

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 385**

Citations Affected: IC 8-1; IC 36-9-22-2.

Synopsis: Municipal utilities. Provides that a utility that: (1) provides or receives wholesale sewage service; and (2) negotiates to renew an expiring contract or enter into a new contract for wholesale sewage; may petition for review of the rates and charges for the wholesale sewage service by the utility regulatory commission (commission) or a court, but not both. Deposits certain expense reimbursements paid by municipal utilities for investigations conducted by the commission into the commission public utility fund account. (Under current law, the reimbursements 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. Urges the legislative council to assign to the environmental quality service council for study during the 2013 legislative interim the topic of rates and charges imposed by water, wastewater, and combined water and wastewater utilities for service to users located outside the corporate boundaries or service territory of the utilities. **(This conference committee report deletes the contents of ESB 385 as reprinted April 10, 2013, and reinserts the contents with the following changes: (1) Deletes the prohibition that a utility that provides wholesale sewage service may not intervene or use utility funds or assets in a proceeding before the department of environmental management that may terminate the need of another utility to remain connected to the works of the wholesale provider. (2) Deletes IC 8-1.5-3-8.3 concerning petitions for review by the commission of extraterritorial rates and charges imposed by certain municipal utilities. (3) Makes a conforming amendment concerning deposits into the commission public utility fund account. (4) Urges the legislative council to assign to the environmental quality service council for study during the 2013 legislative interim the topic of rates and charges imposed by water, wastewater, and combined water and wastewater utilities for service to users located outside the corporate boundaries or service territory of the utilities.)**

Effective: Upon passage; January 1, 2013 (retroactive); July 1, 2013.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 385 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 8-1-2-61.7 IS ADDED TO THE INDIANA CODE
3 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
4 **JANUARY 1, 2013 (RETROACTIVE)]**: **Sec. 61.7. (a) As used in this**
5 **section, "utility" refers to a wastewater utility that:**
6 **(1) is owned or operated by a political subdivision (as defined**
7 **in IC 36-1-2-13); and**
8 **(2) is not under the jurisdiction of the commission for the**
9 **approval of rates and charges.**
10 **(b) As used in this section, "wholesale sewage service" means**
11 **the collection, treatment, purification, and disposal in a sanitary**
12 **manner of liquid and solid waste, sewage, night soil, and industrial**
13 **waste provided by a utility to another utility.**
14 **(c) A utility that:**
15 **(1) either provides or receives wholesale sewage service; and**
16 **(2) negotiates to renew or enter into a new contract for**
17 **wholesale sewage service on expiration of a contract for the**
18 **same wholesale sewage service;**
19 **may file a petition for review of rates and charges for wholesale**
20 **sewage service with the commission or the circuit or superior court**
21 **with jurisdiction in the county where the utility has its principal**

- 1 office.
- 2 (d) If a utility files a petition under subsection (c), the following
- 3 apply:
- 4 (1) The utility that provides the wholesale sewage service has
- 5 the burden of proving that the rates and charges are just and
- 6 reasonable.
- 7 (2) A petition concerning the same rates and charges may not
- 8 be filed with both the commission and a court.
- 9 (3) If multiple petitions concerning the same rates and charges
- 10 are filed, all petitions filed after the first petition filed must
- 11 be:
- 12 (A) consolidated with the first petition filed; and
- 13 (B) heard in the forum in which the first petition was filed.
- 14 (4) The petition is not subject to IC 36-9-23 or IC 36-9-25.
- 15 (5) If the petition is heard by a court, the court shall hear the
- 16 petition de novo.
- 17 (e) After notice and hearing, the commission may issue an order
- 18 determining whether the rates and charges that are the subject of
- 19 a petition filed with the commission under subsection (c) are just
- 20 and reasonable. The order of the commission is a final order for
- 21 purposes of IC 8-1-3.
- 22 (f) This section does not:
- 23 (1) authorize the commission to revise rates and charges of a
- 24 utility for any other purpose other than as stated in this
- 25 section; or
- 26 (2) otherwise return or subject a utility to the jurisdiction of
- 27 the commission.
- 28 (g) The commission may adopt rules under IC 4-22-2 to
- 29 implement this section.
- 30 SECTION 2. IC 8-1-2-70 IS AMENDED TO READ AS FOLLOWS
- 31 [EFFECTIVE JULY 1, 2013]: Sec. 70. In its order upon any
- 32 investigation made under the provisions of this chapter **or IC 8-1.5-3,**
- 33 either upon complaint against any municipal utility, or upon the
- 34 petition of any such municipal utility, or upon the initiation of the
- 35 commission, the commission shall ascertain and declare the expenses
- 36 incurred by it upon such investigation, and the municipal utility
- 37 affected thereby shall pay into the ~~treasury of the state~~ **commission**
- 38 **public utility fund account described in IC 8-1-6-2** the amount of the
- 39 expenses, so ascertained and declared, within a time to be fixed in the
- 40 order, not exceeding twenty (20) days from the date thereof. The
- 41 commission shall cause a certified copy of all such orders to be
- 42 delivered to an officer or agent of the municipal utility affected thereby,
- 43 and all such orders shall, of their own force, take effect and become
- 44 operative twenty (20) days after service thereof unless a different time
- 45 be provided in said order. Any order of the commission as may increase
- 46 any rate of such municipal utility shall not take effect until such
- 47 expenses are paid into the ~~state treasury~~ **commission public utility**
- 48 **fund account described in IC 8-1-6-2.**
- 49 SECTION 3. IC 8-1-6-2, AS AMENDED BY P.L.1-2010,
- 50 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 51 JULY 1, 2013]: Sec. 2. (a) All fees herein prescribed shall be paid into

1 the treasury of the state of Indiana through the secretary of the
 2 commission, a quietus shall be issued, and the fees shall be deposited
 3 into an account to be known as the commission public utility fund
 4 account. This account shall be used for enforcing the provisions of
 5 IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of
 6 funding the expenses of the commission and the consumer counselor
 7 in amounts not in excess of their respective appropriations by the
 8 general assembly, plus the contingency fund. All appropriations under
 9 this chapter paid out of the commission public utility fund account
 10 shall be subject to the prior approval of the general assembly, the
 11 governor, and the state budget agency.

12 (b) Fees collected from municipalities under IC 8-1-2-85 **and**
 13 **amounts paid by municipal utilities under IC 8-1-2-70** shall also be
 14 deposited in the commission public utility fund account, as if they were
 15 fees collected from public utilities under this chapter.

16 SECTION 4. IC 36-9-22-2 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]:
 18 Sec. 2. (a) The power of the municipal works board to fix the terms of
 19 a contract under this section applies to contracts for the installation of
 20 sewage works that have not been finally approved or accepted for full
 21 maintenance and operation by the municipality on July 1, 1979.

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

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

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

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

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

- 1 remonstrate against the annexation of the area served by the sewage
2 works.
- 3 (d) Subsection (c) does not apply to a landowner if all of the
4 following conditions apply:
- 5 (1) The landowner is required to connect to the sewage works
6 because a person other than the landowner has polluted or
7 contaminated the area.
- 8 (2) The costs of extension of or connection to the sewage works
9 are paid by a person other than the landowner or the municipality.
- 10 **(e) Subsection (c) does not apply to a landowner who taps into,
11 connects to, or is required to tap into or connect to the sewage
12 works of a municipality only because the municipality provides
13 wholesale sewage service (as defined in IC 8-1-2-61.7) to another
14 municipality that provides sewage service to the landowner.**
- 15 SECTION 5. [EFFECTIVE UPON PASSAGE] (a) For purposes of
16 this section, "EQSC" refers to the environmental quality service
17 council established by IC 13-13-7-1.
- 18 (b) For purposes of this section, "legislative council" refers to
19 the legislative council established by IC 2-5-1.1-1.
- 20 (c) The general assembly urges the legislative council to assign
21 to the EQSC for study during the 2013 legislative interim the topic
22 of rates and charges imposed by water, wastewater, and combined
23 water and wastewater utilities for service to users located outside
24 the corporate boundaries or service territory of the utilities,
25 including:
- 26 (1) percentage differences between rates imposed on users of
27 the same class located inside versus outside the corporate
28 boundaries or service territory of a utility; and
- 29 (2) the use of compact fees, wholesale service and other
30 contracts, payments in lieu of taxes, and other arrangements
31 to collect payment for utility service.
- 32 (d) If the EQSC is assigned the topic described in subsection (c),
33 the EQSC shall issue to the legislative council a final report
34 containing the EQSC's findings and recommendations, if any, in an
35 electronic format under IC 5-14-6, not later than November 1,
36 2013.
- 37 (e) This SECTION expires December 31, 2013.
- 38 SECTION 6. An emergency is declared for this act.
(Reference is to ESB 385 as reprinted April 10, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 385

Signed by:

Senator Charbonneau
Chairperson

Representative Bauer

Senator Stoops

Representative Wolkins

Senate Conferees

House Conferees