

# HOUSE BILL No. 1377

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-8.5.

**Synopsis:** Competitive procurement. Requires an electric utility that applies for certain certificates of public convenience and necessity to solicit competitive bids from alternative suppliers. Specifies the costs that the utility may recover through a periodic rate adjustment mechanism.

**Effective:** July 1, 2016.

---

---

## Negele, Karickhoff

---

---

January 13, 2016, read first time and referred to Committee on Utilities, Energy and Telecommunications.

---

---



Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# HOUSE BILL No. 1377

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 8-1-8.5-5, AS AMENDED BY P.L.246-2015,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 5. (a) As a condition for receiving the certificate  
4 required under section 2 of this chapter, the applicant shall file an  
5 estimate of construction, purchase, or lease costs in such detail as the  
6 commission may require.

7 (b) The commission shall hold a public hearing on each such  
8 application. The commission may consider all relevant information  
9 related to construction, purchase, or lease costs. A certificate shall be  
10 granted only if the commission has:

11 (1) made a finding as to the best estimate of construction,  
12 purchase, or lease costs based on the evidence of record;  
13 (2) made a finding that either:  
14 (A) the construction, purchase, or lease will be consistent with  
15 the commission's analysis (or such part of the analysis as may  
16 then be developed, if any) for expansion of electric generating  
17 capacity; or



- 1 (B) the construction, purchase, or lease is consistent with a  
 2 utility specific proposal submitted under section 3(e)(1) of this  
 3 chapter and approved under subsection (d). However, if the  
 4 commission has developed, in whole or in part, an analysis for  
 5 the expansion of electric generating capacity and the applicant  
 6 has filed and the commission has approved under subsection  
 7 (d) a utility specific proposal submitted under section 3(e)(1)  
 8 of this chapter, the commission shall make a finding under this  
 9 clause that the construction, purchase, or lease is consistent  
 10 with the commission's analysis, to the extent developed, and  
 11 that the construction, purchase, or lease is consistent with the  
 12 applicant's plan under section 3(e)(1) of this chapter, to the  
 13 extent the plan was approved by the commission;  
 14 (3) made a finding that the public convenience and necessity  
 15 require or will require the construction, purchase, or lease of the  
 16 facility;  
 17 (4) made a finding that the facility, if it is a coal-consuming  
 18 facility, utilizes Indiana coal or is justified, because of economic  
 19 considerations or governmental requirements, in using  
 20 non-Indiana coal; and  
 21 (5) made the findings under subsection (e), if applicable.  
 22 (c) If:  
 23 (1) the commission grants a certificate under this chapter based  
 24 upon a finding under subsection (b)(2) that the construction,  
 25 purchase, or lease of a generating facility is consistent with the  
 26 commission's analysis for the expansion of electric generating  
 27 capacity; and  
 28 (2) a court finally determines that the commission analysis is  
 29 invalid;  
 30 the certificate shall remain in full force and effect if the certificate was  
 31 also based upon a finding under subsection (b)(2) that the construction,  
 32 purchase, or lease of the facility was consistent with a utility specific  
 33 plan submitted under section 3(e)(1) of this chapter and approved  
 34 under subsection (d).  
 35 (d) The commission shall consider and approve, in whole or in part,  
 36 or disapprove a utility specific proposal or an amendment thereto  
 37 jointly with an application for a certificate under this chapter. However,  
 38 such an approval or disapproval shall be solely for the purpose of  
 39 acting upon the pending certificate for the construction, purchase, or  
 40 lease of a facility for the generation of electricity.  
 41 (e) ~~This~~ Subsection (f) applies if an applicant proposes to:  
 42 (1) construct **or purchase** a facility with a generating capacity of



- 1 more than ~~eighty (80)~~ **fifty (50)** megawatts;  
 2 **(2) enter into a contract or an agreement with a term of one**  
 3 **(1) year or more to purchase electric capacity of more than**  
 4 **fifty (50) megawatts;**  
 5 **(3) recover costs under IC 8-1-8.4, IC 8-1-8.7, or IC 8-1-8.8**  
 6 **relating to the generation of electricity; or**  
 7 **(4) convert the fuel source of a generating facility, if a**  
 8 **certificate is required under this chapter for the conversion.**

9 **(f) Before granting applying for a certificate, to the an applicant the**  
 10 **commission:**

11 **(1) must, in addition to the findings required under subsection (b);**  
 12 **find that the estimated costs of the proposed facility are, to the**  
 13 **extent commercially practicable, the result of competitively bid**  
 14 **engineering, procurement, or construction contracts, as**  
 15 **applicable; and**

16 **(2) shall also consider the following factors:**

17 **(A) Reliability.**

18 **(B) Solicitation by the applicant of described in subsection**

19 **(e) must solicit competitive bids to obtain purchased power**  
 20 **capacity and energy from:**

21 **(1) alternative suppliers of the same resource; or**

22 **(2) suppliers of alternative resources that are reasonably**  
 23 **capable of generating the electric capacity required by the**  
 24 **applicant.**

25 The applicant, including an affiliate of the applicant, may participate  
 26 in competitive bidding described in this subsection, **subject to the**  
 27 **same terms, conditions, time limitations, and other requirements**  
 28 **as all other bidders. A bid submitted under this chapter is a trade**  
 29 **secret and confidential for purposes of IC 5-14-3.**

30 **(g) The commission shall adopt rules under IC 4-22-2 to**  
 31 **establish procedures and standards to govern the competitive**  
 32 **bidding process described in subsection (f).**

33 **(h) At the same time an applicant described in subsection (e)**  
 34 **files an application under this chapter, the applicant shall provide**  
 35 **the office of utility consumer counselor with copies of all bids**  
 36 **received through a solicitation under subsection (f).**

37 SECTION 2. IC 8-1-8.5-6 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) In addition to the  
 39 review of the continuing need for the facility under construction  
 40 prescribed in section 5.5 of this chapter, the commission shall, at the  
 41 request of the public utility, maintain an ongoing review of such  
 42 construction as it proceeds. The applicant shall submit each year during



1 construction, or at such other periods as the commission and the public  
 2 utility mutually agree, a progress report. ~~and any revisions in the cost~~  
 3 ~~estimates for the construction.~~

4 (b) If the commission approves the construction and the cost of the  
 5 portion of the facility under review, the certificate shall remain in full  
 6 force and effect.

7 (c) If the commission disapproves of all or part of the construction  
 8 or cost of the portion of the facility under review, **or if the utility**  
 9 **cancels the facility**, the commission may modify or revoke the  
 10 certificate **and address reasonable cost recovery by the applicant.**

11 (d) Alternatively, the public utility may elect to forego commission  
 12 review under subsection (a) and defer the review of the construction  
 13 and cost until completion or cancellation of the facility.

14 SECTION 3. IC 8-1-8.5-6.5 IS REPEALED [EFFECTIVE JULY 1,  
 15 2016]. ~~Sec. 6.5: Absent fraud, concealment, or gross mismanagement,~~  
 16 ~~a utility shall recover through rates the actual costs the utility has~~  
 17 ~~incurred in reliance on a certificate issued under this chapter, and as~~  
 18 ~~modified under sections 5.5 and 6 of this chapter as follows:~~

19 (1) If a facility has been found to be completed and the facility's  
 20 construction has been subject to ongoing review under section  
 21 6(a) of this chapter, the costs of construction approved by the  
 22 commission during the ongoing review shall be included in the  
 23 utility's rate base without further commission review.

24 (2) If a facility has been found to be completed and the facility's  
 25 construction is subject to subsequent review under section 6(d) of  
 26 this chapter, the costs of construction that do not exceed the  
 27 estimate found under section 5(b)(1) of this chapter shall be  
 28 included in the utility's rate base; except for costs that are shown  
 29 to result from inadequate quality controls. However, inclusion of  
 30 costs in excess of the estimate found by the commission under  
 31 section 5(b)(1) of this chapter in the utility's rate base is not  
 32 permitted unless shown by the utility in construction of that  
 33 facility to be necessary and prudent.

34 (3) If a facility has been canceled as a result of the modification  
 35 or revocation of the certificate under section 5.5 or 6 of this  
 36 chapter and the facility's construction has been subject to ongoing  
 37 review under section 6(a) of this chapter (including reviews after  
 38 cancellation); the costs of construction approved by the  
 39 commission during the review shall be recovered by the utility by  
 40 inclusion in rates and amortization over a reasonable time to be  
 41 determined by the commission. The utility shall be permitted to  
 42 earn a return, computed using the utility's authorized rate of



1 return; on the unamortized balance.

2 (4) If a facility has been canceled as a result of the modification  
 3 or revocation of the certificate under section 5.5 or 6 of this  
 4 chapter and the facility's construction is subject to subsequent  
 5 review under section 6(d) of this chapter; the costs of construction  
 6 incurred before cancellation that were included in the estimate  
 7 found under section 5(b)(1) of this chapter and that have not been  
 8 shown to result from inadequate quality controls shall be  
 9 recovered by the utility by inclusion in rates and amortization  
 10 over a reasonable time to be determined by the commission. The  
 11 utility shall be permitted to earn a return; computed using the  
 12 utility's authorized rate of return; on the unamortized balance.  
 13 However, costs that were not included in the estimate found by  
 14 the commission under section 5(b)(1) of this chapter may not be  
 15 included in rates unless shown by the utility in construction of  
 16 that facility to be necessary and prudent.

17 SECTION 4. IC 8-1-8.5-6.6 IS ADDED TO THE INDIANA CODE  
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 19 1, 2016]: **Sec. 6.6. (a) As used in this section, "purchased power  
 20 agreement" or "purchased capacity agreement" means a contract  
 21 between a generator of electricity and a public utility that buys  
 22 electric energy or electric capacity, or both electric energy and  
 23 capacity.**

24 **(b) This subsection applies if the commission approves a  
 25 purchased power agreement or purchased capacity agreement. A  
 26 utility may recover through a periodic rate adjustment mechanism  
 27 under IC 8-1-2-42(a) only those costs that the utility demonstrates  
 28 are prudently incurred with respect to the agreement.**

29 **(c) This subsection applies if the commission approves a  
 30 certificate of public convenience and necessity other than a  
 31 certificate for a proposal described in subsection (b). A utility may  
 32 recover the estimated costs approved by the commission under  
 33 section 5 of this chapter if the facility that is the subject of the  
 34 certificate operates in accordance with the terms of the certificate.  
 35 If the facility does not operate in accordance with the terms of the  
 36 certificate, the commission shall address reasonable cost recovery  
 37 by the utility. A utility may not recover costs that exceed the  
 38 estimated costs approved in the application for the certificate  
 39 unless the utility demonstrates that the additional costs were:**

- 40 **(1) prudently incurred; and**  
 41 **(2) due to extraordinary circumstances.**

