
HOUSE BILL No. 1174

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5; IC 36-9-23-25.

Synopsis: Municipal utility funds and economic development. Allows the board of a municipally owned utility to approve or recommend a transfer of all or part of the utility's surplus earnings from the utility's cash reserve fund to: (1) the municipality's general fund; or (2) a local economic development organization to benefit or promote the municipality, the utility's service area, or the county or region in which the municipality or the utility's service area is located. (Current law allows for a transfer of the utility's surplus earnings only to the municipality's general fund.) Provides that rates and charges in lieu of taxes incorporated into a municipally owned utility's rates and charges may be transferred to: (1) the municipal general fund; or (2) if the cash revenue requirements of the utility have been met, the utility's cash reserve fund. (Current law allows for a transfer of rates and charges in lieu of taxes only to the municipality's general fund.) Provides that a municipality that seeks to make a transfer from the municipally owned utility's cash reserve fund to a local economic development organization may not impose a special rate, charge, surcharge, or other fee on the customers of the utility in order to pay for the transfer. Authorizes the state board of accounts to adopt rules, including emergency rules, to implement these provisions.

Effective: Upon passage; July 1, 2013.

Friend, Wolkins

January 10, 2013, read first time and referred to Committee on Local Government.

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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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HOUSE BILL No. 1174



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 8-1.5-1-7.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2013]: **Sec. 7.3. "Local economic development organization"**
4 **includes any:**

- 5 (1) **organization listed in IC 5-28-11-2; or**
- 6 (2) **organization similar to an organization listed in**
- 7 **IC 5-28-11-2, including a partnership between private**
- 8 **enterprise and local units of government, whose purposes**
- 9 **include economic development activities in one (1) or more**
- 10 **Indiana counties, including:**
 - 11 (A) **coordinating local efforts to attract jobs and new**
 - 12 **business investment;**
 - 13 (B) **providing assistance to existing businesses to foster**
 - 14 **growth and job retention; and**
 - 15 (C) **sustaining and improving the quality of life in the**
 - 16 **communities served.**

17 SECTION 2. IC 8-1.5-3-4 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The board has
 2 general supervisory powers over the utilities under its control, with
 3 responsibility for the detailed supervision of each utility to be vested in
 4 its superintendent **or manager**, who is responsible to the board for the
 5 business and technical operation of the utility. The board shall:

- 6 (1) fix the number and compensation of employees;
 7 (2) adopt rules governing the appointment of employees including
 8 making proper classifications and rules to:
 9 (A) determine the eligibility of applicants;
 10 (B) determine by competitive examination the relative fitness
 11 of applicants for positions;
 12 (C) establish eligible lists arranged according to the ratings
 13 secured;
 14 (D) provide for the appointment of those having the highest
 15 ratings; and
 16 (E) provide for the promotion of employees;
 17 (3) subject to IC 36-4-9-2, appoint a superintendent or manager
 18 of each utility under its control who is responsible to the board for
 19 the business and technical operation of the utility; the board shall
 20 make the appointment on the basis of fitness to manage the
 21 particular utility to which ~~he~~ **the superintendent or manager** is
 22 to be assigned, taking into account ~~his~~ **the superintendent's or**
 23 **manager's** executive ability and ~~his~~ knowledge of the utility
 24 industry;
 25 (4) subject to IC 36-4-9-12, hire attorneys when required for the
 26 operation of the utility;
 27 (5) hire professional or expert personnel when required for the
 28 operation of the utility;
 29 (6) submit a budget of its financial needs for the next year in the
 30 detail required by the municipal legislative body;
 31 (7) recommend to the legislative body reasonable and just rates
 32 and charges for services to the patrons of each utility;
 33 (8) appropriate, lease, rent, purchase, and hold all real and
 34 personal property of the utility;
 35 (9) enter upon lands for the purpose of surveying or examining
 36 the land to determine the location of any plant or appurtenances;
 37 (10) award contracts for:
 38 (A) the purchase of capital equipment;
 39 (B) the construction of capital improvements; or
 40 (C) other property or purposes that are necessary for the full
 41 and efficient construction, management, and operation of each
 42 utility;

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1 (11) adopt rules for the safe, economical, and efficient
2 management and protection of each utility;

3 (12) deposit at least weekly with the municipal fiscal officer all
4 money collected from each utility to be kept in a separate fund
5 subject to the order of the board; and

6 (13) make monthly reports to the fiscal officer of the receipts and
7 disbursements of money belonging to each utility and an annual
8 report of the condition of the utility.

9 (b) The board may purchase by contract electricity, water, gas,
10 power, or any other commodity or service for the purpose of furnishing
11 the commodity or service to the patrons of the municipally owned
12 utility or to the municipality itself.

13 (c) If the board wants to purchase the commodity or service from a
14 public utility and the parties cannot agree on a rate or charge to be paid
15 for it, either party may apply to the commission or other appropriate
16 state or federal regulatory agency to establish a fair and reasonable rate
17 or charge to be paid for the commodity or service.

18 (d) The board may discontinue water service by a waterworks to:

19 (1) a water consumer; or

20 (2) any property;

21 upon failure by the water consumer or the property owner to pay
22 charges legally due for sewer or sewage disposal plant service.
23 However, the water service may not be discontinued for nonpayment
24 of sewer or sewage disposal plant service charges until the charges
25 have been due and unpaid for at least thirty (30) days.

26 (e) Before water service is discontinued under subsection (d), the
27 board must give written notice to the water consumer or property owner
28 of its intention to discontinue water service if the unpaid sewer or
29 sewage disposal plant service charges are not paid before a date
30 specified in the notice. The notice must be mailed not less than ten (10)
31 days before water service is to be discontinued and addressed to the
32 water consumer or the property owner at ~~his~~ **the consumer's or**
33 **owner's** last known address.

34 **(f) The board may approve or recommend a transfer of all or**
35 **part of the municipally owned utility's surplus earnings to:**

36 **(1) the municipality's general fund; or**

37 **(2) after June 30, 2013, a local economic development**
38 **organization;**

39 **under section 11 of this chapter.**

40 SECTION 3. IC 8-1.5-3-8, AS AMENDED BY P.L.172-2009,
41 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2013]: Sec. 8. (a) A municipality owning a utility under this

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1 chapter shall furnish reasonably adequate services and facilities.

2 (b) The rates and charges made by a municipality for a service
3 rendered or to be rendered, either directly or in connection therewith,
4 must be nondiscriminatory, reasonable, and just.

5 (c) "Reasonable and just rates and charges for services" means rates
6 and charges that produce sufficient revenue to:

7 (1) pay all the legal and other necessary expenses incident to the
8 operation of the utility, including:

9 (A) maintenance costs;

10 (B) operating charges;

11 (C) upkeep;

12 (D) repairs;

13 (E) depreciation;

14 (F) interest charges on bonds or other obligations, including
15 leases; and

16 (G) costs associated with the acquisition of utility property
17 under IC 8-1.5-2;

18 (2) provide a sinking fund for the liquidation of bonds or other
19 obligations, including leases;

20 (3) provide a debt service reserve for bonds or other obligations,
21 including leases, in an amount established by the municipality,
22 not to exceed the maximum annual debt service on the bonds or
23 obligations or the maximum annual lease rentals;

24 (4) provide adequate money for working capital;

25 (5) provide adequate money for making extensions and
26 replacements to the extent not provided for through depreciation
27 in subdivision (1); and

28 (6) provide money for the payment of any taxes that may be
29 assessed against the utility.

30 (d) It is the intent of this section that the rates and charges produce
31 an income sufficient to maintain the utility property in a sound physical
32 and financial condition to render adequate and efficient service. Rates
33 and charges too low to meet these requirements are unlawful.

34 (e) The board may recommend to the municipal legislative body
35 rates and charges sufficient to include a reasonable return on the utility
36 plant of the municipality.

37 (f) Rates and charges established under this section are subject to
38 the approval of:

39 (1) the municipal legislative body by ordinance; and

40 (2) the commission, in accordance with the procedures set forth
41 in IC 8-1-2.

42 The commission shall approve rates and charges that are sufficient, in

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1 addition to the cash revenue requirements set forth in subsection (c), to
 2 include a reasonable return on the utility plant of the municipality if the
 3 legislative body so elects.

4 (g) **Subject to subsection (j), and** except for a municipally owned
 5 utility taxed under IC 6-1.1-8-3, the **municipal legislative body may**
 6 **approve and, with respect to a municipally owned utility that has**
 7 **not withdrawn from the commission's jurisdiction for the approval**
 8 **of rates and charges as allowed under this chapter, the** commission
 9 shall approve rates and charges sufficient to compensate the
 10 municipality for taxes that would be due the municipality on the utility
 11 property were it privately owned. **All or part of** these rates and charges
 12 in lieu of taxes may be transferred to:

13 (1) the municipal general fund; or

14 (2) **after June 30, 2013, if the cash revenue requirements set**
 15 **forth in subsection (c) have been met, the municipally owned**
 16 **utility's cash reserve fund established under section 11 of this**
 17 **chapter;**

18 if the legislative body so elects.

19 (h) The commission shall grant a request that an increase in rates
 20 and charges not be effective until after the occurrence of a future event
 21 if the legislative body so requests.

22 (i) A municipality that acquires and operates a utility under
 23 IC 8-1.5-2 by exercising the power of eminent domain may not impose
 24 a special rate, charge, surcharge, or other fee, other than rates and
 25 charges approved under this section or otherwise authorized by law, on
 26 the customers of the utility in order to pay for the costs associated with
 27 acquiring the utility through the exercise of the power of eminent
 28 domain.

29 (j) **A municipality that seeks to make a transfer under:**

30 (1) **subsection (g)(2) to the municipally owned utility's cash**
 31 **reserve fund established under section 11 of this chapter; or**

32 (2) **section 11(a)(2) of this chapter to a local economic**
 33 **development organization;**

34 **may not impose a special rate, charge, surcharge, or other fee,**
 35 **other than rates and charges approved under this section or**
 36 **otherwise authorized by law, on the customers of the utility in**
 37 **order to pay for the transfer. This subsection does not impair the**
 38 **authority of a municipality to adopt a rate ordinance that offers**
 39 **reduced rates or charges for certain industrial or commercial**
 40 **customer classes to provide incentives for those customers to**
 41 **expand or locate their operations in the municipally owned utility's**
 42 **service area.**



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1 SECTION 4. IC 8-1.5-3-11 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The money
 3 belonging to each municipally owned utility shall be kept by the
 4 municipal fiscal officer as separate funds as required by any bond
 5 ordinance or accounting procedures established by the commission or
 6 the state board of accounts. The municipal legislative body, with the
 7 approval **or recommendation** of the board, **and subject to**
 8 **subsections (d) and (e) and section 8(j) of this chapter**, may transfer
 9 surplus earnings of the utility, **including a municipally owned sewer**
 10 **utility subject to IC 36-9-23**, to:

- 11 (1) the municipality's general fund; or
 12 (2) after June 30, 2013, a local economic development
 13 organization to benefit or promote:
 14 (A) the municipality;
 15 (B) one (1) or more areas within the municipally owned
 16 utility's service area; or
 17 (C) the county or region in which:
 18 (i) the municipality; or
 19 (ii) the municipally owned utility's service area;
 20 is located.

21 The Money may not, however, be transferred **under this subsection**
 22 unless the terms and conditions of any bond ordinance, resolution,
 23 indenture, contract under IC 8-1-2.2, or similar instrument binding
 24 upon the utility are complied with.

25 (b) A cash reserve fund shall be created by ordinance and carried on
 26 the records of the utility or utilities by providing for monthly
 27 contributions or transfers to the cash reserve fund of surplus earnings
 28 of the utility or utilities.

29 (c) "Surplus earnings" are those cash earnings remaining after
 30 provision has been made to take care of current obligations, including:

- 31 (1) operating expense;
 32 (2) depreciation or replacement fund;
 33 (3) bond and interest sinking fund;
 34 (4) retirement fund; or
 35 (5) any other priority fund requirements fixed by law.

36 (d) After creation of the cash reserve fund, the legislative body may
 37 **do the following:**

- 38 (1) Include in the municipal general fund budget, as revenue in
 39 lieu of taxes, an amount equal to the actual balance, **or part of**
 40 **the actual balance**, in the cash reserve fund as of June 30 of the
 41 current year. However, **except as provided in subsection (e)**, the
 42 available cash reserve fund balance, **or part of the available**

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1 **cash reserve fund balance**, may be transferred to the municipal
 2 general fund only during the calendar year for which the budget
 3 was adopted, and transfers may not be made from any utility
 4 funds to the general fund except from the cash reserve fund.

5 **(2) After June 30, 2013, transfer to a local economic**
 6 **development organization under subsection (a) an amount**
 7 **equal to the actual balance, or part of the actual balance, in**
 8 **the cash reserve fund at the time of the transfer, to the extent**
 9 **that the funds transferred are not needed or anticipated to be**
 10 **needed for a transfer to the general fund under subdivision (1)**
 11 **or subsection (e) for general municipal purposes. Transfers**
 12 **may not be made from any utility funds to a local economic**
 13 **development organization under subsection (a) except from**
 14 **the cash reserve fund.**

15 (e) If at any time after the final approval of the budget an emergency
 16 should arise for further appropriations from the general fund, the
 17 legislative body may, by ordinance, transfer additional money from the
 18 cash reserve fund to the general fund to provide for the additional
 19 appropriations, the transfer to be limited to the accretions to the cash
 20 reserve fund since the preceding June 30.

21 (f) A cash reserve fund ~~if authorized by ordinance~~, may be used to
 22 make loans to another utility owned by the same municipality, for
 23 periods not to exceed five (5) years, at any interest rate, **if such loans**
 24 **are authorized by ordinance of the municipal legislative body.** The
 25 repayment of the loan and interest shall be returned to the cash reserve
 26 fund.

27 **(g) The state board of accounts may adopt rules under**
 28 **IC 4-22-2, including emergency rules in the manner provided**
 29 **under IC 4-22-2-37.1, to implement this section.**

30 SECTION 5. IC 36-9-23-25, AS AMENDED BY P.L.114-2008,
 31 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2013]: Sec. 25. (a) Subject to section 37 of this chapter, the
 33 municipal legislative body shall, by ordinance, establish just and
 34 equitable fees for the services rendered by the sewage works, and
 35 provide the dates on which the fees are due.

36 (b) Just and equitable fees are the fees required to maintain the
 37 sewage works in the sound physical and financial condition necessary
 38 to render adequate and efficient service. The fees must be sufficient to:

39 (1) pay all expenses incidental to the operation of the works,
 40 including legal expenses, maintenance costs, operating charges,
 41 repairs, lease rentals, and interest charges on bonds or other
 42 obligations;

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- 1 (2) provide the sinking fund required by section 21 of this
- 2 chapter;
- 3 (3) provide adequate money to be used as working capital; and
- 4 (4) provide adequate money for improving and replacing the
- 5 works.

6 Fees established after notice and hearing under this chapter are
 7 presumed to be just and equitable.

8 (c) The fees are payable by the owner of each lot, parcel of real
 9 property, or building that:

- 10 (1) is connected with the sewage works by or through any part of
- 11 the municipal sewer system; or
- 12 (2) uses or is served by the works.

13 Unless the municipal legislative body finds otherwise, the works are
 14 considered to benefit every lot, parcel of real property, or building
 15 connected or to be connected with the municipal sewer system as a
 16 result of construction work under the contract, and the fees shall be
 17 billed and collected accordingly.

18 (d) The municipal legislative body may use one (1) or more of the
 19 following factors to establish the fees:

- 20 (1) A flat charge for each sewer connection.
- 21 (2) The amount of water used on the property.
- 22 (3) The number and size of water outlets on the property.
- 23 (4) The amount, strength, or character of sewage discharged into
- 24 the sewers.
- 25 (5) The size of sewer connections.
- 26 (6) Whether the property has been or will be required to pay
- 27 separately for any part of the sewage works.
- 28 (7) Whether the property, although vacant or unimproved, is
- 29 benefited by a local or lateral sewer because of the availability of
- 30 that sewer. However, the owner must have been notified, by
- 31 recorded covenants and restrictions or deed restrictions in the
- 32 chain of title of his property, that a fee or assessment for sewer
- 33 availability may be charged, and the fee may reflect only the
- 34 capital cost of the sewer and not the cost of operation and
- 35 maintenance of the sewage works.
- 36 (8) The cost of collecting, treating, and disposing of garbage in a
- 37 sanitary manner, including equipment and wages.
- 38 (9) **Subject to subsection (g)**, the amount of money sufficient to
- 39 compensate the municipality for the property taxes that would be
- 40 paid on the sewage works if the sewage works were privately
- 41 owned.
- 42 (10) Any other factors the legislative body considers necessary.

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1 (e) Fees collected under ~~subdivision (8)~~ **subsection (d)(8)** may be
 2 spent for that purpose only after compliance with all provisions of the
 3 ordinance authorizing the issuance of the revenue bonds for the sewage
 4 works. The board may transfer **all or part of the** fees collected in lieu
 5 of taxes under ~~subdivision (9)~~ **subsection (d)(9)** to:

- 6 (1) the general fund of the municipality; or
 7 (2) **after June 30, 2013, if the requirements set forth in**
 8 **subsection (b) have been met, a cash reserve fund established**
 9 **under IC 8-1.5-3-11.**

10 (e) (f) The municipal legislative body may exercise reasonable
 11 discretion in adopting different schedules of fees, or making
 12 classifications in schedules of fees, based on variations in:

- 13 (1) the costs, including capital expenditures, of furnishing
 14 services to various classes of users or to various locations; or
 15 (2) the number of users in various locations.

16 (g) **A municipality that seeks to make a transfer under:**

- 17 (1) **subsection (e)(2) to a cash reserve fund established under**
 18 **IC 8-1.5-3-11; or**
 19 (2) **IC 8-1.5-3-11(a)(2) to a local economic development**
 20 **organization;**

21 **may not impose a special rate, charge, surcharge, or other fee,**
 22 **other than rates and charges approved under this section or**
 23 **otherwise authorized by law, on the customers of the utility in**
 24 **order to pay for the transfer. This subsection does not impair the**
 25 **authority of a municipality to adopt a rate ordinance that offers**
 26 **reduced rates or charges for certain industrial or commercial**
 27 **customer classes to provide incentives for those customers to**
 28 **expand or locate their operations in the municipally owned utility's**
 29 **service area.**

30 SECTION 6. **An emergency is declared for this act.**

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