

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 386

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-40.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 40.5. Pilot Program for Cost Securitization for Retired Electric Utility Assets

Sec. 1. As used in this chapter, "assignee" means any individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred.

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

Sec. 3. As used in this chapter, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that meets the following criteria:

- (1) The public utility owns or operates any electric generation facility for the provision of electric utility service to Indiana customers.
- (2) The public utility is under the jurisdiction of the commission for the approval of rates and charges.
- (3) The public utility has a total of not more than two hundred thousand (200,000) retail electric customers at the time of the filing of a petition under section 10 of this chapter.

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Sec. 4. As used in this chapter, "financing order" means an order issued by the commission under section 10 of this chapter.

Sec. 5. (a) As used in this chapter, "financing party" means a holder of securitization bonds.

(b) The term includes a trustee, a collateral agent, or any other person acting for the benefit of the holder.

Sec. 6. As used in this chapter, "qualified costs", with respect to an electric generation facility that will be retired from service by an electric utility not later than twenty-four (24) months after the filing of a petition by the electric utility under section 10 of this chapter, means the net original cost of the facility and any associated investments, as reflected on the electric utility's accounting system, and as adjusted for depreciation to be incurred until the facility is retired, together with:

(1) costs of:

(A) removal; and

(B) restoration, as applicable;

of the facility, any associated improvements, and facility grounds;

(2) the applicable portion of investment tax credits associated with the facility and any associated investments;

(3) costs of issuing, supporting, and servicing securitization bonds;

(4) taxes related to the recovery of securitization charges; and

(5) any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds.

Sec. 7. (a) As used in this chapter, "securitization bonds" means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that:

(1) are issued by an electric utility, its successors, or an assignee under a financing order;

(2) have a term of not more than twenty (20) years; and

(3) are secured by, or payable from, securitization property.

(b) If certificates of participation, certificates of a beneficial interest, or certificates of ownership are issued under this chapter, a reference in this chapter to "principal", "interest", or "premium" refers to comparable terms with respect to those certificates.

Sec. 8. As used in this chapter, "securitization charges" means nonbypassable amounts that are:



- (1) approved by the commission under a financing order to allow for the full recovery of qualified costs by an electric utility;
- (2) collected from all retail customers and customer classes of the electric utility, including any customer that:
 - (A) is participating in:
 - (i) a net metering program under 170 IAC 4-4.2;
 - (ii) a distributed generation program under IC 8-1-40; or
 - (iii) a feed-in-tariff program;
 offered by the electric utility; or
 - (B) supplies at least part of the customer's own electricity demand;
- (3) charged for the use or availability of electric services; and
- (4) collected by the electric utility, its successors, an assignee, or any other collection agent as provided for in the financing order.

Sec. 9. As used in this chapter, "securitization property" means the rights and interests of an electric utility, or its successor, under a financing order, as described in section 11 of this chapter.

Sec. 10. (a) An electric utility with qualified costs that are at least five percent (5%) of the electric utility's total jurisdictional electric rate base may file a petition with the commission for the authority to:

- (1) issue securitization bonds;
- (2) collect securitization charges; and
- (3) encumber securitization property with a lien and security interest, as described in section 15 of this chapter.

An electric utility's qualified costs may be estimated at the time of filing a petition under this section.

(b) Not later than two hundred forty (240) days after the date a petition is filed by an electric utility under subsection (a), the commission shall conduct a hearing and issue an order on the petition. The commission shall approve the issuance of securitization bonds, the collection of securitization charges, and the encumbrance of securitization property with a lien and security interest under section 15 of this chapter if the commission:

- (1) makes the findings set forth in subsection (d); and
- (2) finds that the net present value of the total securitization charges to be collected under the commission's financing order under this section is less than the amount that would be recovered through traditional ratemaking if the electric utility's qualified costs were included in the electric utility's



net original cost rate base and recovered over a period of not more than twenty (20) years.

Subject to subsection (c), qualified costs authorized in the commission's financing order under this section shall be allocated to the electric utility's customer classes using the same cost allocation methodology approved by the commission in the electric utility's most recent base rate proceeding.

(c) The commission may, in the financing order or in a separate docketed proceeding initiated separately from the electric utility's base rate proceedings, adjust allocations of qualified costs to avoid unreasonable rates to customers in customer classes that have experienced material changes in electric load or in the number of customers. As part of any base rate proceeding initiated during the period over which the securitization charges are to be collected, the commission shall, if the commission orders a change to cost allocation, adjust the allocation of qualified costs among the electric utility's customer classes to reflect the cost allocation approved in that base rate proceeding. An allocation adjustment made under this subsection:

- (1) must ensure that the adjustment of the allocation of securitization charges:
 - (A) will preserve the rating of the securitization bonds; and
 - (B) will not impair or reduce the total securitization charges; and
- (2) must be just and reasonable.

This subsection does not prohibit the commission from approving tariff language as part of a financing order that addresses the conditions upon which allocation adjustments are to be made, including the establishment of a process by which such allocation adjustments must be revised as necessary to preserve the rating of the securitization bonds.

(d) In issuing a financing order under this section, the commission must make the following findings and determinations:

- (1) A determination of the amount of the electric utility's qualified costs.
- (2) A finding that the proceeds of the authorized securitization bonds will be used solely for the purposes of reimbursing the electric utility for qualified costs, that the electric utility's books and records will reflect a reduction in rate base associated with the receipt of proceeds from the securitization bonds, and that such reduction will be reflected in retail rates when the securitization bonds are issued.



(3) A finding that the expected structuring and the expected pricing of the securitization bonds will result in reasonable terms consistent with market conditions and the terms of the financing order.

(4) A finding that the electric utility has demonstrated that it will make, subject to approval by the commission, capital investments in Indiana in an amount equal to or exceeding the amount of the electric utility's qualified costs, over a period of not more than seven (7) years immediately following the planned issuance date of the securitization bonds. Costs to purchase energy or capacity through a power purchase agreement do not constitute a capital investment for purposes of this subdivision. The commission may not impose any other requirement related to the use or distribution of the proceeds of the securitization bonds. However:

(A) the commission shall encourage the electric utility to use the proceeds from the securitization bonds for the construction and ownership of clean energy resources described in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(15); and

(B) notwithstanding the issuance of the financing order, the proposed capital investments remain subject to commission approval to the extent otherwise required by this article.

(5) A finding that:

(A) the electric utility has proposed a reasonable mechanism to reflect a reduction in the electric utility's base rates and charges upon the assessment of securitization charges on customer bills, so as to remove any qualified costs from the electric utility's base rates; and

(B) the mechanism will provide timely rate savings for customers.

(6) A determination that the proposal is just and reasonable.

(e) A financing order issued under this section must set forth:

(1) the amount of qualified costs to be recovered by the electric utility; and

(2) the period over which securitization charges are to be collected, which may not exceed twenty (20) years.

(f) Securitization bonds are effective in accordance with their terms if both:

(1) the financing order under which the securitization bonds



are issued; and

(2) the securitization charges authorized in that order; are irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission under IC 8-1-2-72 or any other statute or rule, except as provided in subsection (h) and section 12(c) of this chapter.

(g) Securitization bonds issued under a financing order of the commission under this section are binding in accordance with their terms, even if the financing order is later vacated, modified, or otherwise held to be invalid in whole or in part.

(h) Upon the request of an electric utility, the commission may adopt a financing order under this section authorizing the retirement and refunding of previously authorized securitization bonds if the commission finds that future securitization charges required to service new securitization bonds, including transaction costs, will be less than the future securitization charges required to service the securitization bonds to be refunded. Upon the retirement of the refunded securitization bonds, the commission shall adjust the related securitization charges accordingly.

(i) IC 8-1-2-76 through IC 8-1-2-83 do not apply to:

- (1) the issuance of securitization bonds under this section; or
- (2) the encumbrance of securitization property with a lien and security interest under section 15 of this chapter.

(j) A financing order is subject to appeal under IC 8-1-3.

(k) After the issuance of a financing order in response to the petition of an electric utility, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer securitization property or to cause securitization bonds to be issued, including the right to defer or postpone assignment, sale, transfer, or issuance. If the electric utility abandons issuance of securitization bonds under the financing order or does not cause securitization bonds to be issued not later than ninety (90) days after the date of a final, non-appealable financing order, the electric utility shall file with the commission a statement of abandonment containing the reasons for the abandonment. However, the commission may, upon petition by the electric utility, extend the ninety (90) day period set forth in this subsection for good cause shown.

(l) The commission may not refuse to allow an electric utility to recover qualified costs in a manner that is otherwise permissible, or refuse or condition authorization or approval of:

- (1) the issuance and sale of securities by an electric utility; or



(2) the assumption by an electric utility of liabilities or obligations;
solely because of the potential availability of securitization bond financing.

Sec. 11. (a) Securitization property consists of the rights and interests of an electric utility, or its successor, under a financing order, including the following:

(1) The right to impose, collect, and receive securitization charges, as authorized under the financing order, in an amount necessary to provide for the full recovery of all qualified costs.

(2) The right under the financing order to obtain periodic adjustments of securitization charges under section 12(c) of this chapter.

(3) All revenue, collections, payments, money, and proceeds arising out of the rights and interests described in this section.

(b) Securitization property constitutes a present property right for purposes of contracts concerning the sale or pledge of property, even if the imposition and collection of securitization charges depend on further acts of the electric utility or others that have not yet occurred. The securitization property continues to exist, and the financing order under which the securitization property arises remains in effect, for the same period as the pledge of the state under section 16(b) of this chapter.

(c) All revenues and collections resulting from securitization charges constitute proceeds of only the securitization property arising from the financing order.

Sec. 12. (a) The interest of an assignee in securitization property and in securitization charges is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person, or in connection with the bankruptcy of the electric utility or any other person. A financing order remains in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

(b) A financing order must include terms ensuring that the securitization charges authorized under the order are nonbypassable charges that are payable by all customers and customer classes of the electric utility, including any customer that:

(1) is participating in:

(A) a net metering program under 170 IAC 4-4.2;

(B) a distributed generation program under IC 8-1-40; or

(C) a feed-in-tariff program;



offered by the electric utility; or

(2) supplies at least part of the customer's own electricity demand.

(c) A financing order must include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually. Each year, not earlier than forty-five (45) days before the anniversary date of the issuance of securitization bonds under the financing order, and not later than the anniversary date of the issuance of the securitization bonds, the electric utility shall submit to the commission an application to do the following:

(1) Correct any over collections or under collections of securitization charges during the twelve (12) months preceding the date of the filing of the electric utility's application under this section. For the first annual review under this section, the electric utility shall correct for any over collections or under collections of securitization charges during those months:

(A) that precede the date of the filing of the electric utility's application under this section; and

(B) in which securitization charges were collected.

(2) Ensure, through proposed securitization charges, as set forth by the electric utility in the application, the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds.

The commission shall review the application, including the electric utility's proposed securitization charges. The review of the filing must be limited to determining whether the application contains any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of the securitization charges and the amount of an adjustment. If the proposed securitization charges have been appropriately calculated, the commission shall issue an order approving the application and the proposed securitization charges not later than forty-five (45) days after the filing of the application. The commission shall approve any revisions to securitization charges under this subsection without conducting an evidentiary hearing. At any time during a calendar year, an electric utility may, on its own initiative, file an application with the commission under this section as the electric utility may determine to be necessary to meet the requirements set forth in subdivisions (1) and (2). The commission shall review any



application filed by an electric utility outside of the annual review schedule, including the electric utility's proposed securitization charges, and if the proposed securitization charges have been appropriately calculated issue an order approving the application and the proposed securitization charges not later than forty-five (45) days after the filing of the application.

(d) A financing order must provide that:

(1) any difference between:

(A) qualified costs approved by the commission in the financing order; and

(B) the electric utility's qualified costs at the time an electric generation facility is retired;

shall be accounted for by the electric utility as a regulatory asset or liability;

(2) an electric utility that ultimately incurs costs of removal and restoration greater than the amount estimated at the time an electric generation facility is retired may seek recovery of such incremental costs through rates; and

(3) the commission may approve recovery of incremental costs under subdivision (2) if the commission finds the costs just and reasonable.

Sec. 13. (a) The commission, in exercising the commission's powers and carrying out the commission's duties with regard to any matter within the commission's authority under this chapter, may not:

(1) for purposes of ratemaking or approval of financing, consider:

(A) securitization bonds issued under a financing order to be the debt of the electric utility other than for federal income tax purposes;

(B) securitization charges paid under a financing order to be the revenue of the electric utility for any purpose; or

(C) securitization costs or financing costs specified in a financing order to be the cost of the electric utility; or

(2) determine any action taken by an electric utility that is consistent with the financing order to be unreasonable. This subdivision does not require the commission to approve a proposed capital investment under section 10(d)(4)(B) of this chapter.

(b) This chapter does not prohibit an electric utility from requesting, or the commission from approving, alternative methods for recovery of the costs of an electric generation facility upon



retirement.

(c) An electric utility that has received an order from the commission approving the recording of a regulatory asset to recover the net book value of an electric generation facility upon the planned retirement of the electric generation facility may not file a petition under section 10 of this chapter with respect to the generation facility.

Sec. 14. (a) If an agreement by an electric utility or an assignee to transfer securitization property expressly states that the transfer is a sale or is otherwise an absolute transfer:

(1) the resulting transaction:

(A) is a true sale; and

(B) is not a secured transaction; and

(2) title, both legal and equitable, passes to the person to which the securitization property is transferred.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of:

(1) whether the purchaser has any recourse against the seller; or

(2) any other term of the agreement, including the following:

(A) The seller's retention of an equity interest in the securitization property.

(B) The fact that the electric utility acts as a collector of securitization charges relating to the securitization property.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 15. (a) A valid and enforceable lien and security interest in securitization property may be created only by a financing order and the execution and delivery of a security agreement with a financing entity in connection with the issuance of securitization bonds.

(b) The lien and security interest attach automatically from the time that value is received for the securitization bonds, and:

(1) constitute a continuously perfected lien and security interest in the securitization property and all proceeds of the property, whether or not accrued;

(2) have priority in the order of their filing, if a financing statement is filed with respect to the security interest in accordance with IC 26-1; and

(3) take precedence over any subsequent:

(A) judicial lien; or



(B) other creditor's lien.

In addition to the rights and remedies provided by this chapter, all rights and remedies provided by IC 26-1 with respect to a security interest apply with respect to securitization property.

(c) Transfer of an interest in securitization property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, if a financing statement is filed with respect to the transfer in accordance with IC 26-1.

(d) The priority of a lien and security interest under this section is not impaired by the following:

(1) A later modification of the financing order under which the securitization property arises.

(2) The commingling of other funds with funds arising from the collection of securitization charges. Any other security interest that may apply to funds arising from the collection of securitization charges terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If securitization property has been transferred to an assignee, any proceeds from that property shall be held in trust for the assignee.

(e) If the electric utility or any of its successors default in paying revenues arising with respect to the securitization property, the commission or a court having jurisdiction shall, upon application of the financing party, and without limiting any other remedies available to the financing party, order the:

(1) sequestration; and

(2) payment to the financing party;

of revenues arising with respect to the securitization property. An order under this subsection remains in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor or any pledger or transferor of the securitization property.

(f) Securitization property constitutes an account as defined in IC 26-1-9.1-102.

(g) For purposes of this chapter and IC 26-1, securitization property is considered to exist regardless of whether:

(1) the revenue or proceeds with respect to the property have accrued; or

(2) the value of the property right is dependent on the customers of an electric utility receiving service.

(h) Changes in a financing order or in customers' securitization charges do not affect the validity, perfection, or priority of the



security interest in the related securitization property.

(i) The description of securitization property in a security agreement, in another agreement, or in a financing statement is sufficient if it refers to this chapter and the financing order under which the securitization property arises.

(j) This chapter controls in any conflict between this chapter and any other Indiana law regarding:

- (1) the attachment and perfection;
- (2) the effect of perfection; and
- (3) the priority;

of any security interest in securitization property.

Sec. 16. (a) Securitization bonds are not:

- (1) a debt or obligation of the state; or
- (2) a charge on the state's full faith and credit or on the state's taxing power.

(b) The state pledges, for the benefit and protection of financing parties and electric utilities under this chapter, that it will not:

- (1) take or permit any action that would impair the value of securitization property; or
- (2) reduce or alter, except as authorized by section 12(c) of this chapter, or impair securitization charges to be imposed, collected, and remitted to financing parties under this chapter;

until the principal, interest, and premium, and other charges incurred, or contracts to be performed, in connection with the related securitization bonds have been paid or performed in full. Any party issuing securitization bonds is authorized to include the pledge set forth in this subsection in any documentation relating to those bonds.

Sec. 17. (a) The acquisition, ownership, and disposition of any direct interest in any securitization bond shall not be taken into account in determining whether a person is subject to any income tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by the state or by any political subdivision of the state.

(b) Any successor to an electric utility, whether that person becomes a successor as a result of any:

- (1) bankruptcy, reorganization, or other insolvency proceeding; or
- (2) merger, acquisition, sale, or transfer;

shall, by operation of law, perform and satisfy all obligations of the electric utility under this chapter in the same manner and to the



same extent as the electric utility would have been obligated to perform and satisfy before the event described in subdivision (1) or (2), including collecting and paying revenues arising with respect to the securitization property to persons entitled to those revenues.

(c) An assignee or financing party is not considered to be an electric utility solely by virtue of any transactions described in this chapter.

Sec. 18. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b).

Sec. 19. The commission shall adopt rules under IC 4-22-2 to implement this chapter. In adopting the rules required by this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this section and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

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

(b) As used in this SECTION, "committee" refers to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8).

(c) As used in this SECTION, "electric utility" has the meaning set forth in IC 8-1-40.5-3, as added by this act.

(d) As used in this SECTION, "participating electric utility" refers to an electric utility that:

- (1) has been issued a financing order by the commission under IC 8-1-40.5-10, as added by this act; and
- (2) has issued securitization bonds and collected securitization charges;

under the authority granted by the financing order.

(e) The legislative council is urged to assign to the committee during the 2022 legislative interim the task of studying the:

- (1) implementation; and
- (2) use by electric utilities;

of IC 8-1-40.5, as added by this act, concerning the securitization of costs for retired electric utility assets.

(f) If the committee is assigned to study the topic described in subsection (e), the committee shall consider available data and other information concerning the following:

- (1) The number of electric utilities that have submitted a



petition to the commission under IC 8-1-40.5-10, as added by this act, for the authority to:

- (A) issue securitization bonds;
- (B) collect securitization charges; and
- (C) encumber securitization property with a lien and security interest.

(2) The number of financing orders that the commission has issued under IC 8-1-40.5-10, as added by this act.

(3) The total amount of securitization bonds issued under IC 8-1-40.5, as added by this act, by each participating electric utility.

(4) The total amount of securitization charges collected under IC 8-1-40.5, as added by this act, by each participating electric utility.

(5) The total savings realized by each participating electric utility by securitizing its qualified costs (as defined in IC 8-1-40.5-6, as added by this act), compared to the amount of those costs that would have been recovered by the electric utility through traditional ratemaking over the same period of years.

(6) The purposes for which each participating electric utility has used any savings described in subdivision (5).

(g) If the committee is assigned to study the topic described in subsection (e), the committee may request information on the topic, including the data and information described in subsection (f), from:

- (1) the commission;
- (2) electric utilities, including participating electric utilities;
- (3) customers of participating electric utilities; and
- (4) any experts, stakeholders, or other interested parties, as the committee determines appropriate.

(h) If the committee is assigned to study the topic described in subsection (e), the committee shall, not later than November 1, 2022, submit to the legislative council a report setting forth the committee's findings and recommendations on the topic described in subsection (e), including the committee's recommendations as to whether the IC 8-1-40.5, as added by this act, should be amended to allow other electricity suppliers, in addition to electric utilities described in IC 8-1-40.5-3, as added by this act, to securitize costs associated with retired electric utility assets. A report submitted to the legislative council under this subsection must be in an electronic format under IC 5-14-6.



(i) This SECTION expires January 1, 2023.

SECTION 3. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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