

SENATE BILL No. 499

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2.5-9; IC 8-1-37.1.

Synopsis: Feed-in tariff for renewable energy facilities. Requires the utility regulatory commission (IURC) to adopt rules to establish an electric utility feed-in tariff (FIT) program. Provides that the rules adopted must do the following: (1) Require all jurisdictional municipally owned electric utilities (utilities) to offer a FIT to eligible customers (including persons that are not existing customers of the electric utility) not later than July 1, 2020. (2) Require utilities, upon the request of an eligible customer, to enter into a contract, for a term of at least 10 years, for the purchase of electricity generated by a renewable energy facility (facility) located in Indiana at a site at which the utility provides, or will provide, retail electric service to the eligible customer. (3) Allow an electric utility to do the following, subject to the approval of the IURC: (A) Require a minimum size or capacity, not to exceed one megawatt, for facilities participating in the program. (B) Establish a cap with respect to the maximum aggregate capacity for all participating facilities under the electric utility's FIT program. (C) Establish a maximum size or capacity limit, which may not be less than 20 megawatts, for a participating facility. (4) Establish appropriate standards for interconnections between facilities and utilities' electric systems. (5) Establish appropriate FITs for participating facilities, with separate rates for electricity generated from each type of qualifying renewable energy resource under the program. (6) Require that any renewable energy credit or clean energy credit earned by a utility under the program be retired. (7) Prohibit an electric utility from requiring that a person that otherwise qualifies to participate in the electric utility's FIT program to be a customer of the electric utility for any
(Continued next page)

Effective: Upon passage; July 1, 2019.

Kruse

January 14, 2019, read first time and referred to Committee on Utilities.



Digest Continued

period of time before enrolling in the electric utility's FIT program. Requires the IURC to ensure that the program complies with certain federal laws, regulations, and orders. Requires the IURC to develop and make available a standard contract for use by utilities in entering into contracts with eligible customers under the program. Requires the IURC to include certain information concerning the program in its annual report to the interim study committee on energy, utilities, and telecommunications.



Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 499

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

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

- 1 SECTION 1. IC 8-1-2.5-9, AS AMENDED BY P.L.53-2014,
2 SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 9. (a) As used in this section, "committee" means
4 the interim study committee on energy, utilities, and
5 telecommunications established by IC 2-5-1.3-4.
6 (b) The committee shall monitor changes and competition in the
7 energy utility industry.
8 (c) The commission shall before August 15 of each year prepare for
9 presentation to the committee an analysis of the effects of competition
10 or changes in the energy utility industry on service and on the pricing
11 of all energy utility services under the jurisdiction of the commission.
12 **Beginning in 2020, the commission shall include in its report under**
13 **this subsection the following information concerning the electric**
14 **utility feed-in tariff program established under IC 8-1-37.1:**
15 (1) For the report prepared by the commission in 2020,



1 information concerning the commission's implementation of
 2 the program, including any costs incurred by the commission
 3 in implementing the program.

4 (2) The following information for each electric utility that is
 5 required to offer a feed-in tariff (as defined in IC 8-1-37.1-5)
 6 under the program:

7 (A) The total number of renewable energy facilities (as
 8 defined in IC 8-1-37.1-7) participating in the electric
 9 utility's feed-in tariff program under all contracts
 10 described in IC 8-1-37.1-10(a)(2) that are in effect on the
 11 last day of the state fiscal year that ends in the same year
 12 as the commission's report under this subsection. The
 13 commission shall break down the total number of
 14 participating renewable energy facilities reported under
 15 this clause by:

16 (i) the type of renewable energy resource (as defined in
 17 IC 8-1-37.1-8) used by the participating renewable
 18 energy facilities to generate electricity; and

19 (ii) the size or capacity of the participating renewable
 20 energy facilities.

21 From the total number of participating renewable energy
 22 facilities reported under this clause, the commission shall
 23 identify those participating renewable energy facilities (by
 24 size or capacity and by type of renewable energy resource
 25 used) that were added to the electric utility's feed-in tariff
 26 program under contracts entered into during the state
 27 fiscal year that ends in the same year as the commission's
 28 report under this subsection.

29 (B) Information concerning any minimum size or capacity
 30 requirements for participating renewable energy facilities
 31 established by the electric utility and approved by the
 32 commission under IC 8-1-37.1-10(a)(3)(A).

33 (C) Information concerning any program participation
 34 caps established by the electric utility and approved by the
 35 commission under IC 8-1-37.1-10(a)(3)(B).

36 (D) Information concerning any maximum size or capacity
 37 limits for participating renewable energy facilities
 38 established by the electric utility and approved by the
 39 commission under IC 8-1-37.1-10(a)(3)(C).

40 (E) Information on the rates established by the commission
 41 under IC 8-1-37.1-10(a)(5) that are in effect under the
 42 electric utility's program as of the last day of the state



- 1 **fiscal year that ends in the same year as the commission's**
 2 **report under this subsection.**
 3 **(3) Any other information that:**
 4 **(A) pertains to the program or an electric utility required**
 5 **to offer a feed-in tariff under the program; and**
 6 **(B) the commission considers relevant or useful to the**
 7 **committee, or that the committee requests from the**
 8 **commission.**
- 9 (d) In addition to reviewing the commission report prepared under
 10 subsection (c), the committee shall also issue a report and
 11 recommendations to the legislative council before November 1 of each
 12 year that are based on a review of the following issues:
- 13 (1) The effects of competition or changes in the energy utility
 14 industry and the impact of the competition or changes on the
 15 residential rates.
 - 16 (2) The status of modernization of the energy utility facilities in
 17 Indiana and the incentives required to further enhance this
 18 infrastructure.
 - 19 (3) The effects on economic development of this modernization.
 - 20 (4) The traditional method of regulating energy utilities and the
 21 method's effectiveness.
 - 22 (5) The economic and social effectiveness of traditional energy
 23 utility service pricing.
 - 24 (6) The effects of legislation enacted by the United States
 25 Congress.
 - 26 (7) All other energy utility issues the committee considers
 27 appropriate; however, it is not the intent of this section to provide
 28 for the review of the statutes cited in section 11 of this chapter.
- 29 The report and recommendations issued under this subsection to the
 30 legislative council must be in an electronic format under IC 5-14-6.
- 31 (e) This section:
- 32 (1) does not give a party to a collective bargaining agreement any
 33 greater rights under the agreement than the party had before
 34 January 1, 1995;
 - 35 (2) does not give the committee the authority to order a party to
 36 a collective bargaining agreement to cancel, terminate, amend, or
 37 otherwise modify the collective bargaining agreement; and
 - 38 (3) may not be implemented by the committee in a way that would
 39 give a party to a collective bargaining agreement any greater
 40 rights under the agreement than the party had before January 1,
 41 1995.
- 42 (f) The committee shall, with the approval of the commission, retain



1 independent consultants the committee considers appropriate to assist
 2 the committee in the review and study. The expenses for the
 3 consultants shall be paid with funds from the public utility fees
 4 assessed under IC 8-1-6.

5 SECTION 2. IC 8-1-37.1 IS ADDED TO THE INDIANA CODE
 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]:

8 **Chapter 37.1. Feed-in Tariff Program for Renewable Energy**
 9 **Facilities**

10 **Sec. 1. As used in this chapter, "capacity", with respect to a**
 11 **renewable energy facility, means the maximum output of**
 12 **electricity, expressed in kilowatts or megawatts, that the renewable**
 13 **energy facility can supply to an electric system's load, adjusted for**
 14 **ambient conditions.**

15 **Sec. 2. (a) As used in this chapter, "customer" means a business,**
 16 **however organized, that:**

17 **(1) qualifies as an Indiana business under:**

18 **(A) IC 5-22-15-20.5; and**

19 **(B) the criteria developed by the Indiana department of**
 20 **administration under IC 5-22-15-20.5;**

21 **as determined by the commission in consultation with the**
 22 **Indiana economic development corporation, as described in**
 23 **IC 5-22-15-20.5(c) with respect to similar determinations**
 24 **made by the Indiana department of administration; and**

25 **(2) agrees, orally or otherwise, to pay an electric utility for**
 26 **retail electric service provided to a location in Indiana.**

27 **(b) The term includes:**

28 **(1) an existing customer of an electric utility; and**

29 **(2) a potential customer of an electric utility.**

30 **Sec. 3. As used in this chapter, "electric utility" means a**
 31 **municipally owned utility (as defined in IC 8-1-2-1(h)) that:**

32 **(1) furnishes retail electric service to customers in Indiana;**
 33 **and**

34 **(2) is subject to the jurisdiction of the commission for the**
 35 **approval of rates and charges.**

36 **Sec. 4. (a) As used in this chapter, "eligible customer" means a**
 37 **customer that agrees, orally or otherwise, to pay an electric utility**
 38 **for retail electric service provided, or to be provided, at an Indiana**
 39 **location that is the site of a renewable energy facility, regardless of**
 40 **the following:**

41 **(1) Whether:**

42 **(A) the customer; or**



- 1 **(B) a person other than the customer;**
 2 **owns, operates, manages, controls, or invests in the renewable**
 3 **energy facility.**
 4 **(2) Whether the renewable energy facility generates, or will**
 5 **generate, electricity that is or will be provided to one (1) or**
 6 **more locations outside Indiana, as long as the majority of the**
 7 **total kilowatt hours of electricity generated is or will be**
 8 **provided to locations inside Indiana.**
 9 **(b) The term includes:**
 10 **(1) an existing customer of an electric utility; and**
 11 **(2) a person that is not an existing customer of an electric**
 12 **utility but agrees to become a customer of the electric utility**
 13 **upon enrolling in the electric utility's feed-in tariff program.**
 14 **Sec. 5. As used in this chapter, "feed-in tariff" or "FIT" means**
 15 **a rate that:**
 16 **(1) an electric utility pays to an eligible customer, under a**
 17 **contract described in section 10(a)(2) of this chapter, for**
 18 **electricity that is:**
 19 **(A) generated by a renewable energy facility located at a**
 20 **site in Indiana at which the electric utility provides retail**
 21 **electric service to the eligible customer; and**
 22 **(B) supplied back to the electric utility's system; and**
 23 **(2) is determined by the commission under rules adopted**
 24 **under section 10(a)(5) of this chapter.**
 25 **Sec. 6. As used in this chapter, "program" refers to the electric**
 26 **utility feed-in tariff program established by the commission under**
 27 **section 10 of this chapter.**
 28 **Sec. 7. (a) As used in this chapter, "renewable energy facility"**
 29 **means a facility that:**
 30 **(1) is located in Indiana;**
 31 **(2) generates electricity solely from a renewable energy**
 32 **resource; and**
 33 **(3) is capable of providing electricity directly to an electric**
 34 **grid.**
 35 **(b) The term includes the following:**
 36 **(1) An alternate energy production facility (as defined in**
 37 **IC 8-1-2.4-2(b)), to the extent the alternate energy production**
 38 **facility generates electricity from a renewable energy**
 39 **resource set forth in section 8 of this chapter.**
 40 **(2) A small hydro facility (as defined in IC 8-1-2.4-2(e)) at an**
 41 **existing dam.**
 42 **(c) The term does not include a cogeneration facility (as defined**



1 in IC 8-1-2.4-2(c)).

2 **Sec. 8. (a) As used in this chapter, "renewable energy resource"**
 3 **means any of the following sources for the generation of electricity:**

4 (1) Wind energy.

5 (2) Solar energy.

6 (3) Hydropower from existing dams.

7 (4) Geothermal energy.

8 (5) Energy from organic waste biogas, including any of the
 9 following:

10 (A) Methane produced by the biodigestion of farm or
 11 animal wastes.

12 (B) Landfill gas.

13 (C) Sewage treatment gas.

14 (b) The term does not include coal bed methane.

15 **Sec. 9. As used in this chapter, "retail electric service" has the**
 16 **meaning set forth in IC 8-1-2.3-2(c).**

17 **Sec. 10. (a) Not later than June 1, 2020, the commission shall**
 18 **adopt rules under IC 4-22-2 to establish the electric utility feed-in**
 19 **tariff program. The rules adopted by the commission under this**
 20 **chapter must do the following:**

21 (1) Require all electric utilities described in section 3 of this
 22 chapter to offer a FIT to eligible customers not later than July
 23 1, 2020.

24 (2) Provide that after July 1, 2020, an electric utility shall,
 25 upon the request of an eligible customer, enter into a contract
 26 for the purchase of electricity generated by a renewable
 27 energy facility located in Indiana at a site at which the electric
 28 utility provides or will provide retail electric service to the
 29 eligible customer. A contract under this subdivision must
 30 satisfy the following requirements:

31 (A) Be for a term of at least ten (10) years.

32 (B) Require the electric utility to purchase electricity from
 33 the eligible customer at a rate that is determined by the
 34 commission under subdivision (5).

35 (C) Require:

36 (i) the eligible customer to sell to the electric utility
 37 electricity generated by the eligible customer's
 38 renewable energy facility in such amounts as agreed to
 39 by the eligible utility and the electric utility under the
 40 contract; and

41 (ii) the electric utility to sell to the eligible customer all
 42 the electricity that is required at the site of the eligible



- 1 customer's renewable energy facility and that is not
2 supplied by the renewable energy facility.
- 3 **(3) Allow an electric utility to do the following:**
- 4 **(A) Require a minimum size or capacity for renewable**
5 **energy facilities participating in the program, subject to**
6 **the approval of the commission. However, a minimum size**
7 **or capacity requirement established under this clause may**
8 **not exceed one (1) megawatt.**
- 9 **(B) Establish a cap with respect to the maximum aggregate**
10 **capacity for all participating renewable energy facilities**
11 **under the electric utility's FIT program, subject to**
12 **approval by the commission. However, if an electric utility**
13 **seeks to establish a cap on the maximum aggregate**
14 **capacity under this clause, the commission may require as**
15 **a condition for approving the cap that a certain percentage**
16 **of the proposed maximum aggregate capacity be reserved**
17 **for electricity generated from one (1) or more types of**
18 **renewable energy resources set forth in section 8 of this**
19 **chapter, to ensure that the electric utility's program is not**
20 **discriminatory with respect to particular types of**
21 **renewable energy facilities or technologies.**
- 22 **(C) Establish a maximum size or capacity limit for a**
23 **participating renewable energy facility, subject to the**
24 **approval of the commission. However, in establishing a**
25 **maximum size or capacity limit under this clause, an**
26 **electric utility:**
- 27 **(i) must allow renewable energy facilities with capacities**
28 **of less than twenty (20) megawatts to participate in the**
29 **program; and**
- 30 **(ii) may not base the maximum size or capacity limit on**
31 **the amount of electricity purchased or required by an**
32 **eligible customer from the electric utility at the site of**
33 **the eligible customer's renewable energy facility.**
- 34 **(4) Establish appropriate standards for interconnections**
35 **between renewable energy facilities and electric utilities'**
36 **systems, based on the size, capacity, and technical**
37 **requirements of the interconnecting facilities. In adopting**
38 **standards under this subdivision, the commission may specify**
39 **how the costs of the interconnection and any required**
40 **upgrades to an electric utility's system are to be allocated**
41 **among the parties.**
- 42 **(5) Establish appropriate FITs for renewable energy facilities**



1 that are the subject of a contract described in subdivision (2),
 2 subject to the following:

3 (A) The rates established must:

4 (i) be just and reasonable to the customers of the electric
 5 utility and in the public interest;

6 (ii) not be discriminatory with respect to particular
 7 eligible customers or particular types of renewable
 8 energy facilities or technologies;

9 (iii) be at levels sufficient to stimulate the development of
 10 renewable energy facilities in Indiana and to encourage
 11 the continuation of existing capacity from those facilities;

12 (iv) be based on an eligible customer's costs to generate
 13 the electricity sold under the program, plus a reasonable
 14 rate of return; and

15 (v) be fair to both the electric utility's ratepayers and
 16 investors.

17 (B) The commission shall establish separate rates for
 18 electricity generated from each of the renewable energy
 19 resources set forth in section 8 of this chapter, subject to
 20 the following:

21 (i) Subject to item (ii) and except as provided in item (iii),
 22 for electricity generated from each renewable energy
 23 resource set forth in section 8 of this chapter, the
 24 commission shall establish at least four (4) rates based on
 25 the size or capacity (up to and including a nameplate
 26 capacity of at least twenty (20) megawatts) of the
 27 renewable energy facility that generates electricity from
 28 the particular renewable energy resource.

29 (ii) For electricity generated from solar energy, the
 30 commission shall establish separate rate classes for
 31 rooftop facilities and ground-mounted facilities. For each
 32 of these two (2) rate classes, the commission shall
 33 establish four (4) rates based on the size or capacity (up
 34 to and including a nameplate capacity of at least twenty
 35 (20) megawatts) of the facility, as required by item (i).

36 (iii) For electricity generated from wind energy, the
 37 commission shall establish at least four (4) rate classes
 38 that reflect the wind resource intensity of the location in
 39 Indiana at which the renewable energy facility that
 40 generates the electricity is located. For each of these four
 41 (4) rate classes, the commission shall establish a number
 42 (to be determined by the commission) of rates, each of



- 1 which reflects the capacity of the facility or the rotor
 2 swept area of the facility, as the commission determines
 3 appropriate.
- 4 **(C) In establishing rates under this subdivision for a**
 5 **particular electric utility, the commission shall consider**
 6 **the following:**
- 7 **(i) The electric utility's costs under the program,**
 8 **including capital costs and operation and maintenance**
 9 **costs, and taking into account the incremental cost of**
 10 **electric energy that, but for the electric utility's purchase**
 11 **of electricity from eligible customers under the program,**
 12 **the electric utility would generate or purchase from**
 13 **another source.**
- 14 **(ii) The term of the contract between the electric utility**
 15 **and an eligible customer. The commission may establish**
 16 **higher rates for contracts that are of shorter duration or**
 17 **may provide for decreasing rates over the term of a**
 18 **contract.**
- 19 **(iii) Any federal tax credit or deduction, or any other**
 20 **federal incentive or subsidy, including any accelerated**
 21 **depreciation available for tax purposes, received by an**
 22 **eligible customer or another person that owns, operates,**
 23 **manages, controls, or invests in a renewable energy**
 24 **facility.**
- 25 **(iv) Any shifting of costs of the program to the electric**
 26 **utility's nonparticipating customers.**
- 27 **(D) The commission may, in establishing rates under this**
 28 **subdivision, provide for the periodic adjustment of the**
 29 **rates during the term of the contract to reflect the effects**
 30 **of inflation or deflation.**
- 31 **(E) The commission shall review the rates established**
 32 **under this subdivision on a periodic basis determined by**
 33 **the commission, but not less frequently than every two (2)**
 34 **years, to determine whether the rates in effect at the time**
 35 **of the review, as most recently adjusted under this clause,**
 36 **satisfy the requirements set forth in clause (A). If, after a**
 37 **review required under this clause, the commission**
 38 **determines that the rates in effect at the time of the review**
 39 **do not satisfy the requirements set forth in clause (A), the**
 40 **commission may adjust the rates to ensure compliance**
 41 **with the requirements set forth in clause (A).**
- 42 **(6) Require that any renewable energy credit or clean energy**



1 credit (as defined in IC 8-1-37-3) earned by an electric utility
2 in connection with the program be retired.

3 (7) Prohibit an electric utility from requiring that a person
4 that:

5 (A) owns, operates, manages, controls, or invests in a
6 renewable energy facility located in Indiana; and

7 (B) otherwise qualifies to participate in the electric utility's
8 feed-in tariff program;

9 be a customer of the electric utility for any period of time
10 before enrolling in the electric utility's feed-in tariff program.

11 (b) In adopting rules under this chapter, the commission shall
12 ensure that the program complies with:

13 (1) the federal Public Utility Regulatory Policies Act of 1978
14 (16 U.S.C. 2601 et seq.) and rules and regulations adopted
15 under that act;

16 (2) the Federal Power Act (16 U.S.C. 791a et seq.) and rules
17 and regulations adopted under that act; and

18 (3) any applicable order or ruling of the Federal Energy
19 Regulatory Commission.

20 Sec. 11. Not later than June 1, 2020, the commission shall
21 develop and make available a standard contract form for use by
22 electric utilities in entering into contracts with eligible customers
23 under rules adopted under section 10(a)(2) of this chapter. The
24 form prescribed by the commission must require the parties to set
25 forth the following information:

26 (1) The rate to be paid for each kilowatt hour of electricity
27 purchased under the contract.

28 (2) Any adjustments to be made to the rate to account for
29 inflation or deflation, as may be prescribed by the commission
30 under section 10(a)(5)(D) of this chapter.

31 (3) The duration of the contract.

32 (4) The following information for the renewable energy
33 facility that is the subject of the contract:

34 (A) The type of renewable energy resource used by the
35 renewable energy facility to generate electricity.

36 (B) The capacity or size of the renewable energy facility.

37 (C) The location of the renewable energy facility.

38 (D) Any technical specifications concerning the renewable
39 energy facility that the commission may require.

40 (E) The owner or operator of the energy facility if the
41 owner or operator is a person other than the eligible
42 customer.



1 **(F) Any federal tax credit or deduction, or any other**
2 **federal incentive or subsidy, including any accelerated**
3 **depreciation available for tax purposes, received by the**
4 **eligible customer or another person that owns, operates,**
5 **manages, controls, or invests in the renewable energy**
6 **facility, with respect to the renewable energy facility.**
7 **(5) Any other pertinent information that the commission may**
8 **require.**
9 **Sec. 12. In adopting the rules required by this chapter, the**
10 **commission may adopt emergency rules in the manner provided by**
11 **IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency**
12 **rule adopted by the commission in the manner provided by**
13 **IC 4-22-2-37.1 expires on the date on which a rule that supersedes**
14 **the emergency rule is adopted by the commission under**
15 **IC 4-22-2-24 through IC 4-22-2-36.**
16 **SECTION 3. An emergency is declared for this act.**

