necessary if the**
 20 **electric line facilities project:**

21 **(1) is consistent with, or part of, a plan developed by the:**

22 **(A) regional transmission organization; or**

23 **(B) Federal Energy Regulatory Commission; or**

24 **(2) transmits or distributes electricity generated from**
 25 **renewable energy resources.**

26 **However, an electricity supplier may seek approval from the**
 27 **commission at the electricity supplier's next general rate**
 28 **proceeding to include in the electricity supplier's basic rates the**
 29 **recoverable costs sought in an application approved under this**
 30 **subsection.**

31 **(f) This section does not relieve an electricity supplier of the**
 32 **duty to obtain any certificate required under IC 8-1-8.5 or**
 33 **IC 8-1-8.7.**

34 **(g) The commission shall not approve a financial incentive for**
 35 **that part of an electric line facilities project that exceeds the lesser**
 36 **of:**

37 **(1) seven percent (7%) of the electricity supplier's rate base**
 38 **approved by the commission in the electricity supplier's most**
 39 **recent general rate proceeding; or**

40 **(2) one hundred fifty million dollars (\$150,000,000).**

41 **(h) The commission may not approve a financial incentive under**
 42 **section 9 of this chapter for a particular electricity supplier if the**
 43 **commission has approved a financial incentive under section 9 of**
 44 **this chapter in the preceding twelve (12) months for that electricity**
 45 **supplier, unless the commission determines that approving a**
 46 **particular financial incentive for an electricity supplier on a more**
 47 **timely basis will benefit the electricity supplier's ratepayers.**

1 (i) **A financial incentive that the commission approves before**
 2 **January 1, 2021, or that an electricity supplier applies for before**
 3 **January 1, 2021, and that is subsequently approved, expires on the**
 4 **earlier of the following dates:**

5 (1) **The date on which the electricity supplier accrues the full**
 6 **recovery amount authorized by the commission.**

7 (2) **The date specified by the commission in its approval of the**
 8 **financial incentive.**

9 **Sec. 11. The commission shall revoke all financial incentives**
 10 **approved under this chapter for an electricity supplier that the**
 11 **commission determines has:**

12 (1) **elected to; and**

13 (2) **failed to;**

14 **comply with the schedule set forth in IC 8-1-37-5(b).**

15 SECTION 9. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007,
 16 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2009]: Sec. 2. As used in this chapter, "clean coal and energy
 18 projects" means any of the following:

19 (1) Any of the following projects:

20 (A) Projects at new energy production or generating facilities
 21 that employ the use of clean coal technology and that produce
 22 energy, including substitute natural gas, primarily from coal,
 23 or gases derived from coal, from the geological formation
 24 known as the Illinois Basin.

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

31 (C) Projects to provide electric transmission facilities to serve
 32 a new energy production or generating facility **or a low**
 33 **carbon dioxide emitting or noncarbon dioxide emitting**
 34 **energy production or generating facility.**

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

38 (E) **Projects or potential projects that employ the use of**
 39 **low carbon dioxide emitting or noncarbon dioxide emitting**
 40 **energy production or generating technologies to produce**
 41 **electricity.**

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

44 (3) The purchase of fuels **or energy** produced by a coal
 45 gasification facility **or by a low carbon dioxide emitting or**
 46 **noncarbon dioxide emitting energy production or generating**

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

4 SECTION 10. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007,
5 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2009]: Sec. 6. As used in this chapter, "eligible business"
7 means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal
8 gasification facility that:

- 9 (1) proposes to construct or repower a new energy production or
10 generating facility;
- 11 (2) proposes to construct or repower a project described in section
12 2(1) or 2(2) of this chapter;
- 13 (3) undertakes a project to develop alternative energy sources,
14 including renewable energy projects or **coal gasification**
15 **facilities; or**
- 16 (4) purchases fuels **or energy** produced by a coal gasification
17 facility **or by a low carbon dioxide emitting or noncarbon**
18 **dioxide emitting energy production or generating facility.**

19 SECTION 11. IC 8-1-8.8-7.5 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) As used in this chapter,**
22 **"low carbon dioxide emitting or noncarbon dioxide emitting**
23 **energy production or generating facility"** means an energy
24 **production or generation facility, including transmission lines and**
25 **equipment described in subsection (b), that is:**

- 26 (1) **installed or constructed at the site of a facility that supplies**
27 **electricity to Indiana retail customers as of July 1, 2009; and**
- 28 (2) **intended to produce:**
 - 29 (A) **no carbon dioxide as a byproduct of the production or**
30 **generation of energy; or**
 - 31 (B) **less carbon dioxide per megawatt hour of electricity**
32 **generated than is produced per megawatt hour of**
33 **electricity generated by a coal fired or other fossil fuel**
34 **based energy production or generating facility.**
- 35 (b) **The term includes the transmission lines and other**
36 **associated equipment employed specifically to serve a low carbon**
37 **dioxide emitting or noncarbon dioxide emitting energy production**
38 **or generating facility.**

39 SECTION 12. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007,
40 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2009]: Sec. 8. (a) As used in this chapter, "new energy
42 **production or generating facility"** refers to a generation or coal
43 gasification facility that satisfies all of the following:

- 44 (1) The facility produces energy primarily from coal or gases from
45 coal from the geological formation known as the Illinois Basin.
- 46 (2) The facility is a:

- 1 (A) newly constructed or newly repowered energy ~~generation~~
 2 plant; or
 3 (B) newly constructed ~~generation~~ capacity expansion at an
 4 existing ~~facility~~; **plant**;
 5 dedicated primarily to serving Indiana retail customers.
 6 (3) The repowering, construction, or expansion of the facility was
 7 begun by an Indiana utility after July 1, 2002.
 8 (4) Except for a facility that is a clean coal and energy project
 9 under section 2(2) of this chapter, the facility has an aggregate
 10 rated electric generating capacity of at least one hundred (100)
 11 megawatts for all units at one (1) site or a generating capacity of
 12 at least four hundred thousand (400,000) pounds per hour of
 13 steam.
- 14 (b) The term includes the transmission lines, gas transportation
 15 facilities, and associated equipment employed specifically to serve a
 16 new energy generating or coal gasification facility.
- 17 SECTION 13. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2009]: **Sec. 8.5. As used in this chapter,**
 20 **"qualified utility system expenses" means any preconstruction**
 21 **costs associated with the study, analysis, or development of a:**
 22 **(1) new energy production or generating facility; or**
 23 **(2) new low carbon dioxide emitting or noncarbon dioxide**
 24 **emitting energy production or generating facility;**
 25 **including siting, design, licensing, and permitting costs.**
- 26 SECTION 14. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007,
 27 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2009]: Sec. 9. As used in this chapter, "qualified utility system
 29 property" means any:
 30 **(1) new energy production or generating or coal gasification**
 31 **facility; or**
 32 **(2) new low carbon dioxide emitting or noncarbon dioxide**
 33 **emitting energy production or generating facility;**
 34 used, or to be used, in whole or in part, by an energy utility to provide
 35 retail energy service (as defined in IC 8-1-2.5-3) regardless of whether
 36 that service is provided under IC 8-1-2.5 or another provision of this
 37 article.
- 38 SECTION 15. IC 8-1-8.8-11 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) The commission
 40 shall encourage clean coal and energy projects by creating the
 41 following financial incentives for clean coal and energy projects, if the
 42 projects are found to be reasonable and necessary:
 43 (1) The timely recovery of costs incurred during construction and
 44 operation of projects described in section 2(1) or 2(2) of this
 45 chapter.
 46 (2) The authorization of up to three (3) percentage points on the

- 1 return on shareholder equity that would otherwise be allowed to
 2 be earned on projects described in subdivision (1).
- 3 (3) Financial incentives for the purchase of fuels **or energy**
 4 produced by a coal gasification facility **or by a low carbon**
 5 **dioxide emitting or noncarbon dioxide emitting energy**
 6 **production or generating facility**, including cost recovery and
 7 the incentive available under subdivision (2).
- 8 (4) Financial incentives for projects to develop alternative energy
 9 sources, including renewable energy projects **or coal gasification**
 10 **facilities**.
- 11 (5) Other financial incentives the commission considers
 12 appropriate.
- 13 (b) An eligible business must file an application to the commission
 14 for approval of a clean coal and energy project under this section. This
 15 chapter does not relieve an eligible business of the duty to obtain any
 16 certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business
 17 seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for
 18 one (1) project may file a single application for all necessary
 19 certificates. If a single application is filed, the commission shall
 20 consider all necessary certificates at the same time.
- 21 (c) The commission shall promptly review an application filed
 22 under this section for completeness. The commission may request
 23 additional information the commission considers necessary to aid in its
 24 review.
- 25 (d) The commission shall, after notice and hearing, issue a
 26 determination of a project's eligibility for the financial incentives
 27 described in subsection (a) not later than one hundred twenty (120)
 28 days after the date of the application, unless the commission finds that
 29 the applicant has not cooperated fully in the proceeding.
- 30 SECTION 16. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007,
 31 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2009]: Sec. 12. (a) The commission shall provide financial
 33 incentives to eligible businesses for:
- 34 (1) new energy ~~producing and~~ **production or** generating
 35 facilities; **and**
- 36 (2) **new low carbon dioxide emitting or noncarbon dioxide**
 37 **emitting energy production or generating facilities;**
 38 in the form of timely recovery of the costs incurred in connection with
 39 the **study, analysis, development, siting, design, licensing,**
 40 **permitting,** construction, repowering, expansion, operation, or
 41 maintenance of the facilities.
- 42 (b) An eligible business seeking authority to timely recover the costs
 43 described in subsection (a) must apply to the commission for approval
 44 of a rate adjustment mechanism in the manner determined by the
 45 commission.
- 46 (c) An application must include the following:

- 1 (1) A schedule for the completion of construction, repowering, or
- 2 expansion of the ~~new energy generating or coal gasification~~
- 3 facility for which rate relief is sought.
- 4 (2) Copies of the most recent integrated resource plan filed with
- 5 the commission, if applicable.
- 6 (3) The amount of capital investment by the eligible business in
- 7 the ~~new energy generating or coal gasification~~ facility.
- 8 (4) Other information the commission considers necessary.
- 9 (d) The commission shall allow an eligible business to recover:
- 10 (1) the costs associated with qualified utility system property; **and**
- 11 **(2) qualified utility system expenses;**
- 12 if the eligible business provides substantial documentation that the
- 13 expected costs ~~associated with qualified utility system property~~ and
- 14 **expenses and** the schedule for incurring those costs **and expenses** are
- 15 reasonable and necessary.
- 16 (e) The commission shall allow an eligible business to recover the
- 17 costs associated with the purchase of fuels **or energy** produced by a
- 18 coal gasification facility **or by a low carbon dioxide emitting or**
- 19 **noncarbon dioxide emitting energy production or generating**
- 20 **facility** if the eligible business provides substantial documentation that
- 21 the costs associated with the purchase are reasonable and necessary.
- 22 (f) A retail rate adjustment mechanism proposed by an eligible
- 23 business under this section may be based on actual or forecasted data.
- 24 If forecast data is used, the retail rate adjustment mechanism must
- 25 contain a reconciliation mechanism to correct for any variance between
- 26 the forecasted costs and the actual costs."
- 27 Delete pages 2 through 4.
- 28 Page 5, delete lines 1 through 19.
- 29 Page 5, line 34, delete "IC 8-1-8.2-6." and insert "**IC 8-1-8.4-6.**".
- 30 Page 5, delete lines 35 through 42, begin a new paragraph and
- 31 insert:
- 32 "**Sec. 3. As used in this chapter, "renewable energy credit", or**
- 33 **"REC", means one (1) megawatt hour of electricity that is:**
- 34 **(1) generated from a renewable energy resource described in**
- 35 **section 4(a) of this chapter;**
- 36 **(2) quantifiable; and**
- 37 **(3) possessed by not more than one (1) entity at a time.**
- 38 **Sec. 4. (a) As used in this chapter, "renewable energy resources"**
- 39 **includes the following sources, technologies, and programs for the**
- 40 **production or conservation of electricity:**
- 41 **(1) Methane systems that convert waste products, including**
- 42 **animal, food, and plant waste, into electricity or fuel for the**
- 43 **production of electricity.**
- 44 **(2) Methane recovered from landfills or coal mines.**
- 45 **(3) Wind.**
- 46 **(4) Solar photovoltaic cells and panels.**

- 1 **(5) Clean coal and energy projects (as defined in IC 8-1-8.8-2),**
- 2 **including plant efficiency measures.**
- 3 **(6) Dedicated crops grown for energy production.**
- 4 **(7) Energy from waste to energy facilities.**
- 5 **(8) Noncarbon dioxide emitting or low carbon dioxide**
- 6 **emitting electricity generating technologies placed in service**
- 7 **after June 30, 2009.**
- 8 **(9) Hydropower.**
- 9 **(10) Demand side management or energy efficiency programs**
- 10 **that:**
 - 11 **(A) reduce electricity consumption; or**
 - 12 **(B) implement load management or demand response**
 - 13 **technologies that shift a customer's electric load from**
 - 14 **periods of higher demand to periods of lower demand.**
- 15 **(11) Combined heat and power systems that:**
 - 16 **(A) use natural gas or renewable energy resources as**
 - 17 **feedstock; and**
 - 18 **(B) achieve at least seventy percent (70%) overall**
 - 19 **efficiency.**
- 20 **(12) Geothermal hot water district heating systems.**
- 21 **(13) Electricity generated through net metering that is**
- 22 **regulated under rules adopted by the commission or other**
- 23 **Indiana law.**
- 24 **(14) Energy storage facilities.**
- 25 **(15) A renewable energy resource listed in IC 8-1-8.8-10 to the**
- 26 **extent the renewable energy resource is not already described**
- 27 **in this subsection.**
- 28 **(b) Except as provided in subsection (a)(7), the term does not**
- 29 **include energy from the incineration, burning, or heating of the**
- 30 **following:**
 - 31 **(1) Garbage.**
 - 32 **(2) General household, institutional, or commercial waste.**
 - 33 **(3) Industrial lunchroom or office waste.**
 - 34 **(4) Landscape waste.**
 - 35 **(5) Construction or demolition debris.**
 - 36 **(6) Feedstock that is municipal, food, plant, industrial, or**
 - 37 **animal waste from outside Indiana.**
- 38 **Sec. 5. (a) Each electricity supplier shall supply electricity under**
- 39 **a schedule set forth in either subsection (b) or (c).**
- 40 **(b) In order to qualify for a financial incentive under**
- 41 **IC 8-1-2-23.1 or IC 8-1-8.4-9, an electricity supplier shall supply**
- 42 **electricity that is generated from renewable energy resources**
- 43 **described in section 4(a) of this chapter to Indiana customers as a**
- 44 **percentage of the total electricity supplied by the electricity**
- 45 **supplier to Indiana customers during a calendar year as follows:**
 - 46 **(1) Not later than the calendar year ending December 31,**
 - 47 **2010, at least three percent (3%).**

1 (2) Not later than the calendar year ending December 31,
2 2015, at least six percent (6%).

3 (3) Not later than the calendar year ending December 31,
4 2020, at least ten percent (10%).

5 (4) Not later than the calendar year ending December 31,
6 2025, at least fifteen percent (15%).

7 For purposes of this subsection, electricity is measured in
8 megawatt hours.

9 (c) An electricity supplier that elects not to comply with
10 subsection (b) shall supply electricity that is generated from
11 renewable energy resources described in section 4(a) of this
12 chapter to Indiana customers as a percentage of the total electricity
13 supplied by the electricity supplier to Indiana customers during a
14 calendar year as follows:

15 (1) Not later than the calendar year ending December 31,
16 2010, at least one and five-tenths percent (1.5%).

17 (2) Not later than the calendar year ending December 31,
18 2015, at least four percent (4%).

19 (3) Not later than the calendar year ending December 31,
20 2020, at least seven percent (7%).

21 (4) Not later than the calendar year ending December 31,
22 2025, at least ten percent (10%).

23 For purposes of this subsection, electricity is measured in
24 megawatt hours.

25 (d) An electricity supplier may own or purchase RECs or
26 carbon offset equivalents to comply with subsection (b) or (c), as
27 applicable.

28 (e) An electricity supplier may not use a renewable energy
29 resource described in section 4(a)(5), 4(a)(8), 4(a)(10), or 4(a)(11)
30 of this chapter to generate more than twenty-five percent (25%) of
31 the electricity that the electricity supplier is required to supply
32 under subsection (b) or (c), as applicable.

33 (f) If an electricity supplier exceeds the applicable percentage
34 under subsection (b) or (c) in a compliance year, the electricity
35 supplier may carry forward the amount of electricity that:

36 (1) exceeds the applicable percentage under subsection (a);
37 and

38 (2) is generated from renewable energy resources;
39 to comply with the requirement under subsection (b) or (c) for
40 either or both of the two (2) immediately succeeding compliance
41 years.

42 (g) The commission shall consider the costs incurred by an
43 electricity supplier in complying with subsection (b) or (c), as
44 applicable, as consistent with the requirements of IC 8-1-2-42(d)(1)
45 when ruling on a fuel cost charge requested by the electricity
46 supplier under IC 8-1-2-42(d)."

47 Delete pages 6 through 7.

- 1 Page 8, delete lines 1 through 3.
- 2 Page 8, line 7, delete "IC 8-1-2-23.1(d), IC 8-1-8.2-11, or section
3 9(c) of this chapter," and insert "**IC 8-1-2-23.1(d) or IC 8-1-8.4-11**".
- 4 Page 8, line 23, delete "shall" and insert "**may**".
- 5 Page 9, delete lines 15 through 42, begin a new paragraph and
6 insert:
- 7 **"Sec. 9. (a) The commission shall allow an electricity supplier
8 that complies with the schedule set forth in section 5(b) or 5(c) of
9 this chapter to recover reasonable and necessary costs incurred in:**
- 10 **(1) constructing, operating, or maintaining facilities to comply
11 with this chapter;**
- 12 **(2) generating electricity from, or purchasing electricity
13 generated from, a renewable energy resource;**
- 14 **(3) purchasing RECs or carbon offset equivalents; or**
- 15 **(4) complying with federal renewable energy resource
16 portfolio requirements;**
- 17 **by a periodic rate adjustment mechanism.**
- 18 **(b) The commission shall revoke a periodic rate adjustment
19 mechanism allowed under subsection (a) for an electricity supplier
20 that the commission determines:**
- 21 **(1) is required to; and**
- 22 **(2) has failed to;**
- 23 **comply with section 5(b) or 5(c) of this chapter.**
- 24 **(c) If the commission revokes a periodic rate adjustment
25 mechanism allowed to an electricity supplier under subsection (b),
26 the electricity supplier may request, in the electricity supplier's
27 next general rate case, recovery of reasonable and necessary costs
28 incurred by the electricity supplier in attempting to comply with
29 section 5(b) or 5(c) of this chapter, as applicable.**
- 30 **Sec. 10. (a) For purposes of calculating RECs to determine an
31 electricity supplier's compliance with section 5(b) or 5(c) of this
32 chapter, as applicable, the following apply:**
- 33 **(1) Except as provided in subdivision (2), one (1) megawatt
34 hour of electricity generated from renewable energy resources
35 in an Indiana facility equals one and five-tenths (1.5) REC.**
- 36 **(2) One (1) megawatt hour of electricity generated from a
37 renewable energy resource described in section 4(a)(1) or
38 4(a)(2) of this chapter that originates in Indiana equals two (2)
39 RECs.**
- 40 **(3) One (1) megawatt hour of electricity that is:**
- 41 **(A) generated from a renewable energy resource that is
42 directly interconnected to a regional transmission
43 organization whose members include an electricity
44 supplier; and**
- 45 **(B) imported into Indiana;**
- 46 **equals one (1) REC.**
- 47 **(b) An electricity supplier may not apportion all or part of a**

1 **single megawatt of electricity among more than one (1):**
 2 **(1) renewable energy resource; or**
 3 **(2) category set forth in subsection (a);**
 4 **in order to comply with section 5(b) or 5(c) of this chapter, as**
 5 **applicable."**

6 Page 10, delete lines 1 through 24.

7 Page 10, between lines 38 and 39, begin a new paragraph and insert:

8 "SECTION 17. IC 14-8-2-42.2 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2009]: **Sec. 42.2. "Coal bed methane", for**
 11 **purposes of this chapter, IC 14-37-3-14.5, and IC 14-37-11-3 means**
 12 **gaseous substances of whatever character lying within or**
 13 **emanating from:**

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

19 SECTION 18. IC 14-8-2-47 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 47. (a) "Commercially**
 21 **minable coal resource", for purposes of IC 14-37, means a seam of coal**
 22 **that:**

23 **(1) can be mined using generally accepted underground**
 24 **practices and suitable equipment; and**
 25 **(2) consists of coal in sufficient quantities and of sufficient**
 26 **quality to be commercially saleable.**

27 **(b) The term includes a seam of coal to which one (1) or more of**
 28 **the following applies:**

29 **(1) The seam is:**

30 **(A) associated with an underground mine permitted under**
 31 **IC 14-34; and**

32 **(B) specifically intended to be mined under the permit.**

33 **(2) The seam is associated with an inactive underground**
 34 **mining operation at which mining operations:**

35 **(A) have temporarily ceased; and**

36 **(B) are anticipated to be resumed by the person with the**
 37 **right to develop the seam.**

38 **(3) The seam is identified by a map as a commercially minable**
 39 **coal resource by the owner or lessee of the seam in an**
 40 **affidavit that:**

41 **(A) is filed with the division of reclamation under**
 42 **IC 14-37-7-8; and**

43 **(B) states that the coal in the seam is being held for later**
 44 **commercial production.**

45 **(4) The seam is:**

46 **(A) not a seam to which subdivision (1), (2), or (3) applies;**
 47 **and**

1 **(B) verified by a professional geologist licensed under**
 2 **IC 25-17.6 or a professional engineer licensed under**
 3 **IC 25-31 to be:**

4 ~~(1)~~ **(i)** at least ~~thirty-six (36)~~ **thirty (30)** inches thick; and
 5 ~~(2)~~ **(ii)** located not more than ~~eight~~ **one thousand two**
 6 hundred ~~(800)~~ **(1,200)** feet below the surface.

7 SECTION 19. IC 14-8-2-317 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 317. "Well for oil and
 9 gas purposes", for purposes of IC 14-37, means a hole drilled,
 10 deepened, or converted for any purpose for which a permit is required
 11 under IC 14-37. The term includes the following:

- 12 (1) An oil ~~or a natural~~ gas well.
 13 **(2) A natural gas well.**
 14 **(3) A coal bed methane well.**
 15 ~~(2)~~ **(4)** A Class II well.
 16 ~~(3)~~ **(5)** A structure test well.
 17 ~~(4)~~ **(6)** A well used for the sole purpose of supplying water for the
 18 secondary recovery of petroleum resources.
 19 ~~(5)~~ **(7)** An underground gas storage well or underground gas
 20 storage observation well.

21 SECTION 20. IC 14-37-1-5 IS ADDED TO THE INDIANA CODE
 22 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2009]: **Sec. 5. This article does not apply to methane ventilation**
 24 **governed under an approved federal Mine Safety and Health**
 25 **Administration coal mine ventilation plan.**

26 SECTION 21. IC 14-37-3-14.5 IS ADDED TO THE INDIANA
 27 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2009]: **Sec. 14.5. The commission shall:**

- 29 **(1) regulate coal bed methane wells and compliance with**
 30 **IC 32-23-7-10 and IC 32-23-7-11; and**
 31 **(2) establish alternative spacing, unit, and bonding**
 32 **requirements for coal bed methane wells.**

33 SECTION 22. IC 14-37-4-1, AS AMENDED BY P.L.80-2005,
 34 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2009]: Sec. 1. A person may not drill, deepen, operate, or
 36 convert a well for ~~oil and gas~~ purposes **of any of the following** without
 37 a permit issued by the department:

- 38 **(1) Oil.**
 39 **(2) Gas.**
 40 **(3) Coal bed methane.**

41 SECTION 23. IC 14-37-4-8 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. **(a)** Except as
 43 provided in section 9 of this chapter **and subject to subsection (b)**, if
 44 an applicant for a permit complies with:

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

1 the commission shall issue a permit.

2 **(b) The division of oil and gas shall post on the web site**
 3 **maintained by the division of oil and gas each complete permit**
 4 **application under this chapter with respect to oil, gas, or coal bed**
 5 **methane. The posting must include at least the following:**

6 **(1) The location, type, and depth of each proposed well.**

7 **(2) The coal seam affected by each proposed coal bed methane**
 8 **well.**

9 **(c) The division of oil and gas may not issue a permit under this**
 10 **chapter less than fourteen (14) days after the posting of the permit**
 11 **application under subsection (b).**

12 SECTION 24. IC 14-37-7-4 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) If a well is drilled
 14 and completed as a producing well:

15 (1) through a commercially minable coal resource; ~~and or~~

16 (2) within an area:

17 **(A) for which a mine plan map is filed with the commission**
 18 **but under section 8 of this chapter; and**

19 **(B) for which an intermediate string is not required under**
 20 **section 3 of this chapter;**

21 an owner or operator shall set a production string of casing properly
 22 centralized and cemented and documented by a sonic cement
 23 bond-variable density log.

24 **(b) Before beginning logging operations under this section, an**
 25 **owner or operator must provide at least forty-eight (48) hours notice to**
 26 **the: all of the following:**

27 **(1) The department. and**

28 **(2) The person who filed the mine plan before commencing**
 29 **logging operations under this section: a map under subsection**
 30 **(a)(2).**

31 **(3) The owner or lessee of the commercially minable coal**
 32 **resource.**

33 **(4) Any person identified as either or both of the following:**

34 **(A) The owner of the coal.**

35 **(B) An owner of coal in an area targeted for later**
 36 **commercial production under section 8 of this chapter.**

37 **(c) The Each person who filed the mine plan entitled to notice**
 38 **under subsection (b)(2), (b)(3), or (b)(4) is entitled to:**

39 (1) be present during the logging operations; and

40 (2) examine the log.

41 (d) The commission shall determine the adequacy of cement
 42 bonding. If there is a bonding failure between fifty (50) feet below and
 43 one hundred (100) feet above the commercially minable coal resource,
 44 the owner or operator shall perform remedial action, as ordered by the
 45 commission, that results in adequate bonding.

46 (e) Not later than thirty (30) days after commencing logging

1 operations, the owner or operator shall provide **a copy of the sonic**
 2 **cement bond-variable density log to:**

3 (1) the department; and the

4 (2) ~~each person who filed the mine plan with a copy of the sonic~~
 5 ~~cement bond-variable density log.~~ **entitled to notice under**
 6 **subsection (b)(2), (b)(3), or (b)(4).**

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

9 SECTION 25. IC 14-37-7-8 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 11 **1, 2009]: Sec. 8. (a) The owner or lessee of coal may file with the**
 12 **division of reclamation an affidavit identifying by map:**

13 (1) **coal that the owner or lessee holds for later commercial**
 14 **production; or**

15 (2) **coal that is in an area targeted by the owner or lessee for**
 16 **later commercial production.**

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

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

22 (1) **keep the affidavit and map confidential; and**

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

26 (d) **Upon receipt of a permit application referred to in**
 27 **subsection (c)(2), the division shall request the division of**
 28 **reclamation to determine if the proposed well location is in an area**
 29 **underlain by coal identified in subsection (a).**

30 (e) **The division of reclamation shall report its determination**
 31 **under subsection (d) in writing to the division.**

32 SECTION 26. IC 14-37-11-3 IS ADDED TO THE INDIANA
 33 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 34 **[EFFECTIVE JULY 1, 2009]: Sec. 3. The owner or operator of a**
 35 **coal mine may burn in flares the coal bed methane produced from**
 36 **a coal bed methane well if either or both of the following apply:**

37 (1) **The burning is necessary to protect coal miners' safety.**

38 (2) **It is not economical to market the coal bed methane.**

39 SECTION 27. IC 32-23-7-0.3 IS ADDED TO THE INDIANA
 40 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 41 **[EFFECTIVE JULY 1, 2009]: Sec. 0.3. As used in this chapter, "coal**
 42 **bed methane" has the meaning set forth in IC 14-8-2-42.2.**

43 SECTION 28. IC 32-23-7-0.4 IS ADDED TO THE INDIANA
 44 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 45 **[EFFECTIVE JULY 1, 2009]: Sec. 0.4. (a) As used in this chapter,**
 46 **"coal bed methane estate in land" means the aggregate of all rights**

- 1 **in land that affect the coal bed methane:**
- 2 (1) **in the land;**
- 3 (2) **on the land;**
- 4 (3) **under the land; or**
- 5 (4) **that may be taken from beneath the surface of the land.**
- 6 **(b) The term includes the following:**
- 7 (1) **The right to produce, sell, use, ventilate, waste, and**
- 8 **otherwise affect coal bed methane in connection with coal**
- 9 **mining or preparation for coal mining.**
- 10 (2) **The right to produce coal bed methane for commercial use**
- 11 **or sale.**
- 12 (3) **The appurtenant right to use the surface overlying the coal**
- 13 **bed methane for coal bed methane operations.**
- 14 SECTION 29. IC 32-23-7-0.5 IS ADDED TO THE INDIANA
- 15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 16 [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. (a) As used in this chapter,**
- 17 **"coal bed methane production area" means the area of land**
- 18 **determined by the operator in which multiple wells are drilled for**
- 19 **a common production purpose.**
- 20 **(b) A coal bed methane production area need not be part of a**
- 21 **unit or other area in which production is pooled.**
- 22 SECTION 30. IC 32-23-7-0.6 IS ADDED TO THE INDIANA
- 23 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 24 [EFFECTIVE JULY 1, 2009]: **Sec. 0.6. (a) As used in this chapter,**
- 25 **"coal estate in land" means the total of all rights in land that affect**
- 26 **the coal:**
- 27 (1) **in the land;**
- 28 (2) **on the land;**
- 29 (3) **under the land; or**
- 30 (4) **that may be taken from beneath the surface of the land.**
- 31 **(b) The term includes the following:**
- 32 (1) **The right to produce, sell, use, waste, and otherwise**
- 33 **impact coal in connection with coal mining or preparation for**
- 34 **coal mining.**
- 35 (2) **The right to produce coal for commercial use or sale.**
- 36 (3) **The appurtenant right to use the surface overlying the coal**
- 37 **for coal operations.**
- 38 SECTION 31. IC 32-23-7-0.8 IS ADDED TO THE INDIANA
- 39 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 40 [EFFECTIVE JULY 1, 2009]: **Sec. 0.8. As used in this chapter,**
- 41 **"commercially minable coal resource" has the meaning set forth**
- 42 **in IC 14-8-2-47.**
- 43 SECTION 32. IC 32-23-7-1 IS AMENDED TO READ AS
- 44 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. (a) As used in this**
- 45 **chapter, "oil and gas" means petroleum and mineral oils and gaseous**
- 46 **substances of whatever character naturally lying or found beneath the**
- 47 **surface of land.**

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

2 SECTION 33. IC 32-23-7-2.5 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. As used in this chapter,**
5 **"operations for coal bed methane", unless otherwise indicated by**
6 **the context of this chapter, means:**

7 **(1) the exploration, surveying, or testing of land for coal bed**
8 **methane;**

9 **(2) other investigation of the potential of land for coal bed**
10 **methane production;**

11 **(3) the actual drilling or preparation for drilling of wells for**
12 **coal bed methane;**

13 **(4) the stimulation of coal bed methane production by**
14 **hydrofracturing or otherwise;**

15 **(5) the collection and transportation by pipeline of coal bed**
16 **methane from:**

17 **(A) the land; or**

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

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

22 SECTION 34. IC 32-23-7-4 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) As used in this**
24 **chapter, "person in interest" means:**

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

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

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

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

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

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

37 **(2) if used in reference to coal bed methane, coal bed methane.**

38 SECTION 35. IC 32-23-7-7 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. (a) ~~Interests in the oil~~**
40 **and gas This section applies to the following:**

41 **(1) Interests in oil and gas.**

42 **(2) Interests in coal bed methane.**

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

46 **(1) for life;**

- 1 (2) for a term of years; or
 2 (3) in fee;
 3 in the manner and to the extent that other interests in real estate and
 4 title are created.
 5 ~~(b)~~ (c) Title to the estates specified under subsection ~~(a)~~ (b) may be
 6 vested in one (1) or more persons by:
 7 (1) sole ownership;
 8 (2) tenancy in common;
 9 (3) joint tenancy;
 10 (4) tenancy by the entirety; or
 11 (5) another manner recognized under Indiana law.
 12 ~~(c)~~ (d) Interests or estates specified in this section are freely
 13 alienable, in whole or in part, in the same manner as are other interests
 14 in real estate.

15 SECTION 36. IC 32-23-7-8 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This chapter does
 17 not limit the rights of parties to contract with regard to ~~the an~~ oil and
 18 gas estate affecting lands in Indiana:

- 19 (1) to the extent permitted by; and
 20 (2) in a manner consistent with;
 21 the nature of the estate in law as specified under this chapter.
 22 (b) This chapter ~~is intended to declare~~ **declares** the law of ~~this the~~
 23 state with regard to the ~~subject matter treated in this chapter~~ **rights of**
 24 **parties to contract concerning the oil and gas estate affecting lands**
 25 **in Indiana** as the law existed before March 5, 1951.

26 (c) This chapter does not affect the rights or powers of any
 27 commission, board, or authority duly constituted for the regulation of
 28 the oil and gas industry in Indiana.

29 SECTION 37. IC 32-23-7-9 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2009]: **Sec. 9. (a) Except as provided in sections 10 and 11 of this**
 32 **chapter, a grant or reservation contained in an instrument that**
 33 **affects land in Indiana and that purports to convey or transfer an**
 34 **interest in the coal or the coal bed methane in, on, under, or that**
 35 **may be produced from beneath the surface of the land transfers**
 36 **the following expressed rights and privileges in addition to any**
 37 **other rights naturally flowing from the character of the instrument**
 38 **in law to the named recipient:**

- 39 (1) **A person in interest in the coal bed methane in land may**
 40 **enter the land for the purpose of:**
 41 (A) **exploring, prospecting, testing, surveying, or otherwise**
 42 **investigating the land to determine the potential of the land**
 43 **for coal bed methane production; or**
 44 (B) **otherwise conducting operations for coal bed methane**
 45 **on the land;**
 46 **whether or not the person is also the owner, lessee, or licensee**

1 of an owner of an interest in the surface rights in the land.

2 (2) A person in interest in the coal bed methane estate in land
3 in Indiana may enter the land to drill a well or test a well on
4 the land for the production or attempted production of coal
5 bed methane regardless of whether the:

6 (A) person is also the owner, lessee, or licensee of an owner
7 of an interest in the surface rights in the land; and

8 (B) owner of the remaining rights in the land consents to
9 the entrance and drilling.

10 A person that drills a well under this subdivision shall provide
11 an accounting to the remaining or nonparticipating persons
12 in interest in the coal bed methane estate in the land, for their
13 respective proportionate shares of the net profits arising from
14 the operations conducted upon the land for coal bed methane.
15 In calculating the profits, a reduction may not be made from
16 the gross proceeds of the production of coal bed methane,
17 except for expenses that are reasonably or necessarily
18 incurred in connection with the drilling, completion,
19 equipping, and operation of the wells drilled upon the
20 premises during the period in which the relationship of
21 cotenancy existed between the person drilling the well and the
22 person whose interest is sought to be charged with the
23 respective proportionate part of the cost of the drilling.

24 (3) A person who may enter and enters land in Indiana for the
25 purpose of exploring, prospecting, testing, surveying, or
26 otherwise investigating the potential of the land for coal bed
27 methane, or for the purpose of conducting operations on the
28 land for the production of coal bed methane, is accountable
29 for the actual damage resulting from the person's activities on
30 the land to:

31 (A) the surface of the land;

32 (B) improvements to the land; or

33 (C) growing crops on the land.

34 However, a person who enters land under this subdivision is
35 not liable for punitive damages. This subdivision does not
36 increase damages between a lessor and a lessee in a valid and
37 subsisting coal bed methane lease that specifies damages if
38 damages are not due other than damages that are expressly
39 provided by contract between cotenants or the lessees of
40 cotenants of a like estate in the land. This section does not
41 authorize the location of a well for coal bed methane nearer
42 than two hundred (200) feet to an existing house, barn, or
43 other structure (except fences) without the express consent of
44 the owner of the structure.

45 (4) The right to conduct operations for coal bed methane upon
46 land located in Indiana includes the right to:

47 (A) install and maintain physical equipment on the land;

- 1 **and**
 2 **(B) use the part of the surface of the land that is reasonably**
 3 **necessary for the operations for coal bed methane;**
 4 **subject to the payment of damages resulting from the**
 5 **installation only of the equipment specified in this subdivision.**
 6 **(b) A conveyance, will, or other document that reserves or**
 7 **excepts the coal or coal bed methane from the surface of the land**
 8 **also excepts or reserves:**
 9 **(1) the expressed rights and privileges set forth in subsection**
 10 **(a)(1) through (a)(4); and**
 11 **(2) any other rights naturally reserved or excepted from the**
 12 **character of the instrument in law.**
 13 SECTION 38. IC 32-23-7-10 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2009]: **Sec. 10. No surface right or any other**
 16 **right pertaining to coal bed methane and naturally flowing from**
 17 **the character of any instrument in law may be exercised if the**
 18 **exercise of the right:**
 19 **(1) compromises in any way the safety of current miners of**
 20 **coal; or**
 21 **(2) has the potential to compromise in any way the safety of**
 22 **miners who might mine coal in the future.**
 23 SECTION 39. IC 32-23-7-11 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) If ownership of coal bed**
 26 **methane is separate from ownership of coal, no surface right or**
 27 **any other right pertaining to coal bed methane and naturally**
 28 **flowing from the character of any instrument in law may be**
 29 **exercised without the consent of the coal owner, a person who files**
 30 **an affidavit with respect to a commercially minable coal resource**
 31 **under IC 14-37-7-8, and the coal mine operator if exercising the**
 32 **right:**
 33 **(1) results in; or**
 34 **(2) has the potential to result in the future in;**
 35 **any diminution of a commercially minable coal resource in**
 36 **Indiana.**
 37 **(b) For purposes of subsection (a), the use of any or a**
 38 **combination of the following is presumed to be among the activities**
 39 **that result in diminution of a commercially minable coal resource:**
 40 **(1) Hydrofracturing the coal seam.**
 41 **(2) Horizontal drilling in the coal seam.**
 42 **(3) Any other technology that disturbs the integrity of either**
 43 **or both of the following:**
 44 **(A) The coal seam.**
 45 **(B) The strata surrounding the coal seam.**
 46 **(c) An application for a permit to drill into or through one (1)**
 47 **or more coal seams for the purpose of testing or producing coal**

- 1 **bed methane must be accompanied by:**
 2 **(1) certification by affidavit of the applicant that upon diligent**
 3 **inquiry, including reference to:**
 4 **(A) the record of filings maintained by the department and**
 5 **made by coal owners and lessees under IC 14-8-2-47; and**
 6 **(B) publicly available records pertaining to thickness and**
 7 **depth of coal;**
 8 **the activities of the applicant do not and will not result in**
 9 **diminution of a commercially minable coal resource; or**
 10 **(2) written consent of the coal owner or lessee authorizing the**
 11 **drilling.**
 12 **(d) If the alternative in subsection (c)(1) is used by the applicant,**
 13 **an applicant who provides a certification under subsection (c)(1)**
 14 **must submit with the permit application proof that written notice**
 15 **of the permit application has been received by the owner and, if**
 16 **applicable, the lessee of the coal through which drilling is**
 17 **proposed.**
 18 **(e) The owner and, if applicable, the lessee of the coal through**
 19 **which drilling is proposed may object to the issuance of the permit**
 20 **on the basis of diminution of a commercially minable coal resource.**
 21 **(f) The department of natural resources shall prescribe by rule**
 22 **the procedure for objection under subsection (e), including a**
 23 **reasonable deadline for initiating the objection.**
 24 SECTION 40. IC 32-23-7-12 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2009]: **Sec. 12. (a) This chapter does not limit**
 27 **the rights of parties to contract with regard to a coal bed methane**
 28 **estate in land affecting lands in Indiana:**
 29 **(1) to the extent permitted by; and**
 30 **(2) in a manner consistent with;**
 31 **the nature of the estate in law as specified under this chapter.**
 32 **(b) Subject to subsection (c), this chapter declares the law of the**
 33 **state with regard to the rights of parties to contract concerning a**
 34 **coal bed methane estate in land affecting lands in Indiana after**
 35 **June 30, 2009.**
 36 **(c) If it is judicially determined that the law that applies before**
 37 **July 1, 2009, differs from the law declared under subsection (b) to**
 38 **apply after June 30, 2009, the determination does not diminish or**
 39 **otherwise affect the application after June 30, 2009, of the law**
 40 **declared under subsection (b) to apply after June 30, 2009.**
 41 **(d) This chapter does not affect the rights or powers of any**
 42 **commission, board, or authority constituted to regulate the coal**
 43 **bed methane industry in Indiana.**
 44 **(e) The natural resources commission shall adopt rules under**
 45 **IC 4-22-2 to regulate coal bed methane production in accordance**
 46 **with sections 10 and 11 of this chapter.**
 47 SECTION 41. IC 32-23-7-13 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2009]: **Sec. 13. (a) Except as provided in**
 3 **subsection (b), an instrument executed after June 30, 2009, that:**

4 **(1) affects land in Indiana; and**

5 **(2) is a grant, exception, or reservation of rights to coal;**
 6 **must include the coal bed methane estate in land.**

7 **(b) In an instrument executed after June 30, 2009, the coal bed**
 8 **methane estate in land may be separated from the coal estate in**
 9 **land by express provisions identifying the coal bed methane estate**
 10 **in land as separate from the coal estate in land.**

11 **(c) An instrument executed after June 30, 2009, that:**

12 **(1) affects land in Indiana; and**

13 **(2) is a grant, exception, or reservation of rights to:**

14 **(A) oil and gas; or**

15 **(B) gas;**

16 **may not include the coal bed methane estate in land.**

17 SECTION 42. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
 18 **SECTION, "commission" refers to the Indiana utility regulatory**
 19 **commission created by IC 8-1-1-2.**

20 **(b) Subject to subsections (c) and (d) and not later than July 1,**
 21 **2009, the commission shall adopt rules to amend the net metering**
 22 **and interconnection rules adopted by the commission and codified**
 23 **at 170 IAC 4-4.2. The commission shall adopt the rules required by**
 24 **this subsection in the same manner as emergency rules are adopted**
 25 **under IC 4-22-2-37.1. The rules adopted by the commission under**
 26 **this subsection must do the following:**

27 **(1) Require an electric utility to offer net metering to at least**
 28 **the following customer classes:**

29 **(A) Residential customers.**

30 **(B) Commercial customers.**

31 **(C) Industrial customers.**

32 **(D) Agricultural customers.**

33 **(E) Local governments.**

34 **(F) The state.**

35 **(G) Kindergarten through grade 12 schools.**

36 **(H) Postsecondary educational institutions (as described in**
 37 **IC 6-3-3-5).**

38 **(2) Allow a net metering customer to interconnect a**
 39 **generating facility with a nameplate capacity of one hundred**
 40 **(100) kilowatts or less to a distribution facility of an electric**
 41 **utility.**

42 **(3) Allow a net metering customer to interconnect a facility**
 43 **that generates electricity through any of the following**
 44 **technologies:**

45 **(A) Solar.**

46 **(B) Wind.**

47 **(C) Microhydroelectrical facilities.**

- 1 **(D) Microturbines using renewable fuels.**
 2 **(E) Fuel cells using renewable fuels.**
 3 **(F) Biogas, including anaerobic digestion.**
 4 **(G) Methane gas from landfills.**
 5 **(c) Rules adopted under subsection (b) expire on:**
 6 **(1) the date the commission adopts rules under IC 4-22-2-24**
 7 **through IC 4-22-2-36; or**
 8 **(2) January 1, 2011;**
 9 **whichever is earlier.**
 10 **(d) Not later than June 1, 2009, the commission shall evaluate**
 11 **the net metering and interconnection rules adopted by the**
 12 **commission and codified at 170 IAC 4-4.2 for compliance with the**
 13 **requirements set forth in subsection (b). To the extent that any**
 14 **rules codified at 170 IAC 4-4.2 do not meet the requirements set**
 15 **forth in subsection (b), the rules are void. Not later than June 15,**
 16 **2009, the commission shall notify the publisher of the Indiana**
 17 **Administrative Code and Indiana Register of any rules codified at**
 18 **170 IAC 4-4.2 that are void under this subsection. The publisher**
 19 **shall remove the rules that are void under this subsection from the**
 20 **Indiana Administrative Code.**
 21 **(e) Not later than November 1, 2009, the commission shall**
 22 **report to the regulatory flexibility committee established by**
 23 **IC 8-1-2.6-4 on the commission's progress under subsection (c)(1)**
 24 **in finally adopting, under IC 4-22-2-24 through IC 4-22-2-36, the**
 25 **emergency rules initially adopted by the commission under**
 26 **subsection (b).**
 27 **(f) For purposes of subsection (b)(1), "electric utility" does not**
 28 **include the following:**
 29 **(1) A corporation organized under IC 8-1-13.**
 30 **(2) A corporation organized under IC 23-17-1 that is an**
 31 **electric cooperative and that has at least one (1) member that**
 32 **is a corporation organized under IC 8-1-13.**
 33 **(g) This SECTION expires January 1, 2011."**
 34 Renumber all SECTIONS consecutively.
 (Reference is to ESB 420 as printed April 10, 2009.)

Representative Koch