March 24, 2023

ENGROSSED
HOUSE BILL No. 1173

DIGEST OF HB 1173 (Updated March 21, 2023 12:47 pm - DI 151)

Citations Affected: IC 22-14; noncode.

Synopsis: Utility scale battery energy storage systems. Provides that a person may not: (1) construct a new utility scale battery energy storage system (BESS); or (2) expand the capacity of an existing BESS by more than 10% of the system's existing capacity; without the prior approval of the department of homeland security (department). Sets forth information that must be included in an application to the department for approval of the construction or expansion of a BESS. Provides that a new BESS, or an expansion of an existing BESS, must comply with the National Fire Protection Association's standard concerning stationary energy storage systems (NFPA 855). Provides that if a BESS is located less than 1/2 mile from the nearest 100 year flood plain, all of the system's equipment must be located at least two feet above the 100 year frequency flood elevation. Requires the operator of a BESS to provide a copy of the operator's emergency response plan for the BESS to the fire department responsible for providing fire protection services in the area in which the BESS is

(Continued next page)

Effective: Upon passage; July 1, 2023.

Pressel, Soliday, Morris

(SENATE SPONSORS — KOCH, GARTEN, BOHACEK)

January 10, 2023, read first time and referred to Committee on Utilities, Energy and Telecommunications.
February 9, 2023, amended, reported — Do Pass.
February 13, 2023, read second time, ordered engrossed.
February 14, 2023, engrossed. Read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 27, 2023, read first time and referred to Committee on Homeland Security and Transportation.
March 23, 2023, amended, reported favorably — Do Pass.

located. Authorizes the fire prevention and building safety commission (commission) to adopt rules to specify standards for the installation and operation of a BESS. Provides that the commission's rules must be consistent with NFPA 855. Provides that the commission's rules must include standards for: (A) chemical spill prevention and control; and (B) appropriate setbacks from surface water resources; for the installation and expansion of a BESS. Requires the department to issue to the interim study committee on energy, utilities, and telecommunication, not later than July 31, 2023, a report regarding the progress of the commission in adopting rules addressing the installation and operation of a BESS.

March 24, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

ENGROSSED
HOUSE BILL No. 1173

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

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

SECTION 1. IC 22-14-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 8. Utility Scale Battery Energy Storage Systems

Sec. 1. For purposes of NFPA 855 and this chapter, "authority having jurisdiction" refers to the department.

Sec. 2. As used in this chapter, "NFPA 855" refers to:

(1) the 2023 edition of NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, as adopted by the National Fire Protection Association; or

(2) if the commission adopts a rule under IC 4-22-2 to amend:

(A) the 2023 edition; or

(B) any subsequent edition;

of NFPA 855, the version of NFPA 855 as amended by the commission.

Sec. 3. (a) As used in this chapter, "utility scale battery energy storage system" means an energy storage system (as defined in

NFPA 855) that is capable of storing and releasing more than one (1) megawatt of electrical energy for a minimum of one (1) hour using an AC inverter and DC storage.

(b) The term does not include the following:

(1) Foundations or property used to directly or indirectly connect the AC inverter or DC storage of such a system to electrical energy production equipment or to a customer's meter.

(2) An energy storage system that is used for the purpose of providing electricity to meet or offset all or part of a host operation's energy needs.

(3) A battery recycling facility.

(4) The manufacturing or storage of batteries by an automobile manufacturer.

Sec. 4. (a) After June 30, 2023, a person may not:

(1) install a new utility scale battery energy storage system; or

(2) expand the capacity of an existing utility scale battery energy storage system by more than ten percent (10%) of the system's original capacity;

without applying for and obtaining the prior approval of the department.

(b) An application for approval under subsection (a) must be in the form and manner specified by the department and must include the following information:

(1) The proposed location, including the county, of the utility scale battery energy storage system.

(2) Plans and specifications for the utility scale battery energy storage system.

(3) A description of the manner in which the utility scale battery energy storage system will comply with the requirements set forth in sections 6 through 8 of this chapter, as applicable.

(4) The applicant's proposed emergency response plan for responding to a:

(A) fire at; or

(B) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(5) The applicant's plan for offering emergency response training under section 9 of this chapter.

The operator of a utility scale battery energy storage system for which installation is complete on or before July 1, 2023, shall

submit to the department before January 1, 2024, a notice providing the information set forth in this subsection with respect to the utility scale battery energy storage system.

(c) An application fee of two hundred fifty dollars ($250) per application must be included with each application submitted under this section.

(d) Not later than thirty (30) days after the department receives an application for approval under subsection (a) and the accompanying application fee under subsection (c), the department shall provide notice to the applicant of the department's approval or disapproval of the application. The department shall approve an application that complies with this chapter.

(e) The department may adopt procedures under which the department:

(1) evaluates an application for approval under subsection (a); and

(2) makes a determination as to whether to approve the installation or expansion proposed by the application.

(f) The department is the sole authority with respect to the regulation and approval of the installation or expansion of a utility scale battery energy storage system. Subject to subsection (g), a local unit may not:

(1) require the owner or operator of a utility scale battery energy storage system to obtain a separate approval, permit, or license for the installation, expansion, or operation of the utility scale battery energy storage system;

(2) impose any fee on the owner or operator of a utility scale battery energy storage system; or

(3) regulate the ownership or operation of a utility scale battery energy storage system.

(g) Subsection (f) does not:

(1) affect the ability of a local unit to exercise zoning, land use, planning, or permitting authority otherwise allowed under law, including IC 36-7, with respect to the installation or expansion of a utility scale battery energy storage system;

(2) exempt an applicant for the installation or expansion of a utility scale battery energy storage system from complying with applicable laws and ordinances concerning land use; or

(3) affect the authority of the Indiana utility regulatory commission granted under IC 8.

Sec. 5. (a) A person may not operate a utility scale battery energy storage system installed after June 30, 2023, unless the

person has first applied for and obtained the approval of the department to do so.

(b) An application under this section must contain:

(1) a commissioning plan; and

(2) a commissioning test;

that complies with NFPA 855.

Sec. 6. A utility scale battery energy storage system must comply with NFPA 855.

Sec. 7. (a) This section applies only to a new utility scale battery energy storage system, or to the expansion of an existing utility scale battery energy storage system, for which an application is submitted under section 4(a) of this chapter after June 30, 2023, and before July 1, 2024.

(b) The total capacity of the batteries contained within a single enclosure in a utility scale battery energy storage system may not exceed ten (10) megawatt hours.

Sec. 8. If a utility scale battery energy storage system is located less than one-half (1/2) mile from the nearest one hundred (100) year flood plain, as determined by the most recently issued Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, all of the system's equipment must be located at least two (2) feet above the one hundred (100) year frequency flood elevation.

Sec. 9. (a) The operator of a utility scale battery energy storage system shall:

(1) provide a copy of the emergency response plan described in section 4(b)(4) of this chapter, as finally adopted, to the fire department that is responsible for providing fire protection services in the area in which the utility scale battery energy storage system is located; and

(2) offer on an annual basis a training session described in subsection (b) to the members of the fire department described in subdivision (1). For a utility scale battery energy storage system for which installation is complete on or before July 1, 2023, the first training under this subdivision must be offered before January 1, 2024.

(b) Subject to subsection (d), the training offered under subsection (a)(2) must provide participating members of the fire department with information regarding the installation and operation of the utility scale battery energy storage system reasonably necessary to allow the fire department to safely and effectively respond to a:

(1) fire at; or

(2) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(c) Subject to subsection (d), the operator of a utility scale battery energy storage system shall cooperate with the department, or another appropriate agency designated by the department, to provide such information concerning the utility scale battery energy storage system as is reasonably necessary for the administration of the training program offered under subsection (a)(2).

(d) This section does not require the operator of a utility scale battery energy storage system to divulge a trade secret (as defined in IC 24-2-3-2).

Sec. 10. (a) The commission may adopt rules under IC 4-22-2 to implement this chapter and to specify standards for the installation and operation of utility scale battery energy storage systems consistent with:

(1) this chapter; and

(2) NFPA 855.

(b) Rules adopted by the commission under subsection (a) must include standards for:

(1) chemical spill prevention and control; and

(2) appropriate setbacks from surface water resources;

for the installation and expansion of utility scale battery energy storage systems, as necessary to protect soil and surface water resources from chemicals contained in or produced by utility scale battery energy storage systems. In establishing the standards described in this subsection, the commission shall consult with the department of environmental management or the department of natural resources, as appropriate.

(c) In adopting rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1.

SECTION 2. [EFFECTIVE UPON PASSAGE] **(a) Not later than November 1, 2023, the department of homeland security shall issue to the executive director of the legislative services agency for distribution to the members of the interim study committee on energy, utilities, and telecommunications a report regarding the progress of the fire prevention and building safety commission in adopting the rules described in IC 22-14-8-10, as added by this act.**

(b) This SECTION expires December 31, 2023.

SECTION 3. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1173, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete AM117301 as adopted by the house utilities, energy, and telecommunications committee on January 17, 2023.

Replace the effective date in SECTION 1 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"**Sec. 1. As used in this chapter, "NFPA 855" refers to the most current edition of NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, as adopted by the National Fire Protection Association.**".

Page 1, line 5, delete "1." and insert "**2.**".

Page 1, line 6, delete "array of batteries capable of storing and" and insert "**energy storage system (as defined in NFPA 855) that:**

(1) is capable of storing and releasing more than one (1) megawatt of electrical energy for a minimum of one (1) hour using an AC inverter and DC storage; and

(2) is interconnected to the electric grid.

(b) The term does not include the following:

(1) Foundations or property used to directly or indirectly connect the AC inverter or DC storage of such a system to electrical energy production equipment or to a customer's meter.

(2) An energy storage system that is used for the purpose of providing electricity to meet or offset all or part of a host operation's energy needs.

(3) A battery recycling facility.".

Page 1, delete lines 7 through 17, begin a new paragraph and insert:

"**Sec. 3. (a) A person may not:**

(1) construct a new utility scale battery energy storage system; or

(2) expand the capacity of an existing utility scale battery energy storage system by more than ten percent (10%) of the system's existing capacity;

without applying for and obtaining the prior approval of the department.

(b) An application for approval under subsection (a) must be in the form and manner specified by the department and must include

the following information:

(1) The proposed location, including the county, of the new or expanded utility scale battery energy storage system, as applicable.

(2) Plans and specifications for the new or expanded utility scale battery energy storage system, as applicable.

(3) A description of the manner in which the utility scale battery energy storage system will comply with the requirements set forth in sections 4 through 6 of this chapter, as applicable.

(4) The applicant's proposed emergency response plan for responding to a:

(A) fire at; or

(B) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(5) The applicant's plan for offering emergency response training under section 7 of this chapter.

(6) Any other information the department considers necessary.

(c) The department may charge a reasonable application fee, not to exceed two hundred fifty dollars ($250) per application, to review and process applications under this section.

(d) Not later than thirty (30) days after the department receives an application for approval under subsection (a), the department shall provide notice to the applicant of the department's approval or disapproval of the application.

(e) The department shall adopt procedures under which the department:

(1) evaluates an application for approval under subsection (a); and

(2) makes a determination as to whether to approve the construction or expansion proposed by the application.

Sec. 4. A new utility scale battery energy storage system, or an expansion of an existing utility scale battery energy storage system, must comply with applicable safety standards in NFPA 855, including:

(1) ASTEM E119;

(2) UL 263;

(3) UL 9540; and

(4) UL 9540A;

as incorporated by reference in NFPA 855.

Sec. 5. (a) This section applies only to a new utility scale battery energy storage system, or to the expansion of an existing utility scale battery energy storage system, for which an application is submitted under section 3(a) of this chapter after April 1, 2023, and before July 1, 2024.

(b) The total capacity of the batteries contained within a single enclosure in a utility scale battery energy storage system may not exceed ten (10) megawatt hours.

Sec. 6. If a utility scale battery energy storage system is located less than one-half (1/2) mile from the nearest one hundred (100) year flood plain, as determined by the most recently issued Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, all of the system's equipment must be located at least two (2) feet above the one hundred (100) year frequency flood elevation.

Sec. 7. (a) The operator of a utility scale battery energy storage system shall:

(1) provide a copy of the emergency response plan described in section 3(b)(4) of this chapter, as finally adopted, to the fire department that is responsible for providing fire protection services in the area in which the utility scale battery energy storage system is located; and

(2) in the case of a utility scale battery storage system for which construction is complete on April 1, 2023, offer a training session described in subsection (b) to the members of the fire department described in subdivision (1) before January 1, 2024.

(b) Subject to subsection (d), the training offered under subsection (a)(2) must provide participating members of the fire department with information regarding the construction and operation of the utility scale battery energy storage system reasonably necessary to allow the fire department to safely and effectively respond to a:

(1) fire at; or

(2) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(c) Subject to subsection (d), the operator of a utility scale battery energy storage system shall cooperate with the department, or another appropriate agency designated by the department, to provide such information concerning the utility scale battery energy storage system as is reasonably necessary for the administration of the training program described in section 8(c)(2)

of this chapter.

(d) This section does not require the operator of a utility scale battery energy storage system to divulge a trade secret (as defined in IC 24-2-3-2).

Sec. 8. (a) As used in this section, "commission" refers to the fire prevention and building safety commission established by IC 22-12-2-1.

(b) Before July 1, 2024, the commission shall adopt rules under IC 4-22-2 specifying standards for the construction and operation of utility scale battery energy storage systems consistent with:

(1) this chapter; and

(2) NFPA 855.

(c) The rules adopted by the commission under subsection (b) must include the following:

(1) Standards for:

(A) chemical spill prevention and control; and

(B) appropriate setbacks from surface water resources;

for the construction and expansion of utility scale battery energy storage systems, as necessary to protect soil and surface water resources from chemicals contained in or produced by utility scale battery energy storage systems. In establishing the standards described in this subdivision, the commission shall consult with the department of environmental management or the department of natural resources, as appropriate.

(2) Standards and procedures for an annual training program concerning the provision of fire protection services in an area in which a utility scale battery energy storage system is located. The training program established under this subdivision must:

(A) be:

(i) completed annually by full-time firefighters (as defined in IC 36-8-10.5-3); and

(ii) offered annually to volunteer firefighters (as defined in IC 36-8-10.5-5);

of each fire department or volunteer fire department (as defined in IC 36-8-10.5-4), as applicable, that is responsible for providing fire protection services in an area in which a utility scale battery energy storage system is located;

(B) provide program participants with information regarding the construction and operation of utility scale battery energy storage systems reasonably necessary to

allow the fire department to safely and effectively respond to a:

(i) fire at; or

(ii) discharge or threatened discharge of environmental contaminants by;

a utility scale battery energy storage system; and

(C) provide for the department, or another appropriate agency designated by the department, to administer and oversee the program.

In establishing the standards and procedures described in this subdivision, the commission shall consult with the board of firefighting personnel standards and education. The standards and procedures established under this subdivision must specify the training program's duration and content, which may include instruction on the use and storage of lithium ion batteries.

(d) In adopting rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1.

(e) The rules adopted by the commission under this section must take effect not later than July 1, 2024.".

Delete page 2.

Page 3, delete lines 1 through 32.

Page 3, line 38, delete "department's progress in developing standards" and insert "**progress of the fire prevention and building safety commission in adopting the rules**".

Page 3, line 39, delete "IC 10-19-13-9," and insert "**IC 10-19-13-8,**".

and when so amended that said bill do pass.

(Reference is to HB 1173 as introduced and as amended by AM117301.)

SOLIDAY

Committee Vote: yeas 13, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security and Transportation, to which was referred House Bill No. 1173, 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:

Replace the effective date in SECTION 1 with "[EFFECTIVE JULY 1, 2023]".

Page 1, line 1, delete "IC 10-19-13" and insert "IC 22-14-8".

Page 1, line 4, delete "13." and insert "**8.**".

Page 1, delete lines 5 through 15, begin a new paragraph and insert:

"**Sec. 1. For purposes of NFPA 855 and this chapter, "authority having jurisdiction" refers to the department.**

Sec. 2. As used in this chapter, "NFPA 855" refers to:

(1) the 2023 edition of NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, as adopted by the National Fire Protection Association; or

(2) if the commission adopts a rule under IC 4-22-2 to amend:

(A) the 2023 edition; or

(B) any subsequent edition;

of NFPA 855, the version of NFPA 855 as amended by the commission.

Sec. 3. (a) As used in this chapter, "utility scale battery energy storage system" means an energy storage system (as defined in NFPA 855) that is capable of storing and releasing more than one (1) megawatt of electrical energy for a minimum of one (1) hour using an AC inverter and DC storage.".

Page 2, between lines 7 and 8, begin a new line block indented and insert:

"**(4) The manufacturing or storage of batteries by an automobile manufacturer.**".

Page 2, line 8, delete "Sec. 3. (a) A" and insert "**Sec. 4. (a) After June 30, 2023, a**".

Page 2, line 9, delete "construct" and insert "**install**".

Page 2, line 13, delete "existing" and insert "**original**".

Page 2, delete lines 19 through 42, begin a new line block indented and insert:

"**(1) The proposed location, including the county, of the utility scale battery energy storage system.**

(2) Plans and specifications for the utility scale battery energy storage system.

(3) A description of the manner in which the utility scale

battery energy storage system will comply with the requirements set forth in sections 6 through 8 of this chapter, as applicable.

(4) The applicant's proposed emergency response plan for responding to a:

(A) fire at; or

(B) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(5) The applicant's plan for offering emergency response training under section 9 of this chapter.

The operator of a utility scale battery energy storage system for which installation is complete on or before July 1, 2023, shall submit to the department before January 1, 2024, a notice providing the information set forth in this subsection with respect to the utility scale battery energy storage system.

(c) An application fee of two hundred fifty dollars ($250) per application must be included with each application submitted under this section.

(d) Not later than thirty (30) days after the department receives an application for approval under subsection (a) and the accompanying application fee under subsection (c), the department shall provide notice to the applicant of the department's approval or disapproval of the application. The department shall approve an application that complies with this chapter.

(e) The department may adopt procedures under which the department:

(1) evaluates an application for approval under subsection (a); and

(2) makes a determination as to whether to approve the installation or expansion proposed by the application.

(f) The department is the sole authority with respect to the regulation and approval of the installation or expansion of a utility scale battery energy storage system. Subject to subsection (g), a local unit may not:

(1) require the owner or operator of a utility scale battery energy storage system to obtain a separate approval, permit, or license for the installation, expansion, or operation of the utility scale battery energy storage system;

(2) impose any fee on the owner or operator of a utility scale battery energy storage system; or

(3) regulate the ownership or operation of a utility scale

battery energy storage system.

(g) Subsection (f) does not:

(1) affect the ability of a local unit to exercise zoning, land use, planning, or permitting authority otherwise allowed under law, including IC 36-7, with respect to the installation or expansion of a utility scale battery energy storage system;

(2) exempt an applicant for the installation or expansion of a utility scale battery energy storage system from complying with applicable laws and ordinances concerning land use; or

(3) affect the authority of the Indiana utility regulatory commission granted under IC 8.

Sec. 5. (a) A person may not operate a utility scale battery energy storage system installed after June 30, 2023, unless the person has first applied for and obtained the approval of the department to do so.

(b) An application under this section must contain:

(1) a commissioning plan; and

(2) a commissioning test;

that complies with NFPA 855.

Sec. 6. A utility scale battery energy storage system must comply with NFPA 855.".

Page 3, delete lines 1 through 17.

Page 3, line 18, delete "5." and insert "**7.**".

Page 3, line 21, delete "3(a)" and insert "**4(a)**".

Page 3, line 21, delete "April 1," and insert "**June 30,**".

Page 3, line 26, delete "6." and insert "**8.**".

Page 3, delete lines 32 through 42, begin a new paragraph and insert:

"**Sec. 9. (a) The operator of a utility scale battery energy storage system shall:**

(1) provide a copy of the emergency response plan described in section 4(b)(4) of this chapter, as finally adopted, to the fire department that is responsible for providing fire protection services in the area in which the utility scale battery energy storage system is located; and

(2) offer on an annual basis a training session described in subsection (b) to the members of the fire department described in subdivision (1). For a utility scale battery energy storage system for which installation is complete on or before July 1, 2023, the first training under this subdivision must be offered before January 1, 2024.".

Page 4, delete line 1.

Page 4, line 4, delete "construction" and insert "**installation**".

Page 4, line 17, delete "described in section 8(c)(2)" and insert "**offered under subsection (a)(2).**".

Page 4, delete line 18.

Page 4, delete lines 22 through 42, begin a new paragraph and insert:

"**Sec. 10. (a) The commission may adopt rules under IC 4-22-2 to implement this chapter and to specify standards for the installation and operation of utility scale battery energy storage systems consistent with:**

(1) this chapter; and

(2) NFPA 855.

(b) Rules adopted by the commission under subsection (a) must include standards for:

(1) chemical spill prevention and control; and

(2) appropriate setbacks from surface water resources;

for the installation and expansion of utility scale battery energy storage systems, as necessary to protect soil and surface water resources from chemicals contained in or produced by utility scale battery energy storage systems. In establishing the standards described in this subsection, the commission shall consult with the department of environmental management or the department of natural resources, as appropriate.

(c) In adopting rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1.".

Page 5, delete lines 1 through 37.

Page 5, line 39, delete "July 31," and insert "**November 1,**".

Page 6, line 2, delete "IC 10-19-13-8," and insert "**IC 22-14-8-10,**".

and when so amended that said bill do pass.

(Reference is to HB 1173 as printed February 9, 2023.)

CRIDER, Chairperson

Committee Vote: Yeas 8, Nays 0.