



Reprinted
April 10, 2013

ENGROSSED HOUSE BILL No. 1137

DIGEST OF HB 1137 (Updated April 9, 2013 5:01 pm - DI 101)

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 proceeding. (Current law provides that a petition is dismissed if the IURC fails to act by the deadline.) Provides that if a city adopts an ordinance before January 1, 2013, to remove the city's municipally owned electric utility from the IURC's jurisdiction for certain purposes, the removal of the city's electric utility from the IURC's jurisdiction is effective for all purposes and is legalized and validated, notwithstanding that the city adopted an ordinance for the removal instead of submitting the question of removal to registered voters of the municipality, as specified by the Indiana Code.

Effective: Upon passage; July 1, 2013.

Frizzell, Battles, Price, Pierce

(SENATE SPONSORS — MERRITT, BREAUX)

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.
April 9, 2013, read second time, amended, ordered engrossed.

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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.

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:

1 SECTION 1. IC 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 8.3. (a) This section applies to a utility that
4 provides service to property located outside the corporate boundaries
5 of the municipality.
6 (b) As used in this section:
7 (1) "utility"; and
8 (2) "works";
9 have the meaning set forth for those terms in section 8.1 of this chapter.
10 (c) This subsection applies if a municipal legislative body adopts an
11 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that
12 is in effect on March 31, 2012, and that imposes rates and charges on
13 users of the works for service to property located outside the corporate
14 boundaries of the municipality that exceed by more than fifteen percent
15 (15%), but not more than fifty percent (50%), the rates and charges
16 imposed on users of the works for service to property located within the
17 corporate boundaries of the municipality. Not later than September 30,

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1 2012, the municipality may petition the commission to approve the
 2 percentage difference between rates and charges established in the
 3 ordinance for property within and property outside the corporate
 4 boundaries. In the petition, the municipality shall set forth the
 5 following:

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

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

11 (3) Whether the works that is the subject of the ordinance is a
 12 water utility works, a wastewater utility works, or both a water
 13 and wastewater utility works.

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

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

39 (1) The municipality.

40 (2) The lesser of:

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

42 (B) twenty-five (25);

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1 users of the works whose property is located outside the corporate
2 boundaries of the municipality.

3 A petition filed under this subsection must be filed not more than
4 fourteen (14) days after the date on which the ordinance referred to in
5 this subsection is adopted. A petition may not be filed under this
6 subsection if a petition has already been filed under section 8.2 of this
7 chapter appealing the same rates and charges.

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

- 19 (1) The municipality.
20 (2) The lesser of:
21 (A) ten percent (10%) of all; or
22 (B) twenty-five (25);

23 users of the works whose property is located outside the corporate
24 boundaries of the municipality.

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

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

- 34 (1) the commission approves or disapproves the petition; ~~or the~~
35 ~~petition is dismissed under subsection (g);~~ and
36 (2) if applicable, the commission adjusts the rates and charges
37 imposed by the ordinance on users of the works whose property
38 is located outside the corporate boundaries of the municipality.

39 (g) The commission shall prescribe the form and manner in which
40 a petition must be filed under subsection (d) or (e). **A petition filed**
41 **under subsection (d)(2) or (e)(2) must be signed by:**

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

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

4 The burden of proof to demonstrate that the proposed rates and charges
 5 are nondiscriminatory, reasonable, and just is on the municipality,
 6 regardless of who petitions the commission. ~~If The commission fails to~~
 7 **shall** approve or disapprove a petition within one hundred twenty (120)
 8 days after the petition is filed in the form and manner prescribed by the
 9 commission. ~~the petition is dismissed, and the ordinance adopted under~~
 10 ~~section 8.1 of this chapter or under IC 36-9-23-26 takes effect.~~
 11 **However, the commission may extend the one hundred twenty**
 12 **(120) day deadline for up to sixty (60) days for good cause if all**
 13 **parties to the proceeding agree.** A petition is automatically
 14 disapproved if the petitioner has filed a petition under section 8.2 of
 15 this chapter or under IC 36-9-23-26.1 with respect to the same rate
 16 ordinance.

17 (h) For purposes of determining whether the percentage difference
 18 between rates and charges imposed on users of the works for service to
 19 property located outside the corporate boundaries of the municipality
 20 and the rates and charges imposed on users of the works for service to
 21 property located within the corporate boundaries of the municipality is
 22 nondiscriminatory, reasonable, and just under section 8 of this chapter,
 23 the commission:

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

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

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

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

42 (2) order the municipal legislative body to adopt an ordinance

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1 imposing the nondiscriminatory, reasonable, and just rates and
 2 charges.
 3 However, with respect to rates and charges imposed in an ordinance
 4 that was the subject of an objecting petition filed under section 8.2 of
 5 this chapter or under IC 36-9-23-26.1 and sustained on final judgment
 6 or appeal, as applicable, by a court, the commission may not establish
 7 rates and charges such that the percentage difference between rates and
 8 charges established by the commission is less than the percentage
 9 difference between rates and charges imposed in the ordinance.
 10 (j) This section does not:
 11 (1) authorize the commission to review or revise rates and charges
 12 imposed on users of the works for service to property located
 13 within the corporate boundaries of the municipality; or
 14 (2) otherwise return or subject a utility to the jurisdiction of the
 15 commission for the approval of rates and charges.
 16 (k) The commission may adopt rules under IC 4-22-2 to implement
 17 this section.
 18 (l) The commission may not impose a fee with respect to
 19 proceedings under this section.
 20 SECTION 2. IC 8-1.5-3-9.1 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.1. (a) This
 22 section applies to the following:
 23 (1) Water utilities that are owned or operated by second class
 24 cities.
 25 (2) Third class cities.
 26 (3) Towns.
 27 (b) In addition to section 9 of this chapter, a municipally owned
 28 utility to which this section applies may be removed from the
 29 jurisdiction of the commission for the approval of rates and charges and
 30 of the issuance of stocks, bonds, notes, or other evidence of
 31 indebtedness, if the municipal legislative body adopts an ordinance
 32 removing the utility from commission jurisdiction. The municipal
 33 legislative body shall, at least thirty (30) days before the final vote on
 34 the ordinance, mail written notice of the meeting to all ratepayers of the
 35 utility and to the commission. For a second class city the municipal
 36 legislative body must hold two (2) public meetings before the final vote
 37 on an ordinance removing the utility from commission jurisdiction may
 38 be adopted. An explanation of the removal process must be provided
 39 at each public meeting under this section. Each public meeting must be
 40 held in a different location.
 41 (c) The ordinance described in subsection (b) takes effect sixty (60)
 42 days after adoption by the municipal legislative body.

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1 (d) The question of removal from commission jurisdiction shall be
 2 submitted to the registered voters of the municipality if, within the sixty
 3 (60) day period described in subsection (c), the legislative body
 4 receives a petition:

5 (1) that is signed by at least the number of the registered voters of
 6 the municipality required under IC 3-8-6-3 to place a candidate on
 7 the ballot; and

8 (2) that requests the legislative body to submit the question of
 9 removal from commission jurisdiction to the registered voters of
 10 the municipality at the next election.

11 The municipal legislative body shall certify the public question in
 12 subsection (e) to the county election board of the county that contains
 13 the greatest percentage of population of the municipality under
 14 IC 3-10-9-3.

15 (e) If the legislative body receives a petition described in subsection
 16 (d) in the proper form, the legislative body shall submit the following
 17 public question to the registered voters of the municipality at the next
 18 election in the form prescribed by IC 3-10-9-4:

19 "Shall the municipally owned utility be taken out of the
 20 jurisdiction of the Indiana utility regulatory commission for the
 21 approval of rates and charges and of the issuance of stocks, bonds,
 22 notes, or other evidence of indebtedness?"

23 The legislative body shall mail written notice of the referendum to the
 24 commission at least ten (10) days before the date of the election.

25 (f) If a majority of those voting on the question described in
 26 subsection (e) favor taking the municipally owned utility out of the
 27 jurisdiction of the commission, the utility is removed from the
 28 jurisdiction of the commission for approval of rates and charges and of
 29 the issuance of stocks, bonds, notes, or other evidences of
 30 indebtedness.

31 (g) If the legislative body receives a petition in proper form under
 32 subsection (d), the ordinance does not take effect until after removal is
 33 approved by a majority of those voting. If a majority of those voting
 34 vote against removal, the utility remains under the jurisdiction of the
 35 commission and the ordinance does not take effect.

36 (h) In addition to the notice required by subsection (b), if the
 37 municipal legislative body adopts the ordinance, described in
 38 subsection (b), the municipal legislative body shall mail written notice
 39 of the withdrawal from commission jurisdiction to the commission
 40 within thirty (30) days after the ordinance becomes effective.

41 (i) Notwithstanding this section or section 9 of this chapter, the
 42 commission may require a municipally owned utility that generates

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1 electric power to provide information to the permanent forecasting
 2 group under IC 8-1-8.5-3.5.
 3 (j) This section does not affect the obligations of a municipally
 4 owned utility under IC 8-1-2.3, IC 8-1-8.5, IC 8-1-22.5, or
 5 IC 8-1.5-3-14.
 6 **(k) Notwithstanding subsection (a) and the procedure set forth**
 7 **in section 9 of this chapter, if a city adopts an ordinance under this**
 8 **section before January 1, 2013, to remove the city's municipally**
 9 **owned electric utility from the jurisdiction of the commission for**
 10 **the approval of rates and charges and of the issuance of stocks,**
 11 **bonds, notes, or other evidence of indebtedness, the removal of the**
 12 **city's municipally owned electric utility from the commission's**
 13 **jurisdiction for the approval of rates and charges and of the**
 14 **issuance of stocks, bonds, notes, or other evidence of indebtedness**
 15 **is effective for all purposes and is legalized and validated.**
 16 SECTION 3. An emergency is declared for this act.

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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.

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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.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1137 be amended to read as follows:

Page 4, line 13, after "the" delete "petition" and insert "**proceeding**".

(Reference is to EHB 1137 as printed April 2, 2013.)

MERRITT



SENATE MOTION

Madam President: I move that Engrossed House Bill 1137 be amended to read as follows:

Page 5, after line 18, begin a new paragraph and insert:

"SECTION 2. IC 8-1.5-3-9.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.1. (a) This section applies to the following:

- (1) Water utilities that are owned or operated by second class cities.
- (2) Third class cities.
- (3) Towns.

(b) In addition to section 9 of this chapter, a municipally owned utility to which this section applies may be removed from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, if the municipal legislative body adopts an ordinance removing the utility from commission jurisdiction. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to all ratepayers of the utility and to the commission. For a second class city the municipal legislative body must hold two (2) public meetings before the final vote on an ordinance removing the utility from commission jurisdiction may be adopted. An explanation of the removal process must be provided at each public meeting under this section. Each public meeting must be held in a different location.

(c) The ordinance described in subsection (b) takes effect sixty (60) days after adoption by the municipal legislative body.

(d) The question of removal from commission jurisdiction shall be submitted to the registered voters of the municipality if, within the sixty (60) day period described in subsection (c), the legislative body receives a petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and
- (2) that requests the legislative body to submit the question of removal from commission jurisdiction to the registered voters of the municipality at the next election.

The municipal legislative body shall certify the public question in subsection (e) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

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(e) If the legislative body receives a petition described in subsection (d) in the proper form, the legislative body shall submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(f) If a majority of those voting on the question described in subsection (e) favor taking the municipally owned utility out of the jurisdiction of the commission, the utility is removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidences of indebtedness.

(g) If the legislative body receives a petition in proper form under subsection (d), the ordinance does not take effect until after removal is approved by a majority of those voting. If a majority of those voting vote against removal, the utility remains under the jurisdiction of the commission and the ordinance does not take effect.

(h) In addition to the notice required by subsection (b), if the municipal legislative body adopts the ordinance, described in subsection (b), the municipal legislative body shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the ordinance becomes effective.

(i) Notwithstanding this section or section 9 of this chapter, the commission may require a municipally owned utility that generates electric power to provide information to the permanent forecasting group under IC 8-1-8.5-3.5.

(j) This section does not affect the obligations of a municipally owned utility under IC 8-1-2.3, IC 8-1-8.5, IC 8-1-22.5, or IC 8-1.5-3-14.

(k) Notwithstanding subsection (a) and the procedure set forth in section 9 of this chapter, if a city adopts an ordinance under this section before January 1, 2013, to remove the city's municipally owned electric utility from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, the removal of the city's municipally owned electric utility from the commission's jurisdiction for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness

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is effective for all purposes and is legalized and validated.

SECTION 3. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1137 as printed April 2, 2013.)

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