



January 25, 2012

HOUSE BILL No. 1126

DIGEST OF HB 1126 (Updated January 24, 2012 11:28 am - DI 69)

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 on the users. Requires the IURC to prescribe the form and content of the petition. Provides that a petition is considered approved if the IURC does not approve or disapprove the petition within 120 days. Authorizes the IURC to adopt rules.

Effective: July 1, 2012.

Frizzell

January 9, 2012, read first time and referred to Committee on Environmental Affairs.
January 25, 2012, amended, reported — Do Pass.

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HB 1126—LS 7018/DI 101+



January 25, 2012

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.

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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 8-1.5-3-8.1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8.1. (a) **As used in this**
 3 section, ~~applies "utility" refers to a~~ **applies "utility" refers to a** municipally owned:
 4 (1) water ~~utilities~~ **utility**;
 5 (2) **wastewater utility**; or
 6 (3) **combined water and wastewater utility**;
 7 that ~~have been taken out of~~ **is not under** the jurisdiction of the
 8 commission for the approval of rates and charges.
 9 (b) **As used in this section, "works" refers to water or**
 10 **wastewater utility works.**
 11 ~~(b)~~ (c) After the introduction of the ordinance establishing the rates
 12 and charges under section 8 of this chapter, but before the ordinance is
 13 finally adopted, the municipal legislative body shall hold a public
 14 hearing at which users of the ~~waterworks,~~ **works**, owners of property
 15 served or to be served by the ~~waterworks,~~ **works**, and other interested
 16 persons may be heard concerning the proposed rates and charges.
 17 Notice of the hearing, setting forth the proposed schedule of rates and

HB 1126—LS 7018/DI 101+



- 1 charges, shall be:
- 2 (1) published in accordance with IC 5-3-1 (IC 5-3-1-1 through
- 3 IC 5-3-1-9);
- 4 (2) mailed to owners of vacant or unimproved property if the
- 5 ordinance includes a fee for water **or wastewater** service to
- 6 vacant or unimproved property; and
- 7 (3) mailed to users ~~of the waterworks~~ **of the works for service to**
- 8 **property** located outside the municipality's corporate boundaries.
- 9 The notice may be mailed in any form so long as the notice of hearing
- 10 is conspicuous. The hearing may be adjourned from time to time.
- 11 **Notice mailed under subdivision (3) must include a statement that,**
- 12 **following adoption of the ordinance, the users described in**
- 13 **subdivision (3) may be entitled to petition the commission under**
- 14 **section 8.3 of this chapter to review and adjust the rates and**
- 15 **charges imposed on the users if the conditions described in section**
- 16 **8.3(c) of this chapter apply and if the users described in subdivision**
- 17 **(3) do not file a petition under section 8.2 of this chapter with**
- 18 **respect to the same rate ordinance.**
- 19 (c) (d) After the hearing, the municipal legislative body shall adopt
- 20 the ordinance establishing the rates and charges, either as originally
- 21 introduced or as modified. A copy of the schedule of rates and charges
- 22 adopted shall be kept on file and available for public inspection in the
- 23 offices of the board and the municipal clerk. **The ordinance must**
- 24 **state in plain language the percentage difference between the rates**
- 25 **and charges imposed on:**
- 26 **(1) users of the works for service to property located outside**
- 27 **the corporate boundaries of the municipality; and**
- 28 **(2) users of the works for service to property located within**
- 29 **the corporate boundaries of the municipality.**
- 30 (d) (e) The rates and charges established for any class of users or
- 31 property shall be extended to cover any additional property that is
- 32 subsequently served and falls within the same class, without any
- 33 hearing or notice.
- 34 (e) (f) The municipal legislative body may change or readjust the
- 35 rates and charges in the same manner as they were established.
- 36 (f) (g) Rates and charges collected under this chapter are considered
- 37 revenues of the ~~waterworks~~ **utility.**
- 38 SECTION 2. IC 8-1.5-3-8.2 IS AMENDED TO READ AS
- 39 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8.2. (a) **As used in this**
- 40 **section: applies to all municipally owned water utilities that have been**
- 41 **taken out of the jurisdiction of the commission for the approval of rates**
- 42 **and charges.**

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1 (1) "utility"; and
 2 (2) "works";
 3 **have the meaning set forth for those terms in section 8.1 of this**
 4 **chapter.**

5 (b) Owners of property connected or to be connected to and served
 6 by the ~~waterworks~~ **works** authorized under this chapter may file a
 7 written petition objecting to the rates and charges of the ~~waterworks~~
 8 **utility** so long as:

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

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

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

38 (e) Upon the date fixed in the notice, the court shall, without a jury,
 39 hear the evidence produced. The court may confirm the decision of the
 40 municipal legislative body or sustain the objecting petition. The order
 41 of the court is final and conclusive upon all parties to the proceeding
 42 and parties who might have appeared at the hearing, subject only to the

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1 right of direct appeal. All questions that were presented or might have
 2 been presented are considered to have been adjudicated by the order of
 3 the court, and no collateral attack upon the decision of the municipal
 4 legislative body or order of the court is permitted.

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

8 SECTION 3. IC 8-1.5-3-8.3 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2012]: **Sec. 8.3. (a) This section applies to a utility that provides
 11 service to users for property located outside the corporate
 12 boundaries of the municipality.**

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

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

15 **(2) "works";**

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

18 **(c) If the municipal legislative body adopts an ordinance under
 19 section 8.1 of this chapter that imposes rates and charges on users
 20 of the works for service to property located outside the corporate
 21 boundaries of the municipality that exceed by more than ten
 22 percent (10%) the rates and charges imposed on users for service
 23 to property located within the corporate boundaries of the
 24 municipality, either or both of the following may petition the
 25 commission to review and adjust, if necessary, the rates and
 26 charges imposed on users for service to property located outside
 27 the corporate boundaries of the municipality:**

28 **(1) The municipality.**

29 **(2) The lesser of:**

30 **(A) ten percent (10%) of; or**

31 **(B) twenty-five (25);**

32 **users whose property is located outside the corporate
 33 boundaries of the municipality.**

34 **A petition must be filed not more than fourteen (14) days after the
 35 date on which the ordinance is adopted.**

36 **(d) The filing of a petition with the commission under subsection
 37 (c) stays the ordinance adopted under section 8.1 of this chapter.
 38 The rates and charges in effect before the adoption of the
 39 ordinance remain in effect until:**

40 **(1) the commission approves or disapproves the petition, or
 41 the petition is considered approved under subsection (e); and**

42 **(2) if applicable, the commission adjusts the rates and charges**

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1 **imposed by the ordinance on users whose property is located**
2 **outside the corporate boundaries of the municipality.**
3 **(e) The commission shall prescribe the form and manner in**
4 **which a petition must be filed under subsection (c). The burden of**
5 **proof to demonstrate that the proposed rates and charges are**
6 **reasonable and just is on the municipality, regardless of who**
7 **petitions the commission under subsection (c). If the commission**
8 **fails to approve or disapprove a petition within one hundred**
9 **twenty (120) days after the petition is filed in the form and manner**
10 **prescribed by the commission, the petition is considered approved.**
11 **A petition is automatically disapproved if the petitioner has filed**
12 **a petition under section 8.2 of this chapter with respect to the same**
13 **rate ordinance.**
14 **(f) If the commission determines that the rates and charges**
15 **imposed on users for service to property located outside the**
16 **corporate boundaries of the municipality are not reasonable and**
17 **just, the commission may:**
18 **(1) establish reasonable and just rates and charges for users**
19 **for service to property located outside the corporate**
20 **boundaries of the municipality; and**
21 **(2) order the municipal legislative body to adopt an ordinance**
22 **imposing the reasonable and just rates and charges.**
23 **(g) This section does not:**
24 **(1) authorize the commission to review or revise rates and**
25 **charges imposed on users for service to property located**
26 **within the corporate boundaries of the municipality; or**
27 **(2) otherwise return or subject a utility to the jurisdiction of**
28 **the commission for the approval of rates and charges.**
29 **(h) The commission may adopt rules under IC 4-22-2 to**
30 **implement this section.**
31 **SECTION 4. IC 36-9-23-26, AS AMENDED BY P.L.114-2008,**
32 **SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
33 **JULY 1, 2012]: Sec. 26. (a) After the introduction of the ordinance**
34 **establishing fees under section 25 of this chapter, but before it is finally**
35 **adopted, the municipal legislative body shall hold a public hearing at**
36 **which users of the sewage works, owners of property served or to be**
37 **served by the works, and other interested persons may be heard**
38 **concerning the proposed fees. Notice of the hearing, setting forth the**
39 **proposed schedule of fees, shall be:**
40 **(1) published in accordance with IC 5-3-1;**
41 **(2) mailed to owners of vacant or unimproved property if the**
42 **ordinance includes a fee for sewer availability to vacant or**

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1 unimproved property; and

2 (3) mailed to users of the sewage works **for service to property**
3 located outside the municipality's corporate boundaries.

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

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

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

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

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

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

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

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

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

32 (1) the petition contains the names and addresses of the
33 petitioners;

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

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

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

41 **(5) the petitioners have not filed a petition with the**
42 **commission under IC 8-1.5-3-8.3 appealing the same rates and**

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1 **charges of the utility.**
2 (b) Unless the objecting petition is abandoned, the municipal clerk
3 shall file in the office of the clerk of the circuit or superior court of the
4 county a copy of the rate ordinance or ordinances together with the
5 petition. The court shall then set the matter for hearing at the earliest
6 date possible, which must be within twenty (20) days after the filing of
7 the petition with the court. The court shall send notice of the hearing
8 by certified mail to the municipality and to the first signer of the
9 petition at the address shown on the petition. All interested parties shall
10 appear in the court without further notice, and the municipality may not
11 conduct any further proceedings concerning the rates and charges until
12 the matters presented by the petition have been heard and determined
13 by the court.
14 (c) At the discretion and upon direction of the court, the petitioners
15 shall file with the petition a bond in the sum and with the security fixed
16 by the court. The bond must be conditioned on the petitioners' payment
17 of all or part of the costs of the hearing and any damages awarded to
18 the municipality if the petition is denied, as ordered by the court.
19 (d) Upon the date fixed in the notice, the court shall, without a jury,
20 hear the evidence produced. The court may confirm the decision of the
21 municipal legislative body or sustain the objecting petition. The order
22 of the court is final and conclusive upon all parties to the proceeding
23 and parties who might have appeared at the hearing, subject only to the
24 right of direct appeal. All questions that were presented or might have
25 been presented are considered to have been adjudicated by the order of
26 the court, and no collateral attack upon the decision of the municipal
27 legislative body or order of the court is permitted.
28 (e) If the court sustains the petition, or if it is sustained on appeal,
29 the municipal legislative body shall set the rates and charges in
30 accordance with the decision of the court.

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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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(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.

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