



February 8, 2011

SENATE BILL No. 251

DIGEST OF SB 251 (Updated February 7, 2011 10:21 am - DI yl)

Citations Affected: IC 8-1.

Synopsis: Clean energy. Requires the Indiana utility regulatory commission (IURC) to allow an energy utility to recover certain federally mandated costs through periodic retail rate adjustment mechanisms. Changes the term "clean coal and energy projects" to "clean energy projects" to allow the term to include nuclear energy production or generating facilities. Provides that: (1) nuclear energy production or generating facilities; and (2) purchases of energy produced by the facilities; qualify for financial incentives available for clean energy projects. Provides that a combined heat and power facility qualifies as a renewable energy resource for purposes of financial incentives for clean energy projects. Provides that an eligible business may recover qualified utility system expenses associated with a: (1) new energy production or generating facility; or (2) new nuclear energy production or generating facility. Requires the IURC to adopt rules to establish the voluntary clean energy portfolio standard program to provide incentives to participating electricity suppliers to supply specified percentages of electricity from clean energy sources. States three clean portfolio standard goals (CPS goals) that a participating electricity supplier must achieve to qualify for an incentive. Provides that a participating electricity supplier may own or purchase clean energy credits to meet a CPS goal. Beginning in 2014, requires: (1) a participating electricity supplier to report annually to the IURC on the supplier's efforts to meet the CPS goals; and (2) the IURC to include in its annual report to the regulatory flexibility committee a summary of the information reported by participating electricity suppliers.

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Effective: Upon passage; July 1, 2011.

Gard, Merritt, Hershman, Boots

January 6, 2011, read first time and referred to Committee on Rules and Legislative Procedure.
February 7, 2011, amended; reassigned to Committee on Utilities and Technology.

SB 251—LS 6062/DI 13+



February 8, 2011

First Regular Session 117th General Assembly (2011)

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

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

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

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SENATE BILL No. 251



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

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

- 1 SECTION 1. IC 8-1-2-6.9 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: **Sec. 6.9. (a) As used in this section, "energy**
- 4 **utility" has the meaning set forth in IC 8-1-2.5-2.**
- 5 **(b) As used in this section, "federally mandated costs" means**
- 6 **capital, operation, maintenance, depreciation, research and**
- 7 **development, tax, or carrying costs that an energy utility incurs in**
- 8 **complying with mandates that the commission finds are, or with**
- 9 **reasonable certainty will be, imposed on the energy utility by the**
- 10 **federal government related to the following:**
- 11 **(1) Environmental laws, rules, regulations, or consent decrees,**
- 12 **including clean air standards and costs associated with:**
- 13 **(A) reducing or offsetting the emission of greenhouse**
- 14 **gases; or**
- 15 **(B) the purchase of emission allowances.**
- 16 **(2) Renewable portfolio or energy efficiency standards,**
- 17 **including projects at existing generating facilities to allow for**

SB 251—LS 6062/DI 13+



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fuel switching, including the use of natural or substitute natural gas.

(3) Participation in one (1) or more industry reliability organizations, including a regional transmission organization.

(4) Transmission and distribution pipeline integrity and safety.

The term does not include fines or penalties assessed against or imposed on an energy utility for violating environmental laws, regulations, or consent decrees.

(c) An energy utility may petition the commission to recover federally mandated costs through a periodic retail rate adjustment mechanism. The petition must include the following:

(1) A description of the mandate that is imposed on the energy utility by the federal government.

(2) A description and estimate of the federally mandated costs associated with the mandate described in subdivision (1).

(3) The energy utility's plans to comply with the mandate described in subdivision (1).

If the commission finds, after notice and hearing, that an energy utility's proposed compliance plan described in subdivision (3) is reasonable and necessary to comply with the mandate described in subdivision (1), the commission shall approve the periodic retail rate adjustment mechanism and authorize the timely recovery of federally mandated costs by the energy utility.

(d) The commission shall adjust any changes in charges approved for an energy utility under section 42(d) or 42(g) of this chapter or IC 8-1-13-30(d), as applicable, to permit the energy utility to retain revenues resulting from a periodic retail rate adjustment mechanism approved under this section.

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

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

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

(3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy

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1 production or generating facilities, including coal gasification
 2 facilities, at an affordable price.

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

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

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

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

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

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

27 (2) The vast and underutilized coal resources of the Illinois Basin
 28 are used as a fuel source for new energy production or generating
 29 facilities.

30 (3) The electric transmission and gas transportation systems
 31 within Indiana are upgraded to distribute additional amounts of
 32 electricity and gas more efficiently.

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

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

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

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projects" means any of the following:

(1) Any of the following projects:

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

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

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

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

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

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

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

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

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

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

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

(1) proposes to construct or repower a new energy production or

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

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

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

31 (b) The term includes the transmission lines, gas transportation
 32 facilities, and associated equipment employed specifically to serve a
 33 new energy generating or coal gasification facility.

34 SECTION 7. IC 8-1-8.8-8.3 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2011]: **Sec. 8.3. As used in this chapter, "new nuclear energy**
 37 **production or generating facility" refers to a nuclear energy**
 38 **production or generating facility that satisfies all of the following:**

- 39 (1) The facility is a:
 - 40 (A) newly constructed or repowered facility; or
 - 41 (B) newly constructed capacity expansion, power uprate,
 - 42 or life cycle management at an existing facility;

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dedicated primarily to serving Indiana customers.
(2) The construction, repowering, expansion, power uprate, or life cycle management was begun by an Indiana utility after July 1, 2008.
(3) The facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

SECTION 8. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) As used in this chapter, "nuclear energy production or generating facility" means an energy production or generation facility that uses a nuclear reactor as its heat source to provide steam to a turbine generator to produce or generate electricity.**

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

SECTION 9. IC 8-1-8.8-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.7. As used in this chapter, "qualified utility system expenses" means the following:**

- (1) Any preconstruction costs associated with the study, analysis, or development of a:**
 - (A) new energy production or generating facility; or**
 - (B) new nuclear energy production or generating facility; including siting, design, licensing, and permitting costs, regardless of whether the facility for which such costs are incurred is ultimately constructed or placed in service.**
- (2) The expansion, power uprate, or life cycle management of a nuclear energy production or generating facility.**

SECTION 10. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. As used in this chapter, "qualified utility system property" means any:**

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

used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

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1 SECTION 11. IC 8-1-8.8-10, AS AMENDED BY P.L.95-2010,
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 10. (a) As used in this chapter "renewable energy
 4 resources" means alternative sources of renewable energy, including
 5 the following:

- 6 (1) Energy from wind.
- 7 (2) Solar energy.
- 8 (3) Photovoltaic cells and panels.
- 9 (4) Dedicated crops grown for energy production.
- 10 (5) Organic waste biomass, including any of the following organic
 11 matter that is available on a renewable basis:
 - 12 (A) Agricultural crops.
 - 13 (B) Agricultural wastes and residues.
 - 14 (C) Wood and wood wastes, including the following:
 - 15 (i) Wood residues.
 - 16 (ii) Forest thinnings.
 - 17 (iii) Mill residue wood.
 - 18 (D) Animal wastes.
 - 19 (E) Animal byproducts.
 - 20 (F) Aquatic plants.
 - 21 (G) Algae.
- 22 (6) Hydropower from existing dams.
- 23 (7) Fuel cells.
- 24 (8) Energy from waste to energy facilities.
- 25 (9) Energy storage systems.
- 26 **(10) Combined heat and power facilities.**

27 (b) Except for energy described in subsection (a)(8), the term does
 28 not include energy from the incinerations, burning, or heating of any of
 29 the following:

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

34 SECTION 12. IC 8-1-8.8-11 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The commission
 36 shall encourage clean ~~coal and~~ energy projects by creating the
 37 following financial incentives for clean ~~coal and~~ energy projects, if the
 38 projects are found to be reasonable and necessary:

- 39 (1) The timely recovery of costs incurred during construction and
 40 operation of projects described in section 2(1) or 2(2) of this
 41 chapter.
- 42 (2) The authorization of up to three (3) percentage points on the

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

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1 of a rate adjustment mechanism in the manner determined by the
2 commission.

- 3 (c) An application must include the following:
- 4 (1) A schedule for the completion of construction, repowering,
- 5 **power uprating, life cycle management**, or expansion of the
- 6 ~~new energy generating or coal gasification~~ facility for which rate
- 7 relief is sought.
- 8 (2) Copies of the most recent integrated resource plan filed with
- 9 the commission, if applicable.
- 10 (3) The amount of capital investment by the eligible business in
- 11 the ~~new energy generating or coal gasification~~ facility.
- 12 (4) Other information the commission considers necessary.

- 13 (d) The commission shall allow an eligible business to recover:
- 14 (1) the costs associated with qualified utility system property; **and**
- 15 (2) **qualified utility system expenses;**
- 16 if the eligible business provides substantial documentation that the
- 17 expected costs ~~associated with qualified utility system property~~ and
- 18 **expenses and** the schedule for incurring those costs **and expenses** are
- 19 reasonable and necessary.

20 (e) The commission shall allow an eligible business to recover the
21 costs associated with the purchase of fuels **or energy** produced by a
22 coal gasification facility **or by a nuclear energy production or**
23 **generating facility** if the eligible business provides substantial
24 documentation that the costs associated with the purchase are
25 reasonable and necessary.

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

31 SECTION 14. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007,
32 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2011]: Sec. 13. An eligible business shall file a monthly report
34 with the lieutenant governor stating the following information:

- 35 (1) The amount of Illinois Basin coal, if any, purchased during the
- 36 previous month for use in a new energy **production or generating**
- 37 ~~or coal gasification~~ facility.
- 38 (2) The amount of any fuel **or energy** produced by:
- 39 (A) a coal gasification facility; **and or**
- 40 (B) **a nuclear energy production or generating facility;**
- 41 **that is** purchased by the eligible business during the previous
- 42 month.

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1 (3) Any other information the lieutenant governor may reasonably
2 require.

3 SECTION 15. IC 8-1-8.8-14, AS AMENDED BY P.L.71-2009,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]: Sec. 14. (a) The group shall conduct an annual study
6 on the use, availability, and economics of using:

- 7 (1) renewable energy resources; **and**
- 8 (2) **nuclear energy production or generating technologies to**
9 **produce electricity;**

10 in Indiana. Each year, the group shall submit a report on the study to
11 the commission for inclusion in the commission's annual report to the
12 regulatory flexibility committee described in IC 8-1-2.5-9 and
13 IC 8-1-2.6-4.

14 (b) The report **required by this section** must include suggestions
15 from the group to encourage the development and use of:

- 16 (1) renewable energy resources and technologies, ~~appropriate for~~
17 ~~use in Indiana. In formulating the suggestions, the group shall~~
18 ~~evaluate~~ **including** potential renewable energy generation
19 opportunities from biomass and algae production systems; **and**
- 20 (2) **nuclear energy production or generating technologies;**
21 **appropriate for use in Indiana.**

22 SECTION 16. IC 8-1-13.1-2, AS ADDED BY P.L.151-2009,
23 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2011]: Sec. 2. As used in this chapter, "alternative energy
25 project" means a project that:

- 26 (1) develops or makes use of:
 - 27 (A) clean ~~coal and~~ energy projects (as defined in IC 8-1-8.8-2);
 - 28 (B) renewable energy resources (as defined in IC 8-1-8.8-10)
 - 29 for the production of electricity;
 - 30 (C) integrated gasification combined cycle (IGCC) technology
 - 31 to produce synthesis gas that is used:
 - 32 (i) to generate electricity; or
 - 33 (ii) as a substitute for natural gas;
 - 34 regardless of the fuel source used to produce the synthesis gas;
 - 35 (D) methane recovered from landfills for the production of
 - 36 electricity;
 - 37 (E) demand side management, energy efficiency, or
 - 38 conservation programs; or
 - 39 (F) coal bed methane;
- 40 (2) results in quantifiable reductions in, or the avoidance of:
 - 41 (A) the use of electricity produced by traditional electric
 - 42 generating facilities that use fossil fuels as their fuel source; or

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- 1 (B) regulated air pollutants and carbon emissions produced by
- 2 traditional electric generating facilities that use fossil fuels as
- 3 their fuel source; and
- 4 (3) is implemented under a plan approved by:
- 5 (A) the office; and
- 6 (B) a corporation's or a cooperatively owned power supplier's
- 7 board of directors.

8 SECTION 17. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 10 PASSAGE]:

11 **Chapter 37. Clean Energy Portfolio Standard Program**

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

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

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

- 18 (1) represents:
 - 19 (A) one (1) megawatt hour of clean energy that satisfies the
 - 20 applicable conditions set forth in section 12(b)(2) of this
 - 21 chapter, if the CEC represents clean energy that is not
 - 22 generated by a facility located in Indiana; or
 - 23 (B) one and twenty-five hundredths (1.25) megawatt hours
 - 24 of clean energy, if the CEC represents clean energy that is
 - 25 generated by a facility located in Indiana;
- 26 (2) is quantifiable and transferrable; and
- 27 (3) is possessed by not more than one (1) entity at a time.

28 **Sec. 4. As used in this chapter, "clean energy resource" means**
 29 **any of the following sources, clean sources, alternative**
 30 **technologies, or programs used in connection with the production**
 31 **or conservation of electricity:**

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

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- 1 (iii) Mill residue wood.
- 2 (D) Animal wastes.
- 3 (E) Animal byproducts.
- 4 (F) Aquatic plants.
- 5 (G) Algae.
- 6 (6) Hydropower.
- 7 (7) Fuel cells.
- 8 (8) Hydrogen.
- 9 (9) Energy from waste to energy facilities, including energy
- 10 derived from advanced solid waste conversion technologies.
- 11 (10) Energy storage systems or technologies.
- 12 (11) Geothermal energy.
- 13 (12) A clean coal and energy project described in
- 14 IC 8-1-8.8-2(1)(D).
- 15 (13) Carbon capture and storage projects.
- 16 (14) Nuclear energy.
- 17 (15) Electricity that is:
- 18 (A) generated by a customer owned distributed generation
- 19 facility that is interconnected to the electricity supplier's
- 20 distribution system in accordance with the commission's
- 21 interconnection standards set forth in 170 IAC 4-4.3; and
- 22 (B) supplied back to the electricity supplier for use in
- 23 meeting the electricity supplier's electricity demand
- 24 requirements.
- 25 (16) Coal bed methane.
- 26 (17) Combined heat and power systems.
- 27 (18) Demand side management or energy efficiency initiatives
- 28 that:
- 29 (A) reduce electricity consumption; or
- 30 (B) implement load management, demand response, or
- 31 energy efficiency measures designed to shift customers'
- 32 electric loads from periods of higher demand to periods of
- 33 lower demand;
- 34 as a result of equipment installed, or customers enrolled, after
- 35 January 1, 2010.
- 36 (19) Industrial byproduct technologies that use fuel or energy
- 37 that is a byproduct of an industrial process.

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

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chapter.

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

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

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

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

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

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

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

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

(1) incorporate:

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

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

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

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

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

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

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

(c) The commission shall approve an application submitted under subsection (a) if the commission determines that:

- (1) the application is complete and accurate; and
- (2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of supplying clean energy to its Indiana retail electric customers during the calendar year ending December 31, 2025, in an amount equal to at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year, as set forth in section 12(a)(3) of this chapter.

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

- (1) CPS Goal I: In the calendar year ending December 31, 2013, at least four percent (4%) of the total electricity supplied by the participating electricity supplier to its Indiana

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retail electric customers during the base year.

(2) CPS Goal II: For the five (5) calendar years beginning January 1, 2014, and ending December 31, 2018, an average of at least four percent (4%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year. In the calendar year ending December 31, 2019, at least seven percent (7%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year.

(3) CPS Goal III: For the five (5) calendar years beginning January 1, 2020, and ending December 31, 2024, an average of at least seven percent (7%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year. In the calendar year ending December 31, 2025, at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year.

For purposes of this subsection, electricity is measured in megawatt hours. However, in determining whether a participating electricity supplier has met a CPS goal set forth in this subsection, the commission shall multiply each megawatt hour of clean energy that is generated by a facility located in Indiana by a factor of one and twenty-five hundredths (1.25).

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

(1) except as provided in subsection (e), is supplied by the participating electricity supplier to the participating electricity supplier's Indiana retail electric customers during the CPS goal period under consideration; and

(2) meets one (1) of the following conditions:

(A) Is generated by a facility located in Indiana or in a control area that is part of the regional transmission organization of which the participating electricity supplier is a member.

(B) Is generated by a facility that:

- (i) is not located in Indiana or in a control area that is part of the regional transmission organization of which the participating electricity supplier is a member; and**
- (ii) is located in a control area that is part of another**

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1 regional transmission organization and that is adjacent
 2 to a control area that is part of the regional transmission
 3 organization of which the participating electricity
 4 supplier is a member;
 5 if the participating electricity supplier owns at least a
 6 forty-nine percent (49%) interest in the facility.

7 (c) To the extent feasible, a participating electricity supplier
 8 shall apply toward meeting the CPS goals set forth in subsection (a)
 9 clean energy that is:

- 10 (1) generated by facilities that are:
 11 (A) owned;
 12 (B) operated; or
 13 (C) in the process of being constructed;
 14 by the participating electricity supplier on January 1, 2011;
 15 or
 16 (2) purchased under a contract at no additional cost to the
 17 participating electricity supplier's Indiana retail electric
 18 customers.

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

- 23 (e) A participating electricity supplier may apply:
 24 (1) amounts of clean energy supplied by the participating
 25 electricity supplier to its Indiana retail electric customers
 26 during a particular CPS goal period; or
 27 (2) CECs acquired by the participating electricity supplier
 28 during a particular CPS goal period;
 29 that exceed the requirements for the particular CPS goal period to
 30 the immediately succeeding CPS goal period.

31 (f) A participating electricity supplier may use a clean energy
 32 resource described in section 4(18) of this chapter to satisfy not
 33 more than thirty percent (30%) of any of the CPS goals set forth
 34 in subsection (a).

35 Sec. 13. (a) The commission shall establish the following
 36 incentives for participating electricity suppliers:

- 37 (1) A shareholder incentive consisting of the authorization of
 38 an increased overall rate of return on equity, not to exceed
 39 fifty (50) basis points over a participating electricity supplier's
 40 authorized rate of return, whenever the participating
 41 electricity supplier attains a CPS goal set forth in section 12(a)
 42 of this chapter. The number of additional basis points

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authorized by the commission under this subdivision may:

- (A) be different for each of the CPS goal periods identified in section 12(a) of this chapter, as the commission determines is appropriate; and
- (B) in the case of a particular participating electricity supplier, be based, in part, on the extent to which the participating electricity supplier has attempted to meet a particular CPS goal in the manner specified in section 12(c) of this chapter.

The additional basis points authorized by the commission under this subdivision for each CPS goal period are not cumulative. In determining a participating electricity supplier's authorized rate of return to which additional basis points may be added upon the participating electricity supplier's achievement of a particular CPS goal, the commission shall not include as part of the authorized rate of return any additional basis points awarded to the participating electricity supplier for having achieved the immediately preceding CPS goal.

(2) The recovery, by means of a periodic rate adjustment mechanism, of all reasonable and necessary program costs incurred by a participating electricity supplier in:

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

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

(3) Incentives based on:

- (A) the sharing of achieved savings or as a percentage of

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1 costs; or
 2 (B) avoided costs resulting from achieving demand side
 3 management or energy efficiency targets.
 4 (4) The recovery of lost revenues associated with
 5 implementation of demand side management or energy
 6 efficiency initiatives.
 7 (5) The designation of electricity produced or conserved by a
 8 clean energy resource as an energy savings for purposes of
 9 any initiative, rule, or order approved by the commission to
 10 promote the efficient use and production of electricity,
 11 including initiatives to implement demand side management,
 12 energy efficiency, or conservation measure in accordance with
 13 commission rules.
 14 (b) A participating electricity supplier that seeks one (1) or more
 15 incentives established by the commission under subsection (a) must
 16 apply to the commission:
 17 (1) in the manner and on a form prescribed by the
 18 commission; and
 19 (2) not later than any dates specified by the commission in
 20 rules adopted under section 10 of this chapter;
 21 for approval for the incentives sought.
 22 (c) The commission shall review an application filed under this
 23 section for completeness. The commission may request additional
 24 information the commission considers necessary to aid in the
 25 commission's review.
 26 (d) The commission shall, after notice and hearing, issue a
 27 determination of a participating electricity supplier's eligibility for
 28 the financial incentives sought. The commission shall issue a
 29 determination under this subsection not later than one hundred
 30 twenty (120) days after the date of the application, unless the
 31 commission finds that the applicant has not cooperated fully in the
 32 proceeding.
 33 (e) Subject to the participating electricity supplier's continuing
 34 compliance with the applicable CPS goal, as determined according
 35 to the measurement and evaluation procedures described in section
 36 10(b)(1)(B) of this chapter, a shareholder incentive described in
 37 subsection (a)(1) continues in effect until the earlier of the
 38 following:
 39 (1) A time or upon an event specified in the commission's
 40 order approving the shareholder incentive.
 41 (2) The commission issues a new order authorizing the
 42 participating electricity supplier to receive a shareholder

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incentive for meeting the next CPS program goal.
(f) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a financial incentive described in subsection (a)(2) continues in effect until the earlier of the following:

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

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

- (1) The participating electricity supplier's efforts, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year.
- (2) The total amount of renewable energy supplied to the participating electricity supplier's Indiana retail electric customers during the most recently ended calendar year, including a breakdown of the following:

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

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

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

- (i) each supplier from whom clean energy was

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

31 **For purposes of this subsection, amounts of clean energy and**
 32 **electricity shall be reported in megawatt hours. A participating**
 33 **electricity supplier's duty to submit a report under this subsection**
 34 **terminates after the participating electricity supplier has submitted**
 35 **the report that applies to the calendar year ending December 31,**
 36 **2025.**

37 **(b) Subject to subsection (c), beginning in 2014, the**
 38 **commission's annual report to the regulatory flexibility committee**
 39 **under IC 8-1-2.5-9(b) must include a summary of the information**
 40 **provided by participating electricity suppliers under subsection (a)**
 41 **with respect to the most recently ended calendar year. The**
 42 **commission's duty to include the information specified in this**

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1 subsection in its annual report to the regulatory flexibility
2 committee terminates after the commission has submitted the
3 information that applies to the calendar year ending December 31,
4 2025.

5 (c) This section does not empower the commission to require a
6 participating electricity supplier to disclose confidential and
7 proprietary business plans and other confidential information
8 without adequate protection of the information. The commission
9 shall exercise all necessary caution to avoid disclosure of
10 confidential information supplied under this section.

11 SECTION 18. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 251, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Utilities and Technology.

(Reference is to SB 251 as introduced.)

LONG, Chairperson

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