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WITHDRAWN	Noes _____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

HOUSE MOTION ____

MR. SPEAKER:

I move that Engrossed Senate Bill 251 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-6-3-2, AS AMENDED BY P.L.111-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(e) The attorney general may bring an action to collect unpaid registration fees owed by a commercial dog broker or a commercial dog breeder under IC 15-21.

(f) This section does not affect the authority of the Indiana utility regulatory commission to, at the commission's option, act independently under IC 8-1-2-115 to recover or collect a forfeiture or penalty.

SECTION 2. IC 4-6-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a)** No agency, except as provided in this chapter, shall have any right to name, appoint, employ,

or hire any attorney or special or general counsel to represent it or perform any legal service in behalf of such agency and the state without the written consent of the attorney general.

(b) This section does not affect the authority of the Indiana utility regulatory commission to, at the commission's option, act independently under IC 8-1-2-115 to recover or collect a forfeiture or penalty.

SECTION 3. IC 8-1-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. **Subject to IC 8-1-2-115(b),** the commission is authorized to employ such counsel or attorneys, engineers, administrative law judges, experts, clerks, accountants and other assistants as it may deem necessary, at such rates of compensation as it may determine upon, subject, however, to the approval of the governor.".

Page 2, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 5. IC 8-1-2-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 109. **(a) This section does not apply to:**

(1) a public utility that owns, operates, manages, or controls any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, or power; or

(2) a department of public utilities created under IC 8-1-11.1.

(b) A public utility that violates this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.

SECTION 6. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 109.1. (a) This section does not apply when a public utility's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the public utility, including any of the following:**

(1) Customer provided equipment.

(2) A negligent act or an omission of a customer.

(3) An unavoidable casualty.

(4) An act of God.

(b) As used in this section, "public utility" means every corporation, company, partnership, limited liability company, individual, or association of individuals, or their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, or power. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

(1) a municipality or political subdivision;

(2) a rural electric membership corporation organized or operating under IC 8-1-13; or

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

(c) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has violated this chapter or failed after due notice to comply with a standard of service established by commission rule or a rate or service requirement of a final and unappealable order of the commission, the commission may order the public utility to pay a civil penalty as follows:

(1) For a violation or failure to comply that involves fuel cost charges granted in a hearing under section 42 of this chapter, an amount equal to not more than two percent (2%) of the total fuel cost charges granted in the hearing.

(2) For all other violations or failures, an amount of not more than five thousand dollars ($5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the public utility's violation or failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of the public utility's obligation to remedy the violation or a willful failure to comply, the commission may impose an additional civil penalty of not more than ten thousand dollars ($10,000) for each violation or failure to comply.

(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

(1) The size of the public utility.

(2) The gravity of the violation or failure to comply.

(3) The good faith of the public utility in attempting to:

(A) remedy the violation; or

(B) achieve compliance after receiving notification of the violation or failure to comply.

(4) The effect of the civil penalty on the public utility's financial ability to provide adequate and reliable service.

(5) If the public utility is a nonprofit company:

(A) the effect of the penalty on the company's members and their capitalization of the company; and

(B) whether the act or omission causing the violation or failure to comply was approved or requested by the company's members.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

(g) A public utility may not be subject to both a civil penalty under this section and a negotiated penalty under a commission approved settlement agreement for the same violation or failure to comply. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(h) Notwithstanding section 112 of this chapter, the civil penalties provided for in this section for each violation or failure to comply by a public utility may not be multiplied or increased because of the number of customers affected or the length of time service is affected. Only one (1) violation or failure to comply per day may be attributed to a public utility as a result of a particular condition, system outage, storm, act, omission, event, decision, or other cause occurring on that day.

(i) Civil penalties recovered under this section shall be paid into the state general fund.

(j) A public utility may not include in the public utility's rate base, and the commission shall not consider in a rate proceeding involving the rates of the public utility, the amount of any penalty or fine imposed on the public utility under this section, any other law, or a rule or regulation of the commission.

(k) Upon the motion of a public utility, the commission shall stay the effect or enforcement of an order under this section pending an appeal, if the public utility posts a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.

SECTION 7. IC 8-1-2-115 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 115. **(a)** The commission shall inquire into any neglect or violation of the statutes of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be ~~its~~ **the commission's** duty, to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered, and suit therein shall be brought **by the commission or, at the commission's option, by the attorney general** in the name of the state of Indiana in ~~the circuit or superior court where the public utility has its principal place of business.~~ **a court that has jurisdiction.** Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the **commission or, at the commission's option, by the attorney** general. ~~counsel.~~

(b) If the commission acts independently of the attorney general under subsection (a) to bring a suit to recover or collect a forfeiture or penalty provided in this chapter, the commission may,

subject to the approval of the governor and the budget agency, contract with one (1) or more attorneys who are not members of the commission's regular staff to prosecute, or assist the commission in prosecuting, the suit. An attorney contracted by the commission under this section shall be employed:

(1) at the salary; and

(2) for the length of time;

approved by the governor and the budget agency for the particular case.".

Renumber all SECTIONS consecutively.

(Reference is to ESB 251 as reprinted April 15, 2011.)

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Representative Moses