

SENATE BILL No. 215

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-1-5.

Synopsis: IURC proceedings. Prohibits a commissioner, an administrative law judge, or an employee of the 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. Permits the IURC to deliberate in executive session on a proposed IURC order under certain circumstances.

Effective: July 1, 2005.

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January 4, 2005, read first time and referred to Committee on Homeland Security, Utilities, and Public Policy.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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SENATE BILL No. 215



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 8-1-1-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The commission shall in all
3 controversial proceedings heard by it be an impartial fact-finding body
4 and shall make its orders in such cases upon the facts impartially found
5 by it. The commission shall in no such proceeding, during the hearing,
6 act in the role either of a proponent or opponent on any issue to be
7 decided by it. All evidence given in any such proceeding shall be
8 offered on behalf of the respective parties to, or appearing in, the
9 proceeding and not in the name or behalf of the commission itself.

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

15 (c) If in any such proceeding the public interest is not otherwise
16 adequately represented by counsel, in the opinion of the commission,
17 it shall be the duty of the utility consumer counselor, if requested by the



1 commission, to make adequate preparation for the presentation of the
2 interests of the public in such proceeding and ~~he~~ **the utility consumer**
3 **counselor** shall at the hearing represent the public interests therein
4 involved.

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

9 (e) ~~Except as otherwise provided in this chapter, no member or A~~
10 **commissioner, an administrative law judge, or a staff** employee of
11 the commission assigned to ~~make findings of fact and conclusions of~~
12 ~~law in a formally docketed evidentiary proceeding may not~~
13 ~~communicate in connection with any issue of fact, or law, or policy~~
14 ~~disputed in that proceeding with any party or his a party's~~
15 ~~representative, except on notice and with opportunity for all parties to~~
16 ~~participate: unless the party agrees to report the communication in~~
17 ~~the manner provided in this subsection, and regardless of whether~~
18 ~~the communication is initiated by the party or the party's~~
19 ~~representative or by the commissioner, administrative law judge,~~
20 ~~or staff employee. A party shall report a communication described~~
21 ~~in this subsection not later than three (3) working days after the~~
22 ~~date on which the communication occurs by submitting a notice of~~
23 ~~ex parte communication to the administrative law judge or~~
24 ~~commissioner assigned to the proceeding and to the secretary of~~
25 ~~the commission for inclusion in the public record. A notice~~
26 ~~provided under this subsection must include the following~~
27 ~~information:~~

- 28 (1) The date, time, and location of the communication and
29 whether it was oral, written, or oral and written.
- 30 (2) The identity of:
 - 31 (A) all participants in the communication;
 - 32 (B) the person initiating the communication; and
 - 33 (C) any other persons present during the communication.
- 34 (3) A description of the communication and a summary of the
35 content of communication.

36 **The party shall attach to the notice required under this subsection**
37 **a copy of any written material or text used during the**
38 **communication.**

39 (f) **Notwithstanding subsection (e), a commissioner, an**
40 **administrative law judge, or a staff employee of the commission**
41 **assigned to a formally docketed proceeding may not communicate**
42 **in connection with any issue of fact, law, or policy disputed in that**

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1 proceeding with any party or a party's representative after the
 2 close of the evidentiary record.
 3 (g) In addition to holding an executive session in the instances
 4 described in IC 5-14-1.5-6.1(b), the commission may hold an
 5 executive session to deliberate on a proposed order if all the
 6 following are satisfied:
 7 (1) All evidence on the matter has been received by the
 8 commission.
 9 (2) The deliberations are preparatory to taking final action on
 10 an order subject to judicial review.
 11 (3) Only the following are permitted to participate in the
 12 executive session:
 13 (A) Commission members.
 14 (B) Commission employees who are formally assigned to
 15 advise or assist in preparing the order, including the
 16 commission's technical staff and attorneys.
 17 IC 5-14-1.5-5, IC 5-14-1.5-6.1, and IC 5-14-1.5-7 apply to an
 18 executive session held under this subsection.
 19 (h) A person who violates this section commits a Class C infraction.

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