
HOUSE BILL No. 1250

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2.

Synopsis: IURC jurisdiction over mergers. Provides that the following transactions require approval by the Indiana utility regulatory commission (IURC) after a hearing: (1) The reorganization of a public utility. (2) A transaction in which a public utility acquires control of a public utility, an out-of-state utility company, or a holding company. (3) A transaction in which a person acquires control of a public utility or the holding company of a public utility. (4) A transaction in which a holding company that controls at least one public utility acquires control of an out-of-state utility company. Provides that an entity resulting from one of these transactions shall establish goals of obtaining at least 10% of its annual procurements from minority business enterprises and at least 5% of its annual procurements from women's business enterprises. Requires the entity to make a good faith effort to meet these goals. Requires the entity to annually submit to the IURC a report that includes the percentage of total procurements obtained from minority business enterprises and women's business enterprises.

Effective: July 1, 2000.

Harris, Pelath

January 10, 2000, read first time and referred to Committee on Commerce and Economic Development.

C
O
P
Y



Introduced

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

C
O
P
Y

HOUSE BILL No. 1250



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 8-1-2-83 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2000]: Sec. 83. (a) ~~No~~ **As used in this section,**
3 **"control" means the power to direct the management and policies**
4 **of a public utility, utility company, or holding company through:**
5 (1) **the ownership of voting securities or stock;**
6 (2) **the terms of a contract; or**
7 (3) **other means.**
8 **The term does not include power from holding an official position**
9 **or corporate office with the public utility, utility company, or**
10 **holding company. Control is presumed to exist if a person, directly**
11 **or indirectly, owns, controls, has the power to vote, or has the**
12 **power to vote proxies that constitute at least twenty percent (20%)**
13 **of the total voting power of the public utility, utility company, or**
14 **holding company.**
15 (b) **As used in this section, unless otherwise indicated, "holding**
16 **company" means a company that has control over one (1) or more:**
17 (1) **public utilities; or**



1 **(2) utility companies.**

2 **(c) As used in this section, "person" means an individual, a firm,**
 3 **a corporation, a company, a partnership, a limited liability**
 4 **company, an association, a trustee, a lessee, or a receiver.**

5 **(d) As used in this section, "reorganization" means a**
 6 **transaction that, regardless of the means by which it is**
 7 **accomplished, results in:**

8 **(1) a change in the ownership of a majority of the voting**
 9 **capital stock of a public utility;**

10 **(2) a change in the ownership or control of an entity that owns**
 11 **or controls a majority of the voting capital stock of a public**
 12 **utility;**

13 **(3) the merger of two (2) public utilities; or**

14 **(4) the acquisition by one (1) public utility of substantially all**
 15 **assets of another public utility.**

16 **(e) As used in this section, "utility company" has the same**
 17 **meaning as the definition of public utility under section 1 of this**
 18 **chapter, except that a utility company owns, operates, manages, or**
 19 **controls a plant or equipment located outside Indiana.**

20 **(f) A public utility, as defined in section 1 of this chapter, shall may**
 21 **not do any of the following without the approval of the commission**
 22 **after hearing:**

23 **(1) Sell, assign, transfer, lease, or encumber its stock, franchise,**
 24 **works, or system to any other person, partnership, limited liability**
 25 **company, or corporation. or**

26 **(2) Contract for the operation of any part of its works or system by**
 27 **any other person, partnership, limited liability company, or**
 28 **corporation. without the approval of the commission after hearing.**
 29 **And no such**

30 **(3) Contract for or effect a reorganization of the public utility.**

31 **(4) Acquire control, directly or indirectly, of a public utility,**
 32 **utility company, or holding company.**

33 **(g) A person may not acquire control, directly or indirectly, of**
 34 **a public utility or the holding company of a public utility without**
 35 **the approval of the commission after a hearing.**

36 **(h) A holding company that controls at least one (1) public**
 37 **utility may not acquire control of a utility company without the**
 38 **approval of the commission after a hearing.**

39 **(i) A public utility, except temporarily or in case of emergency and**
 40 **for a period of not exceeding thirty (30) days, shall may not make any**
 41 **special contract at rates other than those prescribed in its schedule of**
 42 **rates theretofore filed with the commission, and in force, with any other**



C
O
P
Y

1 utility for rendering any service to or procuring any service from such
 2 other utility; without the approval of the commission. It shall be lawful,
 3 however, for any utility to make a contract for service to or from
 4 another utility at rates previously filed with and approved by the
 5 commission and in force.

6 ~~(b)~~ **(j)** The approval of the commission of the sale, assignment,
 7 transfer, lease, or encumbrance of a franchise or any part thereof under
 8 this section shall not revive or validate any lapsed or invalid franchise,
 9 or enlarge or add to the powers and privileges contained in the grant of
 10 any franchise or waive any forfeiture. No such public utility shall
 11 directly or indirectly purchase, acquire, or become the owner of any of
 12 the property, stock, or bonds of any other public utility authorized to
 13 engage or engaged in the same or a similar business, or operating or
 14 purporting to operate under a franchise from the same or any other
 15 municipality or under an indeterminate permit unless authorized so to
 16 do by the commission.

17 ~~(e)~~ **(k)** Nothing contained in this section shall prevent the holding
 18 of stock lawfully acquired before May 1, 1913, or prohibit, upon the
 19 surrender or exchange of said stock pursuant to a reorganization plan,
 20 the purchase, acquisition, taking, or holding by the owner of a
 21 proportionate amount of the stock of any new corporation organized to
 22 take over at foreclosure or other sale, the property of the corporation
 23 whose stock has been thus surrendered or exchanged.

24 ~~(d)~~ **(l)** Every contract by any public utility for the purchase,
 25 acquisition, assignment, or transfer to it of any of the stock of any other
 26 public utility by or through any person, partnership, limited liability
 27 company, or corporation without the approval of the commission shall
 28 be void and of no effect, and no such transfer or assignment of such
 29 stock upon the books of the corporation pursuant to any such contract
 30 shall be effective for any purpose.

31 SECTION 2. IC 8-1-2-83.5 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2000]: **Sec. 83.5. (a) As used in this section, "minority" means a
 34 person who is one (1) of the following:**

- 35 **(1) Black.**
- 36 **(2) Hispanic.**
- 37 **(3) Asian American.**
- 38 **(4) Native American or Alaskan native.**

39 **(b) As used in this section, "minority business enterprise" means
 40 a business that is one (1) of the following:**

- 41 **(1) A sole proprietorship owned and controlled by a minority.**
- 42 **(2) A partnership or joint venture owned and controlled by**



C
O
P
Y

- 1 minorities:
- 2 (A) in which at least fifty-one percent (51%) of the
- 3 ownership interest is held by at least one (1) minority; and
- 4 (B) the management and daily business operations of
- 5 which are controlled by at least one (1) of the minorities
- 6 who own the business.
- 7 (3) A corporation or other entity:
- 8 (A) whose management and daily business operations are
- 9 controlled by at least one (1) of the minorities who own the
- 10 business; and
- 11 (B) that is at least fifty-one percent (51%) owned by at
- 12 least one (1) minority, or if stock is issued, at least fifty-one
- 13 percent (51%) of the stock is owned by at least one (1)
- 14 minority.
- 15 (c) As used in this section, "procurement" means a contract or
- 16 subcontract for the purchase or lease of commodities, supplies,
- 17 technology, property, or other goods and services necessary for the
- 18 operation of an entity described in subsection (e).
- 19 (d) As used in this section, "women's business enterprise" means
- 20 a business that is one (1) of the following:
- 21 (1) A sole proprietorship owned and controlled by a woman.
- 22 (2) A partnership or joint venture owned and controlled by
- 23 women in which:
- 24 (A) at least fifty-one percent (51%) of the ownership is
- 25 held by women; and
- 26 (B) the management and daily business operations are
- 27 controlled by at least one (1) of the women who own the
- 28 business.
- 29 (3) A corporation or other entity:
- 30 (A) whose management and daily business operations are
- 31 controlled by at least one (1) of the women who own the
- 32 business; and
- 33 (B) that is at least fifty-one percent (51%) owned by
- 34 women, or if stock is issued, at least fifty-one percent
- 35 (51%) of the stock is owned by at least one (1) of the
- 36 women.
- 37 (e) It is declared to be the public policy of the state of Indiana to
- 38 encourage the following entities to obtain a fair proportion of their
- 39 total procurements from minority business enterprises and
- 40 women's business enterprises:
- 41 (1) A public utility that undergoes reorganization under
- 42 section 83(f)(3) of this chapter.



C
O
P
Y

1 (2) A public utility that acquires control of a public utility,
2 utility company, or holding company under section 83(f)(4) of
3 this chapter.

4 (3) A person that acquires control of a public utility or the
5 holding company of a public utility under section 83(g) of this
6 chapter.

7 (4) A holding company that controls at least one (1) public
8 utility and acquires control of a utility company under section
9 83(h) of this chapter.

10 (f) Notwithstanding any law or rule to the contrary, an entity
11 described in subsection (e) shall establish goals of obtaining at
12 least:

13 (1) ten percent (10%) of the dollar value of the entity's annual
14 procurements from minority business enterprises; and

15 (2) five percent (5%) of the dollar value of the entity's annual
16 procurements from women's business enterprises.

17 An entity described in subsection (e) shall submit annually to the
18 commission a report that includes the total dollar value of the
19 entity's procurements and the percentage of procurements
20 obtained from minority business enterprises and women's business
21 enterprises.

22 (g) An entity described in subsection (e) shall make a good faith
23 effort to meet the goals established under subsection (f) and shall
24 annually demonstrate to the commission that an effort was made
25 to meet the goals.

26 (h) The commission shall establish and administer a unified
27 certification procedure for minority business enterprises and
28 women's business enterprises that enter into procurement
29 contracts with entities described in subsection (e).

30 (i) The commission shall supply entities described in subsection
31 (e) with a list of the minority business enterprises and women's
32 business enterprises the commission has certified under subsection
33 (h). The commission shall review the list annually to determine the
34 minority business enterprises and women's business enterprises
35 that should continue to be certified. The commission shall establish
36 a procedure for challenging the designation of a certified minority
37 business enterprise or women's business enterprise. The procedure
38 must include proper notice and a hearing for all parties concerned.

39 (j) The commission may adopt rules necessary to implement this
40 section.

C
O
P
Y