

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 29

Citations Affected: IC 4-4-30; IC 4-23-5.5; IC 8-1-2; IC 8-1-8.8.

Synopsis: Clean coal and energy projects and research. Proposed conference committee report for ESB 29. Creates a center for coal technology research to develop technologies to advance the use of Indiana coal. Requires the department of commerce to pursue available private and public sources of money for the coal research grant fund. Eliminates the requirement in existing law that energy generating facilities must be primarily fueled by Indiana coal in order to recover in their rates construction costs for clean coal technologies, for construction that begins after March 31, 2002. Encourages: (1) new energy generating facilities in Indiana that use clean coal technology and are fueled using Illinois Basin coal resources; (2) advanced technologies that reduce regulated air emissions from existing generating plants primarily fueled by Illinois Basin coal; (3) projects to provide electric transmission facilities to serve a new generating facility; (4) projects to develop alternative energy sources, including renewable energy projects; and (5) the purchase by energy utilities of fuels produced by coal gasification facilities in Indiana. Directs the utility regulatory commission (IURC) to encourage clean coal and energy projects through financial incentives. Provides that the IURC shall encourage and provide incentives for certain clean coal and energy projects only if the projects are reasonable and necessary. Directs the state utility forecasting group to conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana and to submit a report of its findings to the IURC. Allows the IURC to review any approved clean coal and energy project to determine that the project continues to comply with the IURC's order initially approving incentives for the project. Allows the IURC to revoke any incentive if it finds that the project no longer complies with the provisions in the order concerning the incentive. Provides that for ratemaking purposes, wages paid by a utility to an independent contractor for construction of clean coal and energy projects are not excessive if the wages are those normally paid for work of the same type and quality in the labor market. (This conference committee report: (1) removes language providing that the IURC has jurisdiction over a utility's purchase of clean coal technology from third parties; (2) removes provisions giving the IURC the authority to impose civil penalties against public utilities in certain cases; (3) removes provisions giving the IURC jurisdiction over various utility mergers; (4) removes provisions concerning the IURC's jurisdiction over merchant power plants; (5) adds a provision allowing certain clean coal incentives for projects to provide electric

transmission facilities serving a new generating facility; (6) changes the date after which certain technologies are considered clean coal technologies for purposes of clean coal and energy project incentives from July 1, 1989, to the date of enactment of the federal Clean Air Act Amendments of 1990; (7) clarifies that a new generating facility that qualifies as a project to develop alternative energy resources is not required to have a generating capacity of at least 100 megawatts to qualify for incentives; (8) provides that renewable energy projects eligible for clean coal and energy project incentives include fuel cells and energy produced from waste to energy facilities producing steam not used to produce electricity; (9) provides that the IURC shall encourage and provide incentives for projects only if the projects are reasonable and necessary, instead of reasonable and in the public interest; (10) clarifies that an application to the IURC for approval of a clean coal and energy project is required in addition to any application required under existing law for the construction of an energy generating facility; (11) decreases the time by which the IURC must issue a determination of a project's eligibility for financial incentives from 180 days to 120 days from the date of the application; (12) eliminates language providing that the recovery of construction costs for new generating facilities using clean coal technology is in place of the normal allowance for funds used during construction (AFUDC) recovery; (13) adds provisions concerning wages paid for construction of clean coal and energy projects; and (14) eliminates the requirement in existing law that energy generating facilities must be primarily fueled by Indiana coal in order to recover in their rates construction costs for clean coal technologies, for construction that begins after March 31, 2002.

Effective: July 1, 2002; Upon passage.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 29 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 1, line 11, delete "has the meaning" and insert "**means coal**
- 2 **from a mine whose coal deposits are located in the ground wholly**
- 3 **or partially in Indiana regardless of the location of the mine's**
- 4 **tipple.**".
- 5 Page 1, delete line 12.
- 6 Page 3, delete lines 35 through 42, begin a new paragraph and insert:
- 7 "SECTION 3. IC 8-1-2-6.6 IS AMENDED TO READ AS
- 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in
- 9 this section:
- 10 "Clean coal technology" means a technology (including
- 11 precombustion treatment of coal):
- 12 (1) that is used at a new or existing electric generating facility and
- 13 directly or indirectly reduces airborne emissions of sulfur or
- 14 nitrogen based pollutants associated with combustion or use of
- 15 coal; and
- 16 (2) that either:
- 17 (A) is not in general commercial use at the same or greater scale
- 18 in new or existing facilities in the United States as of January 1,
- 19 1989; or
- 20 (B) has been selected by the United States Department of Energy
- 21 for funding under its Innovative Clean Coal Technology program
- 22 and is finally approved for such funding on or after January 1,

1 1989.

2 "Indiana coal" means coal from a mine whose coal deposits are
3 located in the ground wholly or partially in Indiana regardless of the
4 location of the mine's tipple.

5 "Qualified pollution control property" means an air pollution control
6 device on a coal burning electric generating facility or any equipment
7 that constitutes clean coal technology that has been approved for use
8 by the commission, that meets applicable state or federal requirements,
9 and that is designed to accommodate the burning of coal from the
10 geological formation known as the Illinois Basin.

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

13 (b) Upon the request of a utility that began construction after October
14 1, 1985, **and before March 31, 2002**, of qualified pollution control
15 property that is to be used and useful for the public convenience, the
16 commission shall for ratemaking purposes add to the value of that
17 utility's property the value of the qualified pollution control property
18 under construction, but only if at the time of the application and
19 thereafter:

20 (1) the facility burns only Indiana coal as its primary fuel source
21 once the air pollution control device is fully operational; or

22 (2) the utility can prove to the commission that the utility is
23 justified because of economic considerations or governmental
24 requirements in utilizing some non-Indiana coal.

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

27 SECTION 4. IC 8-1-2-6.8 IS ADDED TO THE INDIANA CODE AS
28 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON
29 PASSAGE]: **Sec. 6.8. (a) This section applies to a utility that begins
30 construction of qualified pollution control property after March
31 31, 2002.**

32 **(b) As used in this section, "clean coal technology" means a
33 technology (including precombustion treatment of coal):**

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

38 **(2) that either:**

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

43 **(B) has been selected by the United States Department of
44 Energy for funding under its Innovative Clean Coal
45 Technology program and is finally approved for such
46 funding on or after the date of enactment of the federal
47 Clean Air Act Amendments of 1990 (P.L.101-549).**

48 **(c) As used in this section, "qualified pollution control property"
49 means an air pollution control device on a coal burning energy
50 generating facility or any equipment that constitutes clean coal
51 technology that has been approved for use by the commission and**

1 that meets applicable state or federal requirements.

2 (d) As used in this section, "utility" refers to any energy
3 generating utility allowed by law to earn a return on its investment.

4 (e) Upon the request of a utility that begins construction after
5 March 31, 2002, of qualified pollution control property that is to be
6 used and useful for the public convenience, the commission shall
7 for ratemaking purposes add to the value of that utility's property
8 the value of the qualified pollution control property under
9 construction.

10 (f) The commission shall adopt rules under IC 4-22-2 to
11 implement this section.

12 SECTION 5. IC 8-1-2-48 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE UPON PASSAGE]: Sec. 48. (a) The commission shall
14 inquire into the management of the business of all public utilities, and
15 shall keep itself informed as to the manner and method in which the
16 same is conducted and shall have the right to obtain from any public
17 utility all necessary information to enable the commission to perform
18 its duties. If, in its inquiry into the management of any public utility,
19 the commission finds that the amount paid for the services of its
20 officers, employees, or any of them, is excessive, or that the number of
21 officers or persons employed by such utility is not justified by the
22 actual needs of the utility, or that any other item of expense is being
23 incurred by the utility which is either unnecessary or excessive, the
24 commission shall designate such item or items, and such item or items
25 so designated, or such parts thereof as the commission may deem
26 unnecessary or excessive, shall not be taken into consideration in
27 determining and fixing the rates which such utility is permitted to
28 charge for the service which it renders.

29 (b) For purposes of IC 8-1-2, IC 8-1-8.5, IC 8-1-8.7, **IC 8-1-8.8**, and
30 IC 8-1-27, wages paid to an independent contractor of a utility for
31 construction or maintenance performed for the utility shall not be found
32 to be excessive merely because the wages are those normally paid for
33 work of the same type and quality in the labor market in which the
34 work for the utility is being performed.

35 (c) In carrying out its duties and powers under subsection (a) with
36 regard to any utility which sells or generates electricity, the commission
37 may also inquire into or audit a utility's powerplant efficiency and
38 system reliability."

39 Delete pages 4 through 22.

40 Page 23, delete lines 1 through 34.

41 Page 25, between lines 6 and 7, begin a new line double block
42 indented and insert:

43 **"(C) Projects to provide electric transmission facilities to**
44 **serve a new energy generating facility."**

45 Page 25, line 13, delete "electric" and insert "energy".

46 Page 25, line 18, delete "is" and insert "was".

47 Page 25, line 19, delete "as of" and insert "**at the time of enactment**
48 **of the federal Clean Air Act Amendments of 1990 (P.L.101-549);**
49 **or"**.

50 Page 25, delete line 20.

51 Page 25, line 24, delete "January 1, 1989." and insert "**the date of**

- 1 **enactment of the federal Clean Air Act Amendments of 1990**
 2 **(P.L.101-549)."**
- 3 Page 26, line 14, delete "(3) The" and insert "**(4) Except for a**
 4 **facility that is a clean coal and energy project under section 2(2) of**
 5 **this chapter, the"**.
- 6 Page 26, between lines 35 and 36, begin a new line block indented
 7 and insert:
- 8 "**(7) Fuel cells.**
 9 **(8) Energy from waste to energy facilities producing steam not**
 10 **used for the production of electricity."**
- 11 Page 26, line 36, delete "The" and insert "**Except for energy**
 12 **described in subsection (a)(8), the"**.
- 13 Page 27, line 3, delete "in the" and insert "**reasonable and**
 14 **necessary:"**.
- 15 Page 27, delete line 4.
- 16 Page 27, line 20, after "section." insert "**This chapter does not**
 17 **relieve an eligible business of the duty to obtain any certificate**
 18 **required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business**
 19 **seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter**
 20 **for one (1) project may file a single application for all necessary**
 21 **certificates. If a single application is filed, the commission shall**
 22 **consider all necessary certificates at the same time."**
- 23 Page 27, line 27, delete "eighty (180)" and insert "**twenty (120)"**.
- 24 Page 27, line 34, delete "facilities, in place of the normal allowance
 25 for funds used" and insert "**facilities."**
- 26 Page 27, delete line 35.
- 27 Page 28, line 11, after "and" delete "the" and insert "**necessary."**
- 28 Page 28, delete line 12.
- 29 Page 28, line 17, delete "in the public interest." and insert
 30 "**necessary."**
- 31 Page 28, line 41, delete "If any part of this chapter is found to be
 32 unlawful, the" and insert "**The"**.
- 33 Page 28, line 42, delete "shall annually" and insert "**may"**.
- 34 Page 29, line 1, delete "be:" and insert "**comply"**.
- 35 Page 29, delete line 2.
- 36 Page 29, line 3, delete "(2) consistent".
- 37 Page 29, line 3, delete "findings in the".
- 38 Page 29, run in lines 1 through 3.
- 39 Page 29, line 4, after "chapter." insert "**The commission may revoke**
 40 **any incentive approved in the order if the commission finds that**
 41 **the project no longer complies with the provisions of the order**
 42 **concerning the incentive."**
- 43 Page 29, delete lines 5 through 27.
- 44 Renumber all SECTIONS consecutively.
 (Reference is to ESB 29 as reprinted February 26, 2002.)

Conference Committee Report
on
Engrossed Senate Bill 29

Signed by:

Senator Weatherwax
Chairperson

Representative Stilwell

Senator Hume

Representative Lutz J

Senate Conferees

House Conferees