

HOUSE BILL No. 1307

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-3-8.3.

Synopsis: Extraterritorial utility rates and charges. Establishes a procedure for extraterritorial customers of certain utilities to petition the utility regulatory commission for review of rates and charges.

Effective: Upon passage.

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January 23, 2013, read first time and referred to Committee on Utilities and Energy.

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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. 1307



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 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 8.3. (a) This section applies to a utility that
4 provides service to property located outside the corporate boundaries
5 of the municipality.
6 (b) As used in this section:
7 (1) "utility"; and
8 (2) "works";
9 have the meaning set forth for those terms in section 8.1 of this chapter.
10 (c) This subsection applies if a municipal legislative body adopts an
11 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that
12 is in effect on March 31, 2012, and that imposes rates and charges on
13 users of the works for service to property located outside the corporate
14 boundaries of the municipality that exceed by more than fifteen percent
15 (15%), but not more than fifty percent (50%), the rates and charges
16 imposed on users of the works for service to property located within the
17 corporate boundaries of the municipality. Not later than September 30,



1 2012, the municipality may petition the commission to approve the
 2 percentage difference between rates and charges established in the
 3 ordinance for property within and property outside the corporate
 4 boundaries. In the petition, the municipality shall set forth the
 5 following:

6 (1) The date on which the ordinance took effect.

7 (2) The percentage difference between rates and charges imposed
 8 on users of the works for service to property located outside the
 9 corporate boundaries of the municipality and to property located
 10 within the corporate boundaries of the municipality.

11 (3) Whether the works that is the subject of the ordinance is a
 12 water utility works, a wastewater utility works, or both a water
 13 and wastewater utility works.

14 If the commission determines that a petition filed under this subsection
 15 satisfies the requirements of this subsection, the commission shall
 16 approve the petition, including the percentage difference between rates
 17 and charges described in subdivision (2). If the commission determines
 18 that a petition filed under this subsection does not satisfy the
 19 requirements of this subsection, the commission shall disapprove the
 20 petition. However, if the percentage difference imposed in the
 21 ordinance was the subject of an objecting petition that was filed under
 22 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on
 23 final judgment or appeal, as applicable, by a court, the percentage
 24 difference is considered approved without the filing of a petition under
 25 this subsection.

26 (d) If a municipality that files, or that is exempt from filing, a
 27 petition under subsection (c) adopts an ordinance under section 8.1 of
 28 this chapter after March 31, 2012, that imposes rates and charges on
 29 users of the works for service to property located outside the corporate
 30 boundaries of the municipality that exceed the rates and charges
 31 imposed on users of the works for service to property located within the
 32 corporate boundaries of the municipality by more than the sum of the
 33 percentage difference approved or considered approved by the
 34 commission under subsection (c) plus fifteen percent (15%), either or
 35 both of the following may petition the commission to review and
 36 adjust, if necessary, the rates and charges imposed on users of the
 37 works for service to property located outside the corporate boundaries
 38 of the municipality:

39 (1) The municipality.

40 (2) The lesser of:

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

42 (B) twenty-five (25);

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1 users of the works whose property is located outside the corporate
 2 boundaries of the municipality.

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

8 (e) If a municipal legislative body, other than a municipal legislative
 9 body described in subsection (c), adopts an ordinance under section 8.1
 10 of this chapter after March 31, 2012, that imposes rates and charges on
 11 users of the works for service to property located outside the corporate
 12 boundaries of the municipality that exceed the rates and charges
 13 imposed on users of the works for service to property located within the
 14 corporate boundaries of the municipality by more than fifteen percent
 15 (15%), either or both of the following may petition the commission to
 16 review and adjust, if necessary, the rates and charges imposed on users
 17 of the works for service to property located outside the corporate
 18 boundaries of the municipality:

19 (1) The municipality.
 20 (2) The lesser of:
 21 (A) ten percent (10%) of all; or
 22 (B) twenty-five (25);

23 users of the works whose property is located outside the corporate
 24 boundaries of the municipality.

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

30 (f) The filing of a petition with the commission under subsection (d)
 31 or (e) stays the ordinance adopted under section 8.1 of this chapter or
 32 under IC 36-9-23-26. The rates and charges in effect before the
 33 adoption of the ordinance remain in effect until:

34 (1) the commission approves or disapproves the petition, or the
 35 petition is dismissed under subsection (g); and
 36 (2) if applicable, the commission adjusts the rates and charges
 37 imposed by the ordinance on users of the works whose property
 38 is located outside the corporate boundaries of the municipality.

39 (g) The commission shall prescribe the form and manner in which
 40 a petition must be filed under subsection (d), ~~or~~ (e), **or (m)**. The burden
 41 of proof to demonstrate that the proposed rates and charges are
 42 nondiscriminatory, reasonable, and just is on the municipality,

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1 regardless of who petitions the commission. If the commission fails to
 2 approve or disapprove a petition within one hundred twenty (120) days
 3 after the petition is filed in the form and manner prescribed by the
 4 commission, the petition is dismissed, and the ordinance adopted under
 5 section 8.1 of this chapter or under IC 36-9-23-26 takes **or remains in**
 6 effect, **as applicable**. A petition is automatically disapproved if the
 7 petitioner has filed a petition under section 8.2 of this chapter or under
 8 IC 36-9-23-26.1 with respect to the same rate ordinance.

9 (h) For purposes of determining whether the percentage difference
 10 between rates and charges imposed on users of the works for service to
 11 property located outside the corporate boundaries of the municipality
 12 and the rates and charges imposed on users of the works for service to
 13 property located within the corporate boundaries of the municipality is
 14 nondiscriminatory, reasonable, and just under section 8 of this chapter,
 15 the commission:

16 (1) may consider the benefit and expense to all users of the works
 17 of extending the works outside the corporate boundaries of the
 18 municipality; and

19 (2) may not consider any connection fees or capital surcharges
 20 imposed on users of the works for service to property that is
 21 located outside the corporate boundaries of the municipality that
 22 are specifically designated to pay for the costs associated with
 23 main extensions to the users of the works.

24 (i) If the commission determines that the percentage difference
 25 between the rates and charges imposed on users of the works for
 26 service to property located outside the corporate boundaries of the
 27 municipality and the rates and charges imposed on users of the works
 28 for service to property located within the corporate boundaries of the
 29 municipality is not nondiscriminatory, reasonable, and just under
 30 section 8 of this chapter, the commission may:

31 (1) establish nondiscriminatory, reasonable, and just rates and
 32 charges for users of the works for service to property located
 33 outside the corporate boundaries of the municipality; and

34 (2) order the municipal legislative body to adopt an ordinance
 35 imposing the nondiscriminatory, reasonable, and just rates and
 36 charges.

37 However, with respect to rates and charges imposed in an ordinance
 38 that was the subject of an objecting petition filed under section 8.2 of
 39 this chapter or under IC 36-9-23-26.1 and sustained on final judgment
 40 or appeal, as applicable, by a court, the commission may not establish
 41 rates and charges such that the percentage difference between rates and
 42 charges established by the commission is less than the percentage

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1 difference between rates and charges imposed in the ordinance.

2 (j) This section does not:

- 3 (1) authorize the commission to review or revise rates and charges
 4 imposed on users of the works for service to property located
 5 within the corporate boundaries of the municipality; or
 6 (2) otherwise return or subject a utility to the jurisdiction of the
 7 commission for the approval of rates and charges.

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

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

12 **(m) This subsection applies if a municipal legislative body**
 13 **adopts an ordinance under section 8.1 of this chapter or under**
 14 **IC 36-9-23-26 that is in effect on May 15, 2013, and that imposes**
 15 **rates and charges on users of the works for service to property**
 16 **located outside the corporate boundaries of the municipality that**
 17 **exceed by more than fifty percent (50%) the rates and charges**
 18 **imposed on users of the works for service to property located**
 19 **within the corporate boundaries of the municipality. Not later than**
 20 **September 30, 2013, either or both of the following may petition**
 21 **the commission to review and adjust, if necessary, the rates and**
 22 **charges imposed on users of the works for service to property**
 23 **located outside the corporate boundaries of the municipality:**

24 (1) The municipality.

25 (2) The lesser of:

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

27 (B) twenty-five (25);

28 users of the works whose property is located outside the
 29 corporate boundaries of the municipality.

30 (n) The rates and charges established in an ordinance described
 31 in subsection (m) remain in effect until:

32 (1) the commission approves or disapproves the petition, or
 33 the petition is dismissed under subsection (g); and

34 (2) if applicable, the commission adjusts the rates and charges
 35 imposed by the ordinance on users of the works whose
 36 property is located outside the corporate boundaries of the
 37 municipality.

38 SECTION 2. An emergency is declared for this act.

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