

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 411

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-41 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

Chapter 41. Default Standards for Wind Power Devices

Sec. 1. (a) Except as provided in subsections (b) and (c), and subject to IC 36-7-4-1109 and section 9 of this chapter, the standards set forth in sections 10 through 16 of this chapter, or standards less restrictive than the standards set forth in sections 10 through 16 of this chapter, apply to a project owner that, after June 30, 2022, files an initial application for a project to install or locate one (1) or more wind power devices in a unit that qualifies as a wind energy ready community under subsection (d).

(b) Subject to a unit's planning and zoning powers under IC 36-7, this chapter does not apply to a property owner that seeks to install a wind power device on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(c) Unless a standard set forth in sections 10 through 16 of this chapter is already agreed to before July 1, 2022, by the parties involved, the standard does not:

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- (1) apply to any proposal, request, or application that:
- (A) concerns the permitting, construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in a unit;
 - (B) is submitted by a project owner to a unit before July 1, 2022; and
 - (C) is pending approval or has been approved as of July 1, 2022;

as set forth in IC 36-7-4-1109;

- (2) affect the:
- (A) permitting;
 - (B) construction;
 - (C) installation;
 - (D) siting;
 - (E) modification;
 - (F) operation; or
 - (G) decommissioning;

of one (1) or more wind power devices in a unit that before July 1, 2022, has approved such permitting, construction, installation, siting, modification, operation, or decommissioning; or

- (3) affect any:
- (A) economic development agreement; or
 - (B) other agreement;

entered into before July 1, 2022, with respect to the permitting, construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in one (1) or more units.

(d) As used in this section, "wind energy ready community" means a unit that has voluntarily adopted:

- (1) the standards set forth in sections 10 through 16 of this chapter; or
- (2) standards less restrictive than the standards set forth in sections 10 through 16 of this chapter.

Sec. 2. As used in this chapter, "dwelling" means any building, structure, or part of a building or structure that is occupied as, or is designed or intended for occupancy as, a residence by one (1) or more families or individuals.

Sec. 3. (a) As used in this chapter, "nonparticipating property" means a lot or parcel of real property:

- (1) that is not owned by a project owner; and
- (2) with respect to which:
 - (A) the project owner does not seek:
 - (i) to install or locate one (1) or more wind power devices or other facilities related to a wind power project



(including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure);
or

(ii) to otherwise enter into a lease or any other agreement with the owner of the property for use of all or part of the property in connection with a wind power project; or

(B) the owner of the property does not consent:

(i) to having one (1) or more wind power devices or other facilities related to a wind power project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure) installed or located; or

(ii) to otherwise enter into a lease or any other agreement with the project owner for use of all or part of the property in connection with a wind power project.

(b) The term does not include a lot or parcel of real property otherwise described in subsection (a) if the owner of the lot or parcel consents to participate in a wind power project through a neighbor agreement, a participation agreement, or another similar arrangement or agreement with a project owner.

Sec. 4. (a) As used in this chapter, "permit authority" means:

(1) a unit; or

(2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the permitting, construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

(b) The term does not include:

(1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or

(2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

Sec. 5. (a) As used in this chapter, "project owner" means a person that:

(1) will own one (1) or more wind power devices proposed to be located in a unit; or

(2) owns one (1) or more wind power devices located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

(c) The term does not include an electricity supplier (as defined in IC 8-1-2.3-2).

Sec. 6. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind



power devices:

- (A) entirely within unincorporated areas of the county;
 - (B) within both unincorporated areas of the county and one (1) or more municipalities within the county; or
 - (C) entirely within two (2) or more municipalities within the county; or
- (2) a municipality, if:
- (A) a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices entirely within the boundaries of the municipality; and
 - (B) subdivision (1)(B) or (1)(C) does not apply.
- (b) The term refers to:
- (1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in more than one (1) county as part of a single wind power project or development; and
 - (2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in two (2) or more municipalities, each of which is located in a different county.

Sec. 7. As used in this chapter, "wind power device" means a device, including a windmill or a wind turbine, that is designed to use the kinetic energy of moving air to provide mechanical energy or to produce electricity.

Sec. 8. As used in this chapter, "wind power regulation" refers to any ordinance or regulation, including any:

- (1) zoning or land use ordinance or regulation; or
 - (2) general or specific planning ordinance or regulation;
- that is adopted by a unit and that concerns the permitting, construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

Sec. 9. (a) A permit authority for a unit described in section 1(a) of this chapter is responsible for enforcing compliance with any standards set forth in sections 10 through 16 of this chapter that apply in the unit under section 1(a) of this chapter.

(b) A unit may:

- (1) adopt and enforce a wind power regulation that includes standards that:
 - (A) concern the permitting, construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit; and
 - (B) are less restrictive than the standards set forth in this



chapter;

(2) waive or make less restrictive any standard set forth in this chapter with respect to any particular:

(A) wind power device; or

(B) project to install one (1) or more wind power devices in the unit; or

(3) waive or make less restrictive any standard that is not set forth in this chapter but that is included in a wind power regulation adopted by the unit with respect to any particular:

(A) wind power device; or

(B) project to install one (1) or more wind power devices in the unit.

(c) This chapter does not affect a unit's planning and zoning powers under IC 36-7 with respect to the permitting, construction, installation, or siting of one (1) or more wind power devices in the unit.

Sec. 10. (a) Subject to subsection (h), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to:

(1) the centerline of any:

(A) runway located on a public use airport, private use airport, or municipal airport;

(B) public use highway, street, or road; or

(C) railroad easement or right-of-way; or

(2) the property line of any nonparticipating property; is equal to a distance that is at least one and one-tenth (1.1) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(b) Subject to subsection (h), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the nearest point on the outer wall of a dwelling located on a nonparticipating property is equal to a distance that is at least three (3) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(c) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the nearest edge of the right-of-way for any utility transmission or distribution line is equal to a distance that is at least one and



two-tenths (1.2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(d) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the property line of any undeveloped land within the unit that is zoned or platted for residential use is equal to a distance that is at least two (2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(e) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the property line of a state park is equal to a distance of at least one (1) mile.

(f) A project owner may not install or locate a wind power device within a county unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the corporate boundaries of any municipality within the county is equal to a distance of at least one (1) mile. However, a municipality may waive or reduce the minimum distance prescribed by this subsection with respect to the installation of one (1) or more wind power devices.

(g) Except as otherwise allowed by IC 36-7-4-1109, a permit authority, with respect to the permitting, construction, installation, or siting of any wind power device within the unit, may not set a blade tip height limitation, through a wind power regulation or otherwise, that is more restrictive than the standards of the Federal Aviation Administration under 14 CFR Part 77 concerning the safe, efficient use and preservation of the navigable airspace.

(h) The distance requirements set forth in subsections (a)(2) and (b) may be waived with respect to the siting of any one (1) wind power device, subject to the written consent of the owner of each affected nonparticipating property.

Sec. 11. (a) Subject to subsection (c), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate one (1) or more wind power devices in a unit unless the project owner demonstrates to the permit authority that with respect to each wind power device that the project owner seeks to install or locate in the unit:

- (1) the project owner has used shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by the wind power device; and
- (2) the wind power device has been designed such that



industry standard computer modeling indicates that any dwelling on a nonparticipating property within the unit will not experience more than thirty (30) hours per year of shadow flicker under planned operating conditions for the wind power device.

(b) After a project owner installs or locates a wind power device in a unit, the project owner shall work with the owner of any affected dwelling on a nonparticipating property to mitigate the effects of shadow flicker to the extent reasonably practicable.

(c) The requirement set forth in subsection (a)(2) may be waived with respect to any one (1) wind power device, subject to the written consent of the owner of each affected nonparticipating property.

Sec. 12. Except as otherwise allowed by IC 36-7-4-1109, a wind power device installed in a unit must be installed in a manner so as to minimize and mitigate impacts to:

- (1) television signals;
- (2) microwave signals;
- (3) agricultural global positioning systems;
- (4) military defense radar;
- (5) radio reception; or
- (6) weather and doppler radar.

Sec. 13. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device in a unit unless the project owner demonstrates to the permit authority that the wind power device will operate in a manner such that the sound attributable to the wind power device will not exceed an hourly average sound level of fifty (50) A-weighted decibels, as modeled at the outer wall of an affected dwelling.

(b) The requirement set forth in subsection (a) may be waived with respect to any one (1) wind power device, subject to the written consent of the owner of each affected property.

Sec. 14. (a) As used in this section, "wind turbine light mitigation technology" means any technology used in connection with a wind power device to shield, limit, or otherwise mitigate the amount, intensity, character, or visibility of light emitted from the wind power device.

(b) Except as otherwise allowed by IC 36-7-4-1109, after January 1, 2023, and to the extent permissible under federal law or regulations, a wind power device on property in a unit must be equipped with a wind turbine light mitigation technology, unless:

- (1) the Federal Aviation Administration denies the project owner's application to use a wind turbine light mitigation technology;



- (2) the wind turbine light mitigation technology application is pending review by the appropriate federal agencies; or
- (3) the project owner determines that the use of a wind turbine light mitigation technology is not economically feasible.

Sec. 15. This section applies with respect to a wind power device that is constructed or installed in a unit after June 30, 2022. Except as otherwise allowed by IC 36-7-4-1109, all damages to waterways, drainage ditches, field tiles, or other drainage related infrastructure caused by the construction, installation, or maintenance of a wind power device must be completely repaired by the project owner or remedied with the installation of new drainage infrastructure so as to not impede the natural flow of water. All repairs must be completed within a reasonable period of time and:

- (1) to the satisfaction of the unit; and
- (2) as stated in an applicable lease or another agreement with the landowner;

subject to applicable federal, state, and local drainage laws and regulations.

Sec. 16. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device in a unit unless the project owner submits to the permit authority a decommissioning and site restoration plan, and posts a surety bond, or an equivalent means of security acceptable to the permit authority, including a parent company guarantee or an irrevocable letter of credit, but excluding cash, in an amount equal to the estimated cost of decommissioning the wind power device, as calculated by a third party licensed or registered engineer, or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority. The required bond or other security shall be posted in increments such that the total amount of the bond or security posted is as follows:

- (1) An amount equal to twenty-five percent (25%) of the total estimated decommissioning costs not later than the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority) in connection with the:
 - (A) fifth anniversary; and
 - (B) tenth anniversary;



of the start date of the wind power device's full commercial operation, and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(2) An amount equal to fifty percent (50%) of the total estimated decommissioning costs not later than the fifteenth anniversary of the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority) in connection with the fifteenth anniversary of the start date of the wind power device's full commercial operation, and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after the reevaluation.

(3) An amount equal to one hundred percent (100%) of the total estimated decommissioning costs not later than the twentieth anniversary of the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority):

(A) in connection with the twentieth anniversary of the start date of the wind power device's full commercial operation; and

(B) at least once every succeeding five (5) year period after the twentieth anniversary of the start date of the wind power device's full commercial operation;

and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(b) For purposes of this section, the estimated cost of decommissioning a wind power device, as calculated by a licensed or registered professional engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority), shall be net of any estimated salvage value attributable to the wind power device at the time of decommissioning, unless the unit and the project owner agree to include any such value in the estimated cost.

SECTION 2. IC 8-1-42 IS ADDED TO THE INDIANA CODE AS

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A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

Chapter 42. Default Standards for Commercial Solar Energy Systems

Sec. 1. (a) Except as provided in subsections (b) and (c), and subject to IC 36-7-4-1109 and section 9 of this chapter, the standards set forth in sections 10 through 20 of this chapter, or standards less restrictive than the standards set forth in sections 10 through 20 of this chapter, apply to a project owner that, after June 30, 2022, files an initial application for a project to install or locate one (1) or more CSE systems in a unit that qualifies as a solar energy ready community under subsection (d).

(b) Subject to a unit's planning and zoning powers under IC 36-7, this chapter does not apply to a property owner who seeks to install a solar energy device (as defined in IC 32-23-4-3) on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(c) Unless a standard set forth in sections 10 through 20 of this chapter is already agreed to before July 1, 2022, by the parties involved, the standard does not:

- (1) apply to any proposal, request, or application that:**
 - (A) concerns the permitting, construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in a unit;**
 - (B) is submitted by a project owner to a unit before July 1, 2022; and**
 - (C) is pending approval or has been approved as of July 1, 2022;**

as set forth in IC 36-7-4-1109;

- (2) affect the:**
 - (A) permitting;**
 - (B) construction;**
 - (C) installation;**
 - (D) siting;**
 - (E) modification;**
 - (F) operation; or**
 - (G) decommissioning;**

of one (1) or more CSE systems in a unit that before July 1, 2022, has approved such permitting, construction, installation, siting, modification, operation, or decommissioning; or

- (3) affect any:**

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(A) economic development agreement; or

(B) other agreement;

entered into before July 1, 2022, with respect to the permitting, construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in one (1) or more units.

(d) As used in this section, "solar energy ready community" means a unit that has voluntarily adopted:

(1) the standards set forth in sections 10 through 20 of this chapter; or

(2) standards less restrictive than the standards set forth in sections 10 through 20 of this chapter.

Sec. 2. (a) As used in this chapter, "commercial solar energy system", or "CSE system", means a system that:

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.

(b) The term includes solar panels, collection and feeder lines, generation tie lines, substations, ancillary buildings, solar monitoring stations, and accessory equipment or structures.

Sec. 3. As used in this chapter, "commercial solar regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the permitting, construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

Sec. 4. As used in this chapter, "dwelling" means any building, structure, or part of a building or structure that is occupied as, or is designed or intended for occupancy as, a residence by one (1) or more families or individuals.

Sec. 5. (a) As used in this chapter, "nonparticipating property" means a lot or parcel of real property:

(1) that is not owned by a project owner; and

(2) with respect to which:

(A) the project owner does not seek:

(i) to install or locate one (1) or more CSE systems or other facilities related to a CSE system project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure); or

(ii) to otherwise enter into a lease or any other agreement with the owner of the property for use of all



or part of the property in connection with a CSE system project; or

(B) the owner of the property does not consent:

(i) to having one (1) or more CSE systems or other facilities related to a CSE system project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure) installed or located; or

(ii) to otherwise enter into a lease or any other agreement with the project owner for use of all or part of the property in connection with a CSE system project.

(b) The term does not include a lot or parcel of real property otherwise described in subsection (a) if the owner of the lot or parcel consents to participate in a CSE system project through a neighbor agreement, a participation agreement, or another similar arrangement or agreement with a project owner.

Sec. 6. (a) As used in this chapter, "permit authority" means:

(1) a unit; or

(2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the permitting, construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

(b) The term does not include:

(1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or

(2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

Sec. 7. (a) As used in this chapter, "project owner" means a person that:

(1) will own one (1) or more CSE systems proposed to be located in a unit; or

(2) owns one (1) or more CSE systems located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

(c) The term does not include an electricity supplier (as defined in IC 8-1-2.3-2).

Sec. 8. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single CSE system project or development, seeks to locate one (1) or more CSE systems:

(A) entirely within unincorporated areas of the county;

(B) within both unincorporated areas of the county and one (1) or more municipalities within the county; or

(C) entirely within two (2) or more municipalities within



the county; or

(2) a municipality, if:

(A) a project owner, as part of a single CSE system project or development, seeks to locate one (1) or more CSE systems entirely within the boundaries of the municipality; and

(B) subdivision (1)(B) or (1)(C) does not apply.

(b) The term refers to:

(1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more CSE systems, if the project owner seeks to locate CSE systems in more than one (1) county as part of a single CSE system project or development; and

(2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more CSE systems, if the project owner seeks to locate CSE systems in two (2) or more municipalities, each of which is located in a different county.

Sec. 9. (a) A permit authority for a unit described in section 1(a) of this chapter is responsible for enforcing compliance with any standards set forth in sections 10 through 20 of this chapter that apply in the unit under section 1(a) of this chapter.

(b) A unit may:

(1) adopt and enforce a commercial solar regulation that includes standards that:

(A) concern the permitting, construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit; and

(B) are less restrictive than the standards set forth in this chapter;

(2) waive or make less restrictive any standard set forth in this chapter with respect to any particular:

(A) CSE system; or

(B) project to install one (1) or more CSE systems in the unit; or

(3) waive or make less restrictive any standard that is not set forth in this chapter but that is included in a commercial solar regulation adopted by the unit with respect to any particular:

(A) CSE system; or

(B) project to install one (1) or more CSE systems in the unit.

(c) This chapter does not affect a unit's planning and zoning powers under IC 36-7 with respect to the permitting, construction, installation, or siting of one (1) or more CSE systems in the unit.

Sec. 10. (a) Subject to subsection (e), and except as otherwise



allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system on property in a unit unless the distance, measured as a straight line, from the nearest outer edge of the CSE system's solar panels to:

- (1) the nearest edge of the right-of-way for any:
 - (A) federal interstate highway, federal highway, state highway, or county highway is at least forty (40) feet;
 - (B) collector road is at least thirty (30) feet; or
 - (C) local road is at least ten (10) feet; or
- (2) the property line of any nonparticipating property is at least fifty (50) feet.

(b) Subject to subsection (e), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system on property in a unit unless the distance, measured as a straight line, from the nearest outer edge of the CSE system's solar panels to the nearest point on the outer wall of a dwelling located on a nonparticipating property is at least two hundred fifty (250) feet.

(c) Subject to subsection (e), and except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system within a distance of two hundred fifty (250) feet, measured as a straight line, from the nearest outer edge of the CSE system's solar panels to the nearest point on the outer wall of a dwelling located on a nonparticipating property, the project owner shall install a landscape buffer in the area between the nearest outer edge of the CSE system's solar panels and the nonparticipating property owner's property line that faces the CSE system's solar panels. The landscape buffer must be:

- (1) in a location that is not on the property of the nonparticipating property owner; and
- (2) constructed from such materials;

as set forth in a plan submitted to the unit during the permitting and approval process for the CSE system.

(d) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system on property in a unit unless the height of the CSE system solar panels are not more than twenty-five (25) feet above ground level when the CSE system's arrays are at full tilt. However, a permit authority or a unit may not impose a clearance requirement between the ground and the bottom edge of a CSE system's solar panels.

(e) The:

- (1) distance requirements set forth in subsection (a)(2) and subsection (b); and
- (2) requirement for the installation of a landscape buffer set forth in subsection (c);



may be waived with respect to the siting of any one (1) CSE system, subject to the written consent of the owner of each affected nonparticipating property.

Sec. 11. Except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system in a unit, the project owner shall plant, establish, and maintain for the life of the CSE system perennial vegetated ground cover on the ground around and under solar panels, and in project site buffer areas. The use of pollinator seed mixes in the planting of ground cover required by this section is encouraged. A unit or permit authority may require a project owner to prepare for a project site a vegetation plan that:

- (1) is compatible with each CSE system on the project site;
- (2) provides for the planting of noninvasive species and the use of native or naturalized species if the planting and use of noninvasive and native or naturalized species are:
 - (A) appropriate to the region;
 - (B) economically feasible; and
 - (C) agreed to by the landowner;

in order to reduce storm water runoff and erosion at the site and to provide habitat for wildlife and insects; and

- (3) provides for site preparation and maintenance practices designed to control invasive species and noxious weeds (as defined in IC 15-16-7-2).

Sec. 12. Except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system in a unit, the project owner shall completely enclose the CSE system with fencing that is at least six (6) feet high.

Sec. 13. Except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system in a unit, all cables of up to thirty-four and one-half (34.5) kilovolts that are located between inverter locations and project substations shall be located and maintained underground, as feasible. Other solar infrastructure, such as module-to-module collection cables, transmission lines, substations, junction boxes, and other typical aboveground infrastructure may be located and maintained above ground. Buried cables shall be at a depth of at least thirty-six (36) inches below grade or, if necessitated by onsite conditions, at a greater depth. Cables and lines located outside of the CSE system project site may:

- (1) be located above ground; or
- (2) in the case of cables or lines of up to thirty-four and one-half (34.5) kilovolts, be buried underground at:
 - (A) a depth of at least forty-eight (48) inches below grade, so as to not interfere with drainage tile or ditch repairs; or
 - (B) another depth, as necessitated by conditions;



as determined in consultation with the landowner.

Sec. 14. Except as otherwise allowed by IC 36-7-4-1109, a CSE system installed by a project owner must be designed and constructed to:

- (1) minimize glare on adjacent properties and roadways; and
- (2) not interfere with vehicular traffic, including air traffic.

Sec. 15. Except as otherwise allowed by IC 36-7-4-1109, a CSE system installed in a unit must be installed in a manner so as to minimize and mitigate impacts to:

- (1) television signals;
- (2) microwave signals;
- (3) agricultural global positioning systems;
- (4) military defense radar;
- (5) radio reception; or
- (6) weather and doppler radar.

Sec. 16. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system in a unit unless the project owner demonstrates to the permit authority that the CSE system will operate in a manner such that the sound attributable to the CSE system will not exceed an hourly average sound level of fifty (50) A-weighted decibels, as modeled at the outer wall of a dwelling located on an adjacent nonparticipating property.

(b) The requirement set forth in subsection (a) may be waived with respect to any one (1) CSE system, subject to the written consent of the owner of each adjacent nonparticipating property.

Sec. 17. This section applies with respect to a CSE system that is constructed or installed in a unit after June 30, 2022. Except as otherwise allowed by IC 36-7-4-1109, all damages to waterways, drainage ditches, field tiles, or other drainage related infrastructure caused by the construction, installation, or maintenance of a CSE system must be completely repaired by the project owner or remedied with the installation of new drainage infrastructure so as to not impede the natural flow of water. All repairs must be completed within a reasonable period of time and:

- (1) to the satisfaction of the unit; and
- (2) as stated in an applicable lease or another agreement with the landowner;

subject to applicable federal, state, and local drainage laws and regulations.

Sec. 18. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system in a unit unless the project owner submits to the permit authority a decommissioning and site restoration plan, and posts a surety bond, or an equivalent means of security



acceptable to the permit authority, including a parent company guarantee or an irrevocable letter of credit, but excluding cash, in an amount equal to the estimated cost of decommissioning the CSE system, as calculated by a third party licensed or registered engineer or by another person with suitable experience in the decommissioning of CSE systems, as agreed upon by the project owner and the permit authority. The required bond or other security shall be posted in increments such that the total amount of the bond or security posted is as follows:

(1) An amount equal to twenty-five percent (25%) of the total estimated decommissioning costs not later than the start date of the CSE system's full commercial operation.

(2) An amount equal to fifty percent (50%) of the total estimated decommissioning costs not later than the fifth anniversary of the start date of the CSE system's full commercial operation.

(3) An amount equal to one hundred percent (100%) of the total estimated decommissioning costs not later than the tenth anniversary of the start date of the CSE system's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of CSE systems, as agreed upon by the project owner and the permit authority):

(A) in connection with the tenth anniversary of the start date of the CSE system's full commercial operation; and

(B) at least once every succeeding five (5) year period after the tenth anniversary of the start date of the CSE system's full commercial operation;

and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(b) For purposes of this section, the estimated cost of decommissioning a CSE system, as calculated by a licensed or registered professional engineer (or by another person with suitable experience in the decommissioning of CSE systems, as agreed upon by the project owner and the permit authority), shall be net of any estimated salvage value attributable to the CSE system at the time of decommissioning, unless the unit and the project owner agree to include any such value in the estimated cost.

(c) A project owner shall provide to the permit authority written notice of the project owner's intent to decommission a CSE system not later than sixty (60) days before the discontinuation of commercial operation by the CSE system. Except as provided in



subsection (e), after the discontinuation of commercial operation by the CSE system, and as part of the decommissioning process:

- (1) all structures, foundations, roads, gravel areas, and cables associated with the project shall be removed to a depth of at least thirty-six (36) inches below grade; and
- (2) the ground shall be restored to a condition reasonably similar to its condition before the start of construction activities in connection with the CSE system project.

(d) Except as provided in subsection (e), if the project owner fails to remove all CSE system project assets not later than one (1) year after the proposed date of final decommissioning, as set forth in the notice to the permit authority under subsection (c), the permit authority may engage qualified contractors to:

- (1) enter the project site;
- (2) remove the CSE system project assets;
- (3) sell any assets removed; and
- (4) remediate the site;

and may initiate proceedings to recover any costs incurred.

(e) Project assets may remain in place after decommissioning is complete if:

- (1) the location and condition of the assets conform with local regulations at the time of decommissioning; and
- (2) the written consent of the landowner is obtained.

Sec. 19. (a) If a CSE system installed in a unit does not generate electricity for eighteen (18) consecutive months:

- (1) the CSE system is considered abandoned as of the date that is five hundred forty (540) days after the date on which the CSE system last generated electricity; and
- (2) all CSE system project assets shall be removed in accordance with section 18(c) of this chapter not later than one (1) year after the date of abandonment specified in subdivision (1).

(b) In the case of abandonment, as described in subsection (a), if the project owner fails to remove the CSE system project assets not later than one (1) year after the date of abandonment, as required by subsection (a)(2), the permit authority may engage qualified contractors to:

- (1) enter the project site;
- (2) remove the CSE system project assets;
- (3) sell any assets removed; and
- (4) remediate the site;

and may initiate proceedings to recover any costs incurred.

Sec. 20. (a) As used in this section, "force majeure event" includes the following:

- (1) Fire, flood, tornado, or other natural disasters or acts of



God.

(2) War, civil strife, a terrorist attack, or other similar acts of violence.

(3) Other unforeseen events or events over which a project owner has no control.

(b) If a force majeure event results in a CSE system not generating electricity, the project owner shall:

(1) as soon as practicable after the occurrence of the force majeure event, provide notice to the permit authority of the event and of the resulting cessation of generating operations; and

(2) demonstrate to the permit authority that the CSE system will be substantially operational and generating electricity not later than twelve (12) months after the occurrence of the force majeure event.

(c) If the CSE system does not become substantially operational and resume generating electricity within the time set forth in subsection (b)(2):

(1) the CSE system is considered abandoned as of the date that is three hundred sixty-five (365) days after the date on which the CSE system last generated electricity, unless the project owner demonstrates to the permit authority that the project owner is using all commercially reasonable efforts to resume generation; and

(2) all CSE system project assets shall be removed in accordance with section 18(c) of this chapter not later than one (1) year after the date of abandonment specified in subdivision (1).

(d) In the case of presumed abandonment, as described in subsection (c), if the project owner fails to remove the CSE system project assets not later than one (1) year after the date of abandonment, as required by subsection (c)(2), the permit authority may engage qualified contractors to:

(1) enter the project site;

(2) remove the CSE system project assets;

(3) sell any assets removed; and

(4) remediate the site;

and may initiate proceedings to recover any costs incurred.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 411 — Concur

