



Reprinted
February 29, 2012

ENGROSSED HOUSE BILL No. 1126

DIGEST OF HB 1126 (Updated February 28, 2012 5:49 pm - DI 103)

Citations Affected: IC 8-1.5; IC 36-9.

Synopsis: Extraterritorial water and sewer rates. Provides that: (1) a municipality that operates a water, wastewater, or combined water and wastewater utility; or (2) users of the utility's works whose property is located outside the corporate boundaries of the municipality; may petition the utility regulatory commission (IURC) under certain circumstances for review and revision of the rates and charges imposed by ordinance on the users. Requires the IURC to prescribe the form and content of the petition. Provides that a petition is dismissed and the underlying ordinance takes effect if the IURC does not approve or disapprove the petition within 120 days. Authorizes the IURC to adopt rules.

Effective: Upon passage.

Frizzell, Pierce, Lutz, Sullivan

(SENATE SPONSORS — MERRITT, BRAY, TOMES, RANDOLPH)

January 9, 2012, read first time and referred to Committee on Environmental Affairs.
January 25, 2012, amended, reported — Do Pass.
January 27, 2012, read second time, ordered engrossed. Engrossed.
January 30, 2012, read third time, passed. Yeas 93, nays 1.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Utilities and Technology.
February 23, 2012, amended, reported favorably — Do Pass.
February 28, 2012, read second time, amended, ordered engrossed.

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EH 1126—LS 7018/DI 101+



Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1126

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

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

- 1 SECTION 1. IC 8-1.5-3-8, AS AMENDED BY P.L.172-2009,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 8. (a) A municipality owning a utility under
4 this chapter shall furnish reasonably adequate services and facilities.
5 (b) The rates and charges made by a municipality for a service
6 rendered or to be rendered, either directly or in connection therewith,
7 must be nondiscriminatory, reasonable, and just.
8 (c) "Reasonable and just rates and charges for services" means rates
9 and charges that produce sufficient revenue to:
10 (1) pay all the legal and other necessary expenses incident to the
11 operation of the utility, including:
12 (A) maintenance costs;
13 (B) operating charges;
14 (C) upkeep;
15 (D) repairs;
16 (E) depreciation;
17 (F) interest charges on bonds or other obligations, including

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- 1 leases; and
 2 (G) costs associated with the acquisition of utility property
 3 under IC 8-1.5-2;
 4 (2) provide a sinking fund for the liquidation of bonds or other
 5 obligations, including leases;
 6 (3) provide a debt service reserve for bonds or other obligations,
 7 including leases, in an amount established by the municipality,
 8 not to exceed the maximum annual debt service on the bonds or
 9 obligations or the maximum annual lease rentals;
 10 (4) provide adequate money for working capital;
 11 (5) provide adequate money for making extensions and
 12 replacements to the extent not provided for through depreciation
 13 in subdivision (1); and
 14 (6) provide money for the payment of any taxes that may be
 15 assessed against the utility.
 16 (d) It is the intent of this section that the rates and charges produce
 17 an income sufficient to maintain the utility property in a sound physical
 18 and financial condition to render adequate and efficient service. Rates
 19 and charges too low to meet these requirements are unlawful.
 20 (e) The board may recommend to the municipal legislative body
 21 rates and charges sufficient to include a reasonable return on the utility
 22 plant of the municipality.
 23 (f) Rates and charges established under this section are subject to
 24 the approval of:
 25 (1) the municipal legislative body by ordinance; and
 26 (2) the commission, in accordance with the procedures set forth
 27 in IC 8-1-2.
 28 The commission shall approve rates and charges that are sufficient, in
 29 addition to the cash revenue requirements set forth in subsection (c), to
 30 include a reasonable return on the utility plant of the municipality if the
 31 legislative body so elects.
 32 (g) Except for a municipally owned utility taxed under IC 6-1.1-8-3,
 33 the commission shall approve rates and charges sufficient to
 34 compensate the municipality for taxes that would be due the
 35 municipality on the utility property were it privately owned. These rates
 36 and charges in lieu of taxes may be transferred to the municipal general
 37 fund, if the legislative body so elects.
 38 (h) The commission shall grant a request that an increase in rates
 39 and charges not be effective until after the occurrence of a future event
 40 if the legislative body so requests.
 41 (i) A municipality that acquires and operates a utility under
 42 IC 8-1.5-2 by exercising the power of eminent domain may not impose

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1 a special rate, charge, surcharge, or other fee, other than rates and
2 charges approved under this section or otherwise authorized by law, on
3 the customers of the utility in order to pay for the costs associated with
4 acquiring the utility through the exercise of the power of eminent
5 domain.

6 **(j) As used in this subsection, "works" has the meaning set forth**
7 **in section 8.1(b) of this chapter. For purposes of determining**
8 **whether the percentage difference between the rates and charges**
9 **imposed on:**

10 **(1) users of a works for service to property located outside the**
11 **corporate boundaries of a municipality; and**

12 **(2) users of the same works for service to property located**
13 **within the corporate boundaries of the municipality;**

14 **are nondiscriminatory, reasonable, and just, the commission may**
15 **consider the benefit and expense to all users of the works of**
16 **extending the works outside the corporate boundaries of the**
17 **municipality, including the rates and charges that users outside the**
18 **corporate boundaries of the municipality would incur to establish**
19 **a separate works.**

20 SECTION 2. IC 8-1.5-3-8.1 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.1. (a) **As used in**
22 **this section, applies "utility" refers to a municipally owned:**

23 **(1) water utilities utility;**

24 **(2) wastewater utility; or**

25 **(3) combined water and wastewater utility;**

26 **that have been taken out of is not under the jurisdiction of the**
27 **commission for the approval of rates and charges.**

28 **(b) As used in this section, "works" refers to water or**
29 **wastewater utility works.**

30 ~~(b)~~ **(c) After the introduction of the ordinance establishing the rates**
31 **and charges under section 8 of this chapter, but before the ordinance is**
32 **finally adopted, the municipal legislative body shall hold a public**
33 **hearing at which users of the waterworks, works, owners of property**
34 **served or to be served by the waterworks, works, and other interested**
35 **persons may be heard concerning the proposed rates and charges.**
36 **Notice of the hearing, setting forth the proposed schedule of rates and**
37 **charges, shall be:**

38 **(1) published in accordance with IC 5-3-1 (IC 5-3-1-1 through**
39 **IC 5-3-1-9);**

40 **(2) mailed to owners of vacant or unimproved property if the**
41 **ordinance includes a fee for water or wastewater service to**
42 **vacant or unimproved property; and**

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1 (3) mailed to users of the ~~waterworks~~ **of the works for service to**
 2 **property** located outside the municipality's corporate boundaries.
 3 The notice may be mailed in any form so long as the notice of hearing
 4 is conspicuous. The hearing may be adjourned from time to time.
 5 **Notice mailed under subdivision (3) must include a statement that,**
 6 **following adoption of the ordinance, the users described in**
 7 **subdivision (3) may be entitled to petition the commission under**
 8 **section 8.3 of this chapter to review and adjust the rates and**
 9 **charges imposed on the users if the conditions described in section**
 10 **8.3(d), 8.3(g), or 8.3(h) of this chapter apply and if a petition under**
 11 **section 8.2 of this chapter with respect to the same rate ordinance**
 12 **has not been filed.**

13 (e) (d) After the hearing, the municipal legislative body shall adopt
 14 the ordinance establishing the rates and charges, either as originally
 15 introduced or as modified. A copy of the schedule of rates and charges
 16 adopted shall be kept on file and available for public inspection in the
 17 offices of the board and the municipal clerk. **An ordinance adopted**
 18 **after March 31, 2012, must state in plain language the percentage**
 19 **difference between the rates and charges imposed on:**

- 20 (1) **users of the works for service to property located outside**
 21 **the corporate boundaries of the municipality; and**
 22 (2) **users of the works for service to property located within**
 23 **the corporate boundaries of the municipality.**

24 (d) (e) The rates and charges established for any class of users or
 25 property shall be extended to cover any additional property that is
 26 subsequently served and falls within the same class, without any
 27 hearing or notice.

28 (e) (f) The municipal legislative body may change or readjust the
 29 rates and charges in the same manner as they were established.

30 (f) (g) Rates and charges collected under this chapter are considered
 31 revenues of the ~~waterworks~~ **utility.**

32 SECTION 3. IC 8-1.5-3-8.2 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.2. (a) **As used in**
 34 **this section: applies to all municipally owned water utilities that have**
 35 **been taken out of the jurisdiction of the commission for the approval**
 36 **of rates and charges.**

- 37 (1) **"utility"; and**
 38 (2) **"works";**

39 **have the meaning set forth for those terms in section 8.1 of this**
 40 **chapter.**

41 (b) Owners of property connected or to be connected to and served
 42 by the ~~waterworks~~ **works** authorized under this chapter may file a

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1 written petition objecting to the rates and charges of the ~~waterworks~~
2 **utility** so long as:

- 3 (1) the petition contains the names and addresses of the
- 4 petitioners;
- 5 (2) the petitioners attended the public hearing provided under
- 6 section 8.1 of this chapter;
- 7 (3) the written petition is filed with the municipal legislative body
- 8 within five (5) days after the ordinance establishing the rates and
- 9 charges is adopted under section 8.1 of this chapter; ~~and~~
- 10 (4) the written petition states specifically the ground or grounds
- 11 of objection; **and**
- 12 **(5) a petition has not been filed with the commission under**
- 13 **section 8.3 of this chapter appealing the same rates and**
- 14 **charges of the utility.**

15 (c) Unless the objecting petition is abandoned, the municipal clerk
16 shall file in the office of the clerk of the circuit or superior court of the
17 county a copy of the rate ordinance or ordinances together with the
18 petition. The court shall then set the matter for hearing at the earliest
19 date possible, which must be within twenty (20) days after the filing of
20 the petition with the court. The court shall send notice of the hearing
21 by certified mail to the municipality and to the first signer of the
22 petition at the address shown on the petition. All interested parties shall
23 appear in the court without further notice, and the municipality may not
24 conduct any further proceedings concerning the rates and charges until
25 the matters presented by the petition have been heard and determined
26 by the court.

27 (d) At the discretion and upon direction of the court, the petitioners
28 shall file with the petition a bond in the sum and with the security fixed
29 by the court. The bond must be conditioned on the petitioners' payment
30 of all or part of the costs of the hearing and any damages awarded to
31 the municipality if the petition is denied, as ordered by the court.

32 (e) Upon the date fixed in the notice, the court shall, without a jury,
33 hear the evidence produced. The court may confirm the decision of the
34 municipal legislative body or sustain the objecting petition. The order
35 of the court is final and conclusive upon all parties to the proceeding
36 and parties who might have appeared at the hearing, subject only to the
37 right of direct appeal. All questions that were presented or might have
38 been presented are considered to have been adjudicated by the order of
39 the court, and no collateral attack upon the decision of the municipal
40 legislative body or order of the court is permitted.

41 (f) If the court sustains the petition, or if the petition is sustained on
42 appeal, the municipal legislative body shall set the rates and charges in

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1 accordance with the decision of the court.

2 SECTION 4. IC 8-1.5-3-8.3 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: **Sec. 8.3. (a) This section applies to a utility that
5 provides service to users for property located outside the corporate
6 boundaries of the municipality.**

7 **(b) As used in this section:**

8 **(1) "utility"; and**

9 **(2) "works";**

10 **have the meaning set forth for those terms in section 8.1 of this
11 chapter.**

12 **(c) This subsection applies if a municipal legislative body adopts
13 an ordinance under section 8.1 of this chapter that is in effect on
14 March 31, 2012, and that imposes rates and charges on users of the
15 works for service to property located outside the corporate
16 boundaries of the municipality that exceed by more than fifteen
17 percent (15%), but not more than fifty percent (50%), the rates
18 and charges imposed on users for service to property located
19 within the corporate boundaries of the municipality. Not later than
20 September 30, 2012, the municipality may petition the commission
21 to approve the percentage difference between rates and charges
22 established in the ordinance for property within and property
23 outside the corporate boundaries. In the petition, the municipality
24 shall set forth the following:**

25 **(1) The date on which the ordinance took effect.**

26 **(2) The percentage difference between rates and charges
27 imposed on users of the works for service to property located
28 outside the corporate boundaries of the municipality and to
29 property located within the corporate boundaries of the
30 municipality.**

31 **(3) Whether the works that is the subject of the ordinance is
32 a water utility works, a wastewater utility works, or both a
33 water and wastewater utility works.**

34 **(d) If the commission determines that a petition filed under
35 subsection (c) satisfies the requirements of subsection (c), the
36 commission shall approve the petition, including the percentage
37 difference between rates and charges described in subsection (c)(2).
38 If the municipality that filed the petition adopts an ordinance
39 under section 8.1 of this chapter after March 31, 2012, that imposes
40 rates and charges on users of the works for service to property
41 located outside the corporate boundaries of the municipality that
42 exceed the rates and charges imposed on users for service to**

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1 property located within the corporate boundaries of the
 2 municipality by more than the sum of the percentage difference
 3 approved by the commission under this subsection plus fifteen
 4 percent (15%), either or both of the following may petition the
 5 commission to review and adjust, if necessary, the rates and
 6 charges imposed on users for service to property located outside
 7 the corporate boundaries of the municipality:

8 (1) The municipality.

9 (2) The lesser of:

10 (A) ten percent (10%) of all; or

11 (B) twenty-five (25);

12 users whose property is located outside the corporate
 13 boundaries of the municipality.

14 A petition filed under this subsection must be filed not more than
 15 fourteen (14) days after the date on which the ordinance referred
 16 to in this subsection is adopted. A petition may not be filed under
 17 this subsection if a petition has already been filed under section 8.2
 18 of this chapter appealing the same rates and charges.

19 (e) If the commission determines that a petition filed under
 20 subsection (c) does not satisfy the requirements of subsection (c),
 21 the commission shall disapprove the petition.

22 (f) As used in subsection (g), "percentage difference" means the
 23 percentage difference between rates and charges imposed on:

24 (1) users of the works for service to property located outside
 25 the corporate boundaries of a municipality; and

26 (2) users of the works for service to property located within
 27 the corporate boundaries of the municipality.

28 (g) If the legislative body of a municipality, other than a
 29 municipality subject to subsection (d), adopts an ordinance under
 30 section 8.1 of this chapter after March 31, 2012, that imposes rates
 31 and charges on users of the works for service to property located
 32 outside the corporate boundaries of the municipality that exceed
 33 the rates and charges imposed on users for service to property
 34 located within the corporate boundaries of the municipality by
 35 more than:

36 (1) fifteen percent (15%); or

37 (2) if an ordinance in effect on March 31, 2012, imposed
 38 different rates and charges for service to property located
 39 outside or within the corporate boundaries of the
 40 municipality, the sum of:

41 (A) the percentage difference in effect on March 31, 2012;
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- 1 **(B) the increase in rates and charges imposed on users for**
 2 **service to property located within the corporate**
 3 **boundaries of the municipality, if any, multiplied by one**
 4 **hundred fifteen percent (115%);**
 5 **either or both of the potential petitioners identified in subsection**
 6 **(h) may petition the commission to review and adjust, if necessary,**
 7 **the rates and charges imposed on users for service to property**
 8 **located outside the corporate boundaries of the municipality.**
 9 **(h) In a situation described in subsection (g), a petition may be**
 10 **filed by either or both of the following:**
 11 **(1) The municipality.**
 12 **(2) The lesser of:**
 13 **(A) ten percent (10%) of all; or**
 14 **(B) twenty-five (25);**
 15 **users whose property is located outside the corporate**
 16 **boundaries of the municipality.**
 17 **A petition must be filed not more than fourteen (14) days after the**
 18 **date on which the ordinance is adopted. A petition may not be filed**
 19 **under this subsection if a petition has already been filed under**
 20 **section 8.2 of this chapter appealing the same rates and charges.**
 21 **(i) The filing of a petition with the commission under**
 22 **subsections (d) or (h) stays the ordinance adopted under section**
 23 **8.1 of this chapter. The rates and charges in effect before the**
 24 **adoption of the ordinance remain in effect until:**
 25 **(1) the commission approves or disapproves the petition, or**
 26 **the petition is dismissed under subsection (j); and**
 27 **(2) if applicable, the commission adjusts the rates and charges**
 28 **imposed by the ordinance on users whose property is located**
 29 **outside the corporate boundaries of the municipality.**
 30 **(j) The commission shall prescribe the form and manner in**
 31 **which a petition must be filed under subsections (d) or (h). The**
 32 **burden of proof to demonstrate that the proposed rates and**
 33 **charges are reasonable and just is on the municipality, regardless**
 34 **of who petitions the commission under subsection (d) or (h). If the**
 35 **commission fails to approve or disapprove a petition within one**
 36 **hundred twenty (120) days after the petition is filed in the form and**
 37 **manner prescribed by the commission, the petition is dismissed,**
 38 **and the ordinance adopted under section 8.1 of this chapter takes**
 39 **effect. A petition is automatically disapproved if the petitioner has**
 40 **filed a petition under section 8.2 of this chapter with respect to the**
 41 **same rate ordinance.**
 42 **(k) If the commission determines that the difference between the**

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1 rates and charges imposed on users for service to property located
2 outside the corporate boundaries of the municipality and the rates
3 and charges imposed on users for service to property located
4 within the corporate boundaries of the municipality is not
5 nondiscriminatory, reasonable, and just under section 8 of this
6 chapter, the commission may:

- 7 (1) establish reasonable and just rates and charges for users
- 8 for service to property located outside the corporate
- 9 boundaries of the municipality; and
- 10 (2) order the municipal legislative body to adopt an ordinance
- 11 imposing the reasonable and just rates and charges.

12 However, with respect to rates and charges that are the subject of
13 a petition filed under subsection (d), the commission may not
14 establish rates and charges such that the percentage difference
15 between rates and charges established by the commission is less
16 than the percentage difference established in subsection (c) and
17 approved by the commission under subsection (d).

- 18 (l) This section does not:
- 19 (1) authorize the commission to review or revise rates and
- 20 charges imposed on users for service to property located
- 21 within the corporate boundaries of the municipality; or
- 22 (2) otherwise return or subject a utility to the jurisdiction of
- 23 the commission for the approval of rates and charges.

24 (m) The commission may adopt rules under IC 4-22-2 to
25 implement this section.

26 (n) The commission may not impose a fee with respect to
27 proceedings under this section.

28 SECTION 5. IC 36-9-23-26, AS AMENDED BY P.L.114-2008,
29 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 UPON PASSAGE]: Sec. 26. (a) After the introduction of the ordinance
31 establishing fees under section 25 of this chapter, but before it is finally
32 adopted, the municipal legislative body shall hold a public hearing at
33 which users of the sewage works, owners of property served or to be
34 served by the works, and other interested persons may be heard
35 concerning the proposed fees. Notice of the hearing, setting forth the
36 proposed schedule of fees, shall be:

- 37 (1) published in accordance with IC 5-3-1;
- 38 (2) mailed to owners of vacant or unimproved property if the
- 39 ordinance includes a fee for sewer availability to vacant or
- 40 unimproved property; and
- 41 (3) mailed to users of the sewage works **for service to property**
- 42 located outside the municipality's corporate boundaries.

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1 The notice may be mailed in any form so long as the notice of the
2 hearing is conspicuous. The hearing may be adjourned from time to
3 time. **Notice mailed under subdivision (3) must include the**
4 **statement required by IC 8-1.5-3-8.1(c).**

5 (b) After the hearing, the municipal legislative body shall adopt the
6 ordinance establishing the fees, either as originally introduced or as
7 modified. A copy of the schedule of fees adopted shall be kept on file
8 and available for public inspection in the offices of the board and the
9 municipal clerk. **An ordinance adopted after March 31, 2012, must**
10 **state in plain language the percentage difference between the rates**
11 **and charges imposed on:**

12 **(1) users of the works for service to property located outside**
13 **the corporate boundaries of the municipality; and**

14 **(2) users of the works for service to property located within**
15 **the corporate boundaries of the municipality;**

16 **as required by IC 8-1.5-3-8.1(d).**

17 (c) Subject to section 37 of this chapter, the fees established for any
18 class of users or property shall be extended to cover any additional
19 property that is subsequently served and falls within the same class,
20 without any hearing or notice.

21 (d) The municipal legislative body may change or readjust the fees
22 in the same manner by which they were established.

23 (e) Fees collected under this chapter are considered revenues of the
24 sewage works.

25 SECTION 6. IC 36-9-23-26.1 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26.1. (a) Owners
27 of property connected or to be connected to and served by the sewage
28 works authorized under this chapter may file a written petition
29 objecting to the rates and charges of the sewage works so long as:

30 (1) the petition contains the names and addresses of the
31 petitioners;

32 (2) the petitioners attended the public hearing provided under
33 section 26 of this chapter;

34 (3) the written petition is filed with the municipal legislative body
35 within five (5) days after the ordinance establishing the rates and
36 charges is adopted under section 26 of this chapter; ~~and~~

37 (4) the written petition states specifically the ground or grounds
38 of objection; **and**

39 **(5) the petitioners have not filed a petition with the**
40 **commission under IC 8-1.5-3-8.3 appealing the same rates and**
41 **charges of the utility.**

42 (b) Unless the objecting petition is abandoned, the municipal clerk

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1 shall file in the office of the clerk of the circuit or superior court of the
 2 county a copy of the rate ordinance or ordinances together with the
 3 petition. The court shall then set the matter for hearing at the earliest
 4 date possible, which must be within twenty (20) days after the filing of
 5 the petition with the court. The court shall send notice of the hearing
 6 by certified mail to the municipality and to the first signer of the
 7 petition at the address shown on the petition. All interested parties shall
 8 appear in the court without further notice, and the municipality may not
 9 conduct any further proceedings concerning the rates and charges until
 10 the matters presented by the petition have been heard and determined
 11 by the court.

12 (c) At the discretion and upon direction of the court, the petitioners
 13 shall file with the petition a bond in the sum and with the security fixed
 14 by the court. The bond must be conditioned on the petitioners' payment
 15 of all or part of the costs of the hearing and any damages awarded to
 16 the municipality if the petition is denied, as ordered by the court.

17 (d) Upon the date fixed in the notice, the court shall, without a jury,
 18 hear the evidence produced. The court may confirm the decision of the
 19 municipal legislative body or sustain the objecting petition. The order
 20 of the court is final and conclusive upon all parties to the proceeding
 21 and parties who might have appeared at the hearing, subject only to the
 22 right of direct appeal. All questions that were presented or might have
 23 been presented are considered to have been adjudicated by the order of
 24 the court, and no collateral attack upon the decision of the municipal
 25 legislative body or order of the court is permitted.

26 (e) If the court sustains the petition, or if it is sustained on appeal,
 27 the municipal legislative body shall set the rates and charges in
 28 accordance with the decision of the court.

29 **SECTION 7. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1126, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 7, delete "has".

Page 1, line 7, strike "been taken out of" and insert "**is not under**".

Page 4, line 39, delete "until the commission:" and insert "**until:**

(1) the commission approves or disapproves the petition, or the petition is considered approved under subsection (e); and (2) if applicable, the commission adjusts the rates and charges imposed by the ordinance on users whose property is located outside the corporate boundaries of the municipality."

Page 4, delete lines 40 through 42.

Page 5, delete lines 1 through 2.

Page 5, line 27, after "return" insert "**or subject**".

Page 5, after line 30, begin a new paragraph and insert:

"SECTION 4. IC 36-9-23-26, AS AMENDED BY P.L.114-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

- (1) published in accordance with IC 5-3-1;
- (2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and
- (3) mailed to users of the sewage works **for service to property** located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time. **Notice mailed under subdivision (3) must include the statement required by IC 8-1.5-3-8.1(c).**

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk. **The ordinance must state in plain language the**

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percentage difference between the rates and charges imposed on:
(1) users of the works for service to property located outside the corporate boundaries of the municipality; and
(2) users of the works for service to property located within the corporate boundaries of the municipality;
as required by IC 8-1.5-3-8.1(d).

(c) Subject to section 37 of this chapter, the fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

SECTION 5. IC 36-9-23-26.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 26.1. (a) Owners of property connected or to be connected to and served by the sewage works authorized under this chapter may file a written petition objecting to the rates and charges of the sewage works so long as:

- (1) the petition contains the names and addresses of the petitioners;
- (2) the petitioners attended the public hearing provided under section 26 of this chapter;
- (3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 26 of this chapter; ~~and~~
- (4) the written petition states specifically the ground or grounds of objection; ~~and~~
- (5) the petitioners have not filed a petition with the commission under IC 8-1.5-3-8.3 appealing the same rates and charges of the utility.**

(b) Unless the objecting petition is abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the rate ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first signer of the petition at the address shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the rates and charges until the matters presented by the petition have been heard and determined

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by the court.

(c) At the discretion and upon direction of the court, the petitioners shall file with the petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(d) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(e) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body shall set the rates and charges in accordance with the decision of the court."

and when so amended that said bill do pass.

(Reference is to HB 1126 as introduced.)

WOLKINS, Chair

Committee Vote: yeas 6, nays 3.

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Technology, to which was referred House Bill No. 1126, 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:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1.5-3-8, AS AMENDED BY P.L.172-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) A municipality owning a utility under this chapter shall furnish reasonably adequate services and facilities.

(b) The rates and charges made by a municipality for a service rendered or to be rendered, either directly or in connection therewith, must be nondiscriminatory, reasonable, and just.

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(c) "Reasonable and just rates and charges for services" means rates and charges that produce sufficient revenue to:

(1) pay all the legal and other necessary expenses incident to the operation of the utility, including:

(A) maintenance costs;

(B) operating charges;

(C) upkeep;

(D) repairs;

(E) depreciation;

(F) interest charges on bonds or other obligations, including leases; and

(G) costs associated with the acquisition of utility property under IC 8-1.5-2;

(2) provide a sinking fund for the liquidation of bonds or other obligations, including leases;

(3) provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;

(4) provide adequate money for working capital;

(5) provide adequate money for making extensions and replacements to the extent not provided for through depreciation in subdivision (1); and

(6) provide money for the payment of any taxes that may be assessed against the utility.

(d) It is the intent of this section that the rates and charges produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Rates and charges too low to meet these requirements are unlawful.

(e) The board may recommend to the municipal legislative body rates and charges sufficient to include a reasonable return on the utility plant of the municipality.

(f) Rates and charges established under this section are subject to the approval of:

(1) the municipal legislative body by ordinance; and

(2) the commission, in accordance with the procedures set forth in IC 8-1-2.

The commission shall approve rates and charges that are sufficient, in addition to the cash revenue requirements set forth in subsection (c), to include a reasonable return on the utility plant of the municipality if the legislative body so elects.

(g) Except for a municipally owned utility taxed under IC 6-1.1-8-3,

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the commission shall approve rates and charges sufficient to compensate the municipality for taxes that would be due the municipality on the utility property were it privately owned. These rates and charges in lieu of taxes may be transferred to the municipal general fund, if the legislative body so elects.

(h) The commission shall grant a request that an increase in rates and charges not be effective until after the occurrence of a future event if the legislative body so requests.

(i) A municipality that acquires and operates a utility under IC 8-1.5-2 by exercising the power of eminent domain may not impose a special rate, charge, surcharge, or other fee, other than rates and charges approved under this section or otherwise authorized by law, on the customers of the utility in order to pay for the costs associated with acquiring the utility through the exercise of the power of eminent domain.

(j) As used in this subsection, "works" has the meaning set forth in section 8.1(b) of this chapter. For purposes of determining whether the percentage difference between the rates and charges imposed on:

(1) users of a works for service to property located outside the corporate boundaries of a municipality; and

(2) users of the same works for service to property located within the corporate boundaries of the municipality;

are nondiscriminatory, reasonable, and just, the commission may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality, including the rates and charges that users outside the corporate boundaries of the municipality would incur to establish a separate works."

Page 2, line 16, delete "the users described in subdivision".

Page 2, line 17, delete "(3) do not file".

Page 2, line 18, delete "ordinance." and insert "**ordinance has not been filed.**".

Page 3, line 18, delete "the petitioners have not filed".

Page 3, line 18, after "petition" insert "**has not been filed**".

Page 4, line 21, delete "ten" and insert "**fifteen percent (15%)**".

Page 4, line 22, delete "percent (10%)".

Page 4, line 35, after "adopted." insert "**A petition may not be filed under this section if a petition has already been filed under section 8.2 of this chapter appealing the same rates and charges.**".

Page 5, line 10, delete "considered approved." and insert "**dismissed, and the ordinance adopted under section 8.1 of this**

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chapter takes effect."

Page 5, line 14, after "that" insert "**the difference between**".

Page 5, line 16, delete "are not reasonable" and insert "**and the rates and charges imposed on users for service to property located within the corporate boundaries of the municipality is not nondiscriminatory, reasonable,**".

Page 5, line 17, delete "just," and insert "**just under section 8 of this chapter,**".

Page 5, between lines 30 and 31, begin a new paragraph and insert:

"(i) The commission may not impose a fee with respect to proceedings under this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1126 as printed January 25, 2012.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1126 be amended to read as follows:

Replace the effective dates in SECTIONS 1 through 6 with "[EFFECTIVE UPON PASSAGE]".

Page 4, line 17, delete "The ordinance" and insert "**An ordinance adopted after March 31, 2012,**".

Page 6, between lines 11 and 12, begin a new paragraph and insert:

"(c) This subsection applies if a municipal legislative body adopts an ordinance under section 8.1 of this chapter that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifteen percent (15%), but not more than fifty percent (50%), the rates and charges imposed on users for service to property located within the corporate boundaries of the municipality. Not later than September 30, 2012, the municipality may petition the commission to approve the percentage difference between rates and charges established in the ordinance for property within and property outside the corporate boundaries. In the petition, the municipality shall set forth the following:

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- (1) The date on which the ordinance took effect.
- (2) The percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and to property located within the corporate boundaries of the municipality.
- (3) Whether the works that is the subject of the ordinance is a water utility works, a wastewater utility works, or both a water and wastewater utility works.

(d) If the commission determines that a petition filed under subsection (c) satisfies the requirements of subsection (c), the commission shall approve the petition, including the percentage difference between rates and charges described in subsection (c)(2). If the municipality that filed the petition adopts an ordinance under section 8.1 of this chapter after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users for service to property located within the corporate boundaries of the municipality by more than the sum of the percentage difference approved by the commission under this subsection plus fifteen percent (15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users for service to property located outside the corporate boundaries of the municipality:

- (1) The municipality.
- (2) The lesser of:
 - (A) ten percent (10%) of all; or
 - (B) twenty-five (25);users whose property is located outside the corporate boundaries of the municipality.

A petition filed under this subsection must be filed not more than fourteen (14) days after the date on which the ordinance referred to in this subsection is adopted. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter appealing the same rates and charges.

(e) If the commission determines that a petition filed under subsection (c) does not satisfy the requirements of subsection (c), the commission shall disapprove the petition."

Page 6, line 12, delete "(c) If the municipal legislative body" and insert "(f) If the legislative body of a municipality, other than a municipality subject to subsection (d),".



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Page 6, line 13, after "chapter" insert "**after March 31, 2012,**".
Page 6, line 30, after "this" delete "section" and insert "**subsection**".
Page 6, line 32, delete "(d)" and insert "**(g)**".
Page 6, line 33, delete "(c)" and insert "**(d) or (f)**".
Page 6, line 37, delete "considered approved" and insert "**dismissed**".
Page 6, line 37, delete "(e);" and insert "**(h);**".
Page 6, line 41, delete "(e)" and insert "**(h)**".
Page 6, line 42, delete "(c)." and insert "**(d) or (f).**".
Page 7, line 3, delete "(c)." and insert "**(d) or (f).**".
Page 7, line 11, delete "(f)" and insert "**(i)**".
Page 7, between lines 22 and 23, begin a new line blocked left and insert:
"However, with respect to rates and charges that are the subject of a petition filed under subsection (d), the commission may not establish rates and charges such that the percentage difference between rates and charges established by the commission is less than the percentage difference established in subsection (c) and approved by the commission under subsection (d)."
Page 7, line 23, delete "(g)" and insert "**(j)**".
Page 7, line 29, delete "(h)" and insert "**(k)**".
Page 7, line 31, delete "(i)" and insert "**(l)**".
Page 8, line 14, delete "The ordinance" and insert "**An ordinance adopted after March 31, 2012,**".
Page 9, after line 32, begin a new paragraph and insert:
"SECTION 7. An emergency is declared for this act."
(Reference is to EHB 1126 as printed February 24, 2012.)

MERRITT

SENATE MOTION

Madam President: I move that Engrossed House Bill 1126 be amended to read as follows:

Page 4, line 10, delete "8.3(c)" and insert "**8.3(d)**".
Page 6, between lines 11 and 12, begin a new paragraph and insert:
"(c) As used in this section, "percentage difference" means the percentage difference between rates and charges imposed on:
(1) users of the works for service to property located outside the corporate boundaries of a municipality; and

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(2) users of the works for service to property located within the corporate boundaries of the municipality."

Page 6, line 12, delete "(c)" and insert "**(d)**".

Page 6, line 13, delete "rates and charges on users" and insert "**rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users for service to property located within the corporate boundaries of the municipality by more than:**

(1) fifteen percent (15%); or

(2) if an ordinance in effect on March 31, 2012, imposed different rates and charges for service to property located outside or within the corporate boundaries of the municipality, the sum of:

(A) the percentage difference in effect on March 31, 2012; plus

(B) the increase in rates and charges imposed on users for service to property located within the corporate boundaries of the municipality, if any, multiplied by one hundred fifteen percent (115%);"

Page 6, delete lines 14 through 17.

Page 6, line 18, delete "municipality,".

Page 6, line 18, beginning with "either" begin a new line blocked left.

Page 6, line 18, delete "following" and insert "**potential petitioners identified in subsection (e)**".

Page 6, line 21, delete "municipality:" and insert "**municipality.**".

Page 6, between lines 21 and 22, begin a new paragraph and insert: "**(e) In a situation described in subsection (d), a petition may be filed by either or both of the following:**"

Page 6, line 24, delete "of;" and insert "**of all;**".

Page 6, line 32, delete "(d)" and insert "**(f)**".

Page 6, line 32, delete "subsection" and insert "**subsections**".

Page 6, line 33, delete "(c)" and insert "**(d) and (e)**".

Page 6, line 37, delete "approved" and insert "**disapproved**".

Page 6, line 37, delete "(e);" and insert "**(g);**".

Page 6, line 41, delete "(e)" and insert "**(g)**".

Page 6, line 42, delete "subsection (c)." and insert "**subsections (d) and (e).**".

Page 7, line 3, delete "(c)." and insert "**(e).**".

Page 7, line 11, delete "(f)" and insert "**(h)**".

Page 7, line 23, delete "(g)" and insert "**(i)**".

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Page 7, line 29, delete "(h)" and insert "**(j)**".

Page 7, line 31, delete "(i)" and insert "**(k)**".

(Reference is to EHB 1126 as printed February 24, 2012.)

YOUNG R MICHAEL

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