



February 24, 1999

SENATE BILL No. 177

DIGEST OF SB 177 (Updated February 23, 1999 10:34 am - DI 75)

Citations Affected: IC 8-1; noncode.

Synopsis: IURC enforcement authority. Authorizes the Indiana utility regulatory commission to review specified aspects of a utility company that provides water or sewer service. Provides that if the commission finds that such a utility company has continued violations of Indiana law or commission orders or if a review of the utility company reveals that the utility company has severe deficiencies in its operations that the utility company is unlikely to remedy, the commission may order the sale of the utility company or the filing of an action for the appointment of a receiver for the utility company. Requires the regulatory flexibility committee to study and make any necessary recommendations to the general assembly regarding the commission's enforcement powers.

Effective: July 1, 1999.

Long, Lanane

January 6, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
February 23, 1999, amended, reported favorably — Do Pass.

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February 24, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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SENATE BILL No. 177

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

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

- 1 SECTION 1. IC 8-1-30 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:
4 **Chapter 30. Operation of Certain Water and Sewer Utilities**
5 **Sec. 1. The definitions in IC 8-1-2-1 apply throughout this**
6 **chapter.**
7 **Sec. 2. As used in this chapter, "utility company" refers to**
8 **either of the following:**
9 (1) A public utility that provides water or sewer service.
10 (2) A regional sewer and water district.
11 **The term does not include a municipally owned utility.**
12 **Sec. 3. (a) The commission may review any of the following or**
13 **any combination of the following aspects of a utility company's**

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1 operations:

- 2 (1) Technical, financial, and managerial capacity.
 3 (2) Physical condition and capacity of the utility company's
 4 plant.
 5 (3) Compliance with Indiana or federal law or the
 6 commission's orders.
 7 (4) Provision of service to customers.

8 (b) The commission may conduct a review under this section
 9 upon its own motion, a request of the office of the utility consumer
 10 counselor, or upon the filing of a complaint by a customer of the
 11 utility company. The commission's order for review must state
 12 facts to justify a review by the commission.

13 **Sec. 4. The commission may issue orders under section 5 of this**
 14 **chapter if the commission finds either of the following:**

- 15 (1) The utility company has continued violations of:
 16 (A) law regulating the utility company after the
 17 commission has ordered compliance; or
 18 (B) commission orders.
 19 (2) The commission finds after a review conducted under
 20 section 3 of this chapter that the utility company has severe
 21 deficiencies that the utility company is unlikely to remedy.

22 **Sec. 5. (a) As used in this section, "subject utility company"**
 23 **refers to a utility company that is the subject of a finding by the**
 24 **commission under section 4 of this chapter.**

25 (b) If the commission makes a finding under section 4 of this
 26 chapter, the commission may, after notice and hearing, make
 27 appropriate orders to do any of the following:

- 28 (1) Provide for the acquisition of the subject utility company
 29 by another utility company, a municipally owned utility, or by
 30 another person that has the ability to operate the subject
 31 utility company:
 32 (A) in compliance with law and the commission's orders;
 33 and
 34 (B) to remedy any deficiencies found by the commission.
 35 (2) Provide for the appointment of a receiver to operate the
 36 subject public utility:
 37 (A) in compliance with law and the commission's orders;
 38 and
 39 (B) to remedy any deficiencies found by the commission.

40 (c) Before making an order under subsection (b), the

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1 commission shall give notice of the hearing to the following:

2 (1) The subject utility company.

3 (2) Other utility companies in Indiana.

4 (3) Appropriate public agencies and political subdivisions,
5 including all municipalities, located in the subject utility
6 company's service territory.

7 (d) An order under subsection (b)(1) must provide:

8 (1) that the person acquiring the subject utility company must
9 pay the fair market value of the subject utility company at the
10 time of acquisition; and

11 (2) the method and terms by which the fair market value of
12 the subject utility company is to be determined.

13 (e) An order under subsection (b)(1) may provide cost recovery
14 mechanisms for costs associated with improvements to the
15 acquired system that are immediate and necessary to remedy
16 deficiencies, including any of the following:

17 (1) A mechanism for expediting any adjustments to the rate
18 base and rates of the person acquiring the subject utility
19 company.

20 (2) Surcharges on customers of the acquired utility company
21 system to pay for extraordinary costs.

22 (3) A plan for deferring certain improvement costs and
23 recovering costs in phases.

24 (4) A plan for equalizing rates of the subject utility company
25 with the rates of the person acquiring the subject utility
26 company, if necessary.

27 (5) Other incentives to the person acquiring the subject utility
28 company, including adjustments to the allowed rate of return.

29 (f) If the commission makes an order under subsection (b)(2),
30 the attorney general shall file an action in a court with jurisdiction
31 on behalf of the commission for the appointment of a receiver
32 under IC 34-48. The receiver appointed by the court:

33 (1) has the same rights and duties under Indiana law as a
34 utility company providing water or sewer service; and

35 (2) shall continue to operate the subject utility company until
36 the court finds that the subject utility company:

37 (A) has the ability to comply and will comply with Indiana
38 law and the commission's orders relating to the operation
39 of the utility company; and

40 (B) has the ability to operate without any of the

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deficiencies found by the commission.

Sec. 6. A municipality or other governmental unit may not require a utility company that provides water or sewer service to sell property used in the provision of such service to the municipality or governmental unit under IC 8-1-2-92, IC 8-1-2-93, or otherwise, unless the procedures and requirements of this chapter have been complied with and satisfied.

SECTION 2. [EFFECTIVE JULY 1, 1999] (a) As used in this SECTION, "committee" refers to the regulatory flexibility committee established by IC 8-1-2.6-4.

(b) Before January 1, 2000, the committee shall study the enforcement powers of the Indiana utility regulatory commission and make any recommendations to the general assembly regarding the commission's enforcement powers that the committee considers necessary.

(c) This SECTION expires January 1, 2000.

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SENATE MOTION

Mr. President: I move that Senator Lanane be added as coauthor of Senate Bill 177.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 177, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 177 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 8, Nays 0.

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