
SENATE BILL No. 548

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 8-1.5-2.

Synopsis: Various utility matters. Provides that a public utility that provides water service or wastewater service may establish a utility system improvement charge (USIC). (Current law provides only for the establishment of a distribution system improvement charge (DSIC), and provides that a DSIC can be established only by a public utility that provides water service.) Provides that a public utility may petition for a change in its USIC every three months. (Current law provides that a public utility may petition for a change in its DSIC not more than once every 12 months.) Provides that a USIC may produce USIC revenues totaling up to 10% of a public utility's base revenue level. (Current law limits DSIC revenues to 5% of a public utility's base revenue.) Requires a public utility to annually reconcile the difference between its USIC revenues and costs. Repeals definitions related to DSICs. Makes conforming amendments. 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. Requires a municipality to submit the question of whether the municipality should acquire a utility to a public question.

Effective: Upon passage.

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January 14, 2013, read first time and referred to Committee on Rules and Legislative Procedure.



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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 548



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 public utility under subdivision (2)~~ is required to sell
14 ~~such the~~ property at the value and according to the terms and
15 conditions as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as
16 applicable.
17 (b) If this chapter should be repealed or annulled, then all such



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. Any public utility accepting or operating
 11 under any indeterminate license, permit, or franchise granted after
 12 April 30, 1913, shall by acceptance of any such indeterminate license,
 13 permit, or franchise be deemed to have consented to a future purchase
 14 or condemnation of its property including property located in
 15 contiguous territory within six (6) miles of the corporate limits of such
 16 municipality by the municipality in which such utility is located, at the
 17 value and under the terms and conditions as provided in IC 8-1.5-2,
 18 IC 36-9-23, or IC 36-9-25, as applicable, and shall thereby be deemed
 19 to have waived the right of requiring the necessity of such taking to be
 20 established by the judgment of a court, and to have waived all other
 21 remedies and rights relative to condemnation, except such rights and
 22 remedies as are provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as
 23 applicable, and shall have been deemed to have consented to the
 24 revocation of its license, permit, or franchise by the commission for
 25 cause. **However, after June 30, 2013, this section does not apply to**
 26 **a public utility that provides water or sewer utility services unless:**

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

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

- 36 **(1) the commission has made all necessary findings under**
 37 **section 4 of this chapter; and**
 38 **(2) the procedures and requirements of this chapter have been**
 39 **complied with and satisfied.**

40 SECTION 4. IC 8-1-31-2 IS REPEALED [EFFECTIVE UPON
 41 PASSAGE]. ~~Sec. 2. As used in this chapter, "DSIC" refers to~~
 42 ~~distribution system improvement charge.~~

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1 SECTION 5. IC 8-1-31-3 IS REPEALED [EFFECTIVE UPON
2 PASSAGE]. Sec. 3: As used in this chapter, "DSIC costs" means
3 depreciation expenses and pretax return associated with eligible
4 distribution system improvements.

5 SECTION 6. IC 8-1-31-4 IS REPEALED [EFFECTIVE UPON
6 PASSAGE]. Sec. 4: As used in this chapter, "DSIC revenues" means
7 revenues produced through a DSIC exclusive of revenues from all other
8 rates and charges.

9 SECTION 7. IC 8-1-31-5 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE UPON PASSAGE]: Sec. 5. As used in this chapter,
11 "eligible ~~distribution utility~~ system improvements" means new used
12 and useful water ~~utility~~ **distribution or wastewater collection** plant
13 projects that:

- 14 (1) do not increase revenues by connecting the ~~distribution utility~~
15 system to new customers;
- 16 (2) are in service; and
- 17 (3) were not included in the public utility's rate base in its most
18 recent general rate case.

19 SECTION 8. IC 8-1-31-6 IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter,
21 "pretax return" means the revenues necessary to:

- 22 (1) produce net operating income equal to the public utility's
23 weighted cost of capital multiplied by the net original cost of
24 eligible ~~distribution utility~~ system improvements; and
- 25 (2) pay state and federal income taxes applicable to such income.

26 SECTION 9. IC 8-1-31-7.5 IS ADDED TO THE INDIANA CODE
27 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
28 **UPON PASSAGE]: Sec. 7.5. As used in this chapter, "USIC" refers**
29 **to a utility system improvement charge.**

30 SECTION 10. IC 8-1-31-7.6 IS ADDED TO THE INDIANA CODE
31 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
32 **UPON PASSAGE]: Sec. 7.6. As used in this chapter, "USIC costs"**
33 **means depreciation expenses and pretax return associated with**
34 **eligible utility system improvements.**

35 SECTION 11. IC 8-1-31-7.7 IS ADDED TO THE INDIANA CODE
36 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
37 **UPON PASSAGE]: Sec. 7.7. As used in this chapter, "USIC**
38 **revenues" means revenues produced through a USIC exclusive of**
39 **revenues from all other rates and charges.**

40 SECTION 12. IC 8-1-31-8 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as
42 provided in subsection (d), a public utility providing water or

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1 **wastewater utility** service may file with the commission rate
 2 schedules establishing a ~~DSIC~~ **USIC** that will allow the automatic
 3 adjustment of the public utility's basic rates and charges to provide for
 4 recovery of ~~DSIC~~ **USIC** costs.

5 (b) The public utility shall serve the office of the utility consumer
 6 counselor a copy of its filing at the time of its filing with the
 7 commission.

8 (c) Publication of notice of the filing is not required.

9 (d) A public utility may not file a petition under this section in the
 10 same calendar year in which the public utility has filed a request for a
 11 general increase in the basic rates and charges of the public utility.

12 SECTION 13. IC 8-1-31-9 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) When a
 14 petition is filed under section 8 of this chapter, the commission shall
 15 conduct a hearing.

16 (b) The office of the utility consumer counselor may examine
 17 information of the public utility to confirm that the **utility** system
 18 improvements are in accordance with section 5 of this chapter, to
 19 confirm proper calculation of the proposed charge, and submit a report
 20 to the commission not later than thirty (30) days after the petition is
 21 filed.

22 (c) The commission shall hold the hearing and issue its order not
 23 later than sixty (60) days after the petition is filed.

24 (d) If the commission finds that a ~~DSIC~~ **USIC** petition complies
 25 with the requirements of this chapter, the commission shall enter an
 26 order approving the petition.

27 SECTION 14. IC 8-1-31-10 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Except as
 29 provided in subsection (b), a public utility may, but is not required to,
 30 file a petition for a change in its ~~DSIC~~ **USIC** not more often than one
 31 (1) time every ~~twelve (12)~~ **three (3)** months.

32 (b) Except as provided in section 15 of this chapter, a public utility
 33 may not file a petition for a change in its ~~DSIC~~ **USIC** in the same
 34 calendar year in which the public utility has filed a request for a
 35 general increase in the basic rates and charges of the public utility.

36 SECTION 15. IC 8-1-31-13 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. The
 38 commission may not approve a ~~DSIC~~ **USIC** to the extent it would
 39 produce total ~~DSIC~~ **USIC** revenues exceeding ~~five ten percent (5%)~~
 40 **(10%)** of the public utility's base revenue level approved by the
 41 commission in the public utility's most recent general rate proceeding.

42 SECTION 16. IC 8-1-31-14 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. The ~~DSIC~~
 2 **USIC** may be calculated based on a reasonable estimate of sales in the
 3 period in which the charge will be in effect. At the end of each twelve
 4 (12) month period ~~the charge is in effect, following the date on which~~
 5 **the commission initially approves a USIC for a public utility**
 6 **following the public utility's most recent general rate case**, and
 7 using procedures approved by the commission, the public utility shall
 8 reconcile the difference between ~~DSIC~~ **USIC** revenues and ~~DSIC~~
 9 **USIC** costs during ~~that the twelve (12) month~~ period and recover or
 10 refund the difference, as appropriate, through adjustment of the charge.

11 SECTION 17. IC 8-1-31-15 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. A public utility
 13 that has implemented a ~~DSIC~~ **USIC** under this chapter shall file revised
 14 rate schedules resetting the charge if new basic rates and charges
 15 become effective for the public utility following a commission order
 16 authorizing a general increase in rates and charges that includes in the
 17 utility's rate base eligible ~~distribution utility~~ system improvements
 18 reflected in the ~~DSIC~~: **USIC**.

19 SECTION 18. IC 8-1-31-16 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. For purposes
 21 of IC 8-1-2-42(a), the filing of a ~~DSIC~~ **USIC** and a change in a ~~DSIC~~
 22 **USIC** is not a general increase in basic rates and charges.

23 SECTION 19. IC 8-1-31-17 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. The
 25 commission may adopt by rule under IC 4-22-2 or by order other
 26 procedures not inconsistent with this chapter that the commission finds
 27 reasonable or necessary to administer a ~~DSIC~~: **USIC**.

28 SECTION 20. IC 8-1.5-2-7, AS AMENDED BY P.L.172-2009,
 29 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 UPON PASSAGE]: Sec. 7. (a) A certificate of public convenience and
 31 necessity is not required as a condition precedent to the owning,
 32 leasing, acquisition, construction, or operation of a utility by a
 33 municipality, even if there is a public utility engaged in a similar
 34 service. The acquisition of electric utility property and assignment of
 35 a municipal electric utility's service area are, however, subject to the
 36 provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

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

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

41 (2) **A municipality that wants to own and operate a utility in a**
 42 **location where, or contiguous to where, there is a public utility**

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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) 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:

- (1) submit the question of whether the municipality shall acquire or construct a utility, as applicable, to voters of the municipality under section 34 of this chapter; and
- (2) conduct a hearing under section 10 of this chapter.

SECTION 21. 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

- (1) 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.

(d) (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 22. 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

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1 the ordinance adopted under section 7 of this chapter pending the
2 court's determination.

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

5 SECTION 23. IC 8-1.5-2-34 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
7 UPON PASSAGE]: Sec. 34. (a) This section does not apply to a
8 municipality that enters into an agreement with a public utility for
9 the acquisition of the property of the public utility, including the
10 purchase price of the property.

11 (b) Before a municipality described in section 7(b) of this
12 chapter may declare by ordinance that public convenience and
13 necessity require the establishment of a municipally owned utility,
14 the municipality shall submit the question of whether the
15 municipality shall acquire or construct a utility, as applicable, to
16 the voters of the municipality as a public question at a special or
17 general election. In submitting the public question to the voters, the
18 legislative body shall certify the question to the county election
19 board of the county containing the greatest percentage of
20 population of the municipality under IC 3-10-9-3. The county
21 election board shall adopt a resolution setting forth the text of the
22 public question and shall submit the question of public convenience
23 and necessity to the voters of the municipality at a special or
24 general election on a date specified by the municipal legislative
25 body.

26 (c) If a majority of voters voting on the public question vote for
27 the proposal, the municipality shall adopt the ordinance under
28 section 7(c) of this chapter.

29 (d) If a majority of voters voting on the public question vote
30 against the proposal, the municipality may not:

- 31 (1) adopt an ordinance under section 7(c) of this chapter; or
- 32 (2) hold an election on the same question for at least two (2)
33 years after the date of the original election.

34 SECTION 24. An emergency is declared for this act.

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