

SENATE BILL No. 560

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Utility transmission. Requires the utility consumer counselor (counselor) to investigate a utility's petition for a transmission, distribution, and storage system improvement charge (TDSIC) and report its activities to the utility regulatory commission (commission). Authorizes the counselor to request additional funding from the budget agency. Allows a utility to designate a test period for the commission to use in determining an increase in the utility's rates and charges. Provides that a utility may impose a temporary increase in rates and charges while its rate case is pending before the commission. Requires a utility to provide a refund to customers if the temporary rates and charges exceed the rates and charges approved by the commission. Authorizes a utility that provides electric or gas service to petition the commission to recover TDSIC costs.

Effective: Upon passage.

Hershman

January 14, 2013, read first time and referred to Committee on Utilities.

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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. 560



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 8-1-1.1-6.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) The
3 consumer counselor may employ and fix the compensation of, with the
4 approval of the governor and the budget agency, accountants, utility
5 economists, engineers, attorneys, stenographers, or other assistance
6 necessary to carry out the duties of the office. The compensation of the
7 consumer counselor and the counselor's staff shall be paid from an
8 appropriation made for that purpose by the general assembly, or with
9 the approval of the governor and the budget agency, from a
10 contingency fund established under IC 8-1-6-1.

11 (b) The consumer counselor may make use of engineers, experts,
12 and accountants employed by the commission or the Indiana
13 department of transportation and direct them to make appraisals and
14 audits in the performance of the consumer counselor's duties under this
15 chapter and IC 8-1-1 and IC 8-1-2. In so doing, the consumer counselor
16 shall have access to the records and files of the commission or the
17 Indiana department of transportation.



1 (c) The consumer counselor may employ, with the approval of the
 2 governor and the budget agency, additional stenographers, examiners,
 3 experts, engineers, assistant counselors, accountants, and consulting
 4 firms with expertise in utility, motor carrier, or railroad economics or
 5 management or both, at salaries and compensation and for a length of
 6 time as the governor and the budget agency may approve for a
 7 particular case or investigation. The compensation for the additional
 8 personnel together with the cost of transportation, hotel, telegram, and
 9 telephone bills while traveling on public business shall be paid from
 10 the expert witness fee account, or, with the approval of the governor
 11 and the budget agency, from a contingency fund established under
 12 IC 8-1-6-1 on warrants drawn by the auditor of state, sworn to by the
 13 parties who incurred the expenses.

14 (d) Expenses incurred by the regular staff of the office and approved
 15 by the consumer counselor, or an expense incurred by the commission
 16 or the Indiana department of transportation under subsection (b), shall
 17 be charged and paid in the manner provided in IC 8-1-2-70 or IC 8-1-6,
 18 whichever is appropriate under the circumstances.

19 (e) Nothing in this chapter may be construed to prevent a party
 20 interested in a proceeding, suit, or action from appearing in person or
 21 from being represented by counsel.

22 (f) Persons hired by the consumer counselor as provided by this
 23 section are exempt from the job classifications and compensation
 24 schedules established under IC 4-15.

25 (g) The consumer counselor may purchase, lease, or otherwise
 26 acquire sufficient technical equipment necessary for the consumer
 27 counselor to carry out the consumer counselor's statutory duties.

28 **(h) The consumer counselor may submit to the budget agency**
 29 **a request for funds sufficient to carry out any new duties or**
 30 **responsibilities created under IC 8-1-39-9(b). The consumer**
 31 **counselor shall include in its annual report to the regulatory**
 32 **flexibility committee:**

- 33 (1) a description of its activities under IC 8-1-39-9(b); and
 34 (2) a summary of the costs associated with those activities.

35 SECTION 2. IC 8-1-2-42.7 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: **Sec. 42.7. (a) For purposes of this section, "case**
 38 **in chief" includes the following:**

- 39 (1) Testimony, exhibits, and supporting work papers.
 40 (2) Proposed test year and rate base cutoff dates.
 41 (3) Proposed revenue requirements.
 42 (4) Jurisdictional operating revenues and expenses, including

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1 taxes and depreciation.

2 (5) Balance sheet and income statements.

3 (6) Jurisdictional rate base.

4 (7) Proposed cost of capital and capital structure.

5 (8) Jurisdictional class cost of service study.

6 (9) Proposed rate design and pro forma tariff sheets.

7 (b) For purposes of this section, "utility" refers to the following:

8 (1) A public utility.

9 (2) A municipally owned utility.

10 (3) A cooperative owned utility.

11 (c) In a petition filed with the commission to change basic rates
12 and charges, a utility may designate a test period for the
13 commission to use. The commission shall approve a test period that
14 satisfies one (1) of the following:

15 (1) A forward looking test period must be determined on the
16 basis of projected data for the twelve (12) month period
17 beginning not later than twenty-four (24) months after the
18 date on which the utility petitions the commission for a
19 change in its basic rates and charges.

20 (2) A historic test period must be based on a twelve (12)
21 month period that ends not more than two hundred seventy
22 (270) days before the date on which the utility petitions the
23 commission for a change in its basic rates and charges. The
24 commission may adjust a historic test period for fixed, known,
25 and measurable changes and appropriate normalizations and
26 annualizations.

27 (3) A hybrid test period must be based on at least twelve (12)
28 consecutive months of combined historic data and projected
29 data. The commission may adjust the historic data as set forth
30 in subdivision (2).

31 (d) This subsection does not apply to a proceeding in which a
32 utility is seeking an increase in basic rates and charges and
33 requesting initial relief under IC 8-1-2.5-5 or IC 8-1-2.5-6. If the
34 commission does not issue an order on a petition filed by a utility
35 under subsection (c) within three hundred (300) days after the
36 utility files its case in chief in support of the proposed increase, the
37 utility may temporarily implement seventy-five percent (75%) of
38 the utility's proposed permanent increase in basic rates and
39 charges, subject to the commission's review and determination
40 under subsection (e). The utility shall submit the proposed
41 temporary rates and charges to the commission at least thirty (30)
42 days before the date on which the utility seeks to implement the

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1 temporary rates and charges. The temporary rates and charges
 2 may reflect proposed or existing approved customer class
 3 allocations and rate designs. However, if the utility uses a forward
 4 looking test period described in subsection (c)(1), the utility may
 5 not implement the temporary increase before the date on which the
 6 projected twelve (12) month period begins.

7 (e) The commission shall review the temporary rates and
 8 charges to determine compliance with this section. The temporary
 9 rates and charges take effect on the latest of the following dates
 10 unless the commission determines that the temporary rates and
 11 charges are not properly designed in compliance with this section:

12 (1) The date proposed by the utility.

13 (2) Three hundred (300) days after the date on which the
 14 utility files its case in chief.

15 (3) The termination of any extension of the three hundred
 16 (300) day deadline authorized under subsection (f) or (g).

17 If the commission determines that the temporary rates and charges
 18 are not properly designed in compliance with this section, the
 19 utility may cure the defect and file the corrected temporary rates
 20 and charges with the commission within a reasonable period
 21 determined by the commission.

22 (f) If the commission grants a utility an extension of the
 23 procedural schedule, the commission may extend the three
 24 hundred (300) day deadline set forth in subsection (d) by the length
 25 of the extension.

26 (g) The commission may suspend the three hundred (300) day
 27 deadline set forth in subsection (d) if the commission finds that the
 28 utility's case in chief has changed in a material and significant
 29 manner that:

30 (1) the commission did not foresee or anticipate in the
 31 prehearing conference order; and

32 (2) requires the commission to reschedule the date of the
 33 evidentiary hearing established in the prehearing conference
 34 order.

35 For purposes of this subsection, updates to information provided
 36 in the normal course of a proceeding or in accordance with the
 37 prehearing conference order do not constitute a material or
 38 significant change. A suspension may not exceed sixty (60) days.

39 (h) If a utility implements temporary rates and charges that
 40 differ from the permanent rates and charges approved by the
 41 commission in a final order on the petition filed under subsection
 42 (c), the utility shall perform a reconciliation and implement a

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1 refund, in the form of a credit rider, or a surcharge, as applicable,
 2 on customer bills rendered on or after the date the commission
 3 approves the credit or surcharge. The refund or surcharge shall be
 4 credited or added in equal amounts each month for six (6) months.
 5 The amount of the total refund or surcharge equals the amount by
 6 which the temporary rates and charges differ from the permanent
 7 rates and charges.

8 SECTION 3. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 10 PASSAGE]:

11 **Chapter 38. Transmission Reliability**

12 **Sec. 1. As used in this chapter, "electric transmission facility"**
 13 **means a high voltage transmission line with a rating of at least one**
 14 **hundred (100) kilovolts and related transmission facilities and**
 15 **controls.**

16 **Sec. 2. As used in this chapter, "incumbent electric transmission**
 17 **owner" means a public utility that owns, operates, and maintains**
 18 **an electric transmission facility in whole or in part in Indiana.**

19 **Sec. 3. (a) As used in this chapter, "local reliability electric**
 20 **transmission facility" means an electric transmission facility**
 21 **located in whole or in part in Indiana that is required by a regional**
 22 **transmission organization to satisfy the reliability standards of the**
 23 **North American Electric Reliability Corporation, a regional**
 24 **reliability organization, or a successor corporation or organization.**
 25 **If the electricity transmission facility is located in the territory of**
 26 **the PJM Interconnection regional transmission organization**
 27 **territory, or its successor organization, its rating must be:**

- 28 (1) at least one hundred (100) kilovolts; and
 29 (2) not more than three hundred (300) kilovolts.

30 (b) The term does not include an electric transmission facility to
 31 the extent the facility is required by a regional transmission
 32 organization primarily to address nonreliability drivers.

33 **Sec. 4. As used in this chapter, "new electric transmission**
 34 **owner" means a corporation, company, partnership, limited**
 35 **liability company, or other organization that:**

- 36 (1) on the date of its incorporation or organization, does not
 37 own, operate, or maintain an electric transmission facility
 38 located in whole or in part in Indiana; and
 39 (2) is incorporated or organized to construct, own, operate,
 40 and maintain an electric transmission facility located in whole
 41 or in part in Indiana.

42 **Sec. 5. As used in this chapter, "public utility" has the meaning**

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1 set forth in IC 8-1-8.5-1.

2 **Sec. 6.** As used in this chapter, "regional transmission
3 organization" refers to a regional transmission organization
4 approved by the Federal Energy Regulatory Commission.

5 **Sec. 7. (a)** The commission shall grant a new electric
6 transmission owner authority to operate as a public utility in
7 Indiana if the commission makes the following findings:

8 (1) The new electric transmission owner has the financial,
9 managerial, and technical capability to construct, own,
10 operate, and maintain an electric transmission facility.

11 (2) The new electric transmission owner has the ability and
12 intent to comply with all statutes, rules, and regulations
13 enforced by the commission.

14 (3) The new electric transmission owner has the intent to
15 construct, own, operate, and maintain an electric transmission
16 facility that is under consideration for selection in a regional
17 transmission plan.

18 (4) The new electric transmission owner has provided written
19 notice of its request for authority under this section to each
20 incumbent electric transmission owner that may connect its
21 existing electric transmission facility to the new electric
22 transmission facility of the new electric transmission owner.

23 **(b)** In making findings under subsection (a), the commission
24 may consider the creditworthiness of the new electric transmission
25 owner, including:

26 (1) the new electric transmission owner's investment grade
27 rating;

28 (2) guarantees of a parent company of the new electric
29 transmission owner that has an investment grade rating;

30 (3) a bank reference letter or bonding commitment on behalf
31 of the new electric transmission owner;

32 (4) the authority of the new electric transmission owner to
33 directly set rates or impose taxes; and

34 (5) the capability of the new electric transmission owner to
35 meet its financial obligations if it abandons the new electric
36 transmission facility after its construction.

37 **Sec. 8.** A new electric transmission owner shall notify the
38 commission in a timely manner of the dates on which construction
39 of the new electric transmission facility began and was completed.

40 **Sec. 9. (a)** An incumbent electric transmission owner has the
41 right to construct, own, operate, and maintain the following:

42 (1) A local reliability electric transmission facility that

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1 connects to an electric transmission facility owned by the
2 incumbent electric transmission owner.

3 (2) Upgrades to an existing electric transmission facility
4 owned by the incumbent electric transmission owner.

5 (b) The right to construct, own, operate, and maintain a local
6 reliability facility that connects to electric transmission facilities
7 owned by two (2) or more incumbent electric transmission owners
8 belongs individually and proportionately to each incumbent
9 electric transmission owner, unless the incumbent electric
10 transmission owners otherwise agree in writing.

11 Sec. 10. (a) An incumbent electric transmission owner may enter
12 into a contract with a new electric transmission owner that
13 proposes to connect a new electric transmission facility to the
14 electric transmission facility of the incumbent electric transmission
15 owner. The contract may assign responsibility for:

16 (1) maintenance and upgrades; and

17 (2) reliability compliance;
18 with respect to the new electric transmission facility.

19 (b) The commission has jurisdiction to resolve a dispute arising
20 under a contract described in subsection (a).

21 Sec. 11. This chapter does not affect an incumbent electric
22 transmission owner's use and control of existing property rights.

23 SECTION 4. IC 8-1-39 IS ADDED TO THE INDIANA CODE AS
24 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
25 PASSAGE]:

26 Chapter 39. Transmission, Distribution, and Storage System
27 Improvement Charges and Deferrals

28 Sec. 1. The definitions in IC 8-1-2-1 apply throughout this
29 chapter.

30 Sec. 2. As used in this chapter, "eligible transmission,
31 distribution, and storage system improvements" means new
32 electric or gas transmission, distribution, or storage utility projects
33 that:

34 (1) a public utility undertakes for purposes of safety,
35 replacement, reliability, system modernization, or economic
36 development, including the extension of gas service to rural
37 areas; and

38 (2) were not included in the public utility's rate base in its
39 most recent general rate case.

40 Sec. 3. As used in this chapter, "pretax return" means the
41 revenues necessary to:

42 (1) produce net operating income equal to the public utility's

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1 weighted cost of capital multiplied by investments in eligible
 2 transmission, distribution, and storage system improvements;
 3 (2) pay state and federal income taxes imposed on the net
 4 operating income calculated under subdivision (1); and
 5 (3) pay state utility receipts taxes associated with incremental
 6 revenues produced by a TDSIC.

7 **Sec. 4.** As used in this chapter, "public utility" means:

- 8 (1) a public utility (as defined in IC 8-1-2-1(a)); or
- 9 (2) a municipally owned utility (as defined in IC 8-1-2-1(h)).

10 **Sec. 5.** As used in this chapter, "TDSIC" refers to a
 11 transmission, distribution, and storage system improvement
 12 charge.

13 **Sec. 6.** As used in this chapter, "TDSIC costs" means the
 14 following costs incurred with respect to eligible transmission,
 15 distribution, and storage system improvements incurred both while
 16 the improvements are under construction and post in service:

- 17 (1) Depreciation expenses.
- 18 (2) Operation and maintenance expenses.
- 19 (3) Extensions and replacements to the extent not provided for
 20 through depreciation, as provided for in IC 8-1.5-3-8.
- 21 (4) Property taxes.
- 22 (5) Pretax returns.

23 **Sec. 7.** As used in this chapter, "TDSIC revenues" means
 24 revenues produced through a TDSIC and excluding revenues from
 25 all other rates and charges.

26 **Sec. 8. (a)** Subject to subsection (c), a public utility that provides
 27 electric or gas utility service may file with the commission rate
 28 schedules establishing a TDSIC that will allow the periodic
 29 automatic adjustment of the public utility's basic rates and charges
 30 to provide for timely recovery of TDSIC costs. The petition must:

- 31 (1) use the customer class revenue allocation approved in the
 32 public utility's most recent retail base rate case order;
- 33 (2) include the public utility's five (5) year plan for eligible
 34 transmission, distribution, and storage system improvements;
 35 and
- 36 (3) identify projected effects of the plan described in
 37 subdivision (2) on retail rates and charges.

38 The public utility shall provide a copy of the petition to the office
 39 of the utility consumer counselor when the petition is filed with the
 40 commission. The public utility is not required to publish a notice of
 41 the filing of the petition. The public utility may, but is not required
 42 to, update the public utility's five (5) year plan under subdivision

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1 (2) with each petition the public utility files under this section.

2 (b) Alternatively, the public utility may:

3 (1) defer recovery of some or all of its TDSIC costs for five (5)
4 years or less; and

5 (2) recover the deferred TDSIC costs through an addition to
6 the public utility's rate base over the remaining useful life of
7 the eligible transmission, distribution, and storage system
8 improvements.

9 (c) Except as provided in section 12 of this chapter, a public
10 utility may not file a petition under subsection (a) within six (6)
11 months after the date on which the commission issues an order
12 changing the public utility's basic rates and charges with respect
13 to the same type of utility service.

14 (d) Notwithstanding any law or rule governing extension of
15 service, a public utility that provides gas service may, on a
16 nondiscriminatory basis, extend service in rural areas without a
17 deposit from the customer, to the extent that the extension of
18 service results in a positive contribution to the utility's overall cost
19 of service over a twenty (20) year period.

20 (e) A public utility may file a petition under this section not
21 more than one (1) time every six (6) months.

22 Sec. 9. (a) Not more than sixty (60) days after a public utility
23 files a petition under section 8 of this chapter, the commission shall
24 conduct a hearing and issue an order on the petition.

25 (b) Not more than thirty (30) days after a public utility files a
26 petition under section 8 of this chapter, the office of the utility
27 consumer counselor may:

28 (1) examine the information of the public utility to confirm
29 that the proposed transmission, distribution, and storage
30 system improvements comply with this chapter; and

31 (2) report its findings to the commission.

32 (c) If the commission determines that the petition satisfies the
33 requirements of this chapter and the capital expenditures and
34 TDSIC costs are reasonable, the commission shall approve the
35 petition, including:

36 (1) capital expenditures;

37 (2) timely recovery of TDSIC costs through a TDSIC; and

38 (3) if requested, authority to:

39 (A) defer some or all TDSIC costs; and

40 (B) recover the deferred TDSIC costs through an addition
41 to the public utility's rate base over the remaining useful
42 life of the eligible transmission distribution, and storage

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1 system improvements in a subsequent rate case;
2 in an amount not to exceed the amount set forth in the petition
3 under section 8(a)(2) or 8(b) of this chapter.

4 Sec. 10. (a) For purposes of calculating the TDSIC costs of a
5 public utility, the commission shall determine an appropriate
6 pretax return for the public utility. In determining the appropriate
7 pretax return, the commission may consider the following factors:

- 8 (1) The current state and federal income tax rates.
- 9 (2) The public utility's capital structure.
- 10 (3) The actual cost rates for the public utility's long term debt
11 and preferred stock.
- 12 (4) The public utility's cost of common equity determined by
13 the commission in the public utility's most recent general rate
14 proceeding.
- 15 (5) Other information that the commission determines is
16 necessary.

17 (b) The commission shall adjust a public utility's authorized
18 return for purposes of IC 8-1-2-42(d)(3) or IC 8-1-2-42(g)(3) to
19 reflect incremental earnings from an approved TDSIC.

20 Sec. 11. (a) The commission may not approve a TDSIC that
21 would result in an average aggregate increase in a public utility's
22 total retail revenues of more than three percent (3%) in a twelve
23 (12) month period.

24 (b) If a public utility incurs TDSIC costs under the public
25 utility's five (5) year capital expenditure plan that exceed the
26 percentage increase in a TDSIC approved by the commission, the
27 public utility shall defer recovery of the TDSIC costs.

28 Sec. 12. A public utility that has implemented a TDSIC under
29 this chapter shall file revised rate schedules resetting the charge if
30 new basic rates and charges become effective for the public utility
31 following a commission order authorizing a general increase in
32 rates and charges that includes in the public utility's rate base
33 eligible transmission, distribution, and storage system
34 improvements reflected in the TDSIC.

35 Sec. 13. (a) For purposes of this chapter, the following are not
36 a general increase in basic rates and charges under IC 8-1-2-42(a):

- 37 (1) The filing of a TDSIC.
- 38 (2) A change in a TDSIC.
- 39 (3) The deferral of depreciation expenses, operation and
40 maintenance expenses, property taxes, or post in service
41 allowance for funds used during construction under section 8
42 of this chapter.

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1 **(b) This chapter does not limit:**
2 **(1) a public utility's ability to recover eligible transmission,**
3 **distribution, and storage system improvements in a general**
4 **retail rate case; or**
5 **(2) the commission's valuation of utility property under**
6 **IC 8-1-2-6.**
7 **Sec. 14. The commission may adopt by rule under IC 4-22-2 or**
8 **by order other procedures not inconsistent with this chapter that**
9 **the commission finds reasonable or necessary to administer a**
10 **TDSIC.**
11 **SECTION 5. An emergency is declared for this act.**

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