



April 9, 2021

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# ENGROSSED HOUSE BILL No. 1191

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DIGEST OF HB 1191 (Updated April 8, 2021 11:01 am - DI 119)

**Citations Affected:** IC 8-1; IC 36-1.

**Synopsis:** Local unit power to prohibit utility connection. Provides that a county executive or the legislative body of a city or town does not have the power to prohibit: (1) a public utility or department of public utilities from furnishing utility service to a utility customer; or (2) a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service; based on the energy source of the utility service. Provides that, except for purposes of compliance with specified building and fire safety laws, a local unit does not have the power to: (1) require that a particular component, design, or type of material be used in the construction of  
(Continued next page)

**Effective:** January 1, 2021 (retroactive); July 1, 2021.

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## Pressel, Manning, Soliday

(SENATE SPONSORS — KOCH, BOHACEK)

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January 7, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.

January 28, 2021, amended, reported — Do Pass.

February 1, 2021, read second time, ordered engrossed. Engrossed.

February 2, 2021, read third time, passed. Yeas 66, nays 28.

#### SENATE ACTION

February 18, 2021, read first time and referred to Committee on Utilities.

April 8, 2021, amended, reported favorably — Do Pass.

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EH 1191—LS 7052/DI 55



## Digest Continued

a building because of the energy saving or energy producing qualities of the component, design, or material; (2) prohibit the use of a particular component, design, or type of material in the construction of a building because the component, design, or material does not meet an energy saving standard; (3) require that a building or structure be retrofitted with a particular device or type of material because of the energy saving or energy producing qualities of the device or material; (4) prohibit or restrict the purchase or use of vehicles based upon the type of energy used; or (5) prohibit the sale, installation, or use of: (A) natural gas powered: (i) home heating equipment; (ii) home appliances; or (iii) outdoor heating appliances, torches, lamps, or other decorative features; or (B) outdoor grills and stoves.



April 9, 2021

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.

## ENGROSSED HOUSE BILL No. 1191

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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 8-1-2-101.2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2021 (RETROACTIVE)]; **Sec. 101.2. (a) The following**  
4 **definitions apply throughout this section:**  
5 (1) "Energy source" means:  
6 (A) the method of generation; or  
7 (B) the fuel source;  
8 used to provide or supply utility service to a customer. The  
9 term includes any energy source used to provide utility  
10 service, including a clean energy resource (as defined in  
11 IC 8-1-37-4).  
12 (2) "Executive" has the meaning set forth in IC 36-1-2-5.  
13 (3) "Municipal council" has the meaning set forth in section  
14 1(b) of this chapter.  
15 (4) "Private property" means real property that is not owned  
16 or leased by a municipality or county.  
17 (5) "Utility service" means any service provided by a liquid

EH 1191—LS 7052/DI 55



1           petroleum gas company, a public utility, or a department of  
2           public utilities relating to:

3           (A) the generation, production, transmission, or  
4           distribution of electricity or thermal energy to or for the  
5           public, for compensation; or

6           (B) the production, manufacture, storage, transportation,  
7           distribution, sale, or furnishing of:

8           (i) natural gas;

9           (ii) artificial or manufactured gas; or

10          (iii) a mixture of natural gas and artificial or  
11          manufactured gas;

12          to or for the public, for compensation;

13          for heat, light, power, or other uses.

14          (b) A municipal council or county executive does not have the  
15          power to enact any code, ordinance, or land use regulation that  
16          would prohibit or have the effect of prohibiting, or to otherwise  
17          regulate in a manner that would prohibit or have the effect of  
18          prohibiting:

19          (1) a liquid petroleum gas company, a public utility, or a  
20          department of public utilities from furnishing utility service  
21          to a utility customer; or

22          (2) a customer of a liquid petroleum gas company, a public  
23          utility, or a department of public utilities from:

24          (A) purchasing;

25          (B) using; or

26          (C) connecting or reconnecting to;

27          a utility service;

28          based on the energy source of the utility service.

29          (c) This section does not prohibit a liquid petroleum gas  
30          company, a public utility, or a department of public utilities from  
31          disconnecting utility service to a customer in accordance with the  
32          company's, utility's, or department's approved terms and  
33          conditions for service, including when an imminent danger to  
34          public safety exists.

35          SECTION 2. IC 36-1-3-13 IS ADDED TO THE INDIANA CODE  
36          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
37          1, 2021]: Sec. 13. Unless required under IC 36-7-2-9, a unit does not  
38          have the power to do the following:

39          (1) Require that a particular component, design, or type of  
40          material be used in the construction of a building or other  
41          structure because of the energy saving or energy producing  
42          qualities of the component, design, or material.



- 1           **(2) Prohibit the use of a particular component, design, or type**
- 2           **of material in the construction of a building or other structure**
- 3           **because the component, design, or material does not meet a**
- 4           **standard for energy saving.**
- 5           **(3) Require that a building or other structure be retrofitted**
- 6           **with a particular device or type of material because of the**
- 7           **energy saving or energy producing qualities of the device or**
- 8           **material.**
- 9           **(4) Prohibit or restrict the purchase or use of vehicles or other**
- 10          **machines based upon the type of energy that powers the**
- 11          **vehicle or machine.**
- 12          **(5) Prohibit the sale, installation, or use of any of the**
- 13          **following:**
- 14               **(A) Natural gas powered home heating equipment.**
- 15               **(B) Natural gas powered home appliances.**
- 16               **(C) Grills, stoves, and other food preparation appliances**
- 17               **designed to be used outdoors.**
- 18               **(D) Natural gas powered:**
- 19                   **(i) heating appliances; and**
- 20                   **(ii) torches, lamps, and other decorative features;**
- 21               **designed to be used outdoors.**
- 22          **(6) Enact an ordinance, adopt a resolution, or enforce an**
- 23          **ordinance or resolution that purports to exercise a power**
- 24          **denied by subdivisions (1) through (5).**
- 25          **SECTION 3. An emergency is declared for this act.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1191, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 9, delete "nonrenewable or renewable energy source." and insert "**energy source used to provide utility service, including a clean energy resource (as defined in IC 8-1-37-4).**".

Page 1, line 15, after "by" insert "**a liquid petroleum gas company,**".

Page 1, line 16, delete "utility or" and insert "**utility, or a**".

Page 2, line 1, after "electricity" insert "**or thermal energy**".

Page 2, line 16, delete "public utility or" and insert "**liquid petroleum gas company, a public utility, or a**".

Page 2, line 18, delete "public utility or" and insert "**liquid petroleum gas company, a public utility, or a**".

Page 2, delete lines 25 through 29, begin a new paragraph and insert:

"SECTION 2. IC 21-37-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

**Chapter 8. Energy Related Requirements and Prohibitions**

**Sec. 1. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the electrical energy supplied to a state educational institution's facilities will be lower because of the implementation of a prohibition or restriction described in subsection (d) than they would have been without the implementation of the prohibition or restriction.**

**(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the electrical energy supplied to a state educational institution's facilities.**

**(c) A determination of "net monetary savings" under subsection (d)(1) must consider:**

**(1) the stranded cost of any sources of electrical energy, including any sources of electrical energy supplied through:**

**(A) a power purchase agreement that is in effect as of the effective date of the prohibition or restriction described in subsection (d); or**

**(B) an electric generation facility owned or operated by the state educational institution as of the effective date of the**



prohibition or restriction described in subsection (d), including any stranded costs resulting from any part of the facility that is not fully depreciated as of the effective date of the prohibition or restriction described in subsection (d);

that will stop being used as a result of the implementation of the prohibition or restriction described in subsection (d); and  
 (2) the fully allocated cost of new sources of electrical energy that must be procured as a result of the implementation of a prohibition or restriction described in subsection (d);

as well as the difference in overall energy costs that would be incurred without the implementation of the prohibition or restriction and with the implementation of the prohibition and restriction.

(d) A state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that would prohibit or restrict the manner in which electrical energy that is supplied to its facilities is generated, transmitted, or distributed, including any electrical energy that is supplied to its facilities through a power purchase agreement entered into after June 30, 2021, unless the prohibition or restriction:

- (1) would result in net monetary savings to the state educational institution; or
- (2) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021.

Sec. 2. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the construction, heating, cooling, use, and maintenance of a building or other structure will be lower because of the implementation of a requirement described in subsection (d)(1) or (d)(2) than they would have been without the implementation of the requirement.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the construction, heating, cooling, use, and maintenance of a building or other structure.

(c) A determination of "net monetary savings" under subsection (d) must consider:

- (1) the stranded cost of any equipment or materials that will stop being used as a result of the implementation of a requirement described in subsection (d)(1) or (d)(2) before the equipment or materials are fully depreciated; and
- (2) the fully allocated cost of new equipment and materials



that must be acquired and used as a result of the implementation of a requirement described in subsection (d)(1) or (d)(2);

as well as the difference in energy costs that would be incurred without the implementation of the requirement and with the implementation of the requirement.

(d) A state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that would:

(1) require the use of a particular component or type of material in the construction of a building or other structure on a campus of the state educational institution solely because of the energy saving or energy producing qualities of the component or material; or

(2) require the retrofitting of a building or other structure on a campus of the state educational institution with a particular device or type of material solely because of the energy saving or energy producing qualities of the device or material;

unless the requirement can reasonably be expected to result in net monetary savings within ten (10) years after the installation of the component, material, or device, as determined by an individual who is not an employee of or associated with the state educational institution and who has been certified as a Certified Energy Manager by the Association of Energy Engineers.

Sec. 3. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the purchase or use of motor vehicles by a state educational institution will be lower because of the implementation of a resolution, rule, or policy described in subsection (d) than they would have been without the implementation of the resolution, rule, or policy.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the purchase or use of motor vehicles by a state educational institution.

(c) A determination of "net monetary savings" under subsection (e)(1) must consider:

(1) the stranded cost of any motor vehicles that will stop being used as a result of the implementation of a resolution, rule, or policy described in subsection (d) before the motor vehicles are fully depreciated; and

(2) the fully allocated cost of new or replacement motor vehicles that must be purchased as a result of the implementation of a resolution, rule, or policy described in





subsection (d);  
as well as the difference in vehicle or fuel costs that would be incurred without the implementation of the resolution, rule, or policy and with the implementation of the resolution, rule, or policy.

(d) Except as provided in subsection (e), a state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that:

- (1) would prohibit, restrict, give preference to, or establish any condition concerning the purchase or use of motor vehicles by the state educational institution; and
- (2) is based upon the type of energy that powers the motor vehicle.

(e) The prohibition set forth in subsection (d) does not apply if the resolution, rule, or policy described in subsection (d):

- (1) would result in net monetary savings to the state educational institution over the life of the motor vehicle; or
- (2) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021.

SECTION 3. IC 36-1-3-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 13. A unit does not have the power to do the following:

- (1) Require that a particular component, design, or type of material be used in the construction of a building or other structure because of the energy saving or energy producing qualities of the component, design, or material.
- (2) Prohibit the use of a particular component, design, or type of material in the construction of a building or other structure because the component, design, or material does not meet a standard for energy saving.
- (3) Require that a building or other structure be retrofitted with a particular device or type of material because of the energy saving or energy producing qualities of the device or material.
- (4) Prohibit or restrict the purchase or use of vehicles or other machines based upon the type of energy that powers the vehicle or machine.
- (5) Prohibit the sale, installation, or use of any of the following:
  - (A) Natural gas powered home heating equipment.
  - (B) Natural gas powered home appliances.



**(C) Grills, stoves, and other food preparation appliances designed to be used outdoors.**

**(D) Natural gas powered:**

**(i) heating appliances; and**

**(ii) torches, lamps, and other decorative features; designed to be used outdoors.**

**(6) Enact an ordinance, adopt a resolution, or enforce an ordinance or resolution that purports to exercise a power denied by subdivisions (1) through (5)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1191 as introduced.)

SOLIDAY

Committee Vote: yeas 9, nays 4.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1191, 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:

Page 2, delete lines 29 through 42, begin a new paragraph and insert:

**"(c) This section does not prohibit a liquid petroleum gas company, a public utility, or a department of public utilities from disconnecting utility service to a customer in accordance with the company's, utility's, or department's approved terms and conditions for service, including when an imminent danger to public safety exists."**

Delete pages 3 through 4.

Page 5, delete lines 1 through 28.

Page 5, line 31, delete "A" and insert **"Unless required under IC 36-7-2-9, a"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.



(Reference is to HB 1191 as printed January 28, 2021.)

KOCH, Chairperson

Committee Vote: Yeas 7, Nays 3.

