



CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1173

Citations Affected: IC 22-14-8.

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 original 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: (1) a BESS, the installation of which is subject to department approval; and (2) an installation added to an existing BESS in an expansion for which department approval is required; must comply with the National Fire Protection Association's standard concerning stationary energy storage systems (NFPA 855). Provides that the total capacity of the batteries contained within a single enclosure in: (1) a BESS, the installation of which is subject to department approval; and (2) an installation added to an existing BESS in an expansion for which department approval is required; may not exceed 10 megawatt hours unless authorized under rules adopted by the fire prevention and building safety commission (commission). Provides that if a BESS installed after June 30, 2023, 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: (1) provide a copy of the operator's emergency response plan for the BESS; and (2) offer training to enable effective response to a fire or contaminant discharge at the BESS; to the fire department responsible for providing fire protection services in the area in which the BESS is located. Authorizes the commission to adopt rules to specify standards for the installation and operation of a BESS. Provides that the commission's rules: (1) must be consistent with NFPA 855; and (2) must include standards for: (A) chemical spill prevention and control; and (B) appropriate setbacks from surface water resources. Requires the department to issue to the interim study committee on energy, utilities, and telecommunication, not later than November 1, 2023, a report regarding the progress of the commission in adopting rules addressing the installation and operation of a BESS. **(This conference committee report makes the following changes: (1) Provides that the bill's requirement that a BESS must comply with NFPA 855 applies only to: (A) a BESS, the installation of which is subject to department approval under the bill; and (B)**



an installation added to an existing BESS in an expansion for which department approval is required under the bill. (2) Provides that the bill's requirement that the total capacity of the batteries contained within a single enclosure may not exceed 10 megawatt hours: (A) applies only to: (i) a BESS, the installation of which is subject to department approval under the bill; and (ii) an installation added to an existing BESS in an expansion for which department approval is required under the bill; and (B) is subject to variance under rules adopted by the commission. (3) Provides that the bill's requirements regarding a BESS located less than 1/2 mile from a 100 year flood plain apply only to a BESS, the installation of which is required to be approved by the department under the bill. (4) Deletes a provision requiring the operator of a BESS to cooperate with the department, or another appropriate agency designated by the department, to provide such information concerning the BESS as is reasonably necessary for the administration of the training program the operator is required to provide to the fire department that is responsible for providing fire protection services in the area in which the BESS is located.)

Effective: Upon passage; July 1, 2023.



CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1173 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 22-14-8 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2023]:
- 5 **Chapter 8. Utility Scale Battery Energy Storage Systems**
- 6 **Sec. 1. For purposes of NFPA 855 and this chapter, "authority**
- 7 **having jurisdiction" refers to the department.**
- 8 **Sec. 2. As used in this chapter, "NFPA 855" refers to:**
- 9 **(1) the 2023 edition of NFPA 855, Standard for the**
- 10 **Installation of Stationary Energy Storage Systems, as adopted**
- 11 **by the National Fire Protection Association; or**
- 12 **(2) if the commission adopts a rule under IC 4-22-2 to amend:**
- 13 **(A) the 2023 edition; or**
- 14 **(B) any subsequent edition;**
- 15 **of NFPA 855, the version of NFPA 855 as amended by the**
- 16 **commission.**
- 17 **Sec. 3. (a) As used in this chapter, "utility scale battery energy**
- 18 **storage system" means an energy storage system (as defined in**

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

4 (b) The term does not include the following:

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

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

12 (3) A battery recycling facility.

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

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

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

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

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

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

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

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

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

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

35 (A) fire at; or

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

38 the utility scale battery energy storage system.

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

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

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

49 (d) Not later than thirty (30) days after the department receives
 50 an application for approval under subsection (a) and the
 51 accompanying application fee under subsection (c), the department

1 shall provide notice to the applicant of the department's approval
2 or disapproval of the application. The department shall approve an
3 application that complies with this chapter.

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

- 6 (1) evaluates an application for approval under subsection (a);
- 7 and
- 8 (2) makes a determination as to whether to approve the
- 9 installation or expansion proposed by the application.

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

- 14 (1) require the owner or operator of a utility scale battery
- 15 energy storage system to obtain a separate approval, permit,
- 16 or license for the installation, expansion, or operation of the
- 17 utility scale battery energy storage system;
- 18 (2) impose any fee on the owner or operator of a utility scale
- 19 battery energy storage system; or
- 20 (3) regulate the ownership or operation of a utility scale
- 21 battery energy storage system.

22 (g) Subsection (f) does not:

- 23 (1) affect the ability of a local unit to exercise zoning, land use,
- 24 planning, or permitting authority otherwise allowed under
- 25 law, including IC 36-7, with respect to the installation or
- 26 expansion of a utility scale battery energy storage system;
- 27 (2) exempt an applicant for the installation or expansion of a
- 28 utility scale battery energy storage system from complying
- 29 with applicable laws and ordinances concerning land use; or
- 30 (3) affect the authority of the Indiana utility regulatory
- 31 commission granted under IC 8.

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

36 (b) An application under this section must contain:

- 37 (1) a commissioning plan; and
- 38 (2) a commissioning test;

39 that complies with NFPA 855.

40 **Sec. 6. (a)** A utility scale battery energy storage system
41 installation of which is subject to department approval under
42 section 4(a)(1) of this chapter must comply with NFPA 855.

43 (b) An installation added to an existing utility scale battery
44 energy storage system in an expansion for which department
45 approval is required under section 4(a)(2) of this chapter must
46 comply with NFPA 855.

47 **Sec. 7.** The total capacity of the batteries contained within a
48 single enclosure in:

- 49 (1) a utility scale battery energy storage system installation of
- 50 which is subject to department approval under section 4(a)(1)
- 51 of this chapter; or

1 (2) an installation added to an existing utility scale battery
 2 energy storage system in an expansion for which department
 3 approval is required under section 4(a)(2) of this chapter;
 4 may not exceed ten (10) megawatt hours unless authorized under
 5 rules adopted by the commission under this chapter.

6 **Sec. 8. (a)** This section applies only to a utility scale battery
 7 energy storage system installation of which is subject to
 8 department approval under section 4(a)(1) of this chapter.

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

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

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

22 (2) offer on an annual basis a training session described in
 23 subsection (b) to the members of the fire department
 24 described in subdivision (1). For a utility scale battery energy
 25 storage system for which installation is complete before July
 26 1, 2023, the first training under this subdivision must be
 27 offered before January 1, 2024.

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

34 (1) fire at; or

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

37 the utility scale battery energy storage system.

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

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

45 (1) this chapter; and

46 (2) NFPA 855.

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

49 (1) chemical spill prevention and control; and

50 (2) appropriate setbacks from surface water resources;

51 for the installation and expansion of utility scale battery energy

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

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

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

16 (b) This SECTION expires December 31, 2023.

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

(Reference is to EHB 1173 as printed March 24, 2023.)

Conference Committee Report
on
Engrossed House Bill 1173

Signed by:

Representative Pressel
Chairperson

Senator Koch

Representative Pierce M

Senator Ford J.D.

House Conferees

Senate Conferees