

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Utilities, to which was referred House Bill No. 1307, 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:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 8-1-2-92, AS AMENDED BY P.L.172-2009,
4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]: Sec. 92. (a) Every license, permit, or franchise
6 granted after April 30, 1913, to any public utility shall have the effect
7 of an indeterminate permit subject to the provisions of this chapter, and
8 subject to the provisions that:
9 (1) the license, franchise, or permit may be revoked by the
10 commission for cause; or
11 (2) **except as provided in IC 8-1-30-6**, the municipality may
12 purchase or condemn the property as provided in IC 8-1.5-2,
13 IC 36-9-23, or IC 36-9-25, as applicable.
14 ~~Any such~~ **A municipality that** is authorized to purchase ~~such~~ property
15 and ~~every such a~~ public utility **that** is required to sell ~~such the~~ property
16 **under subdivision (2) shall do so** at the value and according to the
17 terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or
18 IC 36-9-25, as applicable.
19 (b) If this chapter should be repealed or annulled, then all such
20 indeterminate franchises, permits, or grants shall cease and become

1 inoperative, and in place thereof such utility shall be reinstated in the
 2 possession and enjoyment of the license, permit, or franchise
 3 surrendered by such utility at the time of the issue of the indeterminate
 4 franchise, permit, or grant; but in no event shall such reinstated license,
 5 permit, or franchise be terminated within a less period than five (5)
 6 years from the date of the repeal or annulment of this chapter.

7 SECTION 2. IC 8-1-2-93, AS AMENDED BY P.L.172-2009,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 93. **(a) This section does not apply to a
 10 public utility that provides water or sewer utility service unless:**

- 11 **(1) the commission makes a finding under IC 8-1-30-4; and**
 12 **(2) the procedures and requirements of IC 8-1-30 have been**
 13 **complied with and satisfied.**

14 **(b)** Any public utility accepting or operating under any
 15 indeterminate license, permit, or franchise granted after April 30, 1913,
 16 shall by acceptance of any such indeterminate license, permit, or
 17 franchise be deemed to have consented to a future purchase or
 18 condemnation of its property including property located in contiguous
 19 territory within six (6) miles of the corporate limits of such
 20 municipality by the municipality in which such utility is located, at the
 21 value and under the terms and conditions as provided in IC 8-1.5-2,
 22 IC 36-9-23, or IC 36-9-25, as applicable, and shall thereby be deemed
 23 to have waived the right of requiring the necessity of such taking to be
 24 established by the judgment of a court, and to have waived all other
 25 remedies and rights relative to condemnation, except such rights and
 26 remedies as are provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as
 27 applicable, and shall have been deemed to have consented to the
 28 revocation of its license, permit, or franchise by the commission for
 29 cause.

30 SECTION 3. IC 8-1-30-6 IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE UPON PASSAGE]: Sec. 6. A municipality or other
 32 governmental unit may not require a utility company that provides
 33 water or sewer service to sell property used in the provision of such
 34 service to the municipality or governmental unit under IC 8-1-2-92,
 35 IC 8-1-2-93, or otherwise, unless:

- 36 **(1) the commission has made all necessary findings under**
 37 **section 4 of this chapter; and**
 38 **(2) the procedures and requirements of this chapter have been**

1 complied with and satisfied.

2 SECTION 4. IC 8-1.5-2-7, AS AMENDED BY P.L.172-2009,
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 7. (a) A certificate of public convenience and
5 necessity is not required as a condition precedent to the owning,
6 leasing, acquisition, construction, or operation of a utility by a
7 municipality, even if there is a public utility engaged in a similar
8 service. The acquisition of electric utility property and assignment of
9 a municipal electric utility's service area are, however, subject to the
10 provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

11 **(b) Subsection (c) applies to the following:**

12 **(1) A municipality that wants to acquire an existing utility,**
13 **including by purchase or condemnation under IC 8-1-2-92,**
14 **IC 8-1-2-93, or otherwise.**

15 **(2) A municipality that wants to own and operate a utility in a**
16 **location where, or contiguous to where, there is a public utility**
17 **engaged in a similar service:**

18 ~~(1)~~ **(A)** under a franchise granted by the municipality; or

19 ~~(2)~~ **(B)** under an indeterminate permit as defined in IC 8-1-2-1.

20 **However, subsection (c) does not apply to a municipality that owns**
21 **and operates a municipally owned utility as of July 1, 2012.**

22 **(c) Before a municipality described in subsection (b) may after**
23 **a hearing as provided by section 10 of this chapter, declare by**
24 **ordinance that public convenience and necessity require the**
25 **establishment of a municipally owned utility, the municipality shall**
26 **conduct a hearing under section 10 of this chapter.**

27 SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) If the
29 municipality and the owners of a public utility are unable to agree upon
30 a price to be paid for the property of the public utility, the municipality
31 may

32 ~~(1)~~ **(1)** by ordinance declare that a public necessity exists for the
33 ~~condemnation of the utility property;~~ and

34 ~~(2)~~ **(2)** bring an action in the circuit or superior court of the county
35 where the municipality is located against the utility for the
36 condemnation of the property.

37 ~~(b) An ordinance adopted under subsection (a) is final.~~

38 ~~(c)~~ **(b)** For the purpose of acquiring the property of a public utility,

- 1 the municipality
- 2 ~~(1)~~ **shall** exercise the power of eminent domain in
- 3 accordance with ~~IC 32-24~~; and
- 4 ~~(2)~~ **is required only to establish the necessity of taking as this**
- 5 **chapter requires: IC 32-24-1.**
- 6 ~~(d)~~ **(c)** The provisions of this section do not apply to:
- 7 **(1)** the acquisition of electric utility property or the assignment of
- 8 service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1; **or**
- 9 **(2) the acquisition of water or sewer utility property unless**
- 10 **the requirements of IC 8-1-30 are satisfied.**
- 11 SECTION 6. IC 8-1.5-2-33 IS ADDED TO THE INDIANA CODE
- 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 13 UPON PASSAGE]: **Sec. 33. (a) Not more than thirty (30) days after**
- 14 **a municipality described in section 7(b)(1) or 7(b)(2) of this chapter**
- 15 **adopts an ordinance under section 7 of this chapter, the utility may**
- 16 **bring an action against the municipality in the circuit or superior**
- 17 **court of the county in which the municipality is located to**
- 18 **determine the question of public convenience and necessity.**
- 19 **(b) The court shall stay further action by the municipality under**
- 20 **the ordinance adopted under section 7 of this chapter pending the**
- 21 **court's determination.**
- 22 **(c) The court shall try the cause without delay and without a**
- 23 **jury and review the evidence de novo."**
- 24 Page 5, line 19, after "located" insert "**anywhere**".
- 25 Page 5, line 26, delete "The" and insert "**Subject to subsection (o),**
- 26 **the**".
- 27 Page 5, between lines 30 and 31, begin a new line blocked left and
- 28 insert:
- 29 **"A petition filed by a group of users under subdivision (2) must be**
- 30 **accompanied by a written verification described in subsection**
- 31 **(o)(2)."**
- 32 Page 5, after line 38, begin a new paragraph and insert:
- 33 **"(o) Before a group of users described in subsection (m)(2) may**
- 34 **petition the commission under subsection (m), the following**
- 35 **conditions must be satisfied:**
- 36 **(1) At least twenty (20) days before filing a petition with the**
- 37 **commission under subsection (m), the group of users must file**
- 38 **the petition with the municipal legislative body.**

1 **(2) Not more than ten (10) days after the petition is filed**
2 **under subdivision (1), the municipal legislative body must**
3 **issue written verification to the group of users that the rates**
4 **and charges imposed on the users exceed by more than fifty**
5 **percent (50%) the rates and charges imposed on users of the**
6 **works whose property is located within the corporate**
7 **boundaries of the municipality.**

8 SECTION 8. **An emergency is declared for this act."**

9 Renumber all SECTIONS consecutively.

(Reference is to HB 1307 as printed February 8, 2013.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 3.

Merritt

Chairperson