

# HOUSE BILL No. 1084

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-22-2-23; IC 8-1-1-5; IC 8-1-1-5.5.

**Synopsis:** Indiana utility regulatory commission procedures. Prohibits a commissioner, an administrative law judge, or an employee of the Indiana utility regulatory commission (IURC) who is assigned to a formally docketed proceeding from communicating with a party to the proceeding unless certain requirements are met. Establishes deadlines relating to proceedings before the IURC.

**Effective:** Upon passage.

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January 13, 2004, read first time and referred to Committee on Commerce and Economic Development.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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# HOUSE BILL No. 1084



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 4-22-2-23 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) This section  
 3 does not apply to rules adopted under IC 4-22-2-37.1.  
 4 (b) Before or after an agency notifies the public of its intention to  
 5 adopt a rule under section 24 of this chapter, the agency shall notify the  
 6 public of its intention to adopt a rule by publishing a notice of intent to  
 7 adopt a rule in the Indiana Register at least thirty (30) days before the  
 8 preliminary adoption of the rule. The publication notice must include  
 9 an overview of the intent and scope of the proposed rule and the  
 10 statutory authority for the rule. The requirement to publish a notice of  
 11 intent to adopt a rule does not apply to rulemaking under IC 13-14-9.  
 12 **Subject to IC 8-1-1-5.5(c) concerning rules proposed by the utility**  
 13 **regulatory commission**, the agency shall solicit comments from the  
 14 public on the need for a rule, the drafting of a rule, or any other subject  
 15 related to a rulemaking action. The procedures that the agency may use  
 16 include the holding of conferences and the inviting of written  
 17 suggestions, facts, arguments, or views. The agency shall prepare a



1 written response that contains a summary of the comments received  
 2 during any part of the rulemaking process. The written response is a  
 3 public document. The agency shall make the written response available  
 4 to interested parties upon request.

5 SECTION 2. IC 8-1-1-5 IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The commission shall in  
 7 all controversial proceedings heard by it be an impartial factfinding  
 8 body and shall make its orders in such cases upon the facts impartially  
 9 found by it. The commission shall in no such proceeding, during the  
 10 hearing, act in the role either of a proponent or opponent on any issue  
 11 to be decided by it. All evidence given in any such proceeding shall be  
 12 offered on behalf of the respective parties to, or appearing in, the  
 13 proceeding and not in the name or behalf of the commission itself.

14 (b) Any report, audit, examination, or analysis prepared by the  
 15 commission staff at the request or direction of the commission may be  
 16 made a part of the record of the proceeding, subject to  
 17 cross-examination by any party of the person who performed or  
 18 directed the preparation of the report, audit, examination, or analysis.

19 (c) If in any such proceeding the public interest is not otherwise  
 20 adequately represented by counsel, in the opinion of the commission,  
 21 it shall be the duty of the utility consumer counselor, if requested by the  
 22 commission, to make adequate preparation for the presentation of the  
 23 interests of the public in such proceeding and ~~he~~ **the utility consumer**  
 24 **counselor** shall at the hearing represent the public interests therein  
 25 involved.

26 (d) However, nothing in this section prevents the commission from  
 27 instituting, prosecuting, hearing, or determining any investigation or  
 28 proceeding which it is authorized to do, or make, on its own motion by  
 29 any law with the administration of which it is charged.

30 (e) ~~Except as otherwise provided in this chapter, no member or A~~  
 31 **commissioner, an administrative law judge, or a staff** employee of  
 32 the commission assigned to ~~make findings of fact and conclusions of~~  
 33 ~~law~~ in a formally docketed ~~evidentiary~~ proceeding may **not**  
 34 communicate in connection with any issue of fact, ~~or~~ law, **or policy**  
 35 disputed in that proceeding with any party or ~~his~~ **party's**  
 36 representative, ~~except on notice and with opportunity for all parties to~~  
 37 ~~participate~~; **regardless of whether the communication is initiated by**  
 38 **the party or the party's representative or by the commissioner,**  
 39 **administrative law judge, or staff employee, unless the party agrees**  
 40 **to report the communication in the manner provided in this**  
 41 **subsection. A party shall report a communication described in this**  
 42 **subsection not later than three (3) working days after the date on**

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1 which the communication occurs by submitting a notice of ex parte  
2 communication to the administrative law judge or commissioner  
3 assigned to the proceeding and to the secretary of the commission  
4 for inclusion in the public record. A notice provided under this  
5 subsection must include the following information:

6 (1) The date, time, and location of the communication and  
7 whether the communication was oral, written, or oral and  
8 written.

9 (2) The identity of:  
10 (A) all participants in the communication;  
11 (B) the person initiating the communication; and  
12 (C) any other persons present during the communication.

13 (3) A description of the communication and a summary of the  
14 content of the communication.

15 The party shall attach to the notice required under this subsection  
16 a copy of any written material or text used during the  
17 communication.

18 (f) Notwithstanding subsection (e), a commissioner, an  
19 administrative law judge, or a staff employee of the commission  
20 assigned to a formally docketed proceeding may not communicate,  
21 in connection with any issue of fact, law, or policy disputed in that  
22 proceeding, with any party or party's representative after the close  
23 of the evidentiary record.

24 (g) A person who violates this section commits a Class C infraction.

25 SECTION 3. IC 8-1-1-5.5 IS ADDED TO THE INDIANA CODE  
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
27 UPON PASSAGE]: Sec. 5.5. (a) As used in this section,  
28 "proceeding" refers to an adjudicatory proceeding, a contested  
29 case, a tariff or other investigation, an arbitration, a complaint  
30 case, an alternative regulation case, a rulemaking, or any other  
31 proceeding before the commission.

32 (b) This subsection applies in a complaint proceeding filed  
33 under IC 8-1-2-54. The person beginning the proceeding must file  
34 the person's direct testimony and exhibits with the commission not  
35 later than thirty (30) days after the proceeding begins.

36 (c) This subsection applies to the submission of written  
37 comments on a rule proposed by the commission under IC 4-22-2.  
38 The person submitting the comments must file the person's  
39 comments with the commission not later than:

40 (1) thirty (30) days after the commission publishes the  
41 commission's notice of intent to adopt the rule under  
42 IC 4-22-2-23 if:

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- 1           (A) the commission will not hold a conference under
- 2           IC 4-22-2-23 to receive comments on the proposed rule; or
- 3           (B) the person will not attend a conference held under
- 4           IC 4-22-2-23 by the commission to receive comments on
- 5           the rule; or
- 6           (2) seven (7) days before the date on which the commission
- 7           will hold a conference under IC 4-22-2-23 to receive
- 8           comments on the proposed rule, if the person will attend the
- 9           conference and present comments.
- 10          (d) In each proceeding, the commission shall do the following:
- 11           (1) Upon the request of a party to the proceeding, establish a
- 12           procedural schedule not later than thirty (30) days after the
- 13           proceeding begins.
- 14           (2) Enter a decision on the merits not later than sixty (60)
- 15           days after the matter has been heard and briefed, unless the
- 16           commission issues a written order extending the time for
- 17           decision.
- 18           (3) Enter a decision on the merits of a petition for rehearing
- 19           or reconsideration not later than sixty (60) days after the
- 20           petition has been heard and briefed, unless the commission
- 21           issues a written order extending the time for decision.
- 22          (e) An order extending the time for decision under subsection
- 23          (d)(2) or (d)(3) must state the cause for the delay and may not delay
- 24          entry of the decision more than sixty (60) days after the decision
- 25          would have been due under subsection (d)(2) or (d)(3) if the time
- 26          for decision had not been extended. The commission may not
- 27          extend the time for the commission's decision more than one (1)
- 28          time.
- 29          (f) The deadlines established by this section may be extended by
- 30          written agreement of the commission and all parties to the
- 31          proceeding.
- 32          (g) Each year, the commission shall include in the commission's
- 33          annual report to the regulatory flexibility committee established by
- 34          IC 8-1-2.6-4 a report on the commission's compliance with this
- 35          section as to all of the commission's proceedings during the
- 36          previous calendar year.
- 37          SECTION 4. An emergency is declared for this act.

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