

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR EHB 1307**

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

**Synopsis:** Municipally owned utilities. Conference committee report for EHB 1307. 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. **(This conference committee report deletes and reinserts the provisions of EHB 1307 as reprinted April 10, 2013, with the following changes: (1) Amends certain code cites concerning the acquisition of a utility company by a municipality or municipally owned utility to specify that certain provisions do not apply to condemnation proceedings brought before March 1, 2013. (2) Amends IC 8-1.5-3-8.5, as amended by HEA 1137-2013, SECTION 1, as follows: (A) Adds omitted cross-references to IC 36-9-23-26. (B) Requires a group of extraterritorial users to attempt to resolve a rate dispute with the municipal legislative body before petitioning the IURC. (C) Deletes a duplicative provision concerning the effect of filing a petition on a rate ordinance. (3) Deletes a noncode provision concerning the applicability of amendments to code cites as set forth in subdivision (1).)**

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

## 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. 1307 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 8-1-2-92, AS AMENDED BY P.L.172-2009,  
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 UPON PASSAGE]: Sec. 92. (a) Every license, permit, or franchise  
5 granted after April 30, 1913, to any public utility shall have the effect  
6 of an indeterminate permit subject to the provisions of this chapter, and  
7 subject to the provisions that:  
8 (1) the license, franchise, or permit may be revoked by the  
9 commission for cause; or  
10 (2) **except as provided in IC 8-1-30-6**, the municipality may  
11 purchase or condemn the property as provided in IC 8-1.5-2,  
12 IC 36-9-23, or IC 36-9-25, as applicable.  
13 ~~Any such~~ A municipality **that** is authorized to purchase ~~such~~ property  
14 and ~~every such a~~ public utility **that** is required to sell ~~such the~~ property  
15 **under subdivision (2) shall do so** at the value and according to the  
16 terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or  
17 IC 36-9-25, as applicable.  
18 (b) If this chapter should be repealed or annulled, then all such  
19 indeterminate franchises, permits, or grants shall cease and become  
20 inoperative, and in place thereof such utility shall be reinstated in the  
21 possession and enjoyment of the license, permit, or franchise  
22 surrendered by such utility at the time of the issue of the indeterminate

1 franchise, permit, or grant; but in no event shall such reinstated license,  
 2 permit, or franchise be terminated within a less period than five (5)  
 3 years from the date of the repeal or annulment of this chapter.

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

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

11 **(b) Notwithstanding subsection (a), this section does apply to the**  
 12 **following:**

13 **(1) A public utility to the extent that the public utility provides**  
 14 **water or sewer utility service in or contiguous to a**  
 15 **municipality that, as of July 1, 2012, had established and**  
 16 **operated a water utility.**

17 **(2) An action brought under:**

18 **(A) section 92 of this chapter;**

19 **(B) this section; or**

20 **(C) IC 8-1.5-2;**

21 **before March 1, 2013.**

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

38 SECTION 3. IC 8-1-30-6 IS AMENDED TO READ AS FOLLOWS  
 39 [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a) This section does not**  
 40 **apply to the following:**

41 **(1) A municipality that, as of July 1, 2012, had established and**  
 42 **operated a water utility.**

43 **(2) An action brought under:**

44 **(A) IC 8-1-2-92;**

45 **(B) IC 8-1-2-93; or**

46 **(C) IC 8-1.5-2;**

47 **before March 1, 2013.**

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

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 (d) 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 ~~(1)~~ **(A) under a franchise granted by the municipality; or**  
 23 ~~(2)~~ **(B) under an indeterminate permit as defined in IC 8-1-2-1.**

24 **(c) Notwithstanding subsection (b), subsection (d) does not apply**  
 25 **to the following:**

- 26 **(1) A municipality that owns and operates a water utility as of**  
 27 **July 1, 2012.**  
 28 **(2) An action brought under:**  
 29 **(A) IC 8-1-2-92;**  
 30 **(B) IC 8-1-2-93; or**  
 31 **(C) this chapter;**  
 32 **before March 1, 2013.**

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

38 SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. **(a) This**  
 40 **section applies to the following:**

- 41 **(1) A municipality that, as of July 1, 2012, had established and**  
 42 **operated a water utility.**  
 43 **(2) An action brought under:**  
 44 **(A) IC 8-1-2-92;**  
 45 **(B) IC 8-1-2-93; or**  
 46 **(C) this chapter;**  
 47 **before March 1, 2013.**

48 ~~(a)~~ **(b) If the municipality and the owners of a public utility are**  
 49 **unable to agree upon a price to be paid for the property of the public**  
 50 **utility, the municipality may:**

- 51 **(1) by ordinance declare that a public necessity exists for the**

1 condemnation of the utility property; and

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

5 ~~(b)~~ (c) An ordinance adopted under subsection ~~(a)~~ (b) is final.

6 ~~(c)~~ (d) For the purpose of acquiring the property of a public utility,  
7 the municipality:

8 (1) may exercise the power of eminent domain in accordance with  
9 IC 32-24; and

10 (2) is required only to establish the necessity of taking as this  
11 chapter requires.

12 ~~(d)~~ (e) The provisions of this section do not apply to the acquisition  
13 of electric utility property or the assignment of service areas covered  
14 by IC 8-1-2.3 and IC 8-1-2-95.1.

15 SECTION 6. IC 8-1.5-2-15.5 IS ADDED TO THE INDIANA  
16 CODE AS A NEW SECTION TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2013]: **Sec. 15.5. (a) This section does not**  
18 **apply to the following:**

19 (1) **A municipality that, as of July 1, 2012, had established a**  
20 **water utility.**

21 (2) **An action brought under:**

22 (A) **IC 8-1-2-92;**

23 (B) **IC 8-1-2-93; or**

24 (C) **this chapter;**

25 **before March 1, 2013.**

26 (3) **The acquisition of electric utility property or the**  
27 **assignment of service areas covered by IC 8-1-2.3 and**  
28 **IC 8-1-2-95.1.**

29 (4) **The acquisition of water or sewer utility property, unless**  
30 **the requirements of IC 8-1-30 are satisfied.**

31 (b) **If the municipality and the owners of a public utility are**  
32 **unable to agree upon a price to be paid for the property of the**  
33 **public utility, the municipality may bring an action in the circuit or**  
34 **superior court of the county where the municipality is located**  
35 **against the utility for the condemnation of the property.**

36 (c) **For the purpose of acquiring the property of a public utility,**  
37 **the municipality shall exercise the power of eminent domain in**  
38 **accordance with IC 32-24-1.**

39 SECTION 7. IC 8-1.5-2-33 IS ADDED TO THE INDIANA CODE  
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
41 UPON PASSAGE]: **Sec. 33. (a) This section does not apply to the**  
42 **following:**

43 (1) **A municipality that, as of July 1, 2012, had established and**  
44 **operated a water utility.**

45 (2) **An action brought under:**

46 (A) **IC 8-1-2-92;**

47 (B) **IC 8-1-2-93; or**

48 (C) **this chapter;**

49 **before March 1, 2013.**

50 (b) **Not more than thirty (30) days after a municipality**  
51 **described in section 7(b)(1) or 7(b)(2) of this chapter adopts an**

1 **ordinance under section 7 of this chapter, the utility may bring an**  
 2 **action against the municipality in the circuit or superior court of**  
 3 **the county in which the municipality is located to determine the**  
 4 **question of public convenience and necessity.**

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

8 **(d) The court shall try the cause without delay and without a**  
 9 **jury and review the evidence de novo.**

10 SECTION 8. IC 8-1.5-3-8.3, AS AMENDED BY HEA 1137-2013,  
 11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2013]: Sec. 8.3. (a) This section applies to a utility that  
 13 provides service to property located outside the corporate boundaries  
 14 of the municipality.

15 (b) As used in this section:

- 16 (1) "utility"; and  
 17 (2) "works";

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

19 (c) This subsection applies if a municipal legislative body adopts an  
 20 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that  
 21 is in effect on March 31, 2012, and that imposes rates and charges on  
 22 users of the works for service to property located outside the corporate  
 23 boundaries of the municipality that exceed by more than fifteen percent  
 24 (15%), but not more than fifty percent (50%), the rates and charges  
 25 imposed on users of the works for service to property located within the  
 26 corporate boundaries of the municipality. Not later than September 30,  
 27 2012, the municipality may petition the commission to approve the  
 28 percentage difference between rates and charges established in the  
 29 ordinance for property within and property outside the corporate  
 30 boundaries. In the petition, the municipality shall set forth the  
 31 following:

- 32 (1) The date on which the ordinance took effect.  
 33 (2) The percentage difference between rates and charges imposed  
 34 on users of the works for service to property located outside the  
 35 corporate boundaries of the municipality and to property located  
 36 within the corporate boundaries of the municipality.  
 37 (3) Whether the works that is the subject of the ordinance is a  
 38 water utility works, a wastewater utility works, or both a water  
 39 and wastewater utility works.

40 If the commission determines that a petition filed under this subsection  
 41 satisfies the requirements of this subsection, the commission shall  
 42 approve the petition, including the percentage difference between rates  
 43 and charges described in subdivision (2). If the commission determines  
 44 that a petition filed under this subsection does not satisfy the  
 45 requirements of this subsection, the commission shall disapprove the  
 46 petition. However, if the percentage difference imposed in the  
 47 ordinance was the subject of an objecting petition that was filed under  
 48 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on  
 49 final judgment or appeal, as applicable, by a court, the percentage  
 50 difference is considered approved without the filing of a petition under  
 51 this subsection.

1 (d) If a municipality that files, or that is exempt from filing, a  
 2 petition under subsection (c) adopts an ordinance under section 8.1 of  
 3 this chapter **or under IC 36-9-23-26** after March 31, 2012, that  
 4 imposes rates and charges on users of the works for service to property  
 5 located outside the corporate boundaries of the municipality that  
 6 exceed the rates and charges imposed on users of the works for service  
 7 to property located within the corporate boundaries of the municipality  
 8 by more than the sum of the percentage difference approved or  
 9 considered approved by the commission under subsection (c) plus  
 10 fifteen percent (15%), either or both of the following may petition the  
 11 commission to review and adjust, if necessary, the rates and charges  
 12 imposed on users of the works for service to property located outside  
 13 the corporate boundaries of the municipality:

14 (1) The municipality.

15 (2) The lesser of:

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

17 (B) twenty-five (25);

18 users of the works whose property is located outside the corporate  
 19 boundaries of the municipality.

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

25 (e) If a municipal legislative body, other than a municipal legislative  
 26 body described in subsection (c), adopts an ordinance under section 8.1  
 27 of this chapter **or under IC 36-9-23-26** after March 31, 2012, that  
 28 imposes rates and charges on users of the works for service to property  
 29 located outside the corporate boundaries of the municipality that  
 30 exceed the rates and charges imposed on users of the works for service  
 31 to property located within the corporate boundaries of the municipality  
 32 by more than fifteen percent (15%), either or both of the following may  
 33 petition the commission to review and adjust, if necessary, the rates and  
 34 charges imposed on users of the works for service to property located  
 35 outside the corporate boundaries of the municipality:

36 (1) The municipality.

37 (2) The lesser of:

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

39 (B) twenty-five (25);

40 users of the works whose property is located outside the corporate  
 41 boundaries of the municipality.

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

47 (f) The filing of a petition with the commission under subsection  
 48 (d), ~~or~~ (e), **or (m)** stays the ordinance adopted under section 8.1 of this  
 49 chapter or under IC 36-9-23-26. The rates and charges in effect before  
 50 the adoption of the ordinance remain in effect until:

- 1 (1) the commission approves or disapproves the petition; and  
 2 (2) if applicable, the commission adjusts the rates and charges  
 3 imposed by the ordinance on users of the works whose property  
 4 is located outside the corporate boundaries of the municipality.
- 5 (g) The commission shall prescribe the form and manner in which  
 6 a petition must be filed under subsection (d), ~~or~~ (e), **or (m)**. A petition  
 7 filed under subsection (d)(2), ~~or~~ (e)(2), **or (m)(2)** must be signed by:  
 8 (1) each individual user seeking review by the commission; or  
 9 (2) one (1) or more attorneys licensed to practice law in Indiana  
 10 who represent the individual users seeking review by the  
 11 commission.
- 12 The burden of proof to demonstrate that the proposed rates and charges  
 13 are nondiscriminatory, reasonable, and just is on the municipality,  
 14 regardless of who petitions the commission. The commission shall  
 15 approve or disapprove a petition within one hundred twenty (120) days  
 16 after the petition is filed in the form and manner prescribed by the  
 17 commission. However, the commission may extend the one hundred  
 18 twenty (120) day deadline for up to sixty (60) days for good cause if all  
 19 parties to the proceeding agree. A petition is automatically disapproved  
 20 if the petitioner has filed a petition under section 8.2 of this chapter or  
 21 under IC 36-9-23-26.1 with respect to the same rate ordinance.
- 22 (h) For purposes of determining whether the percentage difference  
 23 between rates and charges imposed on users of the works for service to  
 24 property located outside the corporate boundaries of the municipality  
 25 and the rates and charges imposed on users of the works for service to  
 26 property located within the corporate boundaries of the municipality is  
 27 nondiscriminatory, reasonable, and just under section 8 of this chapter,  
 28 the commission:  
 29 (1) may consider the benefit and expense to all users of the works  
 30 of extending the works outside the corporate boundaries of the  
 31 municipality; and  
 32 (2) may not consider any connection fees or capital surcharges  
 33 imposed on users of the works for service to property that is  
 34 located outside the corporate boundaries of the municipality that  
 35 are specifically designated to pay for the costs associated with  
 36 main extensions to the users of the works.
- 37 (i) If the commission determines that the percentage difference  
 38 between the rates and charges imposed on users of the works for  
 39 service to property located outside the corporate boundaries of the  
 40 municipality and the rates and charges imposed on users of the works  
 41 for service to property located within the corporate boundaries of the  
 42 municipality is not nondiscriminatory, reasonable, and just under  
 43 section 8 of this chapter, the commission may:  
 44 (1) establish nondiscriminatory, reasonable, and just rates and  
 45 charges for users of the works for service to property located  
 46 outside the corporate boundaries of the municipality; and  
 47 (2) order the municipal legislative body to adopt an ordinance  
 48 imposing the nondiscriminatory, reasonable, and just rates and  
 49 charges.
- 50 However, with respect to rates and charges imposed in an ordinance

1 that was the subject of an objecting petition filed under section 8.2 of  
 2 this chapter or under IC 36-9-23-26.1 and sustained on final judgment  
 3 or appeal, as applicable, by a court, the commission may not establish  
 4 rates and charges such that the percentage difference between rates and  
 5 charges established by the commission is less than the percentage  
 6 difference between rates and charges imposed in the ordinance.

7 (j) This section does not:

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

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

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

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

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

30 **(1) The municipality.**

31 **(2) Subject to subsection (n), the lesser of:**

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

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

34 **users of the works whose property is located outside the  
 35 corporate boundaries of the municipality.**

36 **(n) At least twenty (20) days before a group of users described  
 37 in subsection (m)(2) may petition the commission under subsection  
 38 (m), the group of users must file the petition with the municipal  
 39 legislative body. The municipal legislative body and the group of  
 40 users shall attempt to resolve the issues set forth in the petition  
 41 concerning the rates and charges imposed on the group of users. If  
 42 the group of users and the municipal legislative body are unable to  
 43 resolve the issues within ten (10) days, the group of users may  
 44 petition the commission under subsection (m).**

45 **SECTION 9. An emergency is declared for this act.**

(Reference is to EHB 1137 as reprinted April 10, 2013.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1307**

**S**igned by:

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Representative Braun  
Chairperson

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Senator Merritt

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Representative VanNatter

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Senator Broden

**House Conferees**

**Senate Conferees**