HOUSE BILL No. 1126

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-3.

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.

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Introduced

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:

SECTION 1. IC 8-1.5-3-8.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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~~ **has** been taken out of 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 the conditions described in section 8.3(c) of this chapter apply and if the users described in subdivision (3) do not file a petition under section 8.2 of this chapter with respect to the same rate ordinance.**

~~(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. **The ordinance must state in plain language the 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.

~~(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 JULY 1, 2012]: 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.~~

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(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) the petitioners have not filed a petition with the commission under section 8.3 of this chapter 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

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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 JULY 1, 2012]: **Sec. 8.3. (a) This section applies to a utility that provides service to users for 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) If the municipal legislative body adopts an ordinance under section 8.1 of this chapter 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 ten percent (10%) the rates and charges imposed on users for service to property located within the corporate boundaries of the municipality, 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; or

(B) twenty-five (25);

users 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.

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

(1) approves or disapproves the petition under subsection (e); and

(2) if applicable, adjusts the rates and charges imposed by the

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ordinance on users whose property is located outside the corporate boundaries of the municipality.

(e) The commission shall prescribe the form and manner in which a petition must be filed under subsection (c). The burden of proof to demonstrate that the proposed rates and charges are reasonable and just is on the municipality, regardless of who petitions the commission under subsection (c). 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 considered approved. A petition is automatically disapproved if the petitioner has filed a petition under section 8.2 of this chapter with respect to the same rate ordinance.

(f) If the commission determines that the rates and charges imposed on users for service to property located outside the corporate boundaries of the municipality are not reasonable and just, the commission may:

(1) establish reasonable and just rates and charges for users 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 reasonable and just rates and charges.

(g) This section does not:

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

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

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

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