

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.

HOUSE ENROLLED ACT No. 1307

AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2-92, 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.

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(b) If this chapter should be repealed or annulled, then all such indeterminate franchises, permits, or grants shall cease and become inoperative, and in place thereof such utility shall be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



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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) Notwithstanding subsection (a), this section does apply to the following:

- (1) 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.**

- (2) An action brought under:**

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

- (B) this section; or**

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

before March 1, 2013.

(c) 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) This section does not apply to the following:**

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



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(2) An action brought under:

- (A) IC 8-1-2-92;
- (B) IC 8-1-2-93; or
- (C) IC 8-1.5-2;

before March 1, 2013.

(b) 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:

(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 (d) 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.**

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

(1) A municipality that owns and operates a water utility as of July 1, 2012.

(2) An action brought under:

- (A) IC 8-1-2-92;
- (B) IC 8-1-2-93; or
- (C) this chapter;

before March 1, 2013.

(d) Before a municipality described in subsection (b) may after

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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) This section applies to the following:**

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

(2) An action brought under:

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

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

(C) this chapter;

before March 1, 2013.

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

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

(1) may 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.

~~(d)~~ **(e)** The provisions of this section do not apply to 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.

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

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

(2) An action brought under:

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

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

(C) this chapter;



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before March 1, 2013.

(3) 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.

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

(b) 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 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.

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

SECTION 7. 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) This section does not apply to the following:

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

(2) An action brought under:

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

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

(C) this chapter;

before March 1, 2013.

(b) 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.

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

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

SECTION 8. IC 8-1.5-3-8.3, AS AMENDED BY HEA 1137-2013, SECTION 1, 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:

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- (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 **or under IC 36-9-23-26** 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

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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);

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 **or under IC 36-9-23-26** 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), **or (m)** stays the ordinance adopted under section 8.1 of this

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

- (1) each individual user seeking review by the commission; or
- (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. The commission 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. 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 proceeding 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

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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 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.

(m) This subsection applies 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 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 fifty percent (50%) the rates and charges imposed on users of the works for service to property located anywhere within the corporate boundaries of the municipality. Not later than December 31, 2013, 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) Subject to subsection (n), 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.

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

SECTION 9. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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