

# SENATE MOTION

**MADAM PRESIDENT:**

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

- 1           Page 1, delete lines 1 through 17, begin a new paragraph and insert
- 2           the following:
- 3           "SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
- 4           A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
- 5           PASSAGE]:
- 6           **Chapter 8.4. Federally Mandated Requirements for Energy**
- 7           **Utilities**
- 8           **Sec. 1. As used in this chapter, "certificate" refers to a**
- 9           **certificate of public convenience and necessity issued by the**
- 10          **commission under section 7(b) of this chapter.**
- 11          **Sec. 2. (a) As used in this chapter, "compliance project" means**
- 12          **a project that is:**
- 13                **(1) undertaken by an energy utility; and**
- 14                **(2) related to the direct or indirect compliance by the energy**
- 15                **utility with one (1) or more federally mandated requirements.**
- 16          **(b) The term includes:**
- 17                **(1) an addition; or**
- 18                **(2) an integrity, enhancement, or replacement project;**
- 19          **undertaken by an energy utility to comply with a federally**
- 20          **mandated requirement described in section 5(5) of this chapter.**
- 21          **Sec. 3. As used in this chapter, "energy utility" has the meaning**
- 22          **set forth in IC 8-1-2.5-2.**
- 23          **Sec. 4. (a) As used in this chapter, "federally mandated costs"**
- 24          **means costs that an energy utility incurs in connection with a**
- 25          **compliance project, including capital, operating, maintenance,**
- 26          **depreciation, tax, or financing costs.**
- 27          **(b) The term does not include fines or penalties assessed against**
- 28          **or imposed on an energy utility for violating laws, regulations, or**
- 29          **consent decrees related to a federally mandated requirement.**
- 30          **Sec. 5. As used in this chapter, "federally mandated**

1 requirement" means a requirement that the commission  
 2 determines is imposed on an energy utility by the federal  
 3 government in connection with any of the following:

- 4 (1) The federal Clean Air Act (42 U.S.C. 7401 et seq.).  
 5 (2) The federal Water Pollution Control Act (33 U.S.C. 1251  
 6 et seq.).  
 7 (3) The federal Resource Conservation and Recovery Act (42  
 8 U.S.C. 6901 et seq.).  
 9 (4) The federal Toxic Substances Control Act (15 U.S.C. 2601  
 10 et seq.).  
 11 (5) Standards or regulations concerning the integrity, safety,  
 12 or reliable operation of:  
 13 (A) transmission; or  
 14 (B) distribution;  
 15 pipeline facilities.  
 16 (6) Requirements relating to a license issued by the United  
 17 States Nuclear Regulatory Commission to operate a nuclear  
 18 energy production or generating facility (as defined in  
 19 IC 8-1-8.8-8.5).  
 20 (7) Any other law, order, or regulation administered or issued  
 21 by the United States Environmental Protection Agency, the  
 22 United States Department of Transportation, the Federal  
 23 Energy Regulatory Commission, or the United States  
 24 Department of Energy.

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

- 27 (1) a certificate of public convenience and necessity; or  
 28 (2) the recovery of costs;

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

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

- 41 (1) The following, which must be set forth in the energy  
 42 utility's application for the certificate sought, in accordance  
 43 with section 7(a) of this chapter:  
 44 (A) A description of the federally mandated requirements,  
 45 including any consent decrees related to the federally  
 46 mandated requirements, that the energy utility seeks to  
 47 comply with through the proposed compliance project.

- 1           **(B) A description of the projected federally mandated costs**  
 2           **associated with the proposed compliance project, including**  
 3           **costs that are allocated to the energy utility:**  
 4           **(i) in connection with regional transmission expansion**  
 5           **planning and construction; or**  
 6           **(ii) under a Federal Energy Regulatory Commission**  
 7           **approved tariff, rate schedule, or agreement.**  
 8           **(C) A description of how the proposed compliance project**  
 9           **allows the energy utility to comply with the federally**  
 10           **mandated requirements described by the energy utility**  
 11           **under clause (A).**  
 12           **(D) Alternative plans that demonstrate that the proposed**  
 13           **compliance project is reasonable and necessary.**  
 14           **(E) Information as to whether the proposed compliance**  
 15           **project will extend the useful life of an existing energy**  
 16           **utility facility and, if so, the value of that extension.**  
 17           **(2) Any other factors the commission considers relevant.**  
 18           **(c) An energy utility is not required to obtain a certificate under**  
 19           **this section for a project that constitutes a research and**  
 20           **development project.**  
 21           **Sec. 7. (a) As a condition for receiving the certificate required**  
 22           **under section 6 of this chapter, an energy utility must file with the**  
 23           **commission an application that sets forth the information**  
 24           **described in section 6(b) of this chapter, supported with technical**  
 25           **information in as much detail as the commission requires.**  
 26           **(b) The commission shall hold a properly noticed public hearing**  
 27           **on each application and grant a certificate only if the commission**  
 28           **has:**  
 29           **(1) made a finding that the public convenience and necessity**  
 30           **will be served by the proposed compliance project;**  
 31           **(2) approved the projected federally mandated costs**  
 32           **associated with the proposed compliance project; and**  
 33           **(3) made a finding on each of the factors set forth in section**  
 34           **6(b) of this chapter.**  
 35           **(c) If the commission approves under subsection (b) a proposed**  
 36           **compliance project and the projected federally mandated costs**  
 37           **associated with the proposed compliance project, the following**  
 38           **apply:**  
 39           **(1) Eighty percent (80%) of the approved federally mandated**  
 40           **costs shall be recovered by the energy utility through a**  
 41           **periodic retail rate adjustment mechanism that allows the**  
 42           **timely recovery of the approved federally mandated costs.**  
 43           **The commission shall adjust the energy utility's authorized**  
 44           **net operating income to reflect any approved earnings for**  
 45           **purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).**  
 46           **(2) Twenty percent (20%) of the approved federally mandated**  
 47           **costs, including depreciation, allowance for funds used during**

1           **construction, and post in service carrying costs, based on the**  
 2           **overall cost of capital most recently approved by the**  
 3           **commission, shall be deferred and recovered by the energy**  
 4           **utility as part of the next general rate case filed by the energy**  
 5           **utility with the commission.**

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

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

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

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

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

27           (4) Certain regions of the state, such as southern Indiana, could  
 28           benefit greatly from new employment opportunities created by  
 29           development of new energy production or generating facilities  
 30           utilizing the plentiful supply of coal from the geological formation  
 31           known as the Illinois Basin.

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

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

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

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

- 1 (1) Indiana's **and the region's** energy production or generating  
 2 capacity continues to be adequate to provide for Indiana's current  
 3 and future energy needs, including the support of the state's  
 4 economic development efforts.
- 5 (2) The vast and underutilized coal resources of the Illinois Basin  
 6 are used as a fuel source for new energy production or generating  
 7 facilities.
- 8 (3) The electric transmission and gas transportation systems  
 9 within Indiana are upgraded to distribute additional amounts of  
 10 electricity and gas more efficiently.
- 11 (4) Jobs are created as new energy production or generating  
 12 facilities are built in regions throughout Indiana.
- 13 **(5) The study, analysis, development, and life cycle**  
 14 **management of nuclear energy production or generating**  
 15 **facilities are encouraged at the same time as are new coal**  
 16 **fired and other fossil fuel based energy production or**  
 17 **generating facilities.**
- 18 SECTION 3. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007,  
 19 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2011]: Sec. 2. As used in this chapter, "clean ~~coal~~ and energy  
 21 projects" means any of the following:
- 22 (1) Any of the following projects:
- 23 (A) Projects at new energy production or generating facilities  
 24 that employ the use of clean coal technology and that produce  
 25 energy, including substitute natural gas, primarily from coal,  
 26 or gases derived from coal, from the geological formation  
 27 known as the Illinois Basin.
- 28 (B) Projects to provide advanced technologies that reduce  
 29 regulated air emissions from **or increase the efficiency of**  
 30 existing energy production or generating plants that are fueled  
 31 primarily by coal or gases from coal from the geological  
 32 formation known as the Illinois Basin, such as flue gas  
 33 desulfurization and selective catalytic reduction equipment.
- 34 (C) Projects to provide electric transmission facilities to serve  
 35 a new energy production or generating facility **or a nuclear**  
 36 **energy production or generating facility.**
- 37 (D) Projects that produce substitute natural gas from Indiana  
 38 coal by construction and operation of a coal gasification  
 39 facility.
- 40 **(E) Projects or potential projects that enhance the safe and**  
 41 **reliable use of nuclear energy production or generating**  
 42 **technologies to produce electricity.**
- 43 (2) Projects to develop alternative energy sources, including  
 44 renewable energy projects ~~and~~ **or** coal gasification facilities.
- 45 (3) The purchase of fuels **or energy** produced by a coal  
 46 gasification facility **or by a nuclear energy production or**

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

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

- 9           (1) as a fuel to generate energy; or  
 10          (2) **as** substitute natural gas.

11          SECTION 5. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007,  
 12          SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13          JULY 1, 2011]: Sec. 6. As used in this chapter, "eligible business"  
 14          means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal  
 15          gasification facility that:

- 16          (1) proposes to construct or repower a new energy production or  
 17          generating facility;  
 18          (2) proposes to construct or repower a project described in section  
 19          2(1) or 2(2) of this chapter;  
 20          (3) undertakes a project to develop alternative energy sources,  
 21          including renewable energy projects or **coal gasification**  
 22          **facilities; or**  
 23          (4) purchases fuels **or energy** produced by a coal gasification  
 24          facility **or by a nuclear energy production or generating**  
 25          **facility.**

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

- 31          (1) The facility produces energy primarily from coal or gases from  
 32          coal from the geological formation known as the Illinois Basin.  
 33          (2) The facility is a:  
 34                  (A) newly constructed or newly repowered energy ~~generation~~  
 35                  plant; or  
 36                  (B) newly constructed ~~generation~~ capacity expansion at an  
 37                  existing ~~facility; plant;~~  
 38                  dedicated primarily to serving Indiana retail customers.  
 39          (3) The repowering, construction, or expansion of the facility was  
 40          begun by an Indiana utility after July 1, 2002.  
 41          (4) Except for a facility that is a clean ~~coal and~~ energy project  
 42          under section 2(2) of this chapter, the facility has an aggregate  
 43          rated electric generating capacity of at least one hundred (100)  
 44          megawatts for all units at one (1) site or a generating capacity of  
 45          at least four hundred thousand (400,000) pounds per hour of  
 46          steam.

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

4 SECTION 7. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE  
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 2011]: **Sec. 8.5. (a) As used in this chapter, "nuclear energy  
7 production or generating facility" means an energy production or  
8 generation facility that:**

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

11 (2) **supplies electricity to Indiana retail customers on July 1,  
12 2011;**

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

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

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

21 SECTION 8. IC 8-1-8.8-8.7 IS ADDED TO THE INDIANA CODE  
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
23 1, 2011]: **Sec. 8.7. As used in this chapter, "qualified utility system  
24 expenses" means the costs associated with the study, analysis, or  
25 development of a life cycle management project for a nuclear  
26 energy production or generating facility.**

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

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

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

43 (1) **Energy from wind.**

44 (2) **Solar energy.**

45 (3) **Photovoltaic cells and panels.**

46 (4) **Dedicated crops grown for energy production.**

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

- 1           **facilities.**
- 2           (5) Other financial incentives the commission considers
- 3           appropriate.
- 4           (b) An eligible business must file an application to the commission
- 5           for approval of a clean ~~coal and~~ energy project under this section. This
- 6           chapter does not relieve an eligible business of the duty to obtain any
- 7           certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business
- 8           seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for
- 9           one (1) project may file a single application for all necessary
- 10          certificates. If a single application is filed, the commission shall
- 11          consider all necessary certificates at the same time.
- 12          (c) The commission shall promptly review an application filed
- 13          under this section for completeness. The commission may request
- 14          additional information the commission considers necessary to aid in its
- 15          review.
- 16          (d) The commission shall, after notice and hearing, issue a
- 17          determination of a project's eligibility for the financial incentives
- 18          described in subsection (a) not later than one hundred twenty (120)
- 19          days after the date of the application, unless the commission finds that
- 20          the applicant has not cooperated fully in the proceeding.
- 21          SECTION 12. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007,
- 22          SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23          JULY 1, 2011]: Sec. 12. (a) The commission shall provide financial
- 24          incentives to eligible businesses for:
- 25                (1) new energy ~~producing and~~ **production or** generating
- 26                facilities; **and**
- 27                (2) **nuclear energy production or generating facilities;**
- 28          in the form of timely recovery of the costs incurred in connection with
- 29          the **study, analysis, development, siting, design, licensing,**
- 30          **permitting,** construction, repowering, expansion, **life cycle**
- 31          **management,** operation, or maintenance of the facilities.
- 32          (b) An eligible business seeking authority to timely recover the costs
- 33          described in subsection (a) must apply to the commission for approval
- 34          of a rate adjustment mechanism in the manner determined by the
- 35          commission.
- 36          (c) An application must include the following:
- 37                (1) A schedule for the completion of construction, repowering,
- 38                **life cycle management,** or expansion of the ~~new energy~~
- 39                ~~generating or coal gasification~~ facility for which rate relief is
- 40                sought.
- 41                (2) Copies of the most recent integrated resource plan filed with
- 42                the commission, if applicable.
- 43                (3) The amount of capital investment by the eligible business in
- 44                the ~~new energy generating or coal gasification~~ facility.
- 45                (4) Other information the commission considers necessary.
- 46          (d) The commission shall allow an eligible business to recover:

1           **(1) the costs associated with qualified utility system property; and**  
 2           **(2) qualified utility system expenses;**  
 3 if the eligible business provides substantial documentation that the  
 4 expected costs ~~associated with qualified utility system property~~ and  
 5 **expenses and** the schedule for incurring those costs **and expenses** are  
 6 reasonable and necessary.

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

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

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

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

25           (2) The amount of any fuel **or energy** produced by:

26           **(A) a coal gasification facility; and or**

27           **(B) a nuclear energy production or generating facility;**  
 28 **that is** purchased by the eligible business during the previous  
 29 month.

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

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

1 ~~potential renewable energy generation opportunities from biomass and~~  
2 ~~algae production systems.~~

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

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

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

34 **Chapter 37. Voluntary Clean Energy Portfolio Standard**  
35 **Program**

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

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

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

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

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

5           **(1) Energy from wind.**

6           **(2) Solar energy.**

7           **(3) Photovoltaic cells and panels.**

8           **(4) Dedicated crops grown for energy production.**

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

11           **(A) Agricultural crops.**

12           **(B) Agricultural wastes and residues.**

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

14           **(i) Wood residues.**

15           **(ii) Forest thinnings.**

16           **(iii) Mill residue wood.**

17           **(D) Animal wastes.**

18           **(E) Animal byproducts.**

19           **(F) Aquatic plants.**

20           **(G) Algae.**

21           **(6) Hydropower.**

22           **(7) Fuel cells.**

23           **(8) Hydrogen.**

24           **(9) Energy from waste to energy facilities, including energy**  
 25 **derived from advanced solid waste conversion technologies.**

26           **(10) Energy storage systems or technologies.**

27           **(11) Geothermal energy.**

28           **(12) Coal bed methane derived from a naturally occurring**  
 29 **biogenic process.**

30           **(13) Industrial byproduct technologies that use fuel or energy**  
 31 **that is a byproduct of an industrial process.**

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

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

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

40           **(A) reduce electricity consumption; or**

41           **(B) implement load management, demand response, or**  
 42 **energy efficiency measures designed to shift customers'**  
 43 **electric loads from periods of higher demand to periods of**  
 44 **lower demand;**

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

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

- 1           **(18) Nuclear energy.**  
2           **(19) Electricity that is:**  
3               **(A) generated by a customer owned distributed generation**  
4               **facility that is interconnected to the electricity supplier's**  
5               **distribution system in accordance with the commission's**  
6               **interconnection standards set forth in 170 IAC 4-4.3; and**  
7               **(B) supplied back to the electricity supplier for use in**  
8               **meeting the electricity supplier's electricity demand**  
9               **requirements in accordance with the commission's net**  
10              **metering rules set forth in 170 IAC 4-4.2.**  
11           **(20) Combined heat and power systems.**  
12           **(21) Electricity that is generated from natural gas at a facility**  
13           **constructed in Indiana after July 1, 2011, which displaces**  
14           **electricity generation from an existing coal fired generation**  
15           **facility.**  
16           **(b) Except for energy described in subsection (a)(9), the term**  
17           **does not include energy from the incineration, burning, or heating**  
18           **of any of the following:**  
19               **(1) Tires.**  
20               **(2) General household, institutional, commercial, industrial,**  
21               **lunchroom, office, or landscape waste.**  
22           **(c) The term excludes treated or painted lumber.**  
23           **Sec. 5. As used in this chapter, "clean portfolio standard goal",**  
24           **or "CPS goal", refers to a goal set forth in section 12(a) of this**  
25           **chapter that a participating electricity supplier must achieve**  
26           **during a specified period during the program to qualify for one (1)**  
27           **or more of the financial incentives described in section 13 of this**  
28           **chapter.**  
29           **Sec. 6. (a) As used in this chapter, "electricity supplier" means**  
30           **a public utility (as defined in IC 8-1-2-1) that furnishes retail**  
31           **electric service to customers in Indiana on January 1, 2011.**  
32           **(b) The term does not include a utility that is:**  
33               **(1) a municipally owned utility (as defined in IC 8-1-2-1(h));**  
34               **(2) a corporation organized under IC 8-1-13; or**  
35               **(3) a corporation organized under IC 23-17 that is an electric**  
36               **cooperative and that has at least one (1) member that is a**  
37               **corporation organized under IC 8-1-13.**  
38           **Sec. 7. As used in this chapter, "participating electricity**  
39           **supplier" refers to an electricity supplier that has been approved**  
40           **by the commission under section 11 of this chapter to participate**  
41           **in the program.**  
42           **Sec. 8. As used in this chapter, "program" refers to the Indiana**  
43           **voluntary clean energy portfolio standard program established by**  
44           **the commission under section 10 of this chapter.**  
45           **Sec. 9. As used in this chapter, "regional transmission**  
46           **organization", with respect to an electricity supplier, refers to the**  
47           **regional transmission organization approved by the Federal**

1 Energy Regulatory Commission for the control area that includes  
 2 the electricity supplier's assigned service area (as defined in  
 3 IC 8-1-2.3-2).

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

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

13 (1) incorporate:

14 (A) the CPS goals set forth in section 12(a) of this chapter;

15 (B) methods for measuring and evaluating a participating  
 16 electricity supplier's compliance with the CPS goals set  
 17 forth in section 12(a) of this chapter;

18 (C) the financial incentives and periodic rate adjustment  
 19 mechanisms set forth in section 13 of this chapter; and

20 (D) the reporting requirements set forth in section 14 of  
 21 this chapter;

22 (2) require the commission to determine, before approving an  
 23 application under section 11 of this chapter, that the approval  
 24 of the application will not result in an increase to the retail  
 25 rates and charges of the electricity supplier above what could  
 26 reasonably be expected if the application were not approved;

27 (3) take effect not later than January 1, 2012; and

28 (4) be consistent with this chapter.

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

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

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

42 (1) in the manner and on a form prescribed by the  
 43 commission; and

44 (2) not later than a date specified by the commission in the  
 45 rules adopted under section 10 of this chapter;

46 for approval to participate in the program.

47 (b) Upon receiving an application under subsection (a), the

1 commission shall review the application for completeness. The  
 2 commission may request additional information the commission  
 3 considers necessary to aid in the commission's review.

4 (c) If the commission determines that:

5 (1) an application submitted under subsection (a) is complete  
 6 and reasonably complies with the purpose of this chapter;

7 (2) the electricity supplier submitting the application has  
 8 demonstrated that the electricity supplier has a reasonable  
 9 expectation of obtaining clean energy to meet the energy  
 10 requirements of its Indiana retail electric customers during  
 11 the calendar year ending December 31, 2025, in an amount  
 12 equal to at least ten percent (10%) of the total electricity  
 13 supplied by the participating electricity supplier to its Indiana  
 14 retail electric customers during the base year, as set forth in  
 15 section 12(a)(3) of this chapter; and

16 (3) approving the application will not result in an increase to  
 17 the retail rates and charges of the electricity supplier above  
 18 what could reasonably be expected if the application were not  
 19 approved;

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

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

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

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

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

1 customers during the base year.

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

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

10 (2) For clean energy that is generated by a facility located in  
11 Indiana, and from a clean energy resource listed in section  
12 4(a)(1) through 4(a)(16) of this chapter, by a factor of one and  
13 five tenths (1.5).

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

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

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

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

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

34 (f) A participating electricity supplier may apply:

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

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

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

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

46 Sec. 13. (a) The commission may establish a shareholder  
47 incentive consisting of the authorization of an increased overall

1 rate of return on equity, not to exceed fifty (50) basis points over a  
 2 participating electricity supplier's authorized rate of return,  
 3 whenever the participating electricity supplier attains a CPS goal  
 4 set forth in section 12(a) of this chapter. The number of additional  
 5 basis points authorized by the commission under this subsection  
 6 may:

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

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

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

26 (b) If the commission approves an electricity supplier's  
 27 application under section 11(c) of this chapter, the commission  
 28 shall authorize the incentive described in subsection (a) and the  
 29 recovery of costs, by means of a periodic rate adjustment  
 30 mechanism, as described in subsection (c), based on the following  
 31 considerations:

32 (1) The sharing of achieved savings or as a percentage of  
 33 costs.

34 (2) Avoided costs resulting from achieving demand side  
 35 management or energy efficiency targets.

36 (3) The recovery of lost revenues associated with  
 37 implementation of demand side management or energy  
 38 efficiency initiatives.

39 (4) The designation of electricity produced or conserved by a  
 40 clean energy resource as an energy savings for purposes of  
 41 any initiative, rule, or order approved by the commission to  
 42 promote the efficient use and production of electricity,  
 43 including initiatives to implement demand side management,  
 44 energy efficiency, or conservation measures in accordance  
 45 with commission rules.

46 (c) If the commission approved an electricity supplier's  
 47 application under section 11(c) of this chapter, the commission

1 shall permit the recovery, by means of a periodic rate adjustment  
2 mechanism, of all just, reasonable, and necessary program costs  
3 incurred by a participating electricity supplier in:

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

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

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

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

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

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

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

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

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

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

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

40 (g) Subject to the participating electricity supplier's continuing  
41 compliance with the applicable CPS goal, as determined according  
42 to the measurement and evaluation procedures described in section  
43 10(b)(1)(B) of this chapter, a shareholder incentive described in  
44 subsection (a) continues in effect until the earlier of the following:

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

47 (2) The commission issues a new order authorizing the

1 participating electricity supplier to receive a shareholder  
2 incentive for meeting the next CPS program goal.

3 (h) Subject to the participating electricity supplier's continuing  
4 compliance with the applicable CPS goal, as determined according  
5 to the measurement and evaluation procedures described in section  
6 10(b)(1)(B) of this chapter, a periodic rate adjustment mechanism  
7 described in subsection (c) continues in effect until the earlier of  
8 the following:

9 (1) The participating electricity supplier has recovered the  
10 program costs for which the periodic rate adjustment  
11 mechanism was allowed.

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

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

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

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

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

28 (i) name and location;

29 (ii) total generating capacity;

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

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

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

43 (i) each supplier from whom clean energy was  
44 purchased;

45 (ii) the amount of clean energy purchased from each  
46 supplier;

47 (iii) the price paid by the participating electricity

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

27           For purposes of this subsection, amounts of clean energy and  
 28           electricity shall be reported in megawatt hours. A participating  
 29           electricity supplier's duty to submit a report under this subsection  
 30           terminates after the participating electricity supplier has submitted  
 31           the report that applies to the calendar year ending December 31,  
 32           2025.

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

42           Page 2, delete lines 1 through 22.  
 43           Page 17, after line 6, begin a new paragraph and insert:  
 44           "SECTION 44. An emergency is declared for this act."  
 45           Re-number all SECTIONS consecutively.  
 (Reference is to EHB 1128 as printed April 8, 2011.)

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Senator GARD