

SENATE BILL No. 569

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-17-15.

Synopsis: The Reliable, Affordable, and Safe Power Act. Provides that, in response to the federal Environmental Protection Agency Clean Power Plan regulatory activity: (1) the governor and attorney general shall take appropriate steps to protect the state's sovereignty and police power authority in light of the designed federalism under the federal Clean Air Act; (2) the department of environmental management may examine the implications of preparing and implementing proposed regulations, but may not prepare or implement a state implementation plan until completion of judicial review concerning the legality of regulations under the federal Clean Air Act for existing power plants has been fully resolved at law; (3) the utility regulatory commission may not allow electric generating units to be retired prior to their engineering lifetime if the unit is necessary to maintain the grid reliability specified by the Federal Energy Regulatory Commission in its reliability standards. Requires electric generating units in existence on July 1, 2015, be operated in accordance with their design parameters and in a manner that ensures operation consonant with the initial design life of the unit at the time of its utility regulatory commission approval, and may not allow electric generating units to be retired prior to their engineering lifetime unless the owners of the units have fully recouped the cost of construction and financing, the replacement generation results in lower costs to consumers, and there is sufficient replacement capacity to meet dispatchable capacity of the unit to be retired.

Effective: July 1, 2015.

Schneider

January 20, 2015, read first time and referred to Committee on Utilities.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 569



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

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

1 SECTION 1. IC 13-17-15 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]:
4 **Chapter 15. The Reliable, Affordable, and Safe Power Act**
5 **Sec. 1. The general assembly makes the following findings:**
6 (1) A reliable and affordable electricity supply is vital to the
7 nation's and each state's economic growth, jobs, and the
8 overall well-being of its citizens.
9 (2) Under its sovereignty and the protections of the Tenth
10 Amendment to the Constitution of the United States, it is the
11 sole authority of each state to regulate as necessary to ensure
12 a reliable and affordable supply of electricity for its citizens.
13 (3) Environmental regulations should be based on sound
14 science and a transparent and comprehensive program that
15 addresses environmental issues, the nation's broader
16 economic prosperity, and the long term energy affordability



- 1 for citizens.
- 2 (4) The regulation of retail electricity sales and local
3 distribution of electricity is a sovereign state function that
4 federal agencies have a legal obligation to respect and
5 preserve.
- 6 (5) On June 25, 2013, the President of the United States issued
7 a memorandum to the Administrator of the United States
8 Environmental Protection Agency (EPA) directing the EPA to
9 develop guidelines to control greenhouse gas emissions from
10 existing fossil fuel fired power plants under Section 111(d) of
11 the federal Clean Air Act and to seek input from states.
- 12 (6) On June 2, 2014, the EPA issued proposed guidelines
13 limiting carbon dioxide emissions from existing fossil fuel
14 fired power plants under Section 111(d) of the federal Clean
15 Air Act and published the proposed guidelines for comment
16 in the Federal Register on June 16, 2014.
- 17 (7) The EPA claims authority to regulate greenhouse gases by
18 utilizing Section 111(d) of the federal Clean Air Act to
19 regulate carbon dioxide performance standards for Existing
20 Generating Units when those plants are already regulated
21 under the air toxics program under Section 112 of the federal
22 Clean Air Act.
- 23 (8) The EPA has admitted this proposed regulation will not
24 measurably alter any impacts of climate change.
- 25 (9) The EPA has admitted that its interpretation of the federal
26 Clean Air Act conflicts with a literal reading of the law and
27 acknowledged that this application of the federal Clean Air
28 Act "would have been unrecognizable to the Congress that
29 designed the governing statutory framework."
- 30 (10) The federal Clean Air Act does not authorize the EPA to
31 mandate implementation of "outside of the fence" elements of
32 a state's Clean Power Plan with respect to retirement or
33 operation of coal fired electricity generating units, the
34 reliance on generation of electricity from natural gas, the
35 reliance on renewable energy sources, or the energy efficiency
36 or demand management of end users, each of these exclusively
37 within the police powers of the state.
- 38 (11) The proposed guidelines are based on the EPA's
39 assessment of each state's ability to improve the efficiency of
40 coal fired electric generating units, retire or operate
41 differently coal fired electric generating units, substantially
42 increase the generation of electricity from natural gas,



1 significantly increase reliance on renewable energy sources,
2 and substantially reduce the use of electricity by consumers,
3 all in a plan and on a schedule that is not achievable and
4 workable.

5 (12) The governor, attorney general, utility regulatory
6 commission, and department of environmental management
7 have sent comments to the EPA expressing concern with
8 implementation of the regulation.

9 (13) The proposed regulation would effectively amount to a
10 federal takeover of the electricity system of the United States.

11 (14) The proposed guidelines and plan, by the EPA's own
12 estimates, have a major impact on the economy of each state
13 and significant consequences for how electricity is generated,
14 transmitted, distributed, and used within a state.

15 **Sec. 2. (a)** In response to the EPA Clean Power Plan regulatory
16 activity described in section 1 of this chapter, the governor and
17 attorney general shall:

18 (1) take appropriate steps to protect the state's sovereignty
19 and police power authority in light of the designed federalism
20 under the federal Clean Air Act;

21 (2) prevent federal commandeering of state police power
22 resources; and

23 (3) retain authority to develop and submit to the EPA any
24 plan for meeting the goals of reducing carbon dioxide
25 emissions held to be legally mandated.

26 (b) The general assembly, while pursuing all opportunities to
27 challenge the EPA regulatory activity, shall protect the state's
28 interests in the development of the state's plan in consultation with
29 the department of environmental management and other
30 important stakeholders.

31 **Sec. 3.** Based on the legal uncertainty described in section 1 of
32 this chapter, the department of environmental management may
33 examine the implications of preparing and implementing the EPA
34 regulation, but may not prepare, submit, or implement a state
35 implementation plan under this regulation or otherwise expend
36 funds to do so until completion of the judicial review concerning
37 the legality of a regulation under Section 111(d) of the federal
38 Clean Air Act for existing power plants has been fully resolved at
39 law.

40 **Sec. 4. (a)** The department of environmental management shall
41 submit a copy of any federal Clean Power Plan state
42 implementation plan prepared by the department to the standing



1 committees of the house of representatives and the senate
2 concerned with the environment. The standing committees shall
3 review and submit a report on the impact of the plan concerning
4 the affordability and reliability of the plan on commercial and
5 residential consumers to the legislative council, the governor, and
6 state budget committee.

7 (b) A state implementation plan described in subsection (a) may
8 not be implemented:

9 (1) for at least sixty (60) days after the date the plan is
10 presented to the standing committees of the house of
11 representatives and the senate concerned with the
12 environment; or

13 (2) until the date the report described in subsection (a) has
14 been submitted to the legislative council, the governor, and
15 state budget committee;

16 whichever occurs earlier.

17 (c) A report submitted to the legislative council under this
18 section must be in an electronic format under IC 5-14-6.

19 Sec. 5. The utility regulatory commission may not allow electric
20 generating units to be retired prior to their engineering lifetime if
21 the unit is necessary to maintain the grid reliability specified by the
22 Federal Energy Regulatory Commission (FERC) in its reliability
23 standards.

24 Sec. 6. The utility regulatory commission shall require that
25 electric generating units in existence on July 1, 2015, be operated
26 in accordance with the unit's design parameters and in a manner
27 that ensures operation consonant with the initial design life of the
28 unit at the time of the unit's utility regulatory commission
29 approval.

30 Sec. 7. The state may not adopt a federal Clean Power Plan state
31 implementation plan absent utility regulatory commission and
32 FERC certification that the plan will meet or exceed FERC's
33 reliability standards.

34 Sec. 8. The utility regulatory commission shall condition
35 decisions related to electricity generation and distribution on least
36 cost proposals that comply with federal Clean Air Act regulations
37 and the state implementation plan for which air quality criteria
38 have been published or for which regulations have been adopted
39 under Section 112 of the federal Clean Air Act.

40 Sec. 9. The utility regulatory commission shall cap nonfuel rate
41 increases associated with greenhouse gas regulations at one and
42 one-half percent (1.5%).



1 **Sec. 10. The utility regulatory commission may not allow**
2 **electric generating units to be retired prior to their engineering**
3 **lifetime unless:**
4 **(1) the owners of the units have fully recouped the cost of**
5 **construction and financing;**
6 **(2) the replacement generation results in lower costs to**
7 **consumers; and**
8 **(3) there is sufficient replacement capacity to meet the**
9 **dispatchable capacity of the unit to be retired.**

