



Reprinted  
April 10, 2013

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# ENGROSSED HOUSE BILL No. 1307

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DIGEST OF HB 1307 (Updated April 9, 2013 4:47 pm - DI 103)

**Citations Affected:** IC 8-1; IC 8-1.5; noncode.

**Synopsis:** Municipally owned utilities. Provides that a municipality or a municipally owned utility may not purchase the property of a utility company that provides water or sewer service (including a regional sewer and water district) unless the utility regulatory commission (IURC): (1) finds that the utility company has continued violations of the IURC's orders or the law regulating the utility company after the IURC has ordered compliance; or (2) finds after a review that the utility company has severe deficiencies that the utility company has failed to remedy. Provides that a utility may petition a court to stay proceedings of a municipality or a municipally owned utility to acquire the utility. Establishes a procedure for extraterritorial customers of certain municipally owned utilities to petition the IURC for review of rates and charges.

**Effective:** Upon passage; July 1, 2013.

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## Braun, Koch, Frizzell, Wesco

(SENATE SPONSOR — MERRITT)

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January 23, 2013, read first time and referred to Committee on Utilities and Energy.  
February 7, 2013, amended, reported — Do Pass.  
February 11, 2013, read second time, ordered engrossed.  
February 12, 2013, engrossed. Read third time, passed. Yeas 70, nays 28.

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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Reprinted  
April 10, 2013

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. 1307

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 8-1-2-92, AS AMENDED BY P.L.172-2009,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 92. (a) Every license, permit, or franchise  
4 granted after April 30, 1913, to any public utility shall have the effect  
5 of an indeterminate permit subject to the provisions of this chapter, and  
6 subject to the provisions that:  
7 (1) the license, franchise, or permit may be revoked by the  
8 commission for cause; or  
9 (2) **except as provided in IC 8-1-30-6**, the municipality may  
10 purchase or condemn the property as provided in IC 8-1.5-2,  
11 IC 36-9-23, or IC 36-9-25, as applicable.  
12 ~~Any such~~ **A** municipality ~~that~~ is authorized to purchase ~~such~~ property  
13 and ~~every such a~~ public utility ~~that~~ is required to sell ~~such the~~ property  
14 **under subdivision (2) shall do so** at the value and according to the  
15 terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or  
16 IC 36-9-25, as applicable.  
17 (b) If this chapter should be repealed or annulled, then all such

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1 indeterminate franchises, permits, or grants shall cease and become  
 2 inoperative, and in place thereof such utility shall be reinstated in the  
 3 possession and enjoyment of the license, permit, or franchise  
 4 surrendered by such utility at the time of the issue of the indeterminate  
 5 franchise, permit, or grant; but in no event shall such reinstated license,  
 6 permit, or franchise be terminated within a less period than five (5)  
 7 years from the date of the repeal or annulment of this chapter.

8 SECTION 2. IC 8-1-2-93, AS AMENDED BY P.L.172-2009,  
 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 UPON PASSAGE]: Sec. 93. **(a) This section does not apply to a  
 11 public utility that provides water or sewer utility service unless:**

- 12 **(1) the commission makes a finding under IC 8-1-30-4; and**  
 13 **(2) the procedures and requirements of IC 8-1-30 have been**  
 14 **complied with and satisfied.**

15 **However, this section does apply to a public utility to the extent**  
 16 **that the public utility provides water or sewer utility service in or**  
 17 **contiguous to a municipality that, as of July 1, 2012, had**  
 18 **established and operated a water utility.**

19 **(b)** Any public utility accepting or operating under any  
 20 indeterminate license, permit, or franchise granted after April 30, 1913,  
 21 shall by acceptance of any such indeterminate license, permit, or  
 22 franchise be deemed to have consented to a future purchase or  
 23 condemnation of its property including property located in contiguous  
 24 territory within six (6) miles of the corporate limits of such  
 25 municipality by the municipality in which such utility is located, at the  
 26 value and under the terms and conditions as provided in IC 8-1.5-2,  
 27 IC 36-9-23, or IC 36-9-25, as applicable, and shall thereby be deemed  
 28 to have waived the right of requiring the necessity of such taking to be  
 29 established by the judgment of a court, and to have waived all other  
 30 remedies and rights relative to condemnation, except such rights and  
 31 remedies as are provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as  
 32 applicable, and shall have been deemed to have consented to the  
 33 revocation of its license, permit, or franchise by the commission for  
 34 cause.

35 SECTION 3. IC 8-1-30-6 IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a) This section does not**  
 37 **apply to a municipality that, as of July 1, 2012, had established and**  
 38 **operated a water utility.**

39 **(b)** A municipality or other governmental unit may not require a  
 40 utility company that provides water or sewer service to sell property  
 41 used in the provision of such service to the municipality or  
 42 governmental unit under IC 8-1-2-92, IC 8-1-2-93, or otherwise,



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1 unless:

2 **(1) the commission has made all necessary findings under**  
3 **section 4 of this chapter; and**

4 **(2) the procedures and requirements of this chapter have been**  
5 **complied with and satisfied.**

6 SECTION 4. IC 8-1.5-2-7, AS AMENDED BY P.L.172-2009,  
7 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 UPON PASSAGE]: Sec. 7. (a) A certificate of public convenience and  
9 necessity is not required as a condition precedent to the owning,  
10 leasing, acquisition, construction, or operation of a utility by a  
11 municipality, even if there is a public utility engaged in a similar  
12 service. The acquisition of electric utility property and assignment of  
13 a municipal electric utility's service area are, however, subject to the  
14 provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

15 **(b) Subsection (c) applies to the following:**

16 **(1) A municipality that wants to acquire an existing utility,**  
17 **including by purchase or condemnation under IC 8-1-2-92,**  
18 **IC 8-1-2-93, or otherwise.**

19 **(2) A municipality that wants to own and operate a utility in a**  
20 **location where, or contiguous to where, there is a public utility**  
21 **engaged in a similar service:**

22 **(+) (A) under a franchise granted by the municipality; or**

23 **(-) (B) under an indeterminate permit as defined in IC 8-1-2-1.**

24 **However, subsection (c) does not apply to a municipality that owns**  
25 **and operates a water utility as of July 1, 2012.**

26 **(c) Before a municipality described in subsection (b) may after**  
27 **a hearing as provided by section ~~10~~ of this chapter, declare by**  
28 **ordinance that public convenience and necessity require the**  
29 **establishment of a municipally owned utility, the municipality shall**  
30 **conduct a hearing under section 10 of this chapter.**

31 SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) If the  
33 municipality and the owners of a public utility are unable to agree upon  
34 a price to be paid for the property of the public utility, the municipality  
35 may

36 **(+) by ordinance declare that a public necessity exists for the**  
37 **condemnation of the utility property; and**

38 **(-) bring an action in the circuit or superior court of the county**  
39 **where the municipality is located against the utility for the**  
40 **condemnation of the property.**

41 **~~(b) An ordinance adopted under subsection (a) is final.~~**

42 **(e) (b) For the purpose of acquiring the property of a public utility,**

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1 the municipality

2 ~~(1) may~~ **shall** exercise the power of eminent domain in  
3 accordance with ~~IC 32-24~~; and

4 ~~(2) is required only to establish the necessity of taking as this~~  
5 ~~chapter requires: IC 32-24-1.~~

6 ~~(d)~~ **(c)** The provisions of this section do not apply to:

7 **(1)** the acquisition of electric utility property or the assignment of  
8 service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1; **or**

9 **(2) the acquisition of water or sewer utility property unless**  
10 **the requirements of IC 8-1-30 are satisfied.**

11 **(d) This section does not apply to a municipality that, as of July**  
12 **1, 2012, had established and operated a water utility.**

13 SECTION 6. IC 8-1.5-2-33 IS ADDED TO THE INDIANA CODE  
14 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
15 **UPON PASSAGE]: Sec. 33. (a) Not more than thirty (30) days after**  
16 **a municipality described in section 7(b)(1) or 7(b)(2) of this**  
17 **chapter, other than a municipality that, as of July 1, 2012, had**  
18 **established and operated a water utility, adopts an ordinance**  
19 **under section 7 of this chapter, the utility may bring an action**  
20 **against the municipality in the circuit or superior court of the**  
21 **county in which the municipality is located to determine the**  
22 **question of public convenience and necessity.**

23 **(b) The court shall stay further action by the municipality under**  
24 **the ordinance adopted under section 7 of this chapter pending the**  
25 **court's determination.**

26 **(c) The court shall try the cause without delay and without a**  
27 **jury and review the evidence de novo.**

28 SECTION 7. IC 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,  
29 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2013]: Sec. 8.3. (a) This section applies to a utility that  
31 provides service to property located outside the corporate boundaries  
32 of the municipality.

33 (b) As used in this section:

34 (1) "utility"; and

35 (2) "works";

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

37 (c) This subsection applies if a municipal legislative body adopts an  
38 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that  
39 is in effect on March 31, 2012, and that imposes rates and charges on  
40 users of the works for service to property located outside the corporate  
41 boundaries of the municipality that exceed by more than fifteen percent  
42 (15%), but not more than fifty percent (50%), the rates and charges

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1 imposed on users of the works for service to property located within the  
2 corporate boundaries of the municipality. Not later than September 30,  
3 2012, 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 imposed  
10 on users of the works for service to property located outside the  
11 corporate boundaries of the municipality and to property located  
12 within the corporate boundaries of the municipality.
- 13 (3) Whether the works that is the subject of the ordinance is a  
14 water utility works, a wastewater utility works, or both a water  
15 and wastewater utility works.

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

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

- 41 (1) The municipality.
- 42 (2) The lesser of:

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- 1 (A) ten percent (10%) of all; or  
 2 (B) twenty-five (25);  
 3 users of the works whose property is located outside the corporate  
 4 boundaries of the municipality.  
 5 A petition filed under this subsection must be filed not more than  
 6 fourteen (14) days after the date on which the ordinance referred to in  
 7 this subsection is adopted. A petition may not be filed under this  
 8 subsection if a petition has already been filed under section 8.2 of this  
 9 chapter appealing the same rates and charges.  
 10 (e) If a municipal legislative body, other than a municipal legislative  
 11 body described in subsection (c), adopts an ordinance under section 8.1  
 12 of this chapter **or under IC 36-9-23-26** after March 31, 2012, that  
 13 imposes rates and charges on users of the works for service to property  
 14 located outside the corporate boundaries of the municipality that  
 15 exceed the rates and charges imposed on users of the works for service  
 16 to property located within the corporate boundaries of the municipality  
 17 by more than fifteen percent (15%), either or both of the following may  
 18 petition the commission to review and adjust, if necessary, the rates and  
 19 charges imposed on users of the works for service to property located  
 20 outside the corporate boundaries of the municipality:  
 21 (1) The municipality.  
 22 (2) The lesser of:  
 23 (A) ten percent (10%) of all; or  
 24 (B) twenty-five (25);  
 25 users of the works whose property is located outside the corporate  
 26 boundaries of the municipality.  
 27 A petition must be filed not more than fourteen (14) days after the date  
 28 on which the ordinance is adopted. A petition may not be filed under  
 29 this subsection if a petition has already been filed under section 8.2 of  
 30 this chapter or under IC 36-9-23-26.1 appealing the same rates and  
 31 charges.  
 32 (f) The filing of a petition with the commission under subsection (d)  
 33 or (e) stays the ordinance adopted under section 8.1 of this chapter or  
 34 under IC 36-9-23-26. The rates and charges in effect before the  
 35 adoption of the ordinance remain in effect until:  
 36 (1) the commission approves or disapproves the petition, or the  
 37 petition is dismissed under subsection (g); and  
 38 (2) if applicable, the commission adjusts the rates and charges  
 39 imposed by the ordinance on users of the works whose property  
 40 is located outside the corporate boundaries of the municipality.  
 41 (g) The commission shall prescribe the form and manner in which  
 42 a petition must be filed under subsection (d), ~~or~~ (e), **or (m)**. The burden

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1 of proof to demonstrate that the proposed rates and charges are  
 2 nondiscriminatory, reasonable, and just is on the municipality,  
 3 regardless of who petitions the commission. If the commission fails to  
 4 approve or disapprove a petition within one hundred twenty (120) days  
 5 after the petition is filed in the form and manner prescribed by the  
 6 commission, the petition is dismissed, and the ordinance adopted under  
 7 section 8.1 of this chapter or under IC 36-9-23-26 takes **or remains in**  
 8 effect, **as applicable**. A petition is automatically disapproved if the  
 9 petitioner has filed a petition under section 8.2 of this chapter or under  
 10 IC 36-9-23-26.1 with respect to the same rate ordinance.

11 (h) For purposes of determining whether the percentage difference  
 12 between rates and charges imposed on users of the works for service to  
 13 property located outside the corporate boundaries of the municipality  
 14 and the rates and charges imposed on users of the works for service to  
 15 property located within the corporate boundaries of the municipality is  
 16 nondiscriminatory, reasonable, and just under section 8 of this chapter,  
 17 the commission:

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

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

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

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

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

39 However, with respect to rates and charges imposed in an ordinance  
 40 that was the subject of an objecting petition filed under section 8.2 of  
 41 this chapter or under IC 36-9-23-26.1 and sustained on final judgment  
 42 or appeal, as applicable, by a court, the commission may not establish

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1 rates and charges such that the percentage difference between rates and  
 2 charges established by the commission is less than the percentage  
 3 difference between rates and charges imposed in the ordinance.

4 (j) This section does not:

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

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

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

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

14 **(m) This subsection applies if a municipal legislative body, other**  
 15 **than a municipal legislative body described in subsection (c),**  
 16 **adopts an ordinance under section 8.1 of this chapter or under**  
 17 **IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes**  
 18 **rates and charges on users of the works for service to property**  
 19 **located outside the corporate boundaries of the municipality that**  
 20 **exceed by more than fifty percent (50%) the rates and charges**  
 21 **imposed on users of the works for service to property located**  
 22 **anywhere within the corporate boundaries of the municipality. Not**  
 23 **later than December 31, 2013, either or both of the following may**  
 24 **petition the commission to review and adjust, if necessary, the rates**  
 25 **and charges imposed on users of the works for service to property**  
 26 **located outside the corporate boundaries of the municipality:**

27 (1) **The municipality.**

28 (2) **Subject to subsection (o), the lesser of:**

29 (A) **ten percent (10%) of all; or**

30 (B) **twenty-five (25);**

31 **users of the works whose property is located outside the**  
 32 **corporate boundaries of the municipality.**

33 **A petition filed by a group of users under subdivision (2) must be**  
 34 **accompanied by a written verification described in subsection**  
 35 **(o)(2).**

36 **(n) The rates and charges established in an ordinance described**  
 37 **in subsection (m) remain in effect until:**

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

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

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**municipality.**  
**(o) Before a group of users described in subsection (m)(2) may petition the commission under subsection (m), the following conditions must be satisfied:**

**(1) At least twenty (20) days before filing a petition with the commission under subsection (m), the group of users must file the petition with the municipal legislative body.**

**(2) Not more than ten (10) days after the petition is filed under subdivision (1), the municipal legislative body must issue written verification to the group of users that the rates and charges imposed on the users exceed by more than fifty percent (50%) the rates and charges imposed on users of the works whose property is located within the corporate boundaries of the municipality.**

**SECTION 8. [EFFECTIVE UPON PASSAGE] (a) The following sections, all as amended by this act, do not apply to an action brought under IC 8-1.5-2-15 before March 1, 2013:**

**(1) IC 8-1-2-92.**

**(2) IC 8-1-2-93.**

**(3) IC 8-1-30-6.**

**(4) IC 8-1.5-2-7.**

**(5) IC 8-1.5-2-15.**

**(b) IC 8-1.5-2-33, as added by this act, does not apply to an action brought under IC 8-1.5-2-15 before March 1, 2013.**

**(c) This SECTION expires December 31, 2018.**

**SECTION 9. 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 1307, 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 1, line 3, delete "UPON PASSAGE" and insert "JULY 1, 2013".

Page 3, line 10, after "chapter" insert "**or under IC 36-9-23-26**".

Page 5, line 12, after "body" insert "**, other than a municipal legislative body described in subsection (c),**".

Page 5, line 14, delete "May 15, 2013," and insert "**March 31, 2012,**".

Page 5, line 20, delete "September 30," and insert "**December 31,**".

Page 5, delete line 38.

and when so amended that said bill do pass.

(Reference is to HB 1307 as introduced.)

KOCH, Chair

Committee Vote: yeas 8, nays 2.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1307, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-92, AS AMENDED BY P.L.172-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 92. (a) Every license, permit, or franchise granted after April 30, 1913, to any public utility shall have the effect of an indeterminate permit subject to the provisions of this chapter, and subject to the provisions that:

- (1) the license, franchise, or permit may be revoked by the commission for cause; or
- (2) **except as provided in IC 8-1-30-6**, the municipality may purchase or condemn the property as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable.

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~~Any such A municipality that is authorized to purchase such property and every such a public utility that is required to sell such the property under subdivision (2) shall do so~~ at the value and according to the terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable.

(b) If this chapter should be repealed or annulled, then all such indeterminate franchises, permits, or grants shall cease and become inoperative, and in place thereof such utility shall be reinstated in the possession and enjoyment of the license, permit, or franchise surrendered by such utility at the time of the issue of the indeterminate franchise, permit, or grant; but in no event shall such reinstated license, permit, or franchise be terminated within a less period than five (5) years from the date of the repeal or annulment of this chapter.

SECTION 2. IC 8-1-2-93, AS AMENDED BY P.L.172-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 93. **(a) This section does not apply to a public utility that provides water or sewer utility service unless:**

- (1) the commission makes a finding under IC 8-1-30-4; and**
- (2) the procedures and requirements of IC 8-1-30 have been complied with and satisfied.**

**(b)** Any public utility accepting or operating under any indeterminate license, permit, or franchise granted after April 30, 1913, shall by acceptance of any such indeterminate license, permit, or franchise be deemed to have consented to a future purchase or condemnation of its property including property located in contiguous territory within six (6) miles of the corporate limits of such municipality by the municipality in which such utility is located, at the value and under the terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the judgment of a court, and to have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable, and shall have been deemed to have consented to the revocation of its license, permit, or franchise by the commission for cause.

SECTION 3. IC 8-1-30-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A municipality or other governmental unit may not require a utility company that provides water or sewer service to sell property used in the provision of such service to the municipality or governmental unit under IC 8-1-2-92, IC 8-1-2-93, or otherwise, unless:

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**(1) the commission has made all necessary findings under section 4 of this chapter; and**

**(2) the procedures and requirements of this chapter have been complied with and satisfied.**

SECTION 4. IC 8-1.5-2-7, AS AMENDED BY P.L.172-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) A certificate of public convenience and necessity is not required as a condition precedent to the owning, leasing, acquisition, construction, or operation of a utility by a municipality, even if there is a public utility engaged in a similar service. The acquisition of electric utility property and assignment of a municipal electric utility's service area are, however, subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

**(b) Subsection (c) applies to the following:**

**(1) A municipality that wants to acquire an existing utility, including by purchase or condemnation under IC 8-1-2-92, IC 8-1-2-93, or otherwise.**

**(2) A municipality that wants to own and operate a utility in a location where, or contiguous to where, there is a public utility engaged in a similar service:**

**(1) (A) under a franchise granted by the municipality; or**

**(2) (B) under an indeterminate permit as defined in IC 8-1-2-1.**

**However, subsection (c) does not apply to a municipality that owns and operates a municipally owned utility as of July 1, 2012.**

**(c) Before a municipality described in subsection (b) may after a hearing as provided by section 10 of this chapter, declare by ordinance that public convenience and necessity require the establishment of a municipally owned utility, the municipality shall conduct a hearing under section 10 of this chapter.**

SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) If the municipality and the owners of a public utility are unable to agree upon a price to be paid for the property of the public utility, the municipality may

**(1) by ordinance declare that a public necessity exists for the condemnation of the utility property; and**

**(2) bring an action in the circuit or superior court of the county where the municipality is located against the utility for the condemnation of the property.**

**(b) An ordinance adopted under subsection (a) is final.**

**(c) (b) For the purpose of acquiring the property of a public utility, the municipality**

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(†) ~~may shall~~ exercise the power of eminent domain in accordance with ~~IC 32-24;~~ and  
(2) ~~is required only to establish the necessity of taking as this chapter requires.~~ **IC 32-24-1.**

(†) (c) The provisions of this section do not apply to:  
(1) the acquisition of electric utility property or the assignment of service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1; **or**  
(2) **the acquisition of water or sewer utility property unless the requirements of IC 8-1-30 are satisfied.**

SECTION 6. IC 8-1.5-2-33 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 33. (a) Not more than thirty (30) days after a municipality described in section 7(b)(1) or 7(b)(2) of this chapter adopts an ordinance under section 7 of this chapter, the utility may bring an action against the municipality in the circuit or superior court of the county in which the municipality is located to determine the question of public convenience and necessity.**

**(b) The court shall stay further action by the municipality under the ordinance adopted under section 7 of this chapter pending the court's determination.**

**(c) The court shall try the cause without delay and without a jury and review the evidence de novo."**

Page 5, line 19, after "located" insert "**anywhere**".

Page 5, line 26, delete "The" and insert "**Subject to subsection (o), the**".

Page 5, between lines 30 and 31, begin a new line blocked left and insert:

**"A petition filed by a group of users under subdivision (2) must be accompanied by a written verification described in subsection (o)(2)."**

Page 5, after line 38, begin a new paragraph and insert:

**"(o) Before a group of users described in subsection (m)(2) may petition the commission under subsection (m), the following conditions must be satisfied:**

**(1) At least twenty (20) days before filing a petition with the commission under subsection (m), the group of users must file the petition with the municipal legislative body.**

**(2) Not more than ten (10) days after the petition is filed under subdivision (1), the municipal legislative body must issue written verification to the group of users that the rates and charges imposed on the users exceed by more than fifty percent (50%) the rates and charges imposed on users of the**

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**works whose property is located within the corporate boundaries of the municipality.**

**SECTION 8. An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1307 as printed February 8, 2013.)

MERRITT, Chairperson

Committee Vote: Yeas 6, Nays 3.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1307 be amended to read as follows:

Page 2, between lines 14 and 15, begin a new line blocked left and insert:

**"However, this section does apply to a public utility to the extent that the public utility provides water or sewer utility service in or contiguous to a municipality that, as of July 1, 2012, had established and operated a water utility."**

Page 2, line 32, after "6." insert **"(a) This section does not apply to a municipality that, as of July 1, 2012, had established and operated a water utility.**

**(b)"**

Page 3, line 18, delete "municipally owned" and insert **"water"**.

Page 4, between lines 3 and 4, begin a new paragraph and insert:

**"(d) This section does not apply to a municipality that, as of July 1, 2012, had established and operated a water utility."**

Page 4, line 7, after "chapter" insert **", other than a municipality that, as of July 1, 2012, had established and operated a water utility,"**

Page 9, between lines 3 and 4, begin a new paragraph and insert:

**"SECTION 8. [EFFECTIVE UPON PASSAGE] (a) The following sections, all as amended by this act, do not apply to an action brought under IC 8-1.5-2-15 before March 1, 2013:**

- (1) IC 8-1-2-92.**
- (2) IC 8-1-2-93.**
- (3) IC 8-1-30-6.**
- (4) IC 8-1.5-2-7.**
- (5) IC 8-1.5-2-15.**

**EH 1307—LS 6518/DI 103+**



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**(b) IC 8-1.5-2-33, as added by this act, does not apply to an action brought under IC 8-1.5-2-15 before March 1, 2013.**

**(c) This SECTION expires December 31, 2018."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1307 as printed April 2, 2013.)

Senator MERRITT

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