



Reprinted
February 12, 2021

SENATE BILL No. 386

DIGEST OF SB 386 (Updated February 11, 2021 3:44 pm - DI 119)

Citations Affected: IC 8-1; noncode.

Synopsis: Cost securitization for electric utility assets. Provides that an electric utility that has certain qualified costs that: (1) are associated with an electric generation facility that will be retired from service within 24 months; and (2) are equal to at least 5% of the electric utility's total electric base rate; may file a petition with the utility regulatory commission (IURC) for a financing order authorizing the securitization of the qualified costs. Provides that: (1) an "electric utility", for purposes of the bill, is a public utility that: (A) owns or operates any electric generation facility for the provision of electric utility service to Indiana customers; and (B) is under the jurisdiction of the IURC; and (2) before July 1, 2023, the bill applies only to an electric utility that has a total of not more than 200,000 retail customers. Provides that not later than 240 days after a petition for a financing order is filed, the IURC shall conduct a hearing and issue an order on the petition. Provides that if the IURC makes certain findings with respect to the petition, the IURC shall issue a financing order that authorizes: (1) the issuance of securitization bonds with a term of not more than 15 years; (2) the collection of securitization charges from the electric utility's customers; and (3) the encumbrance of the resulting securitization property with a lien and security interest. Provides that a financing order is subject to appeal directly to the Indiana supreme court. Provides that qualified costs authorized in the IURC's financing
(Continued next page)

Effective: Upon passage.

Koch

January 14, 2021, read first time and referred to Committee on Utilities.
February 8, 2021, amended, reported favorably — Do Pass.
February 11, 2021, read second time, amended, ordered engrossed.

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Digest Continued

order shall be allocated to the electric utility's customer classes using the same cost allocation methodology approved by the IURC in the electric utility's most recent base rate case, subject to certain exceptions. Provides that a financing order issued by the IURC under these provisions must include a mechanism: (1) requiring that securitization charges be reviewed and adjusted by the IURC at least annually; and (2) allowing an electric utility, on its own initiative, to apply to the IURC at any time during a calendar year for an adjustment of its securitization charges, as the electric utility determines to be necessary to: (A) correct any over collections or under collections of securitization charges; and (B) ensure the recovery of amounts sufficient to timely make all payments of debt service in connection with the securitization bonds. Sets forth provisions concerning the encumbrance of securitization property with a lien and security interest, including provisions concerning: (1) the attachment and perfection; and (2) the priority; of a security interest in securitization property. Specifies that 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. Pledges that the state will not: (1) take or permit any action that would impair the value of securitization property; or (2) reduce, alter, or impair related securitization charges; until certain obligations in connection with the related securitization bonds have been paid or performed in full. Requires the IURC to adopt rules to implement these provisions. Urges the legislative council to assign to the interim study committee on energy, utilities, and telecommunications (committee) the task of studying during the 2022 legislative interim: (1) the implementation; and (2) use by electric utilities; of the bill's provisions concerning the securitization of costs for retired electric utility assets. Provides that if the committee is assigned to study this topic, the committee: (1) shall consider available data and other information concerning participating electric utilities to which the IURC has issued a financing order under the bill's provisions; (2) may request this data and information from certain parties; and (3) shall, not later than November 1, 2022, submit to the legislative council a report setting forth the committee's findings and recommendations, including the committee's recommendations as to whether to allow, under the bill's provisions, additional electricity suppliers to securitize costs associated with retired electric utility assets.



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February 12, 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.

SENATE BILL No. 386

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 8-1-41 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 41. Pilot Program for Cost Securitization for Retired**
5 **Electric Utility Assets**

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

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

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

14 **(1) The public utility owns or operates any electric generation**
15 **facility for the provision of electric utility service to Indiana**

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- 1 customers.
- 2 (2) The public utility is under the jurisdiction of the
3 commission for the approval of rates and charges.
- 4 (3) The public utility has a total of not more than two hundred
5 thousand (200,000) retail electric customers at the time of the
6 filing of a petition under section 10 of this chapter. This
7 subdivision expires July 1, 2023.
- 8 Sec. 4. As used in this chapter, "financing order" means an
9 order issued by the commission under section 10 of this chapter.
- 10 Sec. 5. (a) As used in this chapter, "financing party" means a
11 holder of securitization bonds.
- 12 (b) The term includes a trustee, a collateral agent, or any other
13 person acting for the benefit of the holder.
- 14 Sec. 6. As used in this chapter, "qualified costs", with respect to
15 an electric generation facility that will be retired from service by
16 an electric utility not later than twenty-four (24) months after the
17 filing of a petition by the electric utility under section 10 of this
18 chapter, means the net original cost of the facility and any
19 associated investments, as reflected on the electric utility's
20 accounting system, and as adjusted for depreciation to be incurred
21 until the facility is retired, together with:
- 22 (1) costs of:
- 23 (A) removal; and
- 24 (B) restoration, as applicable;
25 of the facility, any associated improvements, and facility
26 grounds;
- 27 (2) the applicable portion of investment tax credits associated
28 with the facility and any associated investments;
- 29 (3) costs of issuing, supporting, and servicing securitization
30 bonds;
- 31 (4) taxes related to the recovery of securitization charges; and
- 32 (5) any costs of retiring and refunding the electric utility's
33 existing debt and equity securities in connection with the
34 issuance of securitization bonds.
- 35 Sec. 7. (a) As used in this chapter, "securitization bonds" means
36 bonds, debentures, notes, certificates of participation, certificates
37 of a beneficial interest, certificates of ownership, or other evidences
38 of indebtedness that:
- 39 (1) are issued by an electric utility, its successors, or an
40 assignee under a financing order;
- 41 (2) have a term of not more than fifteen (15) years; and
- 42 (3) are secured by, or payable from, securitization property.



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

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

8 (1) approved by the commission under a financing order to
 9 allow for the full recovery of qualified costs by an electric
 10 utility;

11 (2) collected from all retail customers and customer classes of
 12 the electric utility, including any customer that:

13 (A) is participating in:

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

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

16 (iii) a feed-in-tariff program;

17 offered by the electric utility; or

18 (B) supplies at least part of the customer's own electricity
 19 demand;

20 (3) charged for the use or availability of electric services; and

21 (4) collected by the electric utility, its successors, an assignee,
 22 or any other collection agent as provided for in the financing
 23 order.

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

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

31 (1) issue securitization bonds;

32 (2) collect securitization charges; and

33 (3) encumber securitization property with a lien and security
 34 interest, as described in section 15 of this chapter.

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

37 (b) Not later than two hundred forty (240) days after the date a
 38 petition is filed by an electric utility under subsection (a), the
 39 commission shall conduct a hearing and issue an order on the
 40 petition. The commission shall approve the issuance of
 41 securitization bonds, the collection of securitization charges, and
 42 the encumbrance of securitization property with a lien and security



1 interest under section 15 of this chapter if the commission:

- 2 (1) makes the findings set forth in subsection (d); and
 3 (2) finds that the net present value of the total securitization
 4 charges to be collected under the commission's financing
 5 order under this section is less than the amount that would be
 6 recovered through traditional ratemaking if the electric
 7 utility's qualified costs were included in the electric utility's
 8 net original cost rate base and recovered over a period of not
 9 more than fifteen (15) years.

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

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

27 (1) must ensure that the adjustment of the allocation of
 28 securitization charges:

- 29 (A) will preserve the rating of the securitization bonds; and
 30 (B) will not impair or reduce the total securitization
 31 charges; and

32 (2) must be just and reasonable.

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

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

- 41 (1) A determination of the amount of the electric utility's
 42 qualified costs.



1 (2) A finding that the proceeds of the authorized securitization
 2 bonds will be used solely for the purposes of reimbursing the
 3 electric utility for qualified costs, and that the electric utility's
 4 books and records will reflect a reduction in rate base
 5 associated with the receipt of proceeds from the securitization
 6 bonds.

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

11 (4) A finding that the electric utility has demonstrated that it
 12 intends to make capital investments in an amount equal to or
 13 exceeding the amount of the electric utility's qualified costs,
 14 over a period of not more than seven (7) years immediately
 15 following the planned issuance date of the securitization
 16 bonds. The commission may not impose any other
 17 requirement related to the use or distribution of the proceeds
 18 of the securitization bonds. However:

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

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

28 (5) A finding that the electric utility's proposal reflects the
 29 cost reductions identified in subsection (b)(2) in retail
 30 customer rates.

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

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

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

35 (2) the period over which securitization charges are to be
 36 collected, which may not exceed fifteen (15) years.

37 (f) Securitization bonds are effective in accordance with their
 38 terms. Both:

39 (1) the financing order under which the securitization bonds
 40 are issued; and

41 (2) the securitization charges authorized in that order;
 42 are irrevocable and not subject to reduction, impairment, or



1 adjustment by further action of the commission under IC 8-1-2-72
 2 or any other statute or rule, except as provided in subsection (h)
 3 and section 12(c) of this chapter.

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

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

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

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

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

22 (k) After the issuance of a financing order in response to the
 23 petition of an electric utility, the electric utility retains sole
 24 discretion regarding whether to assign, sell, or otherwise transfer
 25 securitization property or to cause securitization bonds to be
 26 issued, including the right to defer or postpone assignment, sale,
 27 transfer, or issuance. The electric utility may abandon issuance of
 28 securitization bonds under the financing order by filing with the
 29 commission a statement of abandonment containing the reasons for
 30 the abandonment.

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

- 34 (1) the issuance and sale of securities by an electric utility; or
- 35 (2) the assumption by an electric utility of liabilities or
 36 obligations;

37 solely because of the potential availability of securitization bond
 38 financing.

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

- 42 (1) The right to impose, collect, and receive securitization



1 charges, as authorized under the financing order, in an
 2 amount necessary to provide for the full recovery of all
 3 qualified costs.

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

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

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

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

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

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

31 (1) is participating in:

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

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

34 (C) a feed-in-tariff program;

35 offered by the electric utility; or

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

38 (c) A financing order must include a mechanism requiring that
 39 securitization charges be reviewed and adjusted by the commission
 40 at least annually. Each year, not earlier than forty-five (45) days
 41 before the anniversary date of the issuance of securitization bonds
 42 under the financing order, and not later than the anniversary date



1 of the issuance of the securitization bonds, the electric utility shall
 2 submit to the commission an application to do the following:

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

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

12 (B) in which securitization charges were collected.

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

18 The commission shall review the application, including the electric
 19 utility's proposed securitization charges. The review of the filing
 20 must be limited to determining whether the application contains
 21 any mathematical or clerical errors in the application of the
 22 formula-based mechanism relating to the appropriate amount of
 23 any overcollection or undercollection of the securitization charges
 24 and the amount of an adjustment. If the proposed securitization
 25 charges have been appropriately calculated, the commission shall
 26 issue an order approving the application and the proposed
 27 securitization charges not later than forty-five (45) days after the
 28 filing of the application. The commission shall approve any
 29 revisions to securitization charges under this subsection without
 30 conducting an evidentiary hearing. At any time during a calendar
 31 year, an electric utility may, on its own initiative, file an application
 32 with the commission under this section as the electric utility may
 33 determine to be necessary to meet the requirements set forth in
 34 subdivisions (1) and (2). The commission shall review any
 35 application filed by an electric utility outside of the annual review
 36 schedule, including the electric utility's proposed securitization
 37 charges, and if the proposed securitization charges have been
 38 appropriately calculated issue an order approving the application
 39 and the proposed securitization charges not later than forty-five
 40 (45) days after the filing of the application.

41 (d) A financing order must provide that:

42 (1) any difference between:



- 1 (A) qualified costs approved by the commission in the
 2 financing order; and
 3 (B) the electric utility's qualified costs at the time an
 4 electric generation facility is retired;
 5 shall be accounted for by the electric utility as a regulatory
 6 asset or liability;
 7 (2) an electric utility that ultimately incurs costs of removal
 8 and restoration greater than the amount estimated at the time
 9 an electric generation facility is retired may seek recovery of
 10 such incremental costs through rates; and
 11 (3) the commission may approve recovery of incremental
 12 costs under subdivision (2) if the commission finds the costs
 13 just and reasonable.

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

- 18 (1) for purposes of ratemaking or approval of financing,
 19 consider:
 20 (A) securitization bonds issued under a financing order to
 21 be the debt of the electric utility other than for federal
 22 income tax purposes;
 23 (B) securitization charges paid under a financing order to
 24 be the revenue of the electric utility for any purpose; or
 25 (C) securitization costs or financing costs specified in a
 26 financing order to be the cost of the electric utility; or
 27 (2) determine any action taken by an electric utility that is
 28 consistent with the financing order to be unreasonable. This
 29 subdivision does not require the commission to approve a
 30 proposed capital investment under section 10(d)(4)(B) of this
 31 chapter.
 32 (b) This chapter does not prohibit an electric utility from
 33 requesting, or the commission from approving, alternative methods
 34 for recovery of the costs of an electric generation facility upon
 35 retirement.
 36 (c) An electric utility that has received an order from the
 37 commission approving the recording of a regulatory asset to
 38 recover the net book value of an electric generation facility upon
 39 the planned retirement of the electric generation facility may not
 40 file a petition under section 10 of this chapter with respect to the
 41 generation facility.

42 **Sec. 14. (a) If an agreement by an electric utility or an assignee**



1 to transfer securitization property expressly states that the transfer
2 is a sale or is otherwise an absolute transfer:

3 (1) the resulting transaction:

4 (A) is a true sale; and

5 (B) is not a secured transaction; and

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

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

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

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

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

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

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

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

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

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

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

33 (3) take precedence over any subsequent judicial lien or other
34 creditor's lien.

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

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

42 (d) The priority of a lien and security interest under this section



- 1 is not impaired by the following:
- 2 (1) A later modification of the financing order under which
- 3 the securitization property arises.
- 4 (2) The commingling of other funds with funds arising from
- 5 the collection of securitization charges. Any other security
- 6 interest that may apply to funds arising from the collection of
- 7 securitization charges terminates when the funds are
- 8 transferred to a segregated account for the benefit of the
- 9 assignee or a financing entity. If securitization property has
- 10 been transferred to an assignee, any proceeds from that
- 11 property shall be held in trust for the assignee.
- 12 (e) If the electric utility or any of its successors default in paying
- 13 revenues arising with respect to the securitization property, the
- 14 commission or a court having jurisdiction shall, upon application
- 15 of the financing party, and without limiting any other remedies
- 16 available to the financing party, order the:
- 17 (1) sequestration; and
- 18 (2) payment to the financing party;
- 19 of revenues arising with respect to the securitization property. An
- 20 order under this subsection remains in full force and effect
- 21 notwithstanding any bankruptcy, reorganization, or other
- 22 insolvency proceedings with respect to the debtor or any pledger
- 23 or transferor of the securitization property.
- 24 (f) Securitization property constitutes an account as defined in
- 25 IC 26-1-9.1-102.
- 26 (g) For purposes of this chapter and IC 26-1, securitization
- 27 property is considered to exist regardless of whether:
- 28 (1) the revenue or proceeds with respect to the property have
- 29 accrued; or
- 30 (2) the value of the property right is dependent on the
- 31 customers of an electric utility receiving service.
- 32 (h) Changes in a financing order or in customers' securitization
- 33 charges do not affect the validity, perfection, or priority of the
- 34 security interest in the related securitization property.
- 35 (i) The description of securitization property in a security
- 36 agreement, in another agreement, or in a financing statement is
- 37 sufficient if it refers to this chapter and the financing order under
- 38 which the securitization property arises.
- 39 (j) This chapter controls in any conflict between this chapter
- 40 and any other Indiana law regarding:
- 41 (1) the attachment and perfection;
- 42 (2) the effect of perfection; and



1 (3) the priority;
2 of any security interest in securitization property.

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

4 (1) a debt or obligation of the state; or

5 (2) a charge on the state's full faith and credit or on the state's
6 taxing power.

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

9 (1) take or permit any action that would impair the value of
10 securitization property; or

11 (2) reduce or alter, except as authorized by section 12(c) of
12 this chapter, or impair securitization charges to be imposed,
13 collected, and remitted to financing parties under this
14 chapter;

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

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

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

29 (1) bankruptcy, reorganization, or other insolvency
30 proceeding; or

31 (2) merger, acquisition, sale, or transfer;

32 shall, by operation of law, perform and satisfy all obligations of the
33 electric utility under this chapter in the same manner and to the
34 same extent as the electric utility would have been obligated to
35 perform and satisfy before the event described in subdivision (1) or
36 (2), including collecting and paying revenues arising with respect
37 to the securitization property to persons entitled to those revenues.

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

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



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

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

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

15 (c) As used in this SECTION, "electric utility" has the meaning
 16 set forth in IC 8-1-41-3, as added by this act.

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

19 (1) has been issued a financing order by the commission under
 20 IC 8-1-41-10, as added by this act; and

21 (2) has issued securitization bonds and collected securitization
 22 charges;

23 under the authority granted by the financing order.

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

26 (1) implementation; and

27 (2) use by electric utilities;

28 of IC 8-1-41, as added by this act, concerning the securitization of
 29 costs for retired electric utility assets.

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

33 (1) The number of electric utilities that have submitted a
 34 petition to commission under IC 8-1-41-10, as added by this
 35 act, for the authority to:

36 (A) issue securitization bonds;

37 (B) collect securitization charges; and

38 (C) encumber securitization property with a lien and
 39 security interest.

40 (2) The number of financing orders that the commission has
 41 issued under IC 8-1-41-10, as added by this act.

42 (3) The total amount of securitization bonds issued under



- 1 **IC 8-1-41, as added by this act, by each participating electric**
- 2 **utility.**
- 3 **(4) The total amount of securitization charges collected under**
- 4 **IC 8-1-41, as added by this act, by each participating electric**
- 5 **utility.**
- 6 **(5) The total savings realized by each participating electric**
- 7 **utility by securitizing its qualified costs (as defined in**
- 8 **IC 8-1-41-6, as added by this act), compared to the amount of**
- 9 **those costs that would have been recovered by the electric**
- 10 **utility through traditional ratemaking over the same period**
- 11 **of years.**
- 12 **(6) The purposes for which each participating electric utility**
- 13 **has used any savings described in subdivision (5).**
- 14 **(g) If the committee is assigned to study the topic described in**
- 15 **subsection (e), the committee may request information on the topic,**
- 16 **including the data and information described in subsection (f),**
- 17 **from:**
 - 18 **(1) the commission;**
 - 19 **(2) electric utilities, including participating electric utilities;**
 - 20 **(3) customers of participating electric utilities; and**
 - 21 **(4) any experts, stakeholders, or other interested parties, as**
 - 22 **the committee determines appropriate.**
- 23 **(h) If the committee is assigned to study the topic described in**
- 24 **subsection (e), the committee shall, not later than November 1,**
- 25 **2022, submit to the legislative council a report setting forth the**
- 26 **committee's findings and recommendations on the topic described**
- 27 **in subsection (e), including the committee's recommendations as to**
- 28 **whether the IC 8-1-41, as added by this act, should be amended to**
- 29 **allow other electricity suppliers, in addition to electric utilities**
- 30 **described in IC 8-1-41-3, as added by this act, to securitize costs**
- 31 **associated with retired electric utility assets. A report submitted to**
- 32 **the legislative council under this subsection must be in an**
- 33 **electronic format under IC 5-14-6.**
- 34 **(i) This SECTION expires January 1, 2023.**
- 35 **SECTION 3. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 386, 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 1, line 12, delete "that:" and insert "**that meets the following criteria:**".

Page 1, line 13, after "(1)" insert "**The public utility**".

Page 1, line 13, delete "in Indiana".

Page 1, line 15, delete ";" and insert ".".

Page 2, line 1, after "(2)" insert "**The public utility**".

Page 2, line 2, delete "charges; and" and insert "**charges.**".

Page 2, line 3, after "(3)" insert "**The public utility**".

Page 2, line 5, after "chapter." insert "**This subdivision expires July 1, 2023.**".

Page 2, line 16, delete "facility," and insert "**facility and any associated investments,**".

Page 2, delete line 20, begin a new line block indented and insert:

"(1) costs of:

(A) removal; and

(B) restoration, as applicable;

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

Page 2, line 22, delete "facility;" and insert "**facility and any associated investments;**".

Page 3, line 8, delete "or".

Page 3, line 9, after "(ii)" insert "**a distributed generation program under IC 8-1-40; or**

(iii)".

Page 3, line 12, delete "demand through distributed generation;" and insert "**demand;**".

Page 3, line 21, after "total" insert "**jurisdictional**".

Page 3, line 26, delete "14" and insert "**15**".

Page 3, line 29, delete "one hundred twenty (120)" and insert "**two hundred forty (240)**".

Page 3, line 35, delete "14" and insert "**15**".

Page 4, delete lines 24 through 31, begin a new line block indented and insert:

"(4) A finding that the electric utility has demonstrated that it intends to make capital investments 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. 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 determination that the proposal is just and reasonable."

Page 5, line 2, after "in" insert "subsection (g) and".

Page 5, line 2, delete "12(c)." and insert "12(c) of this chapter."

Page 5, line 19, delete "14" and insert "15".

Page 5, delete lines 20 through 29, begin a new paragraph and insert:

"(i) A financing order is subject to appeal under IC 8-1-3. However, notwithstanding IC 8-1-3, an appeal of a financing order under this chapter must be taken directly to the supreme court. The general assembly finds that the provisions of this subsection are necessary due to:

(1) the great public importance of the implementation of this chapter; and

(2) the need for timely implementation of the process for issuance of securitization bonds under this chapter;

resulting in an emergency need for speedy resolution of an appeal taken under this subsection.

(j) 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. The electric utility may abandon issuance of securitization bonds under the financing order by filing with the commission a statement of abandonment containing the reasons for the abandonment.

(k) 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."

Page 6, line 7, delete "15(b)" and insert "**16(b)**".

Page 6, line 23, delete "or".

Page 6, line 24, after "(B)" insert "**a distributed generation program under IC 8-1-40; or**

(C)".

Page 6, line 27, delete "demand through distributed generation." and insert "**demand**".

Page 7, line 9, delete "charges, and if" and insert "**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**".

Page 7, line 10, delete "calculated" and insert "**calculated, the commission shall**".

Page 7, between lines 25 and 26, begin a new paragraph and insert: "**(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.

(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."

Page 7, line 26, delete "13." and insert "14."

Page 8, line 4, delete "14." and insert "15."

Page 9, line 29, delete "15." and insert "16."

Page 10, line 5, delete "16." and insert "17."

Page 10, line 25, delete "17." and insert "18."

Page 10, line 27, delete "18." and insert "19."

Page 12, line 3, after "(2)" insert "**electric utilities, including**".

and when so amended that said bill do pass.

(Reference is to SB 386 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 9, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 386 be amended to read as follows:

Page 3, line 11, delete "payable by" and insert "**collected from**".

Page 3, line 11, after "all" insert "**retail**".

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Page 4, line 2, delete "(c);" and insert "(d);".

Page 4, line 10, delete "Qualified" and insert "**Subject to subsection (c), qualified**".

Page 4, line 14, delete "However, the commission may", begin a new paragraph and insert:

"(c) The commission may, in the financing order or in a separate docketed proceeding initiated separately from the electric utility's base rate proceedings,".

Page 4, line 17, after "customers." insert "**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."

Page 4, line 18, delete "(c)" and insert "(d)".

Page 5, between lines 6 and 7, begin a new line block indented and insert:

"(5) A finding that the electric utility's proposal reflects the cost reductions identified in subsection (b)(2) in retail customer rates."

Page 5, line 7, delete "(5)" and insert "(6)".

Page 5, line 8, delete "(d)" and insert "(e)".

Page 5, line 13, delete "(e)" and insert "(f)".

Page 5, line 20, delete "(g)" and insert "(h)".

Page 5, line 22, delete "(f)" and insert "(g)".

Page 5, line 26, delete "(g)" and insert "(h)".

Page 5, line 35, delete "(h)" and insert "(i)".

Page 5, line 39, delete "(i)" and insert "(j)".

Page 5, delete lines 40 through 42.



Page 6, delete lines 1 through 7.

Page 6, line 8, delete "(j)" and insert "(k)".

Page 6, line 17, delete "(k)" and insert "(l)".

Page 6, line 40, delete "depends" and insert "**depend**".

Page 9, line 14, after "unreasonable." insert "**This subdivision does not require the commission to approve a proposed capital investment under section 10(d)(4)(B) of this chapter.**".

(Reference is to SB 386 as printed February 9, 2021.)

KOCH

