# CONFERENCE COMMITTEE REPORT
# DIGEST FOR EHB 1126

**Citations Affected:** IC 8-1.5-3; IC 13-26-4-6.1; IC 36-9-23.

**Synopsis:** Water and wastewater issues. Conference committee report for EHB 1126. 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 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. Provides that certain requirements for trustees of a regional sewage district apply only to a district established in response to an agreed order entered into after December 31, 1982. **(This conference committee report deletes and reinserts the contents of EHB 1126 as reprinted February 29, 2012, with the following changes: (1) Changes certain references to "difference between rates and charges" to "percentage difference between rates and charges". (2) Removes IC 8-1.5-3-8 defining "rates and charges" and relocates provisions concerning the IURC's determination of whether the percentage difference between extraterritorial and municipal rates and charges is nondiscriminatory, reasonable, and just to new IC 8-1.5-8.3(h). (3) For purposes of making the determination, removes language including the consideration of rates and charges that extraterritorial users would incur to establish a separate works and specifies that the IURC may not considers connection fees or capital surcharges specifically designated to pay for main extensions. (4) Adds cross references to IC 36-9-23 (municipal sewage works) to clarify the extraterritorial rates and charges that may be reviewed by the IURC. (5) Establishes two triggers for a municipality or users to petition the IURC to review extraterritorial water or wastewater rates and charges: (A) For a municipality that imposes extraterritorial rates that exceed municipal rates by more than 15% but not more than 50%, the sum of the percentage difference plus 15%. (B) For all other municipalities, extraterritorial rates and charges that exceed municipal rates and charges by more than 15%. (6) Exempts a municipality whose higher extraterritorial rates and charges were sustained on final judgment or appeal by a court from the requirement to petition the IURC for approval of the percentage difference by which the extraterritorial rates and charges exceed municipal rates and charges. (7) Removes language inserted by MO112607. (8) Provides that certain requirements for trustees of a regional sewage district apply only**

**to a district established in response to an agreed order entered into after December 31, 1982.)**

**Effective:** Upon passage; July 1, 2012.

| Adopted | Rejected |
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# CONFERENCE COMMITTEE REPORT

***MR. SPEAKER:***

***Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1126 respectfully reports that said two committees have conferred and agreed as follows to wit:***

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 8-1.5-3-8.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.1. (a) **As used in** this section, ~~applies~~ **"utility" refers** to ~~all~~ **a** municipally owned:

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

**(2) wastewater utility; or**

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

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

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

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

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

(2) mailed to owners of vacant or unimproved property if the

ordinance includes a fee for water **or wastewater** service to vacant or unimproved property; and

(3) mailed to users ~~of the waterworks~~ **of the 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 hearing is conspicuous. The hearing may be adjourned from time to time. **Notice mailed under subdivision (3) must include a statement that, following adoption of the ordinance, the users described in subdivision (3) may be entitled to petition the commission under section 8.3 of this chapter to review and adjust the rates and charges imposed on the users if a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance has not been filed.**

~~(c)~~ **(d)** After the hearing, the municipal legislative body shall adopt the ordinance establishing the rates and charges, either as originally introduced or as modified. A copy of the schedule of rates and charges adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk. **An ordinance adopted after March 31, 2012, that imposes different rates and charges for service to property located outside the corporate boundaries of the municipality as compared to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges.**

~~(d)~~ **(e)** The rates and charges 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.

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

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

SECTION 2. IC 8-1.5-3-8.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.2. (a) **As used in** this section: ~~applies to all municipally owned water utilities that have been taken out of the jurisdiction of the commission for the approval of rates and charges.~~

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

**(2) "works";**

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

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

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

(2) the petitioners attended the public hearing provided under section 8.1 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 8.1 of this chapter; ~~and~~

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

**(5) a petition has not been filed with the commission under section 8.3 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges of the utility.**

(c) 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 by the court.

(d) 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.

(e) 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.

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

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

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

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

**(2) "works";**

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

**(c) This subsection applies if a municipal legislative body adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 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 of the**

**works 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:**

**(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.**

**If the commission determines that a petition filed under this subsection satisfies the requirements of this subsection, the commission shall approve the petition, including the percentage difference between rates and charges described in subdivision (2). If the commission determines that a petition filed under this subsection does not satisfy the requirements of this subsection, the commission shall disapprove the petition. However, if the percentage difference imposed in the ordinance was the subject of an objecting petition that was filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the percentage difference is considered approved without the filing of a petition under this subsection.**

**(d) If a municipality that files, or that is exempt from filing, a petition under subsection (c) 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 of the works for service to property located within the corporate boundaries of the municipality by more than the sum of the percentage difference approved or considered approved by the commission under subsection (c) 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 of the works 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 of the works 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 a municipal legislative body, other than a municipal legislative body described in subsection (c), 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 of the works for service to property located within the corporate boundaries of the municipality by more than 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 of the works 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 of the works whose property is located outside the corporate boundaries of the municipality.**

**A petition must be filed not more than fourteen (14) days after the date on which the ordinance 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 or under IC 36-9-23-26.1 appealing the same rates and charges.**

**(f) The filing of a petition with the commission under subsection (d) or (e) stays the ordinance adopted under section 8.1 of this chapter or under IC 36-9-23-26. The rates and charges in effect before the adoption of the ordinance remain in effect until:**

**(1) the commission approves or disapproves the petition, or the petition is dismissed under subsection (g); and**

**(2) if applicable, the commission adjusts the rates and charges imposed by the ordinance on users of the works whose property is located outside the corporate boundaries of the municipality.**

**(g) The commission shall prescribe the form and manner in which a petition must be filed under subsection (d) or (e). The burden of proof to demonstrate that the proposed rates and charges are nondiscriminatory, reasonable, and just is on the municipality, regardless of who petitions the commission. If the commission fails to approve or disapprove a petition within one hundred twenty (120) days after the petition is filed in the form and manner prescribed by the commission, the petition is dismissed, and the ordinance adopted under section 8.1 of this chapter or under IC 36-9-23-26 takes effect. A petition is automatically disapproved if the petitioner has filed a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance.**

**(h) For purposes of determining whether 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 the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission:**

**(1) may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality; and**

**(2) may not consider any connection fees or capital surcharges imposed on users of the works for service to property that is located outside the corporate boundaries of the municipality that are specifically designated to pay for the costs associated with main extensions to the users of the works.**

**(i) If the commission determines that the percentage difference between the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is not nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission may:**

**(1) establish nondiscriminatory, reasonable, and just rates and charges for users of the works for service to property located outside the corporate boundaries of the municipality; and**

**(2) order the municipal legislative body to adopt an ordinance imposing the nondiscriminatory, reasonable, and just rates and charges.**

**However, with respect to rates and charges imposed in an ordinance that was the subject of an objecting petition filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, 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 between rates and charges imposed in the ordinance.**

**(j) This section does not:**

**(1) authorize the commission to review or revise rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality; or**

**(2) otherwise return or subject a utility to the jurisdiction of the commission for the approval of rates and charges.**

**(k) The commission may adopt rules under IC 4-22-2 to implement this section.**

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

SECTION 4. IC 13-26-4-6.1, AS ADDED TO THE INDIANA CODE BY HEA 1117-2012, SEC. 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6.1. (a) This section

applies to a district that is:

(1) a countywide district; and

(2) established in response to an agreed order entered into **after December 31, 1982,** by the department and the executive and fiscal bodies of the county.

(b) Not later than December 31, 2012, the parties to an agreed order described in subsection (a)(2) shall amend the agreed order to provide for the appointment of trustees as follows:

(1) Beginning July 1, 2013, at least one (1) appointed trustee must reside in the geographic area that is the subject of the department investigation resulting in the agreed order.

(2) Beginning July 1, 2013, an appointed trustee may not be served by a municipal sewer system.

(3) Beginning July 1, 2013, at least one (1) appointed trustee must be an elected official who represents a political subdivision that has territory in the district.

SECTION 5. IC 36-9-23-26, AS AMENDED BY P.L.114-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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. **An ordinance adopted after March 31, 2012, that imposes different rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality or to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges, 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 6. IC 36-9-23-26.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 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.

1 SECTION 7. **An emergency is declared for this act.**
(Reference is to EHB 1126 as reprinted February 29, 2012.)

# Conference Committee Report
**on**
# Engrossed House Bill 1126

Signed by:

| | |
|---|---|
| Representative Frizzell<br>Chairperson | Senator Merritt |
| Representative Pierce | Senator Randolph |
| **House Conferees** | **Senate Conferees** |