February 22, 2013

SENATE BILL No. 385

DIGEST OF SB 385 (Updated February 21, 2013 10:51 am - DI 44)

Citations Affected: IC 8-1; IC 36-9.

Synopsis: Sewage utilities. Provides that a utility that: 1) either provides or receives wholesale sewage service; and 2) negotiates to renew or enter into a new contract for wholesale sewage service on expiration of such a contract; may file a petition with the utility regulatory commission or a court to resolve a dispute, but not both. Deposits certain fees paid by municipal utilities in the public utility fund. (Under current law, the fees are deposited in the state treasury.) Provides that a contract for the construction of a municipal sewage works may not require certain landowners to waive the right to remonstrate against annexation by the municipality. Makes conforming amendments.

Effective: July 1, 2013.

Charbonneau, Mishler

January 10, 2013, read first time and referred to Committee on Environmental Affairs.
February 11, 2013, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.
February 21, 2013, reported favorably — Do Pass.

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February 22, 2013

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. 385

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 8-1-2-61.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 61.7. (a) As used in this section, "utility" refers to a wastewater utility owned or operated by a political subdivision (as defined in IC 36-1-2-13) that is not under the jurisdiction of the commission for the approval of rates and charges.**

(b) As used in this section, "wholesale sewage service" means the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste provided by a utility to another utility.

(c) A utility that:

(1) either provides or receives wholesale sewage service; and

(2) negotiates to renew or enter into a new contract for wholesale sewage service on expiration of a contract for the same wholesale sewage service;

may file a petition for review of rates and charges for wholesale sewage service with the commission or the circuit or superior court

with jurisdiction in the county where the utility has its principal office.

(d) If a utility files a petition under subsection (c), the following apply:

(1) The utility that provides the wholesale sewage service has the burden of proving that the rates and charges are just and reasonable.

(2) A petition concerning the same rates and charges may not be filed with both the commission and a court.

(3) If multiple petitions concerning the same rates and charges are filed, all petitions filed after the first petition filed must be:

(A) consolidated with the first petition filed; and

(B) heard in the forum in which the first petition was filed.

(e) After notice and hearing, the commission may issue an order determining whether the rates and charges that are the subject of a petition filed with the commission under subsection (c) are just and reasonable. The order of the commission is a final order for purposes of IC 8-1-3.

(f) This section does not:

(1) authorize the commission to revise rates and charges of a utility for any other purpose other than as stated in this section; or

(2) otherwise return or subject a utility to the jurisdiction of the commission.

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

SECTION 2. IC 8-1-2-70 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 70. In its order upon any investigation made under the provisions of this chapter **or IC 8-1.5-3**, either upon complaint against any municipal utility, or upon the petition of any such municipal utility, or upon the initiation of the commission, the commission shall ascertain and declare the expenses incurred by it upon such investigation, and the municipal utility affected thereby shall pay into the ~~treasury of the state~~ **commission public utility fund account described in IC 8-1-6-2** the amount of the expenses, so ascertained and declared, within a time to be fixed in the order, not exceeding twenty (20) days from the date thereof. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the municipal utility affected thereby, and all such orders shall, of their own force, take effect and become operative twenty (20) days after service thereof unless a different time

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be provided in said order. Any order of the commission as may increase any rate of such municipal utility shall not take effect until such expenses are paid into the ~~state treasury.~~ **commission public utility fund account described in IC 8-1-6-2.**

SECTION 3. IC 36-9-22-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

(b) The works board of a municipality may contract with owners of real property for the construction of sewage works within the municipality or within four (4) miles outside its corporate boundaries in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a period of not to exceed fifteen (15) years, for the payment to the owners and their assigns by any owner of real property who:

(1) did not contribute to the original cost of the sewage works; and

(2) subsequently taps into, uses, or deposits sewage or storm waters in the sewage works or any lateral sewers connected to them;

of a fair pro rata share of the cost of the construction of the sewage works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to it unless it has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

(c) The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract and their successors in title to remonstrate against pending or future annexations by the municipality of the area served by the sewage works. Any person tapping into or connecting to the sewage works contracted for is considered to waive ~~his~~ **the person's** rights to remonstrate against the annexation of the area served by the sewage works.

(d) Subsection (c) does not apply to a landowner if all of the

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following conditions apply:

(1) The landowner is required to connect to the sewage works because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of or connection to the sewage works are paid by a person other than the landowner or the municipality.

(e) Subsection (c) does not apply to a landowner who taps into, connects to, or is required to tap into or connect to the sewage works of a municipality only because the municipality provides wholesale sewage service (as defined in IC 8-1-2-61.7) to another municipality that provides sewage service to the landowner.

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COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 385, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-61.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 61.7. (a) As used in this section, "utility" refers to a wastewater utility owned or operated by a political subdivision (as defined in IC 36-1-2-13) that is not under the jurisdiction of the commission for the approval of rates and charges.**

(b) As used in this section, "wholesale sewage service" means the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste provided by a utility to another utility.

(c) A utility that:

(1) either provides or receives wholesale sewage service; and

(2) negotiates to renew or enter into a new contract for wholesale sewage service on expiration of a contract for the same wholesale sewage service;

may file a petition for review of rates and charges for wholesale sewage service with the commission or the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(d) If a utility files a petition under subsection (c), the following apply:

(1) The utility that provides the wholesale sewage service has the burden of proving that the rates and charges are just and reasonable.

(2) A petition concerning the same rates and charges may not be filed with both the commission and a court.

(3) If multiple petitions concerning the same rates and charges are filed, all petitions filed after the first petition filed must be:

(A) consolidated with the first petition filed; and

(B) heard in the forum in which the first petition was filed.

(e) After notice and hearing, the commission may issue an order determining whether the rates and charges that are the subject of a petition filed with the commission under subsection (c) are just and reasonable. The order of the commission is a final order for

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purposes of IC 8-1-3.

(f) This section does not:

(1) authorize the commission to revise rates and charges of a utility for any other purpose other than as stated in this section; or

(2) otherwise return or subject a utility to the jurisdiction of the commission.

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

SECTION 2. IC 8-1-2-70 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 70. In its order upon any investigation made under the provisions of this chapter **or IC 8-1.5-3**, either upon complaint against any municipal utility, or upon the petition of any such municipal utility, or upon the initiation of the commission, the commission shall ascertain and declare the expenses incurred by it upon such investigation, and the municipal utility affected thereby shall pay into the ~~treasury of the state~~ **commission public utility fund account described in IC 8-1-6-2** the amount of the expenses, so ascertained and declared, within a time to be fixed in the order, not exceeding twenty (20) days from the date thereof. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the municipal utility affected thereby, and all such orders shall, of their own force, take effect and become operative twenty (20) days after service thereof unless a different time be provided in said order. Any order of the commission as may increase any rate of such municipal utility shall not take effect until such expenses are paid into the ~~state treasury.~~ **commission public utility fund account described in IC 8-1-6-2.**

Page 2, delete lines 28 through 42, begin a new paragraph and insert:

"**(e) Subsection (c) does not apply to a landowner who taps into, connects to, or is required to tap into or connect to the sewage works of a municipality only because the municipality provides wholesale sewage service (as defined in IC 8-1-2-61.7) to another municipality that provides sewage service to the landowner.**".

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Delete pages 3 through 4.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 385 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 385, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 385 as printed February 12, 2013.)

KENLEY, Chairperson

Committee Vote: Yeas 12, Nays 1.

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