

**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 consider 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.

## 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:

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

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

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

5 The notice may be mailed in any form so long as the notice of hearing  
 6 is conspicuous. The hearing may be adjourned from time to time.

7 **Notice mailed under subdivision (3) must include a statement that,**  
 8 **following adoption of the ordinance, the users described in**  
 9 **subdivision (3) may be entitled to petition the commission under**  
 10 **section 8.3 of this chapter to review and adjust the rates and**  
 11 **charges imposed on the users if a petition under section 8.2 of this**  
 12 **chapter or under IC 36-9-23-26.1 with respect to the same rate**  
 13 **ordinance has not been filed.**

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

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

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

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

49 (3) the written petition is filed with the municipal legislative body  
 50 within five (5) days after the ordinance establishing the rates and  
 51 charges is adopted under section 8.1 of this chapter; ~~and~~

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

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

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

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

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

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

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

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

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

42 **(2) "works";**

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

45 **(c) This subsection applies if a municipal legislative body adopts**  
46 **an ordinance under section 8.1 of this chapter or under**  
47 **IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes**  
48 **rates and charges on users of the works for service to property**  
49 **located outside the corporate boundaries of the municipality that**  
50 **exceed by more than fifteen percent (15%), but not more than fifty**  
51 **percent (50%), the rates and charges imposed on users of the**

1 works for service to property located within the corporate  
 2 boundaries of the municipality. Not later than September 30, 2012,  
 3 the municipality may petition the commission to approve the  
 4 percentage difference between rates and charges established in the  
 5 ordinance for property within and property outside the corporate  
 6 boundaries. In the petition, the municipality shall set forth the  
 7 following:

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

9 (2) The percentage difference between rates and charges  
 10 imposed on users of the works for service to property located  
 11 outside the corporate boundaries of the municipality and to  
 12 property located within the corporate boundaries of the  
 13 municipality.

14 (3) Whether the works that is the subject of the ordinance is  
 15 a water utility works, a wastewater utility works, or both a  
 16 water and wastewater utility works.

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

30 (d) If a municipality that files, or that is exempt from filing, a  
 31 petition under subsection (c) adopts an ordinance under section 8.1  
 32 of this chapter after March 31, 2012, that imposes rates and  
 33 charges on users of the works for service to property located  
 34 outside the corporate boundaries of the municipality that exceed  
 35 the rates and charges imposed on users of the works for service to  
 36 property located within the corporate boundaries of the  
 37 municipality by more than the sum of the percentage difference  
 38 approved or considered approved by the commission under  
 39 subsection (c) plus fifteen percent (15%), either or both of the  
 40 following may petition the commission to review and adjust, if  
 41 necessary, the rates and charges imposed on users of the works for  
 42 service to property located outside the corporate boundaries of the  
 43 municipality:

44 (1) The municipality.

45 (2) The lesser of:

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

47 (B) twenty-five (25);

48 users of the works whose property is located outside the  
 49 corporate boundaries of the municipality.

50 A petition filed under this subsection must be filed not more than  
 51 fourteen (14) days after the date on which the ordinance referred

1 to in this subsection is adopted. A petition may not be filed under  
 2 this subsection if a petition has already been filed under section 8.2  
 3 of this chapter appealing the same rates and charges.

4 (e) If a municipal legislative body, other than a municipal  
 5 legislative body described in subsection (c), adopts an ordinance  
 6 under section 8.1 of this chapter after March 31, 2012, that imposes  
 7 rates and charges on users of the works for service to property  
 8 located outside the corporate boundaries of the municipality that  
 9 exceed the rates and charges imposed on users of the works for  
 10 service to property located within the corporate boundaries of the  
 11 municipality by more than fifteen percent (15%), either or both of  
 12 the following may petition the commission to review and adjust, if  
 13 necessary, the rates and charges imposed on users of the works for  
 14 service to property located outside the corporate boundaries of the  
 15 municipality:

16 (1) The municipality.

17 (2) The lesser of:

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

19 (B) twenty-five (25);

20 users of the works whose property is located outside the  
 21 corporate boundaries of the municipality.

22 A petition must be filed not more than fourteen (14) days after the  
 23 date on which the ordinance is adopted. A petition may not be filed  
 24 under this subsection if a petition has already been filed under  
 25 section 8.2 of this chapter or under IC 36-9-23-26.1 appealing the  
 26 same rates and charges.

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

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

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

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

50 (h) For purposes of determining whether the percentage  
 51 difference between rates and charges imposed on users of the

1 works for service to property located outside the corporate  
 2 boundaries of the municipality and the rates and charges imposed  
 3 on users of the works for service to property located within the  
 4 corporate boundaries of the municipality is nondiscriminatory,  
 5 reasonable, and just under section 8 of this chapter, the  
 6 commission:

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

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

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

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

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

30 However, with respect to rates and charges imposed in an  
 31 ordinance that was the subject of an objecting petition filed under  
 32 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained  
 33 on final judgment or appeal, as applicable, by a court, the  
 34 commission may not establish rates and charges such that the  
 35 percentage difference between rates and charges established by the  
 36 commission is less than the percentage difference between rates  
 37 and charges imposed in the ordinance.

38 (j) This section does not:

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

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

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

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

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

1 applies to a district that is:

- 2 (1) a countywide district; and  
 3 (2) established in response to an agreed order entered into **after**  
 4 **December 31, 1982**, by the department and the executive and  
 5 fiscal bodies of the county.

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

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

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

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

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

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

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

36 (b) After the hearing, the municipal legislative body shall adopt the  
 37 ordinance establishing the fees, either as originally introduced or as  
 38 modified. A copy of the schedule of fees adopted shall be kept on file  
 39 and available for public inspection in the offices of the board and the  
 40 municipal clerk. **An ordinance adopted after March 31, 2012, that**  
 41 **imposes different rates and charges on users of the works for**  
 42 **service to property located outside the corporate boundaries of the**  
 43 **municipality or to property located within the corporate**  
 44 **boundaries of the municipality must state in plain language the**  
 45 **percentage difference between the rates and charges, as required**  
 46 **by IC 8-1.5-3-8.1(d).**

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

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

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

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

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

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

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

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

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

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

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

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

48 (e) If the court sustains the petition, or if it is sustained on appeal,  
49 the municipal legislative body shall set the rates and charges in  
50 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**

**S**igned by:

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Representative Frizzell  
Chairperson

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Senator Merritt

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Representative Pierce

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Senator Randolph

**House Conferees**

**Senate Conferees**