April 2, 2013

ENGROSSED
HOUSE BILL No. 1137

DIGEST OF HB 1137 (Updated March 28, 2013 1:21 pm - DI 103)

Citations Affected: IC 8-1.5.

Synopsis: IURC review of extraterritorial water rates. Requires that petitions for review by the utility regulatory commission (IURC) of extraterritorial water rates must be signed by each individual seeking review or by an attorney representing the individuals. Provides that the IURC may extend the deadline for approving or disapproving a petition for up to 60 days for good cause upon agreement of all parties to the petition. (Current law provides that a petition is dismissed if the IURC fails to act by the deadline.)

Effective: July 1, 2013.

Frizzell, Battles, Price, Pierce

(SENATE SPONSOR — MERRITT)

January 10, 2013, read first time and referred to Committee on Utilities and Energy.
January 17, 2013, amended, reported — Do Pass.
January 22, 2013, read second time, ordered engrossed. Engrossed.
January 23, 2013, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Utilities.
April 1, 2013, amended, reported favorably — Do Pass.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1137

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 8-1.5-3-8.3, AS ADDED BY P.L.139-2012, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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);

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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). **A petition filed under subsection (d)(2) or (e)(2) must be signed by:**

(1) each individual user seeking review by the commission; or

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(2) one (1) or more attorneys licensed to practice law in Indiana who represent the individual users seeking review by the commission.

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~~ **shall** 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.~~ **However, the commission may extend the one hundred twenty (120) day deadline for up to sixty (60) days for good cause if all parties to the petition agree.** 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

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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.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities and Energy, to which was referred House Bill 1137, 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 4, line 12, after "deadline" insert "**for up to sixty (60) days if all parties to the petition agree or**".

and when so amended that said bill do pass.

(Reference is to HB 1137 as introduced.)

KOCH, Chair

Committee Vote: yeas 11, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1137, 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 4, line 12, after "days" insert "**for good cause**".

Page 4, line 13, delete "or for good cause." and insert "**.**".

and when so amended that said bill do pass.

(Reference is to HB 1137 as printed January 18, 2013.)

MERRITT, Chairperson

Committee Vote: Yeas 9, Nays 0.

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