

SENATE BILL No. 299

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-2.

Synopsis: Utility condemnation of property. Specifies the procedures by which a municipality may exercise the power of eminent domain to acquire the property of a public utility.

Effective: July 1, 2009.

Merritt

January 7, 2009, read first time and referred to Committee on Utilities & Technology.

C
O
P
Y



First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

C
O
P
Y

SENATE BILL No. 299



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 8-1.5-2-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A certificate of
3 public convenience and necessity is not required as a condition
4 precedent to the owning, leasing, acquisition, construction, or operation
5 of a utility by a municipality, even if there is a public utility engaged in
6 a similar service. The acquisition of electric utility property and
7 assignment of a municipal electric utility's service area are, however,
8 subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

9 (b) A municipality that wants to own and operate, **including by**
10 **purchase or condemnation**, a utility where there is a public utility
11 engaged in a similar service:

- 12 (1) under a franchise granted by the municipality; or
 - 13 (2) under an indeterminate permit as defined in IC 8-1-2-1;
- 14 may, after a hearing as provided by section 10 of this chapter and an
15 election as provided by section 16 of this chapter, declare by ordinance
16 that public convenience and necessity require the establishment of a
17 municipally owned utility.



1 SECTION 2. IC 8-1.5-2-11 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) If the municipal
 3 legislative body adopts an ordinance **under section 7 of this chapter**
 4 for the construction or acquisition of a utility, not more than thirty (30)
 5 days after the adoption of the ordinance a public utility engaged in
 6 rendering the same kind of utility service in the municipality, or in the
 7 contiguous area in which the municipality proposes to operate, may
 8 bring an action against the municipality in the circuit court or superior
 9 court of the county in which the municipality is located for the purpose
 10 of securing a judicial review and determination of the question of
 11 public convenience and necessity.

12 (b) Pending such a determination, further action may not be taken
 13 by the municipality for the construction or acquisition of the utility.

14 (c) The cause shall be heard without delay and determined by the
 15 court without a jury, and at the hearing, either party may introduce
 16 evidence.

17 (d) The cause may be appealed to the court of appeals following
 18 determination.

19 SECTION 3. IC 8-1.5-2-15 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) If the
 21 municipality and the owners of a public utility are unable to agree upon
 22 a price to be paid for the property of the public utility, the municipality
 23 may **exercise the power of eminent domain to acquire the property.**
 24 **If the municipality exercises the power of eminent domain, the**
 25 **municipality shall:**

26 (1) by ordinance declare that a public necessity exists for the
 27 condemnation of the utility property; and

28 (2) bring an action in the circuit or superior court of the county
 29 where the municipality is located against the utility for the
 30 condemnation of the property.

31 (b) An ordinance adopted under subsection (a) is final.

32 (c) For the purpose of acquiring the property of a public utility, the
 33 municipality ~~(1) may exercise the power of eminent domain in~~
 34 ~~accordance with IC 32-24; and (2)~~ is required only to establish the
 35 necessity of taking as this chapter requires.

36 (d) The provisions of this section do not apply to the acquisition of
 37 electric utility property or the assignment of service areas covered by
 38 IC 8-1-2.3 and IC 8-1-2-95.1.

39 SECTION 4. IC 8-1.5-2-17 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) A municipality,
 41 by exercising the power of eminent domain in accordance with
 42 ~~IC 32-24 or other~~ applicable law, may acquire property rights ~~inside or~~

C
o
p
y



1 ~~outside its corporate boundaries~~ **within the territory described in**
 2 **section 3(b) of this chapter** as necessary for the business of a
 3 municipally owned utility.
 4 (b) The municipal legislative body may provide for utility lines to
 5 be laid through the municipality as the municipally owned utility
 6 requires. The municipality may use any property or property rights
 7 necessary for constructing, acquiring, operating, or protecting from
 8 injury or pollution the municipally owned utility services.
 9 (c) For the purpose of preserving and protecting from injury or
 10 pollution the municipal water services, the municipality may exercise
 11 its powers in areas within twenty-five (25) miles outside its corporate
 12 boundaries.
 13 (d) All attachments made to the utility fixtures, whether intended for
 14 public or private use, are subject to the supervision and rules of the
 15 utility for protection against abuse or destruction or the inordinate use
 16 or waste of utility services.

**C
o
p
y**

